Neutral Citation Number: [2020] EWHC 3502 (QB)

Case No: CO/1007/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2020

Before :

MR JUSTICE DOVE

- -

Between :

ABBEY PROPERTIES CAMBRIDGESHIRE LIMITED	**Claimant**
- and -	
EAST CAMBRIDGESHIRE DISTRICT COUNCIL	**Defendant**
-and-	
WITCHFORD PARISH COUNCIL	**Interested Party**

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- -

Rupert Warren QC (instructed by **Eversheds LLP**) for the **Claimant**
Jack Smyth (instructed by **Legal Services East Cambridgeshire DC**) for the **Defendant**

Hearing dates: 7th October 2020

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Approved Judgment

Mr Justice Dove :

Introduction:

1. The claimant challenges the decision of the defendant to accept the recommendations of the Examiner in relation to the Witchford Neighbourhood Plan (the "WNP"). The challenge is brought pursuant to section 61 N(2) of the Town and Country Planning Act 1990. Subsequent to the challenge being issued on the 11 March 2020, on the 19 March 2020, a referendum was held in relation to the WNP and the WNP was made on 21 May 2020.

The facts

2. A key part of the development plan for the defendant's administrative area is the East Cambridge Local Plan 2015 ("the ECLP"). In particular, for the purposes of this case, it contains two strategic policies, policy GROWTH 1 and GROWTH 2 which provide as follows:

> "Policy GROWTH 1: Levels of housing, employment and retail growth
>
> In the period 2011 to 2031, the District Council will:
>
> . Make provision for the delivery of 11,500 dwellings in East Cambridgeshire.
>
> . Maximise opportunities for jobs growth in the district, with the aim of achieving a minimum of 9,200 additional jobs in East Cambridgeshire. Part of this strategy will involve making provision for a deliverable supply of at least 179 ha of employment land for B1/B2/B8 uses, and providing for home working.
>
> In the period 2012 to 2031, the District Council will:
>
> . Make provision for at least an additional 3,000m^2 (net) of convenience and 10,000m^2 (net) of comparison retail floorspace in the district.
>
> Policy GROWTH 2: Locational strategy
>
> The majority of development will be focused on the market towns of Ely, Soham and Littleport. Ely is the most significant service and population centre in the district, and will be a key focus for housing, employment and retail growth.
>
> More limited development will take place in villages which have a defined development envelope, thereby helping to support local services, shops and community needs.
>
> Within the defined development envelopes housing, employment and other development to meet local needs will

> normally be permitted – provided there is no significant adverse effect on the character and appearance of the area and that all other material planning considerations are satisfied. Two key exceptions to this will apply in the case of proposals involving the loss of employment land or community facilities – which will be assessed against Policies EMP 1 and COM 3 respectively. Retail development should be focused where possible within the town centres of Ely, Soham and Littleport – or alternatively, if there are no suitable sites available, on edge of centre sites, then out of centre sites, in accordance with Policy COM 1 and other policies in Part 2 of this Local Plan.
>
> Outside defined development envelopes, development will be strictly controlled, having regard to the need to protect the countryside and the setting of towns and villages. Development will be restricted to the main categories listed below, and may be permitted as an exception, providing there is no significant adverse impact on the character of the countryside and that other Local Plan policies are satisfied."

3. The policy contains a list of categories of development which could be permitted as an exception to the strict control of development outside settlement envelopes. As can be seen, the provisions of policy GROWTH 1 require delivery of 11,500 dwellings within the defendant's administrative area between 2011 and 2031. Policy GROWTH 2 provides a special strategy limiting development in villages within a defined development envelope and focuses development on the main market towns of the area.

4. In the spring of 2016 the defendant consulted in relation to the preparation of a new local plan to replace the ECLP. In particular, consultees were invited to propose sites for designation in the new local plan as areas of Local Green Space ("LGS"). LGS is a designation specifically contemplated by the National Planning Policy Framework ("the Framework"), the provisions of which in this connection are set out below. Following the identification of a number of suggested proposals for designation in January 2017, the defendant published a report ("the 2017 Study") in which the sites proposed were assessed against the criteria contained in the Framework. One of the sites which was proposed is the site which is the subject matter of these proceedings, namely the Horsefield (albeit it was known by a different name in the 2017 Study). The January 2017 Study concluded that the Horsefield did not satisfy the criteria necessary for designation as an LGS.

5. In November 2017 a further report in relation to LGS designation was published by the defendant. In this report the Horsefield was proposed for LGS designation on the basis that it did satisfy the criteria contained in the Framework and therefore designation was justified. Also in November 2017 the defendant held a consultation on a draft version of a new local plan in which the Horsefield was proposed as an LGS designation.

6. On 16 February 2018, the new draft local plan was submitted by the defendant for examination. It included the designation of the Horsefield as an LGS, a designation which was supported by evidence submitted to the examination. The claimant

objected to the LGS designation and submitted a hearing statement for the purpose of public hearing sessions in relation to the examination of the new local plan which occurred between June and September 2018. The designation was supported by the defendant and also the interested party.

7. On 19 December 2018, after the hearing sessions had been concluded, the Inspector dealing with the local plan examination wrote to the defendant. She had previously written on 5 December 2018 to indicate her view that the plan as submitted was unsound, but could be found sound if a number of main modifications were undertaken. The purpose of the letter of 19 December 2018 was to attach a schedule of proposed main modifications which the Inspector considered should be made so that consultation could be undertaken in relation to them. The Inspector explained that she would be taking into account the responses to the consultation prior to reaching any final conclusions on the soundness of the plan and whether or not the main modifications were required to make it sound. She also explained that her reasoning would be set out in her report to the defendant which would accompany the schedule of main modifications. In particular, so far as relevant to the present case, the Inspector recommended as a main modification the deletion of the Horsefield as an LGS designation.

8. Following receipt of this correspondence from the Inspector on 21 February 2019 the defendant resolved to withdraw the submitted local plan from independent examination. In the report underpinning this decision the rationale for concluding that the plan should be withdrawn was the concern of officers as to the number of relatively fundamental modifications being proposed by the Inspector. The deletion of the Horsefield as an LGS was one of the several modifications identified as being of concern in the report.

9. Subsequent to this on 1 July 2019, Mark Buxton, a planning consultant acting on behalf of the claimant, wrote to the Planning Inspectorate seeking further information as to the Inspector's reasons for deleting the Horsefield site from the submitted local plan. Mr Buxton explains his enquiry in the following terms:

> "Unfortunately, East Cambs DC subsequently decided to withdraw their Local Plan shortly after receipt of Ms Nurser's [the Inspector's] letter. As a result there is no further explanation available for the reasons for Ms Nurser's recommendation. We would like to understand why she was recommending the deletion of this allocation and particularly if there is any further elaboration on the merits of the allocation and/or the Council's approach to the draft allocation."

10. On 29 July 2019 the Planning Inspectorate responded to Mr Buxton in the following terms:

> "Firstly, I would refer you to the penultimate paragraph of the Inspector's letter of 19 December 2018 to the Council. This states that the Inspector's reasoning will be set out in her 'report to the Council which will accompany the schedule of Man Modifications'. This report would have been prepared for the Council following the consultation of the potential Main

> Modifications. However, as you are aware, the Council subsequently withdraw its Local Plan from examination. Therefore, the Inspector did not prepare a report on the Local Plan examination.
>
> …
>
> In particular, Section 6 of the Procedure Guide deals with main modifications (MMs) to the Plan. Paragraph 6.1 explains that 'throughout the examination, the Inspector will explore the potential for MMs to resolve the soundness and legal compliance issues he or she has identified. Section 20 of the PCPA requires the Inspector to recommend MMs is asked to do so by the LPA (local planning authority), provided that the MMs are necessary to make the plan sound and legally-compliant'. Paragraph 6.2 states that 'MMs may be suggested by the LPA, by representors and hearing participants, or by the Inspector.
>
> As mentioned above, the Inspector's final recommendations and the reasons for them would normally be set out in the Inspector's report which would be prepared following the hearing sessions and the required public consultation on the main modifications (Paragraph 6.4 of the Procedure Guide). As the Plan has now been withdrawn by the Council, we have no further jurisdiction over the matter and our involvement ends. Responsibility for all local planning matters is now solely for the Council. Therefore, the Inspector is unable to provide any further explanation as you have requested."

11. Turning to the preparation of the WNP it appears that in August 2016 the Witchford Neighbourhood Area was designated by the defendant, following which a household survey was undertaken by Witchford Neighbourhood Planning Committee. Dealing in particular with the Horsefield, in May 2019 a document entitled Witchford Local Green Space Designations Report ("the WNPLGS Report") was published. The WNPLGS Report records consultation occurring, as a consequence of which candidate sites for designation as LGS were identified by the neighbourhood planning committee. Those candidates included the Horsefield. The WNPLGS Report then examined each of the candidate sites against the criteria derived from the relevant provisions of the Framework in order to establish whether or not the site was worthy of designation. In relation to the Horse Field the WNPLSG Report concludes that the site was worthy of designation and provides the following reasons:

> "Is site reasonably close proximity to the community it serves?
>
> In centre of village.
>
> Is it demonstrably special to a local community and does it hold a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife?

> Site is highly valued by the Witchford community as an area of true countryside reaching directly into the centre of the village, reinforcing Witchford's status as a rural community. The February 2018 village-wide Neighbourhood Plan questionnaire included the question Q6 'The 'Horsefield' near the primary school between houses 97-195 Main Street must remain as a totally green space.' Response – Strongly Agree 73.41%, Slightly Agree 12.68%, Slightly Disagree 7.56%, Strongly Disagree 6.34%.
>
> Site forms part of the 'Green Space to South Witchford' area specifically recommend for LGS designation in the Witchford Landscape Appraisal (WLA).
>
> The site is highly valued by the local community as the last remaining gap in the built up area on the south side of Main Street, providing views to the south over the open fen. Referring to southerly views from the Main Street the WLA at paragraph 4.2.3 states 'There are areas where the wider landscape setting of the settlement is readily perceived from within the built up area. In these locations the wider landscape can be said to penetrate the built form. These areas are particularly valued for helping to reinforce the small scale, rural character and location of the village and its historic origins'.
>
> Paragraph 5.2 of the WLA states 'The Horsefield is a meadow which connects the core of the village with the wider landscape and enables countryside to extend into the built up area. It offers an opportunity to view the wider fen landscape from Main Street, as such it reinforces the 'island' position of the village surrounded by fen and its rural 'village' character'
>
> The site provides a direct link via public footpaths to a wider landscape of the Millennium Wood, permissive paths and public access land culminating in the Parish Council-owned community orchard (Old Recreation Ground) on Grunty Fen Road.
>
> 17 LGS survey forms give direct testimonial from residents on how important the open space south of Main Street is for recreation and well-being (tranquillity).
>
> Is it local in character and not an extensive tract of land?
>
> Yes. Discrete area of land with clear boundaries and defined entrances."

12. On the basis of the conclusions of the WNPLGS Report, the WNP which was consulted upon as a pre-submission draft included the Horsefield as a designated LGS. The proposal of the WNP in this regard is set out as follows:

"Policy WNP – G12 Local Green Space

The following sites as shown on Map 11 are designated as Local Green Spaces

- Sandpit Drove
- Old Scenes Drove
- Long Meadow
- Edna's Wood
- Fairchild Wood
- Old Recreation Ground and Community Orchard
- Victoria Green
- Millennium Wood
- Manor Road allotments
- The Common, Common Road
- Public Open Space between Orton Drive & Wheates Close
- Broadway allotments
- The 'Horsefield'

Development on these sites will not be acceptable other than in very special circumstances in line with national policy, or where it will enhance the function of the space (e.g. play equipment on Victoria Green) without compromising the primary function of the space as a Local Green Space.

5.4.3 Intent

To recognise the value of these sites to the local community by giving them Local Green Space protection

5.4.4 Context and reasoned justification

The criteria for Local Green Space designation are set out in paragraph 100 of the NPPF. This states that Local Green Space should be:

- In reasonably close proximity to the community it serves
- Demonstrably special to the local community and hold a particular local significance, for example because of its beauty, historic significance, recreational value (including

> as a playing field), tranquillity or richness of its wildlife; and
>
> - Local in character and not an extensive tract of land.
>
> This policy is underpinned by the documentary evidence included in Appendix 1 and in particular by the Witchford Local Green Spaces Report (May 2019).
>
> The Witchford Local Green Spaces Report (May 2019) contains a detailed assessment of the proposed Local Green Spaces against the NPPF criteria and a full justification for their designation."

13. It is also important to note for the purposes of these proceedings that the WNP contains a specific strategy for Witchford under policy WNP SS1. The explanation to the policy noted that the development envelope for Witchford within the WNP had been amended from that contained in the ECLP to take account of the various planning permissions for residential developments which had been permitted on appeal, principally on the basis that the defendant was unable to demonstrate a five year supply of housing. These elements of committed development amounted in total to 330 homes and, in addition, the WNP assumed further infill development of 24 homes, giving rise to a total provision over the WNP plan period 2019-2031 of 354 homes. The WNP noted that the defendant had provided an indicative figure pursuant to the provisions of paragraph 66 of the Framework to inform the preparation of the WNP. That figure was 252 dwellings over the course of the plan period. Against the background of that forecast development provision the WNP spatial strategy policy WNP SS1 provides as follows:

> "Policy WNP SS1 A spatial strategy for Witchford
>
> The permitted housing sites WFD H1, WFD H2 and WFD H3 will deliver approximately 330 homes during the plan period 2019-2031. In addition, other proposals within Witchford's development envelope, which is defined on Policy Map 6 will be supported provided they accord with other provisions in the Development Plan.
>
> Outside the development envelope, development will be restricted to:
>
> - Rural exception housing on the edge of the village where such schemes accord with Policy WNP H2 of this plan;
>
> - Appropriate employment development at the Sedgeway Business Park where such schemes accord with Policy WNP- E2 of this plan; and
>
> - Development for agriculture, horticulture, outdoor recreation, essential educational infrastructure and other uses that need to be located in the countryside."

14. The pre-submission consultation in relation to the WNP took place between 12 June and 25 July 2019. An objection was raised to the WNP by the claimant on 17 July 2019, including, in particular, objections in relation to the LGS designation of the Horsefield. The representations contended that the WNP ought to have had regard to the main modifications to the withdrawn new local plan, including the deletion of the Horsefield contained within them. Further, the representations disputed the adequacy of the housing supply contained within the WNP and argued that the "tilted balance" (see below) applied to the consideration in relation to the making of the WNP on the basis that housing supply within the defendant's administrative area remained short of the appropriate 5 year supply requirement. The designation of the Horsefield as an LGS was objected to on the basis that the local plan Inspector for the new Local Plan had recently advised the removal of that designation from the withdrawn local plan. It was contended that the WNPLGS Report did not acknowledge this earlier conclusion, and also the designation was inconsistent with the Planning Practice Guidance ("the PPG") which confirmed that there was no need to designate linear corridors as LGS simply to protect rights of way. The objections also noted that the proposed designation was an extensive tract of land and therefore did not meet the designation criteria contained in the Framework. The representation contended that there was no further evidence beyond that rejected by the new local plan Inspector to the effect that the area was demonstrably special to the local community. The claimant advocated the proposal that some of the land be developed in order to deliver a large area of the proposed LGS as part and parcel of their suggested proposals.

15. After the submission of the WNP to the defendant, on 17 October 2019, there was further consultation between 17 October 2019 and 28 November 2019. On the 28 November 2019 the claimant submitted further objections reiterating the contents of their previous objection of the 17 July 2019. Additionally, reference was made to the comparison between the position in relation to the WNP and the Norton St Philip Neighbourhood Plan, the subject of objection and subsequent litigation brought by Lochailort Investments Limited (see below). These similarities included a failure by the defendant to demonstrate a five year housing land supply, leading to the need for sites on the immediate settlement edge to be identified for the future, and the use of LGS designation as a mechanism to stop the organic growth of settlements. A further similarity was noted in relation to the failure to evidence that the proposed LGS was demonstrably special or of particular local significance and the incorporation in some of the sites of public footpaths.

16. In December 2019 Mr Peter Biggers ("the Examiner"), having been appointed, conducted the independent Examination of the WNP. He recommended that a number of modifications (which are immaterial for present purposes) should be made to the WNP, but that subject to those modifications the WNP met the basic conditions and could proceed to a referendum. In his report the Examiner scrutinised, against the requirements for satisfaction of the basic conditions as set out below, the spatial strategy for Witchford set out in the WNP. His conclusions are as follows:

> "6.5.1 i) Section 5.1 of the WNP sets out the spatial strategy for Witchford. Essentially this focuses on the main development of the plan period within the sites with permission and which have been identified as allocation providing 330 homes. Thereafter the policy supports the development of sites within the

development limits which meet the WNP policies. Development outside the development limits is restricted to rural exceptions housing, development at Sedgeway Business Park and for uses that need to be located in the countryside.

ii) The situation in respect of the Development Plan in East Cambridgeshire is somewhat unusual and has had repercussions in terms of Reg 16 objections to the Neighbourhood Plan. It is important therefore to set out the context in order to respond to these objections.

iii) The replacement ECLP, which would have been replaced the adopted ECLP 2015 and probably would have been the basis against which the WNP would have been assessed, was withdrawn by the ECDC following receipt of the Inspector's note outlining potential modifications early in 2019. This left a situation where the adopted ECLP 2015 remains in force for the time being as the development plan.

iv) Because the district is in a situation where it has been found that the housing policies of the adopted local plan cannot provide a 5 year housing land supply the housing policies were deemed to be out of date. Under the provisions of the NPPF at paragraph 11 and the so-called 'tilted balance' a number of appeal decisions have been made granting planning permission for housing, including the 3 major sites in Witchford.

v) A number of representations submitted at the Reg 16 stage argue that, because some of the strategic policies of the ECLP have been ruled out of date, the alignment of the WNP to these policies means the WNP is also out of date and serves no useful purpose in guiding the future development of the parish. However I am not persuaded that this is the case. Although Policies GROWTH 1 and GROWTH 4 of the ECLP (the quantity of housing and where it is allocated) may have been challenged as out of date under NPPF paragraph 11 by virtue of the inability to provide a 5 year housing land supply, the same is not true of the locational strategy set out in Policy GROWTH 2. The locational strategy focusses development on Ely, Littleport and Soham and larger village centres which remains the plan objective even in circumstances where a 5 year housing supply cannot be delivered. Witchford under the local strategy is not required to accommodate more than small scale development within the development limits.

vi) Notwithstanding the locational strategy in Policy GROWTH 2, given the appeal decisions that have been made, the WNP has taken the view that the resulting permissions justify extending the development limits for Witchford beyond those previously defined in the ECLP 2015. To accommodate the permitted developments this has resulted in considerable

> extension particularly to the development limits on the north side of the village.
>
> vii) The Reg 16 objectors that the WNP is not making provision for development in the plan period is merely reflecting current commitments. Whilst I acknowledge the change to the boundaries was triggered by the need to align the development limits with the existing communities this does not mean that the plan is not providing for future development. The plan period commences in 2019 and most if not all of the completions on these development sites (currently expected to be 330 dwellings) will occur within the plan period.
>
> viii) After a period of relatively slow development in Witchford this amount of development equates to approximately a 33% increase in the number of dwellings in the parish not allowing for provision from windfall within the development limits over the remainder of the plan period. This level of development is far in excess of both recent development rates and what was the planned strategy for Witchford in the ECLP but has been embraced as part of the spatial strategy of the WNP in recognition of the changed circumstances in respect of housing land supply since the preparation of the ECLP 2015. Development of these sites will extend over a considerable part of the plan period and I am satisfied that, notwithstanding the way in which they came forward, they are contributing to the future development needs of the parish. Given the scale of development these sites represent in the context of Witchford it is not an unreasonable approach for the WNP to look to return to the planned spatial strategy for the villages in the ECLP; ie development at a smaller scale. It should be noted in any event that there is no absolute stop on development imposed by the development limits because if there is evidence of unmet local housing need Policy WNP SS1 allows for rural exception sites to come forward and which could include some market housing if necessary to deliver the site. In that respect therefore there is sufficient flexibility in the plan to respond to change as required by the NPPF at paragraph 11."

17. The Examiner went on to consider objections raised to the indicative figure of 252 dwellings provided by the defendant. Having required further clarification of the derivation of that figure the Examiner was satisfied that, although its derivation needed to be clarified in the plan itself, the indicative figure had had regard to paragraph 66 of the Framework and the WNP made provision for housing in excess of the indicative figure. The Examiner then evaluated the spatial strategy and deals with the specific objections raised by the claimant as follows:

> "[6.5.1] xv) Abbey Properties in their representation argue that in a situation where there is not a 5 year supply of housing the WNP itself should be considered out of date. However the evidence before me shows that as of summer 2019 when the

> latest Housing Land Supply figures were published there was 3.7 years of supply of deliverable and available sites. Under the terms of paragraph 14 of the NPPF a 'made' WNP at present could meet the criteria and continue to be considered up to date. Although Abbey Properties cite the recovered Sandbach Appeal Decision (Ref APP/R0660/W/15/3128707) as relevant to the WNP I am not persuaded that it is because it predates NPPF paragraph 14 and the 3 year housing supply in respect of neighbourhood plans being incorporated into national policy. I am therefore satisfied that the WNP makes appropriate provision for the future development of the parish as required by the NPPF although I acknowledge that the plan is likely to require early review if its policies are to remain relevant in circumstances where the housing delivery across the rest of the district does not improve."

18. Having analysed the various representations which had been made to the WNP for the purposes of the examination, the Examiner concluded that, with the modifications which he proposed being made to the WNP the spatial strategy satisfied the basic conditions.

19. Another principal issue which the Examiner needed to consider was the proposals of policy WNP GI2 in relation to local green space. By way of introduction to this topic the Examiner notes as follows:

> "[6.5.4] xi) Abbey Properties at the Reg 16 stage object to the designation of the 'Horsefield' on the south side of Main Street as an LGS and argue that in the circumstances where ECDC cannot provide a 5 year supply of housing land it is inappropriate to protect the site as LGS and it should be allowed to be developed. I am aware that two applications for housing have been refused planning permission and are currently at appeal with a join public hearing held on the 15th January 2020. One of these proposals sees development of the whole Horsefield, the other proposes development to the east of the LGS adjacent to Rackham Primary School but depends on the Horsefield for the provision of access from Main Street.
>
> xii) Abbey Properties argue that there is no basis to warrant designation of Local Green Space in the ECLP and therefore it is inappropriate. They cite a High Court judgment in what they consider to be a similar case with the Norton St Philip Neighbourhood Plan ([2019] EWHC 2633(QB)). However I do not accept that in this WNP case there is an inadequate basis to designate the site as LGS. As already stated the ECLP at policy COM5 seeks to protect and expand strategic green infrastructure. The NPPF at paragraph 99 makes it quite clear that it is open to neighbourhood plans being used by communities to identify and protect green spaces of particular importance to them. The paragraph goes on to note that designating land as LGS should be consistent with the local

> planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. For the reasons set out in my report above at section 6.5.1 I am satisfied that the WNP does make provision for the local planning of sustainable development in the context of Witchford and East Cambridgeshire. An appropriate level of housing is provided for and although there may be a future need for expansion or redevelopment of the primary school it is land adjacent to the Horsefield and not the Horsefield itself that has been identified as a possible site for this community facility."

20. The Examiner then turned to consider the particular objections which had been raised by the claimant in relation to the designation of the Horsefield. The Examiner's conclusions in respect of those representations are set out as follows:

> "[6.5.4] xiii) Abbey Properties put considerable store by the fact that the Inspector examining the, now withdrawn, replacement ECLP concluded in their note outlining proposed major modifications that the local green spaces proposed in the replacement ECLP should be deleted including Horsefield. The Council's report withdrawing the plan makes it clear that in their opinion the Inspector gave no reason for the deletion of the LGS.
>
> xiv) What the Local Plan Inspector's view were on this matter are not available to me, the plan having been withdrawn. The issue for me as neighbourhood plan examiner is to conclude whether the proposed LGS is appropriate in terms of the NPPF tests and therefore whether the site's designation has regard to national policy and is in accordance with Basic Condition a).
>
> xv) The site is demonstrably in close proximity to the community it serves being immediately adjacent to Main Street and crossed and bounded by PROW giving access to other parcels of land south of the village centre. The site is a contained field bounded by mature hedgerows with hedgerow trees and at least to the north bounded by development. The village and its build development is clearly apparent from any point within the site and it is not therefore an extensive tract of land. The site is demonstrably special to the community in three main respects; first for its contribution to the townscape of the village. It is a key gap in Main Street identified in the professionally prepared Witchford Landscape Appraisal (WLA) as affording views out to the south of the village linking the village to its Fenland landscape. Secondly it has historic significance. The historic character of Witchford was one of linear parcels of farmland stretching to the south of the village but connected into the heart of the village and the Horsefield is one of the last examples of this. Thirdly the site is important for its contribution to informal recreation. It affords

> pedestrian links via PROW to the Millennium Wood open space and to the PROW and permissive path network and the community orchard on Grunty Fen Road to the south of the village.
>
> xvi) The WLA recommended that the site should be local green space and it was widely supported as such by the community at the pre-submission consultation stage of the plan.
>
> xvii) I conclude that designation as a LGS for this site is appropriate. Even if I were to accept Abbey Properties position that, in the light of the shortfall in the 5 year supply of housing land and tilted balance in paragraph 11 of the NPPF is brought into play, that paragraph, in respect of plan making, very clearly states that the tilted balance will not apply where there are policies in the Framework that protect areas or assets of particular importance where these provide a strong reason to restrict development. Designation of a site as a LGS would fall into this category.
>
> xviii) Protecting key green areas by designating them as LGS is likely to contribute to the achievement of sustainability and is a justified activity for the WNP. The selected sites have been assessed in accordance with the NPPF tests and are justified and policy WNP GI2 and its supporting text raises no issues in respect of the Basic Conditions."

21. Subsequently at paragraph 6.7.2 of the Examiner's report, having noted that the WNP makes provisions for a four-yearly analysis of how the plan has performed and whether a review is required, the Examiner noted that the adoption of a replacement for the ECLP would be a key trigger for potential review of the WNP. Whilst he observed that the interested party might wish to include a commitment to review upon adoption of a new ECLP, since that issue did not impact upon the satisfaction of the basic conditions he made no formal recommendation in that respect.

22. Following receipt of the Examiner's report which was dated 7 February 2020, on 9 February 2020 the defendant took the decision which is the subject of these proceedings to adopt the Examiner's conclusions in their entirety and to proceed to the next stage of making the WNP, namely the referendum in relation to it. As set out above that occurred on 19 March 2020, leading to the making of the WNP on the 21 May 2020.

The law and policy

23. By virtue of section 38(2)(c) of the Planning and Compulsory Purchase Act 2004 the development plan for an area includes any neighbourhood development plan which has been made in respect of that area. In order for a neighbourhood development plan to be made it is necessary for it to undergo the processes and testing set out in Schedule 4B of the 1990 Act. The provisions of Schedule 4B set out the regime for examining a neighbourhood development plan which has been submitted to a local planning authority in order to ensure that it is appropriate to be taken forward to a

referendum. In particular paragraph 8 of Schedule 4B provides as follows in relation to those requirements (although the text of the legislation refers to neighbourhood development orders it applies equally to neighbourhood development plans):

> "8 (1) The examiner must consider the following—
>
> (a) whether the draft neighbourhood development order meets the basic conditions (see sub-paragraph (2)),
>
> (b) whether the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,
>
> (c) whether any period specified under section 61L(2)(b) or (5) is appropriate,
>
> (d) whether the area for any referendum should extend beyond the neighbourhood area to which the draft order relates, and
>
> (e) such other matters as may be prescribed.
>
> (2) A draft order meets the basic conditions if—
>
> (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the order,
>
> (b) having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order,
>
> (c) having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order,
>
> (d) the making of the order contributes to the achievement of sustainable development,
>
> (e) the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
>
> (f) the making of the order does not breach, and is otherwise compatible with, EU obligations, and
>
> (g) prescribed conditions are met in relation to the order and prescribed matters have been complied with in connection with the proposal for the order."

24. It is now well established that the test of meeting the basic conditions (and in particular the basic condition under paragraph 8(2)(a)) is not to be equated with the test of soundness, which is to be applied by an Inspector considering a local plan

pursuant to section 20 of the 2004 Act. The basic condition which the Examiner has to scrutinise in relation to national planning policy and advice is that the Examiner must be satisfied that it is appropriate to make the order "having regard to national planning policies and advice". By contrast the test of soundness under paragraph 35(d) of the Framework is that the plan is "consistent with national policy". Paragraph 37 of the Framework distinguishes neighbourhood plans which must meet the basic conditions and other legal requirements in this connection, separating them from the considerations relevant to approving a local plan.

25. Under paragraph 10(1) of Schedule B to the 1990 Act the Examiner is required to make a report in relation to the submitted draft of the neighbourhood plan and recommend whether pursuant to paragraph 10(2) either the neighbourhood plan is to be submitted to a referendum, or that modifications are required prior to it being suitable for submission to a referendum, or finally that the proposal to submit it to referendum should be refused. Having received an Examiner's report, paragraph 12 of Schedule 4B requires a local planning authority to consider the recommendations made by the report to decide what action to take and responses to be made to them. If the local planning authority are satisfied that the draft order meets the basic conditions, or would do so if modifications were made, they must proceed to holding a referendum in relation to the neighbourhood plan. Under paragraph 12(11) of schedule 4B the local planning authority are required to publish the decisions which they make in relation to the neighbourhood plan and their reasons for making those decisions. In *R(on the application of Kebbell Developments Limited) v Leeds City Council* [2018] EWCA Civ 450; [2018] 1 WLR 4625 at paragraph 45, Lindblom LJ concluded that it was open to the local planning authority to, as here, simply adopt the reasons and conclusions of the Examiner in order to discharge the obligation upon it by virtue of paragraph 12(11) of Schedule 4B. No complaint is made by the claimant in the present case about that procedure having being adopted.

26. The Examiner's report is to be read fairly and as a whole in order to understand the reasons being given for the decisions reached. The standard of reasons being given are to be measured against the requirements set out in *South Buckinghamshire District Council v Porter (No 2)* [2004] 1 WLR 1953 at paragraph 36. As has been observed in other cases such as *R(Crownhall Estates Limited) v Chichester District Council* [2016] EWHC 73 (Admin) at paragraphs 55 and 58, and *R(Wilbur Developments Limited) v Hart District Council* [2020] EWHC 227 (Admin) at paragraph 72, that the application of the obligation to give reasons and the standards of those reasons will understandably be affected by the confines of the statutory scheme within which the decision is being reached. For instance, the principal controversial issues will be confined to the matters relevant to the satisfaction of the basic conditions, and not necessarily any or all of the matters raised by representations on the draft neighbourhood plan.

27. A particular feature of the grounds raised in this case relates to the question of the designation of an LGS. The relevant provisions of the Framework are contained within paragraphs 99-101 of the Framework as follows:

> "99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent

> with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.
>
> 100. The Local Green Space designation should only be used where the green space is:
>
> a) in reasonably close proximity to the community it serves;
>
> b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and
>
> c) local in character and is not an extensive tract of land.
>
> 101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts."

28. Further material on LGS designations is to be found in the PPG which provides as follows:

> "**How does Local Green Space designation relate to development?**
>
> - Designating any Local Green Space will need to be consistent with local planning for sustainable development in the area. In particular, plans must identify sufficient land in suitable locations to meet identified development needs and the Local Green Space designation should not be used in a way that undermines this aim of plan making.
>
> - Paragraph: 007 Reference ID: 37-007-20140306
>
> …
>
> **What if land is already protected by designations such as National Park, Area of Outstanding Natural Beauty, Site of Special Scientific Interest, Scheduled Monument or conservation area?**
>
> - Different types of designations are intended to achieve different purposes. If land is already protected by designation, then consideration should be given to whether any additional local benefit would be gained by designation as Local Green Space.
>
> - Paragraph: 011 Reference ID: 37-011-20140306

> - Revision date: 06 03 2014
>
> What about new communities?
>
> - New residential areas may include green areas that were planned as part of the development. Such green areas could be designated as Local Green Space if they are demonstrably special and hold particular local significance.
>
> - Paragraph: 012 Reference ID: 37-012-20140306
>
> - Revision date: 06 03 2014
>
> **What types of green area can be identified as Local Green Space?**
>
> - The green area will need to meet the criteria set out in paragraph 100 of the National Planning Policy Framework. Whether to designate land is a matter for local discretion. For example, green areas could include land where sports pavilions, boating lakes or structures such as war memorials are located, allotments, or urban spaces that provide a tranquil oasis.
>
> - Paragraph: 013 Reference ID: 37-013-20140306"

29. A particular focus in the case relates to the phrase within paragraph 99 of the Framework which identifies that LGS designation should "be capable of enduring beyond the end of the plan period". In the recent case of *R(on the application of Lochailort Investments Limited) v Mendip District Council* [2020] EWCA Civ 1259 one of the grounds upon which a challenge was brought to a neighbourhood development plan was the failure, it was contended, of the Examiner to consider whether or not the LGS designations she was considering were "capable of enduring beyond the end of the plan period". Lang J at first instance was satisfied that although there was no specific reference to this phrase and its application within the Examiner's report, nevertheless she could be satisfied that an experienced Examiner would have considered the entirety of paragraphs 99-101 and, further, the Examiner had accepted the legitimacy of the neighbourhood plan's proposals including that sustainable development could and should take place elsewhere in and around the settlement (see paragraphs 162 and 163 quoted at paragraph 44 of Lewison LJ's judgment in the Court of Appeal).

30. In the Court of Appeal at paragraph 45 of his judgment Lewison LJ agreed with the judge's conclusion. In doing so he expressed views as to the approach to be taken to the feature of paragraph 99 of the Framework related to a designated LGS being capable of enduring beyond the plan period. He provides as follows:

> "45. Mr Ground emphasised by reference to cases to the Green Belt that boundaries should only be changed in exceptional circumstances. He reasoned by analogy that the same should

> apply to the designation of an LGS. But the flaw in this argument is that the policy requirement of paragraph 99 of the NPPF is no more than that the LGS should be capable of enduring beyond the plan period. It is not a policy requirement that the LGS must inevitably last beyond that period. Nor does it specify how far into the future the local planning authority must gaze. Nor does paragraph 99 of the NPPF incorporate the statement in paragraph 135 of the NPPF that new Green Belts should only be established "in exceptional circumstances". I agree with the judge at [35] that this is a less stringent requirement than that applicable to designation as Green Belt; as is paragraph 139 b) of the NPPF (namely that land should not be designated as Green Belt if it is unnecessary to keep it "permanently" open). Permanence is a higher bar than capability to endure beyond the plan period. In addition, paragraph 139 e) requires the local planning authority to be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period. This, too, is a higher bar than being capable of enduring beyond the plan period. A designated LGS might not be capable of enduring beyond the plan period if, for example, pressure on development, and in particular the supply of new housing, would probably require it to be given up for development before the end of the plan period. If, on the other hand, pressure for development can be satisfied elsewhere within the neighbourhood over the plan period, it is likely that a designated LGS will at least be *capable* of enduring beyond the plan period. Given the examiner's conclusions in relation to other parts of the draft plan, and in particular the supply of land in Norton St Philip for housing over the plan period (as noted by the judge at [163]) I consider that the judge was justified in her conclusion."

31. Other relevant provisions of the Framework relevant to the discussion before the Examiner and in the present challenge include paragraph 11(d) of the Framework and in particular the consideration of whether or not policies are out of date. In relation to decision taking, paragraph 11(d) provides that where the most important policies determining an application are out of date, permission should be granted unless either a policy specified in footnote 6 to the Framework is of application, or "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessing against the policies in this framework taken as a whole" (often referred to as the "tilted balance"). Footnote 7 incorporates within circumstances when the most important policies for determining the application will be out of date situations where the local planning authority is unable to demonstrate a five year supply of deliverable housing sites. This position is caveated by paragraph 14 of the Framework which provides as follows:

> "14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the

> neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply
>
> a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;
>
> b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;
>
> c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and
>
> d) the local planning authority's housing delivery was at least 45% of that required over the previous three years."

32. As was held by Lindblom J (as he then was) in *Bloor Homes East Midlands Limited v Secretary of State for Communities and Local Government and other* [2014] EWHC 751 at paragraph 44-46, recently endorsed by the Court of Appeal in *Peel Investments (North) Limited v Secretary of State for Housing, Communities and Local Government and another* [2020] EWCA Civ 1175, the question of whether or not for the purposes of the Framework a policy is out of date is one of fact and judgment, and will depend upon an evaluation of matters such as whether some change in policy, or the emergence of some new factual material, justifies the conclusion that the policy is to be regarded as out of date. The question would be whether the policy has been overtaken by events which have emerged since it was adopted, either in relation to its factual circumstances or as a consequence of some change in national policy or for some other reason. The answer to this question will be a matter of planning judgment.

The grounds

33. The claimant's case is advanced by Mr Rupert Warren QC on two grounds. The first ground has a number of elements to it, and proceeds under the heading of the flawed designation of the Horsefield as LGS. Mr Warren submits that the LGS designation, and in particular the Examiner's endorsement of it, was flawed in a number of respects. Firstly, it was flawed by the failure of the Examiner to have regard to the national policy requirements contained within the Framework at paragraph 99, and in particular the requirement that the LGS should be "capable of enduring beyond the end of the plan period". There is, he submits, no direct reference within the Examiner's reasoning and conclusions relating to this requirement, which is specifically set out in national planning policy. The analysis of the WNPLGS Report failed to consider this criteria and only examined the candidate sites against the criteria set out in paragraph 100. There was neither in the WNPLGS report nor in the Examiner's scrutiny of the claimant's objections any consideration of whether or not it would be possible for the LGS to be capable of enduring beyond the end of the plan period particularly in circumstances in which there was a continuing and pressing need for housing within the defendant's area, and a failure to satisfy the requirement for a five year housing land supply at the time of the Examiner considering the WNP. The requirement to consider this aspect of paragraph 99 was particularly acute in circumstances where the Examiner had himself, at paragraph 6.5.1(xv), concluded

that an early review of the policies in the WNP would be required "in circumstances where the housing delivery across the rest of the district does not improve". Additionally, at the time the housing land supply stood at only 3.7 years and there was no evidence before the Examiner that housing delivery across the district would improve in circumstances where there was no new local plan in prospect and persistent history of under-delivery.

34. Secondly, and in a related manner, Mr Warren submits that the Examiner failed to have regard to his own conclusion that there was a need for an early review, which was itself inconsistent with the notion that the LGS designation would be capable of enduring beyond the end of the plan period. The logical consequence of that conclusion was that the review of the WNP should be awaited before LGS designation could properly be confirmed.

35. Thirdly, the Examiner and the defendant failed to make any enquiries of the local plan Inspector so as to understand her views on the matter, and in particular why she had concluded that the LGS designation should be deleted from the withdrawn new Local Plan. Acting reasonably and making reasonable enquiries, the Examiner, or the defendant as local planning authority, ought to have made enquiries in relation to the Local Plan Inspector's reasoning for her decision to make a main modification deleting the LGS designation from the Horsefield. Failure to do so was a further flaw in the Examiner and the defendant's approach.

36. In response to these submissions Mr Jack Smyth, who appears on behalf of the defendant, draws attention to the references within the Examiner's report to paragraph 99 of the Framework. The Examiner specifically refers to paragraph 99 of the Framework in paragraphs 6.5.4(v) and (xii). As an experienced Examiner and planner Mr Smyth submits that it can be reasonably concluded that the Examiner was fully familiar with the terms of the Framework and its requirements in relation to LGS designation. Moreover, when the Examiner's report is read as a whole it is clear that the Examiner addressed the question as to whether or not the provision of development within the WNP was adequate when he considered the spatial strategy and, as observed in his report at paragraph 6.5.4(xii), he referred back to the making of provision of sustainable development in the context of considering the claimant's objections to the LGS designation. Furthermore, the WNPLGS Report, to which the Examiner had explicit regard, itself refers to the requirements of paragraph 99 and 100 of the Framework as having guided that work and the assessment in the WNPLGS Report. So far as the Examiner's reference to review is concerned, Mr Smyth submits that the designation of an LGS and its capability of enduring beyond the end of the plan period is not incompatible with an early review of the WNP, if that were required. The existence of the possibility of early review neither undermined the recommendation for LGS designation nor required that it be deferred until the WNP was reviewed, if that occurred. Finally, in relation to the withdrawn Local Plan Inspector's report, Mr Smyth submits that a local plan is significantly different from a neighbourhood plan in particular in relation to the scale of the area which is being considered. He submits that it was not necessary for the Examiner to be acquainted with the reasons for the local plan Inspector's conclusions before being able to reach a conclusion of his own. A withdrawn local plan is of no legal effect and therefore would have been of little assistance to the Examiner. Moreover, as is clear from the evidence, there was no report from the Inspector to disclose and there is no reason to

suspect that an enquiry from the defendant would have been any more successful in establishing what the Local Plan Inspector's reasons were than the enquiry raised by the claimant.

37. Turning to ground 2 Mr Warren submits on behalf of the claimant that the Examiner failed to properly interpret policy GROWTH 2 of ECLP for the purposes of making the assessment of general conformity required by the basic conditions. In particular, the Examiner erred when he sought to distinguish policy GROWTH 2 from policies GROWTH 1 and 4 of the ECLP so as to conclude that policy GROWTH 2 was not out of date. Mr Warren submits that these policies sit together and are integrally related to one another. Mr Warren draws attention to the fact that in statements of common ground for appeals in which the claimant and the defendant were involved it was recorded as an agreed position that policy GROWTH 2 is out of date. Thus, the Inspector's conclusion was flawed and his interpretation of policy GROWTH 2 was, as a matter of law erroneous.

38. In response to these submissions Mr Smyth on behalf of the defendant contends that the question of whether or not policy GROWTH 2 of the ECLP was out of date was a question of planning judgment, and that the planning judgment which the Examiner reached in that connection within the report at paragraph 6.5.1(v) was effectively legitimate and a judgment which was adequately reasoned.

Conclusions

39. In order to evaluate the first limb of the claimant's ground 1, namely that the Examiner simply left out of account the requirement that he needed to be satisfied that the LGS designation would endure beyond the end of the plan period, it is essential to read the Examiner's report as a whole in order to do justice to the conclusions which he reached. When that is done in my view there is no substance in the claimant's contentions. Firstly, the Examiner makes clear reference in his report to the relevant paragraphs of the Framework addressing LGS designation and in particular paragraph 99. The Examiner is a highly qualified and experienced town planner, and there is nothing in the report to refute the contention that he was fully alive to the implications of paragraph 99 in relation to ensuring that the LGS designation was capable of enduring beyond the plan period. Indeed, in my view the contents of the report clearly support the conclusion that the Examiner had clearly in mind the policy test in relation to an LGS designation enduring beyond the end of the plan period and, most importantly in terms of the test he was applying, had regard to it in forging his conclusions on the basic conditions.

40. The evidence that the Examiner had this requirement clearly in mind when examining the plan is clear. In particular, in paragraph 6.5.4(xii), when directly engaging with the claimant's representations, the Examiner cross-refers to his conclusions in relation to the planning of sustainable development in the context both of Witchford and the whole of the defendant's administrative area. He goes on to make the specific observation that an appropriate level of housing has been provided for, and whilst there may be a future need for expansion or redevelopment of the primary school that does not require the Horsefield itself. His cross-reference to his earlier conclusions in section 6.5.1 of the report take the reader to the conclusions which he has already formed pertaining to his conclusion that the scale of housing growth which has been provided for in the WNP is appropriate and that the settlement boundaries that have

been defined in it are, firstly, appropriate and, secondly, do not mean that the plan is not providing for future development. Paragraph 6.5.1(viii) is particularly apposite in this regard.

41. Thus, reading the report as a whole it is very clear that the Inspector has reached a conclusion in relation to whether or not the LGS designation is capable of enduring beyond the end of the plan period, and concluded that it is so capable. A further piece of context, although not decisive, is the point made by Mr Smyth in relation to the basis upon which the claimant's objections were formulated, which do not directly make reference to the elements of paragraph 99 related to requiring the LGS to endure beyond the end of the plan period. This provides some context for why the Inspector may not have made direct and specific reference to the LGS enduring beyond the end of the plan period. Nonetheless on reading his report it is very clear that, in the language of Lewison LJ in *Lochailort*, in the light of his conclusions in relation to other parts of the plan it is clear that he formed the view that the LGS was at least capable of enduring beyond the plan period, and that pressure for new development would not probably require it to be given up for development before the end of the plan period. He was clearly satisfied that an appropriated identification of land for housing development had been undertaken and the settlement boundaries were designed to endure for the plan period.

42. I am also unpersuaded that there is any substance in the claimant's argument that the Examiner's conclusions were inconsistent with his observations that the plan may require early review. Firstly, it is important to put the Examiner's observation in context. He observes that the plan would be "likely to require early review if its policies are to remain relevant in circumstances where the housing delivery, across the rest of the district does not improve". Thus, his conclusion in relation to review was one which was contingent: it was not a conclusion that the WNP already required review. Indeed, his later observations about review were again cast in a manner which suggests that the opportunity for review might have been alluded to, but review was not required in order for the plan to be suitable for passing to referendum. I accept Mr Smyth's position that this contingent conclusion of the Examiner is not inconsistent with his main conclusion that the WNP contained a sufficient amount of housing development to meet its requirements and that the location of the settlement boundaries was appropriate. To deploy the explanation offered by Lewison LJ in paragraph 45 of *Lochailort* again, this was not a case where, on the Examiner's finding, development pressure would probably require the LGS to be given up for development before the end of the plan period.

43. Turning to the third element of ground 1, and Mr Warren's submission that the Examiner and the defendant ought to have made further enquiry and established the reasons why the Inspector in relation to the withdrawn Local Plan had concluded that the LGS designation for the Horsefield site should have been deleted, I am not satisfied that this submission is well founded and gives rise to any illegality in the Examiner's conclusions. Firstly, I am not satisfied that it was, as a matter of law, reasonably necessary or required for the Examiner or the defendant to make those enquiries prior to reaching the decisions and conclusions that they did. The nature and scope of the evidence before the Examiner dealing with the WNP was of necessity different to that which was before the Local Plan Inspector. As is set out above, and is well established as a matter of law, the tests which the Local Plan Inspector would

have been applying were different in their content and rigor to those being applied in the neighbourhood planning context by the Examiner. It was not therefore reasonably necessary for the defendant and the Examiner to have knowledge of the Inspector's reasons before reaching their own conclusions on the WNP measured against the evidence base supporting it and the tests set out in the 1990 Act.

44. Secondly, there is a sense in which this point is very largely academic, on the basis that for the reasons set out in the letter from the Planning Inspectorate dated 25 July 2019, the Inspector for the withdrawn Local Plan never compiled a report and therefore did not create a record of the reasons for her main modification in respect of the Horsefield. Another way of putting this point is that there is no reason to suggest that if the Examiner or the defendant had made the same enquiry that the claimant did they would have received any different response. Against that background therefore, in my view, this aspect of ground 1 is unconvincing.

45. For all of these reasons I am not satisfied that the claimant's case in relation to ground 1 has been made out. I turn, therefore, to ground 2. As set out above the question of whether or not a development plan policy is out of date is a question of planning judgment based upon an examination of whether or not the policy's provisions have been overtaken by changes in the factual circumstances, or the policy background, between the time when the policy was adopted and the time at which the decision is under consideration. As Mr Warren accepted during the course of oral argument his submission has to demonstrate that there was a public law error in the planning judgment that the Inspector reached. He contends that the Inspector failed to properly appreciate the interrelationship between policy GROWTH 1 and policy GROWTH 2 such that if the Inspector accepted policy GROWTH 1 was out of date it followed that the location or strategy including the development envelopes set out in policy GROWTH 2 would also be out of date as they were fixed or identified against the overall development requirements set by policy GROWTH 1.

46. I am unable to accept the proposition that the Inspector was unaware of this contention, or that he failed to address it. In particular, in his conclusions at paragraph 6.5.1(v) and (vi) the Inspector explained the point that had been made in respect of policy GROWTH 2 being out of date by virtue of policy GROWTH 1 being out of date and a 5 year housing supply being unavailable. He explains his planning judgment that the locational strategy in policy GROWTH 2 remains relevant and up to date, and that in respect of the development envelope, notwithstanding the provisions of policy GROWTH 2, the WNP had extended development limits to accommodate appeal decisions which had been reached since those previously defined in the ECLP. In the context of the decisions which the Examiner had to reach in relation to the WNP he was entitled to conclude that the locational or spatial strategy set out in the approach to settlements in GROWTH 2 was up to date applying the approach from *Bloor* and *Peel* set out above. It was clearly open to him, as a matter of planning judgment, to conclude that the status of GROWTH 2 was not affected by judgments in respect of the status of GROWTH 1 as a result of challenges based upon absence of a 5-year housing land supply. In my view the judgment which the Inspector reached was, in the circumstances in which he reached his decision, one which was based on a sound interpretation of the policies, including their individual purposes, and an entirely lawful exercise of planning judgment. Moreover, his reasons for reaching that planning judgment are clearly expressed in the report.

47. It follows that having considered the issues raised by the claimant in relation to ground 2 I am not satisfied that they have any substance. In the light of my conclusions on both grounds the claimant's application for judicial review in this case must be dismissed.