Neutral Citation Number: [2019] EWCA Civ 1640

Case No: C1/2018/2373

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
UPPER TRIBUNAL JUDGE ANDREW GRUBB
(sitting as a deputy judge of the High Court)
[2018] EWHC 2386 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 October 2019

Before:

Lord Justice Lindblom
Lord Justice Baker
and
Sir Bernard Rix

Between:

Chichester District Council	**Appellant**
- and -	
(1) Secretary of State for Housing, Communities and Local Government **(2) Beechcroft Land Ltd.**	**Respondents**

- -

Mr Gwion Lewis (instructed by **Sharpe Pritchard LLP**) for the **Appellant**
Mr Guy Williams (instructed by **the Government Legal Department**) for the **First Respondent**
Mr Killian Garvey (instructed by **Eversheds Sutherland**) for the **Second Respondent**

Hearing date: 23 July 2019

Judgment Approved by the court for handing down (subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. When does a proposal for housing development engage the policy in paragraph 198 of the National Planning Policy Framework of March 2012 ("the NPPF") – that where an application for planning permission "conflicts" with a neighbourhood plan "… permission should not normally be granted"?

2. The appellant, Chichester District Council, appeals against the order dated 12 September 2018 of Upper Tribunal Judge Grubb, sitting as a deputy judge of the High Court, by which he dismissed its application under section 288 of the Town and Country Planning Act 1990 challenging the decision of an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government (then the Secretary of State for Communities and Local Government), in a decision letter dated 2 November 2017, to allow an appeal by the second respondent, Beechcroft Land Ltd., under section 78 of the 1990 Act against the refusal on 8 February 2017 of an application for planning permission for up to 34 dwellings on land at Breach Avenue, Southbourne in East Sussex.

3. The site, once an orchard, is undeveloped land outside the settlement boundary of Southbourne defined in the Southbourne Parish Neighbourhood Plan 2015. The inspector found that the proposal was in conflict with two policies of the Chichester Local Plan Key Policies 2015 – Policy 2 and Policy 45 – and did not accord with the "aim" of the neighbourhood plan for the location of new housing, but that it would not conflict with the "policies" of the neighbourhood plan nor offend its purpose in restricting development north of the railway line, which was to avoid adding to congestion at the Stein Road level crossing. The district council could not demonstrate the five-year supply of housing land required by the policy in paragraph 47 of the NPPF. Applying the policy in paragraph 14 of the NPPF, the inspector concluded that the proposal benefited from the "presumption in favour of sustainable development", which in his view overcame the conflict with the two local plan policies and with the aim of the neighbourhood plan for the location of new housing. He therefore allowed Beechcroft's appeal. The judge rejected the argument that the inspector misapplied the policy in paragraph 198 of the NPPF, and therefore dismissed the section 288 application. I granted permission to appeal on 24 January 2019.

The issue in the appeal

4. The main issue in the single ground of appeal is whether the inspector erred in law in his understanding and application of the policy in paragraph 198, or by failing to apply it.

Section 38 of the Planning and Compulsory Purchase Act 2004

5. Section 38(3) of the Planning and Compulsory Purchase Act 2004 provides that "[for] the purposes of [any area of England other than Greater London] the development plan" includes "(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area" and "(c) the neighbourhood development plans which have been made in relation to that area". Subsection (5) requires any conflict between two policies of a development plan to be "resolved in favour of the policy … contained in the last document to

become part of the development plan". Under subsection (6), "[if] regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". Section 38A(2) provides that "[a] "neighbourhood development plan" is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan".

The policies in the NPPF

6. Under the heading "Neighbourhood plans", paragraph 183 of the NPPF said that "[neighbourhood] planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need", and "neighbourhood planning" could be used to "set planning policies through neighbourhood plans to determine decisions on planning applications". Paragraphs 184 and 185 stated:

> "184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.
>
> 185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation."

7. The policy for "Determining applications" in paragraph 198 was this:

> "198. Where a Neighbourhood Development Order has been made, a planning application is not required for development that is within the terms of the order. Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted."

8. The policies in paragraphs 183 to 185 and 198 were replaced in paragraphs 12, 28 to 30 and 52 of the replacement NPPF published in July 2018, and no further change was made in February 2019. Paragraph 12 of the February 2019 version says that "[where] a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted".

The local plan

9. At the relevant time the development plan for Southbourne comprised the local plan, adopted in July 2015, and the neighbourhood plan, which was made in September 2015. The period of each plan runs to 2029.

10. In chapter 5 of the local plan, "Development and Settlement Hierarchy", a "settlement hierarchy" is established for the district, as "the basis for the distribution of growth outlined in the strategy": at the top, "Chichester City Sub-Regional Centre", then "Settlement Hubs", then "Service Villages", then the "Rest of Plan Area" (paragraph 5.1). The plan "focuses the majority of development at Chichester city, Westhampnett and the Settlement Hubs of East Wittering/Bracklesham, Selsey, Southbourne and Tangmere" (paragraph 5.4). Paragraphs 5.5 and 5.6 state:

> "5.5 All settlements classed in the hierarchy as Service Villages or above are defined by Settlement Boundaries. These boundaries indicate the areas where new development will generally be permitted, subject to satisfying other policies in the Plan. Settlement Boundaries have been carried forward from the Chichester District Local Plan 1999, but will be reviewed through Development Plan Documents and Neighbourhood Plans, taking account of the housing and development requirements identified elsewhere in this Plan.
>
> 5.6 The Rest of the Plan Area, defined as the areas outside defined Settlement Boundaries, is rural in character with many smaller villages, hamlets and scattered development along with open countryside. Therefore, development in the Rest of the Plan Area is subject to greater restrictions and limited primarily to that which requires a countryside location or meets an essential local rural need, supports rural diversification and sustainability of the countryside. More detailed policies relating to development in the Rest of the Plan Area are set out in the Strategic Delivery Policies and include Policy 45 Development in the Countryside and Policy 46 Alterations, Change of Use and/or Re-use of Existing Buildings in the Countryside."

Paragraph 5.7 states that Policy 2 "sets out the settlement hierarchy" and that it "indicates the scale and type of development that will be provided in the different settlements".

11. The relevant parts of Policy 2 are:

> "Development Strategy and Settlement Hierarchy
>
> The development strategy identifies the locations where sustainable development, infrastructure and facilities will be accommodated which in terms of scale, function and character support the role of the settlements outlined below. …
>
> …
>
> Settlement Hubs …

New development to meet identified local needs will reinforce the role of the Settlement Hubs as centres providing a range of homes, workplaces, social and community facilities (See Policies 18, 20, 23 and 24). …

Strategic development locations are identified at:

…
- Southbourne, Selsey and East Wittering/Bracklesham in the form of medium-scale extensions (See Policies 20 and 23-24).

…

Service Villages …

Outside of Chichester city and the Settlement Hubs, the Service Villages will be the focus for new development and facilities.

Provision will be made for the following:

- Small scale housing developments consistent with the indicative housing numbers set out in Policy 5 …

…

Settlement Boundaries

There is a presumption in favour of sustainable development within the Settlement Boundaries which will be reviewed through the preparation of Development Plan Documents and/or Neighbourhood Plans …

Rest of the Plan Area: Small villages, hamlets, scattered development and countryside

Development in the Rest of the Plan Area outside the settlements listed above is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with Policies 45-46."

12. Chapter 7, "Housing and Neighbourhoods", identifies the number of homes to be provided in the plan period (paragraph 7.10), and states that a "significant element" of that provision had already been identified (paragraph 7.11). It explains that of the remaining provision of 4,740 homes in the plan period, 3,250 are allocated at the "Strategic Development Locations", 630 on "strategic sites to be identified at the settlement hubs of East Wittering/Bracklesham, Selsey and Southbourne" under Policies 20, 23 and 24, and 860 "to be brought forward on parish housing sites" under Policy 5 (paragraph 7.12). This approach to the provision of new housing is reflected in Policy 4. In Table 7.2, "Summary of Housing Locations and Sites Identified in the Local Plan to 2029", the "approximate" number of homes indicated for "Southbourne village" as one of the "Strategic Allocations" under Policy 20 is 300; and the "approximate" number for "Parish housing sites" under Policy 5 is 860. On the "Parish Housing Sites", paragraph 7.27 says that suitable sites and locations "will be identified meeting the criteria set in Policy 2 …". Policy 5 states that "[small] scale housing sites will be identified to address the specific needs of local communities in accordance with the indicative

parish housing numbers set out below", and that "[suitable] sites will be identified in neighbourhood plans or in a Site Allocation DPD …". The "indicative" housing number for "Southbourne (excluding Southbourne village)", excluding strategic housing allocations, is 50. Under the heading "Neighbourhood Planning", paragraph 7.30 says:

> "7.30 A Neighbourhood Development Plan and its policies will work alongside, and where appropriate replace, the policies in the Local Plan where they overlap. The policies will only apply to the specific area covered by that Neighbourhood Development Plan … . Existing Settlement Boundaries may be reviewed through Neighbourhood Development Plans. …".

13. In chapter 12, "The East-West Corridor", in text headed "Southbourne Strategic Development", paragraph 12.65 refers to the requirement of "around 300 homes over the Plan period …". It says that "Southbourne Parish Council is preparing a neighbourhood plan for the parish which will identify potential development site(s)". Policy 20 reflects this. It says that "[land] at Southbourne will be allocated for development in the Southbourne Neighbourhood Plan including any amendments to the Settlement Boundary"; that the development to be planned for will include "300 homes"; and that development should be "planned as an extension(s) to Southbourne, that is well integrated with the village and provides good access to existing facilities".

14. In chapter 19, "The Environment", Policy 45 states, under the heading "Development in the Countryside":

> "Within the countryside, outside Settlement Boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements.
>
> Planning permission will be granted for sustainable development in the countryside where it can be demonstrated that all the following criteria have been met:
>
> 1. The proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement;
> 2. The proposal is complementary to and does not prejudice any viable agricultural operations on a farm and other existing viable uses; and
> 3. Proposals requiring a countryside setting, for example agricultural buildings, ensure that their scale, siting, design and materials would have a minimal impact on the landscape and rural character of the area.
>
> …".

The neighbourhood plan

15. In section 2 of the neighbourhood plan, under the heading "Planning Policy Context", paragraphs 2.40 to 2.45 refer to the housing policies in the local plan that were relevant to Southbourne.

16. Section 3, "Vision & Objectives", describes the "vision for Southbourne in 2029" (paragraph 3.1) and the plan's "key objectives" in achieving it (paragraph 3.2). One of those objectives is

"to avoid increasing traffic congestion at the Stein Road railway crossing in the plan period and to identify long term solutions" (paragraph 3.2.9).

17. In section 4, "Land Use Policies", paragraph 4.1 says that the neighbourhood plan "contains a series of land use policies that focus on the settlements of Southbourne and Nutbourne, the successful delivery of which during the plan period of April 2014 to March 2029 will achieve the community's vision for the parish". Paragraph 4.2 states:

> "4.2 It is not the purpose of the SPNP to contain all land use and development planning policy relating to the parish. The saved policies of the 1999 Chichester District Local Plan have now been replaced by the CLPKP which will be used by the local planning authority to consider and determine planning applications."

18. Policy 1, "Development within the Settlement Boundaries", states:

> "The Neighbourhood Plan will support development proposals located inside the Settlement Boundaries of Southbourne/Prinsted, Nutbourne West and Hermitage/Lumley/Thornham, as shown on the Policies Map, provided they accord with other provisions of the Neighbourhood Plan and development plan."

19. In the supporting text, paragraph 4.4 says that Policy 1 "encourages" future development to be in the specified "established settlements". Paragraph 4.5 says the policy "proposes amendments to the Settlement Boundaries of Southbourne and Nutbourne villages to accommodate new development on the edge of the settlements but also seeks to protect the essential countryside character of the defined settlement gaps between Southbourne, Nutbourne and Hermitage/Lumley/Thornham villages …". Paragraph 4.6 explains that, "as there are no sites of sufficient size to accommodate new development within [the settlement boundaries established in the 1999 local plan], their alignment requires amendments in order to make provision for the site allocations in Policy 2". Paragraph 4.7 lists the criteria used in reviewing the settlement boundaries, one of which is "c) Minimisation of local traffic congestion – only land south of the Stein Road railway level crossing …". Paragraph 4.8 says the policy accords with "the principles for reviewing the settlement boundary as proposed in Policy 2 of the CLPKP …". Paragraph 4.9 emphasizes that by concentrating development south of the level crossing "the spatial plan minimises the impact of development on a serious traffic congestion and severance issue that will not be resolved during the plan period". Paragraph 4.10 adds that, "[by] directing growth through land allocations south of the level crossing and alongside the A259 … , this policy makes sensible and reasonable provisions". Paragraph 4.13 says that "[the] policy anticipates and responds to the new Local Plan policies 4, 5 and 20 in respect of Southbourne village being identified in the settlement hierarchy … as being suitable for strategic development", and that "[the] proposed amendments to the settlement boundaries will allow for a scale of housing growth and green infrastructure provision desired by these policies".

20. Policy 2, "Housing Site Allocations", allocates four sites for development in the plan period, for a total of 350 dwellings, three of them in Southbourne village, the fourth at Nutbourne West:

> "The Neighbourhood Plan allocates the following sites for housing development of a mix of mainly 1, 2, 3 and 4 bedroom homes, as shown on the Policies Map, subject to the development principles outlined:

I. 150 dwellings on land at Loveders Mobile Home Park, Main Road …
II. 125 dwellings on Land North of Alfrey Close …
III. 25 dwellings on land at Gosden Green …
IV. 50 dwellings on Land at Nutbourne West …

…".

21. Paragraph 4.15 says the three sites allocated in Southbourne village "are all located within the amended Settlement Boundaries defined in Policy 1 and together will deliver 300 new homes", which "represents a significant increase – about 20% – in the size of the village and is well in excess of the rate of new housing delivery of the past few years". Paragraph 4.17 says these three allocations "together will deliver a variety of new homes distributed evenly on both sides of the village and south of the railway crossing".

22. In the submission draft of the neighbourhood plan Policy 1 had contained an additional sentence, which said that "[development] proposals outside the Settlement Boundary will be required to conform to development plan policy in respect of the control of development in the countryside". Recommending the deletion of that sentence, the examiner said (in paragraph 5.9 of his report):

> "5.9 To the extent that over the life of the Plan proposals might come forward for development outside the settlement boundaries, it would not be appropriate for the Plan to require such proposals to conform to development plan policy in the countryside. That responsibility should be for Chichester District Council to determine through its development plan policies. For this reason I have indicated that if this policy is to be retained, the final sentence of the draft policy should be removed ... . In the explanatory text, the policy should therefore encourage, rather than direct development, within the established settlements within the parish. ... ."

The inspector's decision letter

23. In a passage of his decision letter headed "Development Plan Strategy" the inspector set out the relevant policies of the development plan (in paragraphs 6 to 8). He went on to say (in paragraphs 9 to 18):

> "9. The appeal site comprises essentially undeveloped land which was formerly used as an orchard. It abuts the eastern edge of established residential development at Breach Avenue as well as Fraser Gardens and East Field Close. However, the site falls outside of the settlement boundary as defined in the NP and is not allocated for any form of development. Nor is it claimed that the appeal proposal would meet an essential, small scale and local need. It is common ground, therefore, that the proposal would be contrary to LP Policies 2 and 45.
>
> 10. The Council considers that the proposal is also in conflict with LP Policy 5 and NP Policies 1 and 2 on the basis that the unplanned provision of 34 dwellings would be at variance with the development strategy for Southbourne which was properly considered through the LP and NP preparation processes.

11. The appellant contends that these policies are silent on the question of housing development outside of settlement boundaries and are, therefore, not relevant to the appeal proposal. The appellant points to the NP Examiner’s Report which recommended the omission of wording from Policy 1 which would have required development outside of settlement boundaries to conform to development plan policy for the control of development in the countryside. Moreover, it is argued that the scale of development proposed would not be inconsistent with the overall size of Southbourne or the level of development anticipated there in the development plan strategy. The appellant draws support for its approach from an appeal decision at Newick.

12. I agree with the appellant that the policies in question do not directly presume against development outside of settlement boundaries. Furthermore, it was accepted by the Council that LP Policy 5 does not set a cap on the amount of housing which may be provided. That much is plain from the policy’s use of the phrase ‘indicative housing numbers.’

13. Nevertheless, nor is there anything in the NP policies which supports the proposal. Indeed, it is clear that the way in which the settlement boundary was amended under NP Policy 1, and the housing allocations located under Policy 2, was the result of an intention to avoid further development north of the railway line in order to minimise congestion at the Stein Road level crossing. I also heard from interested parties at the Inquiry, as well as others in written submissions, how important this consideration was to local people in the preparation of the NP. The appeal site is located to the north of the railway line. For this reason it was considered and rejected as a housing location during the NP preparation process. I consider below the effect of the proposal on congestion at the crossing. However, at this stage, it is pertinent to recognise that the proposal is at odds with the aims of the NP with regard to the location of new housing.

14. The NP examiner explains the reason for recommending the amendment to Policy 1 at paragraph 5.9 of his Report. He says that it would not be appropriate for the NP to require proposals outside of settlement boundaries to conform to development plan policy for the countryside; that responsibility should be for the District Council through its development plan policies. It seems to me therefore, that the Examiner was not offering support for development outside of settlement boundaries. Rather, he was merely seeking to ensure that the matter is dealt with at the appropriate level of plan making. That approach is consistent with the principle that proposals should be determined in accordance with the development plan when read as a whole, unless material considerations indicate otherwise.

15. I recognise that there are many parallels between the considerations in this appeal and those in the Newick case. In particular, the recognition that the policies of the Joint Core Strategy (JCS) and Newick Neighbourhood Plan did not place a cap on development in the settlement. Notwithstanding that the Newick Neighbourhood Plan was made before the full extent of housing allocations in the JCS had been established, it is also relevant that the scale of the proposal in that case was, relative to the size of the settlement, greater than in this case.

> 16. Moreover, it was accepted by the Council's planning witness that the housing numbers for Southbourne in the LP are not maximums. Furthermore, notwithstanding a suggestion to the contrary in the Council's closing submissions, its planning witness accepted that, had the 34 units been located within the settlement boundary, there would have been no objection on the basis of the scale of the proposal. There is no firm evidence to indicate that the proposed 34 units would be incompatible with the scale of Southbourne as a whole or that future occupiers would not be adequately served by reasonably accessible local services and facilities. Indeed the Council accepted that the site is sustainably located in that regard.
>
> 17. I recognise that the indicative figures in the LP represent a considered policy response to the scale of development to be accommodated in Southbourne. However, the proposal would represent an increase of less than 10% over the 350 dwellings earmarked for Southbourne as a whole. Since the site adjoins the established built up area and is fairly well linked to its facilities, I consider this to be a more useful comparison than the Council's reference to the 50 dwellings indicated in LP Policy 5. It also distinguishes the proposal from the Hambrook appeal cited by the Council. In that case 120 dwellings were proposed in a considerably smaller settlement where just 25 additional units were allocated in the Local Plan. Consequently, I consider that the scale of the proposal, as opposed to its location, would not be at odds with the broad development plan strategy for new housing as indicated in LP Policies 5 and 20.
>
> 18. The silence of NP Policies 1 and 2 on the question of development outside of settlement boundaries is not a positive point in favour of the appeal proposal. As such, it does not outweigh the proposal's conflict with LP Policies 2 and 45 and its lack of accord with the aim of the NP with regard to the location of new housing. Therefore, I find that the proposal would be contrary to the development plan strategy for the location of residential development when considered as a whole. … ."

24. On "Housing Land Supply" he found that the district council "cannot demonstrate a five year supply of deliverable housing land" (paragraph 32)

25. His conclusion on the likely effect of the proposed development on congestion at the Stein Road level crossing was that "the number of additional vehicle movements generated by the proposal would not materially increase the waiting times at the crossing" (paragraph 43).

26. Finally, on the "Planning Balance", he concluded (in paragraphs 47 to 55):

> "47. Section 38(6) of [the 2004 Act] requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal conflicts with LP Policies 2 and 45 and does not accord with the aim of the NP with regard to the location of new housing.
>
> 48. Nonetheless, I have concluded that the Council cannot demonstrate a five year supply of housing as required by the Framework. ...

49. Even taking the Council's figure for the number of housing units to be delivered over the next years … , the ... land supply position would be marginal. However, I have found that substantially fewer units are likely to be delivered. The appellant also considers that the LP is out of date pending the adoption of the DPD. However, there is nothing to suggest that the settlement boundaries for Southbourne will be affected by the completion of that process. Therefore, whilst Policies 2 and 45 are relevant to the supply of housing, I consider that they should still carry moderate weight in the determination of this appeal. I have also found that the scale of the proposal would not be at odds with the level of residential development in Southbourne indicated in LP Policies 5 and 20. Furthermore Southbourne is identified in the LP as a Settlement Hub where strategic development is anticipated. Nor have I found that proposal would lead to other direct harms. Therefore, notwithstanding the conflict with the terms of LP Policies 2 and 45, in practice, the degree of harm to the development plan strategy would be limited.

50. Framework paragraphs 184 and 198 advise that neighbourhood planning provides a powerful tool for local people to ensure that they get the right type of development and that proposals which conflict with a made Neighbourhood Plan should not normally be granted. Paragraph ... 41-083-20170810 of the Planning Practice Guidance advises on the application of the Written Ministerial Statement on Neighbourhood Planning dated 12 December 2016 following [the judgment in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865]. It advises that where, as in this case, the criteria in the Written Ministerial Statement apply, significant weight should still be given to the Neighbourhood Plan notwithstanding the fact that the local planning authority cannot demonstrate a five year supply of deliverable housing sites. I recognise that a great deal of time and effort was invested in the preparation of the NP and that local people responded positively to Government policies on neighbourhood planning. Allowing the appeal could seem to undermine confidence in the planning process. These matters form part of the social dimension of sustainability which, Framework paragraph 7 advises, includes supporting strong, vibrant communities.

51. However, I have found that the proposal would not conflict with the policies of the NP and would not materially exacerbate congestion at the railway crossing. As such, it would not cause harm in respect of the underlying reason why the NP seeks to restrict development north of the railway line. ...

…

55. Overall therefore, I find that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposal. As such, the proposal benefits from the presumption in favour of sustainable development set out in Framework paragraph 14 and LP Policy 1. This consideration is sufficient to overcome the conflict with LP Policies 2 and 45 and the aim of the NP with regard to the location of new housing."

The judgment in the court below

27. The judge concluded that, in applying the policy in paragraph 198 of the NPPF, the inspector had found the proposal did not conflict with the neighbourhood plan but did with the local plan (paragraph 45 of the judgment). The proposal was "not explicitly contrary to either Policy 1 or [Policy] 2" of the neighbourhood plan, but those policies "offered no positive support for development outside the settlement boundary and specified areas". The "amendment" to the neighbourhood plan recommended by the examiner had made it "plain that development outside the settlement boundary and specified areas is a matter for [the local plan]". The "aim" was to keep development to the south of the Stein Road level crossing. But "such a limitation was not expressed in ... Policies 1 and 2 so that it can properly be said that any proposed development there (or anywhere outside the settlement boundary and specified areas) "conflicts" with [the neighbourhood plan]" (paragraph 62). This case differed from *Crane v Secretary of State for Communities and Local Development* [2015] EWHC 425 (Admin). The neighbourhood plan there was "comprehensive". Here there was no equivalent to the policy for "windfall" development in that case, and the neighbourhood plan was "silent" on development outside the settlement boundary and the locations referred to in Policies 1 and 2 (paragraph 68). There the allocations were "explicitly the planned maximum provision of new housing", but in this case neither the local plan nor the neighbourhood plan capped the amount of housing to be provided (paragraph 69).

Did the inspector misconstrue, misapply or fail to apply the paragraph 198 policy?

28. The essential argument for the district council, persuasively presented by Mr Gwion Lewis, was that Beechcroft's proposal was plainly in conflict with both the aims and the policies of neighbourhood plan, and the inspector should have seen that. It was contrary to the objectives and vision of the plan. When the plan was being prepared the site had been rejected as a suitable location for housing development. The proposed development was in conflict with Policy 1 because it was outside the settlement boundary established for Southbourne, and with Policy 2 because it was not on one of the allocated sites and was thus contrary to the parish council's judgment on the suitable locations for new housing. To distinguish as the inspector did between the aims of the neighbourhood plan and its policies, and to conclude that the proposal was at odds with the former but not in conflict with the latter, was, Mr Lewis submitted, irrational and inconsistent with the policy in paragraph 198 of the NPPF. The approach adopted by the inspector and endorsed by the judge was irreconcilable with this court's recent decision in *Gladman Developments Ltd. v Canterbury City Council* [2019] EWCA Civ 669 and the first instance decision in *Crane* – in both of which the circumstances were analogous to this case. Mr Lewis's alternative argument was that if, on a true reading of the decision letter, the inspector reached no clear conclusion on the question of conflict with the neighbourhood plan, he erred in failing to do so. The policy in paragraph 198 of the NPPF required him to do it.

29. Those submissions were countered by Mr Guy Williams for the Secretary of State and Mr Killian Garvey for Beechcroft, both of whom argued that the inspector's approach was impeccable and the judge's analysis correct. The inspector did not misconstrue or misapply, or fail to apply, the policy in paragraph 198 of the NPPF. He found the proposal to be not in accordance with the development plan, and in conflict with it, because it was contrary to the policies of the local plan for proposals on unallocated sites outside settlement boundaries. But he also took into account the fact that it did not accord with the aims of the neighbourhood

plan for the location of new housing. The circumstances in this case can readily be distinguished from both *Crane* and *Gladman v Canterbury City Council*. The conflict with the development plan here was a conflict with policies that were explicitly against the proposed development. There was no need for any "negative inference" to that effect. Those policies were not in the neighbourhood plan but in the local plan – Policies 2 and 45, which govern decision-making for proposed housing development on an unallocated site outside a settlement boundary.

30. I cannot accept Mr Lewis's argument. In my view the inspector's understanding of the relevant policies of the development plan was correct. Nor did he misinterpret or misapply, or overlook the policy in paragraph 198 of the NPPF.

31. The relevant legal principles are well known (see my judgment in *Gladman v Canterbury City Council*, at paragraphs 20 to 22, citing previous authority in this court and above). The decision-maker's duty under section 38(6) of the 2004 Act creates a statutory presumption in favour of the development plan (see the speech of Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447 at, pp.1449, 1450 and 1458 to 1460, and my judgment in *Secretary of State for Communities and Local Government v BDW Trading Ltd. (T/A David Wilson Homes (Central, Mercia and West Midlands)* [2016] EWCA Civ 493, at paragraphs 18 to 23). The presumption applies to the statutorily adopted plan as a whole (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 18 and 21 to 23). To apply the statutory presumption, the decision-maker must interpret the relevant provisions of the plan accurately (see the speech of Lord Clyde in *City of Edinburgh*, at pp.1450 and 1458 to 1460), with a focus on its policies for the development and use of land in the local planning authority's area (see the judgment of Richards L.J. in *R. (on the application of Cherkley Campaign Ltd.) v Mole Valley District Council* [2014] EWCA Civ 567, at paragraph 16). The interpretation of planning policy is ultimately a task for the court, reading the policy sensibly and in its full context (see the judgment of Lord Reed in *Tesco Stores Ltd.*, at paragraphs 18 and 19). Where the real complaint is that a particular policy has simply been misapplied, the court will only intervene where the decision-maker has fallen into "Wednesbury" error (see the judgment of Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865, at paragraph 26, and my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50).

32. As the authorities show, the circumstances in which those basic principles are applied will vary widely. Reading the analysis in one case across into another can be mistaken. No two plans are the same. The policies of each are unique, crafted for the area or neighbourhood to which they relate, not to fit some wider pattern or prescription. Often there will be more than a single component of the development plan relevant to the proposal. In many cases – and this is one – there will be both an adopted local plan and a "made" neighbourhood plan. In such cases the court must keep in mind that the "development plan" to which section 38(6) applies is the statutory plan in its totality, its constituent parts taken together. Relevant polices may be found both in a local plan and in a neighbourhood plan. But the statutory presumption applies to the entire plan – the local plan and the neighbourhood plan together.

33. The dispute in this case, however, is not about the statutory presumption in favour of the development plan, or about the correct interpretation or lawful application of development plan policy. It is about the meaning of government policy in paragraph 198 of the NPPF and its application by the inspector in making his decision on Beechcroft's appeal.

34. The policy is not difficult to understand. It is simply stated, and clear. The concept that when an application "conflicts with a neighbourhood plan" planning permission "should not normally be granted" is straightforward. It carries a policy presumption consistent both with the statutory presumption in favour of the development plan as a whole in section 38(6) of the 2004 Act, which includes a neighbourhood plan, and with the broader theme of the plan-led approach to development control recurrent throughout the NPPF. It does not modify the presumption in section 38(6); it reflects that presumption. And it does not elevate the status of a neighbourhood plan within the development plan as a whole (see the judgment of Holgate J. in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 1173 (Admin), at paragraph 24; and, in this court, *R. (on the application of DLA Delivery Ltd. v Lewes District Council* [2017] EWCA Civ 58, at paragraph 11). None of this is controversial here.

35. It is not suggested that the inspector failed to see which policies of the development plan were relevant to Beechcroft's proposal, or that he misunderstood any of them. As he recognized, six policies of the plan were of particular relevance: four in the local plan, two in the neighbourhood plan. The four local plan policies were Policies 2, 5, 20 and 45; the two policies of the neighbourhood plan were Policies 1 and 2. Of these six policies, those bearing directly on the inspector's decision were Policies 2 and 45 of the local plan. These were the policies specifically relevant to development on unallocated sites in the "countryside" outside settlement boundaries, and so to the proposed development of housing on the appeal site, which was outside the settlement boundary for the settlement of Southbourne.

36. Policy 2 of the local plan is a broad strategic policy. It is not confined to housing development, but embraces development of all types. It sets out the "Development Strategy" and the "Settlement Hierarchy" for the whole district. It states a "presumption in favour of sustainable development" within the settlement boundaries, which were to be reviewed in "Development Plan Documents and Neighbourhood Plans". It devolves to those other plans the task of establishing revised settlement boundaries, within which that "presumption in favour of sustainable development" would apply. At the same time, however, it reserves to the local plan itself the task of setting in place the district-wide policy for development in the "Rest of the Plan Area" – outside settlement boundaries. It lays the strategic foundation for Policies 45 and 46, by stating the principle that "[development] in the Rest of the Plan Area outside the settlements … is restricted to that which requires a countryside location or meets an essential local rural need or supports rural diversification in accordance with Policies 45-46".

37. Policy 5 provides for "[small] scale housing sites" to meet the specific needs of local communities to be identified either in neighbourhood plans or in a Site Allocation DPD, and specifies for the parish of Southbourne, excluding the village of Southbourne, an "indicative" number of 50 dwellings. This is not stated to be a maximum requirement. Policy 20 provides for strategic development in Southbourne, to be allocated in the neighbourhood plan, which was to include "300 homes". Again, the figure is not said to be a maximum.

38. Policy 45 is the development control policy for "Development in the Countryside". It gives effect to the strategic principle of restricting development in the "countryside", stated in Policy 2. It guides decision-making on proposals – such as Beechcroft's – for the development of housing on unallocated sites outside the settlement boundaries, once those boundaries have been set in development plan documents and neighbourhood plans. It does not entirely preclude development outside settlement boundaries. It is, however, strongly restrictive. It

limits acceptable proposals to development that "requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements". And it states three criteria, all of which must be met if planning permission for "sustainable development in the countryside" is to be granted. If those three criteria are met, the proposal would be justified under the policy, and would accord with it. But proposals for larger-scale development, or for smaller-scale development that might have been acceptable but for a failure to comply with the criteria in the policy, are not in accordance with the policy.

39. The purpose of the "land use policies" in the neighbourhood plan is explained in the text of the plan itself, in particular paragraph 4.2, which makes it quite clear that "[it] is not the purpose of [the neighbourhood plan] to contain all land use and development planning policy relating to the parish", and that "the [local plan] will be used by [the district council as] local planning authority to consider and determine planning applications". This emphasizes the limited scope for the policies of the neighbourhood plan in the business of development control – the making of decisions on planning applications and appeals.

40. Policy 1 of the neighbourhood plan supports proposals for development within the settlement boundaries, "provided they accord with other provisions of the Neighbourhood Plan and development plan". It responds to the role envisaged for neighbourhood plans by Policy 2 of the local plan: to fix settlement boundaries, within which "a presumption in favour of sustainable development" will apply. But it says nothing about development outside the settlement boundaries. It does not cut across the operation of Policies 2 and 45 of the local plan, which are the development plan policies specifically relevant to the determination of such proposals. Policy 2 of the neighbourhood plan is a policy of allocation. It carries forward, in the parish of Southbourne, the strategic imperative for the allocation of sites for housing development under Policies 2, 5 and 20 of the local plan. It is the parish council's response to that requirement. Like Policy 1 of the neighbourhood plan, however, it does not affect the operation of Policies 2 and 45 of the local plan.

41. There is no other policy of the neighbourhood plan governing the suitable amount and location of housing development in the parish of Southbourne; none for unallocated or "windfall" sites; and none to refine the criteria-based approach to development outside settlement boundaries in Policy 45 of the local plan. No policy in the neighbourhood plan replicates Policy 45 or provides any different approach to proposals for development outside settlement boundaries. There was no need to include such a policy in the neighbourhood plan, and it would have been inappropriate to do so. As Mr Garvey submitted, if a stricter – or more liberal – policy for development outside settlement boundaries had been inserted in that plan, it would have upset the carefully formulated policies for such proposals already in place in the recently adopted local plan. It would have clashed with local plan Policies 2 and 45.

42. This, therefore, is not one of those cases in which a complete set of development plan policies for housing development is to be found in a single document. The strategy for housing development in Southbourne is undoubtedly complete. It does not lack any necessary policy. It contains a suite of policies covering the full range of locations where housing development might be allocated or proposed. But it is not all in one document. It is deliberately split between two. It spans the local plan and the neighbourhood plan, which went through their statutory processes at the same time, and relate to the same plan period. Neither plan on its own constitutes the entire development plan strategy for housing development in Southbourne. Together, however, as two elements, they compose the full strategy. They are mutually

dependent parts of a single, comprehensive whole, complementing each other. The positive part of the strategy, which sets the plan's approach to the allocation of sites for housing development, includes Policies 5 and 20 of the local plan, which are translated to the neighbourhood level in Policies 1 and 2 of the neighbourhood plan. The restrictive part is in Policies 2 and 45 of the local plan, limiting development in the "countryside" outside settlement boundaries – which have no counterpart in the neighbourhood plan. As the examiner discerned in the neighbourhood plan process, the local plan conferred on the neighbourhood plan the opportunity to make allocations and to revise the settlement boundary, while the neighbourhood plan left squarely with the local plan the task of framing a development control policy for unallocated sites outside the settlement boundaries – which is what it did in Policies 2 and 45.

43. In both *Crane* and *Gladman v Canterbury City Council* the circumstances were different. In *Crane* the proposal was for a development of 111 dwellings on an unallocated site in the village of Broughton Astley. In the Broughton Astley Neighbourhood Plan there were three policies for housing development – policies H1, H2 and H3. Policy H1 made two specific allocations of land and identified a reserve site for a total of 528 dwellings, which was well in excess of the core strategy requirement of "at least 400 ...". Other provisions explained the approach to securing infrastructure and facilities for development on the allocated sites. Policy H2 concerned the provision of affordable housing – requiring at least 30% in all new housing developments. Policy H3 provided for "windfall" development – stating that "[in] principle development will be supported on sites of less than 5 dwellings on previously developed land". The Secretary of State concluded that the proposal was in conflict with the neighbourhood plan, and in view of the policies in paragraphs 185 and 198 of the NPPF he gave "very substantial negative weight" to that conflict. The applicant argued that his conclusion was bad in law. The neighbourhood plan did not define a "settlement boundary" for Broughton Astley – as policy CS2 of the core strategy had envisaged. Nor did it contain any specific policy restricting the development of the site. Policy H1 simply allocated sites for new housing development, but did not preclude development in other locations. Policy H3 did not prevent development on larger sites than those to which it referred. No other policy of the neighbourhood plan was explicitly hostile to the proposal.

44. The court did not accept those submissions. It held that the neighbourhood plan displayed a "comprehensive approach to planning at the neighbourhood level ..." (paragraph 41 of my judgment); that, in the light of the relevant provisions of the neighbourhood plan taken as a whole, "the allocations in policy H1 [represented] both the acceptable location and the acceptable level of new housing development in Broughton Astley in the plan period, albeit with the latitude for approving "windfall" development in policy H3"; that they were "explicitly the planned "maximum" provision of new housing, as one sees in the subsequent policies setting out the requirements for each of them"; that the parish council had "achieved this without needing to define a settlement boundary, or "Limits to Development" of the kind contemplated by Policy CS2 of the core strategy" (paragraph 42); that "[apart] from "windfall" proposals coming forward under [policy H3], the [neighbourhood] plan does not provide for, or envisage, any housing development in excess of the 528 dwellings on the sites allocated under policy H1" (paragraph 43); and that "[larger] proposals for housing on unallocated sites ... will therefore be in conflict both with the neighbourhood plan itself and with the development plan as a whole" (paragraph 46).

45. In *Gladman v Canterbury City Council* the settlement in question – the village of Blean – had no "defined boundary", but it was not in dispute that the proposed development was outside

the "existing built up area". The development plan comprised the saved policies of the adopted local plan. These included Policy H1 – for residential development on allocated sites, and, in specified circumstances, on "other non-identified sites, on previously developed land within urban areas". Policy H2 dealt with a reserve allocation of land on a particular site. Policy H3, for proposals for the development of unidentified "large sites" – sites for five or more dwellings – had not been saved. In a section of the plan headed "HOUSING OUTSIDE URBAN AREAS", Policy H9 stated that "[planning] permission for new residential development, in excess of minor development, on previously developed sites within villages, will only be granted where" four criteria were met. Under the heading "Housing for Local Needs in the Countryside", paragraph 2.58 said that the city council "recognises that in certain circumstances housing should be provided in the countryside to meet an identified housing need", and that "[this] need should be based on an up-to-date housing needs survey carried out in conjunction with the Parish Council ...". Policies EN1 and EN3 were for the protection of the countryside, and of the landscape and wildlife habitats. It was argued by the applicant in that case that the saved policies were in permissive terms, not restrictive, and did not preclude housing development in other locations outside existing urban areas.

46. That argument was rejected at first instance and on appeal. This court held that the strategy contained in the saved policies established "a clear and complete hierarchy of locations in which proposals for new housing would or might be acceptable ..." (paragraph 31 of my judgment); that "the natural and necessary inference ... was that housing development of a kind or in a location other than those explicitly supported under the saved policies, including Policy H1 and Policy H9, could not be regarded as being in accordance with the development plan", but "would be in conflict with the plan, because it would be contrary to the comprehensive strategy for housing development embodied in the surviving policies" (paragraph 34); that "this necessary inference [was] only reinforced by the policy objectives and the supporting text, which emphasized the city council's intention to steer housing development to the existing urban areas and previously developed land and away from undeveloped sites in the countryside", and the "inference, therefore, [was] not neutral or positive towards development without specific support in the policies, but negative" (paragraph 35); and that in this respect, the case "bears some similarity to *Crane* …" (paragraph 36).

47. What those two cases show is that 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.

48. In this case, however, as Mr Williams and Mr Garvey submitted, the structure and content of the relevant policies of the development plan are not as they were in either *Crane* or *Gladman v Canterbury City Council*. In common with both of those cases, the relevant provisions of the development plan form a comprehensive strategy. Here however, unlike *Crane*, the relevant strategy is purposely split between the local plan and the neighbourhood plan. It embraces policies in both plans, which went through their statutory processes at the same time, and whose policies complement, and are consistent with, each other. The housing provision for

which the district council has planned is not expressed as a maximum level of provision. The neighbourhood plan does not have a policy for development on unallocated sites akin to the policy for "windfall" housing development in the Broughton Astley Neighbourhood Plan – Policy H3. A settlement boundary has been established in the neighbourhood plan. The approach to decision-making on development outside that settlement boundary is not merely implicit. It is set by express policies of the development plan. However, those policies are not in the neighbourhood plan, but in the local plan – Policies 2 and 45.

49. Unlike *Gladman v Canterbury City Council*, the policies of the local plan do not require any "natural and necessary inference" to be drawn in deciding whether a proposal such as Beechcroft's is in accordance with the development plan. It is not necessary to deduce a conflict with the development plan from the absence of support in a specific policy. The policies of central relevance to the proposal are clear-cut, and the proposal was plainly contrary to them. The conflict with Policies 2 and 45 of the local plan was not merely a matter of inference. And it was distinct.

50. In my view therefore the judge's analysis was sound. None of the inspector's conclusions betrays any misinterpretation or misapplication of the development plan policies in play. There is nothing unlawful, or indeed surprising, about them. They represent a series of reasonable planning judgments in the application of the relevant policies, with which the court will not interfere. And the assessment of the proposal on its planning merits is not flawed by any legal error in understanding or applying the policy in paragraph 198 of the NPPF. To describe any of the inspector's conclusions as "irrational" is, in my view, impossible.

51. The inspector acknowledged and consciously performed his duty as decision-maker under section 38(6) of the 2004 Act (paragraphs 14, 47 to 55 of the decision letter), and he did so lawfully. He took the development plan "as a whole" (paragraphs 14 and 18). He reached the clear conclusion, as the parties themselves had agreed, that Beechcroft's proposal was not in accordance with the development plan because it was in conflict with Policies 2 and 45 of the local plan (paragraphs 9, 18, 47 and 55): a conclusion that was not only unexceptionable but inevitable. He carefully considered but rejected the district council's contention that there was also conflict with Policy 5 of the local plan and Policies 1 and 2 of the neighbourhood plan (paragraphs 10, 11, 12 and 51). He did so because the neighbourhood plan policies "do not directly presume against" development outside settlement boundaries – which is true; and because the housing numbers in Policy 5 of the local plan are only "indicative" and "not maximums" – which is also true and was acknowledged by the district council at the inquiry (paragraphs 12, 16 and 17). But he did give weight, against the proposal, to the fact that it was "at odds with", and "does not accord with", the "aims" of the neighbourhood plan for the location of new housing – which again is true (paragraph 13, 18, 47 and 55). He also found, however, that the appeal site was "sustainably located" – which the district council had accepted; and that the "scale" of the proposed development was unobjectionable and "not … at odds with" the development plan strategy for new housing indicated in Policies 5 and 20 of the local plan, which was a conclusion open to him as a matter of planning judgment (paragraphs 16, 17 and 49).

52. When he conducted his overall balancing exercise in the course of performing the section 38(6) duty, he accurately identified the proposal's conflict with the development plan as being its conflict with Policies 2 and 45 of the local plan (paragraph 47). As he was entitled to do, he reduced the weight he gave to those two policies, as policies "relevant to the supply of housing" because of the district council's inability to demonstrate a five-year supply of

housing land, but reasonably tempered that conclusion because the "scale" of the proposal was "not … at odds with" the level of housing indicated in Policies 5 and 20 of the local plan, because of Southbourne's status as a "Settlement Hub" where "strategic development" was envisaged, and because there was no other planning harm – all of which enabled him to conclude, in the exercise of his planning judgment, that the degree of harm to the "development plan strategy" would be "limited" (paragraph 49). His assessment ended with the conclusion, in the light of the policy in paragraph 14 of the NPPF, that the proposal's failure to comply with Policies 2 and 45 of the local plan and with the aim of the neighbourhood plan for the location of new housing had been overcome (paragraph 55).

53. In his path to that conclusion the inspector did not overlook the policy in paragraph 198 of the NPPF, nor misconstrue or misapply it. That he had the policy in mind is undeniable; he not only referred to it but recited it (in paragraph 50). He also mentioned the general policy for neighbourhood plans in paragraph 184 of the NPPF and the relevant advice in the Planning Practice Guidance (paragraph 50). As is clear from his conspicuously precise conclusions in applying the relevant local plan policies and those of the neighbourhood plan (paragraphs 9 to 18 and 47 to 55), he grasped the fact that the relevant strategy of the development plan was divided between the two documents, and, crucially, that the conflict of Beechcroft's proposal with the plan was not a conflict with the neighbourhood plan, which had nothing to say about development on unallocated sites beyond the settlement boundary, but a conflict with the policies of the local plan of direct relevance to such proposals – Policies 2 and 45. Thus, as he rightly said, "the proposal would not conflict with the policies of [the neighbourhood plan]" (paragraph 51). He added that the development would not harm the "underlying reason" for the neighbourhood plan's restriction on development to the north of the railway line – because it would not worsen congestion at the level crossing (ibid.). But he did not discount the fact that the proposal found no support in the neighbourhood plan and was not in accord with its aim for the location of new housing (paragraphs 13, 18, 47 and 55). His conclusions on this point are, in my opinion, legally impeccable. He realized that the actual conflict with the development plan in this case was with the local plan, not with the neighbourhood plan, and – as Mr Garvey submitted – he did not make the mistake of counting that conflict twice, as if it were a conflict with both plans.

54. Lastly, even if this analysis is wrong and the inspector was at fault in failing to find, under the policy in paragraph 198 of the NPPF, that Beechcroft's proposal was in conflict with the neighbourhood plan, I think the court's discretion would have been properly exercised in withholding relief (see the decisions of this court in *Simplex GE (Holdings) Ltd. v Secretary of State for the Environment* [2017] P.T.S.R. 1041 and *Smech Properties Ltd. v Runnymede Borough Council* [2016] EWCA Civ 42). In my view the inspector's decision would in those circumstances inevitably have been the same, for three reasons: first, because it seems to me that the policy presumption in paragraph 198 does not have the effect of enlarging the statutory presumption in favour of the development plan in section 38(6) of the 2004 Act (see paragraph 33 above); secondly, because the inspector applied the statutory presumption against Beechcroft's proposal; and thirdly, because he recognized that the proposal did not comply with the aims of the neighbourhood plan for the location of new housing, and plainly gave this consideration as much weight as he thought it could reasonably have – and there is no reason to think he would have given it any greater weight if he had accepted, as Mr Lewis submitted, that the proposal was in conflict both with those aims of the plan and with its policies (see paragraph 28 above).

Conclusion

55. For the reasons I have given, I would dismiss the appeal.

Lord Justice Baker

56. I agree.

Sir Bernard Rix

57. I also agree.