Neutral Citation Number: [2019] EWHC 181 (Admin)

Case No: CO/2349/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 February 2019

Before :

MRS JUSTICE LANG DBE

- -

Between :

SOUTH GLOUCESTERSHIRE COUNCIL	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendant**
WELBECK STRATEGIC LAND LLP	**Interested Party**

- -
- -

Alexander Greaves (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Richard Honey (instructed by the **Government Legal Department**) for the **Defendant**
Mark Lowe QC and Jack Parker (instructed by **Osborne Clarke**) for the **Interested Party**

Hearing date: 15 January 2019

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Approved Judgment

Mrs Justice Lang :

1. The Claimant (hereinafter "the Council") applies under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant, made on his behalf by an Inspector on 3 May 2018, in which he allowed the Interested Party's ("IP") appeal against the refusal, by the Council, to grant planning permission for a proposed development at Cleve Park, Thornbury, Gloucestershire ("the Site").

2. Permission was refused on the papers, but granted at an oral renewal hearing in respect of one ground only, namely, that the Inspector failed to provide adequate reasons for rejecting the Council's submission that permission should be refused on the ground of prematurity, in the light of the emerging Joint Spatial Plan ("JSP"), which was to be followed by the emerging South Gloucestershire Local Plan (2018 – 2036).

Planning application and decisions

3. The IP is a developer who has been granted outline planning permission for a residential development of 350 dwellings (35% affordable housing), a 70 unit elderly care facility, community and commercial facilities and associated public open space and infrastructure.

4. The Site is in the countryside, to the east of the settlement boundary of Thornbury, at the junction of Morton Way and Grovesend Road. It is 21.97 hectares ("ha") in total, with a proposed area of development comprising 11.5 ha.

5. The Council is the local planning authority. It refused the IP outline planning permission on 9 March 2017 (contrary to the advice of its officers) for *inter alia* the following reason:

> "The proposed development is speculative in nature and would not result in a comprehensively planned development, comprising the vision for Thornbury. The proposal is also contrary to points 1,2,3,4,7,8 and 9 for Policy CS32 and point 5 of Policy C55 of the adopted South Gloucestershire Core Strategy."

6. Following a six day inquiry, the Inspector granted outline planning permission, subject to conditions. He identified the main issues at paragraph 5 of the decision letter ("DL"):

> "(i) the extent of the deficit in the Council's five-year housing land supply and the effect of this on the weight that can be attached to relevant policies in the development plan; (ii) whether the proposals would compromise the Council's vision for Thornbury; (iii) the effect of the proposed development on the character of the market town of Thornbury with particular regard to the impact of any three storey buildings; and (iv) the planning balance: whether the adverse impacts of approving the development would significantly and demonstrably outweigh the

> benefits when assessed against the policies in the Framework taken as a whole."

7. It was common ground that there was a lack of a five year housing land supply, though the extent of the shortfall was in dispute. The Inspector concluded that there was a "substantial shortfall" and a "persistent record of under delivery of housing" (DL 27). Applying paragraph 49 of the National Planning Policy Framework ("the Framework"), relevant policies for the supply of housing were not up-to-date, and this significantly reduced the weight that could be given to such policies in the development plan. The tilted balance, as set out in paragraph 14 of the Framework, was triggered (DL 28).

8. The Inspector found that the proposed development was contrary to the development plan, in particular Policy CS5 of the Core Strategy 2006 – 2027, which limited new development in the open countryside. He concluded that there would be some harm arising from the conflict with CS Policy CS32 which set out the vision for Thornbury, and some limited harm to the landscape character of the area, contrary to CS Policy CS5 and PSP Policy PSP2. He gave "little weight" to the Council's prematurity argument (DL 54).

9. The Inspector gave substantial weight to the benefit of much-needed housing, together with the economic benefits of jobs and an increased population (DL 75 – 77).

10. The Inspector concluded that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, and so the proposals benefitted from the presumption in favour of sustainable development in paragraph 14 of the Framework. The conflict with the development plan was outweighed by the other material considerations (DL 80).

Legal and policy framework

(i) Applications under section 288 TCPA 1990

11. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

12. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

13. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

14. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath giving the judgment of the Supreme Court warned, at paragraph 23, against over-legalisation of the planning process. At [24] to [26], he gave guidance that the courts should recognise the expertise of the specialist planning inspectors and work from the presumption that they will have understood the policy framework correctly. Inspectors are akin to expert tribunals who have been accorded primary responsibility for resolving planning disputes and the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies. But issues of interpretation, appropriate for judicial analysis, should not be elided with issues of judgment in the application of that policy.

15. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

16. Two citations from the authorities listed above are of particular relevance to the disputed issues in this case.

a) *South Somerset District Council*, per Hoffmann LJ at 84:

> "...as Forbes J. said in *City of Westminster v Haymarket Publishing Ltd*:
>
> > "It is no part of the court's duty to subject the decision maker to the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute. Because the letter is addressed to parties who are well aware of all the issues involved and of the arguments deployed at the inquiry it is not necessary to rehearse every argument relating to each matter in every paragraph"
>
> The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy."

b) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

> "I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

17. An Inspector is under a statutory duty to give reasons for his decision, pursuant to rule 19 of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.

18. In *Bolton Metropolitan DC v Secretary of State for the Environment* (1996) 71 P & CR 309, Lord Lloyd (giving a judgment with which all other members of the House of Lords agreed), cited with approval "the classic exposition" given by Megaw J in *In re Poyser and Mills' Arbitration* [1964] 2 QB 467:

> "Parliament provided that reasons shall be given, and in my view that must be read as meaning that proper, adequate reasons must be given. The reasons that are set out must be reasons which will not only be intelligible, but which deal with the substantial points that have been raised."

19. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the Inspector's duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

20. Recently, in *Dover District Council v CPRE Kent* [2017] UKSC 79, Lord Carnwath applied Lord Brown's formulation of the legal principles to be applied in respect of the standard of reasons at [35]. In quashing the local planning authority's grant of planning permission because of the failure to give adequate reasons, he said, at [68]:

> "These points were not merely incidental, but were fundamental to the officers' support for the amended scheme. The committee's failure to address such points raises "a substantial doubt" (in Lord Brown's words) as to whether they had properly understood the key issues or reached "a rational conclusion on them on relevant grounds". This is a case where the defect in reasons goes to the heart of the justification for the permission, and undermines its validity. The only appropriate remedy is to quash the permission."

(ii) Decision-making

21. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "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."

22. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters……
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is helpful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission….. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.
>
> Moreover the section has not touched the well-established distinction in principle between those matters which are properly

within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell J observed in *Loup v Secretary of State for the Environment* (1995) 71 P & C.R. 175, 186:

> "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

…..

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will be required to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application. If he fails to take account of some

> material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

23. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983, per Lord Reed at [17].

(iii) The Framework

24. The Framework is a material consideration to be taken into account when applying section 38(6) PCPA 2004 in planning decision-making, but it is policy not statute, and does not displace the statutory presumption in favour of the development plan: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] UKSC 37, per Lord Carnwath at [21].

25. I refer to the 2012 edition of the Framework below, since it was still in force at the date of the Inspector's decision. Paragraph 14 provides:

> "At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> For **plan-making** this means that:
>
> - local planning authorities should positively seek opportunities to meet the development needs of their area;
> - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
> - specific policies in this Framework indicate development should be restricted.
>
> For **decision-taking** this means [unless material considerations indicate otherwise]:
>
> - approving development proposals that accord with the development plan without delay; and
> - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

> - specific policies in this Framework indicate development should be restricted…."

26. Guidance on the weight which may be given to emerging plans is addressed in Annex 1 to the Framework. Paragraph 216 provides:

> "216. From the day of publication, decision-takers may also give weight [unless other material considerations indicate otherwise] to relevant policies in emerging plans according to:
>
> - the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
>
> - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
>
> - the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."

Prematurity

27. The Inspector addressed the Council's submissions on prematurity at DL 54:

> "I give little weight to the prematurity argument. This did not form part of the Council's reasons for refusal and seemed to miss the point of the planning application. The application was submitted, following extensive discussions with Officers, to address the acknowledged shortfall in housing in South Gloucestershire. It was not an attempt to leap-frog the emerging plan process; it is an attempt to address past failures to provide sufficient housing."

28. The Council submitted that the Inspector's reasons, as set out in DL 54, were inadequate because he did not explain why he gave "little weight" to the Council's submissions on prematurity, nor did he address the criteria in the Planning Practice Guidance ("PPG").

29. The PPG gave the following guidance on prematurity:

> "Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development—arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and

> demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:
>
> (a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and
>
> (b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.
>
> Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process."

30. In *Woodcock Holdings Ltd v SSCLG* [2015] JPL 1151, Holgate J. held that the Secretary of State failed to take into account, and apply, his own policy on prematurity (at [122]). In his "sparse" reasons, he failed to address the key elements of the PPG (at [117]). However, in *Woodcock*, prematurity was a main issue, since the emerging neighbourhood plan was the reason why the Secretary of State rejected the Inspector's recommendation to grant planning permission.

31. In contrast, in this case prematurity was not a main issue. As the Inspector rightly observed, it was not relied upon by the Council in its reasons for refusal given in March 2017. At that time, the Officer's Report advised members that the JSP was still at a relatively early stage of development and so carried very limited weight. It also advised that the development proposed would not conflict with the emerging JSP proposals since the JSP identified the application site as a likely development location. Furthermore, the Site had been promoted when the adopted Core Strategy was under consideration by the Inspector, and though it was not allocated for housing, it was not dismissed as unsuitable. Mr Greaves accepted that the Council appeared to have followed the Officer's advice in this respect, even though members disagreed with the Officer's recommendation to grant planning permission for the proposal.

32. The issue of prematurity was raised by the Council in its submissions to the Inquiry, on the basis that, with the passage of time, the JSP had now reached an advanced stage. It was anticipated that examination would take place once the plan was submitted in April 2018. In the event, it was postponed. The Council argued that it could be considered as an aspect of the first reason for refusal, namely, that "the proposed development is speculative in nature and would not result in a comprehensively planned development, comprising the vision for Thornbury". Thus, although it became an issue at appeal

stage, it was a secondary issue, not a main issue. Prematurity was not expressly raised in the statement of common ground nor in the Council's opening submissions.

33. The Inspector did not include prematurity as one of the main issues in DL 5, and the Council has not suggested that the Inspector was wrong not to do so. In his decision, the Inspector dealt with it under the heading "Other planning matters", after consideration of the main issues.

34. The JSP recommended that Thornbury should be a Strategic Development Location in the region. Although sites were to be allocated in the emerging Local Plan, which would follow the JSP, the evidence base for the JSP did identify two potential sites for housing at Thornbury, one of which was the Cleve Park Site. Although the Council supported (and continues to support) the proposals in the JSP, it nonetheless argued before the Inspector that the grant of planning permission for this proposal would effectively pre-determine the decision that there would be major housing development at Thornbury, and it would pre-determine the location and scale of such housing. These proposals were controversial among local residents. It would also deprive the Council of the ability to require a financial contribution from the developer towards the wider infrastructure costs of the JSP as a whole. Mr Read, the Council's planning consultant, gave evidence to the Inquiry that this was an attempt to "leap frog the emerging development plan process" contrary to the Framework.

35. The IP conceded that the JSP was at an advanced stage, and so paragraph (b) of the PPG was met. However, it submitted that paragraph (a) of the PPG was not met because the proposed development would not undermine the JSP by pre-determining decisions which were central to it.

36. Mr Lawson, planning consultant, gave the following evidence on behalf of the IP:

> "16. In response to Mr Read's evidence at paragraph 3.54, it clearly states in the first core planning principle that is quoted in paragraph 3.53 of his evidence that "*plans should be kept up to date*", however in paragraph 3.52 he also sets out that South Gloucestershire's Development Plan should not be considered up-to-date, with which I agree. Therefore, the appeal proposal is not inconsistent with the first core planning principle as it is not contravening an up-to-date plan.
>
> 17. In response to Mr Read's evidence at paragraph 3.54, the suggestion that the proposal is an attempt to "leap-frog" the development plan process is a distortion of the history of the application. The application was prepared and submitted in 2016 at the request of the Council to assist with the housing shortfall in South Gloucestershire. It is mere chance that this appeal coincides with the examination of the Joint Spatial Plan.
>
> 18. As stated at paragraph 5.37 in Mr Read's evidence [SGC.2], the draft Joint Spatial Plan indicates that 500 new dwellings will be located to the east of Thornbury. I am

pleased to see that the appeal site at Cleve Park has been noted in Mr Read's evidence at paragraph 5.37 and appendix 05 of Mr Read's evidence as a precise site proposed to be allocated to accommodate the additional housing growth.

19. The National Planning Policy Guidance provides guidance as to what circumstances it might be justifiable to refuse planning permission on the grounds of prematurity. As set out in Mr Read's evidence [SGC.2] at paragraph 3.57:

> *"(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning.*
>
> *(b) the emerging pan is at an advanced stage but is not yet formally part of the development plan for the area."*

20. The appeal scheme is in no way central to the emerging Joint Spatial Plan. As I set out in my main proof [WEL.1] at paragraphs 80 - 81 the draft Joint Spatial Plan plans for 105,500 new homes, of which 44,000 are additional to current adopted plans. The appeal scheme thus represents 0.3% of the planned housing provision. The appeal scheme is not significant, either on its own or cumulatively.

21. As far as I am aware, none of the objections to the Joint Spatial Plan offer an alternative strategy to deliver 500 homes allocated to Thornbury. The objections instead suggest that there is no need for housing, even[t] though there is a strong evidence of acute need that is set out in each version of the draft Joint Spatial Plan and the clear strategy of that plan to accommodate 500 in the broad location of the appeal site.

22. Should the appeal proposal be brought forward now, or when the Joint Spatial Plan is formally adopted, the appeal proposal would remain the same, and still provide a significant amount of housing in an area that has been identified as suitable and sustainable by the draft plan as a site for additional housing, which has also been acknowledged within Mr Read's evidence at paragraph 5.37 [SGC.2]. Waiting for the adoption of the Joint Spatial Plan wold serve no purpose other than to delay delivery of housing that is needed now in order to achieve the already adopted Local Plan housing requirement.

> 23. The appeal proposal cannot prejudice the Joint Spatial Plan as the plan does not make site-specific allocations. The prejudice is really alleged against the emerging Local Plan which is not yet at a stage where it obtains any protection under the guidance of the framework.
>
> 24. Should the appeal be refused on the grounds of prematurity, it would inevitably lead to the delay of residential development in the District until the adoption of the replacement Local Plan, as it is this plan that will in due course make site specific allocations and not the Joint Spatial Plan. It is unacceptable to delay development until late 2019 at the least, in an area of an authority that cannot demonstrate a five-year housing land supply, and has such a poor record of delivery that it requires a 20% buffer.
>
> 25. In response to Mr Read's evidence paragraph 5.23, the CIL Regulation 123 List can be revised at any time, and local authorities can amend the Regulation 123 List without revising their charging schedules, subject to appropriate consultation (NPPG 098 Reference ID: 25-098-20140612). This does not have to coincide with the adoption of a new development plan, as was the case for the current adopted South Gloucestershire CIL Regulation 123 List, valid from 1 August 2015, 20 months after the Core Strategy, which was adopted in December 2013. The adoption of the Joint Spatial Plan will not lead to a revision of the Regulation 123 List [CD3.18].
>
> 26. South Gloucestershire Council has stated that it next intends to review its CIL rates in line with the adoption of the Local Plan, currently programmed for 2019 (see paragraph 2.14 of CD3.20).
>
> 27. The appeal scheme would make the same CIL contributions now or following the adoption of the Joint Spatial Plan."

37. On my reading of DL 54, the Inspector was clearly summarising the points made by Mr Lawson, as his reasons for giving "little weight" to the Council's submissions on prematurity. In my judgment, it was not necessary for the Inspector to recite the PPG in his decision. As an experienced Inspector, he would have been well aware of it, and he was reminded of it during the Inquiry. In my view, he applied it. The thrust of the IP's case was that paragraph (a) of the PPG was not met because the proposed development was not so substantial or significant that it would undermine the emerging JSP by pre-determining decisions about the scale or location of housing that were central to the JSP. It represented only 0.3% of the JSP's planned housing provision. It had been prepared and submitted in 2016, to assist with the existing housing shortfall. The identification of this Site as suitable for housing pre-dated the JSP and was not an attempt to leap-frog it. The Inspector's acceptance of these submissions by the IP was his response to the Council's reliance upon the PPG. He disagreed with the Council's

analysis and concluded that this was a case in which prematurity should be given "little weight".

38. The parties were well aware of the competing submissions about prematurity and the application of the PPG. There was not any real, as opposed to forensic, doubt as to what the Inspector's reasons were. In the course of Mr Greaves' oral submissions, it became clear that the Council's main challenge was to the substance of the Inspector's reasons, not their adequacy or intelligibility. Mr Greaves submitted that the Inspector misapplied the PPG and failed to grapple with the key issues in the policy. He also submitted that it was irrelevant that the Council had not relied on prematurity as a reason for refusal or that the intention of the application was to address the existing shortfall in housing. However, it was no longer open to the Council to pursue these arguments, because they were the basis of grounds 1 and 2 in the Council's claim, for which permission was refused by both Cranston J. and Holgate J.

39. I was unable to accept that the way in which the Inspector formulated his reasons substantially prejudiced the Council. The Inspector's reasons were specific to this application. It is open to the Council to seek to distinguish this case from other appeals and applications, concerning different proposals, at other sites. It is also open to the Council to submit that the Inspector's approach to the PPG should not be followed in other cases.

40. For these reasons the challenge to the adequacy of reasons fails and the application is dismissed.