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Case No: CO/1307/2021 & CO/1313/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/12/2021

Before :

THE HONOURABLE MR JUSTICE DOVE

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Between :

East Riding of Yorkshire Council	**Claimant**
- and -	
(1) Secretary of State for Levelling up, Housing and Communities	**Defendants**
(2) Gladman Developments Limited	

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Charles Banner QC and Matthew Henderson (instructed by **Solicitor for East Riding of Yorkshire**) for the **Claimant**
Sarah Sackman (instructed by **Government Legal Department**) for the **First Defendant**
Richard Kimblin QC and Thea Osmund-Smith (instructed by **Addleshaw Goddard LLP**) for the **Second Defendant**

Hearing dates: 12th October 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE DOVE

Mr Justice Dove:

Introduction.

1. This judgment addresses two claims for statutory review bought pursuant to section 288 of The Town and Country Planning Act 1990 in relation to two decisions following appeals conducted by way of public inquiry in respect of two refusals of planning permission by the claimant. Whilst these are two separate decisions, because of issues which each appeal had in common the same Inspector was appointed to determine both appeals. The second defendant was the applicant for planning permission in both applications. The details of the appeals were as follows.

2. At land North West of Swanland Equestrian Centre, West Field Lane, Swanland, East Riding of Yorkshire the second defendants applied for outline planning permission for up to 150 residential dwellings, including 25% affordable housing, alongside associated structural landscaping, public open space and surface water attenuation, with all matters reserved apart from site and emergency access. The appeal was allowed on 17th March 2021. For convenience this is referred to as the Swanland appeal.

3. At land North and East of Mayfields, The Balk, Pocklington, East Riding of Yorkshire, the second defendants applied for outline planning permission for up to 380 residential dwellings including 25% affordable housing, a local centre with children's day nursery, convenience store and 60 bed care home, together with landscaping and public open space, surface water attenuation features with all matters reserved other than the details of vehicular access points. Again, the appeal was allowed on 17th March 2021.

4. The public inquiries in relation to both of these appeals were held jointly, and the Inspector explained that there were some broad matters which were common to both appeals. It is in relation to one of those matters in common that the claimant brings both challenges. At the hearing of this matter it was agreed that it would be sensible for this judgment to focus upon the Swanland appeal, on the basis that were the court persuaded of the merit of the claimant's case in relation to that appeal then the Pocklington appeal would fall to be decided similarly.

5. The claims are brought by the claimant on two grounds. The first ground is that the Inspector failed to give reasons for rejecting an argument presented by the claimant in respect of paragraph 48 of the National Planning Policy Framework ("the Framework") which is more fully described below, and which in particular depends upon the allegation that the Inspector failed to provide proper reasons to distinguish two earlier appeal decisions upon which the claimant relied. The second ground is that if the Inspector did give reasons which were legally adequate, there was an error of law on the basis that the Inspector had misinterpreted paragraph 48 of the Framework and/or acted irrationally.

6. As set out above the claimant was represented by Mr Charles Banner QC and Mr Matthew Henderson, the first defendant by Ms Sarah Sackman, and the second defendant by Mr Richard Kimblin QC and Ms Thea Osmund-Smith. All references to the parties' submissions hereafter should be read accordingly. I would wish to place on record my gratitude to all counsel for the careful and focussed written and oral submissions which they provided to the court which have been of considerable assistance. I also express my thanks to those responsible for preparing the papers for

the hearing in this case: a bundle of thoughtfully edited papers was presented for the purposes of the hearing containing all of the documents which were referred to and ensuring that pre-hearing preparation could be undertaken efficiently.

The facts.

7. One of the points of difference between the claimant and the second defendant in the debate over the appeals was the question of whether or not the claimant was able to demonstrate a five-year supply of housing land. The significance of this issue in the decision-making process when determining a planning application for residential development is well-known. In essence, where a local planning authority is unable to demonstrate a five-year supply of deliverable housing land footnote 8 of the Framework indicates that this is a situation where it is to be considered that there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, leading to the use of a tilted balance when assessing the merits of the application. In the present case, which did not involve policies covered by footnote 7 of the Framework, that tilted balance required "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".

8. In December 2020, shortly prior to the exchange of evidence in the appeal, the claimant published its Housing Land Supply Position Statement. The analysis in table 12 of that document indicated that using the housing requirement from the East Riding Local Plan the claimant could demonstrate exactly five years of housing land supply. However, the document observed that by the start of year two of the five-year housing land supply calculation it would have been more than five years since the adoption of the East Riding Local Plan. The significance of that point is that paragraph 73 of the Framework, which contains the requirement to demonstrate a five-year housing land supply, and the accompanying footnote 37 provide as follows:

> "73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old[37]. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period of):
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> a) 5% to ensure choice and competition in the market for land; or
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> b) 10% where the local planning authority wishes to demonstrate a five-year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year, or

> c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.
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> 37 Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five-year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance."

9. In the light of this policy the Housing Land Supply Position Statement proposed an alternative approach to calculating the five-year housing land supply requirement which became known as the hybrid approach. This approach deployed the local plan requirement from the East Riding Local Plan of 1,400 dwellings for the first year of the five-year housing supply calculation, and then four years using the housing requirement calculated using the standard method of 909 dwellings per annum. This, plainly, gave rise to a lower requirement figure, and the calculation within table 13 of the Housing Land Supply Position Statement demonstrated a 6.2 year supply using the hybrid approach.

10. Shortly after the production of the Housing Land Supply Position Statement proofs of evidence were exchanged in relation to the appeals. The claimant's planning witness, who addressed issues of five-year housing land supply, was Mr Owen Robinson. Within his proof of evidence he set out the five-year housing land supply of precisely five-years from the Housing Land Supply Position Statement, but went on to advocate the hybrid approach based on the fact that at the time of writing his proof the five year anniversary of the adoption of the East Riding of Yorkshire local plan was just four months away. Thus, Mr Robinson contended that the Inspector could have certainty that the requirement figure would reduce to reflect the smaller housing requirement based on the standard method, and therefore should adopt the hybrid approach which had been foreshadowed in the Housing Land Supply Position Statement. Mr Robinson contended in his proof of evidence that equal weight should be afforded to the two alternative approaches to calculation, the first based on the local plan only and the second on the hybrid approach, in reaching the decision.

11. Mr Robinson placed reliance on a recent decision by the first defendant in respect of land at the VIP Trading Estate in London ("the VIP decision"). The first defendant's decision was made following receipt of an Inspector's report in which the Inspector had recommended the refusal of permission. That was, overall, a recommendation with which the first defendant agreed. In paragraph 14 of the decision letter the first defendant noted in relation to emerging plans that there was a draft New London Plan and an emerging Royal Borough of Greenwich Site Allocations Development Plan Document. Further, the first defendant observed that the emerging London Plan was at an advanced stage of preparation, and that the first defendant had directed the areas of the plan where changes were required. Where directions had been made by the first defendant, he considered that moderate weight could be afforded to the policies of the emerging London Plan. Where no modifications had been directed the first defendant considered that policies carried significant weight. An issue in the decision was the question of the five-year housing land supply, and in that respect the first defendant observed as follows:

> "26. The Secretary of State has carefully considered the Inspector's analysis of the 5 Year Housing Land Supply at IR15.193-15.216. The Secretary of State has noted the Inspector's findings that the Council are unable to demonstrate a 5YHLS but could be considered to have a supply of 4.99 years with a worst-case scenario of 4.49 years (IR15.214). The Secretary of State has also noted that the Inspector considers the shortfall is very small and, of more importance, that on adoption of the draft London Plan, the revised housing targets in the draft London Plan will result in there being a demonstrable 5YHLS in the Borough (IR15.215).
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> 27. The Secretary of State has taken into consideration that the borough housing targets in policy H1 of the draft London Plan are not to be modified and he has given significant weight to this policy (paragraph 13 of this letter refers). He is satisfied, therefore, for the purposes of this appeal that the Council can demonstrate a 5YHLS. On this basis he disagrees with the Inspector that the presumption in favour of sustainable development applies in this appeal (IR15.215)."

12. In the event this disagreement with the Inspector made no difference to the first defendant's conclusion as to whether or not the appeal should be allowed.

13. Shortly before the public inquiry was due to open the parties completed a Statement of Common Ground. Within the section of the document referring to matters which were disagreed, the argument between the parties as to the status of the hybrid housing requirement was noted. By this stage it was the claimant's position that the five-year housing land supply calculation should be established using the hybrid approach, which acknowledged that within four months the local plan would be five-years old bringing the need for the calculation to be based upon the standard method.

14. By contrast the second defendant considered the supply position should be based upon the local plan housing requirement for the full five-year period. The planning witness called on behalf of the second defendant in relation to the Swanland Appeal was Mr Ben Pycroft. In his proof of evidence, he explained why he considered that the use of the hybrid approach was problematic. The reasons he provided included that such an approach could, if adopted, apply to a number of authorities, including areas where in fact the local housing need was higher than the adopted housing requirement, leading to a failure to demonstrate a five-year housing land supply even in relation to a relatively recently adopted local plan. Secondly, the hybrid approach was difficult to apply in areas such as that of the claimant where there was significant past shortfall against the adopted housing requirement, for reasons associated with the mechanism for calculating the figure for local housing need. Thirdly, the local housing need calculation under the standard method changes from year to year depending on the ten year period over which average annual housing growth was used, and the applicability of the latest affordability ratio. Fourthly, the claimant's hybrid approach overlooked its own Local Development Scheme that indicated that the local plan review was to be adopted in July 2022. In short Mr Pycroft contended that national policy and guidance was clear as to how the five-year housing land supply was to be measured, and this

approach should be taken leading to a conclusion that the claimant could not demonstrate a five-year supply.

15. In response to the initial exchange of evidence, rebuttal proofs were produced by the parties for the purposes of the debate at the public inquiry. Mr Robinson pointed out in response to Mr Pycroft's views that none of the issues he raised were problematic or represented a principled reason for not taking the hybrid approach. Indeed, Mr Robinson expressed the view that the claimant was not going as far as the first defendant had in the VIP decision where the Secretary of State had not applied the adopted local plan requirement at all. The claimant accepted that for the first year of the calculation the local plan requirement should be used.

16. In a rebuttal proof produced on behalf of the second defendant an analysis was presented of the VIP decision, in which it was pointed out that the conclusion of the first defendant was that permission should be refused whether or not a five-year housing land supply had been demonstrated. It was observed that it was unclear whether the first defendant was engaging with a departure from national policy in making the decision, but it was unsurprising that there was no challenge to the legality of this approach since it would have made no difference to the decision. In the rebuttal proof the second defendant did not accept that the approach by the first defendant in reaching this decision was correct.

17. It appears that after the exchange of evidence, and the subsequent rebuttal proofs which were provided in January 2020, two further matters emerged. Firstly, in further discussions in relation to the five-year housing land supply there were adjustments made to the figures in relation to the available housing supply, leading to the conclusion that even on the claimant's own supply figures it could not demonstrate a five-year housing land supply using a calculation based on the local plan requirement.

18. Secondly, on 7th January 2021 the first defendant's duly appointed Inspector issued a decision letter in relation to an appeal at 700 St Johns Road and St Johns Nursery site, Earls Hall Drive, Clacton-on-Sea ("the Clacton decision"). The question of whether or not the local planning authority could demonstrate a five-year housing land supply was a contentious issue. Having addressed issues in relation to the question of which sites could be properly incorporated within the local planning authority's housing land supply the Inspector noted that, firstly, the strategic policies of the local plan were more than five years old and therefore the standard method of calculation should be used giving rise to a housing need of 865 dwellings per year. Secondly, he noted that in the examination in respect of section 1 of the emerging Local Plan a housing requirement of 550 dwellings per year had been found to be sound.

19. The Inspector addressed the issues in respect of the five-year supply of housing and reached conclusions in relation to them in the following paragraphs from his decision:

> "85. Until Section 1 of the eLP is adopted then paragraph 73 (including footnote 37) of the Framework, advises that the SM should, rather than must, be used to establish a local housing need figure for Tendring. That national policy is a material consideration of great weight. However, the examination of Section 1 of the eLP has established that the official household projections for Tendring are subject to distortion due to errors

arising from the UPC. In that regard there is evidence available demonstrating that the ONS recognises that for Tendring there is an error with the midyear estimates, which feed into the calculation of the household projections, with a '*migration error ... likely to be in the range of 5-6,000 people*'. That migration error being thought to represent 47% to 57% of the UPC for Tendring, with the positive UPC figure for Tendring being around 10,500 and '*... one of the biggest of any LPA in England*'.

86. With Section 1 of the eLP so recently having been found to be sound, it seems likely that this part of the eLP, including emerging Policy SP3, will imminently progress to adoption. I consider those circumstances to be a very important material consideration, outweighing the advice in paragraph 73 of the Framework that the SM should be used. That approach being consistent with the advice stated in paragraph 48 of the Framework, because Section 1 of the eLP has reached such an advanced stage in its preparation. When an annual housing requirement of 550 dwellings is used and a historic shortfall allowance of 212 dwellings and a 5% buffer are added, then a total five-year requirement of 3,110 dwellings has been identified by the Council in the SHLAA.

87. Against a requirement of 3,110 dwellings the Council is able to demonstrate the availability of a 5yrHS of 6.14 years, including the deduction of 225 dwellings from the four resolution sites as set out in CD13.12. A 5yrHS of 6.14 years represents a surplus of around 20% when considered against a five-year requirement of 3,110 dwellings.

88. Even if the adoption of Section 1 of the eLP does not happen in January 2021, as currently envisaged by the Council, on the evidence available to me I consider that the SM derived local housing need figure of 865 dwellings per year is so erroneous it simply cannot be relied upon as the basis for assessing the current 5yrHS position for Tendring. That is because of the distortion caused by the UPC, with the 2014 based household projection for Tendring, an essential input into the SM, being subject to a significant statistical error that the ONS has recognised exists. Given those circumstances I consider the SM yields a deeply flawed local housing need figure for Tendring.

89. I recognise that my approach to the consideration of this matter differs to that of the Inspectors who have determined four other appeals in the Council's area drawn to my attention. However, there has been a very recent material change of circumstances postdating the determination of those other appeals, namely the completion of the examination for Section 1 of the eLP. That means that what was an 'interim finding'

> of the EI that a housing requirement based on 550 dwellings per year was likely to be acceptable, as was for example the situation when the Mistley appeal was determined on 23 December 2019, has now become a firm conclusion."

20. The question of the adoption of the hybrid approach was a matter which was touched upon in the opening submissions of both parties to the public inquiry. Similarly, the hybrid approach featured in the closing submissions of both parties. In the second defendant's closing submissions reference was made to the concession in cross-examination made by the claimant's planning witness that the claimant was effectively asking the Inspector to depart from national policy. Further reference was made to the VIP and the Clacton decisions. In particular, the second defendant pointed out that the issues involved in those cases were engaged with paragraph 48 of the Framework and the weight to be attached to emerging policies in decision-making. Paragraph 48 of the Framework provides as follows:

> "48. Local planning authorities may give weight to relevant policies in emerging plans according to;
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> a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
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> b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
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> c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."

21. It was submitted by the second defendant that there was no evidence that the first defendant was seeking to lay down any general principals in relation to departure from paragraph 73 in the decisions which were relied upon by the claimant, indeed the first defendant did not address paragraph 73 of the Framework in those decisions at all. In the present case the second defendant observed there was not a recently examined and sound housing requirement soon to be adopted: the claimant's hybrid approach was an entirely different proposition to that accepted in the VIP decision related to paragraph 48 of the Framework. Similar points were raised in relation to the Clacton decision, where it was plain that although the plan was more than five years old, the errors in the data for the material informing the household projections meant that the standard method figure was not a reliable basis for decision-making. The adoption of a new plan with a figure which had been found sound was close at hand, and again paragraph 48 of the Framework was in play. The second defendant submitted the circumstances in the Clacton decision were very different from the present case.

22. By contrast, in the claimant's closing submissions emphasis was placed upon the imminence and certainty of the use of the standard methodology figure as a result of the operation of footnote 37. Reliance was placed upon the VIP decision as demonstrating that the first defendant departed from paragraph 73 of the Framework in

the light of an imminent change in the housing requirement figure in that case. That approach, it was submitted, was applicable to the appeals. Reliance by the second defendant on the involvement of paragraph 48 of the Framework was misplaced, on the basis that all that that paragraph did was reflect a basic public law proposition in relation to the weight to be attached to an emerging plan as a material consideration. It did not provide a basis for distinguishing between the circumstances of the VIP and Clacton decisions and the present appeals, on the basis that there was an imminent and certain application of the local housing need figure derived from the standard method in the case under consideration. The matters relied upon in paragraph 48 as bearing upon the weight to be given to emerging local plans reflected the degree of certainty and imminence of its adoption which again reflected the circumstances in the appeals under consideration with respect to the use of the local housing need figure derived from the standard method. The Clacton decision also supported this approach.

23. The Inspector addressed these contentions in relation to whether or not the claimant could demonstrate a five-year housing land supply in the following paragraphs of the decision letter:

> "Current situation
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> 23. Paragraph 73 of the Framework requires that Council should identify and update annually a supply of specific deliverable sites to provide a minimum of 5 years' worth of housing against their housing requirement set out in adopted strategic policies. Where strategic policies are more than 5 years old, and unless the strategic policies have been reviewed and found not to require updating, this should be calculated against their local housing need (LHN). The LHN is the number of homes identified as needed through the application of the Standard Method (SM), which is detailed in National Planning Practice Guidance (PPG).
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> 24. The agreed supply period for the determination of this appeal is 1 April 2020- 31 March 2025. The LPSD is not yet 5 years old, although it will become so on the 7 April. The SM calculation would then kick in for the LHN.
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> 25. As set out in the relevant Statement of Common Ground (SOCG)6 and the updated scenarios (INQ31), against the LPSD housing requirement the Council is currently unable to demonstrate a 5-year supply, with the Council considering they can currently demonstrate 4.96 years. This position has changed from the publication of the Housing Land Supply Position Statement (HLSPS) dated December 2020 which gives a figure of 5.0 years. This was due to concessions made in respect of some of the sites assessed as deliverable by the Council, including from communal accommodation.

26. Due to debate over the deliverable sites included in the Council's calculation, the appellant considers that the Council can only demonstrate a supply of 4.17 years against the LPSD requirement. Nevertheless, even at the Council's preferred figure, the so called 'tilted-balance' under paragraph 11(d)(ii) of the Framework would be engaged.

Hybrid Calculation

27. The Council's position is that as the LPSD will be over 5 years old imminently, a hybrid figure which is based on the LPSD requirement for year 1 and the SM for years 2-5 should be used. This position was adopted for the joined appeals and is not reflected in the most recent published HLSPS.

28. Under the SM calculation, the housing figure is considerably lower than the adopted plan requirement – a reduction from 1400 to 909. Even when adding in a calculation for a shortfall and 5% buffer (the former is not a requirement of the SM calculation) the Council's position is that 6.15 years supply can be demonstrated. While the appellant disputes this approach and accounting for differences relating to site deliverability, the appellant considers that under this method, the Council could demonstrate 5.17 years supply. It is on this basis that the Council submits that the tilted balance should not apply.

29. Parties agreed that this appeal, and indeed the linked Pocklington appeal, provide the first time such an approach will have been formally tested. However, two appeal decisions in support of the Council's position were put before me.

30. The first is a Secretary of State (SoS) decision known as VIP Trading which was dated 3 June 2020. Here, the SoS disagreed with the Inspector that the presumption in favour of sustainable development applied due to the supply being between 4.49-4.99 years. This was on the basis that on adoption of the draft London Plan, revised housing targets would result in a 5-year housing land supply and it was noted that the housing targets in the draft plan were not due to be modified.

31. The second decision was for a site at Clacton-on-Sea dated 7 January 2021. While the Inspector acknowledges that, based on the SM the Council couldn't demonstrate the requisite 5-year supply, due to the imminent adoption of a new local plan with a different housing requirement figure indicating 6.14-year supply, the Inspector opted to rely on the new figure. Again, it was held that the presumption in favour of sustainable development did not therefore apply.

32. I accept there was a departure from paragraph 73 of the Framework in both examples. However, these decisions are

materially different to the appeals now before me. Significant weight was given to the emerging housing figures and more specifically, the Inspector and SoS in both examples engaged paragraph 48 of the Framework which sets out criteria for determining what weight to give to emerging plans in accordance with their stage of preparation, the extent of unresolved objections, and consistency to the Framework.

33. The Council argues that paragraph 48 provides no basis for distinguishing the present circumstances, but there is no such direction in the Framework, or indeed in the PPG relating to the circumstances presented as part of these appeals in the way that there is for emerging local plans in paragraph 48.

34. The Framework adopts a clear period of 5 years in terms of housing land supply, and also in terms of local plan preparation and review. Paragraph 73 of the Framework is clear that a minimum of 5 years' worth of deliverable sites should be calculated against <u>either</u> the housing requirement in the adopted strategic policies or the local housing need where the strategic policies are more than 5 years old (my emphasis). As part of this, the SM was introduced in 2018 in order to be simpler, quicker and more transparent and I am of the firm view that to adopt a hybrid approach would undermine that efficiency and transparency.

Future Supply

35. It should be noted that there was broad agreement that from 7 April 2021, the Council are highly likely to be able to demonstrate a 5 year supply based on the full SM calculation, although a precise figure could not yet be determined due to all the data required not yet being available.

36. I accept that in the very near future, this is a matter which would no longer be for debate as the need to use the SM will automatically kick in. This would also be as certain as the adoption of the new requirement figures in the above-mentioned appeals. However, based on my reasons above, that is itself not a reason to justify departure from paragraph 73 in such circumstances as presented here.

Conclusions on Housing Land Supply

37. To sum up, the LPSD requirement should be used and based on this, the Council are unable to demonstrate 5 years supply of housing. In accordance with footnote 7 of the Framework, the policies which are most important for determining the application, that being S3, S4 and S5, are deemed to be out of date. The tilted balance thus applies.

> 38. I will return to the matter of the extent of the shortfall and the weight to be given to this in light of the immanency of the 5-year anniversary of the LPSD in my section on the planning balance."

24. In drawing her conclusions together and striking the planning balance, applying the tilted balance required by paragraph 11 of the Framework, the Inspector concluded that, amongst other matters, substantial weight should be afforded to affordable housing as a benefit of the proposal, and moderate weight to general housing delivery. She took into account the adverse effects which she accepted in respect of policy conflict and the loss of best and most versatile agricultural land. Her conclusions were that these adverse effects would not significantly and demonstrably outweigh the benefits of the proposals and that therefore the appeal should be allowed.

The law.

25. The question of whether or not to grant planning permission for development is governed, initially, by section 70 of the 1990 Act which provides that when an application for planning permission is made to a local planning authority they may grant planning permission either unconditionally or subject to conditions as they see fit, as well as refuse it. Pursuant to section 70(2) the local planning authority is required to have regard to the provisions of the development plan so far as material to the application; indeed in applying section 38(6) of the Planning and Compulsory Purchase Act 2004 the local planning authority is required to determine the application in accordance with the development plan unless material considerations indicate otherwise. Material considerations which are obviously relevant to this exercise include the policy contained within the provisions of the Framework.

26. Pursuant to Rule 19(1) of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 where an appeal is determined by an Inspector it is necessary that both the decision and the reasons for it are provided to the parties in writing. The leading authority in relation to the provision of reasons in this context is *South Bucks District Council and another v Porter (2)* [2004] UKHL 33. Lord Brown summarised the legal principals at paragraphs 35 and 36 of his speech as follows:

> "35. It may perhaps help at this point to attempt some broad summary of the authorities governing the proper approach to a reasons challenge in the planning context. Clearly what follows cannot be regarded as definitive or exhaustive nor, I fear, will it avoid all need for future citation of authority. It should, however, serve to focus the reader's attention of the main considerations to have in mind when contemplating a reasons challenge and if generally its tendency is to discourage such challenges I for one would count that a benefit.
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> 36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principle important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on

> the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straight-forward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

27. An illustration of the importance of the requirement to provide reasons is provided by the decision of the Court of Appeal in *Horada (on behalf of the Shepherds Bush Market Tennants Association) and others v Secretary of State for Communities and Local Government and others* [2016] EWCA Crim 169. The claimant drew particular attention to two features of the decision of the Court of Appeal in *Horada*. Firstly, the emphasis in paragraph 49 of Lewison LJ's judgment on the fact that although the decision may be addressed to a well informed readership, that does not excuse the failure to properly address the need to provide reasons for the decision which has been reached, which was in that case a decision disagreeing with the recommendation of the first defendant's Inspector. Secondly, the claimant draws attention to the observation, again in paragraph 49 of Lewison LJ's judgment, as well as in the substance of the reasons for his decision in paragraphs 51 and 53 of his judgment, upon not downgrading to the status of material considerations matters which were properly understood to be principle controversial issues in reaching the decision.

28. Turning to the issues associated with the interpretation of planning policy the legal principles concerned in relation to addressing this issue are well established. The interpretation of planning policy is a matter of law for the court: see *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983. Allied to the case of *Tesco Stores,* the question of the approach to the interpretation of planning policy has been addressed in the following cases: *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865; *East Staffordshire Borough Council v Secretary of State for Communities and Local Government* [2018] PTSR 88; *Mansell v Tonbridge and Malling Borough Council* [2018] JPL 176; *St Modwin Developments Ltd v Secretary of State for Communities and Local Government* [2018] PTSR 746; *Canterbury City Council v Secretary of State for Communities and Local Government* [2019] PTSR 81, and have been recently summarised by this court in *Tewkesbury Borough Council v Secretary of State for Communities and Local Government* [2021] EWHC 278 (Admin).

Submissions and Conclusions.

29. The claimant's submission in relation to ground 1 is that the question of whether or not the VIP and Clacton decisions justified a departure from national policy so as to adopt the hybrid approach to the housing requirement for the purposes of the five-year housing land supply, and whether paragraph 48 of the Framework was a distinguishing feature which justified not following their approach to the use of an imminent and certain change in the housing requirement, was one of the principal controversial issues in the case. The planning balance was resolved by the Inspector using the tilted balance pursuant to paragraph 11 of the Framework, and the requirement that the tilted balance was used depended upon the question of whether or not paragraph 73 required the Local Plan housing requirement to apply in terms to the calculation of the five-year housing land supply, or the hybrid approach was to be taken to calculating it. The justification for taking the hybrid approach included the support that it was submitted it gained from the appeal decisions, and thus the question of whether or not these appeal decisions justified the hybrid approach was a question which went to the heart of the decision.

30. On the basis that the question of whether the VIP and Clacton decisions amounted to a justification for adopting the hybrid approach was a principal controversial issue in the case, the claimant complains that the Inspector's reasoning did not address the specific points raised by the claimant for contending that paragraph 48 of the Framework did not justify distinguishing those appeal decisions from the present case. In the claimant's closing submissions, as set out above, the claimant had contended that paragraph 48 of the Framework did nothing more or less than reflect the basic public law proposition that weight attributable to an emerging plan as a material consideration increases as it comes closer to adoption. The second defendant had accepted that the imminent application of the local housing needs figure derived from the standard methodology was a material consideration, which again it was contended replicated the approach to an emerging local plan, and rendered the second defendant's reliance on paragraph 48 of the Framework as a distinguishing feature misplaced. The claimant had also relied upon Mr Pycroft accepting in cross-examination that the considerations set out in paragraph 48 in relation to the weight to be attached to emerging local plan policies reflected the degree of certainty and imminence in relation to its adoption further reinforcing the claimant's arguments. None of these matters, it is submitted, are addressed in the reasons which the Inspector gives for her conclusions on the issue. The failure to provide reasons in this connection amounts to an error of law and it follows than the claimant has been substantially prejudiced by this failure.

31. By contrast with these submissions, the first and second defendants submit that the question of whether or not the appeal decisions could be distinguished was not a principal controversial issue for the Inspector to engage with. The principal controversial issue in the present case was the question of whether or not the claimant could demonstrate a five-year housing land supply. Once that is understood as being the principal controversial issue, then it is submitted it is clear that the reasons were more than ample to deal with that question.

32. In any event, the first and second defendant submit that the reasons provided by the Inspector dealt with the claimant's contention that the hybrid approach should be adopted, and explained that the role of paragraph 48 of the Framework and emerging development plan policies made a difference or distinction between the VIP and Clacton decisions and the case which she was considering. The first defendant draws particular attention to paragraphs 32 to 34, and paragraph 34 in particular, which deal

both with the reasons for rejecting the submission that paragraph 48 provides no basis for distinguishing the VIP and the Clacton decisions, and also the submission made by the claimant in relation to certainty and imminence. Paragraph 33 explains that there is no direction in the Framework suggesting that as the use of a local housing needs figure derived from the standard methodology approaches there should be a different approach, taken in the same way as paragraph 48 addresses the issues relating to emerging local plans. Paragraph 34 of the decision explains following on from this that paragraph 73 presents a clear binary approach depending on whether or not the local plan is five years old. The Inspector's reasons record that the standard methodology was introduced in order to be simpler, quicker and more transparent, and that the adoption of a hybrid approach would undermine that efficiency and transparency. Both the first and second defendants emphasise that these are the reasons for the Inspector's decision, and that they address the points raised by the claimant.

33. Having reflected on the submissions of all parties, I remain to be convinced that the answer to the claimant's reasons challenge is to be found in the definition of whether the principle controversial issue in the case was simply whether or not the claimant could demonstrate a five-year housing land supply. As the approach taken by the Court of Appeal in the case of *Horada* encourages, it is important not to relegate to mere incidental material considerations, about which no reasons would be required, matters which were important, if not critical, to the basis of the decision under consideration.

34. At an even higher level of generality the second defendant drew attention to paragraph 5 of the decision letter in the Swanland appeal, and the identification of the "main issue" as simply "whether the site is suitable for development, in the light of the locational policies in the development plan and other material considerations, including the housing land supply position." Again, I am unconvinced that the resolution of this case can be arrived at relying upon this definition of the main issue for two reasons. Firstly, it is in my judgment important not to zoom out so far from the issues presented to the Inspector that the duty to give reasons becomes purposeless, and fails to address the objectives of the provision of reasons set out in paragraph 36 of Lord Brown's speech in the *South Bucks* case. Secondly, the reality is that the Inspector did give reasons in relation to both paragraph 48 of the Framework and the VIP and Clacton decisions. Thus the question which arises is whether or not those reasons were fit for purpose, in the context of an understanding of the decision which the Inspector reached relating to the principal important controversial issues which the parties debated over the course of the inquiry addressing whether or not a five-year housing land supply could be demonstrated by the claimant.

35. I am in no doubt that the reasons which were provided were legally adequate. Two important points of principal need to be borne in mind. Firstly, the Inspector's decision must be read as a whole as well as in a straightforward manner. Secondly, the Inspector is giving the reasons for her decision, and it is in the context of understanding why the Inspector has decided as she has that the duty to give reasons arises. If the reasons are adequate to explain the Inspector's decision it is not necessary for her to give reasons for her reasons. A party to the decision cannot elevate the importance of an argument they make beyond that which the decision-maker considers its role should be simply by affording it exaggerated prominence in the presentation of their case. In most cases, its significance is to be gauged by its importance to the decision reached in the case, rather necessarily the importance ascribed it by a party to the case.

36. Against the backdrop of these principles the following observations arise. Paragraphs 30 and 31 of the decision letter provided an adequate and accurate summary of the VIP and the Clacton decisions, and the basis of the approach which was taken within them. In paragraph 32 of the decision letter the Inspector points out that her view is that the decisions are "materially different to the appeals now before me". She explains the reason for that in terms of emerging housing figures and the engagement of paragraph 48 of the Framework setting out criteria for determining what weight to give to housing requirements in emerging plans in accordance with various factors. These reasons are clear, and immediately explain the factual and policy distinction between the VIP and Clacton decisions and the appeal at hand, in which a different point is raised on the basis of footnote 37 of the Framework.

37. In paragraph 33 the Inspector notes the claimant's argument that paragraph 48 is not a basis for distinguishing the present circumstances, but rejects this on the basis that there is no direction in the Framework to treat the circumstances in the current appeals, where there is the imminent prospect of the standard methodology being deployed, in the same way as there is in relation to emerging local plans to which paragraph 48 applies. This reasoning is clear and reinforced by the complimentary paragraph 34, in which the Inspector points out the Framework's adoption of a clear period of five years for both housing land supply and also local plan preparation and review, which is reflected, as she observes, in the binary choice between the use of the housing requirement in adopted policies, or alternatively the local housing need generated by the standard methodology where those strategic policies are more than five years old. As her added emphasis to the words "either" and "or" notes, the calculation requires use of either a local plan housing requirement or (when the circumstances come within footnote 37) the local housing need figure, but not both. She observes that this "simpler, quicker and more transparent" approach would be undermined by the adoption of a hybrid approach. Thus, the Inspector decided not to depart from paragraph 73 of the Framework.

38. The claimant submitted during the course of argument that paragraph 34 of the decision letter was not to be seen as part of the reasoning relating to the differentiation of the VIP and Clacton decisions, but merely a restatement of the policy. In my judgment that clearly underplays the role of paragraph 34 in the Inspector's overall reasoning. It needs to be read alongside paragraph 33 of the decision, as set out above, as explaining why there is no warrant for concluding that the imminent arrival of a sound housing requirement in an emerging local plan is to be equated to the engagement of footnote 37 in the near future. The provisions of paragraph 73 present a binary choice, and were introduced to create a simple, quick and transparent method of determining whether a five-year housing land supply has been demonstrated at the point in time at which a decision is being made.

39. These reasons in my judgment clearly explain why the Inspector reached the conclusion that she did that there was no basis to depart from paragraph 73 of the Framework. To explain the decision which she made it was not necessary for the Inspector to address each and every argument which the claimant raised in the course of its evidence and submissions. The reasons provided in paragraphs 33 and 34 explain why the Inspector did not propose to depart from paragraph 73 of the Framework in order to evaluate the question of the five-year housing land supply. I do not consider that there is any substance in the complaints raised by the claimant under ground 1.

40. I turn to ground 2. In support of ground 2 the claimant submits that even were the Inspector's reasons adequate they amounted to a misinterpretation of paragraph 48 of the Framework. The claimant contends that when the Inspector observed in paragraph 33 of the decision letter that "there is no such direction in the Framework, or indeed in the PPG relating to the circumstances presented as part of these appeals in the way that there is for emerging local plans in paragraph 48" that was a misinterpretation, since paragraph 48 simply records a basic public law position in respect of emerging policies. The claimant submits that since the imminent introduction of the local housing needs figure generated by the standard methodology was a material consideration, it followed that paragraph 48 of the Framework provided no basis for distinguishing the VIP or the Clacton decisions, because the imminent introduction of the local housing need figure was a material consideration in the appeal which operated in substance in the same way as the imminent adoption of a local plan housing requirement in the VIP and the Clacton decisions. Thus, the Inspector misunderstood and misinterpreted the effect of paragraph 48, or reached an irrational conclusion on the basis that there was no sensible basis to distinguish between the two material considerations.

41. The first defendant responds to this submission by observing, firstly, that in paragraph 32 it is clear that the Inspector has fully understood paragraph 48 of the Framework, and there is no sensible basis upon which it could be concluded that she misinterpreted that paragraph. Furthermore, she clearly understood, and it appeared it was undisputed, that paragraph 48 was not engaged in the circumstances of these appeals. So far as the contention that the Inspector reached an irrational conclusion on the basis that there was no difference between the imminent adoption of a local plan housing requirement which had been found sound, and the imminent use of a local housing need figure derived from the standard method, the first defendant submits that there are clear and obvious differences between those two figures, which is why the Inspector's conclusions were entirely rational and open to her.

42. Firstly, as is obvious from paragraphs 48 and 73 of the Framework, there is no basis to assume that the imminent use of a local housing need figure as a result of the approach of the fifth anniversary of the adoption of strategic policies is to be equated with the housing requirement in an emerging plan which is soon to be adopted having been found sound following independent scrutiny. The two housing requirement figures are derived from different sources and treated differently in national policy. In particular the first defendant points out that the housing requirements in an emerging local plan which has been found sound will arise from both calculations of need and also the consideration of local constraints, leading to the satisfaction of the test of the soundness in relation to the figure. This is quite different from the calculation of the local housing need using set inputs and a universally applicable formula provided for derivation of the standard method requirement. The second defendant makes similar submissions, and also observations in relation to the claimant's contentions about the relationship between planning policy and public law principles that, whilst they are of interest, they do not arise in the present case.

43. I am in no doubt that the first and second defendants' submissions in relation to ground 2 are clearly correct. The Inspector is a specialist tribunal and therefore can be assumed to have a familiarity with, in particular, the Framework which is a compendium of policies that she will be working with on a daily basis. Paragraph 48 of the Framework is clear and unambiguous, and I accept the submission that in paragraph 32 of the

decision letter the Inspector demonstrates that she has clearly understood the policy which it contains. Whilst the claimant submits that the Framework cannot render a material consideration of something which would not otherwise be a material consideration, and that paragraph 48 does not make an emerging plan a material consideration as it would be one in any event, none of this takes the claimant's arguments any further forward.

44. It was neither irrational, nor a misunderstanding of paragraph 48 of the Framework for the Inspector to treat as materially different the situation where paragraph 48 of the Framework was engaged in the light of an emerging sound plan providing a new housing requirement, and the situation where imminent use of a local housing need figure as a result of the approach of the fifth anniversary of the adoption of a local plan was about to occur. Whilst both these possibilities are imminent and certain, that does not mean that they are to be treated as equivalent in planning policy terms in the absence of such policy being specified. Apart from the possibility of them being imminent and certain they are in their nature two quite different housing requirements. The housing requirement from the emerging local plan is one which has been planned and prepared for taking account of all of the requirements necessary to demonstrate to independent scrutiny that the figure is sound. The local housing needs figure produced by the standard methodology is produced through the application of a set calculation. As is clearly identified in the Inspector's reasoning, they both have different roles to play when viewed through the prism of national planning policy. I am unable to accept either that the Inspector misinterpreted paragraph 48 of the Framework, or alternatively reached a conclusion which was irrational.

45. For all of the reasons set out above in my judgment both grounds upon which these claims have been brought must be rejected, and the claims dismissed.