IN THE HIGH COURT OF JUSTICE Claim No: AC-2026-LON-003203

KING'S BENCH DIVISION

PLANNING COURT

BETWEEN:

FAIRFAX (READING) LIMITED

Claimant

-and-

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES & LOCAL GOVERNMENT

(2) SOUTH OXFORDSHIRE DISTRICT COUNCIL

(3) READING BOROUGH COUNCIL

(4) OXFORDSHIRE COUNTY COUNCIL

(5) KIDMORE END PARISH COUNCIL

(6) CAVERSHAM AND DISTRICT RESIDENTS' ASSOCIATION

Defendants

SECRETARY OF STATE'S
SUMMARY GROUNDS OF DEFENCE

References

This document adopts the references used by the Claimant:

- CB/x/y: References to 'x' are to the tab in the Claim Bundle and 'y' to the page.
- AB/x/y: References to 'x' are to the tab in the Authorities Bundle and 'y' to the page.
- DLx: References are to paragraph x in the Inspector's decision letter at [CB/4].

Essential Reading

In addition to the Claimant's list of essential reading:

- The first witness statement of Inspector Webb and its exhibits.

Introduction

1. The Secretary of State resists the application for permission to proceed with this planning statutory review. None of the six grounds advanced by the Claimant discloses an arguable error of law. Permission should therefore be refused.

2. In summary:
   a. **Ground 1**: the Inspector did not treat the level of five year housing land supply, past performance in delivery of housing or the outdatedness of development plan policies as legally irrelevant considerations when applying paragraph 14 of the NPPF. It was simply that on the facts of this case, which were not the same as the other appeal decisions relied on by the Claimant, those matters did not diminish the weight of the protection conferred by paragraph 14. That was a matter of planning judgment for the Inspector.
   b. **Ground 2**: the Inspector did not treat the neighbourhood plan valued landscape designation, in isolation, as determinative of the issue of whether the site formed part of a valued landscape. Although, it was clearly good evidence that it did. Instead, he relied on the designation, the evidence base supporting that designation and his own assessment as set out in DL18-25 to inform his conclusion that it did. The Claimant's case is a mischaracterisation of the Inspector's reasoning.
   c. **Ground 3**: it was no part of the Claimant's case to contend that the ongoing and longstanding public access to the site was a legally irrelevant consideration. Further, it is well known to the law that unauthorised use of land by the public can give rise to legal rights for the public. In this context, the Claimant's submission that such use would be legally irrelevant or an immaterial consideration lacks coherence. The Inspector's reasoning for considering the existing and long history of public access to the former golf course as relevant to his decision was sound and far from irrational.
   d. **Ground 4**: the Inspector did not exclude consideration of off-site BNG or off-site open space. They were expressly considered in the decision letter with legally adequate reasons given for their treatment. The comment at DL54 was not material to the overall decision, as evidenced by DL55-57.
   e. **Ground 5**: At the pre-action stage, it was said that the Inspector did not raise the issue of whether, due to the excess provision of open space, the proposed development would constitute an "efficient use of land". The Claimant now

accepts that it was raised. Mr Allin was given an opportunity to address the issue and he did so. He explained why he thought it did constitute an efficient use of land. It is simply that the Inspector did not agree with him on this point. In the circumstances, no procedural unfairness arose.

f. **Ground 6**: The weight to be given to all material considerations is a matter for the decision maker. DL49 is principally concerned with the numerical contribution to supply and related economic benefits of the delivery of housing. In contrast, DL 50-51 address the responsiveness of that provision to matters including the spatial strategy and local need, in order to assess the social benefits of the delivery of housing in that location. These are different considerations related to the provision of housing and there is no reason why the weight attached to these considerations should necessarily be the same. There is no internal inconsistency in the reasoning.

Response to the grounds of challenge

Ground 1: the Inspector (i) mistook material considerations as legally irrelevant when applying paragraph 14 NPPF alternatively (ii), failed to supply legally adequate reasons to distinguish earlier decisions which had treated those considerations as relevant

(i) The Inspector mistook material considerations as legally irrelevant when applying paragraph 14 NPPF

3. The Inspector's consideration of paragraph 14 of the NPPF discloses no arguable error of law. Properly read, the decision letter does not treat the matters identified at DL38 as legally irrelevant to the application of paragraph 14. Rather, the Inspector recognised that paragraph 14 was engaged (DL33), correctly understood that the use of the word "likely" in paragraph 14 left scope for cases in which conflict with a neighbourhood plan would not significantly and demonstrably outweigh the benefits (DL34), and then explained why, on the particular facts of this case, the matters relied upon by the Claimant did not diminish the weight to be given to the protection conferred by paragraph 14. That was a matter of planning judgment for the Inspector.

4. At DL35, the Inspector explained the purpose and operation of paragraph 14 of the NPPF. At DL36, the Inspector explained that the protection afforded by paragraph 14 is not contingent on there being a particular level of 5YHLS or past performance in delivery. Nor, as set out in DL37, is it contingent on all policies being up to date. These are all matters which might engage paragraph 11(d) of the NPPF and consequently, where applicable, paragraph 14 of the NPPF. All of this analysis is correct.

5. The assertion at SFG23 that "DL37 reveals that the Inspector understood paragraph 14 NPPF to be only ever capable of being engaged with equal weight." is entirely unsupported. Nothing in DL37, or the DL read as a whole, suggests that was the Inspector's reading of paragraph 14.

6. The analysis in DL33-37 informed the reasoned conclusion in DL38 that "Absent other considerations…" the factors relied on by the Claimant did not cancel out or diminish the weight of protection conferred by paragraph 14. The Inspector was not saying that these matters could not reduce the weight as a matter of law or lead to the presumption in paragraph 14 being outweighed. That is not a fair reading of the decision letter, particularly given the introductory words of DL38. Instead, the Inspector was making a judgment as to how the policy should be applied on the facts of this case.

7. The reasoning in DL38 needs also to be read with DL39, where the Inspector explains that: "A key consideration in this regard is the absence of any evidence which indicates that it is likely that SODC will seek to address its shortfall by directing development of the type and scale proposed towards the Parish". The point being made was that these factors were not likely to result in development of this type and scale being directed towards the Parish, or indeed to this location, through plan making. Were the facts of the case different, the analysis might well have been different. The Inspector was simply applying the policy to the facts of the case.

8. As to SFG27, the Inspector was entitled to regard it as significant that there was no evidence that SODC was likely to address its shortfall by directing development of the type and scale proposed towards the Parish. That was not an attempt by the Inspector to set out a legal precondition to the relevance of those factors, but a rational reason why the matters relied upon by the Claimant did not cancel out or diminish the weight of the protection conferred by paragraph 14 in the circumstances before the Inspector.

9. The first part of this ground of challenge is therefore based on a misreading of the decision letter. The Inspector did not say that the factors identified in DL38 were legally irrelevant to the application of paragraph 14 of the NPPF. Instead, he considered that "Absent other considerations…" they were not such as to outweigh the weight of protection afforded by the paragraph 14. This was plainly a matter of planning judgment.

(ii) The Inspector failed to supply legally adequate reasons to distinguish earlier decisions which had treated those considerations as relevant

10. It is not accepted that the other appeal decisions relied on by the Claimant were such as to engage the principle of consistency in decision making. They are context specific examples of the paragraph 14 presumption being outweighed by other considerations. They concern different sites, in different circumstances where different context specific planning judgments will need to have been formed.

11. To the extent that it was necessary to address the other appeal decisions relied on by the Claimant, the reasons given at DL34 were legally adequate to do so. The Inspector noted that the appeal decisions represented a "very small sample" size, insufficient to identify "any trend", and considered that variation in the application of paragraph 14 could "be expected given differing circumstances of any given case". He therefore did not consider these appeal decisions to bind his approach. This was correct and consistent with the Claimant's own Closing Submissions which recognised that: "whether in a given case, the conflict with the neighbourhood plan outweighs the benefits is plainly context specific."[1] As the Inspector explained each decision will turn on its own facts. The Inspector was right to have primary regard to the national policy and to apply that policy to the facts before him. He gave legally adequate reasons for coming to a different overall conclusion on the application of paragraph 14 on the facts before him.

[1] Appellant's Closing Submissions at §56 [CB/14/293].

12. At SFG32, the Claimant now relies on two appeal decisions which are said to be the "most acute" examples of the Inspector disagreeing with "critical aspects of the reasoning" of other Inspectors.

13. First, the **Chalgrove** decision [CB/12]. In particular, at DL173, where in the context of considering paragraph 14 of the NPPF, that Inspector noted that: "… the Council's up-to-date housing requirement for decision making purposes is significantly higher than was previously the case. The CNDP clearly does not therefore address that change in circumstances". There is nothing to suggest that the Inspector, in this case, disagreed with the approach in the Chalgove decision, so far as it applied to the facts of that case. But it does not follow that the same analysis should be applied to this appeal decision given its specific context. Additionally, the context in Chalgrove was clearly different. For example, Chalgrove is a "larger village", which the strategy in the local plan is to support and enhance (DL7). The two cases are clearly distinguishable and as such do not engage the principle of consistency in decision making.

14. Secondly, the **Fontwell** decision [CB/13]. In particular, at DL74 where the significant and persistent shortfall in five year housing land supply was noted in the context of a discussion of the application of paragraphs 11 and 14 of the NPPF. Contrary to SFG36, also noted within that discussion (see Fontwell DL75), was evidence to suggest an ongoing need in the relevant parish. This alone distinguished the **Fontwell** decision from the present appeal decision, for the reasons given at DL39 of this decision. Again, the principle of consistency in decision making was not engaged by this other appeal decision.

15. There is no merit in this ground of challenge.

<u>Ground 2: the Inspector (i) misunderstood paragraph 187(a) NPPF to mean that recognition of a landscape as locally valued within a neighbourhood plan, foreclosed any further consideration whether the site fell within paragraph 187(a) NPPF, thereby (ii) excluding obviously material considerations before concluding the site was within a valued landscape and/or (iii) the Inspector failed to supply legally adequate reasons for his conclusion that the site was a valued landscape.</u>

16. The case law needs to be read in its context. *Stroud District Council v SSCLG and Gladman Developments Ltd* [2015] EWHC 488 (Admin), *Forest of Dean District Council v SSCLG and Gladman Developments Ltd* [2016] EWHC 2429 (Admin)[2], and *Nixon v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 3036 (Admin)[3] are authority for the proposition that a landscape may be a "valued landscape" even though it is not subject to a "designation". In other words, the concept of a "valued landscape" is "not confined to landscapes which have a particular designation": see *CEG Land Promotions II Ltd v Secretary of State for Housing, Communities and Local Government* [2018] EWHC 1799 (Admin) at [56].

17. In each of *Stroud, Forest of Dean*, and *Nixon* the landscape was not designated. The alleged error was failing to go on to consider whether the landscape was nonetheless a "valued landscape" because of demonstrable physical attributes which were such as to take it out of the ordinary. In each instance the Inspectors had, on a proper reading of the decision letters, gone on to consider whether the landscape should nonetheless be a "valued landscape". They had each concluded that the landscape was not a "valued landscape". There was no error in their approaches.

18. As Ouseley J explained in *CGE Land Promotions* at [58], in using the phrase "demonstrable physical attributes" in *Stroud* he was simply using the phrase adopted by the Inspector in that case. He made clear at [59] that consideration of this issue does not need to be confined to the appeal site: c.f. the formulation of the relevant test at SFG45.

19. None of these cases dealt with a landscape which was already the subject of a landscape designation as a "valued landscape". That was the situation which this Inspector had to consider in this case, and his conclusions must be read in that context.

20. As the Inspector recognised at DL17, the site is designated as a "valued landscape" under the Local Valued Landscape Policy of the Kidmore End Neighbourhood Development Plan 2022. This designation was imposed because it was considered that the landscape had "…demonstrable physical attributes which collectively and individually raise the landscape well above the ordinary…" (see supporting text at 11.26).

[2] AB/14.
[3] AB/18.

21. As the Inspector explained, the introductory and supporting text of the policy designation referred to the relevant legal authorities, including *Stroud*, and the GLVIA Box 5.1 exercise. The designation was supported by background assessments which demonstrated that the landscape satisfied the criteria for a valued landscape. As the Inspector noted, this had all been subject to a recent examination and was looked at in significant detail by the neighbourhood plan examiner.

22. Surprisingly, none of this background material, or the Inspector's reliance on it, is acknowledged in the Claimant's SFG. The background material was not included within the claim bundle. This is despite that material being directly referred to in the DL and drawn to the attention of the Claimant in the Secretary of State's Pre-Action Protocol Response: see PAPR at §18-21[4]. It is now exhibited to Inspector Webb's witness statement.

23. The Claimant's assertion at SFG42 that the Inspector's reasoning for concluding that the site was a valued landscape was "simply that the site fell within a locally valued landscape in the Kidmore End Neighbourbood Plan" is a mischaracterisation of the Inspector's reasoning.

24. There was a detailed evidence base, sitting behind the designation, which the Inspector had regard to. This addressed the issue of whether the landscape was a valued landscape, including consideration of the issue of "demonstrable physical attributes". The Inspector was satisfied that this left "no room for doubt" as to whether the landscape was a valued landscape within the meaning of paragraph 187(a) of the NPPF. It was not only the fact of the designation which the Inspector considered, but the evidence base in support of it. He was not persuaded by the Claimant's argument to the contrary.

25. Following DL18, there is then a discussion of the qualities of the landscape, including those of the site. With the conclusion being reached in DL24 that the site "demonstrates and helps to express key attributes and values of both the LCA [Landscape Character Area] and LVL [Locally Valued Landscape]" and that these findings "underline both the important and positive contribution that the site makes to the LVL." This answered the Claimant's position that the site did not reveal the necessary physical attributes which took it out of the ordinary. The Inspector plainly disagreed with that assessment.

[4] [CB/18/371].

The characterisation of the Inspector having simply accepted the designation without more is unjustified. In DL25, the Inspector explained why he considered that the proposed development would "erode the rural character of both the LVL and Parish more generally". Given the need to read a decision letter as a whole, the Claimant is wrong at SFG50 to say that this reasoning should be ignored.

26. Read as a whole, the Inspector did not treat the designation, in isolation, as determinative of the issue of whether the site formed part of a valued landscape. Instead, he relied on the designation, the evidence base supporting that designation and his own assessment as set out in DL18-25 to inform that view. There was no arguable error of law. The Claimant's case depends on mischaracterising the reasoning in DL18 and ignoring the analysis that follows.

Ground 3: the Inspector (i) took into account a legally irrelevant consideration alternatively (ii), acted irrationally in taking into account unauthorised public access to the land

(i) The Inspector took into account a legally irrelevant consideration, being the existing public access to the land

27. It was no part of the Claimant's case to contend that the ongoing and longstanding public access to the site was a legally irrelevant consideration. Nor did this argument feature in the Claimant's Pre-Action Protocol Letter, which was instead argued on the basis of rationality[5]. Raising this as a new point now is contrary to the principles set out in *Barker Mill Estates Trustees v Test Valley BC* [2017] P.T.S.R. 408 at [77]:

> "In an application for statutory review of a planning decision there is no absolute bar on the raising of a point which was not taken before the inspector or decision-maker. But it is necessary to examine the nature of the new point sought to be raised in the context of the process which was followed up to the decision challenged to see whether the claimant should be allowed to argue it. For example, one factor which weighs strongly against allowing a new point to be argued in the High Court is that if it had been raised in the earlier inquiry or appeal process, it would have been necessary for further evidence to be produced and/or additional factual findings or judgments to be made by the inspector, or alternatively participants would have had the opportunity to adduce evidence or make submissions (or the inspector might have called for more information)…"

[5] See [CB/17/366-367]

28. If the submission had been made earlier in the appeal process, it may have been necessary for the Inspector to make additional factual findings as to nature of the use and / or to invite submissions on the legality of the use and / or to invite submissions on the materiality of the use to the decision, rather than the weight to be placed on it as a material consideration. All parties to the inquiry appear to have proceeded on the basis that the public use of the land was capable of being a material consideration, albeit one which the Claimant invited the Inspector to place no weight on.[6]

29. Furthermore, it is not accepted that "unauthorised" public access to a site would be a legally irrelevant consideration. Unauthorised public access is often foundational to the establishment of public rights of way. For example, s.31 of the Highways Act 1980 provides that where a way has been used by the public "as of right" and "without interruption" for a period of 20 years, it is deemed to have been dedicated as a highway, unless there is sufficient evidence that there was no intention during that period to dedicate it. "As of right" means without "without force, stealth, or permission": see *Roxlena Ltd v The Ramblers' Association* [2026] EWCA Civ 534 at [60]. Similarly, under s.15 of the Commons Act 2006, use "as of right" by a significant number of the inhabitants of any locality may enable the registration of land as a town or village green. It is therefore well known to the law that unauthorised use of land by the public can give rise to legal rights for the public. In this context, the Claimant's submission that such use would be legally irrelevant or an immaterial consideration lacks coherence.

(ii) *The Inspector acted irrationally in taking into account unauthorised public access to the land*

30. In DL22, the Inspector noted "the ongoing and apparently long history of public access to the golf course, as well as past public use of the golf course itself." This concerned both use by the public as a golf course and for other purposes. In DL23, the Inspector noted that "[t]hough public access for purposes other than playing golf may have been informal, and may continue to be informal, that does not mean that in this case it is irrelevant or something to be set aside." He gave reasons for this assessment: [1] there

[6] Placing no weight on a material consideration is a lawful approach: see *Tesco Stores v Environment Secretary* [1995] 1 WLR 759 at 780 [AB/6/102]. Therefore, the submission that no weight should be placed on the existing public access was not obviously a submission that it was a legally irrelevant consideration.

was nothing to suggest any serious attempt is currently being made to prevent it; [2] free and easy access is facilitated by pedestrian gates, including from adjoining gardens; and [3] in the absence of the proposed development, the appellant has not indicated any steps are going to be taken to prevent access in the future. Further to this, the Inspector noted in DL23 that numerous members of the public had been making recreational use of the former golf course on his site visits, representations by local residents further attest to such use, and therefore what he had observed was not considered to be unusual. This was all sound reasoning for considering the existing and long history of public access to the former golf course as relevant to his decision.

31. The Inspector was under no misapprehension as to the nature of that access, he appreciated that it was not pursuant to any formalised public right of way. Whilst the appellant had asserted in Closing Submissions[7] that the access could be removed tomorrow, as the Inspector noted, there were no steps which were proposed to prevent any access from continuing and no evidence of any serious attempts currently being made to prevent it. The language of "unlawful trespassory use" used in the Statement of Facts and Grounds contrasts with the way in which the proposal for "formalising the public access"[8] was put in the Appellant's Closing Submissions. In these circumstances, it was (at the very least) open to the Inspector to take the existing public access into account in assessing the impacts and benefits of the scheme.

32. The Claimant asserts at SFG53 that Mr Philip Allin gave evidence that the existing public access "had been objected to by landowners in the form of notices on the land, which had been torn-down or removed". This is not supported by Mr Allin's own witness statement which does not state anything about signs being torn down or removed. Nor, contrary to SFG53, is this evidence recorded in the Claimant's Closing Submissions. In Closing Submissions, the Claimant's position was simply that: "No weight can be placed on the existing public access, given that there is no public rights of access, and the landowner could remove it tomorrow."[9] The Inspector disagreed with that assessment for the reasons he gave.

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[7] At §19a [CB/14/282].
[8] Ibid.
[9] Ibid.

33. Ultimately, the characterisation of the baseline, including levels of informal public access and the scope for perception of change, against which to assess the impact on character and appearance of the area and the weight to be given to the proposal to formalise public access to certain areas was a matter of planning judgment for the decision maker. The Inspector had the benefit of site visits to make his own observations as well as the evidence he heard at the inquiry, including from the local community. His approach falls far short of the high threshold for *Wednesbury* irrationality.

Ground 4: the Inspector failed to supply legally adequate reasons for excluding obviously material considerations (namely off-site biodiversity net gain and public open space)

34. The Inspector did not exclude consideration of (i) off-site BNG; or (ii) off-site open space. They were expressly considered in the decision letter, under the heading "Open Space and BNG". DL52 deals with on-site open space and BNG. DL53-57 then consider off-site open space and BNG.

35. It is notable that SFG66-72 all concern the Inspector's reasoning at DL54. At DL54, the Inspector expressed doubts as to whether this off-site open space and BNG could properly be secured. Contrary to SFG69, this was not a criticism of the drafting of the s.106, but an observation as to whether the tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010 would be met. However, in DL55 he proceeded on the basis that those benefits could properly be secured: "Even if I accepted the appellant's approach…". He went on to consider the weight to be afforded to those benefits in the circumstances. In DL55-56, he gave reasons why he considered the additional benefits of the off-site BNG and open space to be limited. DL54 was therefore not material to his overall decision.

36. For the avoidance of doubt, and contrary to SFG70, it is not accepted that there was any error in the reasoning set out in DL54 or misunderstanding of the tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010. As was set out in the PAPR at §14[10], it is unnecessary to address that reasoning further given that

[10] CB/18/370.

consideration was, in any event, given to the weight to be attached to these off-site benefits. The simple point is that those matters were not excluded from consideration.

37. In DL57 the Inspector expressed the overall conclusion that these benefits, would not themselves or in combination with the other benefits serve to make the development acceptable in planning terms. This was not a conclusion that the benefits could not be taken into account. Rather, the Inspector concluded that they did not outweigh the harms, whether by themselves or in combination with other matters. Accordingly, no arguable error of law arises. The Inspector did not fail to take the benefits into account. He simply reached a planning judgment as to weight. He gave legally adequate reasons for that judgment.

38. In SFG73, the Claimant refers back to the points made under Ground 3, but makes no freestanding point in relation to the Inspector's treatment of these benefits. DL54 being immaterial to the Inspector's overall conclusion, ground 4 does not add to the claim.

<u>Ground 5: the Inspector acted in breach of the rules of procedural fairness by concluding that it was "unclear" whether the site would deliver an efficient use of land and/or mix of housing, without notifying the Claimant those matters were live and/or providing an adequate opportunity to adduce evidence in response.</u>

39. As pleaded at the pre-action stage, it was said that the Inspector did not raise the issue of whether, due to the excess provision of open space, the proposed development would constitute an "efficient use of land". The Claimant now accepts that it was raised by the Inspector: see witness statement of Philip Allin at §12 [CB/5/56].

40. As set out in Inspector Webb's witness statement, the issue was raised following the cross-examination of the appellant's planning witness and before re-examination. The density of the proposed development, compared to other developments, was also a matter explored during cross examination of KEPC's landscape witness by the appellants' advocate, and through cross examination by KEPC's advocate of the appellants' landscape witness.

41. It was therefore a point which the appellant's planning witness had the opportunity to address and the appellant's counsel had the opportunity to revisit during re-examination

and / or in closing submissions. Indeed, the appellant's counsel asked Mr Allin about these issues in re-examination.

42. An Inspector is entitled to raise matters during an inquiry and to ask questions of a witness. Had the appellant considered that it needed more time to deal with this point, then a request for more time should have been made before the close of the inquiry. No such request was made. In those circumstances, any suggestion of procedural unfairness is unsustainable. The prejudice alleged simply does not arise.

43. The argument that the Inspector treated this issue differently to other issues he raised is also unmeritorious. Issues will arise at different points and in different ways during an inquiry and may be dealt with in different ways. Some issues may come from the Inspector's reading of the papers, some may come from oral evidence. An Inspector may think it appropriate to put some matters in writing and to ask some matters orally. Some matters may require written clarification by a party, whereas an Inspector may be content to receive evidence on other matters orally. There is no barrier to an Inspector asking questions of a witness at an inquiry, indeed that is a key function of the inquiry process. Equally, an Inspector does not have to accept the answer given to questions put to a witness.

44. Contrary to SFG80, the Inspector's concern was not about a sufficiency of information as to "whether" the development would constitute an "efficient use of land". Instead, it was "how" it could be said to do so, given the level of open space being provided on site - being significantly more than was necessary to comply with development plan policy. Mr Allin was given an opportunity to address that issue and he did so. He explained why he thought it did constitute an efficient use of land. It is simply that the Inspector did not agree with him on this point.

45. As to the reference in DL52 to "optimising the potential use of the site to accommodate and sustain an appropriate amount and mix of development", that language comes from NPPF paragraph 135(e) which talks about providing an appropriate mix of development including green and public open space. It is an issue which goes to the same point i.e. the quantum of open space being proposed. It was not being raised as a separate concern and did not require any separate question to be asked.

46. As to the points made by the Claimant at SFG84:
    a. It is not clear why raising the point after a concession made by another party makes the Inspector's approach unfair. Indeed, it should have put the Claimant on notice that it remained a consideration for the Inspector.
    b. A single question was sufficient. In asking such a question it is anticipated that a witness will address why they consider something to be so. That is exactly what Mr Allin did. There was no need for the Inspector to follow up.
    c. As to when it was raised, an appellant's planning witness usually gives evidence last in the evidential process. There is no barrier to an Inspector asking questions of such a witness. Inspectors' questions are often asked once a witness has been cross-examined, so as not to duplicate points taken by other parties and because the examination in chief and / or cross examination of a witness may give rise to matters which the Inspector wishes to question the witness on. The timing of the question was a natural function of the inquiry timetable. If the appellant had needed more time to deal with the point, it should have asked for it.
    d. It is not correct that the Inspector only asked questions in writing. They were raised in a variety of ways, all of which were perfectly proper.

47. There is no merit in this ground of challenge.

<u>Ground 6: the Decision was internally inconsistent and thereby irrational on the question of weight to the provision of housing and/or his reasons gave rise to a substantial doubt what weight was taken into the planning balance.</u>

48. As the Claimant accepts, the weight to be given to all material considerations is a matter for the decision maker.

49. DL49 is principally concerned with the numerical contribution to supply and related economic benefits of the delivery of housing. In contrast, DL 50-51 address the responsiveness of that provision to matters including the spatial strategy and local need, in order to assess the social benefits of the delivery of housing in that location. These are different considerations related to the provision of housing and there is no reason why the weight attached to these considerations should necessarily be the same.

50. There is no internal inconsistency in the reasoning. The reality is, the Inspector did not consider the site to be an appropriate location for housing in terms of addressing its social or spatial context. This was clearly explained throughout the decision letter, see for example DL15, and was reflected in the weighting he gave to the social benefits of the provision of housing in that location.

51. As to SFG92, the Inspector was not required to come to one overall conclusion as to the weight to be given to the "benefit of housing". He was entitled to consider the different aspects of the provision of housing in the way he did and to weigh those elements separately. Indeed, Mr Allin's own approach was to ascribe separate weights to the provision of market and affordable housing, albeit both set at "very substantial"[11]. There is no single correct way of weighing benefits. How to do so is a matter of planning judgment for the decision maker, in the context of planning decision making being a flexible process, not rigid or formulaic: *East Staffordshire BC v Secretary of State for Communities and Local Government* [2017] EWCA Civ 893 at [50]. The Inspector's approach was reasonable and adequately explained.

<u>Conclusion</u>

52. For all these reasons, the Claimant's grounds raise no arguable error of law and the Court is respectfully invited:
    a. to refuse permission for the claim to proceed; and
    b. to order the Claimant to pay the Secretary of State's reasonable and proportionate costs of the preparation of its acknowledgement of service, as set out in the First Defendant's Statement of Costs, to follow within 7 days of the filing of these summary grounds.

BEN DU FEU

Cornerstone Barristers

5 August 2026

[11] [CB/9/86] at §6.34.