Neutral Citation Number: [2017] EWHC 1562 (Admin)

Case No: CO/6376/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 June 2017

Before :

MRS JUSTICE LANG DBE

Between :

REIGATE AND BANSTEAD BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	
(2) AMTROSE LIMITED	**Defendants**

James Findlay QC and Emma Dring (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
The **First Defendant** did not appear and was not represented
James Pereira QC (instructed by **Cripps LLP**) for the **Second Defendant**

Hearing date: 13 June 2017

Approved Judgment

Mrs Justice Lang:

1. The Claimant ("the Council") applies under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant ("the Secretary of State") made by an Inspector on his behalf on 8 November 2016, in which he allowed an appeal by the Second Defendant ("the developer") against the Council's refusal of planning permission for up to 46 residential units and associated access at 17, The Close, Horley, Surrey RH6 9EB.

2. Jay J. granted permission on the papers on 30 January 2017.

The decisions of the Council and the Inspector

3. The Council refused planning permission because, *inter alia*, it considered the proposed development, which was within the rural surrounds of Horley and Gatwick Airport Open Setting Designations, would have a serious and harmful impact on the openness of the area and contribute towards the coalescence of Horley with Gatwick Airport. This would be contrary to saved policies Hr36 and Hr37 of the Reigate and Banstead Borough Local Plan 2005 and policies CS6 and CS13 of the Reigate and Banstead Local Plan: Core Strategy 2014.

4. Core Strategy Policy CS6 provided:

> "Policy CS6: Allocation of land for development
>
> 1. Development sites will be allocated in the Development Management Policies Document, or through other DPDs, taking account of sustainability considerations including environmental and amenity value, localised constraints and opportunities, the need to secure appropriate infrastructure/service provision, and the policies within this Core Strategy.
>
> 2. The Council will give priority to the allocation and delivery of land for development in sustainable locations in the urban area, that is:
>
> a. The priority locations for growth and regeneration:
>
> - Redhill town centre
>
> - Horley town centre
>
> - Horley North East and North West sectors
>
> - Preston regeneration area
>
> - Merstham regeneration area
>
> - Other regeneration areas as identified by the Council and its partners

> b. The built up areas of Redhill, Reigate, Horley and Banstead:
>
> c. Other sustainable sites in the existing urban area.
>
> 3. The Council will also allocate land beyond the current urban area for sustainable urban extensions, based on an assessment of the potential within the following broad areas of search (in order of priority):
>
> a. Countryside beyond the Green Belt adjoining the urban area of Horley
>
> b. East of Redhill and East of Merstham
>
> c. South and South West of Reigate.
>
> Sites beyond the current urban area will be released for development in accordance with policy CS13 and detailed phasing policies within the DMP."

5. Core Strategy Policy CS13 provided:

> "Policy CS13: Housing delivery
>
> 1. The Council will plan for delivery of at least 6,900 homes between 2012 and 2027, equating to an annual average provision of 460 homes per year.
>
> 2. Housing will be delivered as follows:
>
> a. At least 5,800 homes within existing urban areas, in particular the priority areas for growth and regeneration identified in policy CS6
>
> b. The remainder to be provided in sustainable urban extensions in the locations set out in policy CS6.
>
> 3. The Council will identify and allocate in the DMP the necessary sites to deliver these homes in accordance with the policies in the Core Strategy.
>
> 4. Sites for sustainable urban extensions within the broad areas of search set out in policy CS6 will be released when such action is necessary to maintain a five year supply of specific deliverable sites (based on the residual annual housing requirement). The phasing of sustainable urban extension sites will be set out in the DMP and will take account of strategic infrastructure requirements."

6. Following an Inquiry on 4 to 6 October 2016, and a site visit, the Inspector (Mr John L. Gray DipArch MSc Registered Architect) allowed the developer's appeal and granted planning permission, in an Appeal Decision ("AD") dated 8 November 2016.

On the first main issue, the Inspector concluded that the proposed access to the appeal site would not appear cramped, contrary to the character of the area, nor would it cause unacceptable noise and disturbance for the occupiers of existing dwellings. On the second main issue, the Inspector concluded that the proposed development would not intrude unacceptably into the rural surrounds of Horley or the open setting of Gatwick Airport. The issue relevant to this challenge was the third main issue – housing need and housing land. The Inspector found that the proposed development was sustainable and it would not cause material harm. The adopted Core Strategy provided for a 5 year supply of housing land (or at least very close to it), but as the Core Strategy Inspector found, environmental and other constraints meant that it was not possible to meet the full objectively assessed need. The proposal would reduce the housing shortfall. The Core Strategy had a clear "urban area first" housing strategy, but as the development only comprised 45 dwellings it would not significantly prejudice the strategy. Although the proposal conflicted with the Core Strategy, there was no reasonable basis upon which to dismiss it.

Grounds of challenge

7. The Council's overarching ground of challenge was that the Inspector failed properly to apply the statutory requirement to determine the appeal in accordance with the development plan, unless material considerations indicated otherwise. Instead he gave priority to his finding that the proposal amounted to sustainable development, in effect applying a presumption in favour of allowing sustainable development, in the absence of material harm. In adopting this approach, he also misapplied the National Planning Policy Framework ("NPPF").

8. The Secretary of State conceded that the Inspector erred in his approach and that the decision ought to be quashed.

9. The developer resisted the challenge, arguing that the Inspector correctly gave primacy to the development plan, but he concluded that there were other material considerations which, when weighed in the balance, indicated that planning permission ought to be granted. The Inspector was entitled to reach this conclusion, as a specialist exercising a planning judgment, and the court ought not to interfere with it.

Legal and policy framework

(i) Applications under section 288 TCPA 1990

10. 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.

11. 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.

12. 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 Ltd v Secretary of State for the Environment* (1981) 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....."

13. The Court should respect the expertise of Inspectors, and at least start from the presumption that they will have understood the policy framework correctly. Their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [25].

14. A 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 Ltd 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.

(ii) Decision-making

15. 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."

16. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters.....
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is helpful to talk of

presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission..... Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.

Moreover the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell J observed in Loup v Secretary of State for the Environment (1995) 71 P & C.R. 175, 186:

> "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

.....

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it 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. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all

> the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983, per Lord Reed at [17].

(iii) The NPPF

17. The NPPF is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [21].

18. NPPF policies relevant to the determination of this application are as follows:

> "**Achieving sustainable development**
>
> .....
>
> 6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.
>
> .....
>
> **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 **plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;

- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, 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.

For **decision-taking** this means [unless material considerations indicate otherwise]:

- 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.

15. Policies in Local Plans should follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

.....

Core planning principles

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

• be genuinely plan-led, empowering local people to shape their surroundings with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;....."

Conclusions

19. Both the Council and the Secretary of State submitted that the Inspector erred in his approach to the decision-making process, as demonstrated in the following passages from the AD:

"Third main issue – housing need and housing land supply

23. Having found no material harm in the context of the first two main issues that could lead to dismissal of the appeal, the question to be asked before considering this third main issue is whether the proposed development would be sustainable. And, since the Council accepted that it would be, and I have no reason to disagree, that is not a question that needs to be deliberated in this decision. It is, however, necessary to consider what impact the proposed development would have on the adopted housing strategy.

24. [The Inspector summarised Core Strategy Policies CS6, CS8 and CS10]

.....

26. .... Where an opportunity of providing additional housing presents itself and there would be no material harm arising therefrom, it should be grasped. Put another way, the Council can demonstrate a 5 year supply of housing land to meet the adopted Core Strategy requirement ..... but meeting the Core Strategy will leave a shortfall of housing at the end of the Plan period compared with the FOAN. The appeal proposal represents sustainable development and would help diminish that shortfall. On that basis, it is not necessary to dwell on the differences of opinion expressed at the inquiry on the deliverability of various sites."

.....

28. The remaining question, therefore, is whether development of the appeal site in the relatively near future would prejudice the Council's very clear 'urban strategy first' strategy for the delivery of housing. There are two reasons why it would not.

.....

31. Accordingly, the conclusions on this third main issue are these. There is, in terms of the adopted Core Strategy, a 5-year supply of housing land – or at least very close to it. The appeal proposal represents sustainable development and, in line with the NPPF, may be allowed even if there is an adequate supply of housing land. The FOAN is greater than is provided for in the Core Strategy which weighs further in favour of allowing the appeal. The Core Strategy has a very clear 'urban area first' housing strategy in which sites outside urban areas should come forward only later in the Plan period; the appeal proposal would be deliverable within five years, but even limiting an assessment to the urban provision in Area 2b, it would amount to less than four months' supply, which is certainly not enough to prejudice the strategy. Technically, the proposal conflicts with Core Strategy Policies CS6, CD8 and CS13 but, given the above conclusions, there is no reasonable basis to dismiss the appeal in terms of housing need and land supply.

.....

Overall conclusion

35. On the third main issue, the proposal represents sustainable development and there is nothing in relation to Core Strategy

> Policies CS6, CS8 and CS13 that could prejudice the 'urban areas first' housing strategy…."

20. The first main criticism was that the Inspector erred in deciding whether the proposal amounted to sustainable development as a freestanding issue, divorced from the question of whether it complied with development plan policies, and outside the decision-making process in NPPF 11 to 15.

21. The Council relied upon the decisions of the High Court in *Cheshire East BC v Secretary of State for Communities & Local Government* [2016] EWHC 571 (Admin); *East Staffordshire BC v Secretary of State for Communities & Local Government* [2016] EWHC 2973 (Admin) and *Trustees of the Barker Mill Estates v Secretary of State for Communities & Local Government* [2016] EWHC 3028 (Admin).

22. On my interpretation of the NPPF, informed by these authorities, the following propositions can be stated:

i) The concept of sustainable development is not only relevant to decision-taking but also to plan-making: *East Staffordshire*, per Green J. at [22]; *Barker Mill*, per Holgate J. at [118].

ii) NPPF 150 describes Local Plans as the key to delivering sustainable development and NPPF 151 requires Local Plans to be prepared with the objective of contributing to the achievement of sustainable development. Under the heading "The presumption in favour of sustainable development", NPPF 14 describes the operation of the presumption in favour of sustainable development for plan-making, and NPPF 16 requires plans to be based on the presumption so that it is clear that development which is sustainable can be approved without delay.

iii) Development plans are required to comply with the NPPF and to deliver sustainable development as part of the requirement of soundness: *Barker Mill*, per Holgate J. at [120].

iv) It follows that an up-to-date development plan will allocate and promote sustainable development: *East Staffordshire*, per Green J. at [36-37]; *Barker Mill*, per Holgate J. at [119-120].

v) Thus, a proposal which complies with the development plan will constitute sustainable development. It will benefit from the statutory presumption in s. 38(6) PCPA 2004, re-affirmed in NPPF 11 and 12, as well as the presumption in favour of the grant of planning permission in the first bullet point under "decision-taking" in NPPF 14. See *Barker Mill*, per Holgate J. at [121].

vi) The presumption in favour of sustainable development provided for in NPPF 14 does not extend to a proposal which conflicts with the development plan. NPPF 12 provides that such a proposal should be refused, unless material considerations indicate otherwise. Refusal in those circumstances accords with the principles governing the existence and approval of sustainable development: *East Staffordshire*, per Green J. at [22 - 23]. Where the proposal

conflicts with the development plan, the presumption in favour of sustainable development has been rebutted and there is a reverse presumption that the proposal should be refused: *East Staffordshire*, per Green J. at [32].

vii) Where the development plan is absent, silent or relevant policies are out-of-date, the second bullet point of NPPF 14 requires a different approach to be taken, but it was not engaged in this particular case.

viii) NPPF 14 exhaustively defines the circumstances in which a presumption in favour of sustainable development can arise. There is no general presumption outside NPPF 14: *Barker Mill*, per Holgate J. at [116], [131], [135]. The purpose of NPPF 14 is to "lead decision-makers along a tightly defined and constrained path, at the end of which the decision must be: is this sustainable development or not?" per Jay J. in *Cheshire East*, at [24]. Although the path differs depending upon whether there is an up-to-date development plan, the principle is generally applicable.

ix) It is important to distinguish between (1) NPPF policies which describe what qualifies as sustainable development which the plan-maker and decision-maker should strive to achieve (i.e. NPPF 6, 7, 18 to 219); and (2) NPPF policies which define the circumstances in which a presumption in favour of sustainable development arises: *Barker Mill*, per Holgate J. at [143]. It is only in the latter case that there will be scope for an overall assessment of whether development is sustainable.

x) In *Barker Mill*, at [143], Holgate J. deprecated the concept of a residual discretion outside NPPF [14], referred to by Green J. in *East Staffordshire* at [23-25]. On my reading of Green J.'s judgment, he was merely referring to the existence of the discretion in section 38(6) PCPA 2004 to grant planning permission for a proposal contrary to the development plan if material circumstances indicate otherwise, which is confirmed in NPPF 12, so there is no real conflict between the two judgments on this point.

23. In this case, it was common ground that the Inspector accepted that the proposal conflicted with Policies CS6 and CS13 of the Core Strategy 2014 (AD 31). In summary, those policies prioritised development to take place in urban areas first. Development outside existing urban areas, which was to be allocated in designated sustainable urban extensions, and would only take place when necessary to maintain a 5-year supply of specific deliverable sites (subject to a cap of 200 units in the Horley area). The Core Strategy Inspector made it clear that it was central to the Core Strategy that greenfield land should not be developed alongside the urban areas before the trigger was reached, which was what the developer proposed in this case.

24. It was also common ground that the Inspector accepted that the Council could demonstrate a 5-year supply of housing land to meet the adopted Core Strategy requirement, or very close to it. Therefore this was not a case in which the development plan was deemed to be out-of-date under NPPF 49.

25. In AD 23, the Inspector said:

> "23. Having found no material harm in the context of the first two main issues that could lead to dismissal of the appeal, the question to be asked before considering the third main issue is whether the proposed development would be sustainable. And, since the Council accepted that it would be, and I have no reason to disagree, that it is not a question that needs to be deliberated in this decision. It is, however, to necessary to consider what impact the proposed development would have on the adopted housing strategy."

26. Applying the legal principles I have summarised above, I agree with the submission by the Council and the Secretary of State that the Inspector failed to take into account that the up-to-date development plan should be presumed to allocate and promote sustainable development. Indeed, Chapter 5: The Spatial Strategy and Policy CS1 of the Core Strategy confirmed the presumption in favour of sustainable development. Therefore a proposal which was contrary to the development plan would be presumed not to be sustainable development. Contrary to the Inspector's finding at AD 23 that the Council conceded that proposal was sustainable development, it is apparent from the Council's 'Closing Submissions' that the Council did not concede that the proposal was sustainable development for this very reason. As the Secretary of State observed in paragraph 8 of his Summary Grounds, the Inspector failed to explain how he had concluded that the proposal was sustainable development when it was not in accordance with the development plan.

27. I also agree with the Council's criticism that the Inspector embarked upon a free-standing overall assessment as to whether the proposal was sustainable development, in AD 23, without following the path set out in NPPF 11 to 15. In my view, it is impossible to read AD 23 in any other way as the Inspector clearly considered that he had to decide whether or not the proposal was sustainable development before going on to consider its impact on the Core Strategy policies on housing.

28. It is implausible to suggest, as the developer did in paragraph 15(a) of its Summary Grounds of Defence, that the Inspector was simply recording that the local planning authority "had not raised any other objections to the development (other than those dealt with under each of the three main issues)". Given that the Inspector had identified the three main issues in the appeal at AD 4, it is unlikely that he would have felt the need, in AD 23, to address his mind to the question of whether there were any other planning concerns beyond those dealt with in the three main issues. If there were such planning concerns, no doubt they would have been separately identified and dealt with as issues in their own right. Moreover, when the Inspector later referred to sustainable development, at AD 26, 31, 35, it was apparent that he was using the term 'sustainable development' to mean an overall assessment of the development.

29. A free-standing assessment of sustainable development, outside NPPF 14, was held to be a misapplication of the NPPF in *Barker Mill*, *East Staffordshire* and *Cheshire East*. In fairness to the Inspector, there were earlier authorities which approved such an assessment (see *Dartford Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 2636 (Admin); [2015] 1 P & CR 2, per Patterson J. at [54]) and the judgments in *Barker Mill* and *East Staffordshire* post-dated his decision. But the preponderance of authority is now against the approach adopted by the Inspector.

30. The second main criticism was that, once the Inspector had found that the proposal amounted to sustainable development which was desirable because it would deliver additional housing sooner, he proceeded upon the basis that planning permission should be granted, despite the conflict with the development plan, provided that there was no other identifiable harm. In so doing, he effectively reversed the statutory presumption in section 38(6) PCPA 2004, which required him to decide the application in accordance with the development plan, unless material considerations indicated otherwise. He substituted his own views of the sound approach to housing development for that of the Core Strategy examiner and the local planning authority.

31. In my judgment, on a fair reading of the decision, this error was clearly demonstrated in the following passages, annotated with my comments in italics:

> "26. .... Where an opportunity of providing additional housing presents itself and there would be no material harm arising therefrom, it should be grasped.... The appeal proposal represents sustainable development and would help diminish that shortfall. On that basis, it is not necessary to dwell .....on the deliverability of various sites." *Presumption in favour of sustainable development and reversal of the statutory presumption.*
>
> "28. The remaining question, therefore, is whether development of the appeal site in the relatively near future would prejudice the Council's very clear 'urban strategy first' strategy for the delivery of housing. There are two reasons why it would not...." *Reversal of the statutory presumption*
>
> "31.....The appeal proposal represents sustainable development and, in line with the NPPF, may be allowed even if there is an adequate supply of housing land.....Technically, the proposal conflicts with Core Strategy Policies CS6, CD8 and CS13 but, given the above conclusions, there is no reasonable basis to dismiss the appeal in terms of housing need and land supply." *Presumption in favour of sustainable development and reversal of the statutory presumption.*
>
> "35. On the third main issue, the proposal represents sustainable development and there is nothing in relation to Core Strategy Policies CS6, CS8 and CS13 that could prejudice the 'urban areas first' housing strategy...." *Presumption in favour of sustainable development and reversal of the statutory presumption.*

32. I cannot accept the developer's submission that the Inspector correctly applied the statutory presumption but decided that material considerations indicated the development plan should not be followed. On each of the occasions set out above, the Inspector manifestly applied a different approach. I am unable to find any part of the decision where the Inspector applied the statutory presumption correctly, either expressly or impliedly.

33. These were not merely technical errors in an otherwise sound analysis. It was not the Inspector's role to alter the housing development priorities in the development plan, from urban allocations to rural allocations, before such action was necessary to maintain a 5-year supply of deliverable sites. The strategy in the development plan had been recently determined, through a comprehensive process, by the local planning authority and approved by the Examiner. The Inspector's role as decision-maker was to take the adopted core strategy and apply it to the proposal in accordance with the statutory presumption in section 38(6) PCPA 2004. The presumption in favour of sustainable development in the NPPF, and the need to boost the supply of housing, does not mean that any proposal which increases housing should be granted even if it is contrary to the development plan. It is a core planning principle that planning should be "genuinely plan-led, empowering local people to shape their surroundings" (NPPF 17). This ensures that development is sustainable, and is based upon adequate, up-to-date and relevant evidence about the economic, social and environmental factors in the area as a whole (NPPF 150, 151, 154, 157 and 158). The development plan also provides consistency and transparency. As Lord Reed said in *Tesco Stores*, at [18] a 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".

34. In reaching these conclusions, I have given careful consideration to the guidance that courts must respect the expertise of Inspectors making policy judgments within their areas of specialist competence (*Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [25]). In applying that guidance to this case, and concluding that the Inspector erred in law, I have taken into account that, unusually, the Secretary of State has conceded that this Inspector erred in law, and effectively supports the Claimant's submissions. Despite his experience and expertise, the Inspector adopted an unorthodox approach which was at odds with section 38(6) PCPA 2004 and the NPPF. I am unable to conclude that he would have reached the same conclusion if he had adopted a lawful approach to the decision-making process.

35. For these reasons, the application is granted and the decision is quashed.