Neutral Citation Number: [2024] EWHC 2617 (Admin)

Case No: AC-2023-BHM-000267

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre,
Priory Courts, 33 Bull Street,
Birmingham, B4 6DS

Date: 17/10/2024

Before :

MR JUSTICE MOULD

- -

Between :

CORA HOMES LIMITED	**Claimant**
- and -	
SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	
- and –	
WEST NORTHAMPTONSHIRE COUNCIL	**Defendants**

- -
- -

KILLIAN GARVEY (instructed by **Shakespeare Martineau LLP**) for the **Claimant**
CHARLES STREETEN (instructed by **Government Legal Department**) for the **First Defendant**
The **Second Defendant** did not appear and was not represented.

Hearing date: 3rd July 2024

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Approved Judgment

This judgment was handed down remotely at 12pm on Thursday 17th October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

MR JUSTICE MOULD :

Introduction

1. This is an application under section 288 of the Town and Country Planning Act 1990 **['the 1990 Act']** challenging the validity of the decision of an inspector appointed by the First Defendant to dismiss the Claimant's appeal under section 78 of the 1990 Act. The decision under challenge was made by letter dated 10 November 2023.

2. The Claimant's appeal was from the refusal by the Second Defendant of an application for outline planning permission for the development **['the proposed development']** of up to 45 dwellings, including 40% affordable dwellings, infrastructure and open space on land east of Brington Rd, Flore, Northamptonshire **['the appeal site']**. All matters other than access were reserved. The inspector held a hearing into the appeal on 12 October 2023 and visited the appeal site on the same day.

3. The inspector's overall conclusion was that the proposed development would result in a high level of harm by virtue of the appeal site's location and would cause harm to the character and appearance of the surrounding area. He concluded that these harmful effects outweighed the benefits of the proposed development. The scheme would conflict with the development plan taken as a whole. There were no material considerations to indicate a decision made other than in accordance with the development plan. On that basis he concluded that the appeal should be dismissed.

4. By these proceedings the Claimant applied to challenge the validity of the inspector's decision on six grounds. On 15 March 2024 Eyre J granted permission on grounds 1, 2, 4 and 5 only. On 20 May 2024 following an oral hearing HHJ Worster (sitting as a judge of the High Court) dismissed the Claimant's application to proceed also on ground 3.

5. In summary, the grounds of challenge are as follows.

   (1) Ground 1 – The Claimant contends that the inspector misinterpreted policy F2 of the Flore Neighbourhood Plan **['the Neighbourhood Plan']** and failed to give adequate reasons for his conclusion that the proposed development would not comply with that policy, policies R1 and S1 of the West Northamptonshire Joint Core Strategy **['the Core Strategy']** and policies SP1 and RA2 of the Daventry Settlements and Countryside Local Plan **['the Local Plan']**.

   (2) Ground 2 – The Claimant contends that the inspector misinterpreted policy F4 of the Neighbourhood Plan and was wrong to regard that policy as relevant to the proposed development. His reasons for concluding that policy F4 was a relevant policy to consider in his determination of the planning appeal were inadequate.

   (3) Ground 4 – The Claimant contends that the inspector acted unfairly in finding that the appeal site would not provide future occupiers with ready access to the services and facilities they would require, without having first given the Claimant a proper opportunity to address that question at the hearing. The Claimant argues

that the Second Defendant had not at any time raised that objection to the proposed development but had agreed in a statement of common ground dated 23 May 2023 **['the SOCG']** that the appeal site was a sustainable location for growth.

(4) Ground 5 – The Claimant contends that the inspector failed to have proper regard to the Claimant's evidence which demonstrated that the acknowledged local need for additional housing was not able to be met within the existing settlement of Flore. Nor did the inspector give adequate reasons for rejecting that evidence.

The inspector's decision

6. In the SOCG the Claimant and the Second Defendant agreed that the statutory development plan comprised of the Core Strategy, the Local Plan and the Neighbourhood Plan. The Core Strategy covers the period 2011-2029 and was adopted in December 2014. The Local Plan covers the period 2011-2029 and was adopted in February 2020. The Neighbourhood Plan covers the period 2014-2029 and was made in September 2016. The appeal site is situated outside but adjacent to the settlement boundary of Flore as delineated on the policies map.

7. In paragraph 7 of his decision letter **['DL7']** the inspector said that there were two main issues in the planning appeal: firstly, the effect of the proposed development upon the character and appearance of the surrounding area; and secondly, the suitability of the appeal site as a location for the proposed development, with particular reference to the requirements of the development plan.

8. DL8 to DL30 set out the inspector's detailed analysis of the first main issue. In DL29 the inspector found that the proposed development would have a moderate adverse effect on the character and appearance of the surrounding area. In DL30 he concluded that as a result, the proposed development would be in conflict with those policies of the Core Strategy, the Local Plan and the Neighbourhood Plan which seek to ensure that development achieves the highest standards of sustainable design, would not lead to the loss of an area which contributes to public amenity, and to maintain and protect the distinctive character and quality of landscape, the form, character and setting of the village of Flore and the intrinsic character of the surrounding countryside.

9. These conclusions are not challenged by the Claimant in these proceedings.

10. DL31 to DL46 set out the inspector's assessment of the suitability of the appeal site for the proposed development having regard to the planning policy framework adopted in the development.

11. In DL31, the inspector said that he had been asked to consider a number of policies in the Core Strategy, the Local Plan and the Neighbourhood Plan which provide a strategy for the location of new development in the area. In DL32 to DL36 he provided a summary of those policies, which included policies R1 and S1 of the Core Strategy, policies SP1 and RA2 of the Local Plan and policies F2 and F4 of the Neighbourhood Plan. In DL36 the inspector recorded that there was an issue as to whether policy F4 was applicable to the proposed development. For the following reasons, the inspector concluded that it was –

> *"36. There is some debate as to whether Neighbourhood Plan Policy F4 is applicable to the appeal scheme. It is common ground that the appeal proposal does not represent a rural exception site. However, the proposed development provides affordable housing, which would be secured by a legal agreement. Policy F4 is clear that market housing can be delivered on affordable housing sites. In this case, the proposed market housing would support the delivery of the affordable housing. In consequence, I believe that Policy F4 is applicable to this scheme".*

12. In DL37 the inspector made the following findings –

> *"The proposed development would be located outside of the defined settlement boundaries. This means that the proposed development would conflict with several of the previously described planning policies. Therefore, it is necessary to establish whether any harm would arise from these breaches of planning policy".*

13. In DL38 to DL40, the inspector considered the degree to which future residents of the proposed development would have ready access to local services and facilities –

> *"38. The evidence before me indicates that the purpose of directing development to a defined hierarchy of settlements is to ensure that the occupiers of a new development have sufficient access to the services and facilities they are likely to require on a regular basis. In addition, it is to ensure that developments are accessible, such as by public transport.*
>
> *39. As the development would be located outside of settlement boundaries, residents would not have ready access to the services they would require. Although the appeal site is near to Flore, the level of facilities on offer in the village are commensurate with the size of the settlement.*
>
> *40. In consequence, the occupiers of the proposed development would need to travel to other settlements in order to meet their day-to-day needs. There is a likelihood that a notable number of these journeys would need to be by private cars meaning that the location of the development would generate harm. This would be in addition to the harm to the character and appearance of the surrounding area, including the rural setting of Flore as previously identified".*

14. In DL41 and DL42, the inspector found that the number of dwellings likely to come forward in the proposed development would result in a scale of development exceeding that which was contemplated under policy F4 of the Neighbourhood Plan. That would result in further harm. His reasons were as follows –

> *"41. Furthermore, harm would arise from the likely quantum of development as a relatively large number of people would occupy the development. Neighbourhood Plan Policy F4 seeks to ensure that developments outside of the village boundaries feature no more than 10 dwellings. Even if this part of the policy should be applied to the affordable housing element of the development only, I have no reason to believe that the final scale of the development would not be akin to the maximum parameters included within the appeal scheme.*

> *42. Given the requirements of the submitted legal agreement, it is likely that the affordable housing element of the proposal would exceed 10 dwellings. This represents a breach of Policy F4".*

15. In DL43, the inspector said that, although the proposed development had been designed by the Claimant to respond to local housing need in accordance with policy F2 of the Neighbourhood Plan, it was in breach of that policy since it also required compliance with policy R1 of the Core Strategy and policy SP1 of the Local Plan –

> *"43. At the hearing, it was established that the development is designed to respond to a local need. This is referenced in Policy F2 of the Neighbourhood Plan. Nevertheless, this policy would still be breached given that it also requires compliance with Policy R1 of the [Core Strategy]. In addition, although Policy SP1 of the [Local Plan] supports housing to meet a local need, it is also clear that developments should maintain the character of an area. For the preceding reasons, this policy has been breached and harm would emanate".*

16. In DL44 to DL46 the inspector drew together his conclusions on the second main issue as follows –

> *"44. It has been suggested that there is an inconsistency between Policy F2 of the Neighbourhood Plan and the [Core Strategy], given that Policy F2 references development outside of settlement boundaries. It has been suggested that precedence should be given to Policy F2.*
>
> *45. Even if I were to agree with this approach, I would find that the development would conflict with the spatial strategy as outlined in the [Core Strategy] and, the more recent, Neighbourhood Plan Policy F4 and the Local Plan. Accordingly, the development would conflict with the development plan, taken as a whole. This would result in significant harm.*
>
> *46. I conclude that the proposed development would conflict with Policies S1 and R1 of the [Core Strategy], Policies SP1 and RA2 of the Local Plan, and Policies F2 and F4 of the Neighbourhood Plan".*

17. In DL47 to DL62 the inspector considered other matters and drew the overall planning balance.

18. In DL49 he said that planning decisions should be made in accordance with the requirements of the development plan, unless material considerations indicate otherwise. In this case, he found that the proposed development would generate significant harm arising from the breach of the spatial strategy and moderate harm to the character and appearance of the area.

19. In DL50 to DL53 the inspector found that the proposed development would bring a number of benefits. It would provide affordable housing, to be secured through planning obligations. Such housing would contribute to the delivery of a range of housing types to meet community needs. The evidence indicated that there was a local need for affordable housing. This benefit therefore attracted significant weight. Moreover, although the Second Defendant was able to demonstrate a five-year supply of housing land, there was a local need for new housing in Flore. The proposed

development would contribute to meeting that local need and conditions could be imposed to ensure that the mix and size of new dwellings did so effectively.

20. In DL54 to DL57, the inspector said –

> *"54. However, the benefits arising from this are tempered by reason of the fact that the development would be located outside of settlement boundaries and would have an adverse effect upon the character and appearance of the surrounding area. It has also not been demonstrated that it would not be possible to deliver all, or a portion of, the housing needed inside the settlement boundaries.*
>
> *55. It has also not been demonstrated that, if the housing could not be provided in the settlement, such as due to insufficient available plots, it could not be provided in smaller clusters outside of the settlement that may have a lesser adverse effect.*
>
> *56. The appellant has provided a legal agreement, which would bind the first occupation of the market housing to people with a local connection. Notwithstanding this, once first occupied, the market housing could be made available for occupation by any potential resident. This potentially means that the market housing could be occupied by people without a local connection.*
>
> *57. These factors reduced the weight that can be given to the delivery of the market housing. In result, this can be given a moderate amount of weight".*

21. The inspector's overall conclusions on the planning balance are given in DL61 and DL62 –

> *"61. The proposed development would conflict with development plan policies that seek to ensure that proposed developments maintain the character and appearance of the surrounding area. In addition, the proposal would conflict with the development plan given that the scheme would be outside of a settlement boundary. Therefore, having regard to the extent and nature of the harmful impacts the proposal would have upon the character of the area and the development plan and national policy conflicts are matters to which I cumulatively attribute a high level of weight.*
>
> *62. Overall, the high level of harm arising from the unsuitable nature of the appeal site's location and the harm to the character and appearance of the surrounding area are such they outweigh the benefits of the proposal. Accordingly, on this occasion other considerations do not indicate the decision should be taken otherwise than in accordance with the development plan".*

22. In DL63, the inspector concluded that the Claimant's appeal against the refusal of planning permission should be dismissed.

Legal Framework

23. In *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 at [6], Lindblom LJ set out seven principles which guide the court in determining a challenge to a planning appeal decision by an

inspector brought under section 288 of the 1990 Act. Five of those principles bear upon the issues raised in the present claim –

(1) Such decisions are to be construed in a reasonably flexible way. Decision letters are written principally for the parties who know what the issues between them are and what evidence and argument has been deployed on those issues. Inspectors need not rehearse every argument or cover every point raised before them.

(2) The reasons for the appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues. The inspector's reasoning must not give rise to a substantial doubt as to whether he or she has gone wrong in law, for example by misunderstanding relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need only refer to the main issues in the dispute, not to every material consideration.

(3) The weight to be attached to any material consideration and all matters of planning judgment are for the inspector and not for the court to determine. An application under section 288 of the 1990 Act does not provide an opportunity for the court to review the planning merits of the proposed development.

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of a planning policy is ultimately a matter of law for the court. The application of relevant policy is for the inspector. Statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration: see *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983 at [17] to [22].

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he or she thought the important planning issues were and decide whether it appears from the way that he or she dealt with them that the inspector must have misunderstood the policy in question.

Ground 1

The issues

24. The issues raised by ground 1 are, in essence, whether the inspector misinterpreted certain policies in the development plan or, alternatively, failed to explain intelligibly or adequately why he found the proposed development not to comply with those policies.

25. The policies upon which Mr Killian Garvey concentrated his submissions on behalf of the Claimant were policies S1 and R1 of the Core Strategy, policies SP1 and RA2 of the Local Plan and, in particular, policy F2 of the Neighbourhood Plan. I need to set out the relevant words of these policies in order to address Mr Garvey's submissions.

I also set out policy F4 of the Neighbourhood Plan, to which I shall return when I come to ground 2, which is chiefly concerned with the inspector's consideration of that particular policy.

Development plan policies

The Core Strategy

26. Policy S1 of the Core Strategy is concerned with the distribution of development in west and south Northamptonshire, including the towns and rural areas, during the period of the plan. The policy states that development and economic activity will primarily be concentrated at Northampton and, to a lesser extent, at Daventry as a sub-regional centre. The development needs of the rural service centres of Brackley and Towcester and the rural areas will be provided for. The policy then states –

> *"D) New development in the rural areas will be limited with the emphasis being on:*
>
> *1) enhancing and maintaining the distinctive character and vitality of rural communities;*
>
> *2) shortening journeys and facilitating access to jobs and services;*
>
> *3) strengthening rural enterprise and linkages between settlements and their hinterlands; and*
>
> *4) respecting the quality of tranquillity".*

27. Policy R1 of the Core Strategy sets out the spatial strategy for the rural areas of Daventry district and west and south Northamptonshire. Within those areas, during the plan period there is said to be an identified overall need for 4,720 dwellings beyond the towns of Daventry, Towcester and Brackley. The policy states that the distribution of that housing requirement will be the subject of local plans to be prepared by the local planning authorities, according to the local need of each village and their role within the hierarchy. The policy establishes a hierarchy of rural settlements comprising primary service villages, secondary service villages, other villages and small settlements or Hamlets. The policy then lists a series of factors that will inform the hierarchy of rural settlements established in local plans. Those factors include (amongst other considerations) –

> (i) the presence of services and facilities to meet the day-to-day needs of residents, including those from surrounding settlements;
>
> (ii) the role, scale and character of the settlement;
>
> (iii) the capacity of settlements to accommodate development in terms of physical, environmental, infrastructure and other constraints;
>
> (iv) the availability of deliverable sites including previously developed land in sustainable locations;
>
> (v) enabling local communities to identify and meet their local needs.

28. Policy R1 states the following requirements of residential development in rural areas –

> *"Residential development in rural areas will be required to:*
>
> *A) provide for an appropriate mix of dwelling types and sizes, including affordable housing to meet the needs of all sectors of the community, including the elderly and vulnerable; and*
>
> *B) not affect open land which is of particular significance to the form and character of the village; and*
>
> *C) preserve and enhance historic buildings and areas of historic or environmental importance including those identified in conservation area appraisals and village design statements; and*
>
> *D) protect the amenity of existing residents; and*
>
> *E) be of an appropriate scale to the existing settlement; and*
>
> *F) promote sustainable development that equally addresses economic social and environmental issues; and*
>
> *G) be within the existing confines of the village".*

29. R1 then states the following approach to development outside the existing confines of the village –

> *"Development outside the existing confines will be permitted where it involves the re-use of buildings or, in exceptional circumstances, where it will enhance or maintain the vitality of rural communities or would contribute towards and improve the local economy".*

The Local Plan

30. Policy SP1 of the Local Plan provides that plan's spatial strategy for Daventry district. The policy states that in order to ensure a sustainable pattern of development to meet the overall spatial strategy of the core strategy, sustainable development in the district will be guided by a number of stated spatial principles. Those principles include protecting and enhancing existing services and facilities within the district's villages through allowing development to meet their identified housing needs; ensuring that development promotes healthy and active lifestyles through encouraging the use of sustainable transport modes; and protecting the open countryside.

31. Policy RA2 of the Local Plan both identifies and provides policy guidance for development at secondary service villages. Flore is identified as a secondary service village. The policy states that development at a secondary service village will be located within the defined confines of the village. The policy continues-

> *"B. Development outside the defined confines will be acceptable only in the following circumstances:*

i. Where the housing land supply is less than five years…; or

ii. Where the development provided would clearly meet an identified local need, for housing this would be need identified through an up-to-date Housing Needs Survey or Housing Needs Assessment where it is demonstrated that this could not be otherwise met within the defined village confines; or

iii. Where it is demonstrated that a scheme is required to support an essential local service that may be under threat, especially a primary school or primary health service; or

iv. Economic development that will enhance or maintain the vitality or sustainability of the Secondary Service Village or would contribute towards and improve the local economy.

C. To ensure that the role of these villages is maintained, all development at the Secondary Service Villages, within or outside the confines shall also meet the following criteria:

i. Be of an appropriate scale relative to its role as a secondary service village; and

ii. Not result in the loss of existing services and facilities important to the sustainability of the settlement and its role as a secondary service village; and

iii. Protect the form, character and setting of the village and areas of historical environmental importance including those identified in conservation area appraisals and village design statements; and

iv. Protect the integrity of garden or other open land that makes an important contribution to the form, character and setting of the settlement; and

v. Be accessible by walking and cycling to the majority of services and facilities within the settlement; and

vi. Protect the amenity of existing residents.

D. Development that is provided for in a made neighbourhood development plan will also be supported".

The Neighbourhood Plan

32. Policy F2 of the Neighbourhood Plan is concerned with the scale and type of new residential development in the neighbourhood of Flore. The first part of the policy is directed at development within the defined development area of the village. It states that small scale residential development not exceeding 10 dwellings will be supported where the scheme will not have a detrimental impact on the character of the village, appropriate access can be achieved and the scheme includes local open space. Of more direct relevance to the proposed development is the second part of policy F2 which is in the following terms –

> *"**F2.2** In line with West Northamptonshire Joint Core Strategy Policy R1 – Spatial strategy for the rural areas, proposals for new housing outside the village development area (with the exception of the two cross hatched sites identified on the Proposals Map and on Map 2 as DA/2014/0454 and DA/2013/0703 where housing development will be supported), will only be supported in the following circumstances:*
>
> *A. Residential development essential for the purposes of agriculture.*
>
> *B. Residential development which meets an identified local need.*
>
> *C. Development provides for the appropriate conversion of redundant buildings to dwellings…*
>
> *D. The rebuilding or replacement of existing dwellings…".*

33. Policy F4 of the Neighbourhood Plan is headed *"Affordable housing and rural exception sites"*. It is in two parts –

> *"**F4.1** Proposals for small-scale affordable housing developments outside the Flore settlement boundary but adjacent to and connected to the existing village will be supported subject to the following criteria.*
>
> *1. They comprise no more than 10 dwellings.*
>
> *2. The proposals contribute towards meeting the needs of people with a local connection for shared ownership, affordable, and social rented accommodation.*
>
> *3. The development is subject to an agreement which will ensure that it remains affordable housing in perpetuity for people with a local connection.*
>
> *4. The development is appropriate, in terms of its scale, character and location, with the village, and adheres to the design criteria in this plan.*
>
> ***F4.2** Open market housing must only be included in a development where it meets a local need and can be demonstrated to be essential to ensure the delivery of affordable housing as part of the same development".*

The Claimant's submissions

34. Mr Garvey submitted that the inspector's conclusion in DL46 that the proposed development would conflict with each of these development plan policies lacked an adequate or intelligible explanation in the preceding paragraphs of the decision letter. Such reasons as the inspector had given for that conclusion showed that he had misinterpreted those policies, particularly policy F2 of the Neighbourhood Plan, which had been central to the Claimant's case for the grant of planning permission for the proposed development.

35. Mr Garvey relied upon the reasoning in DL43 as exposing the inspector's misinterpretation of policy F2. Properly understood, it was submitted, policy F2 provided clear support for housing development outside the defined village development area at Flore, provided that it would meet a local housing need. In DL51

and DL52, the inspector found that there was a local need for new housing in the village, including a need for affordable housing. In DL43 the inspector acknowledged that the proposed development had been brought forward in response to that local need for housing.

36. The proposed development was clearly within one of the categories of new housing development identified in policy F2.2, namely *"B. Residential development which meets an identified local need"*, which enjoys clear and unequivocal policy support under Policy F2 of the Neighbourhood Plan. However, the inspector had read that support given by policy F2 to the proposed development as being contingent on compliance with policy R1 of the Core Strategy. Not only was that to misread policy F2 of the Neighbourhood Plan, but also the inspector had failed adequately to explain why, as he concluded in DL46, the proposed development was in conflict with policies R1 and S1 of the Core Strategy and SP1 and RA2 of the Local Plan.

Conclusions

37. In addressing the Claimant's submissions, it is appropriate to begin with the inspector's own summary of the policies in the development plan to which I have referred above.

38. In DL31, the inspector said that he had been directed towards several policies in the Core Strategy, the Local Plan and the Neighbourhood Plan *"that provide a strategy for the location of new development in the area"*. He went on in DL32 to DL35 to provide a summary of the salient provisions of each of policies S1 and R1 of the Core Strategy, policies SP1 and RA2 of the Local Plan and policies F2 and F4 of the Neighbourhood Plan. He said this –

> *"32. Relevant policies include Policy S1 of the [Core Strategy]. Amongst other matters, this requires that development be provided in a hierarchy of settlements and that new developments in rural areas are limited with the emphasis on meeting defined criteria.*
>
> *33. Policy R1 of the [Core Strategy] states that residential development in rural areas will be required to be within the existing confines of the village; be of an appropriate scale to the existing settlement; and not affect open land which is of particular significance to the form and character of the village.*
>
> *34. Policy F2 of the Neighbourhood Plan states that, in line with Policy R1 of the [Core Strategy], development outside of villages will only be supported, which meets an identified local need. Neighbourhood Plan Policy F4 states that affordable housing and rural exception site developments outside of the settlement boundaries should comprise no more than 10 dwellings.*
>
> *35. Local Plan Policy SP1 states that, to ensure a sustainable pattern of development, proposals will be guided by defined, spatial principles. Local Plan Policy RA2 states that development outside settlement boundaries will be acceptable, where it would clearly meet an identified local need; and would protect the form, character and setting of the village".*

39. I can find nothing in this reasoning to support the contention that the inspector misunderstood those development plan policies which are the subject matter of ground 1 of this claim. On the contrary, in DL32 to DL35 the inspector has succinctly summarised the strategy in those policies for the location of new housing development in the rural areas covered by the development plan. More particularly, in those paragraphs the inspector gives an accurate summary of the policies of the development plan which relate to proposals for housing development in locations outside settlement boundaries, as in the present case where the appeal site is located outside the defined confines of Flore.

40. It is fair to say, however, that Mr Garvey's submissions on ground 1 were not really directed at the inspector's reasoning in DL32 to DL35. His primary contention was that the inspector's reasoning in DL43, that policy F2 of the Neighbourhood Plan *"also requires compliance with Policy R1 of the [Core Strategy]"*, was a misinterpretation of paragraph F2.2 of that policy. Mr Garvey submitted that the inspector had misread the introductory words of paragraph F2.2 - *"In line with… Policy R1"* – as requiring compliance with policy R1 of the Core Strategy. He argued that those words were not to be understood as limiting the support given by policy F2 to housing development outside the confines of the village only to schemes which demonstrate the exceptional circumstances identified in policy R1 of the Core Strategy. The true position was that Policy F2 applies policy R1 to the neighbourhood context of Flore by extending the policy support given to housing development outside the defined village confines to each of the four categories stated in paragraph F2.2 (A) to (D). As the proposed development was acknowledged to meet an identified local need, it was in accordance with the extended policy support given by paragraph F2.2(B) of policy F2 of the Neighbourhood Plan.

41. I do not accept this analysis of policy F2. In my judgment, the inspector was clearly right to read the introductory words of paragraph F2.2 as indicating that the support given by policy F2 to four categories of residential development outside the village confines of Flore was also dependent upon compliance with policy R1 of the Core Strategy.

42. It is obvious why policy F2 should be understood in that way. Policy R1 requires residential developments in rural areas to achieve the policy objectives stated in paragraphs (A) to (G) of the policy. One of those policy objectives is that such residential development should ordinarily take place on sites located within the existing confines of the village: see R1 (G). Policy R1 then identifies certain exceptional circumstances in which development, including for housing, will nevertheless be permitted outside the existing confines of a village. Such development, however, is not thereby freed from fulfilling the policy objectives set out in R1(A) to (F). On the contrary, the requirements stated in paragraphs R1(A) to (F) apply generally to residential developments in rural areas, whether they are proposed on sites within the village confines or, exceptionally, beyond those confines.

43. Returning to policy F2 of the Neighbourhood Plan, it may be correct to say that paragraph F2.2 extends or clarifies the categories of cases in which residential development at Flore will be supported notwithstanding that it is to be located on land outside the defined development area of the village. But the Claimant is wrong to read policy F2 as, in effect, overriding the need for any such development still to fulfil the requirements stated in paragraphs (A) to (F) of policy R1 of the Core Strategy. That is

plainly not the intended meaning and effect of the words *"In line with"* policy R1. Those words mean that the support offered by paragraph F2.2 is to be understood as being consistent with and subject to the policy requirements for residential developments in rural areas stated in paragraphs (A) to (F) of R1. Those policy requirements are not displaced by policy F2 of the Neighbourhood Plan. Instead, they set the context within which the neighbourhood policy stated in paragraph F2.2 of policy F2 is intended to be applied.

44. The inspector's approach in DL43 was accordingly legally sound. He was right to proceed on the basis that in order to gain the support of policy F2, it was not enough for the Claimant to show that the proposed development fell within paragraph F2.2(B). It was also necessary to show that the proposed development fulfilled those requirements of paragraphs (A) to (F) of policy R1 which were relevant to it. On his unchallenged conclusions in DL29 on the first main issue in the planning appeal, it had not been shown that it did so. Instead, the proposed development had been found to have a harmful impact on the character and appearance of the village and the surrounding area.

45. In the light of these conclusions, I do not accept that the inspector's reasoning in DL43 falls below the legal standard of sufficiency. His reasoning is both intelligible and adequate to explain why the proposed development fails to fulfil the requirements which policy R1 of the Core Strategy demands of residential development in rural areas; in particular, in relation to the policy requirements that he identifies in DL33. He has explained why, although it responds to local housing need, the proposed development does not accord with policy F2 of the Neighbourhood Plan, when that policy is properly understood and applied.

46. Nor is there any force, in my view, in the Claimant's contention that the inspector has failed to provide legally sufficient reasons for concluding that the proposed development is in conflict with policy S1 of the Core Strategy and policies SP1 and RA1 of the Local Plan.

47. As the inspector correctly said in DL32, policy S1 places emphasis on development in rural areas meeting defined criteria, among which is maintaining the distinctive character of rural communities, shortening journeys and facilitating access to jobs and services. In his consideration of the effect of the proposed development on the character and appearance of the surrounding area, the inspector explained in considerable detail why he found the distinctive character of the village of Flore and its setting to be compromised. In DL9, the inspector found the appeal site to form part of a landscape which is of importance in providing a rural setting for the village. In DL12, he found that the proposed development would diminish the quality of that setting. In subsequent paragraphs he identified further harmful effects to the character of the village and its surroundings that would result from the proposed development. In DL38 to DL40, in addition to these harmful effects, he found that the village lacked sufficient services and facilities to meet the needs of future occupiers of the proposed development, which was likely to lead to increased use of the private car. These reasons properly explain why the inspector found the proposed development not to comply with policy S1 of the Core Strategy.

48. In DL35, the inspector saw policies SP1 and RA2 of the Local Plan as being closely connected in their application to the proposed development. In my view, he was

correct to take that view. As he said, the principal purpose of policy SP1 is to establish a set of policy principles which will guide the delivery of sustainable development in appropriate locations. Amongst those principles are the need to protect the open countryside and that development should encourage sustainable patterns of transport. Policy RA2 applies spatial policy principles stated in policy SP1 to secondary service villages such as Flore. One of the policy's requirements is that all development within or outside the defined village confines should protect the form, character and setting of the village. It follows that these policies of the Local Plan raised similar challenges for the proposed development to those which the inspector identified in his reasoning on the first main issue and in DL38 to 40. There is no difficulty in understanding why the inspector reached the conclusion that the proposed development would conflict with policies SP1 and RA2 of the Local Plan.

49. The Claimant's final contention under ground 1 was that the inspector's reasoning in DL44 and DL45 was opaque and failed properly or intelligibly to explain how he had resolved the conflict between policy R1 of the Core Strategy and policy F2 of the Neighbourhood Plan.

50. For the reasons I have already given, the premise of that argument is unsound. It is clear from a fair reading of those paragraphs the inspector saw no conflict or tension between those two policies. He was correct in that judgment. There is no conflict between policy R1 and policy F2. Properly understood, those policies are in alignment. Policy F2 is consistent with policy R1 in offering policy support for limited categories of residential development beyond the defined development boundary of the village, provided that the wider policy requirements placed on residential developments in rural areas are fulfilled. It follows that the Claimant's criticisms of the inspector's reasons in DL44 and DL45 go nowhere.

51. In any event, had the inspector taken the contrary view, for the reasons I have given he had provided legally sufficient reasons for concluding in DL45 that the proposed development was in conflict with the development plan taken as a whole. He explained that was the position by virtue of its failure to accord with the spatial strategy outlined by policies S1 and R1 of the Core Strategy and policies SP1 and RA2 of the Local Plan (I address the criticisms of his reliance on policy F4 of the Neighbourhood Plan below in the context of ground 2). Section 38(5) of the Planning and Compulsory Purchase Act 2004 would not have had the effect of requiring the inspector to put aside the performance of the proposed development against those policies, even if he had found that it enjoyed unqualified support from policy F2 of the Neighbourhood Plan. As Mr Charles Streeten submitted on behalf of the First Defendant, it is commonplace for policies in the development plan to pull in different directions. DL44 and DL45 explain intelligibly and adequately how the inspector would have resolved the asserted inconsistency between the two policies, had he thought it had arisen. As I have said, however, he was correct in his view that there was no inconsistency between policy R1 of the Core Strategy and policy F2 of the Neighbourhood Plan.

52. For all these reasons, I reject ground 1 of this claim.

Ground 2

The issue

53. The issue under ground 2 is whether the inspector misinterpreted policy F4 of the Neighbourhood Plan and, as a result, had regard to a policy of the development plan which was immaterial to the determination of the planning application for the proposed development.

54. I have set out the terms of policy F4 in paragraph 33 above. In DL36 the inspector said that there was an issue between the Claimant and the Second Defendant as to whether policy F4 was applicable to the proposed development. The inspector decided that it was. His reasons for doing so were as follows –

> *"It is common ground that the appeal proposal does not represent a rural exception site. However, the proposed development provides affordable housing, which would be secured by a legal agreement. Policy F4 is clear that market housing can be delivered on affordable housing sites. In this case, the proposed market housing would support the delivery of the affordable housing. In consequence, I believe that Policy F4 is applicable to this scheme".*

55. In DL41 and DL42, the inspector went on to consider the question whether the proposed development was in compliance with policy F4 –

> *"41. Furthermore, harm would arise from the likely quantum of development as a relatively large number of people would occupy the development. Neighbourhood Plan Policy F4 seeks to ensure that developments outside of the village boundaries feature no more than 10 dwellings. Even if this part of the policy should be applied to the affordable housing element of the development only, I have no reason to believe that the final scale of the development would not be akin to the maximum parameters included within the appeal scheme.*
>
> *42. Given the requirements of the submitted legal agreement, it is likely that the affordable housing element of the proposal would exceed 10 dwellings. This represents a breach of Policy F4".*

56. In DL45 and DL46, the inspector reiterated his conclusion that the proposed development would be in conflict with policy F4, which in turn contributed towards the significant harm resulting from conflict with the development plan, taken as a whole.

Submissions

57. For the Claimant, Mr Garvey submitted that policy F4 of the Neighbourhood Plan was relevant only to the determination of a planning application for a small-scale affordable housing development of the kind described in paragraph F4.1 of the policy. Paragraph F4.2 was not to be interpreted as extending the policy to planning applications for open market housing beyond the Flore settlement boundary, even in cases where a mix of market and affordable housing was proposed.

58. Policy F2 of the Neighbourhood Plan was the relevant policy against which such market-led housing development proposals fell to be considered. Where there was shown to be an identified local need, policy F2 supported proposals for new housing on sites beyond the village development area of a larger scale and wider range of types and tenure than those provided for under policy F4.

59. In effect, the inspector had interpreted the Neighbourhood Plan as limiting the policy support for new housing developments beyond the defined settlement boundary under F2 to small-scale affordable housing schemes of no more than 10 dwellings under policy F4, regardless of the scale or nature of identified local housing need. That was not a tenable interpretation of the Neighbourhood Plan. The true position was that policies F2 and F4 were concerned with distinct types of housing development. The proposed development fell within the scope of policy F2 and had been designed with that policy in mind. It was not a proposal for small-scale affordable housing of the kind described in policy F4. Policy F4 was not a material policy of the development plan.

60. For the First Defendant, Mr Streeten submitted that the question of law was whether, on its proper construction, policy F4 of the Neighbourhood Plan was capable of being material to the proposed development. Mr Streeten emphasised the need to address that question by reference to the actual words of policy F4 itself. The policy was in two parts. The first part of the policy, paragraph F4.1, was concerned with rural exception sites, which is to say, small-scale affordable housing schemes beyond the settlement boundary. The second part of the policy, paragraph F4.2, was concerned with the broader question of the appropriate mix between open market and affordable housing in residential development schemes brought forward in and around Flore during the lifetime of the Neighbourhood Plan. The objective of the second part of policy F4 was to ensure that such development schemes should deliver only affordable housing, save to the extent that the inclusion of open market housing was shown to meet a local need and was demonstrably essential to ensure the delivery of that affordable housing.

61. On that correct reading of policy F4, it was obvious that policies F2 and F4 were not aimed at distinct and different types of housing development. On the contrary, both policies applied to new housing development in the Flore neighbourhood. The inspector had been correct to apply policy F4 to the proposed development.

62. Moreover, it was submitted, the clear purpose of policy F4 was to limit the support given by the Neighbourhood Plan to new housing developments beyond the defined settlement boundary to small-scale schemes of the kind described in that policy. The proposed development was at a considerably larger scale, seeking planning permission for up to 45 dwellings. The necessary corollary of policy F4 read as a whole was that the scale of housing development proposed in this planning appeal in a location outside the confines of the village was not in accordance with that policy or the Neighbourhood Plan.

Conclusions

63. In my judgment, the Claimant's contentions in support of ground 2 are well-founded.

64. A development plan will have policies which relate to a wide range of development types, such as housing, employment, retail, leisure and so forth. By virtue of section 70(2) of the 1990 Act, in dealing with an application for planning permission, the decision-maker must have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.

65. Often it will be obvious whether a particular policy is material to a particular planning application. A policy which seeks to manage retail development in the plan area will have nothing material to say about a planning application for housing development. There will be other policies in the plan whose purpose is to manage housing development schemes. But in a case such as the present planning appeal, where the materiality of a particular policy of the development to the determination of the planning application is in dispute between the applicant and the local planning authority, the inspector must resolve that dispute on a proper understanding of that policy, if he or she is to fulfil the duty imposed by section 70(2) of the 1990 Act.

66. As Lord Reed said at [17] in *Tesco Store Ltd v Dundee City Council* [2012] PTSR 983 –

> *"The need for a proper understanding follows… from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them".*

67. A rural exception site is an established tool of planning policy for the delivery of affordable housing in rural areas to meet local housing need. The National Planning Policy Framework (December 2023) defines *"rural exception sites"* as –

> *"Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authorities discretion, for example where essential to enable the delivery of affordable units without grant funding".*

68. On the Claimant's argument, policy F4 of the Neighbourhood Plan is no more that the application of that national policy concept to neighbourhood planning policy in Flore. Paragraph F4.1 of policy F4 both reflects and is consistent with the first two sentences of the national policy definition. Paragraph F4.2 both reflects and is consistent with the final sentence of the national policy definition.

69. On that analysis, the reference in paragraph F4.2 to *"open market housing"* is to be understood as limited only to cases where such housing is proposed as part of a planning application for a rural exception site under paragraph F4.1. It involves no strain on the language of paragraph F4.2 to read it in that way. It would be entirely natural to read the two constituent paragraphs of policy F4 together. To do so is also completely consistent with the way in which the concept of rural exception sites is explained in the National Planning Policy Framework.

70. Moreover, that reading of paragraph F4.2 sits comfortably with paragraph F2.2 of policy F2 under which, as the inspector correctly understood, the policy control on scale and mix is provided by paragraphs (A) and (D) of policy R1 of the Core Strategy. In other words, to read paragraph F4.2 as applicable only to proposals for rural exception sites under paragraph F4.1, does not result in any policy gap in controlling the scale and mix of housing development proposed to meet an identified housing need under paragraph F2.2 of the Neighbourhood Plan.

71. In short, in my judgment, policy F4 of the Neighbourhood Plan is a self-contained policy whose only purpose is to promulgate and apply the established national planning policy concept of rural exception sites to the context of neighbourhood planning in Flore. Paragraph F4.2 is limited in its application only to proposals for rural exception sites brought forward under paragraph F4.1. That interpretation of policy F4 is both in accordance with its language and properly reflects its context.

72. The First Defendant's counter argument acknowledges that the first paragraph of the policy, paragraph F4.1, is concerned with rural exception sites. However, on the First Defendant's reading, paragraph F4.2 is to be understood as a free-standing, general policy limitation on the mix of dwelling types and tenures proposed in any planning application for housing development within the neighbourhood to which the Neighbourhood Plan applies. Whilst as a matter of language read in isolation, paragraph F4.2 could bear that meaning, when read in context, it becomes clear that the First Defendant's interpretation is untenable. It leads to confusion with policy F2 when read, as the inspector rightly said, in line with the requirements for rural housing developments stated in policy R1 of the Core Strategy. It is impossible to reconcile with policy F3 of the Neighbourhood Plan, which states that –

> *"All proposals for new housing development will have to demonstrate how they help to maintain a mix of tenure, type and size of dwelling in the Parish".*

73. If, as the First Defendant argues, Policy F4 is to be understood as limiting the provision of open market housing in any housing development within the neighbourhood to the specific circumstances stated in paragraph F4.2, the policy on mix of tenure, type and size which, under policy F3, applies to *"all proposals for new housing development"* is rendered largely, if not wholly, otiose. Whereas if policy F4 is read as a self-contained policy applicable only to planning applications for the development of rural exception sites which reflect the established national policy concept, policies F2 and F3 have a clear and distinct purpose in regulating to planning applications for housing development other than for rural exception sites. There is no gap in policy control at the neighbourhood level.

74. For these reasons, which reflect the submissions advanced by Mr Garvey, I have concluded that the inspector was wrong to regard policy F4 of the Neighbourhood Plan as relevant to his determination of the planning application for the proposed development on appeal before him. The proposed development did not seek to deliver a rural exception site. The proposed development sought to deliver a mix of open market and affordable housing in order to meet an identified need, in response to policy F2 of the Neighbourhood Plan.

75. It follows that the inspector was wrong to find that the proposed development was in breach of policy F4. Policy F4 was not a material provision of the development plan to the determination of the planning appeal before him. He was wrong to attribute harm to that breach and to give significant weight to policy F4 in drawing his overall conclusions in DL45 and DL46 that the proposed development would conflict with the development plan, taken as a whole.

76. In Chichester *District Council v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 1640 at [47], Lindblom LJ said –

> *"…there will sometimes be circumstances in which a proposal for housing development, though it neither complies with nor offends the terms of any particular policy of the development plan, is nevertheless in conflict with the plan because it is manifestly incompatible with the relevant strategy in it. This may be a matter of "natural and necessary inference" from the relevant policies of the plan, read sensibly and as a whole. The effect of those policies may be - I stress "may be" - that a proposal they do not explicitly support is also, inevitably, contrary to them. Whether this is so will always depend on the particular context, and, critically, the wording of the relevant policies, their objectives, and their supporting text.*

77. An example of such circumstances is to be found in *Gladman Developments Ltd v Canterbury City Council [2019] EWCA Civ 669*. See the judgment of Lindblom LJ at [35] in that case.

78. In the present case, there was neither a need nor a justification for drawing any inferences from the terms of policy F4 of the Neighbourhood Plan. Here, as was found to be the case in *Chichester*, the policies of the development plan which are relevant to the determination of the planning appeal may readily be identified. The simple point is that policy F4 of the Neighbourhood Plan is not one of them. On its true construction, policy F4 neither explicitly supported nor explicitly prohibited the proposed development. Policy F4 simply did not apply to the proposed development. The relevant policy framework was set by other express policies of the development plan, including policy R1 of the Core Strategy and policy F2 of the Neighbourhood Plan.

79. For all these reasons, I uphold ground 2.

Ground 4

The issue

80. The issue under ground 4 is whether the inspector gave the Claimant a proper opportunity to make its case before he concluded in DL39 and DL40 that future occupiers of the proposed development would lack ready access to the services they would require; and consequently would be likely to travel to other settlements by private car to meet their day-to-day needs, resulting in an unsustainable, harmful development.

Submissions

81. For the Claimant, Mr Garvey submitted that it had been procedurally unfair for the inspector to reach these conclusions. Prior to the appeal hearing, the Claimant and the Second Defendant had signed the SOCG. The SOCG recorded their agreement that the appeal site was close to a range of local services and facilities within Flore, which should be considered to be a sustainable location for growth as a secondary service village, subject to policies in the development plan. At no stage had the Second Defendant indicated that it wished to change its position on those points of agreement. Nor had the inspector raised the sustainability of the proposed development in relation to the sufficiency of local services and facilities to meet the needs of future occupiers as an issue in the appeal. That question had not been discussed at the hearing.

82. Mr Garvey said that it was well established that in planning appeal proceedings, whether those proceedings take the form of a local inquiry or a hearing, procedural fairness demands that appellants should both know the case which they have to meet and be given a reasonable opportunity to address that opposing case, whether by adducing evidence or in submissions. In the present case, it was clear from DL39 and DL40 that the inspector had departed from matters recorded in the SOCG as agreed between the Claimant and the Second Defendant. The inspector had given no indication at the hearing that he might do so. The Claimant has not been given a fair opportunity to deal with the matters which were decided against it in DL39 and DL40.

Legal principles

83. The procedural rules which apply to planning appeal hearings are the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (2000 SI No 1626).

84. Rule 2(1) defines a statement of common ground as meaning *"a written statement prepared jointly by the local planning authority and the appellant, which contains agreed factual information about the proposal which is the subject of the appeal"*.

85. Rule 6A states –

> *"6A(1) The local planning authority and the appellant shall –*
>
> *(a) together prepare an agreed statement of common ground; and*
>
> *(b) ensure that the Secretary of State receives it… within five weeks of the starting date"*.

86. Rule 11 provides for procedure at the hearing –

> *"11(1) Except as otherwise provided in these Rules, the inspector shall determine the procedure at a hearing.*
>
> *(2) A hearing shall take the form of a discussion led by the inspector and cross-examination shall not be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues.*
>
> *…*
>
> *(4) At the start of the hearing the inspector shall identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person entitled or permitted to appear.*
>
> *(5) Nothing in paragraph (4) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph"*.

87. In *Secretary of State for Communities and Local Government v Hopkins Developments Ltd* [2014] EWCA Civ 470 at [61]-[62], Jackson LJ stated the following principles in relation to the statutory procedure rules which apply to planning appeal inquiries –

> *"61. Let me now stand back and review the terrain. The 2000 Rules enable the Inspector to focus the hearing without confining its scope at the outset. The Rules provide a framework, within which both the Inspector and the parties operate. It remains the duty of the Inspector to conduct the proceedings so that each party has a reasonable opportunity to adduce evidence and make submissions on the material issues, whether identified at the outset or emerging during the course of the hearing.*
>
> *62. From reviewing the authorities I derive the following principles:*
>
> *i) Any party to a planning inquiry is entitled (a) to know the case which he has to meet and (b) to have a reasonable opportunity to adduce evidence and make submissions in relation to that opposing case.*
>
> *ii) If there is procedural unfairness which materially prejudices a party to a planning inquiry that may be a good ground for quashing the Inspector's decision.*
>
> *iii) The 2000 Rules are designed to assist in achieving objective (i), avoiding pitfalls (ii) and promoting efficiency. Nevertheless the Rules are not a complete code for achieving procedural fairness.*
>
> *iv) a rule 7 statement or rule 16 statement identifies what the Inspector regards as the main issues at the time of his statement. Such a statement is likely to assist the parties, but it does not bind the Inspector to disregard evidence on other issues. Nor does it oblige him to give the parties regular updates about his thinking as the Inquiry proceeds.*
>
> *v) The Inspector will consider any significant issues raised by third parties, even if those issues are not in dispute between the main parties. The main parties should therefore deal with any such issues, unless and until the Inspector expressly states that they need not do so.*
>
> *vi) If a main party resiles from a matter agreed in the statement of common ground prepared pursuant to rule 15, the Inspector must give the other party a reasonable opportunity to deal with the new issue which has emerged".*

88. In [58] of *Hopkins Developments Ltd*, Jackson LJ had referred to the judgment of Sullivan J in *R (Poole) v Secretary of State for Communities and Local Government* [2008] EWHC 676 (Admin); [2008] JPL 1774 –

> *"58. In the discussion section of his judgment, Sullivan J gave valuable guidance on the interaction between the common law rules of procedural fairness and the procedural rules governing the conduct of planning inquiries. At paragraph 40 he said:*
>
> > *"However, it is most important when deciding whether the parties at an inquiry have had a fair opportunity to comment on an issue raised by an Inspector of his or her own motion, and whether they could reasonably have anticipated that an issue had to be addressed because it might be raised by an Inspector, to bear in mind the highly focused nature of the*

> *modern public inquiry where the whole emphasis of the Rules and procedural guidance contained in Circulars is to encourage the parties to focus their evidence and submissions on those matters that are in dispute."*
>
> *Sullivan J added that in deciding whether there had been unfairness the court should take into account the importance of the issue in respect of which the Inspector was differing from the position agreed in the statement of common ground".*

Relevant facts

89. Paragraphs 4.3 and 4.4 of the SOCG recorded agreement between the Claimant and the Second Defendant that the appeal site was located north of the village centre of Flore, which offered a range of amenities and facilities including a primary school, nurseries, a village hall and farm shop. It was also agreed that the facilities within the village were located within easy walking distance of the appeal site via public rights of way, including footpaths.

90. Paragraphs 8.17 to 8.19 of the SOCG record the following matters on which the Claimant and the Second Defendant were in agreement –

> *"**Access to services and facilities***
>
> *Flore is considered a sustainable location for growth as a Secondary Service Village, subject to policies in the development plan.*
>
> *The site is close to the following range of local facilities and services within Flore. The bullet points below set out the services and facilities and the distances to them using footways on the road network:*
>
> *Bus stop – 130m (westbound), 210m (eastbound)*
>
> *Flore Millenium Hall – 210m*
>
> *Pub – 240m*
>
> *Flore Village Convenience Store – 305m*
>
> *Flore United Reform Church – 440m*
>
> *Flore Day Nursery – 580m*
>
> *Flore CoE Primary School – 740m.*
>
> *All facilities can be reached for safe pedestrian routes including footpaths and Public Rights of Way (PROW). The site is therefore considered a sustainable location for growth in terms of connections to Flore village services and facilities".*

91. Section 11 of the SOCG listed the matters on which the Claimant and the Second Defendant did not agree. They included –

> *"11. Whether the proposal complies with [Core Strategy] polices SA, S1 and R1".*

92. Paragraph 5.2.21 of the Local Plan states that Secondary Service Villages-

> *"…generally feature some services and facilities, such as a primary school and a convenience shop but still play an important role in providing access to these facilities, for their own residents and, in certain locations, residents from smaller villages and settlements. The level of employment provision is generally more limited".*

93. In refusing planning permission, the Second Defendant did not contend that the appeal site was in an unsustainable location because local services and facilities in Flore would be insufficient to meet the need of future occupiers of the proposed development. Nor did the Second Defendant's statement of case submitted for the purposes of the hearing before the inspector raise that issue.

94. A number of written objections submitted by third parties, including Flore Parish Council who were represented at the hearing by Mr Anderson, raised concerns as to the level of services and facilities in the village, including the contention that the proposed development was not sustainable because those limited services and facilities were insufficient to accommodate the needs of future occupiers of as many as 45 new dwellings. The Parish Council's written objections included the following comments -

> *"… since the adoption of the local plan the village has lost several of the facilities which justified the designation [as a Secondary Service Village], including the garage…, the hairdressers, the farm shop and the café, As well as one of its public houses…There is only one remaining small general convenience shop, one public house and a small specialist retailer serving a small percentage of the local population. The remaining facilities have not been changed for decades, despite the increase in population - the village hall is small and has no parking, the Scout hut is extremely small and unsuitable, the playing field pavilion is now inadequate. There is a need for additional sporting facilities... to meet the demands of the increased population. The school is small and has little or no room for further expansion, and the dentist and doctors in Weedon who serve the village are fully subscribed".*

95. Prior to the hearing, the inspector circulated a note to the parties setting out a provisional agenda for the hearing of the appeal. The inspector's note said that the hearing would take the form of a structured discussion with the inspector asking a series of questions in respect of the main issues. All parties who wished to would be given an opportunity to speak. The note referred to the need to submit an agreed statement of common ground prior to the hearing. The provisional agenda took the form of fifteen points, including *"2. Discussion on development plan"* and *"6. Effects of development, and weight to be given"*.

96. The inspector did not submit a witness statement in response to the claim. Shortly, however, before the hearing of the claim, the First Defendant produced a copy extract of the inspector's manuscript notes of the hearing of the planning appeal. At my

request, I was helpfully provided after the hearing with an agreed, typed transcript of that extract. My attention was drawn to the following note –

> *"Mr Murphy – Strategic – S1/R1 – Interlinked – Four Parts [of] Part D [of] (S1). Limited development in rural areas.*
>
> *Quantity/spatial component*
>
> *….*
>
> *(ten further lines of notes)*
>
> *….*
>
> *Ms Osmund-Smith*
>
> - *JCS 2014*
> - *Flore 2016*
> - *Part 2 2020*
>
> *R1 replaced – DP [Development Plan] read as whole.*
>
> *In order of most recent.*
>
> *…".*

97. In detailed grounds of defence verified by a statement of truth on 18 April 2024, the First Defendant stated that during the hearing the inspector had asked the Second Defendant to identify the most relevant policies in relation to its case that the proposed development did not accord with the spatial strategy in the development plan. The Second Defendant's witness, Mr Murphy, had explained its position on locational sustainability and identified to the inspector a conflict with development plan policy in this regard. Mr Murphy had referred to policy S1 of the Core Strategy and identified a conflict with policy S1(D), which emphasised shortening journeys and facilitating access to jobs and services.

98. The First Defendant said that the inspector had given the Claimant an opportunity to respond on this issue. Counsel appearing for the Claimant had referred to the chronology of adoption of the Core Strategy, the Local Plan and the Neighbourhood Plan and had argued that as the oldest of those constituent parts of the development plan, the Core Strategy should be given the least weight. The First Defendant also said that numerous objectors had raised the issue of locational sustainability both in their original objections and in their representations to the inspector. The Parish Council's representations were before the inspector and Mr Anderson had reiterated that Council's objection to the proposed development.

99. In a witness statement sworn on 9 May 2024, Mr Andrew Gore, a planning consultant who appeared on behalf of the Claimant at the hearing of the appeal, said that these statements made in detailed grounds of defence were unsupported by evidence. There

was no witness statement from the inspector, nor had his hearing notes or any other documentary record been produced in support of them.

100. Mr Gore said that he did not recall the inspector at the hearing raising the role of Flore as a Secondary Service Village as an issue. Mr Gore said that in the light of the matters agreed between the Claimant and the Second Defendant as recorded in paragraphs 8.17 to 8.19 of the SOCG, it would have been surprising had the inspector raised that or the sustainability of the appeal site in terms of connections to village services and facilities as an issue at the appeal hearing. Mr Gore expressed little doubt that the Claimant would have sought to address that issue specifically, amongst other things by reference to what had been agreed in the SOCG. Mr Gore said that he did recall Counsel for the Claimant submitting that, as the oldest component of the development plan, the Core Strategy should receive the least weight. However, he recalled that submission as having been made not in the context of a discussion about the role of Flore as a Secondary Service Village but rather in the context of the overall planning balance.

Conclusions

101. It seems to me that the crucial question to answer under this ground is whether, on a fair reading of DL39 and DL40, the inspector's conclusions in those paragraphs shows that he took a different view from that agreed between the Claimant and the Second Defendant on the matters stated in paragraphs 8.17 to 8.19 of the SOCG. If he did, there would be obvious force in Mr Garvey's submissions, as I am not convinced on the evidence before the court that at the hearing, the inspector raised that point of departure from what had been agreed in the SOCG sufficiently clearly to alert the Claimant's representatives that they needed to address it.

102. In isolation, the first sentence of DL39 can be read as a finding by the inspector that because the appeal site was located outside the existing settlement, future occupiers of the proposed development would not have good connections to those services and facilities which Flore was able to offer. That in turn, as Mr Garvey put it, would create a tension with what is recorded as common ground between the Claimant and the Second Defendant in paragraphs 8.17 to 8.19 of the SOCG.

103. It is trite law, however, that single sentences in planning appeal decisions are not to be read isolation. Such decisions are to be read as a whole. Here, the first sentence of DL39 is to be read in the context of the inspector's reasoning in DL38 to DL40.

104. As I have said, paragraph 11.7 of the SOCG recorded that it remained in dispute between the Claimant and Second Defendant whether the proposed development complied with policy S1 of the Core Strategy. Policy S1(D) places emphasis on *"shortening journeys and facilitating access to jobs and services"*. As DL38 makes clear, in DL39 to DL40 the inspector was considering whether the proposed development was in accordance with that strategic policy. That raised the question whether the proposed development would provide future occupiers with access locally to sufficient services and facilities to meet their needs without having to drive elsewhere to do so.

105. The matters recorded as agreed in paragraphs 8.17 to 8.19 of the SOCG were firstly, the existing services and facilities available in Flore and secondly, that those local

services and facilities would be reasonably accessible to future occupiers without the need to drive to them. It was agreed that the appeal site was *"a sustainable location for growth in terms of connections to Flore village services and facilities"*.

106. In DL39, the inspector acknowledged that the appeal site was near to Flore, a village which offered a level of facilities which was commensurate with the size of that settlement. That, however, begged the question raised by policy S1(D) of the Core Strategy, as to whether those village services and facilities, albeit accessible, would be sufficient to meet the day-to-day needs of future occupiers.

107. Paragraphs 8.17 to 8.19 of the SOCG recorded no agreement between the Claimant and the Second Defendant on that question. Those paragraphs were silent as to whether the existing local services and facilities in Flore would be sufficiently extensive to meet the day-to-day needs of future occupiers of the proposed development, with the result that those people would be likely to use them rather than getting into their cars and driving elsewhere for that purpose.

108. The inspector, however, did answer that question in DL40. In doing so, in my judgment, the inspector did not depart from what had been agreed in paragraphs 8.17 to 8.19 of the SOCG.

109. It follows that the Claimant's complaint of procedural unfairness is without foundation. The inspector's conclusions in DL38 to DL40 were not based on his having departed from what had been agreed between the Claimant and the Second Defendant in paragraphs 8.17 to 8.19 of the SOCG. His conclusions were based on addressing the question of planning judgment raised by applying policy S1 of the Core Strategy in the light of those agreed matters.

110. I accept Mr Gore's evidence that had the inspector raised the sustainability of the appeal site in terms of connections to village services and facilities in Flore as an issue at the appeal hearing, the Claimant would have sought to address that issue specifically by reference to what had been agreed in paragraphs 8.17 to 8.19 of the SOCG. On my analysis of DL38 to DL40, the inspector had no need to raise that particular issue, as he did not dispute what had been agreed in those paragraphs of the SOCG.

111. The inspector's note, however, records that at the hearing, the Second Defendant's planning officer, Mr Murphy, did refer the inspector to paragraph S1(D) of that policy and to the four interlinked parts of that paragraph. The sufficiency of existing services and facilities in Flore to accommodate the needs of future residents of the proposed development had been raised as a concern by the Parish Council and other third parties. In my view, the Claimant both knew or ought to have realised that it had to meet the case that the proposed development did not comply with policy S1(D) of the Core Strategy and had a reasonable opportunity to do so. In determining that issue in DL38 to DL40, the inspector did not differ from the position agreed between the Claimant and the Second Defendant in paragraphs 8.17 to 8.19 of the SOCG.

112. For all these reasons, I reject ground 4.

Ground 5

The issue

113. The issue under this ground relates to the final sentence of DL54, where the inspector said –

> *"it has also not been demonstrated that it would not be possible to deliver all, or a portion of, the housing needed inside the settlement boundaries".*

114. The issue is whether the inspector had proper regard to evidence submitted by the Claimant which was said to demonstrate that delivery of the housing required to meet local needs could not be achieved within the settlement boundaries defined in the development plan.

Submissions

115. Mr Garvey submitted that the Claimant had provided evidence both in its statement of case and in rebuttal which demonstrated that the identified local need for new housing could not be met by development within the village confines at Flore. That evidence had been supplemented at the hearing by the submission to the inspector of updated schedules of house sales in the area.

116. The inspector had not addressed that evidence in DL54 or elsewhere in his decision. He had failed adequately to explain his conclusion on what was a principal important controversial issue.

Conclusions

117. In order to address this argument, it is necessary to understand the context in which the inspector's reasoning in the final sentence of DL54 sits.

118. At DL52, the inspector found there to be a need for some new housing in the village of Flore. He accepted that the proposed development would contribute to meeting that need. At DL53, he referred to proposed planning conditions which would regulate the housing mix with a view to responding to the particular local needs of the village.

119. At DL54, the inspector accepted that these matters were benefits which weighed in favour of the proposed development. However, that weight was tempered by the location of the appeal site outside the settlement boundaries and the resulting adverse impact on the character and appearance of the surrounding area.

120. The final sentence of DL54 provided a further factor which tempered the weight to be given to the benefits of the proposed development identified in DL52 and DL53. In essence, the case for permitting the proposed development, albeit harmful, to proceed on the basis that it would meet an identified need was weakened by the fact that it had not been shown that the need was unable to be met, at least in part, on alternative, more appropriate sites. In DL55, the inspector continued on the same planning logic –

> *"55. It has also not been demonstrated that, if the housing could not be provided in the settlement, such as due to insufficient available plots, it could not be provided in smaller clusters outside of the settlement that may have a lesser adverse effect".*

121. In its statement of case, the Claimant had given its view of the position. The Claimant advanced a number of reasons which, it contended, demonstrated that opportunities to bring forward new housing within the defined settlement boundaries were very limited indeed. The Second Defendant advanced the contrary argument in its statement of case, drawing attention to three planning permissions for new housing development in Flore since 2015. In rebuttal, the Claimant provided further information about those planning permissions and sales data for the resulting new homes, that data being updated at the appeal hearing.

122. Planning appeal decisions are written principally for the parties who know what the issues between them are and what evidence and argument has been deployed in relation to those issues. The required legal standard is that the reasons for the appeal decision must enable one to understand why the appeal was decided as it was and what conclusions were reached on the principal important controversial issues.

123. Applying that standard, I see no difficulty in understanding the inspector's conclusions in DL54 and DL55. A principal benefit claimed for the proposed development was its ability to meet the identified local need for housing. The local planning authority contended that there were alternatives, both in the form of development opportunities in Flore and, if necessary, smaller development schemes beyond the village confines which were likely to be less harmful in their impact than the proposed development. On the evidence before him, the inspector was not persuaded that the alternative solutions to meeting local housing need proposed by the Second Defendant should be discounted.

124. There is no justification for inferring that the inspector failed to have proper regard to the Claimant's evidence in carrying out that analysis. He was not obliged to say more than he did to informed parties. For these reasons, I do not accept that the inspector's reasoning in DL54 was insufficient to meet the familiar legal standard of adequacy and intelligibility described in *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, 1964B-G.

125. A subsidiary argument was initially advanced that the absence of any reference to the updated schedules of housing sales in the list of documents appended to the decision cast doubt on whether the inspector had considered that evidence. That argument is without merit. The decision letter listed only documents submitted after the close of the hearing. The updated schedules were submitted during the course of the hearing. There is no basis for inferring that the inspector failed to take them in consideration when he came to write his decision.

126. For these reasons, I reject ground 5.

Disposal

127. I have found in the Claimant's favour on ground 2. I have rejected grounds 1, 4 and 5. Mr Streeten submitted that if I were to find in the Claimant's favour only on ground 2, I should nevertheless dismiss the claim on the basis that the inspector would have come to the same overall conclusion on the planning appeal if he had not misinterpreted policy F4 of the Neighbourhood Plan and so had regard to an immaterial consideration.

128. I am unable to accept that submission. I bear in mind that it is unnecessary for Mr Garvey to show that, had the inspector not had regard to policy F4 he would, or even probably would, have allowed the appeal. Mr Garvey has only to exclude the contrary contention, namely that the inspector necessarily would still have made the decision to dismiss the appeal: see *Simplex GE (Holdings) Ltd v Secretary for the Environment* [2017] PTSR 1041, 1060E-F.

129. It is clear from his reasoning that the inspector gave significant weight to what he saw as the proposed development's conflict with policy F4 of the Neighbourhood Plan. In my judgment, it cannot safely be said that had he correctly approached his decision without regard to that policy which was irrelevant to his evaluation of the planning balance between competing beneficial and harmful effects of the proposed development, he would necessarily have drawn that balance as he did in DL62 and dismissed the Claimant's planning appeal.

130. For these reasons, I allow this claim on ground 2 only.