Neutral Citation Number: [2024] EWHC 3221 (Admin)

Case No: AC-2024-MAN-000165

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
SITTING IN MANCHESTER

Tuesday, 17th December 2024

Before:
FORDHAM J

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Between:

SAVE GREATER MANCHESTER GREEN BELT LTD	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT **(2) GREATER MANCHESTER COMBINED AUTHORITY** **(3) BOLTON COUNCIL** **(4) BURY COUNCIL (5) MANCHESTER COUNCIL** **(6) OLDHAM COUNCIL (7) ROCHDALE COUNCIL** **(8) SALFORD COUNCIL (9) TAMESIDE COUNCIL** **(10) TRAFFORD COUNCIL (11) WIGAN COUNCIL**	**Defendants**
- and -	
(1) WAIN ESTATES (ARRINGTON) LTD **(2) WAIN ESTATES (LAND) LTD** **(3) PEEL L&P INVESTMENTS (NORTH) LTD** **(4) RLUKREF NOMINEES (UK) ONE LTD** **(5) RLUKREF NOMINEES (UK) TWO LTD**	**Interested Parties**

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Jenny Wigley KC & **Charles Bishop** (Leigh Day) for the **Claimant**
Leon Glenister & **Isabella Buono** (Government Legal Department) for **Defendant (1)**
Christopher Katkowski KC & **Stephanie Hall**
(Manchester City Council Legal Services) for **Defendants (2)-(10)**
Vincent Fraser KC (Mills & Reeve LLP) for **Interested Parties (1) & (2)**
Christopher Young KC & **James Corbet Burcher** (Shoosmiths LLP) for **Interested Party (3)**
Philip Robson (Gowling WLG) for **Interested Parties (4) & (5)**

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Hearing date: 12.12.24
Draft judgment: 13.12.24.

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Approved Judgment

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FORDHAM J

This Judgment was handed down remotely at 10am on 17th December 2024
by circulation to the parties and release to the National Archives.

FORDHAM J:

Introduction

1. This is a planning statutory review case. It concerns a Joint Local Development Plan, examined by the Secretary of State's inspectors and adopted by nine local authorities on 21 March 2024. The Plan is called "Places for Everyone 2022 to 2039" ("the Plan"). The inspectors' report ("IR") is reference "PINS/T4210/429/6". The IR and the adopted Plan, and all the examination documents, can readily be found online. Anyone who wants to find more detail, or who wants to follow up on any paragraph number references which I give, will readily be able to do so. The relevant statutory scheme is found, in particular, in the Planning and Compulsory Purchase Act 2004 and Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012/767). Relevant policy guidance includes the Planning Practice Guidance (PPG); the 2021 National Planning Policy Framework (NPPF); and the Planning Inspectorate's Procedure Guide for Local Plan Examinations (the Procedure Guide). Green belt protection is NPPF chapter 13; the exceptional circumstances test is at §141.

2. Statutory review is a species of judicial review. The Court has a supervisory jurisdiction, to decide questions of law. Among the relevant authorities to which I was referred are the context-specific cases of Oxted Residential Ltd v Tandridge DC [2016] EWCA Civ 414 at §27 (on the Court's supervisory function); Keep Bourne End Green v Buckinghamshire Council [2020] EWHC 1984 (Admin) at §146 (on the "exceptional circumstances" policy guidance test for altering green belt boundaries); and Cherwell Development Watch Alliance v Cherwell DC [2021] EWHC 2190 (Admin) at §25 (on reasons in inspectors' examination reports). The Claimant has raised five grounds for statutory review. One has already made it through the paper-sift of permission for statutory review. The other four were refused on the papers but the Claimant is exercising the right to have their viability reconsidered at an oral hearing. Because the court time was needed for oral submissions, I decided to put these reasons into writing rather than keep everyone after hours and deliver an ex tempore judgment. I am grateful to all the parties, and all team members, for the assistance which I received.

Background

3. Ten local authorities had jointly originally conducted reg.18 consultations in preparing a s.28 joint plan. It was then called the "Greater Manchester Spatial Framework". Those reg.18 consultations were in October 2016 and January 2019. Stockport withdrew from the s.28 agreement for a joint plan in December 2020. Then there were nine. The remaining nine local authorities decided in July 2021 that what they were now proceeding with constituted a s.28(7) "corresponding document", because it met the reg.32(2) test of having "substantially the same effect" as the original joint document. So, they went forward – and not back – and proceeded to a reg.19 consultation in August 2021. Having done so, they then submitted in February 2022 what was by now called "Places for Everyone", for its s.20 independent examination. The inspectors received written representations and held examination hearings between November 2022 and July 2023. What emerged in October 2023 was a schedule of s.20(7C) and s.23(2A) "main modifications". Both PPG §057 and Procedure Guide §6.7 describe the local authority consultation for main modifications. Here, there was an eight week public consultation starting on 11 October 2023. A week before that main modifications consultation, on 4 October 2023, the Government had announced that the Birmingham to Manchester leg –

phase 2b – of the HS2 train project would not be proceeding. The IR was published on 14 February 2024. There were then final, and revised, main modifications. On 21 March 2024 the nine authorities adopted the Plan, including those final main modifications, pursuant to s.23. That adoption is the target for statutory review.

Ground 1

4. The first renewed ground of challenge is about reconsultation. Its essence is as follows. The October 2023 proposed main modifications were consulted on. But they had not at that point changed to take any account of HS2 phase 2b not now going ahead. Changes relating to that new picture emerged as revised main modifications. But there was no consultation on these. The October 2023 consultation had been a narrow one. The revised main modifications have been adopted under s.23(3). All of which means that an integral feature, on which the Plan document was predicated, has been removed. And yet the public has never been consulted on the implications of this. The HS2 change resulted in revised main modifications. Consultation is required for main modifications, unequivocally, by PPG §057; and also by the Procedure Guide §§6.7 to 6.9. There is, moreover, an established practice of consulting on main modifications. There is a narrow exception in the Guide at §6.12, where reconsultation on revised main modifications is described as unnecessary, but it relates to "limited circumstances" where the amendments arise from "responses to consultation". That cannot apply to extraneous matters, or to changes in circumstances. All of which means there was an unjustified and unidentified departure from policy guidance, which the inspectors did not even mention, in what was a cursory discussion of the issue (IR §80). It also means there was a breach of a promise and practice, and therefore of a legitimate expectation, of consultation. In addition, there are the requirements of common law fairness. The HS2 phase 2b change was of so fundamental a nature, as a key change of circumstances, that fairness required – at some stage – consultation or further consultation on its implications for the Plan. That never happened. What fairness requires is an objective question for the Planning Court, not an evaluative judgment for the inspectors. These arguments cross the threshold of arguability. That is the argument.

5. I have not been persuaded that this ground for statutory review has a realistic prospect of success. It is not, in my judgment, arguable that the HS2 phase 2b change was of such materiality as to make failure of reconsultation: an unjustified departure from policy guidance; or a breach of a legitimate expectation; or a breach of standards of procedural fairness. It must be appropriate to start by acknowledging that the need for HS2-related revised main modifications came from the inspectors, and the inspectors addressed the question of materiality, including as to reconsultation: see IR §80. The PPG at §057 describes consultation on main modifications as something which examining inspectors "will require". But the policy guidance is not describing a rigid rule on reconsultation in respect of new or revised main modifications. The policy guidance has to be read as a whole, and sensibly. The Procedure Guide at §6.12 fits alongside §6.7, and alongside PPG §057. The inspectors made several key points at IR §80. First, they said that "neither the Plan's overall spatial strategy, nor its expression through housing and employment land requirements and distributions of allocations, is dependent on HS2". Second, they said their recommended HS2-related new and revised main modifications were being required to "ensure that the reasoned justification" in the Plan was "factually accurate" and "up to date". Thirdly, they explained that the further and amended main modifications "did not materially affect the Plan's strategy or policies". It was on that

basis that they, for their part, were satisfied that no further consultation was necessary. This is not a departure from the policy guidance, read sensibly and as a whole. But even if it was a departure from a general position, it was clearly reasoned. It fits with the substance and purpose of Procedure Guide at §6.12, which says main modifications can be recommended without further consultation if the inspectors are "satisfied that no party would be prejudiced as a result". It is not arguable that every new or revised main modification, or every one which links to something extrinsic, or every one which arises from a changed circumstance, requires reconsultation. If the inspectors have acted lawfully when viewed against the policy guidance, then there is no promise or practice which gave rise to a duty, and no legitimate expectation has been breached. I accept that the question of "what fairness requires" is an objective question for the Court. But these relevant evaluative judgments of the inspectors, viewed in the light of this relevant policy guidance, are unmistakeably contextually relevant. In the context and circumstances of the present case, the Court would be invited to impose its own view that the Plan's overall spatial strategy, or its expression through housing and employment land requirements and distributions of allocations, was dependent on HS2; that these changes were doing more than ensuring that a reasoned justification in the Plan was factually accurate and up to date; and that the further and amended main modifications did materially affect the Plan's strategy or policies. There is in my judgment no realistic prospect of persuading the Court to adopt such a position. I cannot see that it is arguable, with a realistic prospect of success, that the common law required reconsultation in the context and circumstances of the present case, in light of the points ventilated at IR §80.

Ground 2

6. The second renewed ground of challenge is about Policy JPA3.2 for Timperley Wedge. This is another point about HS2. The essential argument is as follows. In the proposed rationale for green belt land losing its special green belt protection at Timperley Wedge, there was a special portion of "safeguarded land" near the proposed HS2 Manchester Airport station. This was being "safeguarded" for development after the completion of HS2. Now that HS2 phase 2b has been discontinued, so that there is to be no HS2 Manchester Airport station, the inspectors have decided that this portion of land should still be lost to the green belt, and should still be safeguarded land for long-term development. The inspectors say this is "logical" and "pragmatic", based on "potential" development, as "an opportunity to see" how issues "resolve themselves" (IR §313). That reasoning, with its focus on "potential", has lost sight of the rigours of the "exceptional circumstances" test for what must be found to be necessary if there is to be a loss of green belt protection. It fails to apply the test. It is not a reasonable response. This crosses the threshold of arguability. That is the essence of the argument.

7. I do not think this ground for statutory review has a realistic prospect of success. This was "issue 11" discussed in the IR at §§292-316. The background includes a published 91-page topic paper Timperley Wedge dated July 2021. Consistently with the exceptional circumstances test for a change in green belt boundary, there is a concept of "safeguarded land" in NPPF §143(c) and (d). It means an area identified "to meet longer-term development needs stretching well beyond the plan period"; which is "not allocated for development at the present time"; where no permanent development could take place without "an update to the plan". This links to NPPF §140 and the idea of intended permanence when resetting green belt boundaries, to secure a position enduring beyond the plan period. What the inspectors were doing was applying the exceptional

circumstances test in respect of Timperley Wedge (IR §315), and with this strip as "safeguarded land" being justified by virtue of "the potential for other infrastructure development in the area" (IR §313). The idea of "potential" is inherently relevant to safeguarded land for long-term development. The inspectors did not say the justification for moving this strip of land out of green belt, and making it safeguarded land, had gone with HS2. They started with the reasoned justification and exceptional circumstances for "taking this land out of the Green Belt", referring to this "area of safeguarded land" (IR §311). They were asking whether the "economic argument" still existed, having regard to Northern Powerhouse Rail and Network North proposals, where it "remains likely that there is significant scope for transport infrastructure investment" (IR §311). They recognised that the "justification" had "clearly altered". They were applying the same criterion of exceptional circumstances and said that the justification had "perhaps", and "to some extent", become "weakened" (§313). But they found the necessary "justification" (§313). That was an evaluative judgment. I see no realistic prospect of this Court concluding that it was unreasonable or legally inadequately unreasoned.

Ground 3

8. The third ground has reference points in the 15 years which is referred to in NPPF §68(b) and a period from 2021 through to "2037" which features in the inspectors' analysis in IR at §§161-162 and 165. The essential argument is as follows. When the inspectors looked at housing needs, with the headroom of a "flexibility allowance", they had to look at the figures for existing housing land supply (IR §164). However, when they did that they moved from an end date of "2037" to one of "2039": see IR §§164-165. They lost sight of the discipline required by the policy guidance, which speaks of the 15 years plan period (NPPF §68(b)) and the importance of up-to-date evidence (NPPF §31). They needed an accurate picture over the 15 years to 2037, with accurate data. That picture was available and clear. It was manifestly relevant. It would have been revealing. They moved from old data 2021-2037 to updated data 2022-2039. That meant they missed an important step. In addition, they included allowances for "windfall" sites (see NPPF §71) to contribute to future capacity, but only small windfall sites (IR §790). There was no allowance for large windfall sites and no discussion of that in the reasons. They did not give adequate reasons for their approach and conclusions, or obviously relevant considerations were ignored, or the response was not reasonable. This crosses the threshold of arguability.

9. I have been unable to accept that this third ground for statutory review has a realistic prospect of success. The argument fails once it is recognised that the inspectors decided, lawfully, to change the "plan period" so that it was 15 years from the anticipated "adoption" (2024) through to 2039: see IR §§790-792. This was the modified plan period described at IR §164. True, the NPPF speaks of "15 years" (NPPF §68(b)), but not as a mandatory ceiling. It also speaks of looking ahead, over what is described as a "minimum" 15 year period (NPPF §22). The reference relied on is to "years 11-15 of the plan" (NPPF §68(b)) and the (minimum) "15 year period" is described as the period "from adoption" (NPPF §22). That extension in the plan period cannot be said to have been unlawful. There was nothing arguably unreasonable in going from the old plan period with its old data to the new plan period with new data; without an intermediate step which looked at the old period but with new data. The picture, with the updating, was a function of the time-line moving forward. It is why the inspectors focused as they did when they took the updated data, such as in their evaluative judgment was helpful

and appropriate, to look at the flexibility allowance to the year 2039: see IR §165. This was the picture "over the plan period" in NPPF §§23, 35c and 74. As to "windfalls", the inspectors included such windfall allowances as they considered appropriate: see IR §790, referring to Table 7.1 at p.136 of the adopted Plan. NPPF §71 explains that there should be "compelling evidence" that windfall sites will provide a reliable source of anticipated supply. It is not arguable that there was compelling evidence unreasonably overlooked. There was a July 2021 Housing Topic Paper which (at §8.2) had addressed "large windfalls" and their appropriateness, which links to their non-inclusion as allowances, albeit recognising some prospect of contribution. I cannot accept, even arguably, that there was something "crucial" which was missing from the reasons. The inspectors were addressing what they saw as the 53 main issues (IR §57). This was all squarely in the realms of classic planning judgment. From it flowed the overall planning judgment: see IR §166. There is no realistic prospect of the Court overturning it, or the nature of the reasoning which precedes it, as being unlawful whether because it is unreasonable in its outcome or as disregarding some legal relevancy or as being legally inadequately reasoned.

Ground 4

10. The fourth and, for today, final ground for statutory review is really about the nine local authorities and their decision of July 2021. They had decided – after Stockport's withdrawal – that the ongoing s.28 joint plan document was a "corresponding" document because it met the reg.32 test of "substantially the same effect". Here the focus is on the IR at §§20-24. The essence of the argument comes to this. The inspectors were required to decide for themselves the correct application of that reg.32 "substantially the same effect" test, stepping into the shoes of the local authorities and applying a correctness standard. That was, by virtue of s.20(5), within the scope of their task in making a determination. They failed to recognise this duty, and it was not discharged by their reference to reasonableness. The correct standard was correctness. A conclusion on reasonableness cannot in law suffice. It does not ask and answer the right question. This crosses the threshold of arguability. That is the essence of the argument.

11. I found it helpful to isolate the premise for the Claimant's argument. It is as follows. The nine authorities in July 2021 were applying the reg.32 test in order to be satisfied that they were acting compatibly with reg.18 and 19 in proceeding without restarting their statutory consultation processes. True, reg.32 is made under s.28(11), but it is the test interwoven into compliance with regs.18 and 19 which are made under s.36. That is enough to trigger s.20(5)(a) which requires an inspectors' determination on whether the Plan "satisfies the requirements of … any regulations under section 36". That premise is hotly contested. As one of their lines of defence, the Defendants and Interested Parties say that reg.32 is made under s.28(11) and not under s.36, which makes it absent from s.20(5) and therefore legally irrelevant.

12. I pause to note that the legislation spells out the situation where inspectors would have to apply the reg.32 test for themselves. It is where a s.20 examination is underway and "suspended" because of a withdrawal, at that stage, by a local authority from a joint development document agreement. The question is then whether the examination can resume: see s.28(9). That is about whether the inspectors can proceed. It is the Secretary of State who directs such a resumption, if the plan remains a "corresponding" document. Reg.32 applies to that direction, by virtue of s.28(9) read with s.28(11). That makes sense because it is about the integrity of the inspectors' own examination process.

13. I will for now assume two things in the Claimant's favour. One is that compliance with regs.18 and 19 – in a s.28(6) scenario like July 2021 where a local authority withdraws from a joint local development document agreement – involves a decision that the reg.32 test is met. The other is that whether local authorities have complied with regs.18 and 19 is a question within the scope of a s.20(5)(a) examination. It does not follow, in my judgment, that the inspectors in applying s.20(5)(a) automatically step into the shoes of the local authority. Sometimes, compliance with a duty expressly incorporates subjective language: a good example is reg.18(2). To comply with a duty – cf. s.20(2)(a) – would I think conventionally connote asking the right question and answering it reasonably.

14. My attention was invited to s.20(7), where Parliament has deliberately chosen the language of whether an inspector "considers", "in all the circumstances", that "it would be reasonable to conclude" that the document satisfies the requirements of s.20(5)(a). Which takes me to the key passage in IR §24. The inspectors recorded that they did not consider that they needed to come to a formal conclusion "about whether the Plan complies with s.28 and reg.32(2)". But they then recognised that this matter had not been considered by a court, and they countenanced a view in which reg.32(2) was a regulation made under s.36, so as to come within s.20(5)(a). They said they had "therefore" considered the effect of the Plan, including at one of the examination hearing sessions. Having done so, they explained that there was "nothing" which they had "read or heard" which even "indicates" that the nine authorities had arrived in July 2021 at a judgement applying the reg.32 test which was "unreasonable". This was saying it was "reasonable to conclude" that the reg.32 test was met. I think in the end the Claimant's argument involves there being a difference between (i) deciding that a conclusion is reasonable and (ii) deciding that it is reasonable to reach that conclusion. Alternatively, a difference between (i) deciding that someone else's conclusion on a point is reasonable and (ii) deciding that it is reasonable yourself to reach that conclusion. I am quite sure that these are not distinctions capable of prevailing to overturn the inspectors' approach to this issue, on the facts and in the circumstances of the present case. The inspectors had been given "nothing", even "indicat[ing]", that it was unreasonable to treat the reg.32 test as met. In my judgment, the claim that there was some material error of approach here has no realistic prospect of succeeding.

Conclusion

15. The Claimant asked the Court to look at the grounds afresh, with the benefit of further written and oral submissions. But having done so, I cannot find in any of the four grounds a viable ground for statutory review with a realistic prospect of success. That means they will remain filtered out at this permission stage and cannot proceed through to join the other ground which awaits its substantive resolution. The parties were agreed that the appropriate Order, in light of this judgment, is: (1) permission for statutory review on grounds 1 to 4 is refused; (2) costs reserved.