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Queen's Bench Division

Bloor Homes East Midlands Ltd *v* Secretary of State for Communities and Local Government and another

[2014] EWHC 754 (Admin)

B

2013 Dec 16;
2014 March 19

Lindblom J

Planning — Development — Refusal of planning permission — Application for planning permission for housing development — Whether permission properly refused on grounds of prematurity — Whether grant of planning permission tending to pre-empt development plan-making process — The Planning System: General Principles (2005), paras 17, 18, 19[1]

C

Planning — Development — Sustainable development — Application for planning permission for housing development — Whether attracting presumption in favour of sustainable development — National Planning Policy Framework (2012), paras 14, 49[2]

An inspector appointed by the Secretary of State dismissed an appeal by the developer against a decision of the local planning authority refusing planning permission for a proposed housing development. The developer applied under section 288 of the Town and Country Planning Act 1990 to quash the inspector's decision on the grounds that he had failed properly to apply, inter alia: (i) the presumption in favour of sustainable development in paragraph 14 of the National Planning Policy Framework (2012) ("NPPF"), read with paragraph 49, in so far as it created a presumption that planning permission for development should be granted where the development plan was "absent" or "silent", or where relevant policies were out-of-date, including where they were considered to be out-of-date because there was no five-year supply of housing land; and (ii) published government guidance on the issue of prematurity, in so far as the inspector had found that a grant of planning permission would pre-empt the planning process in relation to an emerging development plan document on site allocation for housing development.

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On the application—

Held, granting the application, (1) that the question whether a development plan was "absent" for the purposes of paragraph 14 of the NPPF was a question of fact; that a plan would be absent if none had been adopted for the relevant area and relevant period; that whether the plan was "silent" was a question of fact and/or construction of the relevant document; that silence meant an absence of relevant policy and, therefore, a plan would not be silent if it contained a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle; that whether relevant policies were out-of-date could be a matter of both fact and judgment; that the exercise of determining whether there was a five-year supply of housing land required assumptions to be made and judgment to be exercised and, while there might sometimes be no single correct answer, a robust calculation was essential; that, even if paragraph 14 applied to certain development, its status was that of a material consideration and the weight to be given to it was a matter for the decision-maker to decide, although, because it was government policy, it was likely to command significant weight; that, applying those principles, the development plan was not absent or silent on the issue of the developer's proposed development; but that the

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[1] The Planning System: General Principles, paras 17–19: see post, para 136.
[2] National Planning Policy Framework, para 14: see post, para 22.
Para 49: see post, para 68.

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inspector's decision was vitiated by an important error in his consideration of the evidence relating to the five-year supply of housing land (post, paras 44–58, 104, 105, 124–127, 130–133).

(2) That the Government's published policy on prematurity aimed to protect the plan-making process by preventing decisions on individual planning applications from pre-empting decisions that should properly be made in the process of plan-making; that a refusal of planning permission on the ground of prematurity would usually only be justified where the proposed development was so substantial, or its cumulative effect would be so significant, that a grant of grant planning permission could prejudice an emerging development plan document by predetermining decisions about the scale, location or phasing of new developments; that the scale of the development had to be viewed in the context of the particular need being planned for in the development plan document; that the guidance was to be applied flexibly by the decision-maker, in light of the circumstances of the particular application or appeal, having regard to the nature and scale of the proposed development, its location and the stage which the draft development document had reached; and that, applying those principles, the inspector had been entitled to find that a grant of planning permission for the proposed development would be premature (post, paras 147–153).

The following cases are referred to in the judgment:

Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223; [1947] 2 All ER 680, CA

Colman v Secretary of State for Communities and Local Government [2013] EWHC 1138 (Admin)

Cotswold District Council v Secretary of State for Communities and Local Government [2013] EWHC 3719 (Admin)

Edinburgh Council (City of) v Secretary of State for Scotland [1997] 1 WLR 1447; [1998] 1 All ER 174, HL(Sc)

Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government [2012] EWHC 444 (Admin); [2012] JPL 920; [2012] EWCA Civ 1198; [2013] 1 P & CR 6, CA

Hunston Properties Ltd v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610; [2014] JPL 599, CA

Murphy v Secretary of State for Communities and Local Government [2012] EWHC 1198 (Admin)

Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions (Practice Note) [2001] EWHC Admin 74; [2017] PTSR 1126

North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P & CR 137, CA

R (Save Our Parkland Appeal Ltd) v East Devon District Council [2013] EWHC 22 (Admin)

R (Spelthorne Borough Council) v Secretary of State for the Environment, Transport and the Regions (2000) 82 P & CR10, CA

Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB)

Seddon Properties Ltd v Secretary of State for the Environment (1978) 42 P & CR 26; 248 EG 950

South Bucks District Council v Porter (No 2) [2004] UKHL 33; [2004] 1 WLR 1953; [2004] 4 All ER 775, HL(E)

South Somerset District Council v Secretary of State for the Environment (Practice Note) [2017] PTSR 1075; (1992) 66 P & CR 83, CA

Stratford-on-Avon District Council v Secretary of State for Communities and Local Government [2013] EWHC 2074 (Admin); [2014] JPL 104

Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening) [2012] UKSC 13; [2012] PTSR 983, SC(Sc)

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Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759; [1995] 2 All ER 636; 93 LGR 403, HL(E)
Tewkesbury Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 286 (Admin); [2013] PTSR D33; [2013] LGR 399
William Davis Ltd v Secretary of State for Communities and Local Government [2013] EWHC 3058 (Admin)

The following additional cases were cited in argument or referred to in the skeleton arguments:

Boulevard Land Ltd v Secretary of State for the Environment, Transport and the Regions [1998] JPL 983
Givaudan & Co Ltd v Minister of Housing and Local Government [1967] 1 WLR 250; [1966] 3 All ER 696; 64 LGR 352
Hatfield Construction Ltd v Secretary of State for the Environment [1983] JPL 605, CA
R (Singh) v First Secretary of State [2004] EWHC 2366 (Admin)
Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014; [1976] 3 WLR 641; [1976] 3 All ER 665; 75 LGR 190, CA and HL(E)

APPLICATION under section 288 of the Town and Country Planning Act 1990

By a claim form the developer, Bloor Homes East Midlands Ltd, sought a statutory review, pursuant to section 288 of the Town and Country Planning Act 1990, of the decision dated 22 January 2013 of an inspector appointed by the Secretary of State for Communities and Local Government, dismissing its appeal against the refusal by the local planning authority, Hinckley and Bosworth Borough Council, to grant planning permission for a proposed housing development.

The facts and grounds of challenge are stated in the judgment, post, paras 1–18.

Jeremy Cahill QC and *Satnam Choongh* (instructed by *Bloor Homes East Midlands Ltd)* for the developer.

James Maurici QC (instructed by *Treasury Solicitor*) for the Secretary of State.

Timothy Leader (instructed by *Senior Solicitor, Hinckley and Bosworth Borough Council, Hinckley*) for the local planning authority.

The court took time for consideration.

19 March 2014. **LINDBLOM J** handed down the following judgment.

Introduction

1 Next to the cemetery in the village of Groby in Leicestershire, on the open land between Groby and the neighbouring village of Ratby, is a site that has been put forward several times for the development of housing. Every attempt so far has failed. This case is about the latest.

2 By an application made under section 288 of the Town and Country Planning Act 1990 the claimant, Bloor Homes East Midlands Ltd ("Bloor"), challenges the decision of the inspector appointed by the first defendant, the Secretary of State for Communities and Local Government ("the Secretary of

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State"), to dismiss its appeal against the refusal by the second defendant, Hinckley and Bosworth Borough Council ("the council"), of its application for planning permission to build 91 houses on the site. The inspector's decision letter was issued on 22 January 2013. He had held an inquiry into Bloor's appeal in December 2012.

The inspector's decision letter

3 In para 2 of his decision letter the inspector identified two main issues in the appeal. The first was "the adequacy of the supply of housing in the [borough of Hinckley and Bosworth]", and the second "the effect of the proposed development on the character and appearance of the Rothley Brook Meadow Green Wedge ['the Green Wedge']". He also identified "a further consideration" in each of these two main issues was "the impact of the appeal proposals on the emerging Site Allocations and Generic Development Control Policies Development Plan Document ['the Site Allocations DPD']".

4 In para 3 the inspector described the site, its location and its recent planning history:

> "The 4·4 hectare appeal site is in the Green Wedge that separates the villages of Groby and Ratby. Although within Ratby parish, it borders residential development in Groby and there is open land between the site and Ratby village. There have been several unsuccessful planning applications for housing on the site, the most recent resulting in a dismissed appeal in 2011. The appellants have also sought to promote the site for housing at the local inquiries into the local plan and core strategy."

5 In paras 4–15 of his letter the inspector considered the issue of housing supply.

6 In para 4 he noted that the Hinckley and Bosworth core strategy ("the core strategy"), which was adopted in December 2009, envisaged that most of the housing development in the borough would be provided "in the urban area or through sustainable amendments to the settlement boundary and in two sustainable urban extensions ('SUEs'), with a proportion distributed around rural areas in order to meet local needs". The core strategy required 9,000 homes to be provided between 2006 and 2026, at an average of 450 a year. In para 5 the inspector referred to policy 8 of the core strategy, which identified Groby as one of the key rural centres, where the council would aim to allocate land for housing. The council and Bloor had agreed that at least 110 new dwellings would be needed in Groby, and that this would require land outside the existing settlement boundary. That land was going to be identified in the Site Allocations DPD. The consultation draft of the Site Allocations DPD referred to the appeal site as one of the preferred options.

7 The inspector then considered the council's five-year supply of housing land:

> "6. The 2011 appeal was decided in the light of the 2009 core strategy and at a time when the council did not have a five-year supply of housing land. Since then, in March 2012, the National Planning Policy Framework ['the NPPF'] has been issued. The appellants have drawn attention to paragraph 49 of the NPPF, which says that housing supply policies should

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A not be considered up-to-date if the local planning authority [cannot] demonstrate a five-year supply of deliverable housing sites.

"7. The calculation of housing land supply is not an exact science. The dispute between the parties relates largely to the choice of predictive models. The council prefers the 'Liverpool' method, which spreads any shortfall in a given year over the remainder of the plan period and is B appropriate where there is not a severe shortage. On that basis the council can show a supply of housing land extending to 5·27 years or 5·02 years if a 5% buffer is applied.

"8. The appellants prefer the 'Sedgefield' model, which seeks to meet any shortfall earlier in the plan period, on the basis that this approach accords with the views of the Government, as set out in paragraph 47 of the NPPF with regard to boosting housing supply. They draw attention to C a number of appeal decisions where this approach has been adopted. They also suggest that the 5% buffer is insufficient and that a 10% or 20% buffer would be more appropriate. This approach has some force given that the council can only show a supply marginally in excess of five years.

"9. None the less, the Liverpool model is a recognised way of calculating housing supply. The core strategy inspector anticipated that D there would be shortfalls in housing land supply in the early years and that these would be made up later in the plan period when, for example, the SUE came on stream. It is clear from the council's evidence that progress has been made with the Earl Shilton and Barwell SUEs and that planning permission for the Barwell SUE is likely to be granted in the spring of this year.

E "10. The appellants point out that the core strategy inspector's conclusions were based on the expectation that sites would be brought forward in the [Site Allocations DPD], the production of which has been delayed by several years. That situation was, however, known to the Inspector dealing with the 2011 appeal.

"11. Given the inherent uncertainties in any predication of future supply and the fact that it is a method that chimes with the approach in F the core strategy, I consider that it does provide a reasonable basis for assessing future supply. On that basis I conclude that the council has shown that it has a five-year supply of housing land. Furthermore, it is clear that the council is not averse to boosting the supply of housing. Specifically, it is proposing to allocate land for housing in Groby. In the context of this appeal, it is not the amount of housing that is in dispute G but its location."

8 The inspector then referred to the policy in the NPPF for the operation of the planning system: para 12 of the decision letter. He reminded himself that paragraph 12 of the NPPF says that it does not change the statutory status of the development plan as the starting point for decision-making and that development proposals in conflict with an up-to-date plan should be refused H unless other material considerations indicate otherwise. He mentioned the principles set out for the planning system in paragraph 17 of the NPPF, one of which is that planning should be "genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area", and providing

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"a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency". A

9 The inspector went on to consider the Site Allocations DPD process and its bearing on the appeal before him:

> "13. The consultation period for the [Site Allocations DPD] Preferred Options report ended in April 2009 and the document is in the process of being amended in the light of the responses received. A pre-submission draft is due to be published in August of this year, followed by submission to the Secretary of State at the beginning of 2014. The fact that the council has identified the appeal site as a preferred option for housing development is clearly a factor that lends support to the appellants' position. Nevertheless, as in 2011, the weight to be attached to it is limited by the fact that the document in question is a consultation draft. B C
>
> "14. The local community, both as individuals and through the parish councils, have been actively involved in the consultation process. It may be that this process will result in the appeal site being allocated for housing development. To grant planning permission at this time, however, would pre-empt a decision that should properly be made through the development plan process. It would render futile the work done by the council and the contributions made by the local community, thereby reducing public confidence in the planning process and would be contrary to the spirit of paragraphs 12 and 17 of the . . . NPPF." D

10 That analysis led the inspector to his conclusion on the issue of housing supply, at para 15:

> "In conclusion I consider that the council has an up-to-date development plan in the form of the 2009 core strategy, that it has shown the existence of a five-year supply of housing land and that it would be premature to grant planning permission for the development of the appeal site in advance of the adoption of the [Site Allocations DPD]." E

11 The inspector dealt with the second main issue, relating to the Green Wedge, in paras 16–24 of his decision letter. He referred in para 16 to the provenance of development plan policy for the Green Wedge in the Leicestershire Structure Plan of 1987. The relevant policy now was policy 9 of the core strategy, which, said the inspector, "seeks to protect the Green Wedges and lists various uses that would be acceptable within them". Since housing was not one of those acceptable uses, he said, "the appeal proposal conflicts with [policy 9]". F

12 In para 17 the inspector acknowledged that policy 9 required a review of the Green Wedge. This, together with the council's strategic housing land availability assessment, would inform the Site Allocations DPD. The four objectives for Green Wedges, which would inform the review, were, in the inspector's words, "to prevent the merging of settlements, guide urban form, provide a "green lung" and act as a recreation resource". As the inspector observed in para 18, the review was "currently in progress and will establish how much land should be released from different parts of the Green Wedge and allocated for development". G H

13 The inspector said in para 19 of his letter that the appeal site had been considered at three inquiries—a local plan inquiry in 1996 and 1997, the inquiry into the core strategy and the appeal inquiry in 2011—and on

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each occasion it had been concluded by the inspector that development "would detract from the open character and appearance of the area" and would conflict with relevant policy. The policy to which the inspector referred in particular was policy 9 of the core strategy.

14 In paras 20–22 of his letter the inspector considered the contribution made by the appeal site to the amenity and function of the Green Wedge:

> "20. The appeal site is bounded to the east by a stream, beyond which is a public footpath that runs along the embankment of a disused railway line and currently marks the edge of the built up area of the village. To the south is a strip of open land lying between the site and [Sacheverell] Way. The northern boundary is formed by a stream, beyond which is a terrace of three houses, known as Brookvale Cottages. To the west is the road linking Ratby and Groby, a large single house, Ashdale, and the Groby village cemetery. A public footpath runs between the cemetery and the appeal site.
>
> "21. In purely physical terms the proposed development would reduce the gap between Ratby and Groby. Although the site adjoins an extensive area of suburban housing, this is effectively screened by the railway embankment, which forms a logical boundary to the built up area. The appellants point out, with reference to the 2011 appeal decision, that openness for its own sake is not one of the four objectives of the Green Wedge. However, the character of the land in question clearly has a bearing on its contribution to those objectives. The appeal site has an open and rural character while the cemetery and nearby school playing fields, though less rural in character, also have an open aspect that helps to emphasise the separation of the two villages.
>
> "22. The appellants draw attention to the fact that the public do not have a right of access onto the site and say that it can not, therefore, have any recreational value. I see no reason, however, to restrict the definition of recreation to sporting or other activities taking place on the land itself. Recreation can also include walking and general enjoyment of the countryside. There are well used public footpaths along two of the site boundaries and the site provides an attractive complement to their use. In my view the site is, in that respect, a valuable informal recreation resource, the importance of which is enhanced by its proximity to the built up area."

15 As the inspector recognised in para 23 of his decision letter, the fact that the council had included the site as one of the preferred options for housing development in Groby was "clearly a material consideration and is one that favours the appellants' proposals". But he said the weight to be attached to this consideration was "reduced by the fact that the [Site Allocations DPD] and Green Wedge review are still at draft stage". "It may well be", he said, "that the outcome of the process will be to amend the Green Wedge boundary in the area and allocate the site for housing". But he added that this was "far from being a foregone conclusion".

16 Bringing these considerations together in para 24 of his letter, the inspector took account of "the possible future changes to the boundary of the Green Wedge in this area", but said that he "must consider the appeal proposal in the light of the development plan as it stands at present". He said that in his view "the proposed development would detract from the

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character and appearance of the area and would conflict with policy 9 of the core strategy". The core strategy was "up-to-date, having been adopted in 2009", and he could see "no reason to disagree with the conclusion reached in the 2011 appeal decision."

17 The inspector's final conclusion is in paras 29 and 30 of his letter:

> "29. Having regard to all of the above, I consider that the appeal proposal would harm the character and appearance of the Green Wedge and would conflict with policy 9 of the 2009 core strategy. While taking account of the possible changes to the Green Wedge boundary resulting from consideration of the [Site Allocations DPD], I concur with the council's view that the appeal proposal is premature. I do not accept that the housing supply situation is such as to require the granting of planning permission on this site in advance of decisions on the draft [Site Allocations DPD] and the Green Wedge review, both of which are well advanced. To do so would effectively pre-empt those decisions, overriding the public consultation process and contravening the aims of the . . . NPPF.
>
> "30. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed."

The issues for the court

18 The application raises five principal issues: (1) whether the inspector either failed to apply or to explain how he had applied to Bloor's proposal the principles of government policy in paragraph 14 of the NPPF for decision-making where the development plan is "absent" or "silent" (ground 1 of the application); (2) whether the inspector failed to understand and consider the evidence and submissions presented to him by Bloor on the five-year supply of land for the development of housing, and whether the reasons he gave for his conclusion on this matter are adequate (ground 2); (3) whether the inspector failed to apply the Government's policy on the prematurity of proposals for development, or to explain why he had not applied that policy (ground 3); (4) whether, in reaching his conclusions on the likely effect of the proposed development on the Green Wedge, and in considering the weight that ought to given to policy 9 of the core strategy, the inspector failed to have regard to material considerations and had regard to considerations that were immaterial (ground 4); and (5) whether the inspector failed to address Bloor's contention that the proposed development would be "sustainable development" within the meaning of government policy, that policy 9 of the core strategy was out-of-date, and that there was therefore a presumption in favour of planning permission being granted under the policy in paragraphs 14 and 49 of the NPPF (ground 5).

Relevant legal principles

19 The relevant law is not controversial. It comprises seven familiar principles:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to

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A "rehearse every argument relating to each matter in every paragraph": see the judgment of Forbes J in *Seddon Properties Ltd v Secretary of State for the Environment* (1978) 42 P & CR 26, 28.

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration: see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953, 1964B–G.

C (3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" (see *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223) to give material considerations "whatever weight [it] thinks fit or no weight at all": see the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780F–H. And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision: see the judgment of Sullivan J in *Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions (Practice Note)* [2001] EWHC Admin 74 at [6]; [2017] PTSR 1126, para 5 (renumbered).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration: see the judgment of Lord Reed JSC in *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983, paras 17–22.

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question: see the judgment of Hoffmann LJ in *South Somerset District Council v Secretary of State for the Environment (Practice Note)* [2017] PTSR 1075, 1076–1077; (1992) 66 P & CR 83, 85.

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored: see, for example, the judgment of Lang J in *Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB) at [58].

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in

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the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises: see, for example, the judgment of Pill LJ *Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government* [2013] 1 P & CR 6, paras 12–14, citing the judgment of Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P & CR 137, 145.

Issue (1)—paragraph 14 of the NPPF

The NPPF—sustainable development

20 The NPPF was published by the Government on 27 March 2012. It contains the Government's policy for planning in England.

21 In a section headed "Achieving sustainable development" paragraph 6 says that the "policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system". Paragraph 7 says there are three dimensions to sustainable development: "an economic role", "a social role" and "an environmental role". Paragraph 8 explains that "[these] roles should not be undertaken in isolation, because they are mutually dependent".

22 Paragraph 14 says that the "presumption in favour of sustainable development" should be seen as "a golden thread running through both plan-making and decision-taking". It goes on to say that for "decision-taking" this means, unless material considerations indicate otherwise:

> "approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted."

23 Under the heading "Determining applications" paragraph 197 says: "[in] assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development."

The NPPF—the plan-led system

24 Paragraph 11 of the NPPF refers to the requirement in section 38(6) of the Planning and Compulsory Purchase Act 2004 that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 12 says that the NPPF "does not change the statutory status of the development plan as the starting point for decision-making", and emphasises the importance of local planning authorities having "an up-to-date plan in place". Under the heading "Core planning principles" paragraph 17 identifies as one of these principles that "planning should . . . be genuinely plan-led, empowering local people to shape their surroundings . . ."

25 Paragraph 157 in the section of the NPPF dealing with "Plan-making", states: "Crucially, local plans should . . . be drawn up over an appropriate timescale, preferably a 15-year time horizon, take account of

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A longer term requirements, and be kept up-to-date." As Males J said in *Tewkesbury Borough Council v Secretary of State for Communities and Local Government* [2013] PTSR D33; [2013] LGR 399, para 13:

> "The weight to be given to a development plan will depend on the extent to which it is up-to-date. A plan which is based on outdated information, or which has expired without being replaced, is likely to
B command relatively little weight."

26 In the context of development control, paragraph 196 of the NPPF says:

> "The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance
C with the development plan, unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions."

27 In Annex 1 to the NPPF, which deals with "Implementation", paragraph 214 says: "For 12 months from the date of publication, decision-takers may continue to give full weight to relevant policies adopted since
D 2004 even if there is a limited degree of conflict with this Framework." Paragraph 215 says:

> "In other cases and following this 12-month period, due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)."

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Policy 8 of the core strategy

28 Policy 8 of the core strategy is entitled "Key Rural Centres Relating to Leicester". It refers to four settlements: Desford, Groby, Ratby and Markfield. It is preceded by two paragraphs of explanatory text, paras 4.36 and 4.37. Para 4.36 says that those four settlements are "located on the edge
F of the Leicester principal urban area, which due to their proximity, relate primarily to Leicester". Para 4.37 says that the "focus for these villages will be on maintaining existing services, maintaining the separate village identities of these settlements and improving the linkages between these villages and Leicester", that "the scale and type of development in these villages is based on supporting local needs, rather than encouraging larger scale development, which, due to the close relationship with Leicester, could encourage increased
G levels of commuting", and that "[their] role as 'gateway' villages to the National Forest will also be promoted".

29 Policy 8 sets out a series of provisions for each of the four villages. As for Groby, and so far as is relevant in these proceedings, it says:

> "To support the local services in Groby and ensure local people have access to a range of housing the council will: Allocate land for the
H development of a minimum of 110 new homes. Developers will be expected to demonstrate that the number, type and mix of housing proposed will meet the needs of Groby, taking into account the latest housing market assessment and local housing needs surveys where they exist in line with policy 15 and policy 16 . . ."

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Policy 9 of the core strategy

30 Policy 9 relates to the Green Wedge. It is introduced by para 4.38, which says that the Green Wedge "protects the green infrastructure of the borough, and considerable work has already been carried out along the Rothley Brook corridor to improve its recreational and biodiversity function", but that there are "still opportunities within the Green Wedge for enhancement to further increase its amenity as well as ecological value and its value as a functional floodplain". It goes on to say that a "review of the boundary of the Green Wedge will take place through [the Site Allocations DPD]". Policy 9 itself says:

> "[within] the Rothley Brook Meadow Green Wedge uses will be encouraged that provide appropriate recreational facilities within easy reach of urban residents and promote the positive management of land to ensure that the Green Wedge remains or is enhanced as an attractive contribution to the quality of life of nearby urban residents."

The policy lists six land uses that "will be acceptable in the Green Wedge, provided the operational development associated with such uses does not damage the function of the Green Wedge". These are "(a) Agriculture, including allotments and horticulture not accompanied by retail development", "(b) Recreation", "(c) Forestry", "(d) Footpaths, bridleways and cycleways", "(e) Burial grounds", and "(f) Use for nature conservation". The policy also requires "[any] land use or associated development in the Green Wedge" to do several things, including "(a) [retain] the function of the Green Wedge", "(b) [retain] and create green networks between the countryside and open spaces within the urban areas", "(c) [retain] and enhance public access to the Green Wedge, especially for recreation", and "(e) [retain] the visual appearance of the area".

Bloor's case at the inquiry

31 In the statement of common ground provided to the inspector by the parties before the inquiry they agreed (in para 6.1) that the development plan for the purposes of the appeal was composed of the East Midlands Regional Plan of March 2009, the core strategy—which, as I have said, was adopted by the council in December 2009—and those policies of the Hinckley and Bosworth local plan that had been saved beyond September 2007 and not superseded by the core strategy. The "potentially relevant policies" of the development plan were listed (in para 6.2). It was agreed that there were several such policies in the regional strategy and in the saved provisions of the local plan. And there were eight in the core strategy: policy 7 ("Key Rural Centres"), policy 8 ("Key Rural Centres Relating to Leicester"), policy 9 ("Rothley Brook Meadow Green Wedge"), policy 15 ("Affordable Housing"), policy 16 ("Housing Density, Mix and Design"), policy 19 ("Green Space and Play Provision"), policy 20 ("Green Infrastructure") and policy 24 ("Sustainable Design and Technology").

32 At the inquiry Bloor contended that the "presumption in favour of sustainable development" in paragraph 14 of the NPPF was engaged, for several reasons. It said that the development plan was "absent" or "silent" in the sense of paragraph 14 of the NPPF. The core strategy required a minimum of 110 houses to be provided at Groby in the plan period (from

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A 2006–2026). But there was no adopted development plan document allocating the land on which those houses were to be built. In that respect the development plan was either "absent" or "silent".

33 This part of Bloor's case was advanced both in the proof of evidence of its planning witness, Mr Anthony Bateman, and in the closing submissions of Mr Jeremy Cahill QC, who appeared at the inquiry—as he has in these proceedings.

B

34 The relevant passages in Mr Bateman's proof of evidence included these three paragraphs:

> "6.29 It is also relevant in the context of policy 8 to consider that whilst the core strategy is clear over the need for housing at Groby it is silent about the location of the proposed dwellings. On that basis the development falls clearly to be considered against paragraph 14 of the
> C NPPF which deals with circumstances where the plan is silent and states that permission should be granted subject to the caveats that then follow. This view is also the view of the policy officer in his response to the appeal application."
>
> "10.13 The proposals also accord with policy 8 of the core strategy, which seeks a minimum of 110 dwellings to be allocated at Groby.
> D The policy is silent on the specific location of this allocation. The proposals also accord with the emerging [Site Allocations DPD] which identifies the appeal site as a suitable location for part of this allocation."
>
> "10.16 In respect of the NPPF the proposed development falls to be considered under paragraph 49 which sets out that where there is less than a five-year supply the relevant housing policies are to be considered to be
> E out-of-date. In addition the development plan is silent on where the minimum 110 dwellings allocated at Groby are to be located. The development therefore also falls to be considered against paragraph 14 and the second bullet point relating to decision-making. The development accords with the requirements of this paragraph. The development also meets the three dimensions of sustainable development set out in the
> F NPPF."

35 In his closing speech at the inquiry Mr Cahill made a number of submissions about the relevant provisions of the development plan. He submitted, at para 6, that "[there] is more to [the core strategy] than policy 9", that "[the] proposal accords with policy 8 as Groby is one of the key rural centres relating to Leicester", and that the proposal also accorded
G with policy 15 ("Affordable Housing"), policy 16 ("Density, Mix and Design") and policy 19 ("Green Space and Play Provision"). He said, at para 8, that the council's officer had been right in his report to committee when he described the development plan as "currently absent in terms of the allocation of land to meet the Groby housing requirement". As Mr Cahill pointed out, at para 6, in the same part of the report the officer had also
H referred to the passage in paragraph 14 of the NPPF, which refers to "the presumption that planning permission should be granted when plans are 'absent, silent or out-of-date' ". He developed this point in para 13 of his speech. He said that "[if] the view is taken that the proposal is not in accordance with the [development plan] it will be because of [core strategy] policy 9". But the appeal proposal had to be considered in the context of

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paragraph 14 of the NPPF, even though policy 9 was "a [paragraph] 214 policy". This was so, Mr Cahill submitted, for three reasons: first, "the [development plan] is 'absent' or, alternatively, 'silent' as to how the [core strategy] commitment to 110 homes at Groby can be delivered": second, "there is no [five-year] housing land supply so housing supply policies are 'out-of-date' "; and third, "policy 9 is restricting necessary land supply: see [para 6.33] of Mr Bateman's proof of evidence] and [the] Sapcote decision".

The council's case at the inquiry

36 The council's witness at the inquiry, Ms Erica Whettingsteel, said in her evidence that because "[housing] is not amongst the uses considered acceptable in [the Green Wedge]" Bloor's proposal was "contrary to this policy": para 6.30 of Ms Whettingsteel's proof of evidence. In section 9 of her proof of evidence, where she set out her conclusions, Ms Whettingsteel emphasised that the appeal site was "not allocated for development and lies outside the defined settlement boundary": para 9.2. The council accepted

> "that more housing land is needed borough-wide to meet local need and that this is likely to involve the release of some greenfield sites over the short term, as a departure from polices in the development plan to complement the continued delivery of identified supply within development boundaries": para 9.3.

But, said Ms Whettingsteel, "there is no compelling evidence that the appeal development is needed to such an extent as to outweigh the fundamental conflict with the development plan": para 9.3. She went on to say that "[in] the context of [section] 38(6) of the 2004 Act", there were "no factors (including the current supply of housing in the [borough]) that outweigh the conflicts with the development plan": para 9.4.

37 The council's advocate at the inquiry was Mr Timothy Leader, who has also appeared in these proceedings. In his closing submissions Mr Leader refuted Bloor's contention that the development plan was "absent" or "silent". He submitted:

> "The 2012 Regulations do not require the council [to] identify the precise areas of land that are to be allocated in a development plan. The [core strategy] instead identifies how many houses should be directed to each settlement. Policy 9 then provides clear guidance on where proposals for housing development will or will not be acceptable. The suggestion that the plan is silent or does not contain policies on where housing should be delivered is thus untenable. It is perfectly clear that pending the completion of the [Site Allocations DPD] development ought not to be proposed on the appeal site."

38 Mr Leader described the approach he said the inspector should take if he concluded that the council did not have a five-year supply of housing land and the policy in paragraph 14 of the NPPF came into play. He reminded the inspector that the policy in paragraph 14 did not override the requirements of section 38(6) of the 2004 Act and section 70 of the 1990 Act. He said:

> "[it] amounts to a policy that where there is not a [five-year] supply of land for housing a proposal should be viewed favourably subject to all

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material considerations, but giving particular weight to the need to identify significant and demonstrable reasons for refusal."

He asked the inspector to "note the direct conflict with a fundamental policy of the development plan (which is not a 'relevant policy' for the purpose of paragraph 14 [of the NPPF]"—by which he clearly meant policy 9 of the core strategy. He also invited the inspector to find that the development would cause "significant and demonstrable harm 'on the ground' to the function of the Green Wedge", in two ways: first, because it would "result in the loss of an attractive open area of undeveloped land within the agreed urban framework of Groby defined by [Sacheverell] Way and Groby Road", and secondly, because it would "also bring Ratby and Groby closer together in a narrow and vulnerable part of the Green Wedge". Therefore, he submitted, the proposal "falls foul of the test in paragraph 14".

Submissions

39 Mr Cahill submitted that this was a critical part of Bloor's case before the inspector. If the inspector had accepted Bloor's evidence and submissions on the silence or absence of the development plan he would have had to apply the presumption in favour of granting planning permission, which could only be overcome if "any adverse impacts . . . would significantly and demonstrably outweigh the benefits, when assessed against the policies in the [NPPF] taken as a whole": paragraph 14 of the NPPF. This would require both the "adverse impacts" and the "benefits" to be clearly identified, appropriate weight given to each, and an explanation provided of how the balance between them had been struck. Unless that balance fell decisively against the proposal, planning permission should be granted. But in any event this was one of the "principal controversial issues" between the parties. So the inspector had to explain whether he accepted or rejected the proposition that the policy in paragraph 14 of the NPPF was engaged because the development plan was either "absent" or "silent", and, if he rejected that proposition, he had to explain why. He failed to do that. His decision is, therefore, legally flawed; either by a failure to take into account an important material consideration, or by a failure to understand and apply government policy in paragraph 14 of the NPPF, or by his failure to give any reasons—let alone adequate reasons—for rejecting this aspect of Bloor's case on appeal.

40 Mr Leader and, for the Secretary of State, Mr James Maurici QC submitted that the question of whether the core strategy was "absent" or "silent" on the location of the housing needed in Groby was not a principal controversial issue between Bloor and the council in the appeal, prominent as it has now become in these proceedings. The inspector did not have to deal with it in his decision letter. But his reliance on policy 8 and policy 9 of the core strategy in his analysis of the planning merits—as paras 5, 16, 19, 24 and 29 of his decision letter make plain—and his conclusion in para 15 that "the council has an up-to-date development plan in the form of the 2009 core strategy" show that he did not think the plan was either "absent" or "silent". And he was right. The core strategy is neither "absent" nor "silent" about the development of housing in Groby. The amount of land that will have to be allocated in the village is specified by policy 8, and policy 9 effectively directs new housing proposals away from the Green Wedge.

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The inspector saw that. The fact that the Site Allocations DPD is yet to be adopted does not leave the development plan "absent" or "silent" in the sense contemplated in paragraph 14 of the NPPF. This ground amounts to no more than a complaint that the inspector did not refer to paragraph 14 of the NPPF. He did not have to do so. He applied the relevant policy of the development plan and found the proposal to be in conflict with it.

41 Mr Leader also submitted that in view of the relevant provisions of the Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004/2204) and the Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012/767) it is impossible to regard a core strategy that does not allocate sites for a specific purpose as being "absent" or "silent" on that matter. Under regulation 6 of the 2004 Regulations a core strategy was not required to contain policies applying to sites. Under the 2012 Regulations a core strategy is a "local plan", which may or may not allocate sites for a particular type of development. So a core strategy without allocations—or relevant allocations—cannot be regarded as "absent" or "silent" because of that.

Discussion

42 This ground requires the court to consider the meaning of government policy in paragraph 14 of the NPPF, which explains how the "presumption in favour of sustainable development" is to be applied, both in plan-making and in decision-taking.

43 At the inquiry Bloor argued that this presumption, an indisputably powerful theme in national planning policy in the NPPF, should have a decisive role in this case, and for several reasons. One of those reasons, as Mr Cahill submitted in his closing speech, was that in this case the development plan was "absent" or "silent": see para 35 above. But the main reason, as I see it, was the alleged absence of a five-year supply of land for housing in the borough of Hinckley and Bosworth. That undoubtedly was a main issue, a matter of vigorous dispute between Bloor and the council. This is apparent in the evidence and submissions to which I have referred, which led the inspector to define the main issues in the way that he did: see para 3 above.

44 In the context of decision-taking paragraph 14 identifies three possible shortcomings in the development plan, any one of which would require the authority to grant planning permission unless it is clear in the light of the policies of the NPPF that the benefits of doing so would be "significantly and demonstrably" outweighed by "any adverse impacts", or there are specific policies in the NPPF indicating that "development should be restricted". The three possible shortcomings are the absence of the plan, its silence, and its relevant policies having become out-of-date.

45 These are three distinct concepts. A development plan will be "absent" if none has been adopted for the relevant area and the relevant period. If there is such a plan, it may be "silent" because it lacks policy relevant to the project under consideration. And if the plan does have relevant policies these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reason, so that they are now "out-of-date". Absence will be a matter of fact. Silence will be either a matter of fact or a matter of construction, or both. And the question of whether relevant

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policies are no longer up-to-date will be either a matter of fact or perhaps a matter of both fact and judgment.

46 All of this, one has to remember, sits within the statutory framework for the making of decisions on applications for planning permission, in which those decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Government policy in the NPPF does not, and could not, modify that statutory framework, but operates within it—as paragraph 12 of the NPPF acknowledges. The Government has taken the opportunity in the NPPF to confirm its commitment to a system of development control decision-making that is "genuinely plan-led": paragraph 17. But in any event, within the statutory framework, the status of policy in the NPPF, including the policy for decision-making in paragraph 14, is that of a material consideration outside the development plan. It is for the decision-maker to decide what weight should be given to the policy in paragraph 14 if it applies to the case in hand. Because it is government policy it is likely to command significant weight when it has to be taken into account. But the court will not intervene unless the weight given to it can be said to be unreasonable in the *Wednesbury* sense: see para 19(3) above.

47 This case is clearly not one in which the development plan was "absent". That is simply a matter of fact. The plan was in being. At the time of the inquiry into Bloor's appeal it was made up of three components, the East Midlands Regional Plan of March 2009, the core strategy, and the saved policies of the local plan: see para 31 above. A further component, the Site Allocations DPD, was still emerging. It was going through its statutory process towards adoption. The core strategy identified the need for 9,000 new homes to be provided in the borough between 2006 and 2026. In the Site Allocations DPD allocations would be made to fulfil that need. But the fact that that part of the development plan was yet to be adopted did not mean that the plan was absent in the sense of paragraph 14 of the NPPF. The plan was present, though not yet complete. Absence and incompleteness are not the same thing.

48 I come then to the question of whether in this case the plan could be said to be "silent". However broad this concept may be, I do not think it can possibly be invoked in this case.

49 Whether a plan is silent—as opposed to its being absent or its relevant policies out-of-date—is an issue that may fall to the court to decide. Where the meaning of planning policy is contentious it is, in the end, for the court to establish which interpretation is right. As Lord Reed JSC said in *Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] PTSR 983, para 17 a local planning authority must proceed on "a proper understanding of the development plan". This is a necessary corollary of the authority's duty in section 70(2) of the 1990 Act to have regard to the plan and its duty in section 38(6) of the 2004 Act to determine applications in accordance with the plan unless material considerations indicate otherwise. As Lord Reed JSC said, at para 17, the authority "cannot have regard to the provisions of the plan if it fails to understand them". If the authority fails to see that the plan is silent, or thinks it is silent when it is not, it will have gone wrong in law. It will have misconstrued the plan.

50 The answer to the question "Is the plan silent?" will sometimes be obvious, because the plan simply fails to provide any relevant policy at all.

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But often it may not be quite so clear-cut. The term "silent" in this context does not convey some universal and immutable meaning. The NPPF does not itself explain what the Government had in mind when it used that word. But silence in this context must surely mean an absence of relevant policy. I do not think a plan can be regarded as "silent" if it contains a body of policy relevant to the proposal being considered and sufficient to enable the development to be judged acceptable or unacceptable in principle.

51 A plan may or may not be "silent" if it does not allocate the particular site in question for a particular use, whether on its own or as part of a larger area, or if it does not contain policy designed to guide or limit or prevent development of one kind or another on that site or in that location. In *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983, para 18 Lord Reed JSC observed that the development plan is "a carefully crafted and considered statement of policy", whose purpose is to show how the local planning authority will approach its decisions on proposals for development unless there is a good reason not to do so. This is an essential principle of the plan-led system.

52 The provisions of the plan current at the time of the decision may represent one stage of plan-making, and they may later be amplified or refined in another. They may be strategic rather than specific to the site. But they may still provide an ample basis for decision-making on proposals submitted and determined before any addition to the plan has been made. The plan may not have as much to say of relevance to the proposed development as the developer or the local planning authority, or indeed the objectors, might wish. But whether it can properly be said to be silent is a matter for objective interpretation, not the subjective view of any of the parties involved. As Lord Reed JSC said in *Tesco Stores Ltd v Dundee City Council*, para 18: "policy statements should be interpreted objectively in accordance with the language used, read . . . in its proper context."

53 Of course, as Lord Reed JSC also remarked, at para 19, "development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another", and "many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment". It may be that a plan does not have a specific policy for a particular type of proposal that might be put forward on a particular site. The relevant provisions of the plan may be framed in general terms. Often this will be so. But in my view a plan containing general policies for development control that will enable the authority to say whether or not the project before it ought to be approved or rejected—subject of course to other material considerations indicating a different outcome—could hardly be said to be silent.

54 In this case the development plan was not silent on the minimum number of new homes that were going to have to be provided through the allocation of land in Groby, thus enabling it to take its share of the total burden of new housing the borough will have to provide. That minimum number was specified in policy 8 of the core strategy. It was 110. Bloor's proposal was for 91. But it was being promoted on an unallocated site, or, as Bloor would contend, on a site yet to formally be allocated in the Site Allocations DPD.

55 The plan was not silent on the approach the council would take to proposals for the development of housing in the Green Wedge between

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A Groby and Ratby. The core strategy does not leave such proposals in a policy limbo. It has a policy that makes it as clear as one could wish what an applicant for planning permission for such development can expect, unless he is able to show some good reason for a different decision. That policy is policy 9. Its meaning is plain. It tells one what kind of development will be "encouraged" in the Green Wedge, which is a use that will "provide
B appropriate recreational facilities within easy reach of local residents". It also indicates which land uses will be "acceptable" in the Green Wedge, and, by necessary inference, which will not. The "acceptable" uses are generally those that would preserve the openness of the land within the Green Wedge. They do not include housing.

56 To any developer seeking planning permission for housing development on a site in the Green Wedge the import of those two policies
C of the core strategy will be unmistakable. The fact that housing is not an acceptable type of development in the Green Wedge does not mean that such development can never be permitted. There may be considerations that warrant a decision to approve it even though it is contrary to policy 9. At this stage such a proposal might be seen as gaining some support from policy 8 because it would help the council to meet the identified need for at
D least 110 new homes to be provided in Groby in the course of the plan period, though only limited support because the site would not have the benefit of an allocation in the Site Allocations DPD.

57 In that situation, subject to the proposal's compliance with the other relevant policies of the plan, the council would have to judge whether or not a decision to grant planning permission for the scheme would be in accordance with the development plan. In determining the application it
E would have to have regard to all other material considerations, including the relevant parts of the NPPF and, if there was a shortfall in the available supply of land for housing, the provisions of the NPPF that govern the making of decisions when that is so. If the proposal was found to be in conflict with the development plan it might still be permitted if those other material considerations were strong enough to outweigh the statutory presumption in
F favour of the plan—"considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given it": see the speech of Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, 1459D–H. The important point, however, is that the council's decision in that hypothetical case would not have to be made in a development plan policy vacuum. There is no
G vacuum.

58 On that analysis it is impossible to conclude that the circumstances of this case were such as to trigger the policy in paragraph 14 of the NPPF for decision-taking in cases where the development plan is absent or silent. The fact that allocations of land to meet the need for housing development in Groby had not yet been put in place in the Site Allocations DPD did not render the plan absent or silent.

H **59** In my view the inspector understood this. He grasped the meaning and significance of the two policies of the core strategy relevant to the acceptability in principle of housing development on the appeal site. He did not misunderstand or misapply either of those policies. It is clear that he regarded them as providing an adequate basis on which to make his

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decision, in accordance with his duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act.

60 The inspector's reasoning is underpinned by the provisions of policy 8 and policy 9. He referred to policy 8 in para 5 of his decision letter as the starting point for his discussion of housing land supply. And he referred to policy 9 throughout his discussion of the likely effect of the development on the Green Wedge, and by name in paras 16, 17, 19 and 24 and then again in his "Conclusion" in para 29. When one reads his decision letter fairly as a whole there can be no doubt that he was able to base his decision on those two policies. He concluded that the proposal was in conflict with policy 9, and that the other considerations he had to take into account, including the timing of the proposal and the present supply of housing land, were not such as to justify his granting planning permission. He was well aware that the Site Allocations DPD, once it was adopted, would add to the existing provisions of the development plan, and that the appeal site might gain an allocation within it. He took this possibility into account but gave it "limited" weight: para 13 of his decision letter.

61 That was a typical exercise of planning judgment in a case of this kind. The point that matters here, however, is that it was an exercise of planning judgment shaped by the relevant provisions of the development plan, just as Parliament envisaged when it enacted section 38(6) of the 2004 Act. This was a case of the kind one would expect normally to see under the plan-led system, a case in which the plan was neither absent nor silent. The inspector did not, for that reason, have to resort to the approach required by paragraph 14 of the NPPF of granting planning permission unless either the harm "significantly and demonstrably" outweighed the benefits or specific policies of the NPPF suggested refusal.

62 But in fact the inspector did nothing less than he would have had to do if he had approached his decision on the basis that the plan was absent or silent—in spite of the existence of policy 8 and policy 9 of the core strategy. Even then he would not have been free to ignore those policies. He would have had to have regard to them, because section 70(2) of the 1990 Act and section 38(6) of the 2004 Act compelled it. He would have had to weigh the proposal's conflict with policy 9 against any advantages he could see in granting planning permission. He did that. For the reasons he gave he concluded that the harm he saw in the proposed development—its conflict with policy 9 and its prematurity to the Site Allocations DPD—was such that planning permission for it should not be granted. He did not put his conclusions in the language of paragraph 14 of the NPPF. He did not say that the "adverse impacts" of the development would "significantly and demonstrably outweigh the benefits". But that was the effect of the conclusion he stated crisply in para 29 of his decision letter.

63 Should the inspector have stated his conclusion on whether the plan was absent or silent, just as he expressed his view that the plan was up-to-date—in para 15 of his decision letter? I do not believe so. He could have added a sentence to para 29 of his letter saying he had been able to make his assessment of the planning merits of the proposed development in the light of extant development plan policy, which was not only up-to-date but also neither absent nor silent. But in my view that was wholly unnecessary. The only way one can read the decision letter is that the inspector did not have to contend with the absence or silence of the development plan, and

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A that he had rejected Bloor's argument to the contrary. He did not have to say more than he did. His reasons are not defective.

64 This ground of Bloor's application therefore fails.

Issue (2)—the five-year supply of housing land

The NPPF—housing need and the five-year supply of housing land

B **65** Paragraph 159 of the NPPF says that planning authorities should have "a clear understanding of housing needs in their area". They should "prepare a strategic housing market assessment to assess their full housing needs". The strategic housing market assessment "should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period", which "meets household and population projections, taking account of migration and demographic C change", "addresses the need for all types of housing", and "caters for housing demand and the scale of housing supply necessary to meet this demand."

66 In the part of the NPPF dealing with the delivery of sustainable development, in section 6—"Delivering a wide choice of high quality homes"—paragraph 47 says:

D

> "To boost significantly the supply of housing, local planning authorities should:
>
> "• use their evidence base to ensure that their local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical E to the delivery of the housing strategy over the plan period;
>
> "• identify and update annually a supply of specific deliverable [footnote 1] sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities F should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land . . .
>
> "• for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period G and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target . . ."

The footnote to the reference to "a supply of specific deliverable sites" in the second bullet point in that paragraph says:

> "To be considered deliverable, sites should be available now, offer a H suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within

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five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans." A

67 In the recent decision of the Court of Appeal in *Hunston Properties Ltd v Secretary of State for Communities and Local Government* [2013] JPL 599, a case in which the application of paragraph 47 of the NPPF had had to be applied in the context of housing development proposed in the Green Belt, Sir David Keene said, at para 6: B

> "There is no doubt . . . that in proceeding their local plans, local planning authorities are required to ensure that the 'full, objectively assessed needs' for housing are to be met, 'as far as is consistent with policies set out in this Framework'."

In that case the inspector had gone wrong by adopting "a figure for housing requirements below the full objectively assessed needs figure until such time as the local plan process came up with a constrained figure": para 26. This had led her to find that there was no shortfall in housing land supply in the district: para 27. If she had followed the correct approach, she would have found that there was such a shortfall because the supply fell below the objectively assessed five-year requirement": para 27. C

68 Paragraph 49 of the NPPF states: D

> "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites." E

69 The policy in paragraphs 47 and 49 of the NPPF, and its relevance to the application of the policy in paragraph 14, was considered by Males J in the *Tewkesbury* case [2013] PTSR D33; [2013] LGR 399: see para 25 above. He concluded:

> "20. Accordingly, both before and after the issue of the NPPF, the need to ensure a five-year supply of housing land was of significant importance. Before the NPPF the absence of such a supply would result in favourable consideration of planning applications, albeit taking account also of other matters such as the spatial vision for the area concerned. After the NPPF, if such a supply could not be demonstrated, relevant policies would be regarded as out-of-date, and therefore of little weight, and there would be a rebuttable presumption in favour of the grant of planning permission. All of this would have been well understood by local planning authorities. An authority which was not in a position to demonstrate a five-year supply of housing land would have recognised, or ought to have recognised, that on any appeal to the Secretary of State from a refusal of permission there would be at least a real risk that an appeal would succeed and permission would be granted. F G
>
> "21. That is not to say, however, that the absence of a five-year housing land supply would be conclusive in favour of the grant of planning permission. It may be that the NPPF, with its emphasis in paragraph 47 to the need 'to boost significantly the supply of housing', placed even more importance on this factor than PPS3 had done, but whether or not that H

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A is so, in both regimes the absence of such a supply was merely one consideration required to be taken into account, albeit an important one."

The core strategy inspector's report

70 In his report dated 27 November 2009 the inspector who had held the examination into the core strategy offered his conclusions on the topic of B "Housing Land Supply". In those conclusions he said:

"3.42 The [core strategy] sets out the broad framework for development, and the detail of specific sites will be provided by the Site Allocations DPD which is due for examination in 2010. I am satisfied that the council's LDS demonstrates that it has put in place a process which will meet the housing land supply requirements of PPS3.

C "3.43 The revised trajectory shows shortfalls in housing delivery against the annual apportionment of 450 per annum given in the EMRP in the years 2006–2008, 2009/10, and in 2012–2017. However, those shortfalls are made good in the years post 2017/18 when the major developments in the [sustainable urban extensions] come on-stream fully, and the trajectory shows a surplus of dwellings by the end of the plan D period.

"3.44 PPS3 requires that sufficient 'deliverable' sites are identified in the first five years from adoption. The revised trajectory shows a cumulative provision of [2,288] dwellings in the period 2010–2015, compared with the EMRP apportionment of [2,250] dwellings. Those sites are considered by the council to be 'deliverable' and 'developable' in the terms set out in paras 54–57 of PPS3. The submission draft therefore E makes sufficient provision for the first five years from adoption of the [core strategy], subject to detailed allocations made in the [Site Allocations DPD].

"3.45 . . . Data held by the council demonstrate that about 3% of extant planning permissions have expired before development takes place over the past three years. However, given the current uncertainties in the F development market I consider that figure could rise in the next few years, and I propose to discount the small site commitments by about 10% (i e to 80 dwellings per annum) to reflect that situation and to ensure that the [core strategy] is based on robust evidence . . . Consequently, the overall housing provision for the period 2010–2015 would reduce to [2,258] dwellings. That figure would still provide the five-year supply required by PPS3. Subsequent to 2014 it would be appropriate to apply a smaller G discount of about 5% to any small site commitments to reflect an anticipated upturn in the housing market. A consequent revision is necessary to the Small Site Commitments shown in table 1, which should be reduced to 400."

Bloor's case at the inquiry

H 71 In his proof of evidence Mr Bateman presented a table, table 1, in which he compared actual dwelling completions with forecast completions on the basis of the data in the annual monitoring reports for the borough in each year between 2006 and 2011 and the 2012 residential land availability monitoring statement. This, he said, showed that the council had "a persistent

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under delivery of housing", so that the 20% buffer referred to in paragraph 47 of the NPPF needed to be added to the requirement figure: para 7.9. A

72 Mr Bateman used the Sedgefield approach to the calculation of the housing land supply. He explained why, in para 7.11 of his proof of evidence:

> "The Sedgefield approach is utilised rather than the residual approach because it seeks to ensure housing is provided as quickly as possible and it therefore accords with the views of the Government as set out in the NPPF to boost significantly the supply of housing . . . It also accords with the view of the Government in the March 2011 ministerial statement which refers to a 'call for action on growth" and "a pressing need to ensure that the planning system does everything it can to help secure a swift return to economic growth'. The approach of utilising a residual approach to dealing with the shortfall to date would in effect be compounding past under delivery directly contrary to boosting housing supply." B C

73 Mr Bateman sought to strengthen that part of his evidence with four appeal decisions in which the Sedgefield method had been favoured by the Secretary of State or his inspector: a decision of the Secretary of State in April 2011, dismissing an appeal and refusing planning permission for a development of 300 dwellings on a site at Moreton-in-Marsh in Gloucestershire, in which the Secretary of State had agreed with his inspector that the residual method of assessment was inappropriate, and that—in Mr Bateman's words—"the shortfall in housing should be addressed promptly rather than to be allowed to run on for potentially 20 years"; an appeal decision of the Secretary of State, in June 2011, on proposed housing development on a site in Andover in Hampshire; a decision made by an inspector in August 2012—several months after the publication of the NPPF—allowing an appeal and approving a proposal for development including up to 70 dwellings at Honeybourne in Worcestershire, in which the inspector said that in his view it was "inconsistent with Planning for Growth and [paragraph 47 of the NPPF] to meet any housing shortfall by spreading it over the whole plan period", rejected the local planning authority's use of "the residual method", and adopted "the Sedgefield approach"; and the decision of the Secretary of State in October 2012 allowing an appeal and granting planning permission for development including up to 800 dwellings at Shottery in Warwickshire, in which he endorsed his inspector's conclusion that the policy of the NPPF to boost significantly the supply of housing "implies dealing expeditiously with a backlog" and that "[the] backlog should therefore be added to the five-year requirement": para 7.12. D E F G

74 Mr Bateman argued that the calculation of the future housing land requirement should be based on the latest information in the 2008 household projections and on the Chelmer model calculations: paras 7.13–7.55. He concluded, in para 7.55: H

> "Utilising the most up-to-date information available, the 2008 projections, and using the Chelmer model to forecast housing requirements . . . indicates that the minimum appropriate level of house building should be 9,460 dwellings 2006 to 2026 (not including unmet need). Taking account . . . of the shortfall in provision 2006 to 2012 of

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575 dwellings gives a need to provide 2012 to 2017 2,940 dwellings or 588 per annum. When a 5% is added in accordance with the NPPF, the figure is raised to 3,087 dwellings. A 20% buffer increases the figure to 3,528 dwellings."

75 To summarise the supply of housing land in the borough at April 2012 Mr Bateman presented a table: table 5. This showed the significance of discounting the delivery of housing on large sites with planning permission by 10% and also a 10% discount on the Barwell sites, which was to reduce the council's total supply figure of 2,535 to the figure contended for by Mr Bateman, which was 2,337.

76 Mr Bateman said the 10% discount on large sites was made because "it is unlikely all will be built in the five-year period for a variety of reasons": para 7.61 of his proof of evidence. The council did not accept the 10% discount on large sites, though it did discount the delivery on small sites by 10%: para 7.61. Mr Bateman explained some of the reasons why delivery on large sites does not always match the level of the number of dwellings for which planning permission was granted, in para 7.62 of his proof:

> "The NPPF requires sites to be deliverable and achievable. Sites with permission can easily move from one period into another due to market and other constraints (such as ownership, difficulty with access, problems with land conditions etc). Sites may have gained permission purely as a valuation exercise with no intention of being built, particularly small sites. In addition, in an adverse market there can be redesigns on sites to improve their viability. This is particularly the case at present, where there is, for example, little market for apartments and redesigns are taking place to provide different forms of housing in response to the market. Such redesigns with larger housing types with gardens will reduce density. In particular the figure for permissions includes a number of dwellings on large sites and it is considered to be quite ambitious for these to be provided in the five-year period, even at a level of 50 dwellings per annum. The appellants consider therefore it is reasonable to allow for a 10% discount on sites with permission."

77 Mr Bateman said that the 10% discount was supported by *Housing Land Availability*, a paper published by the Department of the Environment in 1995, and had been accepted in the appeal decisions on the proposals at Moreton-in-Marsh and Honeybourne, and in the decision on proposed development at Moat House Farm at Marston Green in Solihull: para 7.62.

78 A further point made by Mr Bateman in support of the 10% discount was that "often the figure to be provided on a site at outline stage can be significantly different to the reserved matters figure". This was so, for example, in the development of a site on Leicester Road, Hinckley, "where permission was granted on appeal for 232 dwellings but . . . the reserved matters approval is for only 184 dwellings": para 7.63.

79 Mr Bateman emphasised the difference between the 10% discount figure and the buffer of 5% or 20%, in para 7.64 of his proof of evidence:

> "It is also important to be clear that the 10% figure here is not the same as the buffer of 5 or 20% that is brought forward from the rest of the plan period. The 10% figure relates to the inevitable difficulties in bringing all sites identified through in the time period. Sites will lapse, and viability

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issues will change. The buffer figure relates to the problems in under delivery in the past. In this respect it is relevant to note that in respect of using even the lowest assessment of the overall housing requirement the Authority already has a shortfall in provision from 2006 of some 437 dwellings."

80 For the Barwell sustainable urban extension Mr Bateman had taken a similar approach. Because there was a "potential for there to be problems with . . . delivery over the period and therefore a 10% discount has been applied": para 7.65.

81 Mr Bateman's conclusion of the question of whether or not there was a five-year supply of housing land was that, on his figures, there was a supply of between 2·81 and 4·35 years, which would reduce to between 2·67 and 4·14 years if a 5% buffer was included, and to between 2·49 and 3·62 years with a 20% buffer: para 7.71. On the council's figures, there was a supply of between 3·05 and 4·72 years, which would reduce to between 2·9 years and 4·49 years with a 5% buffer, and to between 2·7 and 3·39 years with a 20% buffer: para 7.72.

82 In his closing submissions Mr Cahill said that the question of whether or not there was a five-year supply of housing land turned on three contentious matters, namely "Discounts on large sites", "Sedgefield or Liverpool", and "5% or 20% buffer": para 17. Bloor needed to succeed on only one of these three matters for it to be shown that the council had less than a five-year supply: para 17.

83 A 10% discount on large sites had been adopted in the three appeal decisions to which Mr Bateman had referred—the decisions on the proposals at Moreton-in-Marsh, Honeybourne and Marston Green: para 18. The council's planning witness, Ms Whettingsteel, had conceded that there was "a compelling logic" in the 10% deduction: para 19. Mr Cahill reminded the inspector that Ms Whettingsteel had not been able to point to any appeal decision made after the publication of the NPPF in which the Liverpool method had been preferred to the Sedgefield: para 20. In cross-examination she had acknowledged "the logic of the Sedgefield approach": para 21. As for the 5% or 20% buffer, Ms Whettingsteel had agreed in cross-examination that the annual target of 450 completions had been met only once in the last six years; that the average annual figure of completions over those six years was 377—a 17% deficit, which she had conceded was "a substantial shortfall"; and that of the 2,700 dwellings required in that six-year period, only 2,263 had been provided—a deficit of 437, which was, she had accepted, "a substantial deficit": para 22. In concluding this part of his speech, Mr Cahill submitted that the council did not have a five-year supply of housing land: para 24. He said the information Mr Bateman had given about the 2008 household projections and the Chelmer model calculations had been provided "in accordance with the [NPPF's] preference [in paragraph 159] for the most up-to-date information": para 24. However, he said, "[for] the purpose of the [five-year] calculation [Bloor] is content to rely on the figures based on the [regional strategy] in the first of the three columns in the relevant [tables]": para 24. He submitted that under the policy in paragraphs 47 and 49 of the NPPF Bloor's proposal "must be tested with the mechanism identified in [paragraph] 14", and that this should result in planning permission being granted: para 25.

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The council's case at the inquiry

84 At the inquiry the council contended that it had a five-year supply of housing land—5·02 years—and that its "housing supply policies are therefore up-to-date": para 5.11 of Ms Whettingsteel's proof of evidence. It was able to "demonstrate that there [was] not a persistent history of under-delivery", and "on the contrary, [its] supply of land for housing is adequate and is steadily improving": para 5.11.

85 Ms Whettingsteel acknowledged that there were two methods that could be used to determine whether the council had a five-year supply of housing land: "[the] Liverpool (residual) method, which spreads the shortfall from previous [years] under provision over the remainder of the plan period and the Sedgefield method which places the shortfall into the next five years supply": para 7.55. She compared these two methods. The Sedgefield method, she said, "is designed to cure housing shortfall immediately, in circumstances where [local planning authorities] have exhibited a failure to respond positively to the NPPF's intent to deliver economic growth with the requisite sense of urgency": para 7.56. The Liverpool method, by contrast, "takes a more measured approach allocating any shortfall over the life of the plan" and "is appropriate where there is not a severe shortfall and the council's [policy] is to inject a significant supply of housing land within the plan period"; for example, "through the designation of a sustainable urban extension": para 7.57. The council considered the Liverpool method "more appropriate", because it could demonstrate a five-year supply of housing "(5·02 years)", did not have "a persistent history of under-delivery" and "the current supply of land for housing is adequate and is steadily improving": para 7.58. Ms Whettingsteel said the inclusion of the sustainable urban extensions in the five-year housing supply was justified because they had been included in the core strategy: para 7.59. Area action plans for those two sites were being prepared: para 7.59.

86 Ms Whettingsteel used the Liverpool method in her calculation of the council's housing land supply. In her table R1—"Residual Method with no buffer"—she showed a housing land supply of 5·27 years. She acknowledged that the NPPF requires local planning authorities to "boost significantly" the supply of housing "and recommends a buffer of 5% against their housing requirements": para 7.62. She therefore produced another table, table R2—"Residual Method with 5% buffer ([the] Council's preferred method as at April 2002)"—which showed a supply of 5·02 years. She said it was only when a local planning authority had "a persistent record of under-delivery of housing that an increase of 20% is required": para 7.63. She pointed out that in the 11 years since 2011 the council had met the relevant annual housing delivery target four times, and that in the last three years since the adoption of the core strategy "the annual target has not been met due to the recent housing market downturn, rather than a lack of a suitable strategy for housing delivery": para 7.63. Nevertheless, "[for] completeness", she had calculated the housing land supply using a 20% buffer. She presented this alternative calculation in her table R3—"Residual Method with 20% buffer". It showed a supply of 4·39 years. Even if this was the appropriate calculation there would not be "a short supply sufficient to outweigh the need to protect the open and undeveloped character of the [Green Wedge] between Ratby and Groby": para 7.69. To provide "a robust assessment" she had calculated

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the housing land supply using the Sedgefield method, both with and without buffers of 5% and 20%: paras 7.70, 7.71 and 7.72. With no buffer the supply would then be 4·72 years (table S1—"Sedgefield Method with no buffer"), or 4·49 years (table S2—"Sedgefield Method with 5% buffer"), or 3·94 years (table S3—"Sedgefield Method with 20% buffer"). Ms Whettingsteel ended this part of her proof of evidence with this observation, in para 7.72:

> "Whichever method is accepted as being correct, the council's view is that any shortfall in the supply of housing is, in the case of the appeal site, in any event outweighed by the development plan policies, which militate against its development."

87 In his closing speech Mr Leader referred to the three main strands in Bloor's argument that the housing land supply was less than five years. Bloor had tried to prove this, he said, by arguing that, even if housing need was defined by the regional spatial strategy and the core strategy, the supply was less than five years if :

> "(i) a 10% discount is applied to the stock of planning permissions; and (or), (ii) . . . the existing shortfall in the number of completions is required to be made up over the next five years—the Liverpool [versus] Sedgefield debate; (iii) a 20% rather than a 5% buffer is applied."

Mr Leader submitted that Bloor's approach to the calculation of the supply of housing land was "wrong".

88 In his submissions on the 10% deduction for larger sites contended for by Bloor Mr Leader referred to the appeal decisions on the proposals at Moreton-in-Marsh, Honeybourne and Marston Green on which Mr Bateman had relied in his evidence. He submitted that "[the] assistance . . . to be drawn from appeal decisions turns on the similarity of their context compared with the appeal proposal", that the "circumstances of the decisions referred to by Mr Bateman bear no similarity to those in Groby". In each of those cases the regional spatial strategy had been subject to a formal review. So the inspectors "felt compelled to adopt the housing allocations set out in each draft [regional spatial strategy] and test each party's assessment of need in relation to those in each review". In each case a live issue was the extent to which the stock of planning permissions was likely to be deliverable, and each inspector had to consider whether the stock of planning permissions be discounted by 10%. The situation here was different. In the borough of Hinckley and Bosworth the regional spatial strategy and the core strategy were up-to-date. So there was "no need to reassess housing need". That was set out in the core strategy. Nor was there any need to estimate "the attrition of the stock of planning permissions by applying a rule of thumb". Mr Leader then said:

> "Instead, the council discusses the number of dwellings that each consent will deliver. That having been done in the [annual monitoring review] that forms the basis of the parties' assessment of the five-year [housing land supply. There] is no need to guess what the discount ought to be; it might reasonably be assumed that each developer would have a good idea about the number of homes they will deliver. In the circumstances, the application of a 10% discount would be to apply a double discount. That would plainly be inappropriate."

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A 89 On the question "Liverpool or Sedgefield?" Mr Leader made five main points. First, he said that the NPPF does not specify a particular method for "the treatment of any existing shortfall in the delivery of new homes". The Andover appeal decision indicated that the approach was "a matter of judgment, which will turn on the circumstances of each case". Secondly, in the circumstances of this case it was "reasonable to make up the shortfall over a longer period". The core strategy inspector had "anticipated
B that there would be a shortfall in housing delivery in 2006–2008, 2009/2010 and 2012–2017", because of the likely delay in bringing forward the two sustainable urban extensions, but had "accepted that this shortfall would be made good after 2017/2018 and that a surplus would be delivered by the end of the plan period". He had therefore found the core strategy's proposals for housing "justified and effective". Bloor had not disputed the ability of the
C sustainable urban extensions to "make good the planned shortfall in delivery". Thirdly, in the last two years house builders had not been able to match the recent increase in supply with completions. This "may well be a result of the recession", as the core strategy inspector had foreseen. Fourthly, "[in] the particular circumstances of Hinckley and Bosworth there can . . . be a high degree of confidence that sufficient land will come forward for development in the near future". So the "issue is more one of whether
D house builders can respond". Fifthly, therefore, there was "no merit in departing from the planned approach set out in the up-to-date [core strategy]", and "[in] this case the Liverpool approach is thus a reasonable methodology for dealing with the shortfall in housing land supply".

90 Mr Leader submitted that a 20% buffer was "only required where there is a record of persistent under-delivery", a concept not defined in the
E NPPF. He referred to the appeal decisions produced by Mr Bateman, which, he said, "illuminate some helpful principles". He mentioned the appeal decision on the proposal at Shottery, in which, he said, "the inspector found that a moratorium on the grant of planning permission because of a period of over-supply meant that a "significant shortfall against the council target between 2008 and 2012 did not warrant a 20% buffer". In this case too the shortfall in housing land supply was "planned", and it should be treated in
F the same way as in the Shottery case. A planned shortfall was not the only reason for applying a 5% buffer. Mr Leader referred to other appeals, at Torbay and Stratford-upon-Avon, in which a buffer of 5% had been accepted because "under-delivery was ascribed to the current economic crisis". In Hinckley and Bosworth "under-delivery" was "probably attributable to the economic downturn". Bloor had not produced any evidence to the
G contrary. In this case, therefore, it was "appropriate to attach a 5% buffer". If the market could not respond there would be "little purpose in bringing forward land from later in the plan period; it plainly cannot be developed now but it may be [that] conditions will improve in later years when the balance of 15% may be utilised".

Submissions

H 91 Mr Cahill submitted that paragraph 49 of the NPPF is clear. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. A failure to demonstrate this means that the presumption in favour of sustainable development set out in paragraph 14 of

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the NPPF is triggered. As the Court of Appeal's decision in the *Hunston Properties Ltd* case [2014] JPL 599 shows, an authority must identify what paragraph 47 of the NPPF calls the "full, objectively assessed housing needs" for its area. In this case the council's claimed supply of housing land would fall below five years if Bloor had made good any one of the several arguments on which it relied. The inspector had to understand each of those arguments and deal with them all. But he did not. He failed to see that the council did not have a five-year supply of deliverable housing sites, or, at least, that there could be no confidence that it did, and that the presumption in favour of planning permission in paragraph 14 of the NPPF had to be applied.

92 The inspector called the Sedgefield and Liverpool methods of assessment "predictive models" in para 7 of his letter. That is not what they are. They determine how one should deal with past shortfalls in housing supply. The inspector's reference to "predictive models" shows that he failed to understand Mr Bateman's evidence on a different aspect of the five-year supply calculation, namely the use of the 2008 household projections and the Chelmer model calculations, both of which are truly concerned with "predictive" assessment. The use of the Liverpool method in this case found no support in the core strategy inspector's report. The core strategy inspector had been assured by the council that the Site Allocations DPD making site allocations would be examined by 2010: para 3.42 of his report. He had clearly expected a five-year supply to be maintained throughout the core strategy period by allocations being made in the Site Allocations DPD. In Bloor's appeal the inspector was told that there were no decisions since the publication of the NPPF in which the Liverpool method had been used. He was shown several decision letters in which the Sedgefield method had been preferred: see para 73 above. His choice of the Liverpool method was inconsistent with those decisions. If he was not going to follow them he had to explain why.

93 The inspector failed to address the argument put forward by Mr Bateman, in paras 7.13–7.55 of his proof of evidence, and supported by government policy in paragraphs 50 and 159 of the NPPF, that the figures for housing land provision in the core strategy should be updated in the light of the 2008 household projections and by the use of the Chelmer model calculations. This exercise showed that the housing land supply fell well below the required five-year supply: columns 2 and 3 of table 5 in Mr Bateman's proof of evidence.

94 The inspector said, in para 8 of his letter, that Bloor had suggested "that the 5% buffer is insufficient and that a 10% or 20% buffer would be more appropriate". The inspector saw "some force" in this suggestion, acknowledging that "the council can only show a supply marginally in excess of five years". But he seems to have rejected the "10% or 20% buffer" in favour of the Liverpool method. Bloor did not argue for a buffer of between 10% and 20%. A 10% buffer has nothing to do with the Government's policy in paragraph 47 of the NPPF. Bloor was arguing for a 20% buffer, which is supported by paragraph 47 "[where] there has been a record of persistent under delivery of housing".

95 Bloor was also arguing for a 10% discount to be applied to the identified supply of housing from larger sites to reflect the fact that, for various reasons, such sites do not yield housing at the predicted rate.

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A The inspector's approach was muddled. What is clear, however, is that he confused the buffer and the discount, despite Mr Bateman explaining the distinction between them (in para 7.64 of his proof of evidence). He took no account of the 10% discount. Had he done so he could not have concluded that there was a five-year supply of housing land.

96 Mr Leader and Mr Maurici submitted that Mr Cahill's argument here is an attempt to repeat Bloor's case on housing land supply in the B appeal, in the hope of a different outcome. The various contentions made by Mr Bateman in his evidence on the supply of housing land, on which Mr Cahill now relied in his submissions to the court, were all clearly rejected by the inspector—either explicitly or implicitly. But it should be remembered that the disputes at inquiry—about the appropriate method for assessment, whether a buffer ought to be added to the requisite supply and, if C so, how large a buffer, and the need for a discount to be applied to the number of new homes in prospect on larger sites—were not principal controversial issues in their own right. They were subsidiary to the first of the two main issues identified by the inspector, the adequacy of the supply of housing in the borough, on which he reached a clear conclusion (in para 11 of his letter). Mr Cahill's various criticisms of the inspector's analysis amount to no more than a disagreement with that conclusion.

D **97** The inspector identified the main dispute between the parties as being between the two methods of assessment: para 7 of his letter. He gave clear reasons for preferring the Liverpool method, which he described as a "recognised way of calculating housing supply" (para 9) and, in this case, "a reasonable basis for assessing future supply" (para 11): the core strategy inspector's conclusion that the initial shortfall would eventually be overcome E when the sustainable urban extensions at Shilton and Barwell were developed, the progress that had been made with those projects, the council's willingness to boost the supply of housing and its intention to allocate land in Groby: para 11. The inspector had obviously accepted the evidence given by Ms Whettingsteel and rejected Mr Bateman's. It was open to him to do that. His description of the alternative methods as "predictive models" in para 7 of his letter was apt. It does not betray any misunderstanding of what F those methods are and what they are for. They are predictive. Their purpose is to assess today how much land will be available for house building over the next five years. The criticism of what the inspector said about the core strategy inspector's conclusions is wrong. As is clear from what he said in paras 3.42 and 3.44 of his report, the core strategy inspector did expect that there would be shortfalls in housing land supply in the early years of the core G strategy period, but he also expected these shortfalls to be overcome: see para 70 above. The inspector acknowledged that the preparation of the Site Allocations DPD had been delayed, and took this into account, in para 10 of his letter. He referred to the appeal decisions in which the Sedgefield approach has been adopted: para 8. He did not have to say more than he did to explain why he thought it right, in this case, to use the Liverpool method. The cases relied on by Bloor relied on were obviously distinguishable. They H related to different local planning authorities, operating different policies on different sites in different circumstances.

98 Bloor did not in the end rely on the 2008 population projections and the Chelmer model calculations in arguing that the council lacked a five-year supply of housing land. Mr Leader said that Ms Whettingsteel had not been

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cross-examined on the 2008 household projections or on the Chelmer model calculations and Mr Bateman confirmed when he was cross-examined that he was content to rely on the level of housing need identified in the regional strategy, which the council had used in the preparation of the core strategy. This explains why Mr Cahill said what he did in para 24 of his closing submissions: see para 83 above.

99 Although the inspector referred to "a 10% or 20% buffer" in para 8 of his letter, rather than a buffer of 5% or 20%, this does not matter. What is clear is that he found the council was able to show more than a five-year supply of housing land—5·02 years—if a 5% buffer was applied: para 7. He recognised that this was only "marginally in excess of five years", and he took note of Bloor's argument that a 5% buffer was therefore insufficient: para 8. But he was not persuaded by it.

100 One cannot infer from what the inspector said in paras 7 and 8 of his letter that he must have confused the 10% discount with the 5% of 20% buffer, or that he must have ignored what had been said on either side about the 10% discount. In the submissions made for the council in closing he had a sound basis on which to conclude that no discount was needed: see para 88 above. If he had thought it necessary to apply a discount to the assumed delivery of housing on larger sites, as well as adding what he regarded as a sufficient buffer, he would have said so.

Discussion

101 Mr Cahill's argument on this issue draws the court towards areas of planning judgment that were squarely within the remit of the inspector. Only in one respect do I think there is force in his submissions. Otherwise, the argument is mostly a rehearsal of Bloor's case on the supply of housing land in its appeal, a case that was fully ventilated before the inspector and which he rejected.

102 There are four main areas of complaint in this ground: first, the inspector's choice of the Liverpool method, rather than the Sedgefield, for calculating the supply of housing land, despite the appeal decisions presented in evidence at the inquiry, in which the Sedgefield method had been preferred; secondly, the inspector's alleged failure to deal with evidence and submissions inviting him to base his consideration of the need for housing land on the information in the 2008 household projections and the Chelmer model calculations; thirdly, his use of a 5% rather than a 20% buffer, which it is said was unreasonable in the circumstances of this case; and fourthly, his alleged failure to include in his assessment a discount of 10% for the delivery of housing on larger sites.

103 Mr Maurici and Mr Leader said that all of these four matters were secondary issues, lying behind the primary issue, which was whether the council could show a five-year supply of housing land. That is plainly right. But I do not accept, nor indeed did Mr Maurici and Mr Leader submit, that the inspector could confine the explanation he gave for his conclusions on housing land supply to a broadly stated conclusion that there was or was not a supply of that level.

104 I also acknowledge that, as the inspector himself said, "[the] calculation of housing land supply is not an exact science": para 7 of his decision letter. Ascertaining how much land is truly available for housing development is not simply an arithmetical process. It requires assumptions

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to be made and judgment to be exercised. As Harrison J said in *R (Spelthorne Borough Council) v Secretary of State for the Environment, Transport and the Regions* (2000) 82 P & CR 10, para 39: "Predictions for the future necessarily involve assumptions which are made as the result of judgment and experience." And as Hickinbottom J said in *Stratford-on-Avon District Council v Secretary of State for Communities and Local Government* [2014] JPL 104, para 26, the calculation of housing need "is not the product of a mathematical exercise alone; it involves a series of planning judgments weighing a complex of material factors on the basis of all available evidence, including (where available) projections from different models".

105 Because the business of calculating the supply of housing land involves assumptions and judgment there will sometimes not be a single right answer to the question "Can the local planning authority demonstrate a five-year supply?" Often it will be perfectly clear what the answer is, even if there is a margin of dispute between applicant and authority. But since this question has considerable significance for the application of government policy in the NPPF, a robust calculation is essential. And in cases such as this, where the local planning authority's ability to show a five-year supply depends on several variables, any one of which could make a decisive difference to the outcome if an assumption or judgment contrary to the authority's were accepted, the need for clarity and precision will be vital.

106 With those comments in mind I come to the specific criticisms made by Mr Cahill of the inspector's handling of this issue.

107 I do not see any force in Mr Cahill's submissions about the inspector's choice of the Liverpool method of assessment in preference to the Sedgefield. Both methods were well established as means of assessing the supply of housing land. The inspector knew that. He had evidence from either side urging him to accept one method or the other, for reasons that were fully explained, the council contending for the Liverpool method, Bloor for the Sedgefield. I have referred to relevant passages in the evidence and submissions at the inquiry, which show how the argument was put on either side: see paras 72, 73, 82 and 83 above.

108 Neither method is prescribed, or said to be preferable to the other, in government policy in the NPPF. In my view the inspector was free to come to his own judgment on this question. In paras 7 and 8 of his decision letter he referred to the essential characteristics of each method. In para 7 he said the Liverpool method spreads any shortfall in supply in a given year over the remainder of the plan period, and is an appropriate method to adopt where there is not a severe shortage in supply. In para 8 he described the Sedgefield approach as one that seeks to meet any shortfall earlier in the plan period. And he acknowledged Bloor's assertion that this approach accords with the imperative of significantly boosting the supply of housing, stated in paragraph 47 of the NPPF.

109 It seems clear therefore that the inspector understood the essential differences between the two approaches and was able to reach his own view on the method that was more appropriate in the circumstances of this case.

110 Having referred in paras 7 and 8 of his letter to the characteristics of the two methods, the inspector went on to say, in para 9, that "the Liverpool model is a recognised way of calculating housing supply". That observation, in itself, is not in dispute in these proceedings. The inspector

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based his choice of the Liverpool method on his consideration of the relevant facts, including the pattern and pace of housing provision planned for the borough in the core strategy. That was the context here. The inspector plainly took the view that, in the circumstances of this case at the time of his decision, the Liverpool method was the better way to establish what the level of supply really was. A

111 The inspector gave significant weight to the core strategy inspector's relevant conclusions, and, in particular, to his expectation that shortfalls in housing land supply in the early years of the core strategy period would later be overcome when the sustainable urban extensions were developed. I do not accept that this was a misreading of the core strategy inspector's conclusions in paras 3.42–3.45 of his report: see para 70 above. It was in effect, what he had said. But the inspector did not merely recite his colleague's conclusion. He noted the progress that had been made with the sustainable urban extensions at Shilton and Barwell (in para 9 of his letter). And he expressly dealt with Bloor's contention that the core strategy inspector's conclusions were based on a promise that had now proved to be false—that sites would swiftly be brought forward by way of allocations in the Site Allocations DPD, which had now been delayed: para 10 of the decision letter. He did not reject that contention out of hand, but noted that the inspector who had dismissed Bloor's appeal in 2011 was himself aware of the delay that had occurred in the preparation of the Site Allocations DPD. B C D

112 The inspector explained why he shared the view of the core strategy inspector about early shortfalls in supply being corrected by large-scale housing development later in the core strategy period. He plainly had in mind the policy in paragraph 47 of the NPPF, which is cast in terms of a need "[to] boost significantly the supply of housing" and says that authorities should "use their evidence base to ensure that their local plan meets the full, objectively assessed needs" for housing in the relevant area, and identify a supply of sites "sufficient for provide five years' worth of housing against their housing requirements". He referred to that policy explicitly in para 8, and came back to it in para 11, where he referred to the council not being "averse to boosting the supply of housing". E F

113 Having set out the considerations weighing for and against either approach, the inspector went on, in para 11 of his letter, to conclude that the Liverpool method provided "a reasonable basis for assessing future supply". It was, in his opinion, a method congruent with the approach in the core strategy, and consistent with the aim of fulfilling the housing requirements identified there. That was a matter of judgment for him. G

114 I cannot say that this was an unreasonable judgment for the inspector to make. Other inspectors might have taken a different view in the same circumstances. There might have been good reasons for doing so. But that is not enough to sustain a challenge before the court. It lies within the territory of planning judgment, and the court will not go there.

115 The inspector's reasons on this matter are succinct, but that in itself is no criticism. Indeed, it is difficult to see what more he might have been expected to say. H

116 I should add that I see nothing beyond semantics in the criticism of the inspector's description of the two methods of assessment as "predictive models" (in para 7 of his letter). Whether that is an infelicitous description

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of them is neither here nor there. The inspector plainly knew what they were and the purpose for which they were used. If he had described them as "assessment methods" rather than "predictive models" that might have been more accurate. But the fact that he described them in the way he did does not go to the substance of his conclusions, nor does it leave his reasons obscure.

117 Mr Cahill does not succeed in showing that the inspector's choice of the Liverpool method was bad as a matter of law by pointing to other appeal decisions, which were before the inspector, showing that elsewhere in England, in the particular circumstances of those particular cases, the Secretary of State or his inspector had preferred the Sedgefield approach. The inspector did not ignore those decisions. He referred to them in para 8 of his letter. In each of those decisions the inspector or the Secretary of State judged what the appropriate method of assessment would be. As Mr Maurici submitted, however, in none of them does one see the inspector or the Secretary of State exclude the Liverpool method as a potentially appropriate means of assessment, which could sensibly be adopted in another case if it was appropriate to do so. None of the decisions relied on by Mr Bateman dictated what the approach in another case should be. Each of those appeals, unsurprisingly, turned on its own particular facts as they were at the time of decision. Mr Maurici pointed out, for example, that in the appeal at Shottery, where the Secretary of State found, as the parties agreed, that there was a significant shortage in the supply of housing land, the inspector had noted, in para 497 of her report, that there was no firm policy guidance on the correct approach to the assessment of housing land supply. She noted that the emphasis of the NPPF was on a significant boost in the supply of housing. She said that any backlog should be dealt with quickly. And she took the view that in the case before her there was no strong local reason for doing otherwise.

118 I do not accept that the jurisprudence on consistency in decision-making suggests that in this case the inspector ought to have explained why he had differed in his approach from the inspectors and the Secretary of State in those other cases. This was not an instance of like cases having to be decided alike unless there was some explicit and cogent reason for deciding them differently. This was not, in truth, a case of an inspector departing from a previous decision, and having to explain why he was doing so. It was not a case of the facts and circumstances being indistinguishable from those in other appeals concerning other proposals on other sites where other facts and circumstances applied. If one takes the "practical test" referred to by Mann LJ in the *North Wiltshire District Council* case 65 P & CR 137 (see para 19(7) above), which poses for a decision-maker the question "[Am] I necessarily agreeing or disagreeing with some critical aspect in the previous case?", the response the inspector would have been entitled to give would have been that he was not. What he was doing was taking his own view in the circumstances of the case before him of how the supply of housing land ought to be assessed. This is the kind of issue described by Mann LJ as being an area for "possible agreement or disagreement", analogous, in my view, to one of the examples he gave, namely the "assessment of need". In any event, I do not accept that the inspector was under the burden of explaining why he was not persuaded that in this case he should prefer, on the evidence and submissions he heard in the appeal, the same approach to assessment as had

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commended itself to the inspectors and the Secretary of State in those other cases.

119 The next of Mr Cahill's points concerns the inspector's alleged failure to deal with the evidence on the 2008 household projections and the Chelmer model calculations. In my view this is not a good point. The 2008 household projections and the Chelmer model calculations provided in Mr Bateman's evidence were, according to Mr Cahill's submissions in closing at the inquiry, provided so as to satisfy the "preference [in the NPPF] for the most up-to-date information" (see para 83 above). But Mr Cahill went on to make it clear that for the purpose of the calculation of housing land supply Bloor was content to rely on the figures in the column of the relevant tables in Mr Bateman's evidence—table 4 ("Housing requirements using the Sedgefield approach") and table 5 ("Five-year supply figures based on the Sedgefield approach"). Those figures were based on the total requirement of 9,000 new homes for the period 2006 to 2026 in the core strategy, a requirement derived from the regional strategy, rather than the 2008 household projections and the Chelmer model calculations.

120 In view of that submission the inspector did not need to reach a conclusion on the 2008 household projections and the Chelmer model calculations. He could confine his consideration of the rival arguments on housing land supply to the figures on which Bloor was content to rely. He did that. In doing so he did not commit any error of law. It was not incumbent on him to go further than he did. Bloor may now have had second thoughts about the value of the 2008 household projections and the Chelmer model calculations. In its appeal, however, Bloor did not base its argument on the supply of housing land upon that material. And I do not think the inspector's failure to deal with it is a proper complaint to raise in these proceedings.

121 I turn to the inspector's consideration of the appropriate buffer. Again, I cannot accept Mr Cahill's submissions. The relevant passage in the NPPF is in paragraph 47, which advocates the use of either a buffer of 5% "to ensure choice and competition in the market for land" or a buffer of 20%, if there has been "a record of persistent under delivery of housing" in the local planning authority's area. The purpose of adding a 20% buffer in those circumstances is not only to ensure choice and competition in the land market but also "to provide a realistic prospect of achieving the planned supply". The NPPF does not go further than that in what it says about the choice of the appropriate buffer. It does not preclude the use of a buffer of less than 5% or more than 20% or somewhere between those two levels. It leaves that to the discretion of the decision-maker.

122 Adding a buffer of 20% or more will make a substantial difference to the required supply of housing land. A 5% buffer will make a difference, though much more modest. The question for the decision-maker in choosing the appropriate buffer, if there is dispute about that, will be the size of the buffer needed to ensure that the planned supply of housing land will be achieved. The focus will be on the concept of "persistent under delivery of housing". The NPPF does not elaborate on that concept. This too is left for the decision-maker to judge. The word "persistent" seems to imply a failure to deliver the required amount of housing that has continued or occurred for a long time, though not necessarily through an authority's deliberate default. Whether there has been a persistent under-delivery of housing will no doubt

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be contentious in many appeals by house builders and landowners against the refusal of planning permission by authorities naturally keen to defend their record in planning for housing development. Resolving that issue will be a matter for the planning judgment of the inspector who hears the appeal.

123 In this case the inspector found that the council could show a supply of housing land of more than five years, though only slightly more, if a 5% buffer was applied: paras 7 and 8 of his decision letter. He acknowledged that Bloor had argued that a 5% buffer was not enough, and, as he put it, that "a 10% or 20% buffer would be more appropriate". He saw "some force" in that argument because, as he accepted, the council could "only show a supply marginally in excess of five years": para 8. He evidently did not see the need for a buffer of more than 5%, because he accepted that the council's use of the Liverpool method of assessment was reasonable and that, on that basis, there would still be more than a five-year supply of housing land if a 5% buffer was applied. This is clear from what he said on this matter in paras 7, 8 and 9 of his decision letter. Leaving aside for the moment his reference to "a 10% or 20% buffer" in para 8, I think this was a judgment he could properly make. It is in no way vulnerable in law. And the reasons given for it, subject to what I shall say about the inspector having introduced the idea of a 10% buffer, do not fall short of being both adequate and intelligible.

124 The point that troubles me, however, is the inspector's evident failure to deal with Bloor's evidence and submissions, and the council's response to them, on the need to make a 10% discount from the notional delivery of housing on larger sites.

125 In their closing speeches at the inquiry both Mr Cahill and Mr Leader made submissions on this as a point meriting consideration in its own right: see paras 82, 83, 87 and 88 above. It was, in truth, one of the main controversial aspects of the housing land supply issue. It was not merely a subordinate point. As both sides recognised, it was a matter of some significance in the calculation of the housing land supply, and in the crucial question in the first of the inspector's two main issues, which was whether the council was able to demonstrate that there was a five-year supply.

126 Mr Bateman took care in his proof of evidence, in para 7.64, to emphasise that the 10% discount had nothing to do with the buffer, be it 5% or 20%, that had to be included in the land supply: see para 79 above. In his evidence the 10% discount was a quite discrete factor. He may or may not have been right in pressing for it to be made. That is not for the court to decide. But there was nothing opaque in the way he described it. He firmly distinguished it from the buffer. He presented it as an additional and indispensable part of the assessment. The council did not accept that. Ms Whettingsteel did not allow for the discount in her evidence, and in closing Mr Leader argued against it: see para 88 above.

127 As Mr Maurici acknowledged, however, the inspector did not grapple with this point anywhere in his consideration of the issue of housing supply in his decision letter. There is simply no explanation of what he thought about it. Whether his reference to "a 10% or 20% buffer" reflects some confusion in his mind about Mr Bateman's evidence on the 10% discount I cannot tell. Mr Maurici could not explain what it meant. What is clear, however, is that if the inspector intended his reference to "10%" to

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relate to the buffer, which is what he said, it could not also relate to the discount. And if he was intending to refer to the discount he would surely have said so. But he did not. So he either confused the discount with the buffer or he simply neglected to deal with it at all. Either way, he fell into error. He failed to address the evidence and submissions on the 10% discount in a satisfactory way.

128 Mr Maurici submitted that the evidence given by Mr Bateman on the 10% discount in paras 7.61 and 7.62 of his proof of evidence was of a general nature, a "rule of thumb", rather than directed to the particular circumstances of large housing sites in the borough of Hinckley and Bosworth. He pointed to the footnote to paragraph 47 of the NPPF, which says that "[sites] with planning permission should be considered deliverable until permission expires": see para 66 above. This, he said, creates a presumption of deliverability, rebuttable only by clear evidence to the contrary. And he said that in this case there was no such evidence. He also referred to Mr Leader's submission in his closing speech at the inquiry—that the council could gauge the amount of housing that would come forward on particular sites each year through the annual monitoring report, and that to incorporate a 10% discount in the land supply calculation would be double discounting: see para 88 above. He said one could infer from the inspector's acceptance of the council's land supply calculations, at the end of para 7 of his letter, that he must have been unimpressed by Bloor's case on the 10% discount.

129 Mr Cahill's response to these submissions was that the inspector did not adopt that reasoning, and even if he had adopted it he would have had to explain why he did so in the light of the evidence given by Mr Bateman that both generally and in Hinckley and Bosworth there has been a history of large sites not yielding as much housing as is approved in planning permissions. For example, Mr Bateman had referred, in para 7.63 of his proof, to the fact that although planning permission had been granted for 232 dwellings on the site on Leicester Road in Hinckley, reserved matters approval had been sought for only 184: see para 78 above. As Lewis J said in *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin) at [71], the question of whether the "10% lapse rate" was reasonable was "essentially a matter for judgment of the inspector", a judgment that in that case the inspector had made. Mr Cahill said that an inspector who had been presented with evidence about the appropriateness of discounting the delivery of housing permitted on large sites had to exercise his judgment on that evidence and, having done so, had to share that judgment with the parties in his decision letter. In this case the inspector did not do that.

130 Here, I think, Mr Cahill was right. I accept that the submissions made by Mr Leader in his closing speech at the inquiry might have given the inspector a solid basis for rejecting what Mr Bateman had said about the 10% discount in his evidence. But that, as I have said, is not a question that can be answered in these proceedings. It was a question for the inspector. And he did not come to grips with it, or at least he did not do so explicitly. In other cases this might not matter, if the presence or absence of a five-year supply of housing land is clear, regardless of any discount being made for the delivery of housing on larger sites with planning permission. This, however, was not such a case. Even on the most favourable view for the council the five-year supply was tight. In the circumstances the contested 10% discount

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A on large sites was a matter that required specific treatment in the inspector's decision, leaving no doubt about his view, the reasons for it, and the consequence of it for the supply of housing land in the borough at the time of his decision—in particular whether it took the supply below the critical level of five years, and the extent of any surplus or deficit. It was not a matter the inspector could afford to ignore or on which his view could properly be left for the parties to read into his general conclusion on the question of the five-year supply. It was something he had to address. Unfortunately, he did not.

B

131 If the inspector had accepted Mr Bateman's evidence on the 10% discount, and even if all of his other conclusions on the supply of housing land had stayed the same, the effect on his consideration of this main issue in the appeal, and indeed on the outcome of the appeal itself, might have been significant. It would almost certainly have had some consequence for the operation of relevant policy in the NPPF. On the council's case the housing land supply was, the inspector said, only "marginally in excess of five years" (para 8 of his letter), without any discount on the larger sites. In the calculations presented at the inquiry on behalf of the council by Ms Whettingsteel the inclusion of a discount of 10% on the larger sites and on the Barwell sustainable urban extension would have reduced the supply of housing land to less than the requisite five years.

C

D

132 If this had been the inspector's conclusion it would have had several possible repercussions in the appeal. The inspector would then have had to look at the implications for this appeal of the policy in paragraph 49 of the NPPF, which says that policies for the supply of housing are not to be considered up-to-date if the authority is unable to demonstrate a five-year supply of deliverable housing sites: see para 68 above. The conclusion that there was less than a five-year supply of housing land might also have affected his conclusion on prematurity in para 15 of his decision letter. And it might have made a difference to his final conclusion on the merits of the proposal, in para 29, in which he balanced the "housing supply situation" against the harm the development would cause to the Green Wedge and the conflict with policy 9. In all of these respects the balance of advantage against disadvantage in the appeal might then have shifted in a significant way.

E

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133 In short, it would be unsafe to conclude that if the inspector had taken account of the 10% discount contended for by Bloor the result of the appeal would inevitably have been the same as it was. It might well have been, but I cannot be sure that it would.

134 If, however, I am wrong in my view that the inspector failed to take into account the 10% discount, I would have to say that his reasons for rejecting it are entirely obscure. And because in my view this is, or might be, such a significant point, I could not conclude that his failure to give adequate reasons caused no prejudice to Bloor or that the prejudice was not substantial.

G

135 This ground of the application therefore succeeds, though only to the extent that I have indicated.

H

Issue (3)—prematurity

Government policy on prematurity

136 The Government provided guidance on the prematurity of proposals for development in The Planning System: General Principles,

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published in 2005. That guidance survived the publication of the NPPF and the consequent replacement of numerous national planning policy documents extant until then, and it was current at the time of the inspector's decision on Bloor's appeal. The relevant passage of the document is in paragraphs 17, 18 and 19:

> "17. In some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by pre-determining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect.
>
> "18. Otherwise, refusal of planning permission on grounds of prematurity will not usually be justified. Planning applications should continue to be considered in the light of current policies. However, account can also be taken of policies in emerging DPDs. The weight to be attached to such policies depends upon the stage of preparation or review, increasing as successive stages are reached. For example—Where a DPD is at consultation stage, with no early prospect of submission for examination, then a refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question . . .
>
> "19. Where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process."

137 Policy relevant to the issue of prematurity appears in paragraph 216 of the NPPF, which says: "[from] the day of publication, decision-takers may also give weight to relevant policies in emerging plans." The weight to be given to such policies will depend on "the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)", "the extent to which there are unresolved objections to relevant policies" and "the degree of consistency of the relevant policies . . . to the [policies of the NPPF]".

Bloor's case at the inquiry

138 At the inquiry Bloor relied on the advice in paragraphs 17 to 19 of the Government's guidance document. Mr Bateman pointed out that the Site Allocations DPD was "still some way from being submitted and considered at an EiP or being adopted", and was therefore "of only little weight at present": para 6.86 of his proof of evidence. He went on to say that the appeal proposal "at only 91 dwellings" could not be regarded as being "so significant" that to grant planning permission would prejudice the plan-making process, "when it is only 1% of the total dwellings to be provided in the period 2006 to 2026": para 6.68. He said that, in the light of what is said in paragraph 216 of the NPPF, "the emerging DPD is only of

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A little weight": para 6.87. This, therefore, was one of those cases in which a refusal in the grounds of prematurity "would seldom be justified", as paragraph 18 of the Government's guidance document made clear: para 6.68. Mr Bateman also relied in this context on the lack of a five-year supply of housing land and there being no allocation of land for housing in Groby. He said that in these circumstances, under the policy in paragraph 14 of the NPPF, a prematurity point could not be raised "unless B the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole" (para 6.88), and the council's recent grant of planning permission for development on a site at Market Bosworth that had been identified as a preferred site in the draft Site Allocations DPD: para 6.89. These points were repeated by Mr Cahill in his closing C submissions, at para 16.

The council's case at the inquiry

139 The council contended that Bloor's proposal was premature. Ms Whettingsteel said that it "would result in a commitment for housing development and an amendment of the Green Wedge boundary outside . . . D the [Site Allocations DPD]", and that this would be at odds with the plan led philosophy of the [NPPF]": para 1.8 of her proof. She explained the work that had so far been done on the preparation of the Site Allocations DPD and the likely timetable for the remaining stages of the process. The preferred options report had been consulted upon between February and April 2009. Amendments to this document were being prepared. A pre-submission draft of the Site Allocations DPD was due to be published for consultation in E August 2013. In final draft form it would be submitted to the Secretary of State in January 2014. This would be followed by a public examination "to allow the public to bring forward evidence to confirm whether or not the sites identified within the draft plan are the best sites for development": para 6.46. Ms Whettingsteel said it had been acknowledged in the draft Site Allocations DPD that there were "limited sites within Groby due to the nature of the settlement with major roads bordering it on three sides and, F therefore, in order to provide sufficient housing within Groby it may be necessary to allocate greenfield sites": para 6.48. She added that Bloor "should not take great comfort from the appeal site's identification as one of the council's preferred options", because "[the] site may not survive the remaining stages of the plan making process": para 6.49. In a later passage of her proof of evidence, when dealing with "Prematurity" as a distinct issue G in the appeal, she said that "[ad hoc] decision-making outside . . . the plan process . . . tends to inhibit the proper and full participation of the public in the decision-making process" and "is thus at odds with the Government's emphasis on localism and increasing public involvement and democratic accountability in planning": para 7.28.

140 Mr Leader based his closing submissions on prematurity on Ms Whettingsteel's evidence. In view of government policy in the NPPF and H the relevant guidance in The Planning System: General Principles he said that in each case the question of whether it would be right to refuse planning permission on the grounds of prematurity would turn on the particular facts. Policy 8 of the core strategy called for at least 110 new homes to be provided in Groby. The inspector in the 2011 appeal had found that there has been

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"97 net completions" since the beginning of the core strategy period, and had therefore concluded that "the [core strategy] allocation can . . . carry little additional weight in favour of development". Since his decision three more dwellings had been added to the stock of housing in Groby. It followed, submitted Mr Leader, that "there continues to be no pressing need to allocate land for development in the village ahead of [a public examination of] the [Site Allocations DPD] that is being prepared". The council had identified more than one site that might be suitable for development in Groby. The "process of open consultation" in the preparation of the Site Allocations DPD was "particularly important in this case because of the very recent appeal decision which determined the site is unsuitable for development on Green Wedge grounds". In these circumstances, Mr Leader submitted, especially the absence of any pressing need for new homes in Groby, and the three recent decisions of inspectors in which the site and its surroundings had been found to perform a valuable Green Wedge function, it was "entirely proper to defer bringing the site forward for development until it has been determined [that] less sensitive land ought not to be developed".

Submissions

141 Mr Cahill submitted that the inspector failed to apply, or even acknowledge, the Government's advice on prematurity in paragraphs 17, 18 and 19 of the guidance document. He ought to have applied it. He had recognised, in para 13 of his decision letter, that the emerging DPD in which site allocations would be made could carry no more than "limited" weight because it was still at the consultation stage. This, therefore, was a case in which, under the Government's guidance, the refusal of planning permission on prematurity grounds would rarely be justified. There is no sign that the inspector was conscious of the policy, or that he had brought it to bear on his decision. He referred to the importance of public consultation (in para 14), and the importance of local people having the chance to influence decisions made in the preparation of local and neighbourhood plans (in para 12). But he failed to weigh against those considerations the need to ensure a five-year supply of housing land and the duty of local planning authorities to produce up-to-date development plans without delay—a point emphasised by the Secretary of State in the Shottery decision. He ought to have set against his concern as to the prematurity of Bloor's proposal the fact that the council had not got on with the preparations of its Site Allocations DPD. At the very least he ought to have explained why his approach to the issue of prematurity diverged from government policy and from relevant decisions of the Secretary of State.

142 Mr Leader and Mr Maurici said Mr Cahill's argument starts from a false premise—that the inspector saw the question of prematurity as one of the main issues in the appeal. He did not. He saw it as a part, and only a subordinate part, of the first main issue. He dealt with it in the context of the supply of housing land, when considering relevant policy in the NPPF and the development plan and the progress of the Site Allocations DPD towards its adoption. He reached a judgment on it in the light of the evidence and submissions he heard on the timing of the proposal. That judgment was reasonable, and the reasons the inspector gave for it were adequate. He did not need to give reasons for departing from government policy on the

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A prematurity of proposals for development, because he did not depart from that policy. The policy does not preclude a refusal on the grounds of prematurity when there is, as the inspector found, an up-to-date core strategy, a five-year supply of housing land, and a statutory plan-making process—the Site Allocations DPD process—well under way. In these circumstances the inspector was entitled to conclude, as he did, that it was
B not necessary to grant planning permission for the proposed development at this stage, and that to do so would "pre-empt a decision that should properly be made through the development plan process" (para 14) and would be "premature . . . in advance of the adoption of the [Site Allocations DPD]": para 15.

Discussion

C

143 I see nothing in Mr Cahill's argument on this ground. The answer to it, in my view, is that it seeks to attack the inspector's conclusions on an issue that was simply a matter of planning judgment exercised in accordance with well settled policy. It goes outside the scope of the court's jurisdiction in proceedings such as these.

144 In *William Davis Ltd v Secretary of State for Communities and*
D *Local Government* [2013] EWHC 3058 (Admin) at [64] Lang J said that the Secretary of State's conclusion on prematurity in that case was "a planning judgment, which can only be challenged on the basis of an error of law, not because the [claimants] disagree with it on its merits": see also the judgment of Foskett J in *Murphy v Secretary of State for Communities and Local Government* [2012] EWHC 1198 (Admin) at [90]. As was observed by
E Judge Sycamore, sitting as a judge of the Queen's Bench Division in *R (Save Our Parkland Appeal Ltd) v East Devon District Council* [2013] EWHC 22 (Admin) at [32]: "the putting in place of a new development plan is a complex and time consuming exercise which can take several years from commencement to final approval." On the facts of that case the plan-making process was at an early stage, and the judge concluded, at para 38, that "a refusal on the basis of prematurity would not have been consistent
F with national planning policy and would have been in breach of central government guidance". On different facts, and in different circumstances, the court has held a refusal on prematurity grounds to have been consistent with national policy, and sound in law: see the judgment of Judge Gilbart QC, sitting as a judge of the Queen's Bench Division, in *Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local*
G *Government* [2012] JPL 920, paras 47–49.

145 In this case the inspector did not refuse planning permission solely on the ground of prematurity. His conclusions on that issue rest within an assessment of the planning merits in the course of which he also concluded that the proposed development was not supported by any immediate need to increase the supply of housing land, that it would damage the character and appearance of the Green Wedge, that it was contrary to policy 9 of the core
H strategy, and thus, at least to this extent, that it was not in accord with the development plan. I do not think it matters whether prematurity was a separate issue or part of the inspector's first main issue, on housing land supply. Either way, it was a matter he had to consider, because the timing of the proposal was clearly relevant to its merit.

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146 As always, the context is important. Here the context was this. Bloor's proposal was for 91 dwellings on an unallocated site in the Green Wedge between Groby and Ratby. Policy 8 of the core strategy looked to the Site Allocations DPD to allocate land for at least 110 new dwellings in Groby. If one were to assume that all of those dwellings will have to be built on land in the Green Wedge, Bloor's proposal for 91 would represent a large proportion of them, more than 80%. The Site Allocations DPD was well on its way in its statutory process. In that process, however strong the case for allocating Bloor's site may be, there will be a discussion of the relative merits of competing sites, in which the local community will have the chance to take part. The outcome is, or was, far from a foregone conclusion.

147 That is to paraphrase what the inspector was saying in the four paragraphs of his decision letter that deal with prematurity, paras 12–15, and in para 23: see paras 8, 9 and 15 above. In para 12 he referred to the 12 core principles in paragraph 17 of the NPPF, which include the principle that planning in England should be "genuinely plan-led": see para 24 above. If planning is to be plan-led the process of plan-making, in which local people can participate, should be maintained. This principle is, in my view, compatible with the need for decisions on development proposals to be made promptly in the development control process unless there is a good reason for the decision to await the next appropriate stage of plan-making. But it recognises, as did the inspector in para 12 of his letter, that there will be occasions when the suitability of a site for a particular form of development ought, in the public interest, to be considered in a plan-making process rather than when the landowner or a developer chooses to make a planning application. The purpose of the Government's policy on prematurity is to protect a plan-making process from decisions on individual planning applications pre-empting decisions that should properly be made in the process of plan-making. That the inspector was aware of this is clear from what he said in para 14.

148 In The Planning System: General Principles the Government made clear, in paragraph 17, that a refusal on the grounds of prematurity would only usually be justified either when the proposed development was "so substantial" or when its "cumulative effect would be so significant" that to grant planning permission for it could prejudice an emerging development plan document "by predetermining decisions about the scale, location or phasing of new [developments] which are being addressed in the policy in the DPD." The question of whether a proposed development is "substantial" enough to justify a refusal on prematurity grounds will always depend on the context. The scale of the development must be viewed in the context of the particular need being planned for in the development plan document. The guidance in The Planning System: General Principles is for the decision-maker to apply flexibly according to the circumstances that arise on the application or appeal. It must always be applied having regard to the nature and scale of the proposed development, its location, and the stage the draft development plan document has reached.

149 The inspector did not refer to that guidance in his decision letter. But in my view he did not have to. He clearly had it in mind, and his conclusions on the prematurity of Bloor's proposal were consistent with it.

150 Paras 12–15 of the decision letter appear in the section headed "Housing Supply", where the inspector dealt with the first main issue, the

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A adequacy of the supply of housing land in the borough. In the paragraphs preceding his consideration of prematurity he had concluded that the council was able to show a five-year supply of land for housing. This was clearly a significant factor in his conclusions on prematurity. It is not hard to see why. What he had to consider here was whether he ought to grant planning permission for the proposed development in spite of its not being allocated for housing in the development plan, and in spite of its not being needed, at least at this stage, to remedy any shortfall in the supply of housing land. He knew, however, that the council had identified the appeal site as a preferred option for housing development in the draft Site Allocations DPD. He referred to this in para 13 of his letter and said it was a factor that lent to support to Bloor's appeal. But although, as he said in para 14 of his letter, the appeal site might be allocated for housing development in the Site Allocations DPD, granting planning permission for it "at this time" would, he said, "pre-empt a decision that should properly be made through the development plan process", and "render futile the work done by the council and the contributions made by the local community" in that process. This, he said, would have the effect of "reducing public confidence in the planning process and would be contrary to the spirit of paragraphs 12 and 17 of the . . . NPPF".

151 After his consideration of the second main issue, the effect of the proposed development on the Green Wedge, the inspector also said that a decision to grant planning permission would not only pre-empt decisions being made in the Site Allocations DPD process but also the review of the Green Wedge, both of which were "well advanced": para 29. Taken together, those conclusions are, in my view, a paradigm of the exercise of planning judgment called for in the Government's policy and guidance on prematurity extant at the time of the inspector's decision.

152 It cannot be suggested that the inspector's reasons on this issue are unclear or incomplete. They are very fully explained. And they do not expose any misunderstanding or misapplication of relevant policy.

153 This ground of the application therefore fails.

Issue (4)—the Green Wedge

The core strategy inspector's report

154 In para 3.168 of his report the core strategy inspector said the Green Wedge "provides separation between Groby, Ratby, Kirby Muxloe and the suburbs of Leicester", and as providing "a valuable function in retaining the identities of the individual settlements".

The 2011 appeal decision

155 In the decision letter of 24 February 2011 on Bloor's previous proposal for development on this site the inspector had acknowledged the general observation about the function of the Green Wedge in para 3.168 of his report: para 19. He had said that the development would be "in direct conflict" with policy 9 of the core strategy: para 22. But he had noted that a review of the boundary of the Green Wedge was going to take place (para 22), and that the site had been included in the Site Allocations DPD as "one of three preferred options for residential development in Groby", which in his view, "along with the difficulties in identifying sufficient

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additional and appropriate housing land within Groby and the delay in producing the [Site Allocations DPD], carry weight in favour of the proposal": para 23. However, he concluded that "any weight ascribed to the allocation of the site in the draft [Site Allocations DPD] must be tempered by the fact that the [Site Allocations DPD] is at a very early stage in its preparation and consultation is ongoing": para 23.

Bloor's case at the inquiry

156 In his evidence at the inquiry Mr Bateman referred to the review of the Green Wedge in September 2011, subsequently revisited in December 2011, which was "an evidence base for the review of boundaries in the [Site Allocations DPD]": para 6.48 of his proof. The appeal site was part of "Area F" in the review. The September 2011 version of the review had this land did not achieve the objectives of the Green Wedge, and had said that, "when looking at the [Green Wedge] strategically and considering the development pressures around Groby and the [core strategy] housing requirement in comparison to other areas of the [Green Wedge] this plot of land would have a more limited impact on the overall functioning of the [Green Wedge than] other more sensitive areas": para 6.53. It also said that Area F did not achieve the objectives of the Green Wedge, that its development would have the least impact on the functioning of the Green Wedge, and that it should be considered the least sensitive area of the Green Wedge abutting Groby: para 6.54. Mr Bateman said that the appeal site was "the best location around Groby to be developed" and that in the circumstances the weight to be attached to policy 9 of the core strategy was reduced: para 6.56. He said that in his view the appeal site "does not perform a critical role in [Green Wedge] terms and the development can be accommodated without significant harm to the immediate locality or to the wider [Green Wedge], resulting only in the loss of some 0·32% of the overall area": para 6.75.

157 In his closing submissions, at paras 9, 10 and 11, Mr Cahill invited the inspector to accept that the appeal site was "the best site to select in Groby", given that the council's preferred options document had identified it as one of the council's preferred sites for development, that in the review of the Green Wedge undertaken in September 2011 it had been concluded that the appeal site "should be considered as the least sensitive area of the [Green Wedge] abutting Groby". The site was "the best candidate" to satisfy the requirement of policy 8 of the core strategy for housing development. Thus the admitted breach of policy 9 was "technical only". Bloor's main point here was that the circumstances were now different to what had been before the inspector in the 2011 appeal. In particular, the considerations that had persuaded the inspector in that appeal to give only limited weight to the potential of the site for housing development no longer applied. The "evidence base" was now quite different.

The council's case at the inquiry

158 Ms Whettingsteel said in her evidence that because housing was not one of the uses of land considered acceptable in the Green Wedge, Bloor's proposal was contrary to policy 9: para 6.30 of her proof.

159 Ms Whettingsteel described the council's review of the Green Wedge as "a provisional assessment comprising a desk top and limited site

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review of a range of sites, which could conceivably be allocated for development in due course": para 6.45. But there was not a "settled view" that these sites would be suitable for development in the future. They would "still have to pass through further technical and democratic 'sieves' before they can be allocated for development": para 6.45. On the possibility of changes being made to the boundary of the Green Wedge, Ms Whettingsteel said, in para 7.14:

> "I cannot . . . emphasise too much that such adjustments are to be made as part of the plan making process. The [Green Wedge] is not to be eroded through [ad hoc] planning applications and appeals. This is especially the case where there is an adequate supply of land for housing and a well advanced DPD that will deliver more land in the near future."

160 When considering the effect the development would have on the Green Wedge Ms Whettingsteel said it "would extend housing outside . . . the settlement boundary", which in her view was "a defensible boundary not only in policy terms, but created by natural features on the ground": para 7.21. So "the loss of this section of the [Green Wedge] would diminish its ability to guide development form and reduce the important separation between the settlements of Groby and Ratby": para 7.21. She said that "the [Green Wedge] policy function of preventing the merging of settlements would be severely compromised by the proposal": para 7.21. The development "would cause harm to the landscape and the character of Groby and would impinge on the [Green Wedge] and the separation it provides between Ratby and Groby": para 9.3.

161 On the appeal site's contribution to the Green Wedge, Mr Leader submitted in closing that policy 9 of the core strategy "restricts housing and other forms of development in the Green Wedge". The site, he said, "occupies a narrow neck of open land between Ratby and Groby". Development here would be "likely to contribute coalescence". Nothing had changed on the ground since the last inspector's decision, in February 2011. But the "vulnerability and significance of this part of the Green Wedge is . . . increased by the grant of planning permission for substantial development at Glenfield". Not only did the appeal site "contribute to the maintenance of separate identity" between settlements; it also enhanced the "quality of life of Groby's residents" because it was "an area of undeveloped land within the confines of the village". The proposed development would "cause real harm to the Green Wedge". It would "erode the gap between the two villages", and it would "harm the quality of life of local residents". As in February 2011, Bloor's proposal was thus "in direct conflict with policy 9 of the core strategy"—a policy that "mediates the balance that is to be struck on the one hand between the need for housing, and on the other, the need to protect the environment and the setting of towns and villages".

Submissions

162 Mr Cahill submitted that the inspector failed to consider whether circumstances had changed since the previous appeal decision in 2011. Circumstances had changed. A different conclusion on the effect that development on the appeal site would have on the Green Wedge was now justified. The inspector ignored the new facts. Or if he had them in mind he did not explain why they were not such as to lead him to a different

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conclusion to the inspector in the 2011 appeal. He simply said that he saw no reason to disagree with the conclusion reached in the 2011 appeal decision: para 24 of his decision letter. He also took into account an immaterial consideration—his mistaken assumption that the appeal site itself, as opposed to the Green Wedge as a whole, had been considered by the core strategy inspector in his report. The core strategy inspector's observations in para 3.168 of his report were general, and not specific to the appeal site.

163 Mr Maurici and Mr Leader submitted that this is really nothing more than a disagreement with the inspector's assessment of the planning merits. The inspector concluded that Bloor's development would harm the Green Wedge. His judgment on that issue was consistent with that of the inspector in the 2011 appeal. He noted, in para 19 of his decision letter, that the consistent view of inspectors was that development in the Green Wedge would detract from its open character and appearance, and would conflict with development plan policy. He knew perfectly well that the core strategy inspector had considered the whole of the Green Wedge, rather than the appeal site on its own as a part of the Green Wedge. Had his own judgment been different from those other inspectors he would have had to explain why. The weight to be attached to the review of the Green Wedge was a matter for him. He acknowledged that the review was under way, but had not yet been completed. He obviously took it into account. But this did not stop him applying policy 9 of the core strategy and concluding when he did that the proposed development would conflict with it. The result of his consideration of this issue, with the benefit of his site visit, was that the development "would detract from the character and appearance of the area and would conflict with policy 9 of the core strategy", and thus he saw "no reason to disagree with the conclusion reached in the 2011 appeal decision": para 24.

Discussion

164 On this issue I think Mr Cahill's submissions cross the line that divides the court's jurisdiction from the realm of planning judgment. I reject them.

165 Both of Mr Cahill's points concern the way in which the inspector treated the planning history of the appeal site and the Green Wedge—and, in particular, a single paragraph in the core strategy inspector's report, the decision in the 2011 appeal, and the review of the Green Wedge now under way. They do not concern the substance of the inspector's judgment on the question he had to face in the second main issue in the appeal, which was whether the development would harm the character and appearance of the Green Wedge.

166 In paras 20–24 of his decision letter the inspector considered the effect the proposed development was likely to have on the Green Wedge. He did this by describing the topography of the appeal site and its surroundings (in para 20), the effect he thought the development would have in reducing the gap between the villages of Groby and Ratby (para 21), and the value of the site as an area of open land enjoyed by those walking on the public footpaths that run along two of the site's boundaries: para 22. None of the inspector's findings and conclusions in those three paragraphs is attacked in these proceedings.

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A **167** The inspector went on to conclude that the proposed development "would detract from the character and appearance of the area": para 24. There is no criticism of that conclusion either. It was largely a visual judgment, the most difficult kind to fault in a public law challenge. The only basis on which it could be questioned in these proceedings would be an allegation of perversity. That has not been suggested, nor could it be.

B **168** In matters of visual or aesthetic judgment views will often diverge. Here the inspector clearly formed a judgment of his own on the likely effects of the development on the Green Wedge. This was a necessary part of his evaluation of the merits of Bloor's proposal. It went to one the two main issues in the appeal. The inspector concluded that the development would damage both the character and the appearance of the Green Wedge. In para 19 of his decision letter he noted the consistent view of previous C inspectors—"that development would detract from the open character and appearance of the area"—and in para 24 he said he saw no reason to disagree with the conclusions of the inspector who had dismissed the previous appeal. He did not, however, simply adopt those conclusions. He did not have to agree with them. He could have come to a different view. But he did not. His view was consistent with the other inspectors'. If he had disagreed with them he would have had to explain why. And it is not D suggested that in doing so he could have pointed to any change on the ground since the previous appeal.

169 Bloor argued in the appeal that the "evidence base" had changed since the 2011 appeal, because the appeal site had come to be a preferred option for housing development during the Site Allocations DPD process and because the review of the Green Wedge had now been undertaken, with E the aim of identifying the land that ought to be removed from the Green Wedge and allocated for development. These two considerations featured in the inspector's assessment, in paras 18, 23 and 24 of his decision letter. The previous appeal inspector had noted that the appeal site was "one of three preferred options for residential development in Groby" but that at that stage the council's review of the Green Wedge had not reached its consultation stage, and he had therefore given the review little weight. F The inspector knew that. He was also well aware, because Bloor's evidence and submissions had stressed it, that since the previous appeal was heard public consultation had taken place in March 2011, that in the Green Wedge review the council had looked at all of the sites on which the requirement for at least 110 new homes in Groby might be met, concluding in September 2011 that the appeal site was in "the least sensitive area of the Green Wedge G abutting Groby", and that the site was no longer just on a shortlist of three but was now the favoured location.

170 Those points were all made in Bloor's evidence and submissions at the inquiry. I do not accept that on a fair reading of the decision letter it can be said that the inspector overlooked them. He had them in mind. He acknowledged in para 23 of his letter, echoing what had said in para 13, that "[it] may well be that the outcome of the [Site Allocations DPD and H Green Wedge review] process will be to amend the Green Wedge boundary in the area and allocate the site for housing", though he judged this to be "far from being a foregone conclusion". But this did not deflect him from his view that the development would harm the character and appearance of the Green Wedge, and his conclusion that to permit it would offend policy 9 of

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the core strategy. The suggestion that he failed to consider whether there had been material changes since the 2011 appeal decision is wrong in fact. He did consider those changes, and the weight he attached to them was for him to decide.

171 Mr Cahill's second point is, I think, no more convincing. In the first sentence of para 19 of his letter the inspector referred to the site having been considered at three inquiries, including the examination into the core strategy. In the second sentence of that paragraph he said that the approach taken by the inspectors "that development would detract from the open character and appearance of the area" had been "consistent". I do not accept that he misinterpreted the core strategy inspector's conclusion in para 3.168 of his report. What the core strategy inspector had said was in very general terms, relating to the function of the core strategy's two Green Wedges in providing separation between settlements, rather than specific to the appeal site. But it applied to the appeal site as well as to the Green Wedge as a whole. I do not accept that the inspector misunderstood this, or that he failed to notice how the inspector in the previous appeal had understood it in para 19 of his decision letter. There was nothing inconsistent between what the core strategy inspector said in that single paragraph of his report and the proposition that development on the appeal site itself would detract from the open character and appearance of the Green Wedge. And in any case, as I have said, the inspector went on to make his own assessment of the likely effects of this proposed development on the Green Wedge. It is inconceivable that that assessment would have been any different if he had omitted the core strategy inspector from the consensus to which he referred in para 19.

172 I therefore reject this ground.

Issue (5)—sustainable development

Bloor's case at the inquiry

173 At the inquiry Bloor contended that the proposed development was sustainable development within the meaning of that concept in the NPPF, and that, under paragraph 14 of the NPPF, there was therefore a presumption in favour of planning permission being granted for it. In his proof of evidence Mr Bateman said that the proposal was consistent with the three identified roles of sustainable development—the economic role, the social role and the environmental role: paras 6.91–6.94, and 10.16. He argued that policy 9 of the core strategy was out-of-date. He said, in para 6.33 of his proof:

> "Policy 9 has of course to be seen in the light of policy 8 which requires a minimum of 110 dwellings to be provided and the emerging DPD which sets the appeal site out as one of three preferred sites to meet this figure. The policy also has to be seen in the light of paragraph 49 of the NPPF which states that where there is a lack of a five-year supply then policies that restrict housing supply are also to be considered to be out-of-date. This policy clearly seeks to restrict housing land supply and therefore this policy is covered by paragraph 49 (see the Sapcote appeal decision . . .). In those circumstances paragraph 14 of the NPPF sets out the presumption that permission should be granted unless certain caveats are met."

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A And in para 6.56:

> "In essence . . . whilst the appeal proposals do constitute development in the [Green Wedge, policy 9 of the core strategy] is a policy which is supposed to accommodate and shape future development requirements. The local plan is now 11 years old and does not make any provision for development requirements beyond 2006. There is a clear need for
B additional development to take place in the district as noted in the core strategy and this will require the release of greenfield land adjacent to . . . Groby to meet sustainable development requirements . . ."

The council's case at the inquiry

174 The council did not accept that the proposed development was
C sustainable development. Ms Whettingsteel said in her proof of evidence that the proposal was in conflict with policy 9, and the core strategy's "wider strategy for sustainable development": para 1.7. Her conclusion on the on the question of whether the development would be sustainable development was that "the positive aspects in relation to the delivery of housing and economic development are outweighed by the environmental shortcomings of the scheme in relation to its impact on the [Green Wedge]", and therefore
D that "on balance the scheme does not represent a sustainable development as required by the NPPF": para 7.27. I have already referred to Mr Leader's submission in his closing speech that Bloor's proposal was in conflict with "a fundamental policy of the development plan", namely policy 9 of the core strategy, and that policy 9 was not a "relevant policy" for the purpose of paragraph 14 of the NPPF.

E

Submissions

175 Mr Cahill submitted that the inspector failed to address Bloor's argument that the proposed development would be "sustainable development", failed to consider whether there was therefore a policy presumption in favour of planning permission being granted, and failed to confront the question of what weight, if any, he should give to the breach of
F policy 9 of the core strategy. This was a policy that, as Cahill put it in para 97 of his skeleton argument, "prohibited all residential development in the Green Wedge without regard to any cost/benefit analysis", and was therefore inconsistent with the NPPF and in this sense "out-of-date". It was the kind of policy to which Kenneth Parker J had referred in *Colman v Secretary of State for Communities and Local Government* [2013] EWHC
G 1138 (Admin) at [22]–[23] as being inconsistent with the "cost/benefit approach" of the NPPF. Mr Cahill also relied on Lewis J's observations in the *Cotswold District Council* case [2013] EWHC 3719 at [72] to the effect that a policy restricting housing development could be a policy "for the supply of housing" under paragraph 49 of the NPPF. Policy 9 was such a policy. The inspector thus avoided a crucial question in the appeal, which
H was whether Bloor's proposal found support in the Government's policy in paragraphs 14 and 49 of the NPPF.

176 Mr Maurici and Mr Leader submitted that on a fair reading of the decision letter the inspector clearly saw no need to apply the approach to decision-making when the development plan is out-of-date that is indicated in paragraph 14 of the NPPF. He plainly found that the development plan

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was up-to-date. He said so in para 15 of his letter. And he was right. There was an adopted policy governing proposals in the Green Wedge: policy 9 of the core strategy. The inspector applied that policy, and saw that the proposal was in conflict with it. If he had thought the development plan was out-of-date for any reason—such as the absence of any allocation for housing development in Groby, or the current review of the Green Wedge—he would have said so. But that was obviously not what he thought. His conclusion that the development would harm the Green Wedge was, in effect, a conclusion that it was not "sustainable development".

Discussion

177 I cannot accept Mr Cahill's argument on this issue.

178 I think he exaggerated the significance of the question of whether Bloor's proposal was for "sustainable development" when he described it in para 93 of his skeleton argument as "the key controversial issue between the parties". It would be more accurate to say that this was a question inherent in the second of the inspector's two main issues, the likely effect of the development on the Green Wedge.

179 On any sensible view, if the development would harm the Green Wedge by damaging its character and appearance or its function in separating the villages of Groby and Ratby, or by spoiling its amenity for people walking on public footpaths nearby, it would not be sustainable development within the wide scope drawn for that concept in paragraphs 18–219 of the NPPF.

180 The inspector's judgment, firmly stated in para 24, and again in his "Conclusion" in para 29, was that the development would indeed harm the character and the appearance of the Green Wedge, and would conflict with the policy of the development plan aimed at protecting the Green Wedge from such harm: policy 9 of the core strategy. I do not think he had to spell out that in this very obvious sense the development would be unsustainable. He could have added that, but in my view his decision is not deficient because he did not.

181 I need not repeat what I have already said about the policy in paragraph 14 of the NPPF. This ground raises a different aspect of the policy in that paragraph, which is the concept of the development plan being "out-of-date". The suggestion here is that the plan was out-of-date essentially because of the lack of a five-year supply of housing land. The policy in paragraph 49 of the NPPF, it is said, was thus engaged. Policy 9 of the core strategy, if relevant to the supply of housing land in the borough, was itself out-of-date. Under the policy in paragraph 214 of the NPPF this was a policy whose inconsistency with the NPPF was more than "limited". Mr Cahill criticised it as a policy—to borrow Kenneth Parker J's words in *Colman's* case, at para 22—as "on [its] own express terms very far removed from the 'cost/benefit' approach of the NPPF". He said policy 9 was clearly at odds with the NPPF, because it precluded a "cost/benefit" approach of the kind advocated in paragraph 14 of the NPPF. The complaint is that the inspector failed to deal with this point.

182 There is a simple answer to those submissions.

183 First, the inspector did not accept the basic premise of Mr Cahill's argument. He did not accept that there was less than a five-year supply of housing land. He found that there was a sufficient supply. That was a

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A conclusion reached at the time when it had to be made, which was before any part of the Green Wedge protected for the time being by policy 9 had to be released for development. It followed, therefore, that policy 9 was not in this respect out-of-date. It was up-to-date. It was not, at least on the inspector's analysis, prohibiting any residential development required to fulfil the five-year supply. Although the inspector did not articulate his conclusions in this way, it is the clear effect of them.

B **184** Secondly, in any event, the inspector did not sidestep the question of whether the development plan was up-to-date. He concluded, in para 15 of his decision letter, that "the council has an up-to-date development plan in the form of the 2009 [core strategy]". This conclusion was not only explicit; it was also unqualified. It plainly included policy 9, the central policy of relevance in the appeal. The inspector did not find policy 9 to be out-of-date, C or inconsistent with government policy in the NPPF, even to a limited extent. None of this, in my view, went outside the range of reasonable planning judgment. Whether the same conclusion could reasonably have been reached if the council was unable to demonstrate a five-year supply of housing land, and whether the inspector's assessment of the housing land supply was sound, are not questions that arise on this ground of Bloor's application. I have discussed those questions already.

D **185** The inspector did not need to lengthen his decision letter by tackling an argument whose premise, in the light of his conclusion on the supply of housing land, was false. This was not a case in which the decision-maker had to confront an out-of-date development plan and all that follows from that—including the operation of the policy for decision-making in such circumstances in paragraphs 14 and 49 of the NPPF.

E **186** I do not think Mr Cahill's argument gains anything from Kenneth Parker J's analysis of the particular policies of the development plan that he had to consider in *Colman's* case, in which he compared of those policies with government policy in the NPPF. In any event I do not read Kenneth Parker J's judgment in that case as authority for the proposition that every development plan policy restricting development of one kind or another in a particular location will be incompatible with policy for sustainable F development in the NPPF, and thus out-of-date, if it does not in its own terms qualify that restriction by saying it can be overcome by the benefits of a particular proposal. That is more than I can see in what Kenneth Parker J said, and more than I think one take from the NPPF itself. The question of whether a particular policy of the relevant development plan is or is not consistent with the NPPF will depend on the specific terms of that policy and G of the corresponding parts of the NPPF when both are read in their full context. When this is done it may be obvious that there is an inconsistency between the relevant policies of the plan and the NPPF. But in my view that was not so in this case.

187 Lewis J's judgment in the *Cotswold District Council* case [2013] EWHC 3719 does not help Mr Cahill either. In para 72, Lewis J was considering a development plan policy that restricted development, H including housing development. He was able to endorse the approach of the inspector, who had concluded, as did the Secretary of State in his decision letter, that the policy should be disregarded to the extent that it sought to restrict the supply of housing. But this conclusion was founded on the policy in paragraph 49 of the NPPF: that relevant policies for the supply of housing

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should not be considered up-to-date "if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites". In that case the inspector and the Secretary of State had found that there was very serious shortfall in the supply of housing land: see para 29.

188 This ground of the application therefore fails.

Conclusion

189 The application succeeds to the extent I have indicated. The inspector's decision will therefore be quashed and Bloor's appeal remitted to the Secretary of State for redetermination.

Application granted.

SALLY DOBSON, Barrister

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