Case No: CO/4310/2013

Neutral Citation Number: 2013 EWHC 3001 (Admin)

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

Sitting at:
Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date: Monday 30th September 2013

Before:

HIS HONOUR JUDGE GRAHAM WOOD QC
Sitting as a Judge of the High Court

- -

Between:

HALLAM LAND MANAGEMENT LIMITED — **Claimant**

- and -

THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT — **First Defendant**

and

PRESTON CITY COUNCIL — **Second Defendant**

Mr David Hardy, solicitor advocate (Eversheds) for the **Claimant**.

Mr. Stephen Whale (instructed by the Treasury Solicitors) appeared on behalf of the **First Defendant**.
Mr. Jonathon Easton appeared on behalf of the **Second Defendant**

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Approved Judgment

HIS HONOUR JUDGE WOOD QC:

Introduction

1. This court is concerned with an application brought under section 288 of the Town and Country Planning Act 1990 in respect of a decision given by the First Defendant's inspector on 1st March of this year, whereby she refused an appeal against a refusal to grant outline planning permission for a residential development on an 11.6 hectare greenfield site between the outskirts of Preston and the village of Grimsargh in Lancashire.

2. The Claimant, who is the developer, contends that the decision is fundamentally flawed in a number of respects focused on the inspector's failure to take into account material considerations, or to grapple with the central issues in the case, and to give reasons for so doing. It is also asserted that there was a mistake and misunderstanding giving rise to a perverse conclusion.

3. I shall refer to the grounds in more detail below, but first it is necessary to deal with the background to the planning application.

Background

4. Over several decades, the urban area of the City of Preston has extended in a number of directions outwards, inter-alia, in a north-eastern direction towards the M6 motorway. Through a variety of initiatives land was acquired for housing and employment purposes, the latter giving rise to a large industrial area sitting just to the north of the motorway, known as the Rough Hey Industrial Estate. North-east of this industrial estate, and effectively on the edge of the current suburban boundary of Preston, is a small housing estate known as The Hills, established about 15 years ago. A road runs from the south-east to the north-west crossing the motorway (the B6243 Longridge Road) and eventually going through Grimsargh. This road passes through the industrial estate, and to the east of The Hills housing estate, but from this point via a small area of open countryside, comprising several agricultural fields until entering Grimsargh.

5. It is obvious that over many years the village has by this process of encroachment become "closer" to Preston. Although there is a small ribbon of dwelling house properties extending the village southwards on the east side of Longridge Road, bringing it even closer to a similar ribbon of properties to the east of The Hills (a distance measured at approximately 120 metres) in effect the true edge of Grimsargh village appears to be Church House Farm, which sits just south of St Michael's Church, with the main part of the village extending north eastwards from this point. In fact the area around the village to the north, west and east is largely farmland and open, as is apparent from the aerial photographs and the numerous plans made available.

6. The Claimant, or an associated company, has acquired the agricultural land north of The Hills and south of the village to the west of Longridge Road, and has been trying over the past several years, not simply through direct planning application,

but also through the consultation process associated with policy implementation, to develop a substantial part of the area in question.

7. When a planning application was first submitted for the appeal site, it contained some 200 dwellings. However, as it became apparent that the close proximity of these dwellings to the southern edge of the village was going to be crucial for the purposes of separation, the scheme was amended, seeking approval for 143 dwellings towards the southern edge of the appeal site. The proposed development also made provision for public open space.

8. In support of its application, the Claimant provided all the necessary reports and statements, drawings and plans to enable a determination to be made, including the Development Framework Plan and the revised Masterplan drawing. The consultative process brought almost 180 letters of objection, largely identifying the impact on the area of separation (AOS) between the development and the village, and the local parish council provided a formal objection on three grounds, namely the lack of protection afforded to the identity of Grimsargh and damage to the local heritage and environment, lack of capacity within the local infrastructure and pressure on local schools which were currently full. However, it is to be noted that amongst the material considered subsequently by the inspector on appeal was an acknowledgement from the local education authority that there was sufficient capacity.

9. The application for outline planning permission was refused by the Second Defendant, the planning authority, initially by notice dated 11th May 2012. On that occasion a single reason was given in the following terms:

> "*The site is located within an area of separation between the urban area of Preston and the village of Grimsargh as identified in Policy 19 of the emerging Core Strategy and policy EN 2 of the emerging site allocations development plan document. The proposed development would result in the loss of a valuable part of this area of separation and would consequently have an unacceptable detrimental impact on the open countryside character of the area and on the distinctiveness of Grimsargh. This would therefore facilitate the merging of urban Preston and the village of Grimsargh which would reduce the feeling of openness and result in the suburbanisation of this currently open area. This development would also have an unacceptably detrimental impact on the setting and rural character of the village of Grimsargh as it would be physically dominant from the edge of the village, reducing the stand-alone/isolated feel of Grimsargh which would detract from its character. The proposal is therefore contrary to the provisions of policy 19 of the emerging Core Strategy and EN2 of the emerging Site Allocations document*."

10. The emerging Core Strategy became a fully implemented strategy for Central Lancashire when it was approved by the Secretary of State and adopted in June 2012 after this decision was first made. Accordingly the council revisited the question of planning permission in October 2012 and provided an additional reason for refusal based upon prematurity of the site allocations DPD. In simple terms, what this meant was that with a new strategy in place (the Central

Lancashire Core Strategy) it was necessary to create development plan documents (DPDs) which were still in the process of being addressed to accord with the policies set out in the Core Strategy. Whilst an area of separation had been provisionally determined between Preston and Grimsargh, nevertheless this has not been finalised, and a planning decision for a substantial development would prejudice the final outcome of that DPD.

11. Following the refusal of planning permission the appeal process under section 78 of the Town and Country Planning Act 1990 was commenced and an inquiry established under the auspices of the First Defendant's inspector.

12. In addition to emphasising the sustainable development aspect of its proposals, and thus accord with the National Planning Policy Framework (NPPF), one of the Claimant's grounds of appeal to the inspector was as follows:

> The planning policy assessment upon which the council's reason for refusal is based is flawed in that the boundaries of any area of separation between the urban area of Preston and the village of Grimsargh have not yet been defined. The proposed development boundaries and form have been carefully designed to ensure that a suitable area of separation between the settlements will exist after completion of the development.

13. A substantial body of documentary and expert evidence was submitted to this inquiry at which the inspector also heard oral evidence, and following which she attended a site inspection, before providing a decision at the conclusion of the inquiry. An important document for her consideration was the Statement of Common Ground, (SCG) which appears at page 63 of the hearing bundles supplied for this court. It sets out details of the application, the relevant history, and significantly the statutory development plan to be considered by the inspector. It also makes reference to the National Planning Policy Framework.

14. The principal dispute arising from the expert testimony, in respect of which both the developer and the planning authority provided extensive reports from landscaping specialists, related to the question of visual impact of the development, and particularly the extent to which the AOS would be affected if planning permission was granted. I shall return to this later in my judgment.

15. For the appeal process, amended illustrative masterplan and development Framework documents were also provided.

16. The statutory development plan was clearly important because of its mandatory consideration under section 38 (6) of the Planning and Compulsory Purchase Act 2004. Any application had to be determined in accordance with that plan unless material considerations indicate otherwise. It was agreed to include the following:

> The North West of England plan – Regional Spatial Strategy to 2021 (2008)
>
> The Central Lancashire Core Strategy (adopted July 2012)

The Preston Local Plan (2004) insofar as there were saved policies not superseded by the Core Strategy.

17. Because the Regional Spatial Strategy was facing impending abolition, it was agreed that its end days represented a material consideration, although the weight to be attached to its policies depended upon individual circumstances. These policies included sustainable economic development and sustainable communities, and specifically provided an emphasis on the regular provision of new dwellings, affordable housing, the efficient use of existing resources and infrastructure and access.

18. The saved policies of the Preston Local Plan required some consideration, but the weight to be attached to those policies was to be determined by reference to their consistency with the NPPF. By far the most significant component part of the development plan was the recently adopted Core Strategy, which made reference to several individual policies. These included the need to locate some growth in greenfield sites on the fringes of the urban areas, the promotion of pedestrian and cycle links, housing delivery, affordable housing, the protection of agricultural land, and most importantly (policy 19) areas of separation to protect the identity and local distinctiveness of certain settlements and those places at greatest risk of merging, including Grimsargh.

19. The SCG also made reference to the emerging planning policy which has the rather convoluted acronym SADMPDPD, being the Preston Site Allocations and Development Management Policies Development Plan Document. I have referred to this above as being the reason for the council's reconsideration of the application. It was noted in the SCG that the policy was still undergoing a consultative process in relation to its preferred option paper, which included the appeal site within a designated AOS restricting development, although objections had been lodged (from the Claimant) to that area of separation.

20. As I have indicated, it was agreed in the SCG that underpinning the development plan consideration, were the guidelines set out in the NPPF. Specific reference was made to several sections on achieving sustainable development, including the approach to plan making and decision taking.

21. Because a key part of the challenge by the Claimant to the inspector's decision is centred upon a failure to address issues on the appeal, it is helpful to set out other important areas of agreement and disagreement between the parties. Specifically, but not exhaustively, it was agreed that this was a sustainable development, that Preston City Council could not demonstrate a five-year supply of housing, that the development provided policy compliant affordable housing and that there were numerous benefits associated with the proposed development which included in addition to good housing provision, enhancement of the village community and economy, the improvement of cycle and footpath routes and enhancement of the biodiversity of the landscape character. The council did not agree that such benefits outweighed the harmful impacts of the proposed development.

22. The matters which were not agreed and which seem to me to identify the real issues in the case, at least up until the point that concessions were made before the inspector, were listed as follows:

    (1) The nature and extent of the impact of the proposed development upon the character of the area and the distinctiveness of the setting of the village of Grimsargh.

    (2) Whether the proposed development conflicts with policy 19: AOS and major open space of the adopted Core Strategy. (In effect this is the same issue as 1)

    (3) The weight to be attributed to draft policy EN2 and to the draft proposals map in the emerging SADMPDPD.

    (4) Whether the grant of planning permission for the appeal scheme could prejudice the site allocations development management policies DPD by pre-determining decisions about scale, location or phasing of new development.

    (5) The extent and significance of the shortfall in the five-year supply of housing in Preston city.

23. As can be seen from the decision letter, disputed matters 3 and 5 fell away before the inspector being the subject of concession and compromise by both parties. In the decision letter, the inspector identified the main issue in these terms:

    "The main issue is whether this is an appropriate location for housing having regard to national development plan policies in respect of the delivery of new housing and spatial planning policy in the development plan."

The legal approach

24. The jurisdiction of the High Court to quash a decision of the planning inspector is defined by sections 288 (1) and (5) of the Act and is limited to those situations where either the decision was not within the powers of the Act, or where the relevant procedural requirements have not been met so as to cause substantial prejudice to the applicant.

25. Accordingly the court does not consider the merits of the original planning decision, in respect of which the inspector is ideally placed with the necessary expertise to make the appropriate analysis in accordance with planning principles. This was made clear in **R (on the application of Newsmith Stainless limited) v Secretary of State for the Environment, Transport and the Regions [2001] EWHC 74 (Admin).** Sullivan J emphasised the need for the court to be astute in ensuring that a Wednesbury challenge, which is effectively incorporated within the first part of the court's jurisdiction, is not used as a "*cloak for….. a rerun of the arguments on the planning merits*".

26. The second part of the court's jurisdiction is concerned with procedural impropriety, but only in situations where an error identified causes substantial prejudice. As in the present challenge, the usual procedural complaint is that the reasons given in the decision letter are inadequate, leaving the informed reader in real doubt as to the conclusions reached on an important point in issue. Thus, in most instances the court is concerned with reviewing the decision on usual public law principles.

27. In relation to the two aspects of the court's jurisdiction, the parties by counsel are largely agreed in the approach which should be taken by this court. Principles are helpfully set out in the skeleton argument of Mr Easton on behalf of the planning authority. First of all, where the challenge is based on Wednesbury principles, the threshold of reasonableness is a difficult obstacle to surmount because a planning decision rarely involves establishing fact, but is a planning judgment which lends itself to a broad range of possible views, none of which could be said to be unreasonable.

28. Second, the weight to be given to any material consideration, applying the statutory approach under the 2004 Act, it is a matter for the decision maker (**Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759**).

29. Third, where the adequacy of reasons given is challenged (procedural impropriety) the decision-maker is not to be taken as writing an examination paper, but the decision letter must be read in good faith with reference to policies taken in the context of the general thrust of the reasoning.

30. Fourth, whether the reasons are valid or not will depend upon whether the decision leaves room for genuine doubt as to what the decision maker has decided and why (**South Somerset DC v Secretary of State [1993] 1 PLR 80**.) Not only must the reasons be intelligible and adequate, they must also leave the reader able to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues. Any doubts in this respect must be substantial, and an adverse inference will not readily be drawn.

31. Finally, as far as "material considerations" are concerned, it is not necessary to refer to every one, but only the main issues in dispute. If inferences are to be drawn that the decision maker has not fully understood the materiality of the matter to the decision, this will only be significant if it relates to the main issue, and only when all other known facts and circumstances appear to point overwhelmingly to a different decision (**Bolton MDC v Secretary of State for Environment [1995**] **71 P & CR 309.**)

32. To these general principles, counsel for the Secretary of State, Mr Whale, seeks to add some further principles. Only in limited circumstances where it is alleged that a decision was wrong in law and in excess of powers by reference to a point not raised before the inspector, can a challenge have any merit. If the parties were given an opportunity to deal with such a matter, but did not raise it, the argument that the inspector has omitted a material consideration is unsustainable (**Humphris v SSCLG [2012] EWHC 1237**)

33. Further, where, as here, it is alleged that there has been a failure to take into account a material consideration, the challenge will only succeed if it is clear that there is a real possibility that the consideration of the matter would make a difference to the decision (see **Bolton MBC v Secretary of State for the Environment (1991) 61 P&CR 343**.

34. As I have indicated, there is no dispute between the parties as to the application of these general principles.

The legal challenge

35. There are eight grounds of challenge, although in reality they concern four separate areas, with a reasons challenge attached to each, thus requiring the court to consider in relation to each error of law whether there has been a corresponding and justiciable procedural failure. I shall set these out in full.

Ground 1

Failed to take into account a material consideration namely that the inclusion of the appeal site within the site allocations and development management policies DPD was subject to a duly made objection.

Ground 2

Failed to provide any or any adequate reasoning as to whether the fact that the appeal site was the subject of a duly made objection featured in her decision such that the Claimant could understand her approach.

Ground 3

Failed to grapple with a central issue in the case, namely identification of the special character and distinctiveness of Grimsargh and how the same would be harmed by the proposed development

Ground 4

Failed to provide any or any adequate reasoning as to how the central issue had been approached such that the Claimant could understand her approach.

Ground 5

Failed to understand the physical distance between the proposed development and the existing development in Grimsargh and consequently what would remain of the strategic gap, such that she came to inconsistent and irreconcilable conclusions which were perverse.

Ground 6

Failed to provide any or any adequate reasoning as to how she arrived at a conclusion such that the Claimant could understand her approach.

Ground 7

Failed to grapple with a central issue in the case, namely application of a national policy for housing supply contained within the NPPF in which a council cannot demonstrate a five-year supply of housing land.

Ground 8

Failed to provide any or any adequate reasoning as to how she arrived at her conclusions regarding application of national policy for housing supply when housing supply was agreed to be between 2.03 years 3.52 years.

36. These four sets of challenges can be conveniently summarised as (1) the relevance of the emerging SADMPDPD, (2) the character and distinctiveness of Grimsargh, (3) understanding of the physical dimensions in the area of separation and (4) the application of the NPPF where a five-year supply of housing cannot be demonstrated. It is agreed that the reasons challenges are largely parasitic to each of these and insofar as the first second and fourth of these referred to the omission of material considerations, the absence of reasons would be self-evident if there was substance to those challenges.

Discussion

37. The most appropriate way of dealing with the challenges, which are by and large divisible, is to consider the Claimant's argument in relation to each in the first instance, the response thereto by the Defendants, and in each respect to provide my conclusions.

The relevance of the emerging SADMPDPD (1 and 2)

38. The following sections of the decision letter are said to be pertinent. In paragraph 8, after dealing with the purpose of policy 19 in the Core Strategy, and the purpose to be achieved by an area of separation the inspector goes on to say:

The AOS will help maintain the openness of these areas of countryside, and the identity and distinctiveness of the settlements. Detailed boundaries for the AOS are to be set out in the Site Allocations Development Plan Documents. Grimsargh is one of the three northern settlements where such an AOS will be designated. Whilst this policy is, in effect, more stringent than greenbelt policy… it was recognised as having a worthy purpose by the examining inspector who found the Core Strategy to be sound.

39. The inspector dealt with the location of the appeal site in paragraph 9 of her decision letter:

It is….. within the area identified as an AOS on the draft proposals map of the emerging site for Preston Preferred Options Site… Development Plan Document.

40. At paragraph 13, she deals with the purpose of the area of separation in these terms:

> *The purpose of this AOS is to maintain the identity and distinctiveness of Grimsargh as a village settlement within the open countryside, separate from Preston… Although the boundary of the AOS has not been formally adopted, it is indicated on the draft SADMDPD proposal maps. The site is within the very narrowest section of the possible AOS, and is therefore in the most sensitive part of the AOS in terms of separation of the settlements.*

41. The point is simply made on the part of the Claimant that a material consideration which was completely ignored by the inspector was that although the DPD had not been formally adopted, it was actually the subject of an objection made by the Claimant, and that such an objection should have weighed significantly in the balance, on the basis that the designated area of separation might ultimately not be configured in accordance with the draft proposals map. If she had identified this objection, it is a matter which should have been material to her determination under policy 19 and the weight which she attached to that policy.

42. The Claimant's solicitor advocate Mr Hardy was not fazed by a concession seemingly made in a Proof of Evidence relied upon for the purposes of the inspector's inquiry from Mr Hough at paragraph 2.11, where he says

> "*as this DPD is still at a consultation stage, is the subject of objections and there is no certainty that it will be adopted in its current form I have given it very little weight in my assessment of the planning merits of this proposal*."

43. Mr Hardy submits that the converse in terms of weight attachment was applicable for the inspector, in the sense that Mr Hough was making it clear that the objections raised by the Claimant lay at the heart of its validity. Further in this section of his Proof, Mr Hough was clearly referring to the applicable development plan.

44. Mr Hardy further submits that it would not be possible to attach any or at least little weight to an AOS within policy 19 which was as yet undefined because of a validly made objection. The fact that this objection was not identified as a main issue placed before the inspector did not obviate the need for her to take it into account, and to consider the effect which it would have had on her decision.

45. In addition to relying upon the submission that the question of a validly made objection to the DPD was not a main issue before the inspector, the Defendants make a number of points. They say that because the objection lodged to the proposals for the emerging policies DPD was not only referred to in the Statement of Common Ground and thus must have been understood by the inspector, it was impliedly identified in paragraph 18 of the decision letter when in fact she rejected a prematurity/compromise argument by the planning authority which recognised that the AOS was yet to be formally designated and defined.

46. In any event, say the Defendants, it was agreed between the parties that the emerging policy was largely irrelevant, as a determination as to the appropriateness of the development proposals could be made by testing them against the now implemented policy 19 of the Central Lancashire Core Strategy.

47. The point is also made that it is not incumbent upon the inspector to mention everything in her decision letter, not least an item which had not been identified as a main disputed issue, and the status was in any event determined by reference to the principle established in the **Humphriss** case (*supra*). In other words, if the objection to the draft proposals map and its implication for the weight attaching to Policy 19 had not been raised before the inspector, it was not open to the Claimant to raise it within these proceedings.

48. Whilst not accepting that the objection was a material consideration to the main issue, it is contended that applying the principle in the **Bolton MBC** case it could not be said that there was a real possibility that its consideration would have made a difference to the decision.

Conclusions on grounds 1 and 2

49. In my judgement this challenge is without substance. It is correct that the Core Strategy policy which identified an area of separation between Grimsargh and North East Preston to be maintained on the basis of the distinctiveness of the Grimsargh community, was still to be the subject of precise definition, and the emerging policy would achieve that definition. However it does not follow from that that the inspector should not have regarded CS 19 as highly germane to her consideration. The principal issue before her was whether or not the Claimant's proposals were appropriate in the light of the need to maintain an AOS between Grimsargh and Preston.

50. The bulk of the evidence adduced before her inquiry related to that question with detailed landscaping analysis, and evaluation of the effect of impact of the proposals on the existing open land. The parties were afforded an opportunity to deal with the very issue which might arise on the subsequent definition of the AOS if the draft proposals map was to be adopted. It was plain to her that the Claimant did not accept the planning authority's assessment as to what would amount to an appropriate AOS. The planning judgment which she arrived at was fully informed, as the objection to the DPD in the emerging policy was based upon precisely the same premise as the evidence which she considered.

51. Accordingly I regard this as very much a technical challenge which seeks to condescend to the minutiae of the decision made by the inspector. Even if she had made it plain that she was taking into account the fact that the Claimant would continue to object to the draft proposals in the DPD plan, I am quite satisfied that there is no real possibility that it would have made any difference to her decision in this regard. I reject ground one as a valid challenge and it must also follow that no further reasoning was required by the inspector.

The character and distinctiveness of Grimsargh (3 and 4)

52. Policy 19 in the Core Strategy reads as follows:

> "*Protect the identity, local distinctiveness and green infrastructure of certain settlements and neighbourhoods by the designation of areas of separation and major open space, to ensure that those places at greatest risk of merging are protected and environmental/open space resources safeguarded. Areas of separation will be designated around the following northern settlements:(A) Broughton; (B) Goosnargh/Whittingham; and (C) Grimsargh*"

53. An explanatory note is provided at paragraph 10.14 facing the policy:

> "*In some parts of central Lancashire there are relatively small amounts of open countryside between certain settlements. To help maintain the openness of these areas of countryside and the identity and distinctiveness of these settlements, Policy 19 identifies locations where Areas of Separation are needed*."

54. The challenge pursued by the Claimant in this regard is a discrete one. It is said that the policy requires the inspector to identify the special character and distinctiveness of Grimsargh and not the character of the area of separation which is effectively what she did in her decision letter, despite the fact that she correctly referred to the need to consider the question of special character and distinctiveness. This, it is said, was a central issue in the case. The inspector should have set out the way in which the development was going to impact upon the distinctiveness of the village, and this she did not do.

55. The Defendants submit that this challenge is flawed in two respects. First of all (Secretary of State) policy 19 does not require a specific definition of the distinctiveness of Grimsargh as a settlement or community because it is a "policy given" by virtue of the fact that there has been identified between Grimsargh and Preston an area of separation represented by open countryside which is to be preserved. It is a fallacy to suggest that the policy requires any more.

56. In any event (Secretary of State and planning authority) if more was required, an analysis of the distinctiveness can be read in the decision letter, and in particular paragraph 13, where Grimsargh is described as a village settlement situated in the open countryside, and separated from the urban area of Preston. Further in paragraphs 13 to 17 of the decision letter, the inspector specifically analyses the harm which will be caused to the identity and distinctiveness of Grimsargh as a village by the proposed development.

Conclusions on Grounds 3 and 4

57. In my judgment it is difficult to read into policy 19 or the explanatory note any sort of qualifying requirement for the establishment of the distinctiveness of any village or community. I agree that the word character does not appear in either the policy or the explanatory note. However it is noteworthy that the community of Grimsargh is specifically included in the policy for the preservation of an area of

separation. In other words it is unnecessary to apply any further consideration other than that Grimsargh is separate from urban Preston by virtue of open countryside. Indeed the Claimant acknowledged in its evidence the village nature of the community and the thrust of the appeal to the inspector in the first place was to the effect that this community could still be maintained in terms of its distinctiveness by an area of separation notwithstanding the proposed development.

58. In the circumstances I find it difficult to understand the argument that the character and distinctiveness of Grimsargh was a central issue in the case. It might have been different if the Claimant had sought to argue that Grimsargh was no more than a cluster of dwellings, but it seems to me that its inclusion in CS 19 is determinative on this point. It is unnecessary for me to decide whether or not the inspector has undertaken the analysis suggested, because in my judgment the necessary focus was properly on the nature of the area of separation and not on any feature of the village.

59. Again it must follow that no reasoning was required because this was not a matter which required her determination. It was simply not a central issue.

Understanding the physical dimensions of the area of separation (5 and 6)

60. The specific aspect to this challenge is in paragraphs 5 and 12 of the decision letter. Paragraph 5 provides a description of the appeal site which it is accepted is accurate. It does not provide dimensions. However in paragraph 12, when dealing with the size of the gap which would remain if the development was allowed, the inspector said this:

> "*There is a gap of around 120 metres in the ribbon development on the eastern side of Longridge road, opposite the appeal site. The amended indicative layout shows that a similar gap would be maintained at the appeal site with development also set back from the road as at The Hills. However the development would then extend further northwards on the western side of the site. Although a gap of around 120 metres would still exist along the Longridge Road frontage and there would be around 190 metres between the northernmost extremity of the appeal site and housing at the southern edge of Grimsargh ,and because of the northern extension of the proposed residential development, the gap would not run straight through east to west from Longridge road*."

61. It is suggested that this assessment of the physical layout is inconsistent with paragraph 5 in which the inspector had acknowledged that the southern edge of Grimsargh lay on the northern side of St Michael's church. I confess that these various descriptions were very difficult to understand without sight of the physical plans and measurements. A composite plan (not in the bundle) was provided by Mr Hardy on behalf the Claimant and made it easier to understand what may have been a misstatement by the inspector. This shows clearly that the residential dwellings which form part of Grimsargh at the southerly edge are only 120 metres from suburban Preston. However the gap between Church House Farm and the

edge of The Hills is substantially greater. The 190 metres measurement provided on Mr Hardy's plan is between the most northerly point of the proposed residential development (not the appeal site) and the southern tip of the Grimsargh dwelling ribbon. Because this particular (apparent) inconsistency could be explained by loose terminology, Mr Hardy also sought to rely upon an additional paragraph in the decision letter to demonstrate what he submitted was suggestive of a sufficient misunderstanding in the physical dimensions by the inspector to give cause for concern that her own conclusions on what remained of the strategic gap were perverse.

62. In paragraph 15, the inspector says:

> *"Nonetheless it seems to me that there would be still a clear impression of development along the side of Longridge road rather than open countryside which the AOS seeks to achieve. There would be little sense for people travelling from Preston of having left the built-up area of the city. The scheme is heavily reliant on the maintenance of the boundary hedge to create an illusion of openness absence of development to the East. However that openness would for the most part be limited to one "field". From the footpath the views southwards would be entirely enclosed by built development albeit that its appearance may be soft and by planting which would take some considerable time to mature to be effective"*

63. It is submitted, on the basis of the additional plan, that the inspector could not possibly have understood the true layout if she referred to the illusion of absence of the development to the east. The development was to the west of Longridge Road.

64. The Defendants submitted that this challenge is without substance, not least because the inspector was clearly referring to the built development, not the red line boundary of the appeal site when she was describing the northernmost extremity. Further, in relation to paragraph 15, reference is made to page 158 in the bundle which shows the revised extent of the building development and a significant area of hedging which encloses the northern edge of the dwellings and creates a field between that edge and Longridge Road. If this is right, the inspector was not incorrect in her description of "*an absence of development to the east*".

65. In any event, it is said that a criticism of the site description and measurements provided in the inspector's decision letter should be considered in the context of the vast quantity of written and drawn material which was available to her, as well as an understanding of the site from her visit.

Conclusions on grounds 5 and 6

66. I have to confess to finding this challenge somewhat opaque. Whilst the inspector may have been a little loose in the way in which she fixed the anchor points for her measurements, possibly misinterpreting the Claimant's evidence, it seems to me that her description in the very last sentence of paragraph 12 identifies precisely what would happen to the area of separation were the proposed development allowed. In other words there would be virtually no east to west

separation but a narrow band from south-east to north-west maintaining approximately the same gap which existed between the two ribbons of houses ((North edge of Preston and south edge of the village).

67. However rather than indulging in a process of interpretation, it seems to me that a challenge on these grounds requires the court to do precisely that which has been deprecated in the decided authorities, namely treating the decision letter as if it were an examination paper, and descending into the minutiae of the contents of the decision. To establish that this decision was unlawful in the sense that it was Wednesbury irrational with "*irreconcilable conclusions which were perverse*", this court would have to be satisfied that the inspector had simply failed to understand the physical layout of the area of separation and how it would be affected by the proposed build. In my judgment at the very best the Claimant can only show a potential inconsistency in measurement fixing; it is plain to me that the inspector fully understood how the area of separation was going to be affected, not least by the description which she provided at the end of paragraph 12. In any event, if there was a discrepancy, in my judgment it played no material part in her reasoning. Accordingly these grounds must fail.

The application of the NPPF where a five-year housing supply cannot be demonstrated (7 and 8)

68. It is said here that the inspector's failure arose by not grappling with a central issue in the case, that is how the Framework should be applied in the circumstances, it being common ground that a five-year supply could not be demonstrated. The Claimant relies upon the reference in paragraph 10 of the decision letter which reads as follows:

> *"Government policy as set out in the National Planning Policy Framework (2012) is to boost significantly the supply of housing. It is common ground that the council cannot demonstrate a five-year supply of housing as required in the Framework. In such cases, the Framework states the relevant policies for the supply of housing should not be considered up to date and housing applications should be considered in the context of the presumption in favour of sustainable development."*

69. There was never an issue in this case that the proposed development amounted to sustainable development. Therefore in certain circumstances a planning decision, in accordance with the Framework, had to be made on the basis of the presumption. Those circumstances related to the absence of up-to-date relevant housing policy. For Preston City Council it was agreed that a housing land supply set between 3.52 years at best 2.03 years at worst meant that there was no up-to-date relevant housing policy. On the face of it the presumption under paragraph 49 of the Framework was invoked. Paragraph 14 provided further detail in relation to the operation of the presumption in relation to decision taking (as well as plan making). Its import was that permission should be granted in the case of a sustainable development unless "*any adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole*".

70. Mr Hardy refers to the fact that there is still reserved for the decision taking process a qualification of "*material considerations indicating otherwise*". This particular reservation has assumed more importance in the light of his argument which has seemingly modified from his skeleton, in his oral presentation before me. He accepts that policy 19 is not a housing policy, and therefore could not be said to be out of date, and thus effectively ignored. However he relies upon the fact that a material consideration in this case which was not taken into account by the inspector was the golden thread of the presumption in favour of sustainable development, and there was no indication that this had been properly weighed in the balance when she came to the conclusion in relation to the application of policy 19. In other words she ignored this material consideration, and was driven by policy 19 and the evaluation of the AOS only.

71. The Defendants unsurprisingly disagree. They submit that in paragraph 10 the inspector made it abundantly plain that the housing application should be considered in the context of the presumption in favour of sustainable development. Further, in a footnote to paragraph 10 the inspector acknowledged that significant weight should be attached to the substantial shortfall in housing supply. Therefore whether this is a case in which paragraph 49 of the Framework applied, incorporating a planning test set out in paragraph 14 and requiring the adverse impacts to significantly and demonstrably outweigh the benefits of the development, or whether this case fell outside paragraph 49 because policy 19 was not a housing policy but which referred to built development generally, it could not be said that the inspector had ignored this Framework consideration.

Conclusions on grounds 7 and 8

72. It seems to me that whatever the nuances of approach to the various considerations, the weight to be attached to policy CS 19 was a matter entirely for the inspector. In this respect I do not agree that she has failed to grapple with the issue described as central, because she plainly had in mind the presumption which arises from the Framework. There could only be substance to a challenge in ignoring a material consideration if there was evidence that she had failed to address it.

73. However this ground of challenge, as with the two others which referred to a "central issue", with respect appear to misstate the core of this decision-making process, which addressed one stated main issue, an issue to which all the evidence was directed, and that is whether or not this was an appropriate location for housing having regard to national and development plan policies in respect of the delivery of new housing and spatial planning policy in the development plan. The undoubted focus was on the AOS. It had never been suggested that a presumption in favour of sustainable development was a trump card, in the sense that notwithstanding the loss of open agricultural land between the two settlements the development could still be approved.

74. I can find no reason to criticise the inspector in relation to this challenge, as she has clearly undertaken the necessary weighing in the balance.

Other matters

75. As I have indicated, the procedural challenges based upon an absence of adequate reasoning are largely parasitic on the substantive grounds alleging errors of law which I have rejected. Lest it be considered that I am dismissive of these additional procedural challenges upon which I received very little by way of extra submission, I should make it clear that even if the reasons had in any respect been defective, leaving the Claimant in any doubt as to why the inspector had arrived at the conclusion which she did, I would not have been satisfied that the Claimant had been substantially prejudiced by any such failure.

76. Clearly the Claimant has been disappointed by the obstruction of its development plans for this land, but I have no doubt that it was made perfectly plain to them that permission was refused principally and substantially because they had not satisfied the inspector that the development would not affect the area of separation, notwithstanding their attractive evidence to the contrary. Of course it remains open to the Claimant to mount further challenges by way of objection before the DPD is finalised.

77. I invite the parties to agree the costs consequences of my decision. In the absence of agreement I can determine those costs on the submission of summary schedules, or by representation on the handing down this judgment which will be on Friday of this week.

GWQC

2.10.13