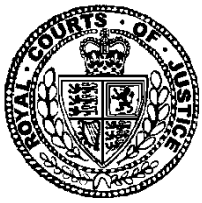

Case No: AC-2024-LON-002277

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

Neutral Citation Number: [2024] EWHC 3552 (Admin)

The Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 5 December 2024

BEFORE:

MR JUSTICE MOULD

BETWEEN:

OCKHAM PARISH COUNCIL

Claimant

- and -

SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

First Defendant

- and -

GUILDFORD BOROUGH COUNCIL

Second Defendant

- and -

TAYLOR WIMPEY UK LIMITED

Third Defendant

MR R HARWOOD KC (instructed by Goodenough Ring) appeared on behalf of the Claimant.

MS T OSMUND-SMITH (instructed by Government Legal Department) appeared on behalf of the First Defendant.

THE SECOND DEFENDANT did not attend and was not represented.

MR J MAURICI KC & MR M DALE-HARRIS (instructed by DAC Beachcroft) appeared on behalf of the Third Defendant.

JUDGMENT

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MR JUSTICE MOULD:

1. The claimant renews an application for planning permission to bring a claim under section 288 of the Town and Country Planning Act 1990 to challenge the grant of planning permission on appeal for the development of land at Wisley Airfield, Hatch Lane, Ockham, Surrey. Permission was refused on the papers by Lang J on 16 September 2024.

2. The appeal site is a former war-time airfield. It lies close to the A3 and to junction 10 of the M25. At present, there are major road improvement works being carried out to junction 10. The appeal site forms part of a larger site allocation in the Guildford Local Plan under policy A35. The site is identified as the largest strategic site for delivery of housing to meet local housing need over the course of the current plan period. The borough is, I think, very largely within the Metropolitan Green Belt. Major allocated housing sites are, accordingly, a very valuable planning asset and their timely delivery is a matter of obvious public interest.

3. The planning application is hybrid in its form. Its component elements are set out on the first page of the decision letter dated 24 May 2024, which is the subject matter of this challenge.

4. The applicant for planning permission, the third defendant, appealed following non-determination of the application by Guildford Borough Council as local planning authority. The appeal was heard at a public local inquiry before Miss Christina Downes DipTP MRTPI. Ms Downes is a planning inspector of very great experience.

5. She conducted an inquiry into the planning application over the course of 32 sitting days. She carried out an accompanied site visit and three unaccompanied site visits.

6. In addition to the appellant and the local planning authority, four consortia of local community groups, including the claimant, were granted rule 6 status. There were two supporting rule 6 parties.

7. The inspector was assisted at the Inquiry by leading and junior counsel appearing for the two main parties and the group of objecting parties of whom the claimant was a

member: all the barristers with great experience in planning law and practice. Each called professional witnesses with expertise across a range of disciplines who were cross-examined, sometimes at length, on their evidence.

8. The inspector's decision runs to some 555 paragraphs, over the course of which she addresses four principal planning issues and a wide range of other matters arising for her consideration before drawing her overall conclusions on the question whether planning permission should be granted. I shall come shortly to the claimant's asserted grounds of challenge, but I observe at the outset that it is beyond any argument that the inspector's decision is a *tour de force*. I also note that she provided a decision on costs running to some 50 paragraphs, in its own right.

9. Against this background, the prospects of mounting a legal challenge to the inspector's decision might be thought to be unpromising. Nevertheless, Mr Richard Harwood KC, with his characteristic drive and skill, has sought to meet that challenge. The test for me to apply today is that stated in paragraph 9.1.3 of the Administrative Court Judicial Review Guide 2024: do the asserted grounds of challenge, or any of them, raise an arguable ground to a judicial review which has a realistic prospect of success?

10. I remind myself of certain established principles of approach in this field of judicial review, which apply with particular force in this case. The decision letter must be read as a whole. It is to be read fairly. It is addressed to informed parties. The inspector's statutory duty is to have regard to all material considerations, including the relevant policies of the Development Plan. She is not, however, required to mention all such considerations. Her duty is to give reasons which enable the reader to understand the conclusions she has reached on the principal important controversial issues in the appeal. In the words of Lord Lloyd of Berwick in the case of *Bolton Metropolitan Borough Council v The Environment Secretary* [2017] PTSR 1091 at pages 1095 to 1096:

> "To require [her] to refer to every material consideration, however insignificant, and to deal with every argument, however peripheral, would be to impose an unjustifiable burden".

11. Lord Lloyd went on to refer to an observation made by the Court of Appeal in that case, that failure to refer to a material consideration may give rise to the inference that a

decision maker has not fully understood the materiality of that matter to the decision. Lord Lloyd said this:

> "Since there is no obligation to refer to every material consideration, but only the main issues in dispute, the scope for drawing any inference will necessarily be limited to the main issues, and then only, as Lord Keith pointed out, when 'all other known facts and circumstances appear to point overwhelmingly' to a different decision".

12. Last, but by no means least, matters of planning judgment are for the inspector alone to determine. The evaluation of the evidence and the planning balance between those considerations, which speak in favour of and against the grant of planning permission, are for her alone to resolve, subject only to the standard of *Wednesbury* irrationality.

13. Against that background, I turn to the grounds of challenge. Under ground 1, the claimant advances four separate grounds in relation to the inspector's evaluation of the traffic impact of the development, the access arrangements and proposals to accommodate the needs of cyclists. The first main issue considered by the inspector was the effect of the proposed development on the local and strategic highway network. She addressed that issue in paragraphs 15 to 62 of her decision. Her overall conclusions are at paragraphs 60 to 62 which I shall read out:

> "60. The traffic impacts arising from the appeal scheme are a major concern for local people. I have carefully considered their objections in reaching my conclusions. I have addressed above the main concerns raised in writing and orally at the inquiry. They were however extremely far reaching, and I have been unable to comment on every objection that was raised in respect of every road or lane within the area. That does not mean to say though that I have not taken these representations into account in the conclusions that I have reached on the highway impacts of the development.
>
> 61. It is worth repeating that this is a site allocated for a larger scale of development than has been proposed. Traffic impacts are inevitable and there is no doubt that some local roads would become busier. The conclusion of acceptability by National Highways and the County Council who are the statutory authorities responsible for the strategic and local highway networks respectively, is a matter to which I afford very significant weight.
>
> 62. The Framework makes clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative

> impacts on the road network would be severe. For the reasons I have given, I conclude that the appeal development would not result in an unacceptable impact on the highway safety of the local and strategic road network and that the cumulative impacts on the road network would not be severe".

14. It is not suggested that the approach that she summarises in those paragraphs involves any legal error or misdirection. I note also that she records the extensive engagement which took place between the strategic and local highway authorities and the appellant, which culminated in the highway authorities raising no objection to this development.

15. The first complaint relates to the proposed access arrangements for the development. At her paragraph 31, the inspector said this:

> "The proposal is for the main access to the site to be onto the Ockham Interchange and Wisley Lane Diversion at the western end of the site. There would be a second access onto Old Lane at the eastern end of the site".

16. The claimant points to the requirements of policy A35 in the Guildford Local Plan which allocates the site for development, and I quote:

> "(1) Primary vehicular access to the site allocation will be via the A3 Ockham interchange".

17. At paragraph 34, the inspector said:

> "34. Policy A35 in the LPSS indicates that the primary vehicular access should be via the A3 Ockham interchange. The Transport Assessment shows that in 2038 the number of trips in the morning peak would be higher at the Old Lane access. As was pointed out at the inquiry, the modelling has taken account of the traffic assignment from the [Development Consent Order] works which post-dated the LPSS. In any event, Policy A35 also requires a vehicular link through the site, so there is no means by which vehicles could be prevented from using Old Lane. The eastern access would be a simple T-junction with a priority left turn. Bearing in mind the illustrative Masterplan and various Parameter Plans, the western access is clearly intended as the more important. This could be assured through the reserved matters approvals, and in the circumstances, I have no concerns that the western access would be perceived as the primary entrance to the development".

18. The claimant argues that this reasoning reveals a misinterpretation of the requirements stated in policy A35. The basis for the argument is that the inspector ought to have found based on higher predicted volumes of traffic using the eastern access that the scheme failed to fulfil that requirement. In my judgment, there is no merit in this argument. The first sentence of paragraph 31 of the decision letter shows that the inspector well understood the policy requirement. The proposed access arrangements reflected that requirement. The proposal was for the main access to be via the Ockham interchange and the Wisley Lane diversion as the policy indicated.

19. Insofar as predicted driver behaviour showed a preference for using the Old Lane access, which the inspector readily acknowledged in paragraph 34 of her decision, as she said, the opportunity to manage that matter would present itself at the detailed layout and design stage in reserved matters. As Mr Maurici pointed out in his submissions, the second paragraph of the requirements stated in policy A35 insists upon the provision of a vehicular link through the site, so the inspector was correct to say that there is no means by which vehicles could be prevented from using Old Lane. That reinforces the point she makes in relation to the opportunity that presents itself at the reserved matters stage, whereas the skilful design will no doubt be brought to bear in collaboration with the planning and highway authorities in order to seek to encourage drivers, in so far as it is thought to be appropriate, to make use of the primary access which has been designed at the western end of the site.

20. The second complaint under ground 1 relates to the inspector's analysis of trip generation in paragraphs 28 to 30 of the decision. It is said that the inspector irrationally failed to address or to explain the response to the failure to include trips generated by B1 office development in the site in the transport assessment. In my judgment, this is a classic example of an impermissible challenge to the inspector's planning judgment and evaluation of the evidence. She addressed this alleged omission in paragraphs 29 and 30 of the decision letter and her reasoning in those paragraphs is, obviously, sound and adequate.

21. In particular, in paragraph 30, she set out clear reasons why, notwithstanding the complaint advanced at the inquiry on this point on behalf of the claimant, she was not persuaded that it called into question the reliability of the overall transport assessment. She referred to the appellant's response, which was that trip generation rates were

applied to the floor space and not to the number of jobs; she took the view that this was a reasonable position for them to take, because, as she said, employees may travel outside of the peaks and some may travel by alternative modes, such as bicycle or bus. She added that the assumption was that the office jobs would be small scale, local and internal to the site: an assumption that she judged to be reasonable. It is worth noting, as she did, that it was one that was agreed by the county council as local highway authority. Mr Maurici showed me the correspondence which indicated that. As I say, those are perfectly adequate and rational reasons for the inspector's approach to this issue and this ground is not arguable.

22. The third complaint is that the inspector fell into error in relying on the prospect of traffic regulation orders being made to lower speed limits on local roads and to make those routes safer and more suitable for cyclists. The position before the Inquiry was that the traffic regulation orders had not yet been made and there was no condition or planning obligation which restricted implementation of the development pending the making of those orders.

23. The inspector addressed this concern at paragraphs 430 and 431 of her decision, but it is important also to draw attention to what she says in paragraph 251:

> "It was confirmed to the inquiry that the County Council is committed to making the associated Traffic Regulation Orders in connection with the proposed cycle routes. This accords with its wider cycling strategy in policy ID9. The costs associated with the Traffic Regulation Orders would be paid [for] by the Appellant and secured through the Section 106 Agreement. It is appreciated that these would be subject to public consultation, but it is difficult to understand why there would be objections to a scheme that would make the local road network safer for all road users".

24. In 257, she referred to the prospect of the need for an agreement under section 278 of the local Highways Act 1980 in relation to works within the highway.

25. I come then to paragraphs 430 and 431. In particular, the basis for this ground of challenge is addressed in paragraph 431, where she says:

> "The justification for the off-site highway provisions have been considered under Issue Four. The obligations relate to the delivery of five cycle routes, improvements to various [public rights of way], and works

> to Ockham Lane and Old Lane, including at the Effingham crossroads. The relevant drawings and documents are at Annexures I, J, K, M and N. The various off-site highway works would be funded by the Appellant. The works relating to Old Lane, the cycle routes and the [public rights of way] are to be completed by the occupation of the 50th dwelling, although this does not apply to the Traffic Regulation Orders, which would be required for the speed limit reductions and would be likely to take longer to complete".

26. It is, accordingly, beyond argument that the inspector recognised that there was an element of uncertainty in the delivery of the speed limits, which were proposed as part of the overall package to improve conditions for cyclists on the surrounding road network and that that, in turn, depended upon the making of the traffic regulation orders.

27. However, she was aware, as she recorded in paragraph 251, that there was general agreement that such orders were merited and that, in particular, the council whose responsibility it would be to promote those orders, the county council, was committed to doing so.

28. Whilst, of course, they being a public authority exercising an administrative function, it cannot be guaranteed that they would do so, it seems to me the inspector was clearly entitled, in the reasonable exercise of her judgment, to proceed on the basis she set out in paragraph 431 of the decision letter.

29. The broader context for this is that, even were she to have had greater concerns about this point, she would have needed to set those concerns against the powerful factors speaking in favour of the grant of permission. There is no suggestion in the decision letter that matters of this kind were such as to cause her to doubt that the planning balance fell clearly in favour of the grant of planning permission. So, on that basis also, it seems to me, that this is a ground of challenge that cannot be said to enjoy a realistic prospect of success.

30. The final ground taken under ground 1 relates to the step change in national policy for development and design of new development to improve the contribution towards meeting the needs of cyclists, which is set out in the policy statement promoted by the Department of Transport in 2020, under the heading "LTN 1/20". There are two policies in the local plan which bear upon this point: firstly, the site allocation policy

A35 and, secondly, policy ID9 which was promulgated in a more recent development plan document, which indicates that "Cycle routes and infrastructure are required to be designed and adhere to the principles and quality criteria contained within the latest national guidance." In this case that guidance was set out in LTN 1/20.

31. The policy also indicated that development proposals are required to deliver the site-specific requirements for cycling infrastructure as identified in site allocation policies and also may include further requirements identified as part of the planning application process where justified. Policy A35 itself indicated that arrangements would be required to accommodate cyclists as part of the delivery of development of the site allocation.

32. The point that Mr Harwood makes is that not only does the national guidance in LTN 1/20 indicate a step change in the policy drive to improve provision for cyclists, but also local plan policy ID9, the more recent policy of the two that I have mentioned, indicates a stronger requirement to adhere or to accord with national policy. He submits that the inspector failed in her analysis of this question properly to interpret or to apply that change at local as well as national level.

33. The inspector dealt with this matter in her decision letter at paragraphs 238 to 244 under the heading, "Policy context in LTN 1/20". The first point to note is what she says at paragraph 240:

> "Policy ID9 includes a provision that cycle routes and infrastructure are to accord with the principles and quality criteria contained within the latest national guidance. This comprises Local Transport Note 1/20: Cycle Infrastructure Design (July 2020) (LTN 1/20) and reflects the Government's ambition to encourage a significant increase in cycling as a mode of travel. It sets out guidance and good practice in the design of cycling infrastructure. …"

34. There can be no doubt that the inspector well understood not only the thrust of the more recent development plan policy, but also the thrust of the national guidance and the requirement of local policy that, as a matter of generality, development schemes in Guildford should adhere to it.

35. The inspector goes on at paragraphs 241 to 244 to consider, firstly, the degree to which the scheme that is the subject of the appeal does accord with the requirements of LTN

1/20 and, insofar as it does not, to consider whether that failing or those failings should stand against the approval of the scheme. I am not going to read those paragraphs out, but I do draw attention to paragraph 242 where she says this:

> "… The policy A35 allocation was made in full awareness of the type of roads and lanes within the vicinity of the appeal site. It recognises that the proposed off-site cycle routes would not be suitable for everyone, which is why it focuses on the 'average' cyclist. Furthermore, Policy ID9 itself recognises the constraints by providing that cycle routes should be within the highway boundary or on land within the control of the Appellant. This may not fully align with LTN 1/20 and in this case the proposed cycle routes are unlikely to be suitable for young children or novice cyclists. Despite many objections to the proposals, there were no achievable alternative routes or solutions put forward by objectors within the context I have explained".

She acknowledges in paragraph 243 that, notwithstanding those points,

> "LTN 1/20 should [not] be disregarded in this case, but it should be used sensibly and treated as guidance rather than a mandatory set of rules. Its principles and standards should be applied in a reasonable and realistic way".

She concludes: "to my mind the cycle route proposals have taken account of the principles in LTN 1/20 and accommodated them where possible".

Then she says at 244:

> "This is the approach adopted by the County Council and also Phil Jones Associates, who was a main contributor to LTN 1/20. Both have been closely involved in the design and review of the proposed cycle routes. Phil Jones Associates, in their review of the cycle route proposals, concluded that all the appropriate opportunities to promote cycling to key destinations had been taken up, with the result the routes would be safe and accessible to the average cyclist".

36. In her analysis in those paragraphs as a whole, that is to say 238 to 244, and in those specific references to which I have referred, I am satisfied that the inspector understood the import of policy ID9 and the relationship with LTN 1/20. She also understood correctly, so far as interpretation is concerned, that the relationship between ID9 and A35, the site allocation, was not that the A35 requirements had been, as it were, superseded by ID9, but the two should be applied in a way that was complementary.

They both form part of the local plan. The fact that the ID9 policy, in part, advocated close adherence to the prevailing national policy standards and requirements, did not mean that the inspector was guilty of misinterpretation in drawing some guidance and giving some weight to the more site-specific guidance given in relation to this site under policy A35. As the plan itself indicated, the two were intended to be read in a way that was complementary.

37. In any event, as Mr Maurici pointed out, the matter is put beyond any argument by what the inspector concluded overall in paragraph 548 where gives her conclusions on compliance of the appeal proposal with the development plan as a whole, as she must, in order to fulfil her duty under section 38(6) of the Planning and Compulsory Purchase Act 2004. She said this at 547 and 548:

> "547. The most important policies in this case seem to me to be policies S1 and S2 and A35 in the LPSS. The appeal proposal would be in compliance with those policies.
>
> 548. However, there are many other relevant policies, which I have addressed. The appeal proposal would comply with the vast majority. There would be conflict with policy E5 in the LPSS as there would be loss of agricultural land, although I have explained that this would inevitably be breached in view of the policy A35 allocation. There would be conflict with policy ID9 in the LPDMP because there could not be full compliance with LTN 1/20 [and so on]".

38. However, she drew matters together in paragraph 549 and concluded that the development, as a whole, would be in accordance with the Development Plan and proceeded on that basis. There is ample authority that, firstly, development plans in relation to large schemes almost inevitably pull to some degree in different directions; and, secondly, that it is a matter for the judgment of the planning decision maker, provided that they understand those policies correctly, to decide what the overall position is with regard to compliance. The inspector acknowledged that there was to some degree conflict with policy ID9, in part for the reasons advanced by the claimant and others at the Inquiry, but she concluded, nevertheless, that there was overall compliance with the plan in this case. In the light of that contextual element of the decision, the fourth ground under ground 1 is not arguable.

39. I turn then to the second ground of challenge to the decision letter. This relates to habitats and, in particular, the inspector's fulfilment of her statutory function under regulation 63 of The Conservation of Habitats and Species Regulations 2017. That was required in this case because the development scheme was likely to have an effect on what was originally a European Protected Site: the Thames Basin Heaths Special Protection Area. She dealt with the discharge of that function in paragraphs 137 to 205 of her decision, under the heading, "The Effect on the Thames Basin Heaths Special Protection Area (The SPA) and the Habitats Regulations Assessment (HRA)".

40. An appropriate assessment was required in this case by virtue of the view that likely significant effects could not be ruled out. That assessment is set out in paragraphs 154 through to 191, with the conclusion being at paragraph 191. One of the important considerations was the question of nitrogen deposition, which the inspector dealt with in paragraph 174 through to 187 in her decision. It is important to note that, in considering the issues which fell for appropriate assessment by her as competent authority in this case, she had the benefit of understanding the position of the national conservation body, Natural England. She dealt with their position in paragraphs 107 to 108 of the decision letter. As one would expect in a case like this, Natural England had been consulted to a very significant extent in the preparation of the Habitats Regulations Assessment that was placed before the inspector. Natural England, speaking with their expertise and statutory function, had raised no continuing concerns about the impact of the proposed development on the Special Protection Area.

41. Returning to the question of nitrogen deposition, there had been very detailed consideration of the risks involved in relation to the Special Protection Area, particularly from roadworks and from traffic, in the context of the Development Consent Order examination, which resulted in approval for the major roadworks at junction 10 of the M25. Things had developed somewhat since that process took place and, as the inspector notes at paragraph 182, a supplementary advice note had been promulgated by Natural England, which dealt with improvements in their understanding of the risks associated with nitrogen deposition and other matters on the Special Protection Area; and on the species that were particularly valued within it. That advice, in particular, related to the question of critical loads, which ought not to be exceeded in order to maintain the conservation status of the Special Protection Area.

42. One of the arguments advanced at the Inquiry to the inspector was that the development could not be safely found not to lead to unacceptable exceedances in nitrogen deposition and that, consequently, she could not be satisfied that the scheme would not prejudice the maintenance of the conservation status of the protected site.

43. She addressed that question in overall conclusions in paragraphs 185 to 187 of her decision:

> "185. The evidence indicates that for the appeal development alone, the 1% exceedance zone would be close to the roadside and would not affect any areas of dwarf shrub heath. However, the in-combination assessment shows that critical loads would be exceeded by more than 1% within parts of the DCO heathland restoration areas and also small areas of existing heathland within 200m of Old Lane and the A3.
>
> 186. In considering whether such exceedances would affect the integrity of the SPA it is however relevant to consider three important factors. The first is that, as already considered under Issue Two, background nitrogen deposition will fall in the future. Apart from small areas adjacent to the A3 and the M25, which are the areas associated with vegetation clearance as a result of the DCO works, the level of nitrogen deposition in 2038 is modelled to be lower than in 2019 regardless of whether the appeal development goes ahead. The second factor is that the evidence suggests that despite the historic extent of nitrogen deposition within the SPA, this has not prevented an increase in the extent of heathland within Ockham and Wisley Commons through active land management. The third factor is that there is good indication that the population numbers of the SPA birds have shown a general upwards trend.
>
> 187. The evidence indicates that the area of affected heathland, including that generated by the DCO restoration works would be some 9.5 ha, which would be about 4.3% of the total heathland within the Ockham and Wisley Commons SPA component. As indicated above, this area has historically experienced higher levels of deposition and the overall effect would be that there would be a slower rate of recovery. The Appellant's evidence is that the effect would be negligible, and I am inclined to agree for the reasons I have given".

44. The established legal standard for legal challenge to the competent authority's assessment of the risk to protected sites from development, in the discharge of their regulation 63 function, is the *Wednesbury* standard. In other words, the question for me is whether it is arguable that, in the light of that reasoning, the inspector, in concluding, as she does in 191,

> "that the appeal development both alone and in-combination with other plans and projects would not undermine the conservation objectives of the SPA and would not result in adverse effects on the integrity of the designated site in respect of air quality",

has reached an irrational conclusion on the basis of the evidence or has failed to explain the conclusion that she reached.

45. I am wholly unpersuaded that either of those is an arguable proposition. The short point is that which she sets out in paragraph 187 in relation to nitrogen deposition. There would be a slower rate in recovery but the degree to which that rate will slow would be negligible. She was plainly entitled reasonably to reach the conclusion that she did. That conclusion and the reasonableness of it is not affected by the reasoning and the conclusions that she draws in relation to the DCO compensation land in paragraphs 188 to 190. Mr Harwood criticised her reliance on what she called "a purely precautionary approach", which was the basis for requiring the delivery of the compensation land under the DCO scheme. I see no reason why she should not give appropriate weight to that factor and to that justification for delivery of the compensation land. I do not read out those paragraphs, but I am quite satisfied that the explanation she gives for her conclusions, in relation to the compensation land, in 188 to 190 is one which is not arguably irrational or lacking in adequate reasoning.

46. For those reasons, I reject as unarguable the claimant's proposed challenge to the planning decision.

47. I turn, finally, and very briefly, to the final aspect of the claim. That relates to the costs decision letter. That challenge proceeds on two grounds: the first of which is entirely parasitic on the second ground of challenge to the decision letter. Having dismissed that ground as unarguable, I say no more about the first ground of challenge to the costs decision.

48. The second ground of challenge to the costs decision seeks to characterise as invalid or unlawful conclusions that the inspector drew as to whether or not aspects of the evidence given in relation to ecology and the principle of development on behalf of the claimant and its fellow community groups at the Inquiry was unreasonable. Those findings are set out in paragraphs 32 and 43, respectively, of the costs decision letter. It

is very well established that the standard for judging whether or not parties have behaved unreasonably in the context of the inspector's costs jurisdiction is to be judged by the ordinary standard of reasonableness. It is also well established that the inspector, particularly in this case, for the reasons I gave at the outset of this ruling, was far better placed than this court to form a judgment as to whether a party or a party's witnesses had behaved unreasonably in the course of making their presentation and giving their evidence at the Inquiry.

49. In this case, the inspector gave perfectly sound and understandable reasons in paragraphs 32 and 43 for concluding, as she did, that, in each of those respects, there had been unreasonable behaviour. Those paragraphs must, of course, be read in the context of the broader analysis which, in relation to ecology evidence, begins at paragraph 30 and concludes at paragraph 34; and, in relation to the question of development principles, which begins at paragraph 43 and goes over to paragraph 44. In the case of the latter, it is clear that the wasted costs consequences of what she found to be unreasonable behaviour in that respect were very modest indeed. But, in any event, I have read those paragraphs carefully, I have considered the complaints that are made about them in the claimant's statement of facts and grounds, and I am quite satisfied that, applying the *Wednesbury* standard, neither her conclusions nor her reasoning is arguably to be criticised on that basis.

50. For those reasons, I refuse permission on the proposed challenge to the costs decision also.

51. It follows that this application to renew the application for permission must be refused.

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