All England Reporter - Cases

Thornhill Estates Ltd v Secretary of State for Communities and Local Government

[2015] EWHC 3169 (Admin)

Queen's Bench Division, Planning Court (Leeds)

Stewart J

04 November 2015

Martin Kingston QC & Jenny Wigley (instructed by Walker Morris) for the Claimant

Tim Buley (instructed by Government Legal Department) for the Defendant

Nathalie Lieven QC (instructed by Leeds City Council) for the Interested Party (1)

Hearing dates: 19 & 20 October 2015

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE STEWART

Mr Justice Stewart:

Introduction

1. On 10 March 2015 the Defendant (referred to in this judgment as “D” or “SoS”) refused outline planning permission for some 400 dwellings and associated works at Bagley Lane/Calverley Lane, Farsley, Leeds. The Claimant (C) challenges that decision under section 288 of the Town & Country Planning Act 1990.

2. A list of abbreviations used in this judgment (in addition to those set out in paragraph 1 above) is contained in Appendix I.

3. There are 6 Grounds of claim which fall into 2 broad categories:

(i) Failure to take into account material considerations relating to the application of development plan policy (Grounds A and B).

(ii) Material errors in the calculation of LCC’s 5 year supply of housing land (Grounds C – F).

4. In Appendix 2 to this judgment are contained section 38(6) of the Planning and Compulsory Purchase Act 2004 and the material paragraphs of NPPF, NPPG, LUDPR and CS.

Outline Chronology

5. Key dates in the chronology are:

2006 – Adoption of LUDPR (including Policy N34).

21 September 2012 – C applied for outline planning permission.

13 March 2013 – LCC’s Executive Board adopted PAS Interim Policy.

25 June 2013 – C lodged an appeal against the LPA’s failure to determine the application.

04 July 2013 – The appeal was recovered for the SoS’s determination pursuant to section 79 and paragraph 3 of schedule 6 of the Town & Country Planning Act 1990.

01 August 2013 – The LPA agreed an Officer’s Report suggesting reasons for refusal should the LPA have had the opportunity to determine the application. In short the release of the site would be premature, being contrary to policy N34 UDPR and paragraph 85 NPPF and not meeting the criteria of the Interim Policy, together with the highway concerns and the requirement for a section 106 agreement.

November 2013 – Inquiry by planning inspector.

27 January 2014 – Inspector’s 1st Report recommending that the appeal be allowed and granted.

27 January 2014 – Judgment handed down in R(Miller Homes Limited) v Leeds City Council [2014] EWHC 82 (Admin) (“the Miller Homes case”). PAS Interim Policy held to be lawful.

3 July 2014 – SoS directs the planning inquiry to be re-opened on the basis that there were two issues upon which he was not sufficiently informed. The relevant issue was the five year supply of housing. The other matter (the impact on bats) subsequently became irrelevant.

5 September 2014 – CS Inspector’s Report.

26 September 2014 – Planning permission granted for housing development of adjacent PAS site at Calverley Lane, Farsley.

11-14 November 2014 – Planning Inquiry reconvened.

12 November 2014 – LPA adopts the CS (including the up to date housing requirement and distribution plans as approved by the CS Inspector).

16 December 2014,

6 and 3 January 2015 – Development Plan Panel meetings on draft Site Allocations Proposals – principle of current PAS land for Housing Allocation or to be retained as Safeguarded Land (PAS) considered at these meetings.

27 January 2015 – Inspector’s 2nd Report.

5 February 2015 – C wrote to D drawing attention to LCC’s intended withdrawal of PAS Interim Policy.

11 February 2015 – LCC’s Executive Board withdrew its PAS Interim Policy with immediate effect and also agreed its Officer’s proposals for site allocations to form the basis of a draft Site Applications Plan to be prepared and published later in 2015. On the same date LCC brought this decision to D’s attention in correspondence. Also Executive Board meeting on draft Site Allocations Proposals – principle of current PAS land for Housing Allocations or to be retained as Safeguarded Land (PAS) established.

10 March 2015 – D issued the decision subject to this claim.

March 2015 – Appeal to Court of Appeal in Miller Homes case withdrawn (apparently because of withdrawal by LCC of Interim Policy).

17 April 2015 – Proceedings issued.

15 July 2015 – Executive Board decide to publish Site Allocations Draft Publication Plan for consultation.

22 September 2015 – Draft Site Allocations Plan published for consultation.

The Inspector’s 1st Report

6. Matters relevant to the present claim arising from the Inspector’s 1st Report are:

(i) The Development Plan relevant to the appeal at that time comprised the LUDPR.1 The site was identified as PAS land under Policy N34 LUDPR, that policy being intended to ensure the endurance of green belt boundaries by designating land for longer term development needs.2

(ii) The LUDPR was to be replaced by the emerging Leeds LDF, the publication draft of the Leeds CS being at the examination stage.3 Draft Policy SP6 of the CS indicated that 70,000 (net) new dwellings would be accommodated between 2012 and 2028 with a “step up” whereby 3,660 dwellings per annum would be accommodated between 2012 – 2013 and 2016 – 2017 with 4,700 per annum between 2017 – 2018 to the end of the plan period.4

(iii) An interim policy for PAS land had been introduced by LCC in March 2013, this interim policy incorporating criteria against which the release of PAS sites for housing would be considered.5

(iv) It was appropriate to use the CS total housing requirement in that it reflected both objectively assessed need and current national and local housing growth strategies, the Appellants accepting that around 70,000 dwellings was a reasonable requirement for the CS plan period.6

(v) As to the PAS interim policy, this was something to which the Inspector attached limited weight on the basis that it represented a pragmatic approach by LCC to ensuring an ongoing supply of housing land pending the publication of the Site Allocation Plan.7 He held that the proposal met some but not all of the PAS interim policy criteria.89

(vi) The development was “sustainable development” and there was no basis to resist the development on grounds of educational or health provision; further the impact on highways and drainage would be acceptable.10

(vii) The proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value.11

(viii) The proposal was contrary to the provisions of policy N34 which was the starting point; there were adverse impacts on local character and identity and the development was not fully compliant with PAS interim policy. Balanced against this were other material considerations one of which was that there was not a five year supply of housing land.12

7. In the Overall Conclusions in the 1st Report the Inspector said this:

“200. As a five year supply of deliverable housing sites has not been demonstrated relevant policies for the supply of housing should not be considered up-to-date. Policy N34 relates to areas of land safeguarded for long-term development, including housing and Policy H3 deals with the delivery of housing. Both should be considered as policies relevant to the supply of housing and are, therefore, out of date. Paragraph 14 of the Framework indicates that where relevant development plan policies are out-of-date planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. There are no specific policies in the Framework that indicate that development should be restricted.

201. The conflict with Policy N34, taking into account its out-of-date status, and the adverse impacts on local character and identity do not, in themselves, significantly and demonstrably outweigh the benefits…The PAS Interim Policy has been subject to legal challenge…and is of limited weight. The inconclusive position of housing land development opportunities needs to be seen in the context of the lack of a five year supply in the Council area as a whole, the national policy test….”

8. The Inspector dealt with the five year housing land supply in paragraphs 170 – 179 of the first report before concluding that13 the evidence indicated that a five year housing supply could not be demonstrated. His reasoning in summary was as follows:

(a) The emerging CS housing requirement was the most appropriate to be used in the period up to 2028 but there were three main issues between the parties in calculating the five year housing supply requirement.

(b) The first was the “step up approach” within the CS indicating a smaller number of dwellings per annum to be provided up to 2016/2017. The Inspector said that pending receipt of the Inspector’s Report into the CS examination the CS average requirement of 4,375 units per annum rather than the “step up” was the approach to be followed. This led to a five year requirement of 21,875 dwellings.14

(c) Secondly, there was an undisputed backlog i.e. shortfall in provision. That under supply should normally be dealt with in the following five years rather than over the whole plan period.15

(d) Thirdly C was arguing for a buffer of 20%. The Inspector found that a buffer of 5% should be added to the five year requirement on the basis that recessionary practice had been largely outside the control of LCC and a record of persistent under delivery of housing had not been proven.16

(e) If one added to the five year requirement of 21,875 dwellings a 3,000 backlog and a 5% buffer the five year requirement was then just under 26,000 dwellings.17

(f) The actual supply on LCC’s own figures was a five year supply of 19,760 dwellings, this being below their own stated requirements of 20,307 based on the “step up” approach and less than a four year supply set against the Inspector’s own conclusions.18

Core Strategy

9. On 12 November 2014, the day after the inquiry resumed, LCC approved the CS for adoption. The Local Plan Inspector approved the “step up” approach contained in Spatial Policy 6. The target was “at least 3,660 (dwellings) per year should be delivered from 2012/13 to the end of 2016/17.”

The Inspector’s 2nd Report

10. The 2nd Report dealt solely with matters raised in relation to the reopened Inquiry and was to be read alongside the original report.19

11. In the conclusions in the 2nd Report the Inspector found in relation to the five year housing land supply:

(1) In respect of the requirement:

(a) There was no dispute that the base requirement for the five year period 1 April 2014 to 31 March 2019 was 20,380 dwellings, this differing from the first report when the CS was still under examination and the “step up” was subject to objections.20

(b) The under-supply for the first two years of the CS had been about 2,900 units.21

(c) With regard to any under-supply in 2011/2012, while there were 12 months between the preparation of the evidence base (the SHMA) and the base date of the CS, the Inspector’s original conclusions on what should count towards the backlog held true and the backlog fed into the backlog of the assessment of need which included demographic factors.22

(d) The shortfall should be made up in the next five years for the reasons set out in IR1 – paragraph 174 and not over the first 10 years of the CS, thus applying the “”Sedgefield” approach.23

(e) A persistent under delivery of housing had not been proven based on the particular circumstances in Leeds, and so a buffer of 5% should be applied to the five year requirement and also to the undersupply.24

(f) Therefore the five year housing requirement comprised of about 24,440 dwellings including the undersupply since April 2012 made up in this period and the application of a 5% buffer to both the base requirement and the undersupply.25

(2) As regards supply, this was considered in paragraphs 190 – 202 of the 2nd Report resulting in a conclusion26 of an overall supply figure of about 26,500 homes.

(3) Therefore the Inspector’s conclusions on housing land supply was as follows:

“203. The supply of some 26,500 homes exceeds the requirement by just over 2,000 units. Therefore, the evidence indicates that a five year housing supply can be demonstrated. The supply figure also allows flexibility on top of the 5% buffer…

204.This conclusion differs from that arrived at in the original report (OR180) and that can be explained by the adoption of the CS with its “step up”; and the presentation of evidence on completion since April 2012, city centre/inner area viability, regeneration, empties and other sources of supply.”

12. In his “overall conclusions” in the 2nd Report the Inspector recorded:

“215. The proposal remains contrary to Leeds UDP Policy N34 which is still a “saved” policy post adoption of the CS. There are adverse impacts on local character and identity, including less than substantial harm to the setting of the Farsley Conservation Area (OR201). The development is not fully compliant with the PAS Interim Policy (OR198). Permission would undermine the plan-led system promoted by the Framework (OR203)…

216. I have concluded that there is now a five year supply of housing which is a significant change in circumstances since the original report. As a result paragraph 49 of the Framework does not take effect and relevant policies for the supply of housing can be considered up-to-date. Given that Spatial Policies 6 and 7 and Policies H1 and H4 of the CS have recently been found sound and have only just been adopted it is unsurprising that they should be considered up-to-date.

217. So far as policy N34 of the UDP is concerned I concluded previously that it was a policy for the supply of housing (OR200). In the light of the present circumstances it can also be considered up-to-date. In this respect the UDP has a plan period of 1998 to 2016 (OR18) so it is not time expired. It is noteworthy that in the explanation to Policy N34, PAS land will be reviewed as part of the preparation of the LDF (OR17). This is consistent with paragraph 85 of the Framework which states that permission for permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development.

218. The SAP will be published in 2015 and will undertake this review having regard to the CS, including in particular Spatial Policies 6 and 7 and Policies H1 and H4. As part of this review the relative sustainability of potential sites will be assessed (IR23 & 91). The fact that the Council has applied Policy N34 flexibly through the interim policy so that land has been released in advance of a Local Plan review does not make it out-of-date in the context of paragraphs 14 and 49 of the Framework. More, it reflects a pragmatic approach by LCC.

219. The test within paragraph 14 of the Framework in relation to planning permission being granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits does not now come into play. It is a matter of balancing the harm, conflict with the development plan and adverse impacts on local character and identity, against the benefits, primarily the contribution to housing provision, including affordable homes (OR199)…

220. Development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. I conclude that the conflict with the development plan, the starting point for decision making, and the adverse impacts on local character and identity are sufficient to outweigh the benefits of additional housing, including affordable homes. The presumption in favour of sustainable development does not apply as the proposal does not accord with the development plan.”

The Defendant’s Decision Letter 10 March 2015

13. The key paragraphs of the Decision Letter are:

“Policy Considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time when the inquiry first opened, the development plan for Leeds comprised the…(LUDPR) and the Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal were those identified at IR(i)17-18. Since then, Leeds have adopted their Core Strategy (CS)… However, the Inspector points out…that the proposal remains contrary to LUDPR Policy 34 as that remains a saved policy following the adoption of the CS. Although the Council have subsequently resolved to withdraw this policy (as indicated in their letter of 11 February 2015…), and the appellants have suggested in their letter of 5 February 2015 that that is an important material consideration in this case, the Secretary of State gives it little weight at this early stage in the Council’s work towards preparing their Site Allocations Plan (SAP).

….

Main Issues

9. Having regard to the issues identified by the Inspector at IR(i)132 and IR(ii)182, the Secretary of State considers that the main considerations in this case are:

a) whether there is a five year supply of housing land;

b) the release of the appeal site in the context of the Spatial Strategy for Leeds…

Whether there is now a five year supply of housing land

10. As the appeal Inspector confirms (IR(ii)183), the CS has now been found to be sound, with a base requirement for the period from 1 April 2014 to 31 March 2019 of 20,380 dwellings – lower than his assessment at the time of the original session of the inquiry. However, as it forms the basis for an up-to-date development plan, the Secretary of State accepts it as an indisputable basis for the determination of appeals.

11. Like the Inspector, the Secretary of State has then gone on to consider the implications of the shortfall in provision against the base requirement. He agrees with the Inspector’s reasoning at IR(ii)184-188, and with his conclusion at IR(ii)189, that the five year housing requirement comprises about 24,440 dwellings including the undersupply since April 2012 to be made up in this period and the application of a 5% buffer.

12. The Secretary of State has also carefully considered the Inspector’s discussion on “Supply” at IR(ii)190-201 and agrees with his conclusion at IR(ii)202 that an overall supply figure of about 26,500 homes would be reasonable. The Secretary of State therefore also agrees with the Inspector’s conclusion at IR(ii)203 that a supply of some 26,500 homes exceeds the requirement by just over 2,000 units, thereby indicating that a five year housing land supply can be demonstrated with scope for some flexibility. He also agrees (IR(ii)204) that the difference from the appeal Inspector’s original conclusion is accounted for by the different approach accepted in the adopted CS along with evidence on completions, city centre/inner area viability, regeneration, empties and other sources of supply.

…

The release of the appeal site in the context of the spatial strategy for Leeds

….

14. As indicated in paragraph 6 above, the Secretary of State gives little weight to the fact that the Council have indicated that they now intend to withdraw LUDPR Policy 34. The Secretary of State takes the view that, although that protects land not envisaged to be needed for development during the period covered by the housing policies of the LUDPR (IR(i)133), an intention to withdraw it does not necessarily imply that all such sites should be released immediately as there will be a number of other factors to be taken into account by the Council in preparing their SAP.

…

Overall Conclusions

20. The Secretary of State is satisfied that the Council have now identified a five year supply of housing land in an up-to-date CS without the appeal site, so that the presumption in the Framework in favour of sustainable development does not apply. Furthermore, he considers that the adverse impacts on local character and identity count against the proposed scheme and considers it appropriate for the Council to proceed to identify the most sustainable sites through the preparation and adoption of their SAP.”

(In paragraphs 16 and 17 D agreed with the Inspector’s conclusion that the proposal would constitute a sustainable development and that the proposal would result in an adverse impact on local character and identity and the loss of a site of intrinsic value).

Ground A: Failure to consider properly whether Policy N34 should be considered “out-of-date” in the context of paragraph 14 NPPF

14. If LPAs cannot demonstrate a five year supply of deliverable housing sites then policies for the supply of housing should not be considered up-to-date.27 If however a five year supply of deliverable housing sites is demonstrated then policies for the supply of housing may nevertheless be out-of-date for other reasons. The relevance of this is clear: if, for whatever reason, relevant policies are out-of-date then the provisions favouring development under paragraph 14 NPPF come into play.28

15. Policy N34 provided that development would be restricted within PAS sites.

16. In the first Report the Inspector did not come to any conclusions on C’s argument that, irrespective of NPPF paragraph 49, Policy N34 was out-of-date. As a result of his other findings he did not need to do so. He did however set out in some detail the C’s argument to that effect.29 The Inspector also set out LCC’s submissions on this point as follows:

“63. The starting point under s 38(6) of the Town and County Planning Act 1990 is the development plan….The proposed development is not in accordance with N34. That policy protects PAS land from development until a comprehensive review has been carried out through the LDF process which has not yet happened. The argument that, because the Council has accepted that some PAS land should be released before a review, in order meet the need to provide more housing land, N34 was out of date and no weight should be given to it, is unsustainable.

64. First, policies do not become out of date because there are reasons to depart from them. The need for housing land, as acknowledged by the Council in the interim policy, may be a material consideration to depart from the policy. Secondly, the analysis ignores the planning considerations which are not of interest to the applicants, i.e. anything other than the need to provide more housing land. Thirdly, N34 is entirely in step with Paragraph 85 of the Framework which provides policy support for the same approach in new policies…Paragraph 85 supports the Council’s approach of ensuring that the larger PAS sites come through the Site Allocations DPD process.”

17. The central point made by C is that D should have decided that the fact that LCC brought into existence a PAS Interim Policy (recognising that some PAS sites might be released for development contrary to N34) made N34 out-of-date. In my judgment this is a misplaced submission. The Interim Policy read:

“In advance of the Site Allocations DPD, development for housing on …PAS land will only be supported if the following criteria are met” (the criteria were then set out).30

The logic is clear. Against the backdrop of N34, the Interim Policy provided for departures from the Development Plan Policy in order to seek to meet, on an interim basis, the new requirement in NPPF. The very existence of the Interim Policy depended on the continued existence of Policy N34. Under section 38(6) the new NPPF requirement was capable of constituting a material consideration to depart from N34. However, N34 was still serving the purpose of designating PAS sites and, subject to the Interim Policy, preventing the least sustainable sites from being released for housing.

18. C makes much of an apparent acknowledgement in cross-examination by an LCC witness that N34 was out-of-date and of some words of my own in the Miller Homes case where I said: 31

“The Defendant (i.e. LCC) points out that this is not a unique situation. LPAs may often need a policy in place pending a new DPD, or at least pending a proposed new DPD having proper status as an Emerging Policy. If the development plan is out of date the process of adopting a new DPD can take 18 months or more. Further, it is not difficult for a Development Plan to become out-of-date if there is for example a change of national policy which conflicts with it…The LPA will, as Leeds have done here, seek to bridge the time interval with an Interim Policy if at all possible. That Interim Policy will by definition be inconsistent with the development plan since it is a change in circumstances which require the Interim Policy”32

(My underlining).

Whilst words used in evidence and in a judgment are of course of importance, the Court has to be careful in attaching too much significance to them. It is easy to see why terminology can be confusing and at least the words in my judgment cannot be taken to imply that I was using the underlined words as a term of art by reference to NPPF paragraph 14.

Therefore there is nothing in the point about the evidence in cross-examination, or in the Miller Homes case judgment, which undermines the logic that N34 was not out of date for the purposes of NPPF paragraph 14 as a result of the very introduction of the PAS Interim Policy.

19. C’s next points are that the Inspector failed to consider properly and or give reasons for whether or not N34 was out-of-date and that D failed to consider the issue at all.

20. As regards the 2nd Report C focuses on the words in paragraphs and 218 and 219, the relevant sentences of which I shall repeat.33 They are:

“The fact that the Council has applied Policy N34 flexibly through the interim policy so that land has been released in advance of a Local Plan review does not make it out-of-date in the context of paragraphs 14 and 49 of the Framework. More, it reflects a pragmatic approach by LCC.

The test was in paragraph 14 of the Framework in relation to planning permission being granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits does not now come into play.” (My underlining)

I do not accept the criticism that by referring to paragraph 49 NPPF, or by using the word “now” the Inspector was limiting his consideration to five year housing land supply issues. The context of the sentences and the reference to the application of N34 through the Interim Policy and to paragraph 14 militates against that. Further, C submitted that the Interim Policy could not be characterised as applying Policy N34 flexibly or at all given that the development of N34 sites was inconsistent with and departed from the Development Plan in which N34 is to be found.34 In my judgment the Inspector was clearly accepting LCC’s submissions in finding that the release of sites on the basis of the Interim Policy did not make N34 out-of-date. The logic I have set out above was entirely appropriate. N34 was not an out-of-date Policy; the Interim Policy released some, but not all, PAS sites on the basis of certain criteria; the pragmatic approach was to permit some departure from N34 pursuant to section 38(6) to comply with the new requirements of NPPF. Essentially N34 was the necessary live body upon which the Interim Policy had to be grafted. The Inspector was entitled to find, and did find, that this was the position, rather than N34 being out-of-date as a Policy and being given only such weight as an out-of-date Policy might merit.35 This was essentially a planning judgment, the parameters of the argument relating to which he had understood.

21. Finally, as regards the 2nd Report, C says that the reasons are inadequate and amount simply to an assertion which failed to address the various points submitted on behalf of C during the Inquiry. I reject this submission also. I have regard to the helpful summary of the principles which apply in a section 288 challenge as set out in sub paragraph (1) and (2) of paragraph 19 of the Bloor Homes case36: in particular decisions of the Secretary of State and Inspectors are to construed in a reasonable, flexible way, the letters are written principally for parties who know the issues and the evidence and argument deployed and the reasons for an appeal decision must be intelligible and adequate enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues.

On a sensibly informed objective reading of the Inspector’s conclusions, I find that he gave adequate, comprehensible and cogent reasons for rejecting the Claimant’s argument. It must also be borne in mind that the 2nd Report was expressly stated to be read alongside the 1st Report, and doing so leads to the inevitable conclusion that the Inspector understood the arguments, set them out adequately and made appropriate conclusions upon them.

22. C also criticises the D on the basis that he failed to deal with the issue at all. However in the paragraph immediately following paragraphs 217 and 218 of the 2nd Report by the Inspector, the Inspector expressly stated:

“219. The test within paragraph 14 or the Framework…does not now come into play…”

In paragraph 13 of the Decision Letter it is recorded that the Secretary of State:

“…also agrees (IR(2) 219) that the test within paragraph 14 of the Framework does not come into play.”

It is therefore clear that he accepted the Inspector’s reasoning which I have upheld. That was sufficient.37

Ground B: Failure to understand and take into account a material consideration, namely the Council’s withdrawal of its “PAS Interim Policy”

23. On 11 February 2015 LCC wrote to the Planning Inspectorate as follows:

“I am writing to you now to alert you a decision of the Council which is related to the determination…On 11 February 2015 the Council published a list of site allocation proposals which its Executive Board agreed should form the basis of the Site Allocations Plan to be prepared for consultation this year. This includes the Council’s view on which PAS sites…are or are not appropriate to be brought forward during the Plan Period. Neither the Grove Road or Bagley Lane sites are proposed as housing allocations within the site allocation proposals, but are proposed to be retained as PAS.

In the light of the fact that work on the Site Allocations Plan has progressed to this point the Council takes the view that it is not appropriate or necessary to retain its Interim PAS Policy and has therefore withdrawn this policy with immediate effect.”

In advance of the decision on 11 February 2015, C, having notice of the proposal to withdraw the Interim Policy on PAS, had written to D by letter dated 5 February 2015 saying that the impending withdrawal of a significant aspect of the only remaining reason for refusal was a material consideration for D to take into account.

24. As previously noted, the Decision Letter referred to the withdrawal of Policy N34 (not the Interim Policy). C therefore submits:

(1) D failed to consider the effects of the withdrawal of the PAS Interim Policy on C’s appeal.

(2) The Interim Policy formed an important plank of LCC’s sole remaining reason for refusal at the appeal.38

(3) LCC’s decision to withdraw the Interim Policy including the size threshold criterion on 11 February 2015 represented a significant change of circumstances and an important material consideration in the appeal.

(4) The reliance by LCC on the emerging SAP DPD indicating which N34 PAS sites could be released meant that the early release of PAS sites of the Interim Policy remained but the criteria did not.

(5) In the Decision Letter39 D expressly said that he gave little weight at this early stage in LCC’s work in preparing the SAP. Therefore it is said that there is no basis for refusal on the withdrawn Interim Policy or on the Emerging SAP which D said would be given such “little weight”.

25. It is correct that LCC had relied on the Interim Policy as a reason for refusal of planning permission. In the first Report the Inspector, however, attached limited weight to the Interim Policy40. In paragraph 198 of the first Report it was noted in the “Overall Conclusions” that “the development is not fully compliant with PAS Interim Policy”. Despite this the Inspector recommended that the appeal be allowed. In the Overall Conclusions of the 2nd Report the Inspector echoed the fact that the development was not fully compliant with the Interim Policy,41 and in paragraphs 217 and 218 referred to the Interim Policy by reference to the flexible pragmatic application of N34. The final conclusions of the Inspector42 are based on conflict with N34 and the adverse effects on the local character and identity being sufficient to outweigh the benefits of additional housing including affordable homes. D accepted this43.

26. Therefore, D and LCC submit that neither the Inspector nor D relied on the Interim Policy as a reason for dismissing the appeal. The withdrawal of the Interim Policy could not therefore affect the basis of the Inspector’s recommendation; nor could it or did it affect D’s decision. The fact that the purpose of the Interim Policy remains (namely earlier release of PAS sites) cannot therefore be relevant. C’s site is not proposed under either the Interim Policy or the Emerging SAP. Neither was given much weight by the Inspector/D.

27. In my judgment there is a serious problem with the Decision Letter. It was accepted on D’s behalf that in paragraphs 6 and 14 of the Decision Letter D was wrong in saying that Policy N34 had been withdrawn. To expand on the submissions of D/LCC, they can be crystallised as follows:

(i) What happened on the 11 February 2015 was that N34 continued to exist, the Interim Policy was withdrawn and the Emerging Policy (SAP) replaced it, but against the background of the CS having been adopted.44

(ii) In effect one “weak” policy, i.e. the Interim Policy, was replaced by another “weak” policy, namely the SAP.

(iii) There was no sense in continuing to have an Interim Policy with criteria when the CS had been adopted and the SAP was an Emerging Policy.

(iv) The appeal site was not within the size criterion of the Interim Policy; nor was it in the Emerging SAP in which LCC analysed sites on an individual basis.

(v) Neither the Interim Policy nor the draft SAP would have been a reason for refusal given the Inspector’s findings in his first Report.

(vi) The Ground is therefore resisted on the basis that:

a. the withdrawal of the Interim Policy was, as a matter of law, incapable of being a material consideration;

b. had D dealt with the point that it was the Interim Policy rather than N34 which had been withdrawn, then he would have reached the same decision in any event.45

28. In my judgment this Ground must succeed. D clearly made significant factual errors in paragraphs 6 and 14 of the Decision Letter. By withdrawing the Interim Policy after the date of the Inspector’s Report the “graft” to Policy N34 was removed. It was replaced by a decision that LCC would determine applications on PAS sites having regard to all material considerations including the Emerging SAP46. I do not accept that it is possible for the Court to say that neither the Interim Policy nor the new “material considerations” were incapable of being material considerations in relation to this site. The central argument for D/LCC was the fact that in the 1st Report the Inspector recommended the grant of permission and therefore he did not regard the Interim Policy as a reason for refusal despite the development not being fully compliant with it.47 This submission founders in my judgment because it is clear that in both reports the Inspector gave some weight to the non compliance with the Interim Policy. In the 1st Report, when balancing all the factors, this failure fully to comply with the Interim Policy was not sufficient to recommend refusal of permission. The reasoning of the Inspector can be seen in that Report in paragraphs 198 and 199. Having made the point about the lack of compliance with the Interim Policy the Inspector says48:

“Balanced against these impacts, there are other material considerations. There is not a five year supply of housing land…”

By the time of the 2nd Report the Inspector decided there was a five year supply of housing land. In those circumstances he recommended refusal of permission. Nevertheless, this again was a clearly a balancing exercise since the Inspector expressly mentioned the failure to comply with the Interim Policy. It was therefore a factor which he took into account. The withdrawal of that Policy therefore cannot be said to have been incapable of being a material consideration.

29. Ultimately this was not merely a factual error on behalf of D. It was an error of law in that D did not understand/take into account the withdrawal of the Interim Policy; he gave no reasons for not considering the withdrawal and in the circumstances of this case it would be inappropriate for the Court to attempt to plug the gap which D has left.

Ground C: Failure properly to apply the test for deliverablity.

30. The five year land supply was the central issue in the appeal, particularly in relation to the 2nd Report. The test for deliverability is in footnote 11 NPPF. It is:

“To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.”

31. LCC’s evidence was that the net five year deliverable supply was 29,504 homes. Of these 23,741 were SHLAA sites, the additional supply of 5,913 being made up of additional PAS sites, windfall delivery, windfall supply, long term empty properties and identified and estimated pre-determination. The Inspector reduced the figure for SHLAA sites by 1395, 895 for reduced supply from new student housing and 500 for elderly accommodation. He accepted therefore a net SHLAA figure of some 22,346 homes. He also made certain reductions in the additional supply before arriving at his overall supply figure of 26,500.49 The focus of C’s challenge is in relation to the Inspector’s acceptance of the SHLAA figure subject to the reduction only of 1,395 homes.

32. C points out that in the Inspector’s conclusions on supply he does not mention the test for deliverability or paragraph 11 NPPF. In this context it is important to note:

(i) That the Inspector set out C’s case on housing requirement extensively in paragraphs 21 – 67 of the 2nd Report. He then set out LCC’s case in paragraphs 95 – 124.

(ii) He recorded50:

“It is common ground that the burden of proof falls on the Council to demonstrate there is a five year supply. Sites have to be available now, be suitable now and achievable with a realistic prospect of delivery and in particular be viable. Viability is not the only aspect of achievability. ”

(The Inspector’s underlining)

(iii) Given that the test was “common ground” and the Inspector has not suggested that he has departed from it, it is clear that the Inspector has sought to apply precisely the test found in footnote 11 NPPF. The question therefore is whether there are any proper grounds for finding that the Inspector erred in law, either by wrongly applying the test and/or failing to provide adequate reasons.

33. C relied on a supplementary proof of evidence by Mr Dunbavin, a Town Planning Consultant and a proof of evidence from Philip Roebuck, a Chartered Surveyor. The key passages of Mr Dunbavin’s evidence are at paragraphs 5.82 – 5.100. He there analysis the SHLAA sites in some detail and concludes that they will only deliver 13,254 units, a reduction of 10,176 from the LCC figure of 23,430.51 Mr Roebuck focused on 84 sites in the SHLAA which had the potential to deliver 50 dwellings or more over the next five years. On the SHLAA this amounted to 10,876 dwellings. Mr Roebuck’s review of the 84 sites, based on his knowledge of the regional residential market and regular dialogue with major stakeholders, led him to conclude that those sites would deliver only 4,680 dwellings, a shortfall of 6,268 dwellings.

34. Finally there was a lengthy report from the Leeds Developer Consortium which reviewed LCC’s five year supply assessment from known sites greater than five dwellings. This concluded that the gross supply from known identifiable sites was 12,840 dwellings.

35. In this context I note that there is reference to these reports by the Inspector.52 The Inspector heard evidence from C’s witnesses and also LCC’s witnesses. Importantly he recorded this submission of C53:

“Policy in relation to SHLAA production is clear. Developers, landowners and agents are to play a significant role to make sure that the document is robust as set out in the PPG, PAS Guidance and the appeal at Elworth Farm.”

36. At this point I should set out some central paragraphs of the Inspector’s conclusions in the 2nd Report on the issue of supply:

“191. A significant proportion of the SHLAA Sites identified to contribute are in the city centre and inner areas of Leeds (IR49). There are questions over the viability of many of these sites and whether a competitive return can be achieved and there are the developers available to bring them forward (IR51). However, to my mind, supply cannot be approached in a policy vacuum. The strategy of the CS is to require a significant proportion of brown field development (over 50% for the whole of the plan period) and an appropriate mix of dwelling types, including units for smaller households. In terms of housing distribution almost 50% of housing is planned to take place in the city centre, inner area and East Leeds HMCAs. Allocations and planning permissions will need to reflect this strategy. As a consequence so will the five year land supply. This is in the context of an optimistic growth strategy (IR97). Based on the evidence before me the position in Leeds is different to that in other areas such as Wakefield where there are a number of main settlements with adopted allocations and less reliance on development within a MUA (IR51 and 102).

192. The volume house builders have rejected a significant proportion of the supply from city centre and inner areas identified by the Council. In recent years the house builders have not tended to be involved in such sites as they have not fitted their business model (IR108). However, a number of factors are likely to assist supply in these areas. The Council’s interventions will bring forward brown field land (IR108). Some developers are involved in regeneration projects and there is evidence of s106 obligations assisting in this respect (IR117). There are signs that Leeds is going to capitalise on the emerging market for large PRS schemes funded by financial institutions (IR115). There are low cost builders who are active in Leeds and there is no reason why that should not continue (IR109), whilst recognising that output from these regional operators is unlikely to increase significantly (IR50). The scheme to open up the south entrance to the railway station will make the Holbeck Urban Village more attractive to developers (IR113). There is good reason to expect the city centre to capitalise upon its attractiveness as a place to live once again (IR93).

193. The Council has assessed the viability of a selection of sites in the city centre and inner area and the evidence indicates that a significant proportion of such sites are likely to be viable, albeit not achieving the profit margin sought by the volume house builders (IR113 and 117). The approach taken by the DVS on land values, costs, sale prices and profit has, to my mind, been largely substantiated (IR112 and 113). For these reasons the house builders’ and appellants’ view of the contribution from these areas is to pessimistic.

194. I note that less than 50% of SHLAA sites have planning permission (IR42). Some are amber sites (IR40). Others have expired permissions (IR52). However, I am satisfied that the Council has made a reasonable assessment of the likelihood of them coming forward in the short term, taking into account their promotion by landowners and the Council’s knowledge of sites within its area (IR106). It is also appropriate for such sites to be considered within the context of the Core Strategy objectives.

195. There is also a difference between the Council and the Appellant in relation to the predicted build out rates. Even on sites in high demand areas such as the Golden Triangle there are a limited number of outlets and a tendency to concentrate on family houses rather than smaller units (IR120). For example at Kirkstall Forge family homes are to be built first even though more than 75% of the development is to be flats. Build rates may be limited so that the flow of properties onto the market allows prices and profit levels to be maintained (IR119). There is also some reflection of their business model in the figures. However, past build out rates and publicly stated anticipated rates on some sites indicate a higher output than generally predicted by the house builders (IR119). For the purpose of this exercise build rates should be based on a more optimistic but still realistic delivery than that put forward by the house builders within the policy framework set by the CS.

…

197. The input of the development industry into the SHLAA process and resultant five year supply is important as recognised by PPG, Planning Advisory Service guidance and the appeal decision in Cheshire East (IR43). The position of the house builders is clearly set out in the Leeds Developer Consortium Report (IR45). I acknowledge the work done by the Appellants in their further assessment of the larger sites where there is variance between the house builders and the Council (IR45) and the further sense check on some sites (IR54). Although circumstances have changed on some sites which were conceded as being unlikely to come forward at the original Inquiry and previous appeals, the Appellants’ overall assessment indicates that the SHLAA sites will deliver over 10,000 units less than the 2014 SHLAA figures.

198. The SHLAA process for a city such as Leeds is by necessity a broad brush approach given the large number of sites, many of them relatively small in scale. (IR105). Some sites will come into the supply and others will fall away (IR106). The SHLAA is a snapshot in time. There were significant disagreements during the formulation of the 2014 SHLAA which has led to the disparity in the figures put forward by the Council and the Appellant. However, it is nigh impossible for an Inspector at appeal to redo the analysis for a city such as Leeds with any accuracy.

199. Therefore, taking into account the Policy context and the other factors that I have referred to above, I consider that the published 2014 SHLAA is the best basis for assessing the five year housing supply. In coming to this conclusion I have taken into account the different underlying objectives of the Council and the development industry which underpin their analysis. Given that the CS has only just been adopted and should be given the opportunity to bed down and form the framework for housing supply, the Council’s analysis should be preferred. To do otherwise would seriously undermine the chances of the CS being implemented…”

37. I reiterate my conclusion that the Inspector fully and properly addressed the test for delivery in NPPF, footnote 11. The cited paragraphs were clearly written based on the requirements of footnote 11.54 What other criticism does C make of the 2nd Report under this Ground? In summary, it is this:

(i) Given C’s detailed and site specific evidence as to why a significant number of sites failed the footnote 11 test, the Inspector could not accept the SHLAA without giving full reasons for rejection of the evidence. Reference is made to the Wainhomes case55 where are at paragraph 35 Stuart-Smith J said:

“…in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority's evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court.”

(ii) C also relies on these statements by Lindblom J in the Bloor Homes case:

“103…I do not accept …that the Inspector could confine the explanation he gave for his conclusions on housing land supply to a broadly stated conclusion that there was or was not a supply of that level.

…

130…. I accept that the submissions made by Mr Leader in his closing speech at the Inquiry might have given the inspector a solid basis for rejecting what Mr Bateman had said about the 10% discount in his evidence. But that, as I have said, is not a question that can be answered in these proceedings. It was a question for the Inspector. And he did not come to grips with it, or at least he did not do so explicitly. In other cases this might not matter, if the presence or absence of a five year supply of housing land is clear, regardless of any discount being made for the delivery of housing on larger sites with planning permission. This, however, was not such a case. Even on the most favourable view for the Council the five year supply was tight. In the circumstances the contested 10% discount on large sites was a matter that required specific treatment in the Inspector's decision, leaving no doubt about his view, the reasons for it, and the consequence of it for the supply of housing land in the borough at the time of his decision…It was not a matter the Inspector could afford to ignore or on which his view could properly be left for the parties to read into his general conclusion on the question of the five year supply. It was something he had to address. Unfortunately, he did not.”

(iii) Strategic level policy support is only one element in demonstrating that a site is deliverable and the reliance by the Inspector on policy support56 further demonstrates his failure to engage with the footnote 11 test.

(iv) The Inspector failed to give reasons for rejecting detailed evidence of C on deliverability.57

(v) In the 1st Report58 the Inspector said that sites shown as red or amber within the SAP could not be said to be available, suitable, achievable or viable. He recorded in the 2nd Report59 C’s evidence that there were 1,558 units which were red or amber (the majority amber). C says that the Inspector unlawfully failed to give reasons for rejecting the site specific evidence given by Mr Dunbavin that the red and amber sites ought not be included in the five year supply.60

(vi) As regards the city centre and inner area sites61 the Inspector failed to analyse them against the test for deliverability and reached no conclusion as to whether they would be viable, given that LCC’s own viability reports showed that only just over ? of the sites analysed in the city centre were viable and some 60% of the sites analysed in the inner areas were viable. The city centre and inner area sites amounted to 9,775 units, being 41% of the claimed SHLAA supply.62

38. In approaching these submissions I must remind myself again of the principles summarised by Linblom J in the Bloor Homes case at paragraph 19, but also at paragraphs 103, 105 and 130. I reject Ground C based on these submissions for the following reasons:

(i) I do not accept that the Inspector fell foul of what Stuart-Smith J said in the Wainhomes case. The Inspector63 gave reasons why he accepted the SHLAA figures. He did not assume “simply on the basis of inclusion by the authority in a draft plan…that all such sites are deliverable.”64 If one reads carefully the paragraphs in the 2nd Report in relation to supply it is clear that the Inspector took on board the criticisms of the LCC’s case and the SHLAA and responded to them. The fact that his response was short does not mean that the reasons given were inadequate, particularly as he had set out the rival submissions in detail earlier in the Report.

(ii) The Inspector was fully aware of C’s approach to this matter. C wished the Inspector to deal with a large number of sites included within the SHLAA. In my judgment the Inspector was fully entitled to say that it was “nigh impossible for an Inspector at appeal to redo the analysis for a city such as Leeds with any accuracy.”65 LCC had undertaken the process of considering each site when compiling the SHLAA and LCC had compiled it according to NPPG.66 He considered the criticisms of the SHLAA and gave adequate reasons for coming to the conclusion that it was the best basis for assessing the five year housing supply. A major issue had been whether Mr Dunbavin could criticise the SHLAA when house builders had not properly engaged in the process of producing it. The Inspector clearly accepted LCC’s case on this.67

C criticised paragraph 191 of the 2nd Report where the Inspector said

“Allocations and planning permissions will need to reflect this strategy (i.e. the CS). As a consequence so will the five year land supply.”

It was said that this was a non sequitur given the purpose of the CS being policy at the strategic level, not area or site specific. However, these sentences and the remainder of paragraph 191 reflect the process undertaken by LCC in compiling this SHLAA (see above) and lead into the subsequent paragraphs dealing with the assessment of viability.

(iii) As to the red/amber site point, the Inspector specifically decided this in paragraph 194 of the 2nd Report. By noting that some of the SHLAA sites were amber sites, this was clearly accepting that red sites were not included in the SHLAA. He specifically referenced paragraph 106 of the Report which set out that LCC had assessed suitability and availability and that “sites which were accepted as not being part of the supply last year are now under active consideration” – with reasons given for this. Earlier the Inspector had recorded C’s submissions on this issue68. In the light of the evidence about the SHLAA being prepared with regard to specific sites, and the lack of inclusion of red sites in the SHLAA, the Inspector’s conclusion in paragraph 194 was adequate and does not fall foul of the requirements as set out in the Bloor Homes case. The compilation of the SHLAA (published July 2014) was a significant change from the position at the date of the first Report.69

(iv) The first DVS report of May 2014 was a report on 15 sites identified in the SHLAA update 2012. The results of the appraisal was that 11 sites were considered to be viable and 4 unviable when LCC’s full planning policies were applied. The 2nd DVS report of October 2014 (i.e. post dating the July 2014 SHLAA) tested 17 sites. 10 were considered to be viable, 3 marginally viable and 4 unviable. The non viable sites in the 1st DVS report were not included in the SHLAA. In relation to the 2nd DVS report it was accepted by LCC at the reconvened Inquiry that non viable sites should be taken out of the SHLAA. That does not affect C’s central submission.

C’s case is recorded in the last bullet point of paragraph 51 of the 2nd Report.70 It was this:

“The apparent suggestion from the Council’s exercise is that this sample reflects the wide theoretical viability of the inner area. For this reason it does not matter that a couple of sites found non viable in the 1st DVS report are no longer in the supply. If the Council’s point is that all in the current supply are viable it should have tested them all. If the point is the sample sets the tone wider viability of that area it has to live with the outcome that 2 of the original 5 and 7 of the original 17 produce a negative return, even with minimum profit and minimum land price and all the other contested assumptions. This is 9 out of 22, or 40%. Applied to the inner area total this is 2,326 units that would be producing a negative return…”

C submits that there is nothing which enables one to understand why the Inspector did not extrapolate the non viable sites in the DVS to the SHLAA as a whole. But in paragraph 193 the Inspector made his findings and specifically referenced LCC’s case which he had set out at paragraphs 112, 113 and 117. The important point from paragraph 112 is that LCC “chose sites where there might viability issues, and it is difficult to see what was wrong with this approach.” In paragraph 117 three of the marginally viable sites were argued to be capable of inclusion in the SHLAA together with the 10 viable sites, on the basis of taking a reasonably optimistic view of the economy in Leeds. Therefore the Inspector accepted that the DVS report inner area sites which were non viable were not representative and capable of extrapolation. They were specifically chosen because they might have viability issues. Therefore paragraph 193, with its references to LCC’s submissions, cannot be criticised as failing to provide sufficient reasons.

(v) In short:

(a) the Inspector did not assume that the sites included in the SHLAA were as a matter of fact deliverable and he gave sufficient reasons as to why he came to the conclusion that the SHLAA was the best basis for assessing the five year housing supply. Therefore the weight to be attached to the quality of the LCC’s evidence was a matter of planning judgment for the Inspector and should be afforded all proper respect by the Court; 71

(b) there was no need for the Inspector to rehearse every argument and the reasons were intelligible and adequate, enabling everybody to understand why the appeal was decided as it was and the conclusions that were reached on the principal important controversial issues72.

(c) there was sufficient clarity and precision in relation to the LPA’s ability to show a five year supply.

39. D’s Decision Letter73 agreed with the Inspector’s conclusions on the five year supply. There being no error of law in the Inspector’s Report, this Ground must fail.

Ground D:Failure to take into account extra 1,040 dwellings and 2014/15 under supply as a material consideration of particular relevance to the credibility of the (LCC,s) position and the quality of its evidence.

40. C submits that the Inspector, and therefore D, failed to have regard to material considerations specifically in relation to the deliverability of the five year supply. Relying on the statement by Stuart-Smith J in the Wainhomes case74 that the weight to be attached to the inclusion of sites in an emerging plan “can only be determined by reference to the quality of the evidence base”, it is said that the Inspector should have and did not take into account in assessing the credibility of LCC’s evidence:

(i) the automatic “step-up” increase in the housing requirement by 1,040 dwellings in accordance with the CS and

(ii) the under supply expected during the year 2014/15.

41. The base requirement for the five year period was 20,380 (3x3660 and 2x4700) with the automatic increase by the difference between 4,700 and 3,660 (1,040) in April 2015 and each year until 2017. The step-up to 4,700 begins in April 2017. D’s Decision Letter was issued on 10 March 2015, three weeks before the automatic increase was due to take place. The Inspector and D did not take into account the imminent increase in assessing whether LCC could demonstrate a five year supply of housing land. In addition it was common ground that in the first half of 2014/2015 there had been an under supply of housing and there would be a further under supply by the end of that year (i.e. 31 March 2015). The Inspector recorded75 the shortfall on LCC’s figures for 2012/13 and 2013/14. This under supply for the first two years of the CS had been about 2,900 units, he found.

42. This Ground fails in my judgment for the following reasons:

(i) The Inspector’s calculation had to take place at a single point. This was end March 2014, being the last full year for which reliable evidence was available.

(ii) What was to happen as at April 2015 was not *per se* a material consideration; this applied equally to the under supply envisaged for 2014/2015 and in relation to the CS step-up requirement.

(iii) The Inspector recognised, under the sub heading “Requirement”, the shortfall for the first two years of the CS.76 C’s submission about the shortfall in those two years and the under supply for 2014/2015 was primarily under the argument about the buffer77. In this context the Inspector gave detailed reasons why a persistent under delivery of housing had not been proven. He said:

“187….There has been under delivery in the first two years of the CS. The Appellants point to completion rates lagging behind the requirement in the last 10 quarters (IR35). But these factors are a reflection of a period when the country has been emerging from recession. Delivery on city centre, inner area and brown-field sites, which make up a significant proportion of the supply in Leeds, is likely to take longer to respond to encouraging trends in the housing market. However, at the same time permissions on green-field sites have increased as a proportion of consents (IR92). PPG notes that the factors behind under delivery may vary from place to place.

188. On the basis that delivery exceeds targets for the first 4 of the last 10 years, a persistent under delivery of housing has not been proven, a conclusion which is consistent with that which I came to previously (OR176). This is a judgment based on the particular circumstances in Leeds as put to me at the Inquiry…”

These reasons, albeit when considering the buffer, are a comprehensive rejection of any point that LCC’s quality of evidence was materially undermined.

Ground E:Error in relation to 2011/2012 under supply

43. As already stated, the Inspector incorporated the under supply for the year 2012/2013 and 2013/2014, namely 2,900 units78. C had argued that the 2011/2012 shortfall was a material consideration and amounted to 1,729 units. In relation to this the Inspector said:

“185. With regard to any under supply in 2011/12, whilst there was 12 months between the preparation of the evidence base (the SHMA) and the base date of the CS, it would seem to me that my original conclusions on what should count towards the backlog hold true (OR173). The backlog fed into the objective assessment of need which included demographic factors.”

44. C submits that they can demonstrate from the documents that the Inspector was clearly wrong in this finding. In summary:

(i) CS Spatial Policy 6 requires the provision of 70,000 dwellings between 2012 and 2028 with at least 3,660 per year from 2012/13 to the end of 2016/17.

(ii) Paragraph 3 of the CS shows the evidence derived from the SHMA of 2011.

(iii) Therefore no shortfall between 2011/12 could have been taken into account, the SHMA being dated May 2011.

(iv) The Inspector’s reference to paragraph 173 of the 1st Report79 takes one to the statement that “the SHMA indicate that pre-CS there was no backlog as the suppressed demand was taken into account in the assessment of future need.” There is a reference then to paragraph 71 which says:

“71. On the backlog, the SHMA is clear that pre-CS there was none. Suppressed demand is taken into account in the assessment of future need in the SHMA.”

[There is then a footnote reference “CD8” which is the LCC SHMA update (May 2011).]

(v) Therefore there was a missing year where the shortfall of 1,729 dwellings was not counted in the Inspector’s requirement figure.

(vi) D has therefore not provided the necessary “clarity and precision” referred to in the Bloor Homes case80.

(vii) In the context of a finding by the Inspector that supply exceeded requirement by just over 2,000 units allowing for flexibility on top of the 5% buffer,81 this ground alone is such that a reduction in flexibility to about 280 (2,000 – 1,729) would made a material difference to the outcome of the decision. This was something the Inspector had to address.82

45. C’s submission to the Inspector was that there was an under supply in the year 2011/2012 measured against 3,660 being the CS base requirement for the first 5 years (albeit beginning in the year April 2012/2013).83 This was a measure which took account of the fact that the CS had been adopted after the original inquiry. The submission before the first hearing was that the supply in the year 2011/2012 might be measured against a number of possible requirements.

46. The case for D/LCC is that anything prior to the CS plan period could not be under supply. If one considers the CS Inspector’s Report84 the following emerges:

(i) Issue 1 which the CS Inspector had to consider under the Assessment of Soundness was “whether the Core Strategy makes adequate provision to meet the full, objectively assessed needs for market and affordable housing in the city and district.”

(ii) Between 2008/2009 and 2011/2012 housing delivery in Leeds fell below the rates set in the Regional Strategy, though that strategy had been revoked and its housing targets shown to be inaccurate, thus significantly reducing the weight to be attributed to under delivery against the Regional Strategy target and the need to address any shortfall against the Regional Strategy through the Core Strategy (paragraph 16).

(iii) Evidence subsequent to the SHMA was taken into account (see for example paragraph 14) in particular, at paragraph 19 the CS Inspector found85 “…on the basis of the evidence before me I am satisfied that the Core Strategy figure of 70,000 (net) is based on a reasonable objective analysis of the need for new housing in Leeds up to 2028.”

47. Therefore the SHMA was part of the analysis but not all of it and the CS Inspector’s Report made it clear that in the relevant period i.e. April 2012 up to 2028 the total figure of 70,000 net units was the need for new housing in Leeds. For this reason any alleged shortfall in 2011 – 2012 could not and should not form part of the arithmetic.

48. C’s response to this is that that was not what the Inspector said in the 2nd Report. If that was not the reason the Inspector clearly gave then D/LCC cannot rely upon it.86

49. The Inspector said this in the 2nd Report:

“185.With regard to any under supply in 2011/12, whilst there was 12 months between the preparation of the evidence base (the SHMA) and the base date of the CS, it would seem to me that my original conclusions on what should count towards the backlog hold true (OR173). The backlog fed into the objective assessment of need which included demographic factors.”

I have recorded above what was said in the first Report at paragraph 173 with the reference back to paragraph 71. Of course, as C submits, the SHMA itself did not deal with the 2011/2012 period. However the Inspector was fully cognisant of this and accepted it in the first sentence of paragraph 185 of the 2nd Report. What he went on to say is that his original conclusions on what should count towards the backlog hold true (my underlining). What he had found should not count towards the backlog was anything which was taken into account in the assessment of future need. This leads to the 2nd sentence of paragraph 185. The “objective assessment of need which included demographic factors” was the full assessment for the period April 2012 to 2028 and therefore any “backlog” was fed into this.

Read properly and in the context of documentation as a whole the Inspector’s finding at paragraph 185 is clear and precise and, albeit in few words, gives adequate reasons. It deals fully and properly with the submission which had been put to him by C87. I therefore reject C’s case on this Ground also.

Ground F:Inadequate reasoning.

50. C relies on the well known statement of Lord Brown of Eaton-under-Heywood88 that the reasons for the decision “must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”…”

51. It is said that the Inspector and therefore D failed to give adequate reasons for the decision such that it was not possible to understand how the Inspector reached the conclusion that LCC could demonstrate a five year supply of housing land.

52. This Ground adds nothing to the previous grounds which I have dealt with. I reject it for the reasons I have already given.

Summary

53. I reject all of C’s grounds apart from Ground B. It is common ground that if I accepted Ground B only I must quash the Secretary of State’s decision. I therefore grant the requested relief based on this sole ground.

Appendix 1 – List of Abbreviations

CS – Core Strategy

DPD – Development Plan Document

LCC – Leeds City Council

LDD – Local Development Document

LDF – Local Development Framework

LPA – Local Planning Authority

LUDPR – Leeds Unitary Development Plan Review 2006

MUA – Main Urban Area

NPPF – National Planning Policy Framework

NPPG – National Planning Practice Guidance

PAS – Protected Areas of Search

SAP – Site Allocations Plan

SHLAA – Strategic Housing Land Availability Assessment

SHMA – Strategic Housing Market Assessment

SPD – Supplementary Planning Document

SPG – Supplementary Planning Guidance

APPENDIX 2

Planning and Compulsory Purchase Act 2004

38 Development planE+W

….........This section has no associated Explanatory Notes

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

National Planning Policy Framework

……….

The presumption in favour of sustainable development

11. Planning law requires that applications for planning permission must be

determined in accordance with the development plan unless material

considerations indicate otherwise.

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

13. The National Planning Policy Framework constitutes guidance for local

planning authorities and decision-takers both in drawing up plans and as

a material consideration in determining applications.

14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden

thread running through both plan-making and decision-taking.

…………

For decision-taking this means:

?? approving development proposals that accord with the development plan

without delay; and

?? where the development plan is absent, silent or relevant policies are

out-of-date, granting permission unless:

–– any adverse impacts of doing so would significantly and demonstrably

outweigh the benefits, when assessed against the policies in this

Framework taken as a whole; or

–– specific policies in this Framework indicate development should be

restricted.

………..

6. Delivering a wide choice of high quality homes

47. To boost significantly the supply of housing, local planning authorities should:

?? use their evidence base to ensure that their Local Plan meets the full,

objectively assessed needs for market and affordable housing in the

housing market area, as far as is consistent with the policies set out in this

Framework, including identifying key sites which are critical to the delivery

of the housing strategy over the plan period;

?? identify and update annually a supply of specific deliverable11 sites

sufficient to provide five years worth of housing against their housing

requirements with an additional buffer of 5% (moved forward from later

in the plan period) to ensure choice and competition in the market for

land. Where there has been a record of persistent under delivery of

housing, local planning authorities should increase the buffer to 20%

(moved forward from later in the plan period) to provide a realistic

prospect of achieving the planned supply and to ensure choice and

competition in the market for land;

………….

11 To be considered deliverable, sites should be available now, offer a suitable location for development now, and be

achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that

development of the site is viable. Sites with planning permission should be considered deliverable until permission

expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.

…………….

49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

…………..

9. Protecting Green Belt land

……….

85. When defining boundaries, local planning authorities should:

……………….

?? where necessary, identify in their plans areas of ‘safeguarded land’

between the urban area and the Green Belt, in order to meet longer-term

development needs stretching well beyond the plan period;

?? make clear that the safeguarded land is not allocated for development at

the present time. Planning permission for the permanent development of

safeguarded land should only be granted following a Local Plan review

which proposes the development;

……………….

Planning Practice Guidance

Paragraph: 031 Reference ID: 3-031-20140306

What constitutes a ‘deliverable site’ in the context of housing policy?

Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years.

However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the five-year supply. Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out. If there are no significant constraints (e.g. infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a five-year timeframe.

The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust five-year housing supply.

http://planningguidance.planningportal.gov.uk/blog/guidance/housing-and-economic-land-availability-assessment/stage-5-final-evidence-base/ - paragraph\_031Revision date: 06 03 2014

Leeds Unitary Development Plan

(Review 2006)

…………..

5.4.9 To ensure the necessary long-term endurance of the Green Belt,

definition of its boundaries was accompanied by designation of Protected

Areas of Search to provide land for longer-term development needs.

Given the emphasis in the UDP on providing for new development within

urban areas it is not currently envisaged that there will be a need to use

any such safeguarded land during the Review period. However, it is

retained both to maintain the permanence of Green Belt boundaries and

to provide some flexibility for the City’s long-term development. The

suitability of the protected sites for development will be comprehensively

reviewed as part of the preparation of the Local Development Framework,

and in the light of the next Regional Spatial Strategy. Meanwhile, it is

intended that no development should be permitted on this land that would

prejudice the possibility of longer-term development, and any proposals

for such development will be treated as departures from the Plan.

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N34: WITHIN THOSE AREAS SHOWN ON THE PROPOSALS MAP

UNDER THIS POLICY, DEVELOPMENT WILL BE RESTRICTED

TO THAT WHICH IS NECESSARY FOR THE OPERATION OF

EXISTING USES TOGETHER WITH SUCH TEMPORARY USES

AS WOULD NOT PREJUDICE THE POSSIBILITY OF LONG

TERM DEVELOPMENT.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

………….

25. Calverley Lane, Farsley

………………..

Leeds Interim Policy

………..

3. Main Issues

3.1. To support regeneration, economic growth and to help meet housing need, the City Council has been proactive in facilitating a range of actions to help stimulate the housing market….

…..

3.2. Within the context of these various initiatives and actions, the City Council is able to demonstrate a range of measures to take forward the aspirations for Leeds to be the ‘best city in the UK’….. A key dimension of this strategy also is the need for the city to demonstrate an improved position in terms of overall size and balance of housing supply. As a consequence the council will be in a stronger position to resist proposals on sites that are unsuitable or unsustainable or that are more appropriately considered through the on-going site allocations process. To that end this report is about adding to the range of initiatives to support growth by bolstering the land supply, notwithstanding the existing Leeds’ 5 Year Land Supply position and the scope provided by existing allocations and permissions.

3.3. The following interim policy will assist Leeds in strengthening it’s supply of achievable housing land pending the adoption of Leeds’ Site Allocations

Development Plan Document which will identify a comprehensive range of new housing sites:

In advance of the Site Allocations DPD, development for housing on

Protected Area of Search (PAS) land will only be supported if the

following criteria are met:

i) locations must be well related to the Main Urban Area or Major

Settlements in the Settlement Hierarchy as defined in the Core

Strategy Publication Draft;

ii) sites must not exceed 10ha in size (‘sites’ in this context meaning

the areas of land identified in the Unitary Development Plan), and

there should be no sub-division of larger sites to bring them

below the 10ha threshold; and

iii) the land is not needed, or potentially needed, for alternative uses

In cases that meet criteria (i) and (iii) above, development for housing on

further PAS land may be supported if:

iv) it is in an area where housing land development opportunity is

demonstrably lacking; and

v) the development proposed includes or facilitates significant

planning benefits such as, but not limited to:

a) a clear and binding linkage to the redevelopment of a

significant brownfield site in a regeneration area;

b) proposals to address a significant infrastructure deficit in the

locality of the site.

In all cases development proposals should satisfactorily address all

other planning policies, including those in the Core Strategy.

*Justification*

3.4. The National Planning Policy Framework (NPPF), notes that the use of

‘safeguarded land’ should be considered for development as part of a Local Plan review. However, paragraph 49 of the NPPF, provides that a local planning authority’s policies concerning supply of land will be considered “out-of-date”, if an adequate supply cannot be identified. The AMR 2012, gives an overview of the City Council’s overall housing land supply position. The focus of the above interim policy within this context, is therefore to help boost overall supply, as a further measure to supplement the housing delivery initiatives summarised in para. 3.1 above.

3.5. Policy N34 of the UDP, identifies a series of Protected Areas of Search (PAS), as a basis to support the needs of long term development. Within the overall context of this report and prevailing circumstance, regarding the need to facilitate regeneration, economic recover and further boost housing land supply, the above interim policy provides a clear rationale for departing from the approach in the Unitary Development Plan.

3.6. Criterion i), of the policy ensures that ‘early release’ sites will be in sustainable locations. The sites being well related to the Main Urban Area or Major Settlements, will ensure that any new housing would also be well located for public transport and access to employment and reasonably close to existing facilities such as shops, medical facilities and schools. The Main Urban Area and Major Settlements are the focus of most development in the Core Strategy.

3.7. The 10ha size threshold is necessary to draw a distinction between smaller sites that will provide sufficient additional housing to bolster housing land supply and the larger sites that should be considered through the Site Allocations Development Plan Document where the principle of allocating such sites (including comparisons with reasonable alternatives) is most appropriately dealt with. The 10ha threshold would provide for a meaningful contribution in that just over half of the sites that qualify under criterion i) would be below the threshold. Using the SHLAA density assumption that 75% of the land would be built on at 30 dwellings per hectare, the threshold would mean excluding sites with capacities of 225+ dwellings. This is reasonable as such a scale of development ought to be considered through the Site Allocations Development Plan Document.

3.8. With regard to criteria (iii) in the policy, it should be noted that Policy N34 of the UDP is safeguarding land for the full range of possible future needs, not just housing. Whilst housing needs have increased significantly, there are other pressing needs, not least for new schools. Hence, where local needs are evident, or the position remains uncertain, particular PAS sites will therefore need to be safeguarded for that purpose or otherwise retained as PAS until the potential need to accommodate non-housing uses is resolved.

3.9. Criterion (iv) is concerned with further PAS release. It is acknowledged that the housing market requires a broad spread of development opportunity in order for sites to be brought forward in the short term. Whilst many parts of the District already have housing land available for development, other areas have no such opportunities, and also lack brownfield land for windfall development. It would be inappropriate to release PAS sites for development outside the Plan-led process where suitable alternative opportunities already exist. Hence, in these exceptional circumstances further PAS land release may be appropriate, where these are coupled with other appropriate benefits as set out in Criterion v)…..

……

5.1 In aspiring to be ‘the best city in the UK’ Leeds has major ambitions and is

demonstrating leadership, in taking proactive steps to support a range of initiatives, interventions and actions. Central to these is the desire to facilitate regeneration projects, economic growth and to help meet a variety of housing needs, through seeking to boost housing delivery in Leeds. The purpose of this report is to set out how Leeds will improve its housing offer in terms of broadening its supply of land and promoting housing delivery. Within this overall context and the conclusions of the Authority Monitoring Report (AMR) 2012, this report explores how Leeds’ housing land portfolio and housing delivery may be enhanced, including the setting of criteria for the release of a selection of Protected Area of Search (PAS) sites for development.

5.2 Within the context of an overall strategy to support regeneration and housing investment, this report sets out a positive way forward for further bolstering Leeds’ current housing land supply. The release of selected PAS sites subject to criteria should help strengthen the overall housing land supply position and the balance of achievable sites.

……..

Report of Chief Planning Officer

Report to Executive Board

Date: 11th February 2015

Subject: Site Allocations Plan & Aire Valley Leeds Area Action Plan – Site Allocation Proposals

Core Strategy

Leeds Local Development Framework

Adopted 12th November 2014

………

4.6.3 Within the context of evidence derived from the Strategic Housing Market Assessment (2011) and informed by the above considerations, a housing requirement of 70,000 (net) new homes has been set, as a basis to meet the housing demands and job growth aspirations of the City. This figure is broadly consistent with the former Regional Strategy. It is based primarily on the 2008-based population projections and has not reflected the 2012-based population projections which were published at a very late stage of the Core Strategy Examination process. As part of the implementation of the

Core Strategy, the City Council will continue to monitor the evidence base and delivery; and through allocations plans, manage the release of sites through phasing……In the delivery of the above housing growth principles and within the context of current economic uncertainties and the fragile nature of the housing market, the delivery these requirements as part of an overall strategy, will need to be closely monitored.

………..

4.6.12 The 66,000 units that will be identified will be composed of current, undelivered allocations (7,500 units), extant planning permissions (20,000 units) and other sites which are deemed to be appropriate for housing delivery, as per the guidelines in Spatial Policy 6 (Figures as at 31 March 2011).

SPATIAL POLICY 6: THE HOUSING REQUIREMENT AND ALLOCATION OF HOUSING LAND

The provision of 70,000 (net) new dwellings will be accommodated between 2012 and 2028 with a target that at least 3,660 per year should be delivered from 2012/13 to the end of 2016/17.

…………

4.6.14 The SHLAA Update 2011 assessed sites for their suitability, availability and achievability, with a partnership of external interests – including housebuilders – applying market judgement to deliverability of dwellings…….This provides the framework for housing distribution so that land can be found that meets the criteria of Spatial Policy 6 in future LDF land allocation documents.

…..

POLICY H1: MANAGED RELEASE OF SITES

LDF Allocation Documents will phase1 the release of allocations according to the following criteria in order to ensure sufficiency of supply, geographical distribution in accordance with Spatial Policy 7, and achievement of a previously developed land target of 65% for the first 5 years and 55% thereafter. Subject to these considerations, phases with the earliest release

should be made up of sites which best address the following criteria:

(i) Location in regeneration areas,

(ii) Locations which have the best public transport accessibility,

(iii) Locations with the best accessibility to local services,

(iv) Locations with least impact on Green Belt objectives,

(v) Sites with least negative and most positive impacts on existing and proposed green infrastructure, green corridors, green space and nature conservation,

Consideration will be given to bringing forward large sites, of more than 750 dwellings, to facilitate early delivery in the Plan period.

In special circumstances, allocated sites may be permitted to be released in advance of their phasing outlined above, so long as the permitted site delivers infrastructure and housing investment that is needed within Regeneration Priority Programme Areas. In such cases, suitable mechanisms will be agreed to ensure that delivery within the Regeneration Priority Programme Area occurs either before, or in conjunction with the delivery of the permitted site.

The Council will maintain a five year supply (plus appropriate NPPF buffer) of deliverable housing sites through considering release of the subsequent phase or phases of sites to help address the shortfall.

……………

POLICY H4: HOUSING MIX

Developments should include an appropriate mix of dwelling types and sizes to address needs measured over the long term taking into account the nature of the development and character of the location. This should include the need to make provision for Independent Living (see Policy H8)

For developments over 250 units, in or adjoining the Main Urban Area and Major Settlements or for developments over 50 units in or adjoining Smaller Settlements, developers should submit a Housing Needs Assessment addressing all tenures so that the needs of the locality can be taken into account at the time of development.