

NEUTRAL CITATION NUMBER: [2020] EWHC 1172 (QB)

IN THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION

PLANNING COURT (LEEDS)

BEFORE HIS HONOUR JUDGE MARK RAESIDE QC (Sitting as a Judge of the High Court)

Case No: CO/2925/2019

B E T W E E N:

THE QUEEN ON THE APPLICATION OF STEPHEN JOHN WILLIAMS

Claimant

and

NORTHUMBERLAND COUNTY COUNCIL

Defendant

MR STEPHEN WILLIAMS appeared as a Litigant in Person  
MR SIMON PICKLES of counsel appeared on behalf of the Respondent

#### APPROVED JUDGMENT

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HIS HONOUR JUDGE MARK RAESIDE QC:

This is the transcript that I have briefly corrected some three months later on 17 April 2020 without the aid of any documents of an *ex tempore* oral judgment I gave on 24 January 2020.

### **Introduction**

1. This case concerns a claim for judicial review brought by Stephen John Williams acting as a Litigant in Person (**‘Mr Williams’**), against the Northumberland County Council (**‘NCC’**) acting through counsel Simon Pickles, in respect of their decision made on 14 June 2019 concerning a notice of planning permission for development of up to 20 dwellings (100% affordable) at land southwest of St Cuthbert’s Close, Main Street, North Sunderland, Northumberland (**‘the Decision’**).
2. There are now only two grounds at this substantive hearing described by Mr Williams as follows:
  - (i) **‘Ground 1** – Scale of development – NCC failed to determine, in accordance with the development plan NNCNP Policy 1, which provides for limits on the scale of development in the relevant area and has not provided “material considerations” to justify this breach, an error of law, and NCC has determined in accordance with an interpretation of the NPPF, a material consideration, but NCC also intends to adopt a policy with other interpretation with which the development would not comply. This is irrational/unreasonable’ and,
  - (ii) **‘Ground 3** - Proof of the “local need” for affordable housing – NCC has failed to demonstrate compliance with development plan NNCNP Policy 9(d) and PLD Policy S6 and other material considerations which require housing outside settlements to be affordable for local needs (local needs being defined by specific criteria), an error of law’.
3. Grounds 1 and 3 are opposed by NCC who, in conclusion, in his skeleton argument Simon Pickles say as follows:
  - (i) ‘Differences between definitions of “small scale” within planning policy are not, of themselves, central to this decision-making process since permission, when granted for development of land, as an exceptional site for 100% affordable housing pursuant to NNCNP Policy 9(d) where – on paper interpretation of that policy in context – no size limitation arose (not principal residences under Policy 1) and they did not, moreover, there did not arise any irrationality at all whether an expression as proposed for redefinition in emerging policy compared with its definition and adopted policy plan. NCC was not operating inconsistent policies of the like status’ and,
  - (ii) ‘The officer’s report to committee on 24 May 2018, the officer’s addendum report to committee on 18 October 2018 and member’s focus was clearly on housing need and not confined to demand only. The decision to grant was entirely lawful, as far as the matter was concerned’.
4. Both grounds were concerned with affordable housing and the lawful/irrational approach a local authority should take to such planning applications in an

Area of Outstanding National Beauty (“AONB”).

### **Procedural Background**

5. On 26 July 2019 Mr Williams, issued a judicial review Claim Form reference number CO/2925/2019 against NCC and Ms Shelia Carr and Mr Walter Dunn as Interested Parties in respect of planning application number 17/01819/OUT. Attached was an undated Statement of Facts and Grounds which relied on five separate grounds. Mr Williams acted as the Litigant in Person and did not contend this was an Arras Convention claim. The remedy sought was quashing the Decision.
6. Insofar as relevant to this claim, Ground 3, at paragraph 43, provides as follows:

‘Both the [Report] and [Addendum] gave vague statements of “expressions of interest” from providers and how the development would make a contribution to the affordable housing stock. “Demand” for affordable housing is a phrase that appears several times. Nothing is supported by data. Concerns were raised during the consultation process about the robustness of this evidence, in particular that demand was not necessarily the same as need’.
7. It is this particular wording which forms the basis of Ground 3 and nothing further.
8. NCC Acknowledge of Service was accompanied by the Defendant’s Summary Grounds dated 12 August 2019 settled by Simon Pickles of counsel.
9. On 12 September 2019, following consideration of the documents lodged by NCC and the Acknowledgement of Service and other documents filed by NCC, an order was made by HHJ Kline (sitting as a High Court judge) which granted permission on Ground 3 alone in the following specific terms:

‘Permission is hereby granted in relation to the following ground: that the defendant wrongly concluded, from the interest of registered providers in the proposed development site, that there was an identified community or other local need of affordable housing (see paragraph 43 of the statement of facts and grounds)’.
10. The relevant observation of the judge on Ground 3 and on Ground 1 were as follows:
  - (i) ‘Ground 3 (affordable housing for local need): paragraph 43 of the statement of facts and grounds.

It is arguable, with a realistic prospect of success that, in deciding whether to give permission, the defendant concluded that the development site qualified as a rural exception site because registered providers had expressed an interest in it. It is arguable, with a realistic prospect of success, but it does not follow, from the expression of interests, that there is identified community or other local need for affordable housing’.
  - (ii) ‘Save to this extent, Ground 3 appears to be
    - (1) no more than a complaint about if the defendants had properly weighed the evidence before it, and/or
    - (2) No more than a disagreement with the conclusions the defendant reached. Neither any complaint about weight, in this case, nor the apparent disagreement with the defendant’s conclusions discloses any ground for judicial review which has a realistic prospect of success’.

- (iii) 'The remaining grounds are not arguable with a realistic prospect of success'.
- (iv) 'Ground 1 (scale of development): whilst Policy 1 of the North Northumberland Coast Neighbourhood Plan explains that small-scale developments will be supported, Police 9(d) explains that particular support will also be given to proposals for "exception" sites of affordable housing provision where they do not have a negative impact on sensitive settlement edges. Policy 9(d) does not impose a size limitation on "exception" sites. Policy S6 of the Berwick upon Tweed Borough Local Plan does not, itself, say anything about size limitation of affordable housing sites. Paragraph 77 of the MPPF provides the Local Planning Authority should support opportunities to bring forward "rural exception sites" which are small sites that will be providing affordable housing to meet identified local needs. Concerning the claimant's case, however, small sites are not limited by paragraph 68(a) of the NPPF to sites no larger than one hectare. Paragraph 7.45 of the emerging plan does not indicate, and in Policy HOU7 which makes provision for rural exception sites, is limited sites less than one hectare, or less than 10 dwellings, but the emerging plan was not published until three months after the defendants resolved to give permission, was not submitted until four months after that, bearing in mind that limited weight be attached to emerging plan, when permission was actually given. There was no public law error when permission was given in not referring the matter back to councillors.'
11. On 14 October 2019, NCC's counsel Simon Pickles settled the Defendants Detailed Grounds limited to Ground 3. The document made reference to the provision of a witness statement from Ian Stanners of NCC.
12. By an undated document Mr Williams gave Notice of Renewal solely on Ground 1 in the following terms:  
'Northumberland Coast Neighbourhood Plan (in NCN). The scale of development allowed, under Policy 9, is limited by Policy 1 because Policy 1 explicitly applies to affordable housing for local needs (Section A) in all locations in the NP area (Policy "within the Neighbourhood Plan Area"). As both policies apply the decision must be in accordance with both unless material considerations suggest otherwise (Town and Country Planning Act 1990 Section 70, planning and compensation at Section 38). Policy 1 is formulated to invite "material consideration to be weighed against it – it does not allow large developments provided there are material considerations". However, no material consideration has been put forward – there is nothing to weigh against Policy 1. I submit that the decision has not been made in accordance with the Acts and so is unlawful, Northumberland County Council Emerging Policy Plan HOU7. The claimant accepts, on reconsideration, the Emerging Plan Policy (officer is not obliged to consider this case) but Policy HOU7 derives its definition of "small sites" (as being no larger than 0.5 hectares) from the NPPF 2018 which was valid at the time of the resolution and decision. It is irrational for there to be markedly different interpretations of "small sites" for the same council.'
13. By an undated document Mr Williams filed a Response to Defendants' Detailed Grounds and a witness statement on Ground 3, alone. It is this document that he particularly relies upon in his oral submissions made today on Ground 3.

14. On 26 November 2019 counsel for NCC Simon Pickles settled the Defendants' Written Submissions in response to Mr Williams' Notice of Renewal on Ground 1.
15. The Notice of Renewal on Ground 1 came before me on 3 December 2019, attended only by Mr Williams and not NCC, in which he provides a 'speak-to' document from which he read, with submissions together with a supporting file of documents.
16. On 1 December 2019 I granted permission for Ground 1 generally. In accordance with the Notice of Renewal dated 20 September 2019 and required service of the documents on NCC.
17. NCC served the Defendants' Additional Detailed Grounds to Ground 1 on 18 December 2019 which was, again, settled by Simon Pickles of counsel.
18. In accordance with my order a trial bundle of documents, together with a skeleton argument, dated 13 January 2020 from Mr Williams, and the Defendants' skeleton argument, again settled by Simon Pickles, also dated 13 January 2020.
19. At the oral hearing of this claim which was set down for a day and a half including this *ex tempore* oral judgment, both Mr Williams and Simon Pickles, of counsel, have agreed that the 'speak-to' documents would be the basis of their submissions and the document upon which this *ex tempore* oral judgment, should be based.

### **Plans and location**

20. NCC comprise a large swathe of both coastal and inland area in which a small area comprises three parishes of Bamburgh, Seahouses and North Sunderland and Beadnell, who together produced a Joint Neighbourhood Plan under the Localism Act 2011. The three parishes, themselves, include both the coastal and inland area.
21. On 10 July 2018 Seahouses and North Sunderland Parish Council published a Policies Plan on a scale of 1:4,000 showing hatched in orange the Northumberland Coast AONB which covered much of the parish and included the land the subject of this planning application. Delineated in black was a settlement boundary referring to Policy 8 and touched the southwest corner of this black boundary inland from the coast and is the land subject to this planning application.
22. A site layout plan, for illustrative purposes only, has been provided and it shows a road continue across the settlement boundary into the land the subject of this planning application with 20 houses arranged around the proposed new road. The effect is to continue what was quite a large area of housing, mainly in the North Sunderland County Parish, outside, but attached to, the settlement boundary, all of which is land not on the coast but well inland.

### **Background to the Decision**

23. On 22 May 2017 Mrs Sheila Carr and Mr Walter Dunn, the Interested Parties who have taken no part in this claim, made an outline planning application number 17/01819/OUT, proposing the erection of 20 dwellings on land which comprises 1.06 hectares, which was amended on 23 April 2018 to refer to affordable housing.
24. Originally, on 24 May 2018, NCC officers reported to the committee with a recommendation for approval of planning permission (**'the Report'**) and, subsequently, the officers provided an addendum report to committee on 18 October 2018, likewise recommending for approval of the planning application (**'the Addendum'**).
25. At a meeting of the committee of NCC on 18 October 2018 the officers' recommendations as amended was accepted and the result was a Decision (**"the Meeting"**).
26. Prior to the Report officers of NCC had looked into the housing need for affordable homes and the Report and Addendum formed the basis of the decision.

## **(1) Need for affordable housing according to NCC**

27. Ian Stanners is the housing enabling officer (previously known as the affordable housing officer) of NCC and a significant element of his duties was the assessing and advising on the need for affordable homes in specific locations for NCC. He deals, in his witness statement dated 17 October 2019, in paragraphs 8-18, with the relevant background prior to the Report from which I ought to quote the key paragraphs:

‘The Bernicia Group is a community-focused housing association. It works exclusively in the northeast, the County Council and Housing Enabling Teamwork with Bernicia very regularly and are their registered provider (‘RPs’) and are essential in helping to meet the need for affordable housing for rent both for existing stock and new developments. It is the largest social landlord in North Northumberland Coastal Area within which the application site lies, having acquired the council’s home stock from the former Berwick upon Tweed Borough Council of Coastal Northumberland the local government reorganisation. As such, they are an invaluable source of evidence when assessing housing need’. (Paragraph 8)

‘I attribute significant “weight” to evidence from RPs on the assessment of the need for affordable homes for rent. This provides the most up-to-date picture from experienced housing managers who are mindful of not creating an oversupply with the results in existing local homes becoming harder to let – so a balanced view is essential. They have access to up-to-date information about recent lettings and locations, details of applicants and what housing need those applicants have’. (Paragraph 10)

‘Bernicia ... in my experience are cautious and prudent developers of affordable homes. They do not invest ‘lightly’ and make sound financial decisions based on their assessment of housing need. They have been reluctant to invest in Seahouses/North Sunderland area as they did not feel the evidence was there to support a new development for affordable homes (mindful that the new homes could render existing large local stock harder to let and less sustainable)’. (Paragraph 14)

## **(2) The Report**

28. The Report deals with both principal development approach to Policy 1 and Policy 9 including rural exception sites, and a major development in an AONB and the planning obligations, including factual position of affordable housing and visual impacts in an AONB, for which I quote the following more important parts:

‘Housing Department. It is understood that this site will be viewed as an exception site and therefore development for affordable housing to meet local need only. It is understood there are issues with other current sites across the coastal areas which may prevent progress and the failure of other sites to deliver affordable homes, which make this site more important in helping to meet identified need. The application offers 20 affordable homes, the site of 100% affordable housing, which compares very favourably with the SHMA-based evidence of 15%’. (Paragraph 4)

‘Appraisal. Rural exception sites. The application proposes residential development of affordable housing to be considered as a rural exception site. This is supported by a statement of expression of interest from a Registered Provider. In assessing the need for such a site, the application has been subject to a consultation with Affordable Housing’. (Paragraph 7.2)

‘Affordable Housing has reviewed and submitted the information and consulted with Registered Providers. This has provided an overview of home finder’s statistics highlighting there has been substantive demand for affordable properties in the area and there is more than one provider that is willing to commit to this development, as demonstrated by the application verified by Affordable Housing. From this Affordable Housing have agreed that there is sufficient local demand to support development in this number whereby the tenure is flexible’. (Paragraph 7.16)

‘... having regard to the above, there could be potential oversupply of affordable homes in the event that all the applications be approved, however, based on research undertaken by Affordable Housing and providers have indicated that there would be sufficient demand within a three-year period which would give this application online[?] stage and they reasonably assume that an approved scheme would be delivered within the timeframe to satisfy demand’. (Paragraph 7.17)

‘Summary. The principle of development is therefore considered acceptable in accordance with Policy 1:9 of the NNCNP and S6 of the BLP and in PPF’. (Paragraph 7.29)

‘Other matters. The exception for development outside the settlement boundary is thought[?] by the proposed putting forward of 100% affordable housing which was offered support through Policy 9. The NNCNP does not stipulate, within the policy, or supporting documents, that there is a need for affordable housing outside what would ordinarily be secured from this. The application has been robustly assessed by the council Affordable Housing Team in conjunction with the Registered Providers that operate in the area and not only verify the information put forward but also assess relevant information regarding to home finder. Notwithstanding this there is still considered to be sufficient need to accept the proposal as an exception site.

Conclusion. The application has addressed the main considerations and would accord with the relevant policy. The proposal is, therefore, supported’. (Paragraph 8.2)

### **(3) The Addendum**

29. The Addendum deals with objections made by Mr Williams in a letter before claim which challenged the data relied upon in the Report.
30. Mr Williams’ proposed claim for judicial review pre-action protocol letter dated 11 July 2018 dealt with, amongst other things, both the development scale and the local need for affordable housing in the following way: The Addendum considered by Mr Williams considered the

response as follows:

‘Affordable housing – local need’.

‘The description of the title for change to include – affordable housing for local need in order to be accompanied for the development for permissible as rural exception site.’ (Paragraph 1.1)

‘Revisions for NPPS. In the interim a revised version of the National Plan Policy Framework was published in July 2018 providing a substantive amendment to the policy base on which planning decisions and policies are based’. (Paragraph 1.18)

‘The aim of this addendum is to re-address the matters raised in the pre-action protocol letter and consolidate the planning position of the application and the implication this has upon the appraisal of the main considerations set out in the original printed report’. (Paragraph 1.9)

‘Appraisal. The application is not considered a major development within the AONB, either through the NNCNP definition or PPG, but cannot be considered a “small scale”. There are no specific details to deal with how development when it is neither small scale nor major development per the NNCNP, as the policy is silent on the matter’. (Paragraph 2.7)

‘Notwithstanding this, and according to Policy 1 has been incorrectly stated within Report, however, there has been no conflict’. (Paragraph 2.8)

‘The application was, however, offered significant [in principle of?] policy support as development outside the settlement boundary in accordance with Policy 9 and would still apply’. (Paragraph 2.9)

‘Conclusion. It is therefore considered by officers that, in this instance, the revisions to the NPPF would not have a material impact in the application of recommendation’. (Paragraph 3.2)

#### **4) The Meeting**

31. The Meeting was attended by NCC’s chair Councillor C Castle and the planning vice-chair, Councillor T Thorne, and attended by officers of NCC including a senior planning officer, a lawyer and Mr Stanners, and they considered both the Report and the Addendum.

32. The members of NCC committee questioned and received answers from officer’s present concerning Policy 1 and Policy 9 in the following way:

‘Members then ask questions of key responses from officers ... the strategic housing market assessment had concluded that affordable housing for rent and so were equally needed, the interested Registered Provider was a cautious developer, would only build as needs for housing, would have identified local people who would get first opportunity for housing. There was no other option for affordable housing locally, robust assurance had been provided that there was a local demand for it ... Members then made the



following key points: 100% of the properties were affordable housing; affordable housing was essential, especially for young people struggling to get on the housing ladder’.

## **Statutory Framework**

33. Consideration has been given to both **the National Planning Policy Framework** and **the North Northumberland Coast Neighbourhood Plan** and reference should be made to the Policies Plan document, which I have referred to above, and the plan of location and, also, for the meeting, of the Policies Plan dated 10 July 2018- **Other Planning Documents**.

### **(1) National Planning Policy Framework**

34. The National Planning Policy Framework dated July 2018 (as revised) deals with affordable housing both in their own right and in the context of rural housing and exception sites as follows:
- ‘In rural areas planning policies and decisions should be responsive to local circumstances and support housing developments to reflect local needs. Local planning authorities should support opportunities to bring forward rural exception sites that will provide affordable housing to meet identified local needs and consider whether allowing some market housing on these sites would help to facilitate this’
35. The definition in the appendix to the glossary of rural exception sites is as follows:
- ‘Small sites used for affordable housing in perpetuity where sites would not normally be used for housing or exception sites seek to address the need for local communities by accommodating households who have either current residence or having existing families or employment connections, the portion of the market homes may be allowed on the site at the local planning authority’s discretion, for example, essential to enable to deliver affordable units without granting funding’.
36. The Glossary and Appendix 2 provides no definition of ‘small sites’ by means of any limitation in the number of houses permitted.
37. There is, in addition, no guidance in respect of AONB which, as this is the relevant area to this planning application, provides as follows:
- ‘Great weight should be given to conserving and enhancing landscape and scenic beauty in ... Areas of Outstanding Natural Beauty which have the highest status and protection in relation to issues ... the scale and extent of development within those designated areas should be limited. Planning permission should be refused for major developments other than exceptional circumstances, and where it can be demonstrated that development is in the public interest, consideration of such applications should include an assessment of:
- (a) the need for development including in terms of national consideration and the impact of permitting it or refusing it by local economy,
  - (b) the cost and scope of the development outside the designated area or meet the need for it in some other way, and
  - (c) any detrimental effect on the environment and landscape or creating

opportunities and the extent to which it could be moderated'.  
(Paragraph 1.73)

38. The footnote, the definition of 'major development' is a matter for the decision-maker taking into account its natural scale and setting or whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. As a matter of record, there is no definition of what is meant by 'limited' within that clause, or, indeed, any definition of a small site in terms of size or numbers, the matter is open.

## **(2) North Northumberland Coast Neighbourhood Plan**

39. North Northumberland Coast Neighbourhood Plan (November 2017) was the relevant neighbourhood plan at the date of the Report but subsequently, as noted in the Addendum, the relevant Neighbourhood Plan for the meeting was (10 July 2018). There are differences between these two Neighbourhood Plans of which probably the most important is the introduction in Policy 9 of the concept of 'exception' sites which accords with the change in July 2018 of the National Planning Policy Framework as set out above.

40. The correct approach take to the interpretation of this development is now well established by way of *Tesco Stores Limited v Dundee City Council* [2012] UK13 per Lord Reed, in particular, at paragraphs 18 and 19 as follows:

'The development plan is a carefully drafted and considered statement of policy published in order to inform the public of the approach which will be followed by planning authorities in decision making unless there is good reason to depart from it. As in other areas of administrative law the policies which it sets out are designed to secure consistency in directing and exercising discretionary powers whilst allowing a measure of flexibility to be retained. Those considerations ... suggest that, in principle ... policy statements should be interpreted objectively in accordance with the language used and read, always, in a proper context'. (Paragraph 18)

'...a development plan ... is not analogous, in its nature or purpose, to a statute or contract. As has often been observed development plans are full of broad statements of policy, many of which are irreconcilable so that in a particular case one must give way to another in addition to many of the provisions of development plans and framed in language where application is to give sets of facts required to exercise judgement on such matters falling within the jurisdiction of the planning authorities and the exercise of their judgement can only be challenged on grounds that it is irrational[?] or perverse'. (Paragraph 19)

41. Before coming to Policy 1 and Policy 9 of the Neighbourhood Plan it is necessary to set out that whole context and that would include reference to Sections 2 and 3 and others I will come to in a moment as follows:

'Vision and objectives of North Northumberland Coast. The North Northumberland Coast comprises some of the most dramatic and iconic scenery in the country. The stretch of coastline between Beadnell and Bamburgh is widely regarded as the "jewel in the crown" of Northumberland which also underpins the economic strength of the area'. (2.1)

‘It recognises that their natural environment includes a landscape and biodiversity are what makes this area so special but, also, the people who live here, who work here and who contribute to a sustainable village community, that plays a vital role as a sustainable future area. A significant issue that is raised throughout the consultation progress[?] were the lack of availability of housing for people in the local community and the number of holiday homes and second homes in the area. Their aim is to plan to provide a positive framework to sustain vibrant local communities to grown in the area whilst, at the same time, protection what makes the area so special’. (2.2)

‘The key element of this has been to protect the coastal areas and concentrate new development inland and away from protected sites’. (2.6)

‘Planning policies. Reading the Neighbourhood Plan. It is essential that the Neighbourhood Plan is read as a whole document, all policy should be read alongside the other policy and the plan. This means that any proposal should be assessed and considered in accordance with the plan as a whole unless material considerations indicate otherwise’. (Paragraph 3.1)

‘There is very limited cross-referencing within the policies because the plan has been written to be read as a whole document. In some cases there is a specific cross-reference as needed for clarification of that policy but not for emphasis on the weight of important of cross-referencing policy’. (3.2)

‘Before each policy is an explanatory text. This text consists of descriptive and explanatory matters in respect of policies. The text is relevant to the interpretation of each policy to which it relates. Although the supporting text is not policy it does assist in clarifying what policy is trying to achieve and sets out the intention of that policy’. (Paragraph 3.4)

**(a) Policy 1**

‘Within the neighbourhood area, subject to compliance with Policy 3 and having regard to other material planning considerations, small-scale development would be supported which:

- (a) New principle resident developments including affordable housing to meet local needs, self-build units, live/work units, housing for older people and schemes which provide a range of housing including two or three or four-bedroom dwellings and bungalows.
  - (b) New employment opportunities.
  - (c) New and expanded business premises.
  - (d) New and expanded social community, leisure and educational facilities which contribute to maintain or growth of local sustainable communities.
- Major developments in an AONB will not be supported except for the exceptional circumstances where it can be demonstrated to be in the public interest where [it turned?] on the location which can absorb the development without a significant adverse impact on the AONB’.

42. The explanatory text to Policy 1 provides assistance as follows:

‘It is a policy which sets a framework for type of development which would be supported by neighbourhood area. Other policies within the plan provided detail to build on this policy’. (4.1)

‘This policy provides support for small-scale proposals which will help to achieve the vision of putting the heart back in our rural communities’. (4.2)

‘Small scale. Policy 1 makes reference to small-scale housing developments which is the preferred means by which new housing will be delivered in the Neighbourhood Plan. Small scale should be seen, in general terms, as applying to a scheme that is modest and limited in scope and extent. “Small scale” for the purpose of housing in this plan is schemes of up to nine dwellings. Small-scale schemes can still be classed as major developments within the AONB’.

The definition of major developments is then set out, which is quite long and I will not quote it although I have read it carefully.

**(b) Policy 9**

‘Outside the settlement boundaries as defined by policy mapped development we are restricted to appropriate development in open countryside. Support will be given to:

- (a) Single dwelling principle residences and hamlets defined in Policy 15.
- (b) Rural business and economic development proposals.
- (c) Sensitive design car parking proposals on edge of settlements with pedestrian links to town and village centres.
- (d) Proposals for “exception” site of affordable housing provision where they do not have a negative impact on sensitive settlement edges.
- (e) Proposals in the harbour area of Seahouses and Beadnell where no related ongoing function of the harbour, and,
- (f) Conversion of redundant buildings for use as principal residences where buildings are originally of substantial construction or the proposal secures the optimal viable use of heritage’.

43. The explanatory notes to Policy 9 are short but important and say as follows:  
‘Settlement boundaries have been created in the plan having regard to planning principles established in the PPF and, in particular, have been defined to ensure recognition of the intrinsic character and beauty of the countryside of the neighbourhood area. The settlement boundaries are not intended to stifle development but could make a positive contribution to sustained communities in the Neighbourhood Area that reflects the intention of national policies and guidance. Therefore, proposals such as those offering local employment opportunities – exception – sites for 100% affordable housing provision, sensitive car parking proposals or other facilities and services that would benefit the local community are supported by this policy’. (4.54)

44. Policy 9 is to be construed with Policy 8 in that the former concerns development outside the

boundary and the latter concerns sustainable development inside the boundary. The wording of the two is materially different and, in particular, wording for policy in respect of small-scale development is redolent in Policy 8 but not so in Policy 9.

45. Reference can also be made to other parts of the document as a whole including Policy 14 concerning people and principal housing together with its expansion note which provides:
- ‘It is expected that affordable housing will be provided as necessary in line with the most up-to-date development plan policy concerning affordable housing and in line with up-to-date evidence of affordable housing need. There is an issue with affordability of housing to buy in the neighbourhood area as prices are above average compared to Northumberland. There is also a lower than average availability of affordable rented property in the area’.
- (5.4)

**(c) Other Planning Documents**

46. Reference should also be made, for fullness, to other planning documents which are, in the past, or in the future, concern affordable housing and exception sites.
47. The Berwick upon Tweed Local Plan 1999 includes Policy S6 which provides:
- ‘The development of affordable housing to meet an identified community need will be permitted on sites which are suitable in terms of proximity to local services and facilities and access to public transport’

And in particular paragraph 4.9 which provides supporting text and a number of criteria to identify the persons who may qualify, *viz*,

‘Existing residents needing separate accommodation in the area, people whose work provides important services and need to live close to the local community, people who are not necessarily resident locally but have long-standing links with the local community, and people offered jobs in the locality who cannot take the offer because of lack of affordable housing’.

48. Subsequent to the Decision NCC are in the process of developing their local plan, which was drafted January 2019, which deals with the exceptions sites in Policy HO7 which provides:
- ‘The development of small-scale rural exception sites that would not normally be used for housing and adjacent to well-related, to the existing settlement would be supported where the local need of affordable housing is clearly justified with evidence of up-to-date housing needs study, has been necessary to meet local community needs for households who are either current local residents who have an existing family or an employment connection in a particular area in which the developments are proposed to take place’.

In addition, in the accompanying explanatory notes, which, in particular provides, ‘In a context of MPPF’s definition of major development small sites are considered to be less than 0.8 hectares in size or comprising less than 10 dwellings. (Paragraph 7.45)

**Ground 1**

49. Mr Williams’ ‘speak-to’ document in summary puts the following submissions on Ground 1: (1) Report dealt with this scale is vague and ambiguous and concluded that proposal was in

- accordance with the relevant policies and, therefore, members were granting permission of the basis of an incorrect understanding that the proposal was in accordance with Policy 1
- (2) Because the Addendum members did not decide after weighing Policy 9 against the breach of Policy 1 but on the understanding that Policy 1 was silent on the matter and therefore Policy 9 was sufficient, in itself, to support the proposal.
  - (3) Policy 1 and Policy 9 are entirely complementary and deal with separate relevant planning considerations, are intended to act together as one, imposing some measure of control in the scale and others allowing a particular type of development at that scale.
  - (4) Policy 1 applies explicitly to affordable housing to meet local need through the planning area which includes a rural exception site.
  - (5) Policy 9(d) does not include any size limitations because it is unnecessary to refer to any size limitation because Policy 1 applies unambiguously and,
  - (6) The emerging plan does define small sites in the notes to HOU7.
50. In his 'speak-to' document, Simon Pickles, counsel for NCC, recorded as a preliminary matter that the main issue on Ground 1 was with the conclusion that the local Neighbourhood Plan as a whole was irrational having regard to the proper interpretation of Policy 9 as it rates the scale of development to confirm the correct approach was well-established, test in *Tesco Stores (supra)* and highlighted the difference between the Early Neighbourhood Plan available and the Report and the relevant Neighbourhood Plan at the Meeting which informed the Decision.
51. Simon Pickles proceeded to analyse the case in two separate limbs relied upon by Mr Williams in his renewal notice. The first limb concerns whether small-scale policy governs the scale of exception sites supported by Policy 9. The second limb concerns the decision to grant said to be tainted by irrationality by virtue of restriction on the exceptional sites to small sites in the emerging local plan. On the first limb of Ground 1 he invited consideration of the relevant neighbourhood plan to be considered as a whole, and makes four points:
- (a) The broad issue faced by NCC in bringing social needs together and environmental provision affects the areas of housing provision.
  - (b) The purpose of the document was to steer development away from sensitive environments and concentrate housing on particular settlement areas to be sustainable.
  - (c) Policy 8 and Policy 9 regulates the sustainable development inside and outside settlement boundaries respectively and should be construed in that way, insofar as Policy 9 is concerned, not to stifle development, and,
  - (d) Policy 1 supported small-scale proposals to bring the heart back into local communities which was 'preferred' but not exclusive means of housing delivery.
52. The interpretation of Policy 9(d), which is at the heart of this dispute on Ground 1, was construed by him in this way:
- (1) Policy 9 does not, itself, say any development is restricted to 'small scale' and other criteria of 'sensitive settlement edges' is specifically selected.
  - (2) Reference to 'exception' sites in Policy 9 plainly imports a concept from the National Planning Policy Framework and does not explain further as to any numerical limitation be provided from that document.
  - (3) Policy 9 provides for positive development beyond the settlement boundaries to help meet sustainable development needs in the area. There is no reason or rationale to stifle that contribution by reference to size as opposed to a flexible approach.
  - (4) Policy 9(a) sets out bespoke provisions for scale of development outside the settlement boundaries which has to be read alongside Policy 9(d).

- (5) Policy 1 is concerned with ‘preferred’ but not exclusive means of delivering housing, unlike Policy 8 which has a particular approach inside the settlement boundary. There is no such limitation provided in Policy 9 outside the boundary.
- (6) In the context of the plan as a whole Policy 1(a) can be seen by reference to the affordable housing which is in accordance with the policy elsewhere requires a certain percentage and it would then be unwarranted to make a restriction on Policy 9(d) to limit all such developments to only small scale. Generally, there is no proper basis to limit exception sites to small sites which are defined numerically.
53. In respect of the second limb of Mr Williams’ case, the matter was dealt with really quite shortly. There was no rationality in having an emerging draft Neighbourhood Plan in different terms of that of the boundary decision. The policies, and they did not contradict each other, were not irrational and there is no basis to refer back to the plan.
54. In reply, Mr Williams submitted that the intention of the Neighbourhood Plan and the real exception sites did not concern with Policy 1 as it operated through Policy 9 but referenced a plan in those policies and the general Neighbourhood Plan in all cases was to be assessed in that way.

### **Short discussion on Ground 1**

55. Ground 1 has been placed in the context of extensive material that I have set out above and on analysis, therefore, can be properly dealt with really very shortly. The first limb, which is a central argument in this case, is a matter of interpretation of planning documents, in the usual way which, in my judgement, do allow a clear answer.
56. The starting point of the true and proper construction of Policy 9 makes it clear that the concept of ‘small scale’ as defined in the explanatory note of Policy 1, is not the test to be applied when it comes to sustainable development outside the settlement boundary in rural exception sites of affordable housing. If there is any test or consideration that has to be it is that it should not provide a negative impact on sensitive settlement edges. The explanatory notes to Policy 9 indicate that the settlement boundaries are not intended to stifle development but make positive contribution, and proposals to offer exceptional sites for 100% housing as supported by this policy.
57. The driver of this policy and the change from the previous Neighbourhood Plan in existence on the date of the Report is not relevant to the Decision as developed and the new concept of rural exception sites in the National Planning Policy Framework provided in July 2018 dictates the approach and is, in effect, mirrored the NCC, of the Neighbourhood Plan dated 10 July 2018. At the time of the Decision the concept of small site carried over to the National Planning Policy and specified an undefined and, therefore, permitted Neighbourhood Plan to adopt this concept and I consider it to be the appropriate approach. Whilst it is right to note that previous documents available to NCC sought to limit the concept of small sites and equally, subsequently, the Emerging Plan was also adopting a definition of a concept of small site in accordance with Policy 1, at the time of the Decision that was not the case and no such limitation was provided which could rationally require the NCC to take the approach suggested by Mr Williams.
58. It is, of course, right that the NC Neighbourhood Plan is to be read as a whole and cross-referencing is not necessary as indicated by Policy 3, however, one cannot carry a concept of ‘small sites,’ as defined at Policy 1, over to Policy 9 when the language of Policy 9, at the time, provided no such limitation. There is no rational basis for that interpretation to be adopted by NCC at the material time of this planning application and the Decision.
59. In taking this approach it is not my intention to do more than construe and properly, interpret

on a rational basis, Policy 9, as it was so framed at the date of the Decision. The NCC and other neighbourhoods in the country are in the process, no doubt, of continuing to define the concept of a 'small site,' adopted from the National Planning Policy Framework, but that document does not provide a constraint on numbers but rather a broad concept, and thus the usual meaning to be given to the language used is to be followed for which no definition is provided. This is not a case which I propose to provide a useful guidance as to how the term should be treated, other than focusing on Policy 9 as drafted at the material time and there is no basis, in my judgement, for which by implication or limitation, even adopting the approach from Policy 3, that Policy 1 can have the effect suggested by Mr Williams.

60. The second limb of the argument is really very short. Only limited weight can be given to the Emerging Plan of HOU7 as construed in Policy 9 and I am unable to find any irrationally in the Decision, simply by virtue of the fact that different terms were adopted in the matter of drafting process, for future reference to planning applications, and whilst that may affect further developments in the future, at the time of this application for planning permission these three parishes adopted the wording that I have described above.

### **Ground 3**

61. Mr Williams' 'speak-to' document deals with these grounds more shortly and, in summary, he says as follows:
- (1) Rural exception sites must not just provide affordable housing, but affordable housing for local housing for local needs and local needs are narrowly defined as those with genuine connection to the area which must be identified and demonstrable and only achieved through some analytical process such as housing study which did not take place.
  - (2) The data actually relied upon by NCC does not differentiate between demand and genuine local need. There is nothing more substantive provided by Ian Stanners which relies, essentially, on the views and interests of Bernicia.
  - (3) The evidence, such as it does, does not indicate a way the process had been gone through the appropriate rigor.
62. The 'speak to' document of Simon Pickles, for NCC, takes the limit of the scope of the issue to be defined by the permission granted by HHJ Kline which concerns only the conclusion of arguable irrationality as closely defined and that there was no identified or other community need for affordable housing. Permission was not granted more generally. He relies upon the witness statement of Ian Stanners, which responds to the concerns of the learned judge and now provides an explanation of the relevant. Essentially his arguments are shortly made in this way:
- (1) NCC did not proceed on the basis, but it followed expressions of interest from Bernia alone but, instead, those best regarded by well-informed information about affordable housing was trustworthy and reasonable and it is wrong to draw distinction between demand and need as one is simply a factor of the other.
  - (2) Other sources apart from affordable housing, are also relied upon including Bernia, SHRMA, home finder stats, information of the housing needs and surveys and evidence of the other sites for use in comparison.
  - (3) The focus was on the 'need' in respect of rural exception sites when the Report is read fairly.
  - (4) The same applies to the Addendum which also focused on 'need.'
  - (5) The Meeting makes it clear that members focused on 'need' for affordable housing. Reliance is also placed on a set of further documents which I have not quoted above, but I have considered carefully.



### **Short discussion on Ground 3**

63. Ground 3 may in fact also now be dealt with really very shortly, having regard to the evidence supplied by NCC since concern expressed by HHJ Kline when he gave permission. I consider this has answered Mr Williams concerns. Whilst it may be some concerns about the vague statements of expressions and interest the real facts in support of this case and the decision for “affordable housing” was made by the relevant department on the basis of which it had sufficient information and cannot, in my judgement, be considered irrational in the usual way. It is certainly not wrong in law as asserted.
64. When the Report and the Addendum are read fairly the emphasis, in my judgement, is on ‘need’ and, whilst the word ‘demand’ does appear, as I have hopefully fully and fairly cited above, I am satisfied that the thrust of the case has rightly proceeded on the needs in terms of rural development exception sites.
65. I acknowledge that the process has been evidence based, indeed, a robust approach is appropriate, but this is a problem which is well understood by the Housing Department. This particular neighbourhood is a sensitive area and has problems with affordable housing and, generally, they are well familiar with the clear neighbourhood problems as to second home owners and the need to find affordable housing for local people and, also, the importance of such a social policy, as made clear from the National Policy Framework which has special designation for rural exception sites. In my judgement Mr Stanner’s witness statement, together with the further documents but not only of Bernicia, do provide the appropriate support of evidence which satisfies me that the approach taken by NCC cannot be considered irrational on a public law basis and certainly not unlawful. Affordable housing has particular resonance for this area, as is apparent from the documents I have considered, and I am satisfied that sufficient weight has been placed on what appears to be an extensive knowledge of, not just well-known and trusted central housing association in this area, but also independent evidence. A decision was made on affordable housing and the planning application was therefore appropriate and permitted by NCC and there is no basis on which I consider this can be challenged.

### **Conclusion**

66. I am satisfied that, whilst Ground 1 and Ground 3 were available to Mr Williams for argument, which he has, in the past and today, set out in an attractive and open way, on analysis, and with the assistance of the well-considered arguments of counsel for NCC; Simon Pickles, whose arguments as put I accept as correct, the view I have formed is that in this case I am not prepared to quash the Decision.

### **Order**

- (1) I dismiss this claim
- (2) I am prepared to deal with costs if time available.

**End of Judgment**

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This transcript has been approved by the judge.