



Neutral Citation Number: [2024] EWHC 3302 (Admin)

AC-2024-LON-002049

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

Date: 18 December 2024

Before :

Dan Kolinsky KC

(sitting as a Deputy Judge of the High Court)

BETWEEN:

WAVERLEY BOROUGH COUNCIL

Claimant

- and -

**(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND
COMMUNITIES**

(2) SIGMA HOMES LIMITED

Defendants

David Lintott, instructed by Waverley Borough Council for the Claimant

Matthew Fraser instructed by Government Legal Department for the First Defendant

Christopher Young KC and Leanne Buckley-Thomson instructed by DMH Stallard LLP for the Second Defendant

Hearing date: 4 December 2024

Approved Judgment

This judgment was handed down remotely at 12pm on 18 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Dan Kolinsky KC (sitting as a Deputy High Court Judge):

1. The Claimant challenges, pursuant to s.288 of the Town and Country Planning Act 1990 (“the 1990 Act”), the decision of a Planning Inspector appointed by the First Defendant dated 8 May 2024 allowing an appeal and granting outline planning permission for the erection of up to 53 dwellings and associated work (“the Development”) at land at Coombebury Cottage, Dunsfold Road, Dunsfold GU8 4NB.
2. Permission to proceed with this claim was granted by Lang J on 25 July 2024. The challenge is confined to a single ground which concerns the Inspector’s assessment of the relationship of the Development with the Surrey Hills National Landscape (previously known as the Surrey Hills Area of Outstanding Natural Beauty).
3. The Claimant is the local planning authority. It refused planning permission for the Development on 31 May 2023.
4. The Second Defendant’s appeal against that refusal was determined by the Inspector following an inquiry held on 27-29 February 2024 and 1 March 2024. The Inspector undertook a site visit on 1 March 2024.

The Inspector’s Decision and Relevant Planning Policy

5. The Inspector’s decision is dated 8 May 2024. I refer to it below as “DL”.
6. The Inspector identified the main issue in para 6 of DL as “the effect of the proposed development on the character and appearance of the area, including in respect of trees”.
7. At para 7, the Inspector identified that the site forms part of a valued landscape as it is located within the setting of the Surrey Hills National Landscape (“SHNL”). It is also located within an Area of Great Landscape Value and the proposed access would pass through common land, Dunsfold Common.
8. The relevant policy context in respect of National Landscapes (as they are now known) is as follows.

9. The development plan policy is policy RE3 of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites February 2018 (“the Local Plan 1”). It provides that the setting of the SHNL “*will be protected where development outside its boundaries harm public views from or into the [SHNL]*”.
10. In the National Planning Policy Framework (“NPPF”) (December 2023 version), the relevant policy is contained in para 182. Its first sentence states: “*Great weight should be given to conserving and enhancing landscape and scenic beauty in ... Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues*”. Its third sentence states: “*The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designated to avoid or minimise adverse impacts on the designated areas*”. It is apparent that a different policy approach applies to development within the setting of SHNL (third sentence) compared to that which applies to development in SHNL (first sentence).
11. At the inquiry, expert landscape and visual impact evidence was called by both main parties. The Inspector made general observations about this in para 8 and 9 of DL. He observed: “*From all that I have heard, saw and experienced during the appeal process, including during my site visit [the Development’s] effects would largely lie somewhere between each party’s witness’s assessments, generally more closely of the Council’s witness on landscape and impact*”. He noted that he had largely adopted the Council’s assessment as a benchmark. However, he qualified this by stating: “*I have not, though, adopted the Council’s case in respect to the effect of the development on the SHNL*”.
12. The Inspector began his discussion of the main issue with consideration of trees (which had formed one of the Council’s reasons for refusal). He noted at para 11 of DL that it was “*very clear*” “*that there would be fairly substantial space around the site’s margins for additional planting*”. Thus “*with careful consideration and control of reserved matters, particularly landscape and layout, this could reasonably supplement and complement the existing mature planting around the site’s margins*”. He considered that a “*sympathetic context and setting for the development in character with the area could be achieved*”.

13. Having discussed planting within the developed area of the site, he stated his overall assessment in respect of trees as “*in terms of the ..reason for refusal trees do not add any particular additional weight to the totality of harm that would occur*”. Subject to careful control at the reserved matters stage there would be no conflict with the applicable development policies or paragraph 136 of the NPPF.

14. He then turned to consider the relationship with the SHNL. Paragraphs 15-18 contain his assessment of this. I set those paragraphs out in full.

“15. *Dunsfold is not located in the SHNL but is within its setting. The appeal site is reasonably well contained, due largely to the area’s topography and the screening effect of vegetation, particularly woodland. It is also located some distance away from the SHNL. Consequently, at most, there would be only very limited views of the appeal development from the SHNL.*

16. *Indeed, in views from higher ground of the SHNL, due principally to its well-wooded context, Dunsfold village is currently a largely indistinguishable feature in the landscape. Given that the village is substantially bigger than the appeal development would be, subject to the careful control of the scheme’s detailed design and appearance, for the reasons outlined above, I see no reason why this would not continue to be the case were the appeal development to proceed.*

17. *From outside the SHNL, there are much closer views of the site from which the appeal development would be more readily discernible with the SHNL forming part of the backdrop and/or context. They would though be limited due to the reasons referred to above. As the development would be experienced in the context of the existing village and bearing in mind the distance from the SHNL, in this sense the appeal scheme would also have no adverse impacts via its effect on the SHNL’s setting.*

18. *For the foregoing reasons, subject to careful consideration of the reserved matters, overall, the appeal development would not have a harmful effect on the SHNL via its setting. Accordingly, it would not be at odds with Framework para 182. Nor would it conflict with the first part of Local Plan I Policy RE3 (Landscape Character – i. Surrey Hills Area of Outstanding Natural Beauty) ”.*

15. In para 19 of DL, the Inspector noted that the surrounding area including Dunsfold village was a candidate area in the ongoing SHNL Boundary Review. However, given the lack of certainty in respect of the outcome, he considered that this attracted no more than limited weight. There is no challenge to this part of his decision.

16. In para 20-22 of DL the Inspector made the following assessment of the impact of the Development on the character and appearance of the area.

- “20. *Regarding character and appearance, my attention has also been drawn to a number of other appeal decisions, including those relating to land in the near vicinity of the site. These include an appeal concerning the proposed residential development of a site that adjoins the current appeal site, to the west (the adjoining appeal). That appeal was dismissed.*
21. *When making his decision, amongst other things, the Inspector for the ‘adjoining appeal’ stated that that wooded site helps provide a ‘clearly important’ vestigial link between Dunsfold Common and the broader landscape on the east side of the settlement, within which the current appeal site is immediately located. I have found no good reason to disagree with his assessment.*
22. *Layout and hence the siting of the built form within the current appeal site would be a matter reserved for future determination. Nonetheless, the proposed parameters plan shows a reasonably substantial gap of open land around the site’s fringes would be maintained, particularly to the southernmost corner, thereby retaining a vestigial link. That link would, though, be much diminished, significantly narrowing the gap between the two clusters of development in Dunsfold, to the detriment of the character and appearance of the area”.*

17. In para 23, the Inspector drew together his conclusions on the main issue (as he had defined it in para 6 of DL) as follows:

“Notwithstanding my conclusions regarding the SHNL and trees as outlined above, the proposed development would have a harmful effect on the character and appearance of the area, which is an AGLV and a valued landscape in the terms of the Framework. Consequently, in that regard, it would be at odds with Policies TD1 (Townscape and Design), RE1 (Countryside beyond the Green Belt) and RE3 (ii) (Landscape Character – ii. The AGLV) of the Local Plan I and with Policy DM15 (Development in rural areas) of the Local Plan II, as well as with para 180 of the [NPPF]”.

18. To understand how these conclusions fed into the Inspector’s overall planning assessment, it is necessary to refer to paragraph 11 of the NPPF. Paragraph 11 so far as relevant states that:

*“..decisions should apply a presumption in favour of sustainable development
(d) where there are no relevant development plan policies or the policies which are most important for determining the application are of date, granting planning permission unless*

i. the application of the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed [footnote 7]; or

ii any adverse impacts of doing would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole”

Footnote 7 refers to policies in the NPPF (rather than those in development plans) relating to (amongst other things) Areas of Outstanding Natural Beauty (now National Landscapes).

19. The Inspector’s planning balance was:-

a. He identified conflict with the spatial strategy of the Local Plan I in paras 26-30 (as a development outside the settlement boundary of Dunsfold).

b. He noted the Claimant’s failure to provide a five year housing land supply (DL 31) and therefore indicated that the conflict with the spatial strategy carried limited weight.

c. He set out his overall planning balance and conclusions in paras 44-53. In summary:-

i. He treated the harm he had identified to the character and appearance of the area as having significant weight against the proposal (DL 44).

ii. He identified the serious and significant shortfall in housing delivery (DL 46) and the difficulties which the Claimant would face in addressing this (DL 46).

iii. He applied the tilted balance contained in paragraph 11 of the NPPF in DL 51-2 stating as follows:

“51. Although collectively weighty, all of the adverse impacts that would, or at least might, result from the appeal development, most notably via harm to the character and appearance of the area and the associated development plan policy conflict, would

not significantly and demonstrably outweigh the benefits, particularly those associated with affordable and market housing delivery, when assessed against the policies in the Framework taken as a whole.

52. *Accordingly, while perhaps not ideal, the appeal scheme would be sustainable development in the terms of the Framework for which there is a presumption in its favour. Consequently, it would also accord with Policy SP1 (Presumption in Favour of Sustainable Development) of the Local Plan I. Moreover, that it would represent sustainable development in the terms of the Framework is a material consideration that, in the particular circumstances of the case, outweighs the conflict with the development plan as a whole”.*

20. Accordingly the Inspector granted outline planning permission for the Development subject to conditions and the s.106 obligation.

Legal Context

21. Planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise (see s.38(6) of the Planning and Compulsory Purchase Act 2004) and having regard to material considerations (see s.70(2) of the 1990 Act).

22. A right of appeal to the Secretary of State is afforded to an applicant by s.78 of the 1990 Act.

23. In respect of any challenge to an Inspector’s decision pursuant to s.288 of the 1990 Act, the applicable principles are summarised by Lindblom LJ in St Modwen Developments Ltd v Secretary of State [2017] EWCA Civ 1643 at para 6.

24. Lindblom LJ considered the correct approach to alleged failures to take account of material considerations in DLA Delivery Ltd v Baroness Cumberlege of Newick [2018] P.T.S.R. 2063 at para 25. It is necessary to show that the matter is one which the statute expressly or impliedly requires to be taken into account ‘as a matter of legal obligation’ because it is ‘obviously material’.

25. The duty to give reasons was considered by the House of Lords in South Buckinghamshire CC v Porter (No. 2) [2004] 1 W.L.R. 1953. The applicable principles were summarised by Lord Brown at para 36.

The Claimant's contentions

26. The Claimant challenges the Inspector's conclusion that there was no adverse impact on the SHNL.

27. The specific criticism advanced is as follows. The Claimant contends that the Inspector, in determining that the Development would not have a harmful adverse effect on the SHNL via its setting, failed to take into account a material consideration. In particular, when relying on the context for the existing village as a reason why there would be no harmful effect on the SHNL, the Inspector failed to take account of his finding that the Development would change the existing context of the village in a harmful way in views from the footpath to the east. As a result, the Inspector failed to consider whether there would be a harmful effect on the SHNL by development within its setting which have given rise to a clear reason to refuse planning permission, as provided for in footnote 7 of the NPPF.

28. In the alternative the Claimant contends that the Inspector failed to give adequate reasons for his conclusions.

29. In his oral submissions, Mr Lintott referred to the Inspector's conclusions in respect of the impact on the character and appearance of the area in DL paras 20-22 including in particular his recognition of the impact on the vestigial link between Dunsfold Common and the broader landscape to the east of the settlement. He argued that the Inspector did not engage with this impact of the Development in urbanising what was open rural land in his assessment of the impact on SHNL via its setting. He contended that this urbanising effect of the Development would be apparent from views from footpath 281. He relied on the Claimant's landscape witness' assessment of the impact of views of the appeal site from footpath 281 which runs adjacent to the site before passing on higher ground with views across the site. He also argued that there would be visual association with the Greenland Hills which are part of SHNL. His essential complaint

was that the Inspector had not addressed this adverse impact in his assessment of the impact on the SHNL.

The Defendants' Submissions

30. Mr Fraser for the First Defendant's response to the claim was to contend that the Claimant's case failed to differentiate between two distinct elements of the Inspector's reasoning:

(1) On the one hand, the Inspector recognised that, in judging the impact on the SHNL via its setting, "*the development would be experienced in the context of the existing village*", which – coupled with the distance from the SHNL – would result in no adverse impact (see DL para 17).

(2) On the other, in relation to the separate question of the impact of the Development on the character and appearance of the area, it was found by the Inspector [DL/22] that the "*vestigial link*" between Dunsfold Common and the broader landscape on the east side of the settlement would be "*retained*" but "*be much diminished, significantly narrowing the gap between two clusters of development in Dunsfold, to the detriment of the character and appearance of the area*".

These two exercises of planning judgment by the Inspector were, he submitted, consistent with one another, and there is nothing to indicate any failure by the Inspector to take one judgment into account when reaching the other. They relate to two separate albeit related issues, namely the specific issue of the effect on the SHNL and the more general impact on the character and appearance of the area.

31. Mr Fraser emphasised the opening words of para 23 DL which made it clear that the Inspector had kept in mind both limbs of his analysis in reaching his overall conclusions.

32. Mr Young KC for the Second Defendant adopted the First Defendant's submissions. In addition, he contended that the claim was an impermissible attack on the Inspector's

planning judgment and sought to “*cherry pick*” parts of the landscape evidence at the inquiry. He contended that this was precisely the type of challenge which the courts have repeatedly cautioned against. He explained the elements of the Inspector’s judgment in respect of DL paras 15-17 related precisely to the policy test in the third sentence of paragraph 182 of the NPPF. They were the exercise of an unassailable planning judgment. Ms Buckley-Thomson for the Second Defendant addressed the reasons challenge contending that the Inspector’s reasons were perfectly intelligible to informed participants at the inquiry.

Discussion

33. The focus of the Claimant’s challenge is the landscape and visual impact conclusions of the Inspector in respect of the relationship with the SHNL. In making his submissions, Mr Lintott showed the Court some relevant illustrative materials in respect of key views from footpath 281 and took the Court to the passages from the Council’s landscape witness’ evidence to the inquiry. As he did so, it was strikingly apparent how much better placed the Inspector was to assess the applicable landscape impacts. The Inspector heard the evidence first hand (including cross examination). The Inspector has relevant professional qualifications to make the necessary evaluative judgments as to how to assess the impact of the Development in its context. Critically, the Inspector undertook a site visit which involved walking footpath 281 and experiencing the dynamic approach to Dunsfold village in the vicinity of the site and in the context of the distant SHNL. The observations of Sullivan J (as he then was) in R (Newsmith) v Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 74 at paras 7-8 as to the daunting difficulties which a Claimant faces trying to go behind such planning judgments are apt in the present case.
34. Mr Lintott expressly (and rightly) disavowed any irrationality challenge. Instead, he frames his case that the Inspector failed to consider his own conclusions in respect of adverse impact on the character and appearance of the area (DL 20-22) when making his assessment of the impact on the SHNL.
35. Reading the decision fairly and as a whole, I do not accept that this is a plausible analysis of the Inspector’s decision. There are two clear positive indications against this

somewhat implausible proposition that the Inspector left out of account his own conclusion.

36. First, in para 9 of DL, the Inspector took care to distance himself from the Claimant's landscape evidence so far as it related to the relationship with SHNL. This shows that the Inspector consciously dealt with these two limbs of analysis separately.
37. Second, in para 23 of DL, the Inspector's use of the word "*notwithstanding*" gives an express indication that he kept in mind the distinctness of his conclusions on the relationship with the SHNL and his more general assessment of the impact on the character and appearance of the area.
38. Reading the decision fairly and as a whole, it is clear that the Inspector lawfully considered the relationship of the Development with the SHNL. As Mr Young KC submitted, his evaluation closely followed the policy framework in the third sentence of paragraph 182 of the NPPF.
39. The Inspector described the relationship of the site with the SHNL in para 15 of DL. He noted that the site was reasonably well contained. He described the topography. He referred to the screening effect of the vegetation, particularly the woodland. He identified the distance from the SHNL (it is several miles away). In para 16 of DL, the Inspector commented on the views from the higher ground of the SHNL. He explained that Dunsfold village is currently a largely indistinguishable feature in the landscape and why he saw no reason why this would not continue if the Development were to proceed.
40. I note that the Claimant makes no challenge to this part of the Inspector's assessment.
41. In para 17 of DL, the Inspector dealt with views from outside the SHNL. He noted that there were closer views of the site from which the Development would be more readily discernible with the SHNL forming part of the backdrop and/or context. He then observed: "*They would though be limited due to the reasons referred to above*". This sentence was a key focus of Mr Lintott's submissions. He claimed that the Inspector had not explained why the views would be limited when they were important and there

would be a change in the way in which the appeal site was experienced (as the Inspector himself identified in para 20-22). Mr Lintott relied on the conclusions of his landscape witness to support the proposition that there would be an adverse impact.

42. However, in agreement with the submissions made by the Defendants, I consider that it is clear that the Inspector was referring back to the various factors which he had identified in para 15-16 of DL. These include the topography, vegetation and distance. This is made clear in the following sentence which says: “*As the development would be experienced in the context of the existing village and bearing in mind the distance from the SHNL in this sense the appeal scheme would also have no adverse impacts via its effect on the SHNL’s setting*”. The Inspector also took account of the scale and design of the Development (as is apparent from DL 18) in making this assessment of the relationship with the SHNL. This answers the Claimant’s assertion that the Inspector left out of account the impact of the Development in dealing with its relationship with the SHNL.
43. Read fairly and in context, the Inspector sets out the basis for his planning judgment that there would not be any adverse impact on the SHNL via its setting. In doing so, he applied the relevant test in the third sentence of para 182 of the NPPF. He explained how he had reached his assessment which, in effect, is informed by the remoteness of the relationship between the Development and the SHNL given the various factors he identified including the topography, vegetation, distance, scale of the Development and design (judging the parameters proposed and taking account of the scope for “careful consideration of the reserved matters”).
44. In so doing, the Inspector undertook the necessary exercise of planning judgment required by the third sentence of para 182 of the NPPF in assessing whether the development was sensitively located and designed to avoid or minimise adverse impacts on the SHNL.
45. Mr Lintott’s reliance on the conclusions of his landscape witness provide no basis for undermining the Inspector’s conclusion. As indicated above, the Inspector was careful in para 9 of DL to explain that his adoption of the Council’s landscape assessment did not extend to the impact of the SHNL. Rather, he made his own assessment – based on

his site visit – of the relationship of the Development with the SHNL. He explained in paras 15-18 how he reached that conclusion.

46. Mr Lintott sought to draw support from the decision of an Inspector (Benjamin Webb) in a decision dated 13 December 2022 referred to in para 22 of DL. This decision related to an adjacent site at land at North Gratton Chase, Dunsfold. The current Inspector agreed with the reference by Mr Webb to the vestigial link in para 11 and 13 of his decision. That analysis formed part of the current Inspector’s evaluation of the impact on the character and appearance of the area. However, there is no support to be drawn from Mr Webb’s decision for the proposition that this also gave rise to an adverse impact on the SHNL via its setting. No adverse impact on the SHNL is identified in Mr Webb’s decision and the point was not taken by the Council in that case. Therefore, the decision provides no support for the Claimant’s criticism of the Inspector’s reasoning in respect of the relationship with SHNL in this case.
47. I agree with the Defendants’ submissions that the Claimant’s case is excessively legalistic. Decisions of Inspectors are to be construed in a “reasonably flexible way”, and are “written principally for parties who know what the issues” are: St Modwen Developments Ltd [2018] PTSR 746, para. 6 per Lindblom LJ. The courts have repeatedly cautioned against the hypercritical scrutiny of planning decisions, and laborious dissection of decision letters in an effort to find fault: St Modwen, para. 7.
48. In the present case, the Inspector’s decision is set out with clarity. The Inspector addresses the relationship with the SHNL in paras 15-18. His assessment draws on his site visit and explains the judgments he has reached. He is careful to relate his conclusions to para 182 of the NPPF and the applicable development plan policy (RE3 of Local Plan I).
49. His evaluation of the impact on the character and appearance of the area is, as the First Defendant submits, a distinct exercise. He explains his conclusions as to the harmful impacts in paras 20-22 of DL. In para 23, he drew the threads together stating: *“Notwithstanding my conclusions regarding the SHNL and trees as outlined above, the proposed development would have a harmful effect on the character and appearance of the area”*. The Claimant’s case that the Inspector has ignored his judgment on the

impact of the character and appearance of the area in reaching his judgment on the relationship with the SHNL is inherently implausible and does not survive a fair reading of DL.

50. In my judgment, the Claimant's reasons challenge adds nothing. It is prefaced on an assertion that there is a gap in the Inspector's reasoning by failing to explain the discrepancy between his conclusions on the impact of the SHNL via its setting and his conclusions in respect of the character and appearance of the area. However, for the reasons I have given there is no logical gap to fill. He dealt with the relationship with the SHNL distinctly from his assessment of the impact on the character and appearance. The factors identified above (topography, vegetation, distance and the potential design response of the Development secured at the reserved matters stage) explain his approach to the relationship with the SHNL. The Inspector has stated his conclusions on the principal controversial issues and there is no scope for doubt as what he has decided. He has given adequate reasons for his decision applying the relevant principles as encapsulated in para 36 of the speech of Lord Brown in South Buckinghamshire CC v Porter (No 2) [2004] 1 WLR 1953.

51. The Claimant has not established that there was any legal error on the Inspector's part. Whilst the Claimant may strongly disagree with the Inspector's conclusions, it has not established that there was any failure to take account of a material consideration, failure to give reasons or other legal error. To the contrary, the Inspector explained his reasons for granting planning permission with clarity and made a lawful decision informed by, amongst other things, his site visit.

52. The claim is dismissed.

53. I am grateful to all Counsel for their focussed and efficient submissions which have assisted the Court.