Neutral Citation Number: [2016] EWHC 1198 (Admin)

Case No: CO/5683/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/05/2016

Before :

MR JUSTICE GILBART

- -

Between :

CAWREY LIMITED	**Claimant**
- and -	
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**First Defendant**
-AND-	
HINCKLEY AND BOSWORTH BOROUGH COUNCIL	**Second Defendant**

- -
- -

Alison Ogley (instructed by **Marrons Shakespeares, Solicitors of Leicester**) for the **Claimant**
Tim Buley (instructed by **Government Legal Department**) for the **First Defendant**

Hearing dates: 10th May 2016

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Judgment Approved

MR JUSTICE GILBART :

ACRONYMS USED IN JUDGMENT

TCPA 1990	Town and Country Planning Act 1990
LBCAA 1990	Planning (Listed Buildings and Conservation Areas) Act 1990
PCPA 2004	Planning and Compulsory Purchase Act 2004
NPPF	National Planning Policy Framework (March 2012)
LPA	Local Planning Authority
SSCLG	Secretary of State for Communities and Local Government
HBBC	Hinckley and Bosworth Borough Council
CS	Core Strategy
CL	Cawrey Limited
PROW	Public Right of Way

1. This is an application by CL under s 288 *TCPA 1990* to quash a decision letter of one of the Defendant SSCLG's Inspectors, dated 9th October 2015, whereby he dismissed the appeal of CL against the refusal of HBBC to grant outline planning permission for

residential development on land south of Markfield Road, Ratby, Leicestershire. The full description of the development was "residential development, new access, public open space, equipped children's play area, cycle and footpath routes and sustainable urban drainage measures."

2. It is another case in which the interpretation and application of NPPF must be addressed.

3. I shall deal with this matter under the following heads:
   a. The grounds of challenge;
   b. Development Plan context;
   c. NPPF policy;
   d. The case for the Claimant at the inquiry;
   e. The Decision Letter;
   f. Submissions by Ms Ogley for the Claimant CL;
   g. Submissions by Mr Buley for the Defendant SSCLG;
   h. Discussion and Conclusions.

(a) The grounds of challenge

4. The grounds of challenge are that:
   (1) The Inspector failed to provide adequate reasons, or alternatively took into account immaterial considerations, when dealing with the issue of landscape impact. His errors included misinterpretation of the Development Plan and NPPF, and inadequate reasoning in his conclusions concerning the impact on the landscape and on recreational use;
   (2) He had failed to consider the nature and extent of any conflict with policies RES5 and NE5 of the Development Plan. He had failed to address the weight to be applied to them properly in the light of NPPF. He had failed to address properly the scheme's compliance with policy CS8, and that it complied with the Development Plan taken as a whole;
   (3) He had failed to consider whether the scheme involved sustainable development in terms of the policy in NPPF, and therefore whether the presumption in favour of such development applied to the proposal.

5. Ms Ogley said that Ground 3 was a subset of Ground 2. When she developed her grounds orally, it became apparent that her attack on the Inspector's approach included what she said was his failure to tackle issues relating to the supply of housing, and specifically in the case of affordable housing. I shall deal with those matters when I set out her submissions to the Court.

(b) The Development Plan context

6. The Development Plan consists, inter alia, of a Core Strategy (CS) adopted in December 2009, and the Hinckley and Bosworth Local Plan, which was adopted in February 2001. Some policies were saved with effect from 28th September 2007, including NE5 and RES5, which are set out below. Those policies are effective until the new Local Plan 2006-2026 is adopted. The policies of relevance to this challenge are:
   <u>CS Policy 8</u>

This sets out policies for rural centres which relate to Leicester, namely Desford, Groby, Ratby and Markfield. In the case of Ratby, it states insofar as is relevant (I have numbered the policies so as to make subsequent cross reference easier):

> *Ratby*
> To support the local services in Ratby and ensure local people have access to a range of housing the council will:
> (1) Allocate land for the development of a minimum of 75 new homes. Developers will be expected to demonstrate that the number, type and mix of housing proposed will meet the needs of Ratby, taking into account the latest Housing Market Assessment and local housing needs surveys where they exist in line with Policy 15 and Policy 16.
> (2) Support additional employment provision to meet local needs in line with Policy 7.
> (3) Support the improvement of the GP facilities in Ratby to provide for the increase in population, to be delivered by the PCT and developer contributions. Work with the PCT to expand the range of services available in the village including a dentist and optician as supported by the Ratby Parish Plan.
> (4) Address the existing deficiencies in the quality, quantity and accessibility of green space and play provision in Ratby as detailed in the council's most up to date strategy and the Play Strategy. New green space and play provision will be provided where necessary to meet the standards set out in Policy 19.
> (5) Deliver improvements to the quality of Ferndale Park Outdoor Facilities as supported by Hinckley & Bosworth Cultural facilities audit.
> (6) Deliver safe cycle routes as detailed in Policy 14, in particular from Ratby to Groby Community College, into Glenfield and Kirby Muxloe and to Timkens employment site.
> (7) Implement the strategic green infrastructure network detailed in Policy 20. To achieve this, the following strategic interventions relating to Ratby will be required: Ratby to Desford Multifunctional Corridor; Tourism Support (promotion of Ratby as a 'gateway village' to the National Forest); Transport Corridor Disturbance Mitigation; and the Rothley Brook Corridor Management.
> (8) Support proposals that contribute to the delivery of the National Forest Strategy in line with Policy 21.
> (9) Support proposals that contribute to the delivery of the Charnwood Forest Regional Park in line with Policy 22.
> (10) Support improvements to the existing community centres ……
> (11) Support measures to reduce the noise and air pollution (from the M1)
> (12) Support measures to direct through traffic away from Ratby Village…….
> (13) Require new development to respect the character and appearance of the Ratby Conservation Area by incorporating locally distinctive features of the conservation area into the development.

Saved Local Plan Policies

NE5 reads as follows

"Policy NE5 - Development in the countryside

The countryside will be protected for its own sake. Planning permission will be granted for built and other forms of development in the countryside provided that the development is either:

(a) important to the local economy and cannot be provided within or adjacent to an existing settlement; or

(b) for the change of use, reuse or extension of existing buildings, particularly those of historic value; or

(c) for sport or recreation purposes;

and only where the following criteria are met:

(i) it does not have an adverse effect on the appearance or character of the Landscape.

(ii) it is in keeping with the scale and character of existing buildings and the general surroundings.

(iii) where necessary it is effectively screened by landscaping or other methods.

(iv) the proposed development will not generate traffic likely to exceed the capacity of the highway network or impair road safety."

RES 5 reads as follows

"Policy RES 5 - residential proposals on unallocated sites

On sites which are not specifically allocated in the plan for housing, planning permission will only be granted for new residential development if:

(a) the site lies within the boundaries of an urban area or rural settlement as defined on the proposals map, and

(b) the siting, design and layout of the proposal do not conflict with the relevant plan policies."

(c) NPPF-The National Planning Policy Framework

7. The issues argued before the Court involved the interpretation and application of NPPF. I shall in due course refer to the authorities on its status, meaning and application.

8. The parts relevant to this matter are:

"6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system.

7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and

- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."

"The presumption in favour of sustainable development

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

13 ……

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

For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  – any adverse impacts of doing so would significantly and demonstrably
  outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  – specific policies in this Framework indicate development should be restricted." (A footnote (9) gives as examples policies relating to Habitat Directives, designated Sites of Special Scientific Interest,

designated Green Belts, Areas of Outstanding Natural Beauty, Heritage Coasts, National Parks, designated heritage assets or areas at risk of flooding or coastal erosion)

For decision-taking this means": ("unless material considerations indicate otherwise" appears in a footnote)

"● approving development proposals that accord with the development plan without delay; and
● where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

– any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
– specific policies in this Framework indicate development should be restricted. (Reference is again made to footnote (9))

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

"Core planning principles

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

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
- ……..
- ……..
- ……..
- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it;
- …….
- contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
- ……..
- ……..

- ……..
- ……..
- ……..”

9. Chapter 6 deals with “Delivering a wide choice of high quality homes.” The following paragraphs are relevant:

“6. *Delivering a wide choice of high quality homes*

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 (a footnote adds “To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans”
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 (a footnote adds “To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged.”
- 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 …….

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."

10. Section 11 of the NPPF deals with "Conserving and enhancing the natural environment". Paragraphs [109], [110], [113] and [115] read, insofar as is relevant to this case:

"109. The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;
- ……
- …….
- ……..
- …….

110. In preparing plans to meet development needs, the aim should be to minimise pollution and other adverse effects on the local and natural environment. Plans should allocate land with the least environmental or amenity value, where consistent with other policies in this Framework.

113. Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged…….

115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations

in all these areas, and should be given great weight in National Parks and the Broads."

11. Annex 1 to NPPF deals with "Implementation." It includes at paragraph [215]:

> "215. …… due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

(d) The case for the Claimant at the inquiry

12. The original application had anticipated the erection of 134 dwellings. HBBC officers encouraged CL to increase the density to 158. The refusal by the HBBC members was against the professional advice of its officers. There had been two reasons for refusal, but only one remained extant at the time of the inquiry, which was that

> "The development would have a detrimental landscape impact contrary to Policy NE5…….and the environmental dimension of the (NPPF)"

13. The Claimant's case contended that:
    a. the development complied with the Development Plan as a whole, having particular regard to Core Strategy Policy 8;
    b. there was a shortfall in the 5 year housing supply, and in the supply of affordable housing;
    c. Ii there was a shortfall, it was argued that the mechanism in NPPF [49] applied, thereby depriving NE5 (and by implication RES 5) of weight;
    d. the landscape was not one meriting protection under NPPF [109];
    e. the highways impact would be acceptable;
    f. the development met the sustainability criteria in NPPF [7].

14. Evidence put before him by the Claimant in its Planning witness' evidence, and apparently unchallenged by HBBC, addressed the three dimensions of sustainable development in NPPF [6] and also referred to the CS:

> <u>Economic Dimension</u>
> (i) Securing long term employment of 15 employees at the Claimant's business; providing construction jobs; providing increased local spending, generating £1.4m in New Homes bonus payments to enable HBBC to better support local services and make infrastructure improvements.
> (ii) Ratby is a sustainable location given its accessibility (by public transport) to major job opportunities to Leicester;
> <u>Social Dimension</u>
> It will provide 158 homes, of which 64 will be affordable homes to meet local needs, generating £915,000 to meet the costs of any identified impacts, including contributions to education, the GPs' surgery, additional open space including accessible woodland in the National Forest, and improved highway safety. It will ensure continuity of supply in market and affordable housing over the remainder of the Plan period;
> <u>Environmental Dimension</u>

> Any landscape harm will be offset by proposed landscape and woodland planting at Ratby, the gateway entrance to the National Forest. A new hedgerow and woodland planting will bring biodiversity to an area currently poor ecologically. It is designed to encourage cycling and pedestrian links with a new footpath into the Forest and the village centre, a safer cycle route along National Route N63, and new bus shelters.

(d) The Decision Letter

15. The Inspector identified as the two main issues of the appeal ([5])

> (a) the effect of the proposed development on the character and appearance of the landscape;
> (b) the contribution of the proposed development to the supply of housing in the district and in the local area.

16. He dealt with the issues as follows:

> *"The effect of the proposed development on the character and appearance of the landscape*
>
> 6. 'Saved' Policies RES5 and NE5 of the Hinckley and Bosworth Local Plan 2001, which despite their age still form part of the development plan, allow housing development within settlement boundaries but resist development beyond those boundaries unless, among other things, it is important to the local economy and would not have an adverse effect on the appearance and character of the landscape. The appeal scheme would extend outside the defined settlement boundaries. A new hedge and trees would be planted to define the western boundary of the development, broadly aligned with the rear of the plots in Stamford Street. The proposed houses would occupy the area between this new boundary, Markfield Road, and the houses in The Poplars, Ash Close and Stamford Street. The Appellants refer to the development as rounding-off at the western edge of Ratby and argue that the scheme would provide a new defensible boundary for the village.
>
> 7. Markfield Road and part of the adjacent field have a character influenced by nearby houses, but the scheme would extend some way beyond this into the wider countryside and I consider that it would cut across existing natural features and boundaries in a visually harmful manner. Ratby currently appears on the rim of the landscape when seen from the countryside, and is partly contained by the sharp drop at the end of Stamford Street, but the development would appear to spill over the rim into a trough and up the opposite slope, extending beyond existing field boundaries towards a low ridge. In doing so it would form a substantial urban intrusion into the wider open landscape. The development would also include a very distinctive area of sloping paddock, with scattered trees and ridge-and-furrow. This paddock, topped by the Stamford Street houses at the top of the green bluff, forms a pleasant and interesting landscape setting for the village when looking back from the countryside towards its western edge. This is clearly appreciated from the well-used footpath that leads through the site. Similarly, when looking out of the village from the end of Stamford Street, the land drops away providing a pleasant aspect. Residents can walk

from an enclosed, traditional terraced street straight into the open countryside. I consider that the development would cause substantial harm to the landscape.

8. Ratby, like many villages, has ragged edges that come from the complex interactions between historical development, activities, movement and the landscape. There is nothing inherently wrong with that form, nor anything inherently beneficial in rounding off these edges. The proposed hedge at the development's outer boundary, other than being a theoretical projection of the rear boundary of Stamford Street, would not clearly relate to any existing landscape feature. Even if the hedge were made thicker as suggested at the inquiry, it would be no more or less 'defensible' than the current situation. The Appellants propose by means of a unilateral undertaking to plant new woodland beyond the boundary of the site to extend the National Forest and create new rights of way. But even with these proposals and their potential ecological benefits I consider that the scheme overall would have a harmful effect on the landscape for the reasons I have given, and would diminish the benefit of the existing, evidently valued, public right of way.

9. One of the Framework's core planning principles is to recognise the intrinsic character and beauty of the countryside. The appeal site is ordinary countryside, but it has visual value and provides space for walking, jogging and other forms of informal recreation. I conclude that the development would amount to a substantial extension of built development into open countryside, harmful to the character and appearance of the landscape, and would conflict with 'saved' Policies RES5 and NE5 of the Hinckley and Bosworth Local Plan 2001.

The contribution of the proposed development to the supply of housing in the district and in the local area

10. The Statement of Common Ground indicates that the full, objectively assessed housing need for the Borough is 9,000 dwellings for the period 2006-2026, or 450 dwellings per annum, which is derived from the adopted Hinckley and Bosworth Core Strategy 2009. Using the Sedgefield methodology, the shortfall of 328 dwellings since the start of the plan period is added to the annual requirement of 450 dwellings over the next 5 years, equating to 516 dwellings per year. None of this is in dispute.

11. The District's housing strategy over the Core Strategy plan period is heavily reliant on two Sustainable Urban Extensions (SUEs), at Earl Shilton and Barwell, which are referred to in Policies 2 and 3 of the Core Strategy respectively. The Appellants argue that neither site is likely to deliver new homes in the next 5 years and that, combined with the absence of delivery on a large site west of Hinckley, there is less than a 5 year supply of housing land in the Borough.

12. It has taken a long time to bring the two SUEs forward, but I consider that there is now reasonable evidence that things are moving. At Earl Shilton, a letter dated 3 September 2015 from Bloor Homes on behalf of the developer consortium, which also includes Barwood Developments, Jelson Homes and Persimmon Homes, states that all the parties have now confirmed that they are in a position to enter into a collaboration agreement. The focus is now on viability in the light of recent sales evidence. This will clarify what the scheme can deliver in terms of affordable housing and other off-site contributions once essential on site infrastructure has been

accounted for. Subject to settling the collaboration agreement and the viability position, an outline planning application is to be submitted before Christmas this year.

13. The Barwell SUE is subject to a resolution to grant planning permission subject to a s106 agreement; the Chief Planning and Development Officer has been granted delegated powers to finalise the remaining matters including the obligation and the latter is expected to be completed and planning permission issued by the end of the year.

14. These are complex sites and the process of reserved matters approval and infrastructure provision will take time, but I consider that there is enough evidence to conclude that, even allowing for time to provide initial infrastructure, both sites are likely to make some contribution to the supply of housing in the next 5 years. This will clearly be towards the back end of the 5 year period, but the Council's revised September 2015 calculation of the 5 year housing trajectory, submitted to the Inquiry, rightly makes realistically low assumptions about the level of early delivery on these sites.

15. The site west of Hinckley is included in the submitted Site Allocations and Development Management Policies DPD as HIN02, and is subject to both outline application and a full application for the development of the first two phases. No permission has yet been granted and the Appellants argue that the site should be discounted completely, pointing to an absence of recent information on the Council's website. However, a letter dated 3 September 2015 from the owner, Bloor Homes, indicates that negotiations are well under way in connection with the applications. Issues regarding measures at the site access have been resolved, negotiations are continuing with bus operators, a further round of traffic modelling has been completed, the design has been the subject of a favourable design review and the s106 obligation for the main site outline is at an advanced stage. The developer's suggestion that first build completions are likely to take place in June 2016 seems tight, but in the light of the information available I consider it probable that this site will make a significant contribution towards the housing supply in the first five years.

16. I consider that the Council has been realistic about housing delivery from these large sites. I am satisfied that all three sites are deliverable within the terms of the Framework.

17. As for the delivery trajectory from some of the smaller sites allocated in the submitted Site Allocations and Development Management Policies DPD, I again consider that the Appellants' assessment is unduly negative. They suggest that sites HIN 04, 06, 08, 11 and 12 should be discounted largely because they are Council-owned and, owing to internal processes and the need for a development partner, they will take longer to deliver. But in these cases the authority has the benefit of control and, from experience, local authorities are capable of bringing their own sites forward sites reasonably quickly for development. Site MKBOS02 is more constrained, but even allowing for some slippage I consider that it would be capable of contributing a reasonable number of homes towards the end of the 5 year period. Site NEW02 is not in the developer's current build programme but even with that slippage it is capable of being delivered within the 5 years. Taking all the evidence into account I consider

that, in respect of these smaller sites, the Council has been realistic in its delivery calculations.

18. The Appellants argue that there has been persistent housing under-delivery in the Borough. It is true that a surplus against the annual average requirement has only been registered three times since 2006. However, two of these surpluses have been in the last two years, the most recent one being substantial. The early part of this period was affected by reduced demand linked to the economic downturn, and the most recent two years have registered a notable upturn which is likely to reflect improved economic circumstances. Whilst it is not known whether the improvement will be continued into 2015/16, it is reasonable to allow for cyclical variations in the housing market and in that context I do not consider that there has been a persistent under-supply. A 5% buffer is therefore appropriate to apply to the calculation of the 5 year land supply.

19. Taking all these factors into account, I consider that the housing land supply calculation submitted by the Council to the Inquiry, which is based on the Sedgefield method and a 5% buffer, is as sound a calculation as is possible to make at this time. The new positive evidence from the Council and from the developer in respect of the sites at Earl Shilton and on land west of Hinckley, the information update on Barwell, and the fact that the Site Allocations and Development Management Policies DPD is now at the stage of Examination, clearly point towards a different conclusion on the 5 year supply from that of the Inspectors in appeals at Sketchley House, Burbage APP/K2420/A/13/2208318 (Secretary of State's decision November 2014) and at Ratby Road, Groby APP/K2420/A/12/2181080 (Inspector's decision March 2015). I conclude that there is currently sufficient housing land in the Borough as a whole to meet requirements for the next 5 years.

20. The Appellants argue that a more local housing need has not been satisfied. In the adopted Hinckley and Bosworth Core Strategy 2009, Ratby is one of four Key Rural Centres relating to Leicester in which the focus is on maintaining existing local services, with a scale of new development to support local needs, rather than allowing larger scale development which might encourage commuting. In this context, Core Strategy Policy 7 supports housing within the settlement boundaries and Policy 8 indicates that the Council will allocate land for the development of a minimum of 75 new homes.

21. Rather more than 75 homes have already been built in Ratby since 2006, and the proposed development on the Casepak site will add to the total; but even so, reading Policies 7 and 8 together with the explanatory text it is clear that, in addition to development within the settlement boundaries, the Core Strategy seeks a development plan allocation at Ratby to meet local needs. No such allocation has been made in the submitted Site Allocations and Development Management Policies DPD. Whilst that is a matter for the DPD Examination, I give some weight to the Appellants' arguments, informed in part by information from the Council's Housing Officer and by their local knowledge, that the scheme would help to satisfy a currently unmet need for local market and affordable housing. Moreover, I do not consider that the number of houses sought in this scheme would be disproportionately large in relation to the minimum of 75 referred to by Policy 8. That said, it is my conclusion that the landscape harm that would arise from the particular scheme before me would considerably outweigh the benefits in respect of local housing provision.

Other matters
22. A number of objectors including the Parish Council express concern about the effect of the development on local services, although the Council itself has withdrawn its objection in connection with this issue. One disadvantage would be that more young children would have to travel to the adjacent village to go to school, but there is little evidence that local facilities would be adversely affected and indeed I consider that the scheme would generally support local services both through the additional local population and through the contributions effected by means of the s106 agreement towards education and other social facilities. Overall, I consider that, in relation to support for local facilities, the scheme would be in accordance with the objectives of Core Strategy Policy 8.

23 …….

24 …….

25. The Appellants refer to the negative effects of a refusal on their own business and employees. Whilst recognising the importance of a healthy economy as one of the elements of sustainable development, risk is an inherent part of business and this matter does not carry so much weight as to make a difference to my conclusions.

Conclusions

26. The development would harm the character and appearance of the landscape by spilling out into the wider countryside, removing the characterful steep paddock next to Stamford Street, and failing to respect existing landscape features. It would not conform with 'saved' Policies RES5 and NE5 of the Hinckley and Bosworth Local Plan 2001 which, though many years old, still have relevance as a means of protecting the countryside from urban encroachment.

27. Policies RES5 and NE5 of course rely on defined settlement boundaries which affect the supply of housing land. These may need adjustment where housing allocations are made, but given my conclusion that there is currently an adequate supply of housing land in the Borough for the next 5 years, I continue to give them full weight as far as the appeal site is concerned.

28. The scheme would provide benefits in terms of the provision of a range of housing in Ratby, including affordable housing, which would help to meet local needs, and it would generally support local facilities, so it would not be in conflict with Policy 8 of the adopted Hinckley and Bosworth Core Strategy 2009. However, I consider that the harm to the landscape overrides these benefits.

29. I therefore consider that the scheme would be in conflict with the development plan taken as a whole. I have taken into account all the other matters raised but they do not alter my conclusion that the appeal should be dismissed."

(e) Submissions by Ms Ogley for the Claimant CL

17. It follows from the terms of the Decision Letter that the attack by CL on the 5 year housing land supply point had failed. Ms Ogley did not seek to argue that the Inspector had erred in law with regard to that issue. It follows also that the policy effects of a deficiency, as per NPPF [49], did not apply.

18. Ms Ogley's Ground 1 started with her criticisms of the Inspector's assessment of landscape impact. Both parties had addressed this on the basis, inter alia, of what is said in NPPF at [109] about protecting "valued" landscapes. The language of the Inspector seemed to have that concept in mind. Ms Ogley contended that the effect of the unreported decision of Ouseley J in *Stroud District Council v SSCLG and Gladman Developments Limited* [2015] EWHC 488 (Admin) is that "ordinary" countryside does not fall within the scope of NPPF [109].

19. In the absence of reasons, there is a real doubt about whether the Inspector erred in his approach to whether the site was protected under NPPF [109].

20. He erred at paragraph [9] of the Decision Letter in referring to matters which are irrelevant to the assessment of landscape impact, namely Local Plan policies RES5, NE5 and the core principle relating to protecting the countryside for its own sake at paragraph [17] of NPPF.

21. The reference at paragraph [9] to "walking, jogging and other forms of informal recreation" was unreasoned. The most that could be said is that a PROW crossed the site. Otherwise it was in use as agricultural land. The Inspector's description was tantamount to describing it as a village green.

22. One should contrast this Decision letter with that endorsed by Patterson J in *Cheshire East BC v SSCLG* [2016] EWHC 694 (Admin).

23. As to Grounds 2 and 3, Miss Ogley argued that the Inspector found that there was a conflict with policies NE5 and RES 5, but failed to describe the nature and extent of the conflict: he was required to do so- see *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at [22] per Lord Reed. He had to do that to be able to consider what weight he attached to that conflict.

24. It was not enough to find that there was a 5 year supply of housing land when considering whether there was consistency with the policies in NPPF, as the Inspector did at [27]. The fact that he found a 5 year supply did not answer the question of whether or not this was sustainable development, which despite its prominence in NPPF, was never addressed by him. They had been before him expressly: reference was made to the Claimant's planning witness' evidence wherein he addressed each of the three heads (Economic, Social and Environmental Dimensions) set out in NPPF [7], cross referenced to objectives of the Core Strategy.

25. He had to apply the test in NPPF [215]. The unchallenged evidence of the Claimant was that there was only 2.1 years' supply of affordable housing. CS 8 sought housing to meet the needs of Ratby, and sought housebuilding to reflect the outcome of the latest Housing Market Assessment and Housing Needs Surveys. 40% of these scheme of up to 158 dwellings would be affordable housing, or 64 houses. The unchallenged evidence on shortfall was that it was between 446 and 556 units (depending on whether one took a 5% or 20% buffer).

26. He had to consider, and failed to do so, whether this scheme complied with the Development Plan as a whole.

27. However he does appear to have concluded that the scheme accorded with CS 8 (see Decision Letter [22] and [28]). By reason of its provision of affordable housing it complied with Core Strategy Policy 15, and by its woodland and other planting, complied with Policy 21 relating to the National Forest.

28. The Decision Letter does not deal with NPPF [14] explicitly or impliedly. The Inspector had to consider whether the approach of the saved policies in the Local Plan was consistent with the approach now adopted in NPPF. Reference was made to the analysis in *Colman v SSCLG, N Devon CC and RWE NPower* [2013] EWHC 1138 (Admin) per Kenneth Parker J at [7], [22] and [23]. NE5 and RES5 were elderly saved policies, but they were out of date for other reasons:

    a. NPPF [109] now distinguished between different grades of countryside and its protection;

    b. The proposal complied with the Core Strategy taken as a whole.

29. The effect of s 38(5) *PCPA 2004* was that where there was conflict, one had to give precedence to the more recent Development Plan policy. In this case that was the Core Strategy. His findings at [21] amount to a finding of compliance with the Core Strategy.

(f) Submissions by Mr Buley for the Defendant SSCLG

30. The starting point in this case must be s 38(6) *PCPA 2004.* Having identified the first of the two main issues as the effect of the proposal on the character and appearance of the landscape, the Inspector made clear findings that the landscape in question had value by reference to its particular features. He concluded that the development would constitute a substantial extension of the built up area into the countryside, which would be harmful to the character and appearance of the landscape, and would conflict with policies RES 5 and NE5 (see Decision letter at [9]).

31. He found that the scheme would provide some benefits in compliance with policy CS 8, but found expressly that the harm to the landscape overrode those benefits [28], and that therefore the scheme would be in conflict with the Development Plan taken as a whole [29].

32. It is not unusual for Development Plan policies to pull in different directions- see *R v Rochdale MBC ex p Milne (no 2)* [2001] Env LR 22 per Sullivan J.

33. As to Ground 1, he made clear and unassailable findings of the value of the site in landscape terms, and of the harm which the development would cause in landscape terms. NPPF paragraph [109] is not setting a statutory test which must be passed. In any event, *Stroud DC* has been misunderstood. It was considering whether the Inspector had equiparated the meaning of the term "valued" with that of the term "designated". There is nothing in *Stroud* which supports the idea that land which is

not designated is not worthy of protection. Like the Inspector in the *Cheshire East* case this Inspector was exercising his planning judgment.

34. On Grounds 2-3, it is unarguable that there would not be a breach of RES 5, since the effect of approval would be to extend built development beyond its current boundary. As he found that the development would harm the character and appearance of the landscape, there would be a breach of NE5 also.

35. NPPF [215] does not assist the Claimant. NPPF may give more nuanced protection to the countryside than occurred beforehand, but is still thinks it worthy of protection- see the core principles at [17]. But in any event the Inspector was addressing, and was entitled to address, the question of weight. For the reasons he gave in [26] and [27] he considered that NE5 and RES5 were still relevant because they protected the countryside from urban encroachment, which accords with the core principle at NPPF [17].

36. There is no conflict between CS8 and RES 5. The fact that a scheme fulfils some objectives of CS 8 does not thereby mean that the scheme complied with it. CS 8 was a policy addressing objectives, not particular allocation. In any event the Inspector accepted that the scheme offered some advantages which complied with paragraph CS 8, which were considerably harmed by the landscape harm it would cause. Once allocations are made, then RES 5 will protect land beyond the then urban boundary.

37. On sustainable development, Paragraph [14] of NPPF only required that one engage in this exercise if the Plan was absent, silent or not up to date. The Inspector had held that the policies which were restrictive of development were none of those things.

(g) Discussion and Conclusions

38. I shall start with the relevant principles of law.

39. This case is yet another to come before the Planning Court in which the meaning and application of NPPF must be addressed, as well as its effect (if any) on decision making for the purposes of decisions made under s 77 or 78 of *TCPA 1990.* Fortunately, since these challenges were made, the Court of Appeal has stilled some of the arguments, through the judgment of Lindblom LJ in *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor* [2016] EWCA Civ 168, to which I shall make substantial reference presently.

40. But given some of the arguments that were deployed in this case, it is necessary to refer to some matters of first principle, which largely follow the list given by Lindblom J in *Bloor* at [19]. I have added to that list only because some matters not of moment in that decision were more relevant in this one.

41. The list given by Lindblom LJ is:
"(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 WLR 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 WLR 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] PTSR 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 LJ, 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).

42. I would add the following, given the issues in this case: an Inspector appointed to conduct a planning appeal must:

(8) have regard to the statutory Development Plan (see s 70(1) *TCPA 1990*);

(9) have regard to material considerations (s 70(1) *TCPA 1990*);

(10) determine the proposal in accordance with the Development Plan unless material considerations indicate otherwise (s 38(6) *PCPA 2004*);

(11) consider the nature and extent of any conflict with the Development Plan: *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 at [22] per Lord Reed;

(12) consider whether the development accords with the Development Plan, looking at it as a whole- see *R(Milne) v Rochdale MBC (No 2)* [2000] EWHC 650 (Admin), [2001] JPL 470, [2001] Env LR 22, (2001) 81 P & CR 27, [2000] EG 103 per Sullivan J at [46]- [48]. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in the light of the whole plan the proposal does or does not accord with it; per Lord Clyde in *City of Edinburgh Council v. the Secretary of State for Scotland* [1997] UKHL 38, [1997] WLR 1447, 1998 SC (HL) 33 cited by Sullivan J in *R(Milne) v Rochdale MBC (No 2)* at [48];

(13) apply national policy unless s/he gives reasons for not doing so- see Nolan LJ in *Horsham District Council v Secretary of State for the Environment and Margram Plc* [1993] 1 PLR 81 following Woolf J in *E. C. Gransden & Co. Ltd. v. Secretary of State for the Environment [1987] 54 P & CR 86* and see Lindblom J in *Cala Homes (South) Ltd v Secretary of State for Communities & Local Government* [2011] EWHC 97 (Admin), [2011] JPL 887 at [50].

I would add one other matter of principle:

(14) If it is shown that the decision maker had regard to an immaterial consideration, or failed to have regard to a material one, the decision will be quashed unless the Court is satisfied that the decision would necessarily have been the same: see *Simplex GE (Holdings) Ltd v. Secretary of State for the Environment* [1988] 57 P & CR 306.

43. It follows from the above that NPPF was very relevant to the determination of the appeal. But it was so because, as a statement of Government policy, it was a material consideration; no more and no less. While the arguments there were directed towards paragraph 49 of NPPF, it is important to note what Lindblom LJ said in *Suffolk Coastal* at [42] and [43] about NPPF generally

> "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 WLR 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 ……. 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.
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> 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."

44. I refer also to paragraphs [46] – [47] which deal with what must now be seen as the inappropriate application and consideration of NPPF, including to some extent judicially:

> "46 We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780F-H). Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.
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> 47 One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the

> particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.'s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin)).”

45. I respectfully suggested in *Dartford Borough Council v Secretary of State for Communities and Local Government & Anor* [2016] EWHC 649 (Admin) that *Suffolk Coastal* has laid to rest several disputes about the interpretation of NPPF, both as to the particular paragraphs it addressed, but also generally. Before *Suffolk Coastal* it had 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 judgment at [42]-[43], which restates the role of a policy document, and just as importantly how it is to be interpreted and applied. 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. Given Point 6 in the list of principles set out by Lindblom J, an Inspector is not, as a general rule, required to spell out the provisions of NPPF. However if s/he were minded to depart from it, then the authorities cited above are clear that reasons must be given for doing so.

46. For completeness, I should add that I drew the attention of both Counsel to the *Suffolk Coastal* and *Dartford BC [2016]* judgments.

47. In that context, I turn to the issues before me. The first observation I must make is that however disappointing it must be to the Claimant CL that the Inspector has not endorsed a proposal which had been supported by HBBC’s professional officers, he was the decision maker, and the earlier endorsement cannot affect the analysis of the Decision Letter. I should stress however that at no time did Ms Ogley try and argue that the recommendation for approval should be taken into account in the analysis which this Court had to conduct. To have done so would have been inappropriate.

48. I accept the proposition advanced by Mr Buley that in this case one must start with the Development Plan. It was for the Inspector to determine as a matter of planning judgment whether or not there was a breach of it, looking at it as a whole. Given the Inspector’s thorough and reasoned critique of the effect of the development on the character and appearance of the area, there can be no doubt that the proposal was found to be in conflict with Policy NE5. He was entitled to find that the objective of that policy remained relevant and up to date. Given his finding on the 5 year supply, it

cannot be argued that paragraph [49] of NPPF applied so as to affect the weight to be given to that conflict. The breach of RES5 goes along with it, as the effect of NE5 at this point is to maintain the urban boundary. But on any view, the Inspector had given powerful reasons why the extension of the urban area at this point would cause significant harm. It is impossible to argue that he did not address the nature and extent of the conflict with these policies.

49. The argument of the Claimant that the matters to which the Inspector referred are not relevant in terms of landscape assessment is misconceived. He had given reasons which identified why harm would flow from the extension of the built up area at this point. NPPF undoubtedly recognises the intrinsic character of the countryside as a core principle. The fact that paragraph [109] may recognise that some has a value worthy of designation for the quality of its landscape does not thereby imply that the loss of undesignated countryside is not of itself capable of being harmful in the planning balance, and there is nothing in *Stroud DC v SSCLG* [2015] EWHC 488 per Ouseley J or in *Cheshire East BC v SSCLG* [2016] EWHC 694 per Patterson J which suggests otherwise. Insofar as Kenneth Parker J in *Colman v SSCLG* may be interpreted as suggesting that such protection was no longer given by NPPF, I respectfully disagree with him. For it would be very odd indeed if the core principle at paragraph [17] of NPPF of "recognising the intrinsic beauty and character of the countryside" was to be taken as only applying to those areas with a designation. Undesignated areas – "ordinary countryside" as per Ouseley J in *Stroud DC* - may not justify the same level of protection, but NPPF, properly read, cannot be interpreted as removing it altogether. Of course if paragraph [49] applies (which it did not here) then the situation may be very different in NPPF terms.

50. Whether that loss of countryside is important in any particular case is a matter of planning judgment for the decision maker. In any event, extant policies in a Development Plan which are protective of countryside must be had regard to, and in a case such as this a conflict with them could properly determine the s 38(6) *PCPA 2004* issue. If the conclusion has been reached that the proposal does conflict with the development plan as a whole, then a conclusion that a development should then be permitted will require a judgment that material considerations justify the grant of permission. If reliance is then placed on NPPF, one must remember always what Lindblom LJ has said in *Suffolk Coastal* about its status. It is not suggested in this case that this is one where the NPPF paragraph [14] test applies, which given the Inspector's findings on the effect on the landscape, and the fact that HBBC is the Borough, and Ratby the settlement, where the policies considered in *Bloor* applied, is unsurprising. Nor is it suggested that he should have applied NPPF [49] given his findings on housing land. There is in my judgment nothing at all in NPPF which *requires* an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) *PCPA 2004* and s 70 *TCPA 1990.*

51. That effectively disposes of Ground 1. I should perhaps say for completeness that I am quite unimpressed by the argument that the appeal site had no recreational value. It is, after all, crossed by a footpath, leading to the countryside. Its presence on either side of the path no doubt contributed to the ambiance of the walk along the path. That must not lead to exaggeration of its value, and there may be proper arguments about how one maintains an agreeable footpath link in a development, but it is idle to argue

that the Inspector's approach was not capable of being argued or was not properly reasoned.

52. As to Grounds 2 and 3, I accept Mr Buley's argument that the achievement of objectives under CS8 does not of itself amount to compliance. The difficulty is that CS 8 is but one policy. The Inspector had to look at the Development Plan overall. He made a clear finding that if one did so, this development did not accord with the Development Plan because of the breaches of RES 5 and NE5. It is true that CL had made a strong case on the need for more affordable housing, and the planning benefits which would follow from the development, but the Inspector, as he was entitled to do, found that the harm which it would cause to the character and appearance of the area outweighed the benefits.

53. It is true that he did not set out in any formal separate section an assessment of whether the development was sustainable, measuring it against the criteria in NPPF [7], but he did so implicitly in paragraphs [20] and [22]- [25]. He also addressed the Claimant's arguments about affordable housing and local housing, but he held that those benefits (which he accepted would be created) were outweighed by the landscape harm [21]. That was a planning judgment which he was entitled to make.

54. I can well understand the frustration the Claimant must feel at having worked up a scheme, and increased the density at the request of officers, and then to have it refused, and that refusal upheld on appeal. But in my judgment when properly analysed, no criticism can be made of the Decision Letter on any ground arguable in law. I express no view at all on the planning merits, which is not for a judge to do.

55. For the above reasons, this claim is dismissed.