Neutral Citation Number: [2015] EWHC 132 (Admin)

Case No: CO/3971/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 January 2015

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

HOPKINS HOMES LTD	**Applicant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
(2) SUFFOLK COASTAL DISTRICT COUNCIL	

- -
- -

Christopher Lockhart-Mummery QC (instructed by **Howes Percival LLP**) for the **Applicant**
Jonathan Clay (instructed by **The Solicitor to the SCDC**) for the **Second Defendant**

Hearing date: 20 January 15

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Judgment

Mr Justice Supperstone :

Introduction

1. This is an application made under s.288 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") to quash the decision letter of the Defendant (given by his Inspector) dated 15 July 2014 whereby he dismissed the Applicant's planning appeal made under s.78 of the 1990 Act.

2. On 6 November 2014 the Treasury Solicitor notified the court that the First Defendant did not intend to defend this appeal and would not be represented at the hearing. The Consent Order states: "The First Defendant, having carefully considered the Appeal Decision, the Applicant's grounds and witness statement evidence, has concluded that his appointed Inspector erred in law. It is accepted that the Inspector erred in law in that he failed to give adequate reasons in paragraphs 8 and 9 of the Decision Letter for his conclusions in relation to paragraph 49 of the National Planning Policy Framework ["NPPF"] and whether policies SP19, SP27 and SP29 were 'relevant policies for the supply of housing' within the meaning of paragraph 49".

Factual background

3. By its planning application dated 7 January 2013 the Applicant applied for planning permission to the Second Defendant for residential development of 26 dwellings, associated access and landscaping.

4. The appeal site lies adjacent to the settlement boundary of Yoxford as defined in the development plan. Yoxford is identified within the Suffolk Coastal District Local Plan ("LP") which was adopted in July 2013 as a Key Service Centre, which provides an extensive range of specified facilities. In the 2009 Suffolk Coastal Strategic Housing Land Availability Assessment the appeal site was the only site within the settlement of Yoxford that was identified as having development potential, all other options having been excluded following a desk-top analysis.

The policy framework

5. For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004 the statutory development plan comprises the LP, and certain "saved" policies from the Suffolk Coastal Local Plan adopted by the Second Defendant in December 1994 (referred to by the Inspector as "the old Local Plan").

6. The LP contains the following relevant policies:

   i) Policy SP19 is a Settlement Policy which provides that modest estate-scale housing development is appropriate within the defined physical limits of Key Service Centres, Yoxford being one such settlement. Outside these settlements, that is in the "Countryside", the policy provides :

      "No development other than in special circumstances."

   ii) Policy SP27 would "permit housing development within defined physical limits".

   iii) Policy SP29, The Countryside, provides:

      > "The strategy in respect of new development outside the physical limits of those settlements defined as [Key Service Centres] is that it would be limited to that which of necessity requires to be located there and accords with other relevant policies within the Core Strategy (e.g. Policies SP7 or DM13); or would otherwise accord with special circumstances outlined in paragraph 55 of the National Planning Policy Framework."

      Paragraph 55 of the NPPF relates to housing.

7. The relevant policy from the old Local Plan is policy AP4 which provides

   > "<u>Parks and gardens of historic or landscape interest</u>
   >
   > The District Council will encourage the preservation and/or enhancement of parks and gardens of historic and landscape interest and their surroundings. Planning permission for any

> proposed development will not be granted if it would have a materially adverse impact on their character, features or immediate setting."

The appeal site forms part of an area defined as Historic Parkland by the Second Defendant in its Supplementary Planning Guidance 6 "Historic Parks and Garden" (SPG) dated December 1995.

8. Policy AP13 in the old Local Plan, which relates to Special Landscape Areas, states:

> "The valleys and tributaries of the Rivers Alde, Blyth, Deben, Fynn, Hundred, Mill, Minsmere, Ore and Yox, and the Parks and Gardens of Historic or Landscape Interest are designated as Special Landscape Areas and shown on the Proposals Map. The District Council will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality."

9. Paragraph 14 of the NPPF provides, so far as is material:

> "At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development,** which should be seen as a golden thread running through both plan-making and decision-taking.
>
> For **decision-taking** this means:
>
> - 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."

10. Paragraph 47 of the NPPF requires that to boost significantly the supply of housing, local authorities should

> "identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements…"

11. Paragraph 49 provides:

> "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."

12. Paragraph 135 in Part 11 of the NPPF ("Conserving and enhancing the natural environment") states:

> "The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

Annex 2 (Glossary) to the NPPF provides that "**Significance (for heritage policy)**" means:

> "The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting."

13. In *Bloor Homes East Midlands Ltd v Secretary of State for Communities & Local Government* [2014] EWHC 754 (Admin) at para 19 Lindblom J recently summarised the relevant legal principles, which, so far as they are material, are as follows:

> "(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&CR 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 anr v Porter (No. 2)* [2004] 1 WLR 1953 at p.1964 B-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 Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at p.780 F-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 the Environment, Transport and Regions* [2001] EWHC 74 Admin, 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] PTSR 983, at paragraphs 17-22).
>
> (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 LJ, as he then was, in *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P&CR 80, at p.83 E-H)."

The Inspector's decision letter ("DL")

14. In DL4 the Inspector identified the main issues in this appeal to include:

- Consideration of a 5 years' supply of housing land and its effects
- The principle of the proposed development outside the defined village
- The effects of the proposal on the local historic parkland and landscape

15. In DL5, the Inspector agreed with the Appellant "that it seems very unlikely that a 5 years' supply of housing land can now be demonstrated". The remainder of the DL proceeds on the basis that there was not a 5 years' supply.

16. In DL9 the Inspector states in relation to Policy SP27, "I do not consider this policy to be a relevant policy for the supply of housing and I consider it to be up to date".

17. DL12-14, under the heading "**The principle of the proposed development outside the defined village**" state:

> "12. Policy SP27 of the LP relates to Key and Local Service Centres (Yoxford is a Key Service Centre) and states, amongst other things, that housing development will be permitted within the defined physical limits or where there is proven local support in the form of small allocations of a scale appropriate to the size, local and characteristics of the particular community; the appellants do not seek to rely on the latter section of this part of the policy.
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> 13. The appeal site is outside the physical limits boundary as defined in the very recently adopted Local Plan. The supporting text to Policy SP27 states that new housing development in such settlements would require careful consideration given environmental issues and the potential impact on their character. The requirement directing development to within the physical limits of the settlement is in accordance with one of the core principles of the Framework, recognising the intrinsic character and beauty of the countryside. I am aware that the appeal site was identified within the Council's SHLAA, along with a number of other sites within and around the settlement; however, the Council state that this was done in error and was done as a result of the failure to take account of its designation within the Historic Park.
>
> 14. I consider that the appeal site occupies an important position adjacent to the settlement, where Old High Road marks the end of the village and the start to the open countryside. The proposed development would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of the Framework."

18. It is implicit in DL14 that the Inspector finds Policy SP29 to be an up to date policy.

19. In DL16 the Inspector acknowledges that the arable use on and surrounding the appeal site had eroded the parkland qualities of the area. He continued: "However, one of the key underlying qualities of parkland, that is openness and freedom from built development remains".

20. DL21 states:

> "In respect of these matters [i.e. effect of proposal on historic parkland and landscape], the historic parkland forms a non-designated heritage asset, as defined in the Framework and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan and Policies SP1, SP1A and SP15 of the LP."

21. At DL31 and 32, under the heading "**The planning balance**", the Inspector acknowledges (at DL31) the advantages of the proposed development, and at DL32 states:

> "However, I have found significant conflict with policies in the recently adopted Local Plan. I have also found conflict with some saved policies of the old Local Plan and I have sought to balance these negative aspects of the proposal against its benefits. In doing so, I consider that the unacceptable effects of the development are not outweighed by any benefits and means that it cannot be considered as a sustainable form of development, taking account of its 3 dimensions as set out at paragraph 7 of the Framework. Therefore, the proposal conflicts with the aims of the Framework."

Grounds of challenge

22. Mr Christopher Lockhart-Mummery QC advances three grounds of challenge to the Inspector's decision:

    i) The Inspector erred in law in his interpretation of paragraph 49 of the NPPF in relation to policies of the LP.

    ii) The Inspector misdirected himself as to the status of the limits boundary to Yoxford; and

    iii) The Inspector misdirected himself as to the status of Policy AP4.

Discussion

Ground 1: misinterpretation of paragraph 49 of the NPPF in relation to the policies in the LP

23. The Inspector found the proposed development to be "unacceptable in principle" (DL14) since it was contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of the Framework. It appears from DL8 that SP19 also informed this judgment.

24. Mr Lockhart-Mummery submits that in doing so the Inspector had regard to immaterial considerations. On the proper construction of paragraph 49 of the NPPF he should have determined that these policies were policies for the supply of housing and thus, in the absence of a five year supply of housing, not up to date.

25. If the Inspector had adopted the proper construction of paragraph 49 it would, Mr Lockhart-Mummery submits, follow that the planning balance would have resulted in the grant of permission (subject to other considerations) 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" (NPPF para 14). The Inspector failed, he submits, to have regard to the correct balance, and therefore failed to undertake the planning balance on the proper and lawful basis.

26. In support of this submission Mr Lockhart-Mummery referred to recent cases on the meaning and effect of paragraph 49 of the NPPF, in particular *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), *South Northamptonshire Council v Secretary of State for Communities and Local Government and Robert Plummer* [2013] EWHC 4377 (Admin), and *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin). The proper construction and effect of paragraph 49, he submits, is that it applies to any policy which has the effect of restricting the development of housing.

27. In *Barwood Land* Ouseley J noted that the issues were similar to those considered by Lewis J in *Robert Plummer*, a judgment with which he agreed (para 1). The planning policy background in *Barwood Land* was that the South Northamptonshire Local Plan, SNLP, had been adopted in 1997 and had expired in 2006 except for a number of saved policies which included EV2, protecting the open countryside, EV7, protecting the Special Landscape Areas, SLAs, and EV8, protecting the gaps between settlements, all of which were part of the Development Plan and were applicable to the appeal site (para 4). The Secretary of State said that he agreed with the Inspector's conclusions and recommendations (see para 13).

28. Ouseley J noted that policy EV2 is one of a group of environmental policies restrictive of development in the countryside. It says "planning permission will not be granted for development in the open countryside…". The exceptions, not listed exhaustively, do not include residential development. EV2 reflects and is the counterpart of policies for the location of development, of which housing forms a large part. General local plan policy H6, subject to limited exceptions, normally prevents housing in the open countryside which is defined as land outside the village confines and town boundaries. Policy H5 deals with infill in restricted villages. The development was in conflict, as the Inspector concluded, with H5 and H6 (para 38).

29. At paragraph 43 Ouseley J stated:

> "The question of whether policy EV2 was a policy for the supply of housing was considered by Lewis J in the *Plummer* case… In paragraph 34 he concluded that policy G2, providing for new development to be in Towcester, Brackley and areas closely related to the Northampton Borough boundary, but limited in the villages and severely restrained in the open countryside, was a housing supply policy relating to residential and other forms of development. Policy EV2 he described as 'somewhere between the *Davis* case and the *Cotswold* case'. In *William Davis Ltd v SSCLG* [2013] EWHC 3058 (Admin), Lang J considered that a policy for the preservation of the undeveloped character of the particular area was not a housing supply policy. In *Cotswold DC v SSCLG* [2013] EWHC 3719 (Admin) Lewis J held that a policy, applicable to housing and other development, restricting development outside development boundaries, was a housing supply policy. I agree with Lewis J in *Plummer* that EV2 is somewhere between those two cases."

30. Ouseley J continued:

> "44. I am satisfied that the issue did form a significant part of the Inspector's reasoning on housing supply policy. The Inspector discussed the scope of paragraph 49 of the Framework in paragraph 172 IR. He said:
>
> 'In my view however, the effect of paragraph 49 of the Framework is broader than this. Although there must be direct effect on relevant housing policies, I agree with my colleague that the effect extends to other general development policies which are relevant to the supply of housing. There would thus be some effect on relevant environmental policies but a greater impact on the restraints included in local Planning Policies G2 and G3.'

45. I have already quoted from paragraph 199 in which he specifically considers the relationship between EV2 and paragraph 49 of the Framework, so it is clear that he considered the issue and reached a view that EV2 was a policy 'for the supply of housing'.

46. That phraseology is either very narrow and specific, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.

47. It is my judgment that the language of the policy cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development. They may be generally applicable to all or most common forms of development, as with EV2, stating that they would not be permitted in open countryside, which as here could be very broadly defined. Such very general policies contrast with policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development.

48. However, once the Inspector has properly directed himself as to the scope of paragraph 49 NPPF as he did here, the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment. In this case, the policy clearly

> falls within the scope of the phrase and the Inspector was fully entitled to reach the conclusion on it which he did."

31. Mr Jonathan Clay, for the Second Defendant, relies on the decision in *William Davis*. In that case the relevant parts of the development plan were first, the East Midlands Regional Plan approved in 2009; and second, the North-West Leicestershire Local Plan, adopted in 2002. Policy E20, of particular importance, had been saved on terms by direction of the Secretary of State dated 21 September 2007. E20, Green Wedge, stated that "Development will not be permitted which would adversely affect or diminish the present open and undeveloped character of the Coalville-Whitwick-Swannington Green Wedge, identified on the Proposals Map. Appropriate uses in the Green Wedge are agriculture, forestry, minerals extraction and outdoor sport and recreation uses. Any built development permitted within the Green Wedge will be limited to minor structures and facilities which are strictly ancillary to the use of the land for these purposes". The Claimant's case was that the Inspector and the Secretary of State had misinterpreted or misapplied NPPF in that, inter alia, they failed to hold that policy E20 was a relevant policy for the supply of housing and accordingly out of date.

32. Lang J concluded at paragraph 47 as follows:

> "The Claimants sought to argue that Policy E20 should have been treated as one of the '[r]elevant policies for the supply of housing' within the meaning of NPPF, paragraph 49 because the restriction on development potentially affects housing development. I do not consider that this is a correct interpretation of paragraph 49. Paragraph 49 is located in the section of the NPPF dedicated to housing and it refers to policies for 'the <u>supply</u> of housing', of which there are many in local, regional and national plans. It was agreed that the housing policies in the Development Plan in this case, were out of date by virtue of paragraph 49… However Policy E20 does not relate to the <u>supply</u> of housing, and therefore is not covered by paragraph 49. I was shown numerous Inspectors' decisions in which paragraph 49 had been applied but these were distinguishable from this case because the policies related specifically to housing. There were a couple of exceptions, but in so far as Inspectors have applied paragraph 49 to policies which did not relate to housing, I respectfully suggest that they did so in error. ..."

33. Mr Lockhart-Mummery observes that the learned judge appears to have thought that paragraph 49 relates to policies dealing with the positive provision of housing, for example a requirement that the Plan should provide so many hundreds of houses in specified locations. This approach is, he submits, illogical and would defeat the purpose and effect of paragraph 49. He gives the example of the Plan having been adopted yesterday and the following day the planning authority not being able to demonstrate a five years' supply of housing, with the effect that yesterday's up to the minute housing provision is deemed out of date.

34. Mr Clay takes issue with these criticisms. He observes that Ouseley J did not suggest in *Barwood Land* that the decision in that case was wrongly decided. In any event, Mr Clay submits, the Inspector did consider the scope of paragraph 49 of the NPPF and recognised that certain of the Local Plan policies protect "specific areas or features" (see *Barwood Land* judgment, paragraph 47). The Inspector understood, he submits correctly, the scope of paragraph 49 as providing, as a matter of policy, that policies for the supply of housing cannot be treated as up to date where the Council cannot demonstrate a five year housing land supply.

35. Mr Clay does not accept that paragraph 49 can lead to policy in a recently adopted Local Plan that is wholly consistent with Core Planning Principles of the NPPF being given little weight. In any case, he submits, any conflict with SP29 was not determinative of the decision to refuse permission. The decision was based on the application of several policies in both the development plan and the Framework and on the Inspector's own judgment. His concern was the effect of the development on the special landscape, the historic park and the character of the village. These are all, he submits, legitimate matters of planning judgment.

36. Mr Clay suggests that this ground of challenge is a thinly veiled attack on the planning judgments made by the Inspector and is largely concerned with matters of merits and weight, which matters are entirely within the Inspector's remit. The Inspector does directly, says Mr Clay, apply paragraph 14 of NPPF, finding that "the unacceptable effects of the development are not outweighed by any benefits" (DL32) and that "it cannot be considered as a sustainable form of development, taking account of its 3 dimensions as set out at paragraph 7 of the Framework". These are, Mr Clay submits, planning judgments and are unimpeachable.

37. Mr Clay observes that the reason given on behalf of the First Defendant for concluding that the Inspector erred in law is that he failed to give adequate reasons in paragraphs 8 and 9 of the Decision Letter for his conclusions in relation to paragraph 49 of the NPPF and whether policies SP19, SP27 and SP29 were relevant policies for the supply of housing within the meaning of paragraph 49 (see para 2 above). That being so, Mr Clay suggests that the reason for the First Defendant submitting to judgment appears to be concerned with a failure by the Inspector to give adequate reasons, however no such allegation forms any part of any of the grounds of the claim or in the submissions made by Mr Lockhart-Mummery.

38. I accept Mr Lockhart-Mummery's submission that the error made by the Inspector was not so much a failure to give reasons, as a misinterpretation and misapplication of paragraph 49 of the NPPF in relation to policies in the Local Plan. The sole judgment to which the Inspector had regard was *Davis* in respect of which he noted "it was held that paragraph 14 of the Framework only applies to development which has been found to be sustainable" (DL6). However none of the later cases followed the approach adopted by the learned judge in *Davis*. I agree with Mr Lockhart-Mummery that SP29 is the equivalent to Policy EV2 in *Barwood Land*. Following the analysis of Ouseley J in that case, with which I agree, I consider that the Inspector did misinterpret NPPF paragraph 49 in the present case.

39. This did, in my view, amount to a fundamental misdirection as to the Framework.

40. In *Simplex G.E. (Holdings) and another v Secretary of State for the Environment and the City and District of St Albans District Council* [1989] 57 P&CR 56, Purchas LJ stated that the error in that case was in his judgment undeniably a significant factor in the decision making process carried out by the Minister. He found that it was impossible to say that the learned judge was entitled to come to the conclusion that the Minister would necessarily have reached the same conclusion if he had not acted on the erroneous factor. He added: "It is not necessary for Mr Barnes [for the Appellants] to show that the Minister would, or even probably would, have come to a different conclusion. He has to exclude only the contrary contention, namely that the Minister necessarily would still have made the same decision". (See page 18, and also the observations of Staughton LJ at page 20 of the judgment).

41. I do not consider, applying that test, that the Inspector necessarily would still have made the same decision if he had not misinterpreted NPPF paragraph 49. Accordingly, having found that the Inspector erred in his interpretation of the Framework, I conclude that his decision should be quashed.

Ground 2: Misdirection as to the status of the limits boundary to Yoxford

42. In the light of the conclusion I have reached on ground 1 I can deal with grounds 2 and 3 more shortly.

43. Mr Lockhart-Mummery submits that the Inspector erred in finding as he stated in DL13 that "the appeal site is outside the physical limits boundary as defined in the very recently adopted Local Plan". This is in fact not so. It was merely carried over, without scrutiny or review, from the old Local Plan. Appendix D to the LP states (at page 153) that: "The actual Proposals Maps will be updated when they are superseded by the adoption of subsequent Development Plan Documents".

44. This misunderstanding by the Inspector is, Mr Lockhart-Mummery suggests, of importance because of paragraphs 12 and 14 of the NPPF. These paragraphs revolve round the question of whether a development plan policy is up to date. Paragraph 12 is concerned with compliance with, or conflict with, an up to date local plan. Paragraph 14, which Mr Lockhart-Mummery describes as the lynchpin of the NPPF, is constructed on the same basis.

45. Mr Clay submits that the Applicant is incorrect in saying that the boundaries were carried over, without scrutiny or review from the old Local Plan. He submits that the reference in the LP, on which Mr Lockhart-Mummery relies (see para 43 above), makes clear that as a result of the adoption of the Core Strategy, particularly Policy SP19, a number of settlements within the district have had their Physical Limits Boundaries removed. That being so the Inspector was correct as a matter of fact that the physical limits are defined in the recently adopted Plan. He submits that the Inspector was entitled to find that the policy is not a policy for the supply of housing, not out of date, and to give it weight accordingly.

46. In my view the Inspector was mistaken in assuming, as he appears to have done, that the physical limits boundary of the appeal site was defined in the LP. The position appears to be, as Mr Lockhart-Mummery observes, that at the material time the defined limits of Yoxford had not changed. However the boundary of Yoxford and the appeal site was not defined in the LP. This ground though, as Mr Lockhart-

Mummery accepts, really adds nothing to Ground 1 relating as it does to a finding within DL12-14.

Ground 3: Misdirection as to status of policy AP4

47. Mr Lockhart-Mummery submits the Inspector misdirected himself as to the status of Policy AP4.

48. In DL10 the Inspector recognised that there is a degree of conflict between Policy AP4 and the NPPF, but he went on to conclude that "its broad aim is consistent with the aims of the Framework…". Mr Lockhart-Mummery submits that in reaching this conclusion the Inspector failed to have proper regard to, or misinterpreted, paragraph 135 of the NPPF which requires an assessment of the significance of the heritage asset and the harm to it and for this then to be weighed in the overall planning balance; "significance" being as defined in Annex 2. Mr Lockhart-Mummery submits the Inspector failed properly to assess the significance of the heritage asset, and the scale of any harm or loss to it, and thus failed to have regard to a material consideration.

49. Mr Clay submits that questions of weight are entirely within the remit of the decision maker, absent irrationality and it is clear that the Inspector took account of the concerns of the Applicant that Policy AP4 did not fully reflect the NPPF.

50. Further, in response to the Applicant's contention that the Inspector failed to have regard to a material consideration in failing to assess the significance of the heritage asset and the scale of harm or loss to it, Mr Clay relies on observations of the Inspector made in DL15-17 in support of his submission that he did assess the significance of the historic parklands; and at DL18-19 he goes on to describe and discuss the landscape and visual effects.

51. At DL20 the Inspector states:

> "I do not agree that the proposal forms an appropriate development site in this respect, but would be seen as an ad hoc expansion across what would otherwise be seen as the village/countryside boundary and the development site would not be contained to the west by any existing logical boundary."

52. Mr Clay submits that the Inspector was entitled to find that there was a degree of conflict between AP4 and the Framework and to reduce its weight accordingly. The Inspector considered and identified the significance of the heritage asset; he identified the harm to the asset and then found that it conflicted with both parts of the development plan and the Framework. He weighed the harm against the benefits at DL32 and found the effects "unacceptable".

53. However, in my view what the Inspector failed to do was to assess the significance of the heritage asset in accordance with paragraph 135 of the NPPF and the definition of "significance" in Annex 2. I do not accept that it can be implied from the paragraphs in the DL on which Mr Clay relies that he did so.

Conclusion

54. For the reasons I have given, this application succeeds, and the decision of the Inspector will be quashed.

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