Neutral Citation Number: [2016] EWHC 649 (Admin)

Case No: C/O4570/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 23rd March 2016

Before :

MR JUSTICE GILBART

Between :

DARTFORD BOROUGH COUNCIL	**Claimant**
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**First Defendant**
and	
FAIRVIEW NEW HOMES LIMITED	**Second Defendant**

(Transcript of the Handed Down Judgment of
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Estelle Dehon (instructed by **Sharpe Pritchard,** Solicitors of London) for the **Claimant**
Richard Moules (instructed by **Treasury Solicitor**) for the **First Defendant**
Timothy Corner QC (instructed by **Hogan Lovells International LLP**, Solicitors of London) for the **Second Defendant**

Hearing dates: 16th March 2016

Judgment
As Approved by the Court

MR JUSTICE GILBART :

1. In this matter Dartford Borough Council (" DBC") have applied under s 288 of the *Town and Country Planning Act 1990* ("*TCPA 1990"*) to quash a decision letter of the Inspector appointed by the First Defendant Secretary of State for Communities and Local Government, dated 14th August 2015, whereby he allowed an appeal by the Second Defendant Fairview Homes Limited against the refusal of DBC as local planning authority ("LPA") to permit the erection of 56 dwellings on land north of Hedge Place Road, Stone in Dartford. He did so after a public inquiry held on 12-15 May and 16-17 July 2015. That inquiry was held after the first decision on the appeal had been quashed by this Court.

2. I shall consider this matter under the following heads

   A. The refusal

   B. Relevant Development Plan Policy

   C. National Planning Policy Framework

   D. The Decision Letter

   E. The case for the claimant DBC

   F. The cases for the First and Second Defendants

   G. Discussion

   H. Conclusions

A THE REFUSAL

3. The original refusal, which had been against the advice of the DBC professional officers, was made on 20th February 2013 on the following grounds:

> " 1. The proposal would constitute an over intensive development of the site, by reason of the number of dwellings, the inadequacy of the car parking provision, the amenity of future residents, the loss of existing vegetation and the inadequate replacement landscaping proposed. It would therefore be contrary to Policy CS 15 and CS 17 of the Dartford Core Strategy 2011, Policies B1, B3 and T23 of the adopted Dartford Local Plan 1995, and the Council's Parking Standards……2012.
>
> 2. By virtue of the walking distances to public transport and other community facilities and the impact on landscaping and biodiversity, the proposal to develop this windfall site is contrary to the criteria set down in Policy CS10 of the Dartford Core Strategy 2011."

4. As matters have turned out in the light of the decision letter and of the issues raised before the Court, none of the policies in reason for refusal (1) need detain us in this

judgement. The issues of the loss of vegetation and the inadequacy of the proposed landscaping remain. Policy CS10, which sets out criteria for the development of windfall sites, is of importance.

5. For those uninitiated in the technical language of the planning world, a windfall site is a site for housing development, which is not allocated in a relevant plan. It is of course commonplace that sites that have not hitherto been identified will come forward by way of planning applications, for all sorts of reasons.

B RELEVANT DEVELOPMENT PLAN POLICY

6. For the purposes of this judgement, it is necessary to identify one policy, and then refer also to some other material relied on by DBC.

7. Policy CS10 of the Dartford Core Strategy (2011) reads

> "Housing Provision
> 1 In order to meet housing needs and to provide an impetus for regeneration of the Borough, land is allocated for housing in accordance with the spatial; strategy set out in Policy CS 1. The capacity between 2006 and 2026 is as follows:
>
Dartford Town centre incl Northern Gateway	up to 3070
Ebbsfleet to Stone	up to 7850
Thames Waterfront	up to 3750
Other sites north of A2	up to 2400
Sites south of A2, normally provided within village boundaries	up to 200
>
> 2 The Council will support proposals for housing as identified through the strategic site allocations Policies CS 3 and 5 and shown on the Proposals map.
> 3 Housing proposals will also be supported in the broad locations for development, as identified in table 1 below …… subject to compliance with other policies in this Plan and with future Local Development Documents.
>
> <u>Windfall Sites</u>
> 4 Planning applications for sites not identified as deliverable or developable in the SHLAA will be assessed in the same way as planned development by consideration of:
> a. The sustainability of the site for housing development;
> b. Whether benefits of development outweigh disbenefits;
> c. The capacity of the current and proposed infrastructure to serve the development taking into account committed and planned housing development;
> d. Where spare capacity is not available, the ability of the site to provide for the requirements it generates.
>
> 5 The Council will monitor the role of windfall sites in overall housing provision and the impact on infrastructure capacity. Where critical trigger points are reached, the Council will take appropriate management action."
>
> (The figures sum to 17,270).

8. Pausing there, one can see that in the case of a windfall site (which the appeal site was), if its development would meet the criteria specified in CS10 (4), no issues of housing requirements or supply arise. While paragraph 5 might introduce some management action, no critical trigger points had been reached in the area.

9. However, as will be seen, the Second Defendant argued that DBC had a shortfall of land to meet its housing requirements in terms of the national policy guidance NPPF (National Planning Policy Framework) and therefore the appeal considered that issue in the way which will be set out in due course.

10. Here, there are no other relevant policies in the Development Plan, but some material set out in the Core Strategy in other parts of the document.

11. Paragraph 2.6 stated

> "in tandem with economic growth, new residential communities are proposed. There is enough suitable and available land for up to 17,300 new homes to be built between 2006 and 2026, although the actual pace at which homes will be delivered will depend on market conditions. The aim is to supply a closer alignment of local labour supply and demand, so as to reduce the need for travel……"

12. Table 5 set out five columns headed "Triggers and Management Action." It identified risks and set out what to do. Under the column "Risks" it listed "housing delivery does not meet local needs". The "Response Trigger" is "Forecasts indicate plan delivery falling below local housing need level of 11,700 homes." The "Action" set out is to carry out a review of the plan.

13. Paragraph 3.21 identified that

> "an element of supply from windfall sites can enable early delivery of housing and increase flexibility"

while noting that care must be taken so that infrastructure and community provision was not overloaded. In the event in this case no such issue arose.

14. Lastly, it is perhaps important to note that no policy placed a limit on the extent of housing development in numerical terms. The most that it did was identify that figure as being the point at which it was thought that an excess over 17,300 units would be the point at which the level of new housing would have unacceptable impacts.

15. It follows from the above that the DBC area is one where its Development Plan is encouraging of housing development

i) on the allocated sites

ii) on windfall sites which pass the tests in paragraphs 4 and 5 of CS 10

provided that the point has not been reached where the number of units permitted between 2006 and 2026 exceeds 17,300.

C NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

16. NPPF was published in March 2012, and according to its first paragraph

> "……..sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. 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."

17. Section 6 is entitled

> "Delivering a wide choice of high quality homes."

18. Paragraphs 47-50 within Section 6 read (footnotes omitted)

"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 deliverable 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;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.

48. Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.

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.

50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);
- identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and
- where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time."

19. Those paragraphs have been the subject of judicial consideration, which I shall address below.

D THE DECISION LETTER

20. It is unnecessary to set out or recite all of the Decision Letter. I shall refer to those parts germane to the issues before me.

21. At paragraph 3 he defined the main issues before him as follows:

"Main Issues

3. Several Statements of Common Ground (SOCG), with Dartford Council, with Kent County Council and with the Council of the London Borough of Bexley reduce the areas of contention. Not all parties subscribe to all the SOCGs. Third parties in particular continue to pursue issues of highway safety. There remain six main issues. They are;

- Whether the site would be a sustainable location for development and the effects of the proposal on;
- Biodiversity
- The character and appearance of the area
- The living conditions of existing residents of Waterstone Park and of potential future residents of the appeal scheme
- Highway safety

and on

- Housing Land Supply"

22. At paragraphs 4-5 he considered the policy approach to sustainable location. He considered that there was a close alignment between the DBC Core Strategy Policy CS10 (4) and the policy guidance in the relevant parts of NPPF (not those set out above). Having addressed whether it was land of the right type for housing development (paras 6-11), addressed its history and use, and concluded that as an agricultural greenfield site its development would be a loss, but not a great one. At paragraphs 12-15 he concluded that it was in an acceptable location in terms of access to facilities, and unusually well favoured by being within 20 minutes' walk of major employment opportunities at the Bluewater Regional Shopping Centre. At paragraph 16 he concluded that it was supported by infrastructure, at paragraphs 17-19 he addressed the minimisation of the need to travel, and concluded as follows at paragraph 22:

"*Conclusion in respect of location*

22. The Council's Windfall Sites SPD contains a further, non-locational, criterion of combating climate change. Paragraph 2.27 of Tania Smith's evidence asserts that the scheme provides appropriate policy compliant measures with regard to water efficiency and reductions in energy use. I have no reason to disagree. These are set out in the recommendations of the appellant's submitted energy statement and in its sustainability statement, both prepared by Think Three Ltd and can be secured by conditions (17 and 18).

23. With these conditions in place, I conclude that the site would be a sustainable location for development. It would accord with Core Strategy policy CS1 which seeks to focus development in three priority areas. Good public transport facilities are at a reasonable distance. Although it is a greenfield site, its loss would not be greatly significant in agricultural terms. Landscape effects are considered separately, below. It would otherwise comply with subsections (a), (c) and (d) of section 4 of Core Strategy policy CS10 which sets out considerations for assessing windfall sites. It would comply with the locational aspects of policy CS11 which seeks to achieve the delivery of a balanced relationship between homes, jobs and infrastructure. Its development would not be in conflict with part (e) of Core Strategy policy CS14 (1) which seeks to protect and enhance existing open spaces.

23. Having rejected objections relating to biodiversity (paragraphs 24-34) he then addressed questions the effect on the character and appearance of the area. As to landscape issues, he was critical of DBC spending time on arguing the process of landscape issues, and said this at paragraph 35

> "35. Much of the local planning authority's criticism related to the process by which the appeal scheme was designed. But I am considering whether the outcome of whatever process was followed would be acceptable in planning terms by reference to the development plan and other material considerations. What it boils down to is whether it would be acceptable, as the Council's advocate put it in her closing submission, that a 100 year old hedge would be

removed, to be replaced partly with front gardens defined by (low box) hedges and the rest with parking spaces and whether or not there should remain a connectivity of open space between the cliff face of Bluewater to the south and the filled land to the north, separating the two developed areas of Hedge Place Road and Waterstone Park."

24. He went on at paragraphs 39-42 to say this

> "39. Remnant hedgerows are noted as a characteristic feature of the Landscape Character Area, which I can confirm from my site visit. In that context, the removal of the hedge on the southern boundary of the site would be a loss of landscape character, although some found the enclosure it presently provides to Hedge Place Road intimidating and a cause of insecurity.
>
> 40. But the much more substantial hedge on the opposite side of Hedge Place Road would remain. This includes trees which are seen on the skyline when viewed across Bluewater from the A2 road to the south and so are a significant structural element in landscape terms. The appellant's uncontested verified views show that these would continue to be seen from the south forming a structural break in the landscape between the older development of Hedge Place Road and Plantation Close to the west and the newer development of Waterstone Park to the east, of which the appeal proposal would appear as a part.
>
> 41. When viewed from the north, the appellant's uncontested verified views show that the same trees would continue to be seen on the skyline behind the houses in Hedge Place Road and Barnfield Close. The development would be seen to have a slight separation from Waterstone Park. This would be consistent with the description of individual but linked communities described in policy CS4 (1) of the Core Strategy which the Council seeks to promote in the Ebbsfleet to Stone area. The enhanced northern and western hedgerows proposed in the appellant's landscaping plans would help form a new landscape framework to the existing and retained agricultural grazing land on the former landfill areas and an edge to the urban area, in the way sought for this character area by the Landscape Assessment of Kent.
>
> 42. I conclude that the proposal's effect on the character and appearance of the area would be acceptable in terms of landscape. It would comply with policy B3 of the Dartford Local Plan adopted in April 1995. This requires development proposals to incorporate appropriate hard and soft landscaping, incorporating existing trees where possible."

25. He then (paragraphs 43-49) addressed issues relating to density, and (paragraphs 50-60) living conditions. He concluded that the effect on the living conditions of existing and future residents would be acceptable if the development went ahead. At paragraphs 61- 65 he rejected objections made in relation to the effect of the development on highway safety.

26. He then addressed the issue of housing land supply. He said this at paragraphs 66-77:

> *"Housing Land Supply*
>
> 66. Although the Council had the opportunity to set an alternative, locally derived housing target in its Core Strategy, it chose to perpetuate that set by the now

abolished South East Plan, which is derived from the requirements and needs of a wider area. It is unchanged by the absence of requests from neighbouring authorities to assist in providing for their objectively assessed needs under the duty to cooperate. Unusually, therefore, the Dartford Core Strategy sets a capacity-based housing target in terms of "up to" a maximum of 17,300 between 2006 and 2026, rather than a local needs-based target of a minimum which is to be exceeded but it is a target, nonetheless. In this respect, my view is consistent with that taken in the "Knockhall Road" decision (APP/T2215/A/13/2203710), to which I was referred.

67. It does not follow that anything less than the maximum satisfies the target; the wider justificatory and explanatory text of the Core Strategy makes it clear that the words "up to" are included because analysis suggests uncertainty in respect of environmental outcomes and the capacity of infrastructure and services to address growth should forecasts indicate that this level of delivery is likely to be exceeded. Nevertheless, the Core Strategy itself only includes a trigger for management action to remedy any shortfall in delivery if forecasts indicate delivery is falling below local housing need levels of 11,700 homes.

68. Paragraphs 47 and 49 of the National Planning Policy Framework do not make that distinction, advising that 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 against their housing requirements. Although the NPPF policy is that housing targets should meet full objectively assessed needs, there is nothing to preclude housing targets being set at a higher level, as is the case in Dartford.

69. From evidence given at the Inquiry it is quite clear that although the Council has granted planning permissions for nearly sufficient housing to meet all its local housing needs even though it is only about half-way through the plan period, those permissions are on sites which will be built out in periods extending long beyond the timescale of the Core Strategy. Nevertheless, in terms of specific deliverable sites, the Council continues to claim that it has identified sufficient land to meet both its trigger point for management action and its Core Strategy target for the next five years.

70. Its Core Strategy target is phased, with target delivery rates peaking in the third of a four-phase delivery period. Previous shortfalls are addressed on the Liverpool method over the whole period of the plan rather than the first five years because the target is not a needs-based figure. This method is also applied to its five years housing target calculation and no "buffer" is applied, resulting in a five-year target of up to 6450. Although the appellant argues for a different basis of calculation, the accuracy of this figure is confirmed in evidence. I have no quarrel with the use of the Liverpool method, for the reasons given by the Council.

71. The Council's intervention trigger point of 4040 is calculated on a different basis, because it is a needs-based figure, using the Sedgefield method for addressing shortfalls and adding a 5% buffer. Shortfalls in delivery were not considered persistent at the time of the Knockhall Road decision. Although shortfalls have persisted for two further years, completion rates have picked up somewhat and there has been a step-change in the annual target, so I am not convinced that a verdict of persistent underdelivery is yet justified.

72. The Council's record in forecasting its delivery against target is poor, as demonstrated by the appellant's uncontroverted evidence. For that reason, I do not accept the Council's prediction that delivery rates will increase to double or treble those of the recent past. I am more persuaded by the appellant's evidence that possible delivery in the next five years is 6172. Even that represents a doubling of recent delivery rates and so I do not disagree with the appellant's description of it as hugely ambitious. Nevertheless, the appellant accepts that it is realistic and I have no reason to disagree.

73. Even that hugely ambitious expectation of delivery fails to meet the Core Strategy target for the next five years. It follows that, in line with national policy expressed in the NPPF, I should not regard the Council's policies for the supply of housing as being up to date. Paradoxically, that would include Core Strategy policy CS10 (4) for the assessment of windfall sites with which I have found this appeal proposal to comply but, in practice, the outcome is the same because NPPF paragraph 14 advises that where relevant policies are out of date, permission should be granted 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. I have previously noted that policy CS10 (4) of the Dartford Core Strategy can be seen to align closely with the NPPF.

74. Both the appellant and the Council produce tables showing recent housing delivery; the appellant against the Core Strategy target, the Council against the trigger for management action. At nine-twentieths of the way through the plan period, delivery shows a 32% shortfall against the Core Strategy target and an 18% shortfall compared with the Council's trigger for management action. Whichever way it is looked at, management action is needed to increase delivery.

75. Paragraph 3.21 of the Council's Core Strategy advises that an element of supply from windfall sites can enable early delivery of housing and increase flexibility. That is a measure of the beneficial effects on housing land supply which this proposal would have.

76. Affordable housing is proposed comprising a total of 16 units. That represents 29% of the dwellings proposed. It would be marginally below the 30% required by Core Strategy policy CS19 but the Council does not contest the shortfall. As its provision is a policy requirement, its inclusion in the Unilateral Undertaking would be CIL compliant.

77. I conclude that the shortfall of affordable housing provision would be marginal and not such as to justify dismissing the appeal. The effect of the proposal on the supply of housing overall would be beneficial. The proposal would therefore accord with Core Strategy policy CS10 which provides for housing development."

27. He then set out his conclusions at paragraphs 78-9, before turning to the question of conditions:

"Conclusions and conditions

78. The overall planning balance would be as follows. As a greenfield site, the land would not be of the preferred type for development but its loss would not be

greatly significant. It would be in the right place, supported by infrastructure. The balanced and sustainable pattern of land use and transport sought by policy CS11 and the third of the Core Strategy's key principles would be maintained. The balance of ecological effect would be marginally positive. So would its landscape effects. The living conditions it would provide would be acceptable. It would not have an unacceptable effect on highway safety. Its benefits in terms of housing provision would be unqualified at a time when management action to increase delivery rates is called for.

79. The appeal proposal would therefore perform the three roles of a sustainable development. I conclude that the adverse impacts of granting permission would not significantly or demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole; indeed, rather the reverse and so, the appeal should be allowed."

E THE CASE FOR THE CLAIMANT DBC

28. For DBC Ms Dehon argued two grounds:

i) that the Inspector failed to give adequate reasons for assessing the 5 year supply figure against the CS10 figure of "up to 17,300";

ii) that he failed to give adequate reasons for finding that the impact on landscape character would be acceptable.

29. On the first ground she argued that the Inspector had to start with a figure for the "full objectively assessed needs" ("FOAN" in acronym form) referred to in the first bullet point in paragraph 47 of NPPF. But the Inspector, for the reasons he gave at paragraphs 66 and 70, also considered that the figure of 11,700 (the trigger intervention point) was not a FOAN, although he referred to it as representing the level of local housing need.

30. Referring to the judgements of Sir David Keene in *St Albans v Hunston Properties Ltd, & Anor* [2013] EWCA Civ 1610 at [21]-[27], and Dove J in *Kings Lynn and W Norfolk BC v Secretary of State for Communities and Local Government* [2015] EWHC 2464 at [27]-[28] and [37], Ms Dehon said that given the fact that neither figure represented the FOAN, the Inspector had to go and determine what FOAN he would take. If he did not do so then he could not address what the 5 year requirement was for the purposes of paragraph 47, which would then trigger the mechanism in paragraph 49.

31. It was common ground at the inquiry that if 11,700 (the trigger figure) was taken as the requirement, then DBC had a 5 year supply of housing land.

32. She said that the Inspector gave no adequate reasons as to what figure he adopted. It was an important matter to DBC to know as it had to deal with applications where, if it was found that it had no 5 year supply, it would be more difficult to resist the release of sites. The fact that the Inspector addressed delivery rates did not absolve him of the duty to identify which requirement he was using. His reasoning was therefore inadequate.

33. Ms Dehon accepted that this was not a strong ground, and that it would be difficult for her to succeed in quashing the decision if the second ground failed. She submitted that, if the Inspector had fallen into error, the court could only quash the decision if the Defendants showed that it would have been the same in any event- see *Simplex GE (Holdings) Limited v Secretary of State* [1988] 3 PLR 25.

34. On the second ground, Ms Dehon argued that the reasoning of the Inspector was inadequate. DBC had argued that there was a distinction between an effect on landscape character and effects visually, which the Inspector's reasoning did not address.

F CASES FOR THE SECRETARY OF STATE AND FOR THE SECOND DEFENDANT

35. While I had of course received skeleton arguments from counsel for both, which I had read, I did not consider that Ms Dehon's case called for any argument in response.

G DISCUSSION

36. I start with the basic rules relating to the determination of planning applications by a local planning authority (and therefore by an Inspector also). By section 70(2) of *TCPA 1990*

> "in dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations."

37. By section 38(6) of the *Planning and Compulsory Purchase Act 2004*

> *"*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."

38. So far as the law on the writing of decision letters is concerned, I gratefully adopt the exposition of Lindblom J (as he then was) in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government & Anor* [2014] EWHC 754 (Admin):

> "*Relevant legal principles*
> 19. The relevant law is not controversial. It comprises seven familiar principles:
> (1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).
> (2) 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". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire*

District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 137, at p.145).

39. Having set the legal framework, I turn to the arguments raised before me. I shall start with Ms Dehon's second ground. It is, I say respectfully, quite unarguable. The Inspector patently gave reasons why he reached the conclusion he did. He was not required to give them at length, when, as here, they could be succinctly stated. He was not required to give reasons for reasons. His reasoning at paragraphs 39-41 and his conclusion at paragraph 42 are coherent, address both character and visual effects, and are unimpeachable. They can have left no doubt in the mind of DBC, or anyone else, why he had reached his conclusion.

40. It follows that once he had rejected the landscape objection, the site passed every test in Policy CS 10 for the development of a windfall site, as the Inspector found and as Ms Dehon conceded in argument. Given the effect of Policy CS10 on this application, it then follows, applying section 38(6) of the 2004 Act that material considerations had to be identified which would justify refusal. Given the fact that Policy CS 10 was a permissive policy which did not set limits (and it was not suggested that the upper figure of 17,300 was close to being met), and that the strategy explicitly welcomed the contribution windfall sites would make, no reason to refuse planning permission remained. None of the matters argued in the two reasons for refusal had been sustained successfully by DBC before the Inspector. Indeed, DBC through Ms Dehon never suggested that there was any reason to refuse permission if the Court rejected its case on the landscape issue.

41. The first ground is thus in reality an unnecessary dispute. But even if it is relevant, I reject the DBC case on it. I start with some observations about NPPF. After argument had been concluded, the Court of Appeal judgement in *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor* [2016] EWCA Civ 168 was issued, it having been given in another court as the argument in this case started. I gave the opportunity to Counsel to make any written submissions on it if they wished. Ms Dehon elected not to do so. Mr Corner QC did so for the Second Defendant. It is not necessary that I refer to his submissions on the point.

42. I respectfully suggest that *Suffolk Coastal* has laid to rest several disputes about the interpretation of NPPF, both as to the particular paragraphs it addressed, but generally. For those of us who have swum for several years in the waters of Town and Country Planning, it has been striking that NPPF, a policy document, could sometimes have been approached as if it were a statute, and as importantly, as if it did away with the importance of a decision maker taking a properly nuanced decision in the round, having regard to the development plan (and its statutory significance) and to all material considerations. In particular, I would emphasise this passage in Lindblom LJ's judgement, which restates the role of a policy document, and just as importantly how it is to be interpreted and applied:

> "42 The NPPF is a policy document. It ought not to be treated as if it had the force of statute. It does not, and could not, displace the statutory "presumption in favour of the development plan", as Lord Hope described it in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at 1450B-G). Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, government policy in the NPPF is a material consideration external to the

development plan. Policies in the NPPF, including those relating to the "presumption in favour of sustainable development", do not modify the statutory framework for the making of decisions on applications for planning permission. They operate within that framework – as the NPPF itself acknowledges, for example, in paragraph 12 (see paragraph 12 above). It is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the *Wednesbury* sense.

43 When determining an application for planning permission for housing development the decision-maker will have to consider, in the usual way, whether or not the proposal accords with the relevant provisions of the development plan. If it does, the question will be whether other material considerations, including relevant policies in the NPPF, indicate that planning permission should not be granted. If the proposal does not accord with the relevant provisions of the plan, it will be necessary to consider whether other material considerations, including relevant policies in the NPPF, nevertheless indicate that planning permission should be granted."

43. NPPF is not to be used to obstruct sensible decision making. It is there as policy guidance to be had regard to in that process, not to supplant it. Here the Inspector was presented with a Development Plan policy which was not up to date, but which nonetheless provided two ends of a range of figures in whose context a decision could properly be made. One of them (the lower figure) was argued for as the appropriate "needs" figure by DBC. This was not a case where the absence of an up to date assessment of housing needs deprived the decision maker of a context in which to consider any aspect of housing policy, whether or not it made it difficult to establish if there was a failure to identify the 5 year figure against which the available supply was to be measured. For not all issues on housing at an inquiry are the same. Thus in *St Albans v Hunston* , where the level of housing need was a critical factor in determining whether there was a case for release of a site from the Green Belt, it was wrong of the Inspector to have relied on an out of date plan, having regard to paragraph 47 of NPPF. In *Kings Lynn etc. v SSCLG* Dove J identified, rightly, that when one does assess up to date needs and arrive at a FOAN, there may be reasons why the figures emerging from the first analysis need to be boosted or reduced by reference to other planning factors, be they (for example) the recognition of the relevance of second homes in Norfolk, or the need to boost housing development in some deprived areas or the need to restrain it in areas of environmental sensitivity.

44. But here by contrast, there was a context in which the Inspector could make at least some judgements about housing supply. In a case such as this, where there is a choice of two figures relied on by the parties, both of which can be criticised, but which address both ends of the possible range, neither NPPF nor the judicial authority cited above, prevent an Inspector from reaching a judgement on the issue by asking whether, when measured against either figure, there would be a benefit in planning terms in granting permission. In this case no-one suggested that the requirement figure would be below the lower figure, so using both figures to test delivery rates

was a sensible way of dealing with the issue. If this were a site where there were significant objections to development, and a real issue on whether its contribution to housing provision would be beneficial, it *may* be that a more thorough analysis would have been required, subject always to the actual context of the actual decision in question. That is a matter to be decided on a case by case basis. But there is nothing in either *St Albans* v *Hunston* per Sir David Keene nor in *Kings Lynn v SSCLG* per Dove J which prevents an Inspector from adopting a sensible and pragmatic approach of testing whether, on the lower "needs" figure, there would still be advantage in the grant of permission for housing, and especially not on a site to whose development there was no sustainable objection otherwise.

45. The alternative is that he would have had to perform some much more thorough analysis. But to derive a requirement for the plan period, so that one had an up to date figure, is a substantial exercise, best conducted in the Development Plan process. In my judgement there was nothing to prevent the Inspector approaching it in the way he did, without his embarking on an analysis of what one must do to derive a robust requirement figure: he would have had to look at census data and projections, household formation rates, average household size, migration patterns, economic performance, vacancy rates, site assessment, completion rates and all the other topics that await one when embarking on the ascertainment of a FOAN. To some, such an exercise is a sojourn in a garden of delights, but one should not underestimate its complexity and substance. Anyone ever instructed or otherwise participating at the time when Development Plan inquiries involved the examination of such topics at public inquiry will know that only too well. That is a burden to be imposed on a s 78 appeal Inspector only if unavoidable, and is truly a matter for the Development Plan process. An Inspector on appeal will not have the ability to consult all who should be consulted, and is only considering one site. If this Court interpreted NPPF paragraph 47 as requiring such an exercise in *any* case where there is not an up to date FOAN, it would turn many otherwise simple s 78 public inquiries on modest sites (like this 1 hectare site) into major inquiries involving a large amount of very technical evidence.

46. In this matter, it is unnecessary to determine whether the NPPF paragraph 49 mechanism was wrongly applied. As the Inspector pointed out, the relevant policy (CS10) which, if the paragraph 49 mechanism operated, would be disapplied, supported the development, and he had in any event found that the development was sustainable. If one applies the *Suffolk Coastal* approach, as one must, one still has to determine the application in accordance with s 78 *TCPA 1990* and s 38(6) of the *PCPA 2004*, and having regard to all material considerations, so that the criteria in Policy CS 10 were still relevant. If the development met them, the test in s 38(6) applied. It is not suggested by DBC that, once the landscape objection had failed, there was anything capable of "showing otherwise" in the context of s 38 (6).

47. Here, the Inspector, while preferring the use of the 17,300 figure, as he was entitled to, actually made his decision on the basis that the delivery rates of completed housing were too low whichever of the two figures was correct. That was also how he put the matter in his final conclusion. Tellingly, nothing was put forward by DBC to me to show that his assessment of delivery rates was capable of challenge, nor that the development was objectionable if there was a 5 year supply of housing land.

48. Thus one has a conclusion on delivery rates which would have been the same had he accepted all of DBC's case, in the context of an appeal where the site met each

criterion in the relevant policy, and to whose development there was no remaining objection.

49. Ms Dehon also argued that the Inspector's reasoning was inadequate and unclear. I reject that argument. His approach of looking at delivery rates is fully reasoned and leaves the informed reader in no doubt at all as to how he has approached the topic.

50. Lastly, his choice of delivery rates as a relevant parameter chimes closely with the policy impetus given by NPPF (and also by the Development Plan) to the maintenance of a supply of housing sites.

51. It follows from the above that this is an application which has no merit whatever. Had it been made after the filter in s 288 (4A) of *TCPA 1990* came into effect on 26th October 2015, I have no doubt that permission would not have been given for it to be made. The application is dismissed.

52. I invite written submissions as to costs and any other orders.