Neutral Citation Number: [2019] EWHC 2366 (Admin)

Case No: CO/755/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/09/2019

Before:

SIR DUNCAN OUSELEY
sitting as a High Court Judge

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Between:

DYLON 2 LTD	**Claimant**
- and -	
LONDON BOROUGH OF BROMLEY	**Defendant**
-and-	
THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Interested Party**

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- -

Andrew Parkinson (instructed by **Field Fisher**) for the **Claimant**
Craig Howell Williams QC and Caroline Daly (instructed by **Solicitor to the London Borough of Bromley**) for the **Defendant**
The Secretary of State did not appear and was not represented

Hearing dates: 24 July 2019

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Approved Judgment

Sir Duncan Ouseley:

1. On 16 January 2019, the Bromley London Borough Council, Bromley LBC, adopted the Bromley Local Plan, BLP, which covers the 15-year period from 2015-2029/30. This is part of the statutory development plan which applies to the Borough. By s38(2) of the Planning and Compulsory Purchase Act 2004, the 2004 Act, the other major part is the London Plan of March 2016, which runs to 2025. By s24(1)(b) of the 2004 Act, the BLP must be "in general conformity with" the London Plan. The replacement for the London Plan, known as the New London Plan, NLP, running on to 2030, is at quite an advanced stage; its examination in public has been under way since January 2019.

2. Bromley LBC adopted the BLP after it had concluded the various stages statutorily required of it. Notably it had been submitted to the Secretary of State by Bromley LBC, and had passed through the examination in December 2017, conducted by an Inspector appointed by the Secretary of State. The Claimant, Dylon 2 Ltd, was a participant at the examination. The task of the Inspector, under s20(5)(b) of the 2004 Act is to satisfy herself that the plan is "sound." There is no statutory definition of "soundness", but the National Planning Policy Framework, the Framework, purports to supply the omission, and is invariably used in that way. The Inspector was satisfied that the BLP would be sound if "Main Modifications" were made; these were published for public consultation between June and August 2018. The modifications were then made, and, thus modified, the BLP was adopted.

3. Dylon 2 claims, under s113 of the 2004 Act, that the BLP or certain parts of it, should be quashed because of legal errors on the part of the Inspector, in her judgment that the BLP would be sound, if modified. Ground 1 contends that she misinterpreted Policy 3.3 of the London Plan, which required that a Local Plan should contain a specific policy for its revision were the housing targets in the London Plan superseded by figures in a new London Plan. It was to be anticipated that there would be a new London Plan, with higher target housing figures for a number of London Boroughs, including Bromley. Second, the Inspector had misinterpreted Policy 3.3Da of the London Plan, or had ignored paragraph 47 of the Framework, 2012 version: this obliged Bromley LBC to "boost significantly the supply of housing as far as is consistent with the policies set out in the Framework." But, it was contended, she had not dealt with that issue, or had given no reasons or no adequate reasons for any conclusion she had reached on it.

4. Mr Parkinson, for Dylon2, renewed his application for permission to argue a third ground, upon which Lieven J refused permission. This is that the Inspector failed to give reasons for differing from the decision of an Inspector on a planning appeal, promulgated between the examination and her recommendations on it. It was sent to her by Dylon 2, and she invited submissions from other parties on it. It related to two aspects of the calculation of the five-year housing land supply, where the appeal Inspector had concluded that the Bromley LBC's figures were speculative, and to his

view that he was not satisfied that there was compelling evidence that such a supply existed.

The 2004 Act

5. The language of s113(3) of the 2004 Act is in familiar terms; a challenge can be brought on the grounds that the local plan is not within the appropriate power or that a procedural requirement has not been complied with. The challenge concerns the Inspector's approach. The Inspector's duty is set out in s20. By s20(5), in brief, the purpose of the independent examination by the Inspector is to determine whether the Local Plan (a) is in general conformity with the strategic plan, (b) whether it is sound, and (c) whether the duty of co-operation on the local authority has been complied with. These are duties on the Inspector, who clearly performs an inquisitorial role, rather than an adjudicative one. But s20(7) is not in common language. By s20(7)(b), where the Inspector has carried out the examination and "considers that, in all the circumstances, it would be reasonable to conclude (i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and (ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and give reasons for the recommendation."

6. I shall deal with the nature of the obligation to give reasons for the recommendation that the plan be adopted. But the test of whether the decision was unlawful is whether the Inspector considered that it would be reasonable to conclude that the plan in question was in general conformity with the strategic plan, and reasonable to conclude that it was sound. Although such a judgment may be unlawful for irrationality, or disregard of material considerations, and reliance on the irrelevant, the language requires any challenge to show that the Inspector's judgment was not reasonable.

The policies in the London Plan

7. Before setting out the policies, I note that the way in which housing requirements are set in London differs from the way they are set elsewhere. The boroughs do not each assess their individual housing needs, or "objectively assessed needs", OANs. This is assessed at the London level for the London Housing Market Area, LHMA; the Strategic Housing Market Assessment for the London Plan was carried out in 2013, as was the assessment of Strategic Housing Land Availability, SHLAA. The SHMA identified a requirement for 49000 new homes a year in London; the SHLAA found a supply of land for 42000 new homes a year. This figure was applied at the level of the individual Borough in Table 3.1 of the London Plan; the figure specified as the "minimum ten year target" for LB Bromley was 6413 for 2015-2025.

8. The London Plan described this as consistent with the Framework, taking account of London's locally distinct circumstances, limited land availability, and the need for development to be sustainable. The text at 3.16b shows that the housing need figure

was in fact higher than 49000 a year for the period 2015-2036. The SHLAA figure of 42000 was the minimum supply against the 49000 minimum need. Paragraph 3.18 continued: "As context for this, boroughs must be mindful that for their LDFs [Local Development Frameworks] to be found sound they must demonstrate they have sought to boost significantly the supply of housing as far as is consistent with the policies set out in the Framework."

9. The housing supply targets in Table 3.1 should be used as minima, augmented with additional capacity from town centres and opportunity and intensification areas. So Local Plans, 3.19, should not just address how the Table 3.1 targets were to be met, but demonstrate how the boroughs sought to exceed the target through additional sources of housing capacity, collaborative working with "relevant partners", and "partnership working with developers…and other relevant agencies."

10. Policy 3.3 is entitled "Increasing Housing Supply". Paragraph B of Policy 3.3 stated that the Mayor would seek to ensure that the housing needs identified in 3.16b would be met through at least an annual average of 42000 net additional homes across London. Importantly 3.3C said: "This target will be reviewed by 2019/2020 and periodically thereafter and provide the basis for monitoring until then." That is one of the tasks being undertaken in the New London Plan.

11. Policy 3.3 then deals with local plans. 3.3D and Da are at the heart of the challenge. They read:

> "D. Boroughs should seek to achieve and exceed the relevant minimum borough annual average housing target in Table 3.1, if a target beyond 2025 is required, boroughs should roll forward and seek to exceed that in Table 3.1 until it is replaced by a revised London Plan target. [punctuation as in original]
>
> Da. Boroughs should draw on the housing benchmarks in table 3.1in developing their [Local Plan] targets, augmented where possible with extra housing capacity to close the gap between identified housing need (see Policy3.8) and supply in line with the requirement of the NPPF."

12. Policy 3.3 continued in E, stating that extra housing capacity should be sought, having regard to the other policies of the London Plan, and in particular through the potential to realise brownfield housing capacity through intensification, town centre renewal, "opportunity and intensification areas", mixed-use redevelopment and sensitive renewal of existing residential areas.

13. Paragraph 3.24 said:

> "Table 3.1 only covers the period 2015 – 2025. [Local Plans] which come forward following publication of this plan before its replacement or alteration will not be covered for their full term by the current targets. The Mayor therefore commits to revising the targets by 2019/2020. In order to provide guidance for any intervening period, [Local Plans] should roll forward the annual targets in Table 3.1 expressing the rolling target as an indicative figure to be checked and adjusted against any revised housing targets."

The policies in the Bromley Local Plan as adopted in January 2019

14. The introduction to its spatial strategy acknowledged the need for the BLP to be in general conformity with the London Plan, as a key strategic factor. New housing was to meet and exceed where possible, the minimum 641 new dwellings per annum London Plan target. This should be provided in sustainable locations, close to existing facilities, and through the re-use of brownfield sites. Green Belt boundaries could be amended if there were exceptional circumstances and the Council was seeking to amend it only where those circumstances existed "and the amendment will help meet identified needs which it can demonstrate cannot be accommodated elsewhere." Paragraph 2.0.3 referred to the review of the London Plan as one which could impact in the short term on housing supply in the Borough.

15. Policy 1, "Housing Supply" states:

> "The Council will make provision for a minimum average of 641 additional homes per annum over the ten-year period [2016-2025] and where possible over the fifteen year plan period which will be achieved by: a) The development of allocated sites and sites with planning permission; b) Town centre renewal involving the provision of housing; …d) The development or redevelopment of windfall sites; e) The conversion of suitable properties…[and various other means in line with Policy 3.3E of the London Plan, set out above]."

16. The supporting text refers to paragraph 47 of the Framework, and to the origin of the housing targets in the London Plan. It explains the derivation of the housing provision figure of 641 per annum, and notes that the figure will be rolled forward "over a 15 year period in line with advice set out in the London Plan and the GLA's Housing Supplementary Planning Guidance." The effect of Policy 3.3E was summarised.

17. The text then dealt, [2.1.5], with the anticipated sources of the housing supply over the plan period. There were specific sites in the Bromley Town Centre Action Plan and Opportunity Area, plus:

> "the five-year supply of deliverable land for housing which is regularly updated and site allocations. Other housing units will also be provided on large and small windfall sites. The housing trajectory in Appendix 10.1 shows a total of 10,645 deliverable and development dwellings over the Plan period, an annual average of over 700 dwellings.
>
> 2.1.6 [This compared with the minimum housing supply based on 641 dwellings per annum of 9615.] This trajectory is therefore consistent with the London Plan Policy 3.3, including its clauses Da and E. It does so first by seeking to supplement the London Plan minimum housing target of 641 per annum with extra housing capacity to close the gap between identified housing need and supply, a total of 1030 dwellings over the plan period. It also does so by drawing upon the brownfield housing capacity of the sources set out in Policy 3.3 (E), such as the Opportunity Area and town centres."

18. This latter paragraph, and the preceding sentence of the former were among the "Main Modifications" required by the Inspector to make the BLP sound. The supporting text also said at [2.1.14] that the Council's Housing Implementation Strategy would ensure that the delivery of housing was regularly monitored. It would also respond to the review of the London Plan.

19. The Appendix 10.1 trajectory included among the sources two relevant to ground 3. The projection for small sites was 3652 dwellings over the plan period, with 626 in the first 5 year period, and increasing in contribution over the succeeding 5 year periods. The text, [2.1.8], explained that the figure for small sites was based on the 352 annual average figure realised from small sites over the period 2004/5-2011/12, excluding almost all of the garden sites. Its comment was that over the 10 year London Plan period, the small site windfall figure could contribute 3520 units. In fact, in Appendix 10.1, that figure is spread over 15 years, but nothing seems to turn on that. Delivery from small sites was significant in the Borough, and its inclusion was said to reflect the Framework, government Guidance and the London Plan. The "prior approval projection", for conversion from office to residential use, produced 200 dwellings over the plan period, all in the first 5 year period, 2016-2020.

The Inspector's Report (IR)

20. The Inspector found that the BLP as submitted for examination was unsound but with her Main Modifications, it would become sound and could be adopted. She applied the exposition of "soundness" in the Framework, i.e. whether it had been "positively prepared", "justified", was "effective" and "consistent with national policy". The first requires the plan to be "based on a strategy which seeks to meet objectively assessed development and infrastructure requirements." The last requires the plan to enable "the delivery of sustainable development in accordance with the policies in the Framework."

21. Issue 2 for the Inspector was whether the policies for housing growth and affordable housing were justified, deliverable and consistent with national policy and the London Plan.

22. At IR19, she noted that Appendix 10.1 of the BLP identified a supply of 10,645 dwellings, exceeding the London Plan target of 9615 dwellings by over 1000. However, she required two Main Modifications, which I have included as set out in the adopted text of the BLP. These were:

> "to address concerns how the Plan would close the gap between identified need and current supply, as required by policy 3.3D of the London Plan.
>
> 20. Any backlog in providing housing across London as a whole would be addressed in the next London-wide assessment of housing need. The NLP is currently being examined [with housing requirements and supply based on 2017 SHMA and SHLAAs], and the view has been expressed that the policy-based housing target in the NLP should be adopted in this Plan. However, the final version of the [NLP] is not yet known and the new housing target for Bromley has not yet been settled, since it is a matter of dispute between the Council and the GLA, and therefore has little weight. This plan has to be in conformity with the current London Plan, including the figures for housing need, and therefore the policy-based housing target in policy 1 is justified. Once the NLP is published the Council will need to consider the implications for the Borough's housing land supply and decide whether an update or partial update of this Plan is required. This is already set out in the Council's Local Development Scheme."

23. She dealt with the point of particular relevance to ground 2 in IR 41-42, which relates to the need for the BLP to provide for the minimum target to be exceeded:

> "If further housing land had been allocated in the Plan, there would have been more flexibility in terms of the [five-year housing land supply] 5YHLS and a greater contribution would have been made to "closing the gap" and boosting the supply of housing in Bromley. Arguably, there would also have been more affordable housing available, depending on the sites concerned. There have been times in the recent past when development has been allowed on appeal when Inspectors expressed concerns about housing delivery in the Borough. However, allocations in the Plan provide a reasonable prospect for a 5YHLS, subject to 5 year reviews. [Those two sentences are relevant to ground 3].
>
> 42. The release of further housing land would have been likely to require a different strategy than that adopted in the Plan, particularly in respect of the release of Green Belt land for housing. However, the strategy adopted in the Plan is in general conformity with the London Plan 2016, in protecting Green Belt land and developing housing and high-density inaccessible locations, mostly in existing urban areas.

24. She concluded on housing at IR54:

> "There are components within that supply which give rise to concerns that the contribution to "closing the gap", in terms of London Plan policy 3.3, may be limited. In examining the Plan, I have borne in mind that the housing target is likely to be revised in the NLP. Whatever the new target might be, the Council will need to consider it against the supply which is available at that time and, in accordance with the [Local Development Scheme] LDS, decide whether there is a need to take action on a review or partial review of the Plan. However, at this time I conclude that the policies for housing in the Plan are justified, deliverable, and consistent with the national policy and the London Plan subject to the [Main Modifications] MMs set out above."

25. She returned to the extent of the Green Belt under the heading of "Open and Natural Space". She concluded that exceptional circumstances for specific uses and sites justified all of the changes made to it in the Plan. She continued in IR 84:

> "Concerns that further Green Belt/MOL [Metropolitan Open Land] should have been released to meet housing need are in

> themselves not justified, given the amount of housing provided. The Plan already provides for more than the minimum housing requirement and in the light of the London Plan's protection for the Green Belt, the exceptional circumstances do not exist for the further deletions to provide more housing. Having taken into account comments received, the site visits undertaken and for the reasons given elsewhere in this report, I do not consider that any further changes are necessary to Green Belt and MOL."

26. At IR 104, she observed that there was strategic support in the London Plan for the protection of Green Belt and that she considered the scale of the changes in the Plan "represent a balanced and positive approach to sustainable development in the area."

27. It is convenient here to refer to those other parts of the IR relevant to ground 3. She dealt with small site windfalls in IR22 and 37. Windfalls made up a significant part of the supply but historically such sites:

> "have been able to deliver about 45% on small sites in the Borough… As set out in the Council's Housing Land Supply Paper….This document also shows that small sites have been a consistent and reliable source of supply in the Borough, especially on brownfield sites… Whilst the methodology on the use of small sites has been questioned…the PPG states that plans can pass soundness tests even where sites will broad locations for growth have not been identified for years 11-15. Therefore the Plan complies with the NPPF on these matters. 37. The small sites allowances smaller and declining from that set out in the London SHLAA 2013. Furthermore, completions data from 2015 /16 has established that the number of small site completions exceeded that set out in the Planned, giving further confidence to those allowances."

28. IR 37 also dealt with office to residential conversions, and the fear that a unit might be counted twice, once as a prior approval and again as part of the redevelopment of a town centre site, for example:

> "There is no firm evidence to suggest that there has been any double-counting of the units converted from office to residential uses under prior approval of the sites identified in the broad locations."

Ground 1: the need for a review to be built into the BLP adopted policies

29. Mr Parkinson submitted that on the true interpretation of Policy 3.3D of the London Plan, the BLP had to make policy provision for the revision of the housing target figures in Table 3.1, after 2025, which it was anticipated would be required by the NLP. Any housing target for the period of the BLP after 2025 should be expressed as "indicative". But his principal argument went further than the way in which the position after 2025 was dealt with: there was a direct conflict between the BLP Policy 1 and Policy 3.3 of the London Plan, because it did not contain any provision for its revision in the light of the NLP, when adopted. In effect, on its true construction, it required that the BLP should change when its target housing figures changed. He accepted that such a policy could not adopt any particular figures because none had been adopted yet in the NLP.

30. Comments in the supporting text could not make good a deficiency in what should be in a policy, nor did the supporting text actually contain the necessary review commitment. The Local Development Scheme, which referred to an appropriate early partial review of the BLP was not a policy and could be altered as the LB Bromley might choose. The obligation, in regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012 No 767, to review a Local Plan once every 5 years would not necessarily bite until 2024. The Inspector's conclusion that the BLP was in general conformity with the London Plan was based on her misinterpretation of the London Plan, and it was not possible to know what conclusion she would have come to on the question of general conformity if she had interpreted the important policy, 3.3D, correctly; there could well have been a further Main Modification to resolve it.

31. Mr Howell Williams submitted that s38(5) of the 2004 Act was important because it meant that, when the NLP was adopted as part of the development plan for LB Bromley, any conflict between it and the BLP would be resolved in favour of the NLP as the more recent plan. In effect, provision had already been made through the London Plan, for a time limit on the Table 3.1 targets and the post 2025 interim or indicative target. There was no need for a review to be built into the BLP policy.

32. In any event, the Inspector, dealing with the effect of the NLP, had not concluded that a review mechanism needed to be built into Policy 1 of the BLP itself, nor for the post 2025 figures to be referred to as "indicative". Bromley LBC recognised that it would have to review the position after the adoption of the NLP figures, whatever they might be; IR20 and 54. This was supported by the text of the BLP at [2.0.3] and [2.1.14]. Supporting text was still part of the development plan albeit not having the force of policy, and not able to trump policy; it was of a lesser status than the policies themselves, but was at least relevant to their interpretation; *R (Cherkley Campaign Ltd) v Mole Valley District Council* [2014] EWCA Civ 567, Richards LJ at [16].

There was a general statutory duty on a local planning authority to keep its development plan documents under review; see ss17(6) and 13 of the 2004 Act. Regulation 10A of the 2012 Regulations and paragraph 33 of the 2019 Framework, which required a local plan review at least once every 5 years, showed the review duty on LB Bromley, whatever adopted policy said. An out of date policy, also risked the operation of the "tilted balance" against the LB Bromley. The Inspector was entitled to give weight to the LB Bromley Local Development Scheme as recognition that the Council would need to consider an update of the BLP once the NLP was adopted.

33. Indeed, Dylon 2 had not included any argument for such a policy alteration in its representations to the Inspector at the examination. Mr Kehoe, the LB Bromley Chief Planner so said in his witness statement, and Mr Butterworth of Nathaniel Lichfield and Partners, Dylon 2's planning consultants, did not suggest that they had done so in the course of their arguments as to why land should be released from the Green Belt or MOL. In any event, there had been no misinterpretation of the London Plan; Policy 3.3 did not require a review policy to be built into the boroughs' plans, nor a cautionary reference to the post 2025 housing target figures as "indicative to be checked and adjusted against any revised housing targets."

Conclusions on ground 1

34. I accept Mr Howell Williams' submissions in general. First, however, I note that Mr Parkinson's submissions tended to confuse two distinct issues: was there an inconsistency between Policy 3.3D of the London Plan and Policy 1 of the BLP? If so, did that mean that the Inspector had wrongly, that is not reasonably, concluded that the BLP was in general conformity with the London Plan? He had always submitted that, properly interpreted, the BLP Policy 1 did not fully reflect London Plan Policy 3.3D, but that was the be all and end all of his written argument. In oral submission, he said that the error was such that the BLP at least might not be in general conformity with the London Plan; the asserted misinterpretation could have caused the Inspector to come to a different view on that point.

35. This is an important issue, because the challenge is not in substance one going to soundness. Its substance is a challenge to general conformity; and if it is not a challenge to general conformity, it seeks to subvert the requirement that the BLP be in general conformity by erecting a non-existent requirement that there be a closer degree of conformity between policies than statute requires. It was also far from easy to see how the asserted error or conflict however could come under the rubric of "soundness" in the Framework, if it did not affect general conformity.

36. There are duties on the local authority, an important role for the Mayor of London and a specific task for the Inspector in relation to the general conformity of the BLP with the London Plan. By s20(5)(a), it was a specific task for the Inspector to consider whether the BLP was in general conformity with the London Plan. This is separate

from its soundness, and is the specific point at which the Inspector would consider whether policies in the two parts of the development plan were in conflict with each other and, if so, whether the local plan remained in general conformity. A mere textual conflict, lacuna, or inadequacy in the reflection of a strategic policy would not necessarily prevent the local plan being in general conformity with the strategic plan.

37. But there are earlier stages in the process of considering whether the BLP was in general conformity with the London Plan. By s24(4)-(7) of the 2004 Act, Bromley LBC had to request the opinion of the Mayor of London as to whether the BLP conformed generally with the London Plan. The Mayor was entitled to give such an opinion and, if of the view that the BLP did not conform generally with the London Plan, was to be taken to have made representations seeking to change it.

38. Here, on 30 December 2016, the Greater London Authority, GLA, wrote to LB Bromley addressing the question of the general conformity of the BLP with the London Plan. A number of issues were raised. I note one, in passing, relevant to the second ground, but highlighted by the GLA, to the effect that there was not currently sufficient evidence of "exceptional circumstances" to support the proposed release of Green Belt. It addressed BLP Policy 1, but the point it raised was whether the BLP set a strong enough direction to meet its obligation to seek to augment the minimum 641 new homes figure, so as to close the gap between housing need and supply. It concluded that the BLP did not do so, which it regarded as a particular concern for Bromley. This too relates to the second ground. The letter continued:

> "in line with the requirements of Policy 3.3 of the London Plan, the Local Plan should set out clearly how the minimum targets will be met and exceeded. In addition to the broad areas of growth identified in Draft Policy 1, to address the requirements of Policy 3.3 of the London Plan, a Local Plan could provide policies which actively encourage sympathetic increases in suburban densities, and/or allow for well-designed increases in the height of buildings in many parts of the borough and promote more intense land use in and around town centres. Such approaches could also help ensure the protection of Green Belt and Metropolitan Open Land by more intensely using the brownfield land available."

39. The long letter concluded by looking forward to working together to see "if these outstanding issues of conformity can be resolved." It did not deal with the issue which lies at the heart of ground 1: the effect of new housing figures in the NLP and the need for a policy requiring a review of the BLP. A further letter was sent by the GLA on 27 June 2017, focusing on site specific proposals.

40. I do not know what changes were made to the draft BLP, if any, before it was submitted to the Secretary of State. But it is perfectly clear that the Mayor of London made no further representations, and none to the Inspector, suggesting either that there was an issue of general conformity, or indeed any issue of conflict or inadequacy of policy statement in relation to the ground 1 issue. The Inspector would have been bound to refer to any outstanding issue of general conformity raised by the GLA, or which she herself considered existed. I have been shown nothing to that effect. Moreover, the Inspector required Main Modifications to the supporting text to Policy 1, in IR19, and set out above as part of paragraph 2.1.5, and 2.1.6, which address the issue of closing the gap in the context of Policy 1 as submitted to the Secretary of State. She required none relating to the ground 1 issue; obviously she saw no need to do so and did not have a basis for concern in anything which the strategic authority might have said.

41. I am therefore satisfied that no one, including those whose views matter most, BLP, GLA and then the Inspector, thought that any conflict between the two policies, in the way contended for by Mr Parkinson, could prevent the BLP being in general conformity with the London Plan. Indeed, there is no basis for supposing that any of them thought there was any inconsistency at all. I find it impossible to see, even if there were an inconsistency of the nature contended for by Mr Parkinson, how that could have altered the reasonableness of the Inspector's conclusion that the BLP was nonetheless in general conformity with the London Plan.

42. I do not see either how, if the BLP was in general conformity with the London Plan, any difference between Policy 3.3D and Policy 1 could affect the Inspector's judgement as to the soundness of the BLP. If there is an issue of inconsistency, falling short of showing a want of general conformity, it cannot be brought in under the guise of "soundness" without altering the basis upon which such inconsistencies are to be approached. And if the inconsistency does not go to general conformity, it goes nowhere as a basis for finding that the plan is invalid. Mr Howell Williams grappled with Mr Parkinson's submissions on the basis upon which they were made, and to that I turn.

43. Second, however, I do not accept Mr Parkinson's interpretation of Policy 3.3D. This interpretation was never raised before the Inspector by Dylon 2, or the GLA or anyone else; that may not prevent the argument succeeding but it gets off to a very shaky start. There is simply no London Plan policy requirement for a specific local plan review to consider the NLP new figures when available. Policy 3.3D says nothing about what is to happen before 2025, even with NLP new figures. It deals with the position from 2025-2031, in the case of the BLP. The target for the period ending in 2025 from table 3.1 in the London Plan is to be rolled forward, as the BLP has done. LB Bromley should seek to exceed it, as it has done. That obligation ends when Table 3.1 is replaced. The target for the years of a plan period after 2025 is the rolled forward figure from Table 3.1, which has a plan end life of 2025; it endures

"until it [Table 3.1] is replaced by a revised London Plan." The punctuation is a bit odd with a comma after 3.1, and "if" not "If" after it when a full stop to end the sentence is plainly what was meant; and the last phrase beginning "until" clearly only applies to the period after the London Plan expires in 2025. The policy becomes quite incomprehensible otherwise.

44. It is not the figures for the earlier part of the BLP period which are affected on the terms of Policy 3.3D. That period before 2025 continues to be governed by the figure in the BLP, subject to s38(5) of the 2004 Act. That also makes sense: the part of Policy 3.3D at issue is only dealing with the situation where a Local Plan now requires figures for a period after the London Plan will have expired.

45. I wondered whether Policy 3.3D meant that the figures in the NLP's equivalent of Table 3.1 should simply be inserted into the boroughs' equivalent of Policy 1. But that is not what the policy says, at least of the period before 2025. I see scope for an argument that when the revised housing figures are adopted, they are then treated as transposed into the various local plans for the period after 2025. If that is its meaning, there is no need for a change to the BLP, because it would happen automatically, and there is no conflict then between the two Plans. But there is no basis for the same to happen in relation to the figures for the period before 2025. Policy 3.3D leaves those untouched. It would be an odd result for the later figures to be transposed into the BLP but not the earlier ones. The figures which required earlier revision would then be left for a local plan review, and a single plan would have to cope with two sets of figures in an unhappy relationship, when it came to forward planning. I can also see significant planning problems if the figure from the NLP were simply adopted as the housing target for the whole of the remainder of the BLP without a review, which enabled allocations to be made, site opportunities to be explored, policies to be varied, including consideration of whether exceptional circumstances now existed which required amendment to the extent of the Green Belt. The target would exist to be met, without the opportunity for a plan based response.

46. Mr Parkinson put some store by the supporting text at 3.24 of the London Plan, although swift enough to downplay the Defendant's reliance on supporting text in response. But it cannot stand as policy, nor create a policy conflict with Policy 1. If that text means what I conclude Policy 3.3D means, it adds nothing. In its last sentence, the "intervening period" for which it provides guidance, appears to be the period between the expiry of the London Plan and the end date of Local Plans which post-date it. The rolling target in that period, post 2025, should be expressed "as an indicative figure to be checked and adjusted against any revised housing targets." That language provides a qualification to the expression of the rolling target after 2025, but not one that is in a policy. It is not, on any view, requiring a local plan to adopt that language and to adopt it in a policy. Not putting it in Policy 1 of the BLP creates no contradiction or conflict. Nor is it a policy requiring local plan policy to

contain a review provision triggered by the adoption of the NLP revised housing figures. There is simply no sound foundation for Mr Parkinson's submission.

47. Moreover, there are many reasons why such a provision would be unnecessary. The Inspector was entitled to give weight to the LB Bromley Local Development Scheme which contemplates a review or a partial review when the NLP revised figures are finalised, to the comments in the supporting text about a review, and she is entitled to expect attention to be paid what she said about that in her own Report. She would know the statutory duties which lie upon the local planning authority to keep the plan under review. Of course, a local authority may fail in a number of respects; s38(5) may have the effect of forcing its hand if it is insufficiently active to respond to an important change. But local authorities, in areas of real housing pressure such as Bromley, are usually only too aware from experience of the problems of leaving decision-making on the location of housing to the process of developer site selection and appeal.

48. Accordingly, ground one is dismissed.

Ground two: the misinterpretation of Policy 3.3 Da of the London Plan

49. Mr Parkinson submitted that the Inspector had misinterpreted this policy or had ignored paragraph 47 of the Framework. This policy is concerned with closing the gap between identified housing need and housing supply. He placed particular reliance on the London Plan requirement, in its supporting text to Policy 3.3Da, at 3.18, that soundness required the local authorities to demonstrate "that they have sought to boost significantly the supply of housing as far as is consistent with the policies set out in the Framework." He focused on what the Inspector had said at IR41-42, above. A mere and marginal excess of supply over the minimum target did not of itself demonstrate compliance with the policy; the question was: had the Council done as much as it could? The Inspector's conclusion, that more housing would require a different strategy, did not grapple with that question. She never concluded that a different strategy with more housing could not also be in general conformity with the London Plan, whereas she needed to be satisfied that an alternative with more housing would be inconsistent with the London Plan or Framework.

50. I do not accept those submissions. In my judgment, the Inspector dealt fully and clearly with this issue, and her conclusion cannot be said to be one which she ought to have considered it unreasonable to reach. First, 3.3Da is to be read with 3.3E, which identifies ways in which additional development capacity can be brought forward. Policy 1 of the BLP is plainly consistent with those policies, identifying that the figure of 641 is a minimum. A Main Modification was required fully to reflect in supporting text how the capacity was to be augmented beyond the minimum, not just by the excess of 1000 dwellings, but also by the brownfield site capacity of the sort of sites mentioned in Policy 3.3E.

51. Second, this was the issue on which the GLA wrote to LB Bromley, but which it did not repeat in its second letter, nor, so far as any evidence goes, were any representations made to the Inspector, to the effect that the BLP remained unsatisfactory. So insofar as supporting text in the London Plan could contribute to the judgment about what was required for "soundness", the Inspector was plainly aware of the issue, and it was in response to those policies, whether or not the GLA was in fact satisfied, that two "Main Modifications" were made. So, the relevant issues were recognised and addressed. It is not arguable that her conclusion was other than wholly reasonable.

52. Third, as the Inspector recognised, the degree of augmentation of housing capacity beyond the minimum in Table 3.1, was subject to consistency with the policies of the Framework. Those policies include not making changes to Green Belt boundaries without exceptional circumstances, and requiring development to be sustainable. Her comment that the release of further housing land would have been likely to require a different strategy particularly in respect of the release of land from the Green Belt, whereas the existing strategy was in general conformity with the London Plan, is rather more significant than the submissions of Mr Parkinson allow. She is in effect saying that land would probably have to be released from the Green Belt. That would require exceptional circumstances. IR84 specifically dealt with Green Belt/MOL land releases for housing; they were not justified. To have released land for housing would not just have been a different strategy, but one which she concluded was not justified, and so would not be consistent with Framework policies or the London Plan. The GLA had already expressed concern over the extent of Green Belt release for specific uses and sites. The Inspector's reasoning was adequate for her conclusions on soundness.

53. Mr Parkinson was not suggesting, and it would have been hopeless for him to do so, that Green Belt release for housing augmentation beyond the minimum would be in general conformity with the London Plan. Mr Parkinson did not suggest that there was some other objectionable policy limit to the development of sites not protected by the Green Belt or Metropolitan Open Land or other designations, consistent with the Framework. There was no misinterpretation of the Framework; plainly it was not overlooked. There was no policy bar to suitable sites being promoted for housing, even if not allocated or identified, nor of suitable allocations being refused.

54. This ground of challenge was a challenge in the abstract, unless it was a challenge to a refusal to vary Green Belt boundaries. It is dismissed.

Ground 3: absence of reasons in relation to an appeal decision

55. Mr Parkinson contended that the Inspector had not complied with her duty to give reasons because she failed to deal expressly with an appeal decision submitted to her after the hearings were closed, with which it was said her own conclusions were

inconsistent in the way in which they dealt with the existence of and two aspects of the five-year housing land supply.

56. The appeal decision, Maybrey Works, concerned a residential development of 159 dwellings in Bromley; the appeal was allowed. Mr Parkinson relied on what the Inspector had to say about the 5 year housing land supply. There was an issue about whether such a supply existed or not. At DL36, he expressed the view that there was no compelling evidence that additional small site units would be delivered; there would almost certainly be a contribution "but the number is speculative." He also considered, DL37, the legislative change had stimulated applications for prior approval for office conversions to residential, but no large schemes had been identified, they were blocked in the centre of Bromley, and it was reasonable to assume that the pool of premises suitable for conversion was likely to decline in later years. The anticipated 200 units over five years was again "speculative." At DL39, he concluded that even if all the Council's assumptions were right, the supply was likely to be significantly less than the Council claimed, he had little confidence in the Council's expectations, and there was no compelling evidence that a 5 year supply of housing land existed. He pointed out in DL40 that the target in the London Plan was a minimum, and the untested figures in the NLP provided the most up-to-date evidence of housing need. Overall, he concluded that the scheme would make a meaningful and important contribution to meeting housing need in Bromley. The proposed development would be sustainable and would comply with the development plan as a whole. In accordance with paragraph 14 of the 2012 version of the Framework, the scheme should be granted permission.

57. The obligation on a local plan Inspector to give reasons focuses on the reasons for her recommendation, here that the plan was sound; her reasons must be the reasons for that decision. She is performing an inquisitorial role rather than conducting a series of appeals, giving reasons dealing with the principal points of controversy, such as would apply to appeal decisions; see my analysis in *Cooper Estates Strategic Land Ltd v Royal Tunbridge Wells Borough Council* [2017] EWHC 224 (Admin) at 23-29, and *Town End Farm Partnership v Sunderland City Council* [2018] EWHC 2662 (Admin). It is therefore misconceived to seek legal error in the reasons of a local plan Inspector otherwise than by reference to the task she had to perform. Mr Parkinson relied exclusively for his submissions in relation to consistency upon Court judgments dealing with appeal decisions, and with local authority development control decisions.

58. Second, at the heart of his submissions is the clear but often misunderstood judgment of Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P&CR 137. This judgment, properly understood, is in line with the higher authorities on the giving of reasons in planning appeals; the appeal Inspector is obliged to give reasons for her decision on the principal points in controversy, but is not obliged to give reasons explaining how she dealt with every material consideration. There is no special rule for earlier decisions, which could be

material considerations, nor for earlier decisions which are said to be inconsistent in some way or to some degree; see *H J Banks & Co Ltd v SSHCLG* [2018] 3141 (Admin) at [110-114]. The decision at issue in *North Wiltshire* was fundamental to the appeal decision. Indeed, even taking what Mann LJ said at face value, no obligation to give reasons arises until inconsistency on some critical aspect has been established.

59. The Inspector dealt adequately with this issue in her general comment at IR41, highlighted above. No further detail was arguably required.

60. I do not consider that the decision of the appeal Inspector was on an issue of critical importance to the local plan Inspector's conclusions on soundness, such as to require explicit distinguishing reasoning. First, it is plain that the appeal Inspector considered that the development accorded with the development plan; he did not grant permission because the policies were out of date or deemed out of date because of the want of a five-year housing supply. His decision would have been the same if he had been fully satisfied as to the existence of a 5 year housing supply. Whether a proposal accorded with the development plan was not the issue for the local plan Inspector; hers was a different task. Second, the language of his conclusion that there was no compelling evidence that a five-year supply of housing existed is a questionable formulation; it is not a straightforward finding that such a supply did not exist, and it was clearly not a conclusion critical to his decision. Further, his consideration of the figures in the NLP would have been quite inappropriate for her. Third, she was entitled to conclude, for the reason she gave, that a 5 year housing land supply did exist, and that the small sites allowance was justified, and not simply speculative, as with the office conversions to residential. In any event the only issue raised by the Claimant on the latter point, and which the local plan Inspector considered, was whether there was any double counting.

61. I do not consider that those issues merited more detailed reasoning, distinguishing or taking issue with the appeal Inspector's decision, even though they are to a degree different at least in emphasis. The facts of *North Wiltshire* and others referred to in *HJ Banks & Co* involve far starker contradictions, and the issue on which the decisions contradicted each other were critically in point. They do not support an argument that some explanation was required for any difference in views on those housing supply topics, let alone in the context of the different tasks of the local plan and appeal Inspector.

62. I do not consider either that the local plan Inspector had to go through all the views expressed by the appeal Inspector about other sites. The local plan Inspector's task could be impossible otherwise; there could be no real limit to the number of different decisions, and arguments about decisions, which she had to work her way through and around. Her task is not to explain why she differs from such an array, but is to strike her own course dealing with the differently focussed issues she has to confront, on the basis of all the evidence and views which she hears. Her conclusion was the judgment of an Inspector at an examination with the range of participants, the nature of inquiry,

the focus of the task, and what may be different evidence and views available; the other was the product of an appeal with whatever the Council and a single appellant were able to present. Otherwise a single appeal could stand for an examination of the soundness of the major housing policy. The degree of difference requires no explanation and the expression of the different view, itself supported by the reasons required by the 2004 Act, is sufficient in my view to explain the position.

63. This ground all comes about from a misconception about the reasons obligation on local plan Inspectors, and of the reasons required in relation to previous allegedly inconsistent decisions.

64. I add that I was not persuaded, by the fact that the Inspector invited submissions from other participants, after Dylon 2 had submitted the Maybrey decision to her, that that meant that under the Planning Inspectorate's Guidance on Procedural Practice in the Examination of Local Plans, she must be taken to have accepted it was significant. That Guidance is that Inspectors will only request additional information after the hearing sessions, if "that is essential to inform his/her conclusions on the soundness/legal compliance of the plan." I appreciate that that inference could be drawn from the fact that she invited others to make representations about the Maybrey decision once it had been submitted to her. But she did not request the submission of the decision in the first place. An Inspector could reasonably hold that a conclusion that it was not essential at all, was more wisely reached after seeing what other parties, notably the Council, had to say about such a document, once submitted.

65. I am prepared to accept that this ground just passed the arguability threshold, and to grant permission. But I dismiss it.

Overall conclusion

66. This application is dismissed.