Neutral Citation Number: [2015] EWHC 3459 (Admin)

Case No: CO/3447/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Birmingham Civil Justice Centre

Date: 2 December 2015

Before :

THE HONOURABLE MRS JUSTICE LANG DBE

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Between :

	DAVENTRY DISTRICT COUNCIL	**Claimant**
	- and -	
	(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT **(2) GLADMAN DEVELOPMENTS LIMITED**	**Defendants**

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Mr Christiaan Zwart (instructed by **District Law**) for the **Claimant**
Mr Richard Kimblin (instructed by **Irwin Mitchell LLP**) for the **Second Defendant**
The First Defendant did not appear and was not represented.

Hearing date: 19 November 2015

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Judgment **Mrs Justice Lang:**

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant, made on his behalf by an Inspector on 12 June 2015, allowing the Second Defendant's appeal against refusal of planning permission for 121 dwellings in Weedon Bec, Northamptonshire.

2. In summary, the Claimant contended that the Inspector failed to discharge the statutory

duty to determine the application in accordance with the development plan, and misapplied the National Planning Policy Framework (NPPF) in concluding that the saved policies in the Local Plan (LP) (in particular, LP Policy HS24 restricting residential development in the open countryside) ought to be given reduced weight. The Claimant also complained that the Inspector's reasons were inadequate.

3. By letter dated 13 October 2015, the First Defendant conceded that the decision ought to be quashed. However, the Second Defendant (the developer) continued to resist the application.

Planning history

4. On 28 May 2014, the Second Defendant applied to the Claimant for outline planning permission for a residential development of up to 121 dwellings, with all matters reserved save for the matter of access. The proposed development site of about 7.72 hectares comprises three agricultural fields, which include earthworks known as ridge and furrow. It lies to the south of the village of Weedon, off New Street, on ground rising up onto Round Hill, which is part of the Northamptonshire Uplands.

5. The Claimant refused outline planning permission on 9 October 2014. The reasons were *inter alia*:

> "1. The proposed development would be contrary to saved local plan policies GN1 (b and f), HS22, HS24 and GN2(g) and policy S1 of the emerging JCS [Joint Core Strategy], by reason of it being large scale development outside the confines of the restricted infill village, affecting open land of significance of the character and form of the village, within the open countryside and adjacent to the SLA. Therefore applying paragraph 12 of the NPPF, permission should be refused unless other material considerations indicate otherwise. Applying the fall-back position within paragraph 14 of the NPPF, it is considered that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. Specifically, the proposal would not constitute sustainable development due to the following elements of conflict with the NPPF and local policies:
>
> a) The development would be a peripheral cul-de-sac estate that suburbanise this rural village location, would erode the local, character and historic form of the settlement, would not integrate well with the existing village and would facilitate social interaction or health, inclusive communities (contrary to paragraphs 55, 58, 61 and 69 of NPPF and saved policy GN2(a) of the Daventry Local Plan).
>
> b) The development would not be well connected to local facilities (both within and outside Weedon) and accessibility by

> means other than the private car would be limited in terms of both practicality and attractiveness (contrary to paragraphs 35, 36, 58, 61 and 69 of NPPF and policy S10 of the emerging JCS).
>
> c) The development would result in loss and harm to a valued local landscape, and would diminish the recreational value of the rural right of way that runs adjacent to and through the site … (contrary to paragraphs 69 and 110 of NPPF).
>
> d) The development would cause harm to the setting of designated heritage assets ……

6. The Second Defendant appealed against the refusal of outline planning permission under section 78 TCPA 1990. An Inspector, Mr David Nicholson, was appointed by the First Defendant. He conducted a site visit and held an inquiry in May 2015. By the date of the inquiry, the West Northamptonshire Joint Core Strategy Development Plan Part 1 ("JCS") had been adopted.

7. The Inspector allowed the appeal and granted outline planning permission for the development, subject to conditions. In his Decision Letter ("DL") dated 12 June 2015, he concluded:

> "86.…I find that as the Council can demonstrate a 5 year HLS the weighted presumption in favour of sustainable development (NPPF 14) does not apply and the appeal should be determined on the normal planning balance. Nevertheless, the site would be well connected to a village with many local services and none of the harm I have identified would outweigh the benefits of providing more housing and much needed affordable housing in particular. Subject to control, through conditions and the s.106 Agreement, and having regard to all other matters raised, I conclude that the appeal should be allowed."

Applications under section 288 TCPA 1990

8. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with and in consequence, the interests of the applicant have been substantially prejudiced.

9. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

10. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties v Secretary of State for the*

Environment (1978) 42 P &CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision."

11. An Inspector's decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

Ground 1: failure to determine the application in accordance with the development plan and misapplication of the National Policy Planning Framework

12. The Claimant submitted that the Inspector erred in failing to determine the application for planning permission in accordance with the development plan, and that he misapplied the NPPF. Mr Kimblin's response was that the Inspector was entitled to give reduced weight to the saved LP Policies HS22 and HS24, and that he properly applied the NPPF.

Legal Framework

13. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "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." (emphasis added)

14. The NPPF is a material consideration for these purposes, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: see NPPF paragraphs 11 to 13; *Phides Estates (Overseas) Limited v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin) per Lindblom J. at [74].

15. In *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, Lord Reed (with whose judgment Lord Brown, Lord Hope, Lord Kerr and Lord Dyson agreed) said, at

[17]:

> "It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment* (1991) 63 P & CR 2319, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with whom the other members of the House expressed their agreement. At p.44, 1459, his lordship observed:
>
> > "In the practical application of sec. 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it." "

16. Lord Reed rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality. He said:

> "18. … The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained…..these considerations suggest that, in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. They are intended to guide the decisions of planning

authorities, who should only depart from them for good reason.

> 19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v. Secretary of State for the Environment* [1995] 1 WLR 659, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

17. These general principles also apply to other planning decision-makers, including an Inspector determining an appeal on behalf of the Secretary of State.

The development plan

18. At the date of the appeal, the material parts of the development plan comprised:

a) The West Northamptonshire Joint Core Strategy Development Plan Part 1 which was adopted on 15 December 2014.

b) Policies from the Daventry District Local Plan which were adopted in June 1997, and saved in September 2007, pursuant to a direction from the First Defendant under paragraph 1(3) of schedule 8 to the PCPA 2004. Some were replaced by the JCS in December 2014. A revised version of the remaining saved policies was published in February 2015. It is anticipated that they will eventually be replaced by the Daventry Settlements and Countryside Local Plan when adopted.

19. According to paragraph 1.4 of the LP, its purpose was:

> "To set out the District Council's policies for the control of development and, where appropriate, to make specific proposals for the use of land. It is based upon the provisions of the Northamptonshire County Structure Plan, as approved by the Secretary of State in February 1989, and takes account of Alteration No. 1 to that Plan, as approved by the Secretary of State in February 1992. The plan will deal with the period 1991 to 2006 and will, with the Northamptonshire County Structure

Plan, constitute the statutory development plan for the District."

20. It is apparent from paragraphs 1.21 & 1.22 of the LP that the Structure Plan did not specify the location of residential development, other than in the northern part of Daventry Town, and the Claimant "*therefore developed its own policy in respect of the general location of development in the Daventry District. In line with current government advice, this policy is urban oriented ...*". Mr Zwart relied on this point to make the submission that these policies should be seen as dating from 1997 (the date of adoption) rather than 1989 (the date of the Structure Plan). I accept that submission.

21. Mr Kimblin rightly pointed out that the LP related to a specific period of time, which expired in 2006. The Structure Plan upon which it was based has also been superseded. On the other hand, the policies in issue were "saved" by the Minister in 2007 and so remain in force. As the Minister explained in his letter of 21 September 2007, the purpose of saving the policies was to ensure continuity in the plan-led system, and preparation of development plans should not be delayed as a result.

22. "Chapter 4 - Housing Policies" of the Local Plan explained, at paragraph 4.23:

> "In addressing where the additional housing allocation to the District should be located, the Council has been concerned to follow Government advice to guide new development to locations, which reduce the need for car journeys and the distances driven. Daventry is clearly the major employment and service centre within the district and the Council has concluded that this advice would best be met by allocating further land for housing in the town."

23. In rural areas, the general policy is that residential development is to be primarily in four specified Limited Development Villages (paragraph 4.43). Weedon Bec is not a Limited Development Village. It is classified as a "Restricted Infill Village" to which LP Policy HS22 applies.

24. LP Policy HS22 states:

> **"RESTRICTED INFILL VILLAGES**
>
> **POLICY HS22**
>
> **PLANNING PERMISSION WILL NORMALLY BE GRANTED FOR RESIDENTIAL DEVELOPMENT IN THE RESTRICTED INFILL VILLAGES PROVIDED THAT:**
>
> **A IT IS ON A SMALL SCALE, AND**
>
> **B IT IS WITHIN THE EXISTING CONFINES OF THE VILLAGE, AND**

C IT DOES NOT AFFECT OPEN LAND WHICH IS OF PARTICULAR SIGNIFICANCE TO THE FORM AND CHARACTER OF THE VILLAGE, OR

D IT COMPRISES THE RENOVATION OR CONVERSION OF EXISTING BUILDINGS FOR RESIDENTIAL PURPOSES PROVIDED THAT THE PROPOSAL IS IN KEEPING WITH THE CHARACTER AND QUALITY OF THE VILLAGE ENVIRONMENT."

25. Paragraphs 4.88 to 4.91 explain as follows:

"4.88 The objectives of the District Council's planning policies in respect of these villages are as follows:

a to ensure that new development does not bring about the extension of the village into open countryside,

b to ensure that existing buildings are retained as far as possible,

c to ensure that the scale, character, design and density of new development and redevelopment within the village is sympathetic to the existing built environment, and

d to ensure that such important open spaces as now remain in these villages do not become the subject of unsuitable infill development.

Small Scale

4.89 In determining what constitutes "small scale" for the purposes of this policy, the District Council will not attempt to impose arbitrary upper limits on the number of dwelling units included in any application but will rather judge each case on its merits with particular regard to:

a the scale of the proposal in relation to the character of the immediately adjoining area,

b the scale of the proposal in relation to the size of the village as a whole, bearing in mind the need to maintain a balanced housing stock and assist in the social integration of new residents.

c the scale of the proposal relative to other current an recent infill proposals, bearing in mind the need to ensure that the cumulative effects of successive

developments do not damage the character and amenity of established residential areas.

d the impact of the proposal on local services.

The Existing Confines

4.90 For the purposes of this policy, "existing confines of the village" will be taken to mean that area of the village defined by the existing main built-up area but excluding those peripheral buildings such as free-standing individual or groups of dwellings, nearby farm buildings or other structures which are not closely related thereto. Gardens, or former gardens, within the curtilages of dwelling houses, will not necessarily be assumed to fall within the existing confines of the village. The construction of a bypass around a Restricted Infill Village will not be regarded as an extension to the confines of the village and land between the existing built up area and the new Road will be considered as open countryside.

Important Open Land

4.91 Such sites will normally comprise large open frontages whose contribution to the character of the village is of acknowledged importance. However, private gardens and orchards can also make significant contributions to the local environment, both within and on the edge of the village, and the development of these will be resisted under this policy where appropriate. The development of private gardens which do not make an immediate contribution to the character of the local environment will also be resisted where they form important settings for listed buildings or other buildings of quality."

26. Housing policy in the "Open Countryside is set out in LP Policy HS24, which provides:

"OPEN COUNTRYSIDE

POLICY HS24

PLANNING PERMISSION WILL NOT BE GRANTED FOR RESIDENTIAL DEVELOPMENT IN THE OPEN COUNTRYSIDE OTHER THAN:

A DEVELOPMENT, INCLUDING THE RE-USE OR CONVERSION OF EXISTING BUILDINGS, ESSENTIAL FOR THE PURPOSES OF

AGRICULTURE OR FORESTRY

B THE REPLACEMENT OF AN EXISTING DWELLING PROVIDED IT RETAINS ITS LAWFUL EXISTING USE AS A DWELLING HOUSE PROVIDED THAT THE DWELLING IS NORMALLY OF THE SAME GENERAL SIZE, MASSING AND BULK AS THE ORIGINAL DWELLING SITED ON THE SAME FOOTPRINT AND RESPECTS THE DISTINCTIVE NATURE OF ITS RURAL SURROUNDINGS."

27. Paragraphs 4.97 explains:

> "The County Structure Plan seeks to restrain development in the open Countryside and this policy seeks to prevent residential development unless there is there is a requirement for accommodation for agriculture or forestry workers or the dwelling is direct replacement."

The Inspector's conclusions on the development plan

28. It was common ground before the Inspector that the proposed development would not comply with LP HS22, as it was a large scale development outside the confines of the village. The proposed development would also conflict with LP HS24 as it was on a site outside an existing settlement in the open countryside.

29. One of the contentious issues at the Inquiry was whether LP HS22 and LP HS24 ought to be treated as "out-of-date" under NPPF paragraph 49.

30. Paragraph 49 states:

> "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."

31. Where a policy is considered out-of-date, there is a presumption in favour of granting planning permission for sustainable development. By NPPF paragraph 14, the presumption operates in the following way when decisions are made:

> "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 the Framework taken as a whole; or

- specific policies in this Framework indicate development should be restricted."

32. The Inspector found, on the evidence, that the Claimant could demonstrate about 5.2 years supply of deliverable housing sites, and therefore the policies for the supply of housing should not be deemed to be "out-of-date" by operation of paragraph 49 (DL 43). The Inspector went on to conclude (at DL 86), that "*as the Council can demonstrate a 5 year HLS the weighted presumption in favour of sustainable development (NPPF 14) does not apply and the appeal should be determined on the normal planning balance.*"

33. In a section headed *"Conclusion on the development plan*" the Inspector correctly directed himself that the NPPF "*does not change the status of the development plan as the starting point for my decision*" (DL 65).

34. At DL 67, he correctly identified, as part of the development plan, LP Policy HS22 and HS24 which had the effect of restricting residential development outside of existing settlements. However, he gave the development plan policies "*reduced weight*" and concluded that the benefit of the housing to be provided outweighed the conflict with the development plan. He said:

> "68. The Council acknowledged, as it must, that saved LP policies HS22 and HS24 are both policies for the supply of housing. However, given that the Council can demonstrate a 5 year HLS, albeit only just, these policies are not excluded by NPPF 47. Nevertheless, given the age of the policies and their lack of consistency with the thrust of NPPF 49 towards boosting significantly the supply of housing, I give the conflict with these policies and GN1(E) and (F), reduced weight."
>
> …..
>
> 72. For the above reasons, I find that only moderate weight should be given to the conflict with some policies in the LP and JCS. Conversely, substantial weight should be given to the scheme's contribution to meet housing targets and provide AH in particular. Taken together, I find that the proposals would accord with the development plan as a whole. Moreover, the fact that the proposals would amount to sustainable development, as defined in the NPPF, amounts to a material consideration of substantial weight which outweighs any conflict with the development plan in any event."

35. Both counsel accepted that the Inspector erroneously referred to NPPF 49 instead of 47 in the fourth line of DL 68, however little turns on that slip.

Errors in the Inspector's approach

36. I agree with Mr Zwart's submission that this section of the decision letter demonstrated a series of errors in the Inspector's approach to the saved policies, in particular, LP Policy HS24.

37. It was common ground that the Inspector ought to have applied Annex 1 to the NPPF, the material parts of which provide:

> "209. The National Planning Policy Framework aims to strengthen local decision making and reinforce the importance of up-to-date plans.
>
> 210. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
>
> 211. For the purposes of decision-taking, the policies in the Local Plan …. should not be considered out-of-date simply because they were adopted prior to the publication of this Framework.
>
> 212. However, the policies contained in this Framework are material considerations which local planning authorities should take into account from the day of its publication. The Framework must also be taken into account in the preparation of plans.
>
> 213. Plans may, therefore, need to be revised to take into account the policies in this Framework. This should be progressed as quickly as possible, either through a partial review or by preparing a new plan.
>
> 214. For 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.
>
> 215. In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

38. NPPF 210 reiterates that planning decisions are to be made in accordance with the development plan, unless material considerations indicate otherwise. Indeed, NPPF emphasises the value of local development plans since they reflect the needs and priorities of local people for their area:

> "1….It provides a framework within which local people and their accountable councils can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities."
>
> "150. ….Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities…"

39. In DL 68, the Inspector gave "*reduced weight*" to the saved policies on the grounds of their age. However, age alone was not a sufficient basis for the decision as NPPF paragraph 211 provides that "*the policies in the Local Plan …. should not be considered out-of-date simply because they were adopted prior to the publication of this Framework*". Applying NPPF paragraph 215, the Inspector was required to analyse in what way, and to what extent, the policies were not consistent with the NPPF. He did not do so.

40. The first step should have been to identify the age of the policies for this purpose. The Inspector ought to have considered whether these policies should be treated as dating from 1997 (the date of adoption) rather than 1989 (the date of the Structure Plan) and the significance of the policies being saved in 2007 (see paragraphs 20 and 21 of my judgment above).

41. The next step ought to have been to assess the extent to which the policies were consistent with current policy in the NPPF. The Inspector did not do this.

42. The LP policy was to locate housing allocation in urban areas, particularly Daventry, as it was the major employer and service centre in the district, and Government policy in 1997 advised that new development should be guided to locations which reduced the need for travel, especially by car. In rural areas, the LP policy was to identify specific villages suitable for development – the four Limited Development Villages. Elsewhere in rural areas, development would be restricted to within the confines of the existing settlements – the Restricted Infill Villages. Lastly, the LP protected the open countryside by restraining non-essential new housing development.

43. I accept Mr Zwart's submission that policies such as these are not necessarily inconsistent with the NPPF, just because they were adopted years earlier, against the background of a Structure Plan which has been superseded. The reason is that some planning policies by their very nature continue and are not "time-limited", as they are re-stated in each iteration of planning policy, at both national and local levels.

44. For example, the NPPF promotes development in locations where travel can be minimised and the use of sustainable transport modes maximised (NPPF 34). It encourages the use of existing buildings for housing development (NPPF 51). In rural areas, it advises that new housing should be located in existing settlements, avoiding open countryside save in special circumstances such as housing needs for rural workers and using heritage assets or redundant buildings (NPPF 55). Section 11 is dedicated to

"Conserving and enhancing the natural environment" and provides that valued landscapes should be protected and enhanced and brownfield land and land with the least environmental or amenity value should be allocated to meet development needs (NPPF 109, 110, 111). The saved housing policies in the Local Plan are consistent with many of these NPPF policies.

45. At local level, it is pertinent to note that the very recently examined and adopted JCS, based upon the NPPF, also favours development in the towns, as sustainable locations. Whilst recognising the need for limited development in rural areas, to meet local needs, the JCS expressly protects rural areas which are prized for their tranquillity, and recreational and amenity value.

46. Of course, Mr Kimblin was correct to say that the Local Plan became time-expired in 2006. I accept that this was particularly relevant to consideration of housing allocation/ supply figures, which are calculated in respect of specific time periods. However, the Inspector had fully investigated housing allocation/supply at DL 33 to 43. The Inspector conducted this investigation to meet the requirements of NPPF 47 and 49. NPPF 47 requires local planning authorities to "*boost significantly the supply of housing*" by ensuring that their Local Plan meets the "*full, objectively assessed needs*" for market and affordable housing. They are required to identify a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional percentage 'buffer'. By NPPF 49, if they are not able to demonstrate a five year supply of deliverable housing sites, their "*policies for the supply of housing*" are to be treated as out-of-date. It follows that if a planning authority is able to demonstrate a five year supply, its policies are not to be treated out-of date for this purpose. Importantly, a planning authority is entitled to decide for itself the locations to which it allocates its housing supply, consistently with national and local policy.

47. Although the Inspector had already determined the issues under NPPF 47 and 49 in the Claimant's favour earlier in the DL, he re-introduced them in DL 68. In doing so, I consider that he failed to take account of the differences between NPPF 49 and NPPF 215 and thus fell into error.

48. The sole focus of NPPF 49 is the supply of deliverable housing sites, pursuant to the policy in NPPF 47. In contrast, NPPF 215 has a much broader ambit, which requires assessment of the extent to which the saved policies are consistent with all NPPF policies, including policies for the protection of the natural environment and policies favouring development in settlements, brownfield sites, sustainable locations etc. and not in the countryside. The Inspector overlooked this, and did not consider the extent to which LP Policy HS24 was consistent with NPPF policies such as these, even though HS24 is headed "*Open countryside*" and is clearly intended to protect the countryside.

49. When the Inspector characterised LP HS24 merely as a "policy for the supply of housing" he wrongly adopted the approach required under NPPF 47 and 49. The Claimant conceded in relation to NPPF 47 and 49 that LP HS24 was a "policy for the supply of housing", as he had to in the light of *South Northamptonshire Council v Secretary of State for Communities & Local Government* [2014] EWHC 573 (Admin), per Ouseley J. at [46, 47]. However, the Claimant did not concede that LP HS24 only

concerned housing supply for the different purposes of NPPF 215. In my view, it was unfair of the Inspector to suggest that the Claimant did so.

50. In my view, Mr Kimblin placed undue emphasis on the evidence given by Ms Hammonds, the planning officer on behalf of the Claimant and Ms Tilston, the planning manager on behalf of the Second Defendant. Much of their written and oral evidence comprised legal and planning policy submissions on the correct approach for the Inspector to adopt. Whilst they were entitled to give their opinions, these were matters for the Inspector to decide for himself.

51. I accept Mr Zwart's submission that NPPF 47 sets out policy for a local authority's plan-making, not decision-taking. The two functions are clearly distinguished throughout the NPPF, and appear to have been confused by the Inspector in DL 68, when he referred to the "*lack of consistency with the thrust of NPPF [47] towards boosting significantly the supply of housing*". I also accept Mr Zwart's point that use of the inapt word "thrust" perhaps reflects the Inspector's lack of clarity about the way in which NPPF 215 was to be applied. However, I consider that older policies which restrict housing supply can in principle be inconsistent with the key NPPF objective of "*providing the supply of housing required to meet the needs of present and future generations*" which is identified in NPPF 7 as a function of the social dimension of sustainable development. This applies to both plan-making and decision-taking, and so falls to be considered under NPPF 215.

52. The other key difference between NPPF 49 and NPPF 215 is that NPPF 49 is mechanistic – if the minimum figure is not reached the policy is automatically deemed out-of-date - whereas NPPF 215 requires a far more nuanced approach. It provides that "*due weight*" should be given to relevant plans according to their degree of consistency with the NPPF. Not only does this require a careful assessment, but it also means that the Inspector must specify the weight which is due to be accorded to the policy in issue. Typically, Inspectors express weight as limited, moderate, substantial etc. In this case, the Inspector failed to do this, merely concluding that he was giving LP Policy GN1(E) and (F) and LP Policy HS22 and HS24 "*reduced weight*". The term "reduced" is not sufficiently clear – it begs the question reduced from what to what? It is impossible to work out from DL 68 how much weight the Inspector did accord to LP HS 24.

53. The reader of the decision is not really assisted by the fact that in DL 71, the Inspector concluded that "*only moderate weight should be given to the conflict with some policies in the LP and JCS*" because by that stage he had also factored in the "*reduced weight*" he had accorded to JCS Policy R1 as well as all the other LP policies.

54. Mr Kimblin relied on DL 15 to demonstrate the lawfulness of the Inspector's approach:

> "*Special landscape area (SLA)*
>
> 15. Much of Daventry district lies within a SLA defined in saved LP Policy EN1 and sets criteria for development in these areas. Policy GN2(G) normally grants permission for development providing that it would not adversely affect a SLA. Two points

arise. First, the appeal site adjoins the SLA, but is not itself within it, and so Policy EN1 does not apply and Policy GN2(G) does not apply directly. Secondly, these are very old policies being based on a Structure Plan which pre-dated the 1990 Act. Under the … NPPF paragraph 215 (NPPF 215) policies relating to landscape areas should be criteria-based whereas Policy GN2(G) is not. This policy should therefore be given limited weight."

55. However, I did not find DL 15 of much assistance when considering DL 68, for the following reasons:

i) It was dealing with a different issue – the effect on landscape – and different policies.

ii) There were two reasons for his overall conclusion that the policies should be given *"limited weight"*. First, they did not apply, directly or at all, to this site, as it fell outside the SLA; and second because the policies were *"very old"*. It is not apparent from the reasoning the extent to which each reason contributed to the conclusion on weight.

iii) The Inspector referred to the fact that the policies were based on a pre-1990 Act Structure Plan. He had received evidence/submissions from Ms Tilston, the Second Defendant's Planning Manager, on the way in which national landscape policy had changed over the years, and how the SLA was now out of date. However, it would not necessarily follow that the same conclusion could be drawn in respect of the saved housing policies.

iv) The Inspector's reference to NPPF 215 was simply an error; he should have referred to NPPF 113, as this is the paragraph which advises that landscape policies should be criteria-based. I accept that the Inspector probably had NPPF 215 in mind, as the point he made addressed the degree of consistency between the policy and the NPPF. But this point is specific to landscape policies; it does not assist on whether the saved housing policies were or were not consistent with the NPPF.

56. In conclusion, I consider that the Inspector erred in law in the way in which he discharged his statutory duty under section 70(2) TCPA 1990 and section 38(6) PCPA 2004, and in his application of the NPPF. The decision will be quashed (by consent, in the case of the First Defendant only).

Ground 2: Reasons

57. In view of my conclusions on Ground 1, it is unnecessary for me to decide Ground 2.