IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT

BETWEEN

WAINHOMES (NORTH WEST) LTD

Claimant

and

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT

First Defendant

and

SOUTH RIBBLE BOROUGH COUNCIL

Second Defendant

STATEMENT OF FACTS AND GROUNDS

"DL" references are to paragraph numbers in the Decision Letter under challenge.

"SH" references refer to exhibits attached to first Witness Statement of Stephen Harris.

Introduction

1. This is an application under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant's ("D1")

Inspector dated 13th December 2019 dismissing the Claimant's appeal against the Second Defendant's ("D2") refusal of outline planning permission for up to 100 dwellings on land to the South of Chain House Lane ("the Site").

2. The Inspector (DL6) identified the main issues in the appeal as –

    i) The housing requirement and whether a 5 year supply can be demonstrated,

    ii) Whether the proposed development would prejudice the Council's ability to manage the comprehensive development of the wider area with particular regard to policy G3 of the South Ribble Local Plan 2015 ("SRLP").

3. The development plan for the area comprises the Central Lancashire Core Strategy ("CS") adopted in July 2012 and the SRLP adopted in July 2015. The Site is identified as within a larger area of Safeguarded Land in policy G3 of the SLRP. Policy G3 was the only relevant policy relied upon in D2's reasons for refusal of planning permission (DL8). **[SH11]**

4. In addition to D2's area the CS also covers the areas of the neighbouring local planning authorities of Preston ("PCC") and Chorley ("CC") which form one Housing Market Area ("HMA"), namely the Central Lancashire HMA ("CLHMA"). The housing requirement for the three local planning authorities is set out in CS policy 4. (DL9). **[SH10]**

5. CS policy 4 is in four parts. Part (a) of the policy sets out the minimum housing requirement for each of the three local planning authorities within the CLHMA. The requirement for D2 is 417 dwellings per annum plus the under-provision prior to the CS. Parts (b) to (d) of the policy are concerned with review of housing delivery performance and ensuring that sufficient housing land is identified and available (DL 9).

6. D1's policy with respect to 5 year housing supply is set out in NPPF para 73. **[SH 12]** The paragraph provides inter alia that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing

need where the strategic policies are more than five years old. This is qualified by footnote 37 which provides

> *"Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists it should be calculated using the standard method set out in national planning guidance"*.

7. The net effect of the qualification in footnote 37 is that one should continue to use the figures in adopted strategic policies which are more than 5 years old if they have been reviewed and found not to require updating.

8. NPPF paragraph 11 **[SH12]** sets out D1's policy with respect to the presumption in favour of sustainable development. Sub-paragraphs (c) and (d) are concerned with decision-taking. Sub-paragraph (d) provides for what is commonly referred to as the "tilted balance". This provides

> *"where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
>
> *i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
>
> *ii) 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"*.

This sub-paragraph is qualified by footnotes 6 and 7.

9. Footnote 6 identifies the policies referred to in sub-paragraph (d)(i). They are not relevant in this case.

10. Footnote 7 provides that for applications involving the provision of housing the development plan policies will be out date inter alia where the local

planning authority cannot demonstrate a 5 year supply of deliverable housing sites in accordance with paragraph 73.

11. The CS is more than 5 years old having been adopted in July 2012. A key issue in the appeal and in determining the housing supply issue was whether there had been a review of the relevant strategic policy (DL12). If there had been a review housing requirement had to be calculated in accordance with CS policy 4.

12. In 2016 a report to the 3 CLHMA authorities [**SH18]** (a) considered the duty to keep plans under review (paragraph 6), (b) referred to the advice that plans were likely to need updating every 5 years (paragraph 7), (c) acknowledged that the CS was reaching the point where it was necessary to review whether the CS needed updating (paragraph 7) and (d) concluded that there was a need to review the CS (paragraph 13). A SHMA was accordingly commissioned for the purpose of reviewing the CS policy. At the inquiry D2's witness Ms Harding observed that *"the point of the SHMA was to see if the Core Strategy figures remained up to date"* (Claimant's Closing para 17(i) **[SH9]**

13. The SHMA was reported to the 3 CLHMA authorities on 2nd March 2017. That report concluded the Full Objectively Assessed Need was only marginally below the CS figure, and recommended that the CS figure should be retained rather than proceed to a partial review of the CS (report paragraph 20). **[SH19]**

14. In September 2017 after consideration of the SHMA the 3 CLHMA authorities entered into a document entitled *"Central Lancashire Strategic Housing Market Joint Memorandum of Understanding and Statement of Co-operation relating to the Provision of Housing Land"* ("the MOU"). **[SH20]**

15. The MOU explained that its purpose was to confirm and set out the agreed approach of the three authorities to the CS and the HMA, that it was informed by the SHMA and set out the agreed approach to the distribution of housing prior to adoption of a new plan (paragraph 3.1). It recorded that it was appropriate to retain the CS Policy 4 figures for the reasons given (paragraphs 4.6 and 5.10) and agreed to continue to apply the housing requirements in CS Policy 4 (paragraph 6.1(a)) and to continue the existing monitoring arrangements of the CS and individual local plans to confirm that the MOU

was delivering as intended (paragraph 6.1(c)). It recorded that the document was to be reviewed no less than every three years and would be reviewed when new evidence that rendered it out of date emerged (paragraph 7.1).

16. Local planning authorities produce Housing Land Position Statements ("HLPS") annually. D2's 2019 HLPS refers to the MOU and states in bold that it *"could be considered to have been a review of the policy in terms of footnote 37 of the NPPF"* (p21) **[SH15]**

17. PCC's 2019 HLPS explains that *"Whilst the housing requirement policy (Policy 4) is now almost seven years old, Preston are still using this requirement rather than the local housing need figure due to a 'review' of this policy which took place in 2017"* (para 1.9) **[SH14]** CC's 2019 HLPS also applies the CS Policy 4 figure to calculate its 5 year housing land supply **[SH16]**

18. In a report on a planning application on land at Pear Tree Lane CC explained that it continued to apply the CS Policy 4 requirements because it believed that they remained up to date because a review of the housing needs and requirements set out in the CS was undertaken in 2017 (report paragraph 35) **[SH17]**

19. All of the above documents were before the Inspector at the inquiry.

20. As the 3 authorities form one HMA it is important that a consistent approach is taken across the three authorities.

21. Furthermore which approach to take has important consequences for the individual authorities. If it is accepted that the CS requirement remains up to date PCC is unable to identify a 5 year housing land supply whereas CC is able to identify a 5 year housing land supply. If the local housing need/standard method approach is applied PCC is able to identify a 5 year housing land supply whereas CC is unable to identify a 5 year housing supply. **[see paragraphs 7.29 and 7.33 of SH4]** The implications for D2 are illustrated by the table at DL13.

22. Which method is to be adopted also has important implications for the distribution of housing within the CLHMA. The CS provides for 507 houses per annum in PCC, 417 in CCC and 417 in D2 – which means that of the CS

requirement 37.8% is to be provided in PCC and 31.1% in both D2 and CC. The figures for local housing need using the standard method would require 241 units per annum in PCC, 579 in CC and 213 in D2 – the proportion within the CLHMA is 23.3% in PCC, 56.1% in CC and 20.6% in D2. This was conceded by D2 to amount to a radical redistribution which would render the development policies out of date (D2 closing para 18 and Claimant closing para 71) **[SH8 and SH9]**

23. At the outset of the inquiry D2's case, despite the position expressed in its 2019 HLPS, was that there had not been a review of the CS requirements in 2017. However, during the course of the inquiry its witnesses made a number of important concessions. In particular the witnesses agreed that there had been a review of Policy 4(a) in 2017. This is recorded in D2's closing submissions, and was no longer in issue (paragraph 20) **[SH8]**

24. D2 also conceded that policy G3 of the SLRP would be out of date in terms of NPPF paragraph 11(d) if there were no 5 year housing land supply (D2 closing submissions paragraph 18). This was not in issue at the close of the inquiry.

25. The Inspector considered whether there had been a review of the strategic policies for the purposes of footnote 37 in DL 14-25 and concluded that there had not been a review DL37.

26. The Inspector further concluded that there had in any event been a significant change since 2017 with the introduction of the standard method in the 2018 NPPF and D2's significantly lower figure arising from the standard method calculation (DL26-28 and 37).

27. The Inspector concluded that the SRLP policy G3 was not out-of-date if the standard method were to be applied and concluded that it would not result in a radical distribution of housing within the CLHMA (DL87-88).

Legal context

28. The general approach to be taken to challenges under section 288 TCPA 1990 were summarised by Lindblom LJ in *St Modwen Developments Ltd v SSCLG [2017] EWCA Civ 1643 [2018] PTSR 746* -

(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 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) 42P&CR26, 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] 1WLR 1953, 1964B—G.

(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 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) 66P&CR83, 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&EnergyLtd v Secretary of State for Communities and Local Government [2012] EWHC1419 (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 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 [in] 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) 65P&CR137, 145.

Grounds

29. The Inspector failed to give intelligible and adequate reasons for her decision.

30. The Inspector's reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds.

31. The Inspector failed properly to understand and apply relevant policy.

32. The Inspector failed to have regard to material considerations and/or took into account immaterial considerations.

The Inspector's consideration as to whether there had been a review

33. D2's final position on the question as to whether there was a review of the relevant strategic policies in 2017 was that whilst there was a review of CS Policy 4(a) there was not a review of the whole policy. (D2 closing para 18).

34. In DL20 the Inspector stated that she did not consider there to have been a review in 2017 *"In view of the above, and the inconclusive evidence supplied by the Council regarding the lack of consultation and review of the whole policy"*. This comment follows the Inspector's reference in DL20 to an earlier decision on appeal at Brindle Road. It is unclear whether her reference to the *"above"* is a reference simply to the Brindle Road decision or to earlier paragraphs in the DL, particularly DL15-19. Whichever is the case the reasoning is unclear and in so as it can be understood reveals errors.

35. The Inspector relies upon the Council's *"inconclusive evidence"* regarding *"the lack of consultation and review of the whole policy".* Given the Inspector found the Council's evidence to be *"inconclusive"* it cannot assist a conclusion that the process did not amount to a review. Reliance upon this amounted to an error and/or the inspector failed to explain how this provided grounds to conclude that there had been no review.

36. The reference to there not being a review of the *"whole policy"* (DL16 & 20) appears to reflect the position argued by D2 in closing following the concessions made by D2's witness which was that whilst it was accepted that there had been a review of CS Policy 4(a) there had not been a review of CS Policy 4(b)-(d) (D2 closing para 20).

37. This argument is misconceived. NPPF 73 provides that local planning authorities should identify a supply of sites sufficient to provide a minimum of 5 years' worth of housing against *"their housing requirement set out in adopted strategic policies"*. It is the requirement set out in the policies that the relevant part of the paragraph is concerned with, rather than other policies within the adopted plan. This is emphasised further by footnote 37 which refers to *"these strategic policies"*. CS Policy 4(a) is the relevant policy setting out the requirement. The remainder of CS Policy 4 addresses issues with monitoring delivery rather than requirement.

38. The concession that CS Policy 4(a) had been reviewed was the end of the matter. The relevant policies for the purposes of NPPF 73 and footnote 37 had been reviewed.

39. The conclusion that the other parts of CS Policy 4 had not been reviewed was in any event an error. In addition to recording that the CS Policy 4 housing requirement was to continue to apply (MOU para 6.1(a)), the MOU also recorded that existing monitoring arrangements in the CS were to continue to apply (MOU para 6.1(c)). Reference to the existing monitoring arrangements included reference to the remainder of CS Policy 4.

40. In 2016/17 there was no policy or guidance as to what amounted to a review or how it should be undertaken. Subsequent guidance (NPPG 61-062) **[SH13]**]does not specify any particular procedure to be followed but merely states that reviews should be proportionate to the issues in hand. The inspector accepted that there are no guidelines requiring consultation and merely commented that it would be proportionate and assist in ensuring a document was fit for purpose (DL15). The absence of consultation is not a ground for finding there had not been a review.

41. The inspector in the Brindle Road decision merely observed that he was not convinced that the MOU amounted to a review – he did not find that it was not a review. The comments fall to be considered in the context of his applying the CS Policy 4 figure in any event. In the circumstances the Brindle Road inspector did not come to a conclusion as to whether there was a review; his reasoning set out why he applied the CS Policy 4 figure irrespective of whether there had been a review. Furthermore the inspector's comments refer solely to the MOU and not to the whole process undertaken in 2016/17 which amounted to the review. They also pre-dated the subsequent guidance with respect to reviews (NPPG 61-062). His observations do not assist in finding that there was no review.

42. Furthermore the Inspector's position with respect to the Brindle Road decision is equivocal as she observes that she noted *"the basis on which these comments were made as highlighted by the Appellant"* (DL20). It is unclear from this whether she accepts the points being made by the Appellant.

43. At DL17-19 the inspector refers to the process undertaken in 2016/17 and appears to conclude that it did not amount to a review on the grounds that it was considering whether the local authorities had a full objectively assessed need rather than whether the CS policy should be reviewed. This ignores the fact that NPPF 73 and footnote 37 **[SH12]** are concerned with housing land requirement. At the time of the 2017 review this was addressed in paragraph 47 of the 2012 NPPF **[SH24]** which provided that Local Plans were to meet the full objectively assessed need. Inevitably any review of the CS housing figure would need to determine whether it catered for the full objectively assessed housing need. This supports the conclusion that the process amounted to a review. The Inspector's reasoning further fails to address the fact that having assessed the FOAN and concluded that it was met by the CS figures the MoU then resolved to continue with the CS figures.

44. The Inspector failed to give intelligible and adequate reasons with respect to whether there had been a review for her decision. Her reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds.

45. The Inspector failed properly to understand and apply relevant policy and failed to have regard to material considerations and/or took into account immaterial considerations.

The Inspector's consideration of the position of the other 2 local planning authorities

46. The Inspector considered the position of the other 2 local planning authorities within the CLHMA at DL21-25.

47. Given that the HMA comprised the 3 local planning authority areas, the fact the housing requirement in the CS covered the 3 local planning authorities, that it required all 3 authorities to meet their requirements if the requirement for the CS area was to be met, and the need for the 3 authorities to adopt a common approach (as reflected in both the CS and the MOU), it was important to consider this matter prior to coming to a conclusion on whether there had been a review. The Inspector erred in considering this matter after her conclusion on the matter in DL20.

48. In DL21 the Inspector stated that she had taken into account the evidence with respect to the positions of PCC and CC and concluded that *"it seems to me that there are various other reasons, not solely relating to the MOU, that they continue to use the CS figures and consider that a review of Policy 4 has taken place"*.

49. The evidence before the Inspector included PCC's 2019 HLPS which explained that the CS Policy 4 figure continued to be used because there had been a review, and the CC committee report addressing housing requirement which explained that the CS Policy 4 figure continued to be used because there had been a review in 2017.

50. The Inspector's reasoning reveals multiple errors.

51. The Inspector states that there are *"various other reasons, not solely relating to the MOU"*. The statement that the reason were not *solely* related to the MOU is an acceptance that one of the reasons was the MOU. If the MOU is one of the reasons it matters not that there may be other reasons. The Inspector was

accepting that there had been a review. This inevitable conclusion is then ignored by the Inspector who had erred by already determining that there had not been a review.

52. The Inspector states that there were other reasons not solely related to the MOU which led to PCC and CC considering *"that a review of Policy 4 has taken place"*. The Inspector is accepting that the 2 planning authorities consider that a *"review…has taken place"*. The Inspector states that this can be disregarded because the reason why a review is considered to have taken place was not solely related to the MOU.

53. Ultimately the important question was whether a review *had* taken place. It mattered not whether the review had been undertaken through the MOU, the process leading up to and including the MOU, or some other way. The finding that the authorities considered a review to have taken place was the critical finding. The Inspector erred in dismissing this on the grounds that it was not solely as a result of the MOU.

54. CS Policy 4 applies to the 3 local planning authorities. Once it has been found to have been reviewed that finding applies to the 3 local planning authorities. It cannot be said to have been reviewed for some authorities but not others.

55. In considering this issue the Inspector failed to consider and properly apply NPPF 73 and footnote 37. Given that the CS is more than 5 years old the authorities could only properly be applying the CS figure if footnote 37 applied (i.e. it was considered that there had been a review). This is the position taken by PCC, CC and the Inspector. It was also the position accepted by D2 in its 2019 HLPS and at the inquiry with respect to the relevant requirement in CS Policy 4.

56. The Inspector failed to give intelligible and adequate reasons for her decision. Her reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds.

57. The Inspector failed properly to understand and apply relevant policy and failed to have regard to material considerations and/or took into account immaterial considerations.

The Inspector's consideration as to whether a "significant change" had taken place since the 2017 MOU

58. Guidance with respect to reviews is provided in NPPG 61-062 which provides

> *"To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.*
>
> *Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.*
>
> *There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for a quickly as reasonably possible."* (my underlining)

59. The guidance is concerned with reviews of development plans prior to the issue of the revised NPPF in 2018. It provides that in such cases the development

plan policies remain up-to-date despite the issue of the revised NPPF unless there has been a significant change *"as outlined below".* The guidance clearly provides that *significant change* for these purposes is to have a particular meaning – namely the meaning *outlined below*.

60. The guidance specifically identifies the circumstances which amount to a *significant change* for the purposes of local housing need (i.e. housing requirement). A significant change is said to have occurred if the development plan figure was adopted prior to the standard method being implemented and provided for a figure significantly *below* the standard method figure.

61. The Inspector considered the application of this guidance and DL27-28 and concluded that she agreed *"with the Council that the wording of paragraph 062 does not necessarily discount a situation where the existing plan figure is significantly* above *the number generated using the standard method"* (DL28).

62. This involves a plain misinterpretation and misapplication of the guidance.

63. The guidance defines *when* a significant change occurs for the purpose of the guidance. If an event does not come within that definition it does not amount to a significant change – there is no need to define when a significant change *does not* occur.

64. The Inspector's reasoning would also render the guidance on this issue pointless. If a significant change is to have occurred if the development plan figure is significantly above or below the standard method figure, the development plan figure would only be used if there was no material difference between the development plan figure and the standard method figure – there would accordingly be no purpose in applying the development plan figure rather than the standard method figure.

65. The Inspector's reasoning also fails to take into account the reason given for the approach taken in the guidance and the wider policy context. The guidance explains that the approach is taken to ensure that all housing need is planned for as quickly as possible. The policy in NPPF is to boost significantly the supply of housing land (NPPF paragraph 59) **[SH12]**. In this context it is clear why the guidance effectively provides for use of the higher figure within the development plan or standard method.

66. The Inspector failed to give intelligible and adequate reasons for her decision. Her reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds.

67. The Inspector failed properly to understand and apply relevant policy and failed to have regard to material considerations and/or took into account immaterial considerations.

The Inspector's consideration of the impact on the CLHMA

68. In DL34 the Inspector accepts that her conclusions may have consequences for the neighbouring authorities and states *"Convincing arguments have been made by the Appellants for retaining the current CS housing requirements in view of the redistribution which may potentially result from this"*, but then concludes that this is a matter for the other local planning authorities and a new Central Lancashire Local Plan.

69. The paragraph reveals multiple errors.

70. The Inspector accepted that the arguments for retaining the current CS housing requirement were *convincing*. Given that the arguments were *convincing* they should have been followed.

71. The Inspector suggests that these are matters for the decision making of the individual authorities and/or the emerging Central Lancashire Local Plan. The emerging plan would cover the 3 local planning authority areas and would not be a matter for the individual authorities. The reason why the emerging plan would cover the 3 authorities is because they comprise a single HMA. Any redistribution of housing within the HMA needs the collective decision of the 3 authorities – it cannot be done by individual decisions of the 3 individual authorities.

72. The Inspector failed to give intelligible and adequate reasons for her decision. Her reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds.

73. The Inspector failed properly to understand and apply relevant policy and failed to have regard to material considerations and/or took into account immaterial considerations.

The Inspector's consideration of the implications of the distributional impact of use of the standard method.

74. The Claimant's case at the appeal was that the tilted balance under NPPF 11 applied irrespective of the conclusion reached with respect to the 5 year supply –

    i) If the CP Policy 4 figure applied D2 was unable to identify a 5 year supply and accordingly the tilted balance was triggered as a result of NPPF 11(d) and footnote 7.

    ii) Application of the standard method would result in a radical (D2's witnesses word) redistribution requirement within the CLHMA and render SLRP policy G3 out-of-date.

75. The second argument was conceded by D2 at the inquiry as a result of the evidence to the inquiry (D2 closing para 18).

76. The Inspector addressed the second issue at DL87-88. The Inspector rejected the common case of the Claimant and D2 that application of the standard method would result in G3 being out-of-date. On the grounds –

    i) That the distributional consequences is not a situation referred to in NPPF or PPG as rendering this type of policy out-of-date (DL87), and

    ii) The re-distribution was not radical (DL88).

    Both grounds disclose errors on the Inspector's part.

77. NPPF 11(d) refers to the *"the policies which are most important for determining the application"* being out-of-date. It does not set out the situations in which such policies are out-of-date. The only qualification provided is that in footnote 7 which expressly provides that policies will be out of date when there is no 5 year housing supply. It is important to note that

footnote 7 refers to this situation being included within those where the policies are out-of-date; it does not purport to provide that this is the only situation when policies will be out-of-date.

78. The only issue identified in the NPPF is whether the policies in question are amongst the most important for determining the appeal. In this case SRLP policy G3 was the only relevant policy in the reason for refusal and is identified by the Inspector as the most important policy (DL89). D2 had correctly conceded that it came within NPPF 11(d).

79. Given that the NPPF does not attempt to set out the situations which render any particular policies out-of-date (with the exception of footnote 7) one cannot conclude that a policy is not out-of-date because it is not a situation referred to in the NPPF or PPG.

80. The Inspector concluded that the standard method would not result in a radical redistribution setting out figures in DL88 to explain why she came to that conclusion. In DL88 she compares the distribution provided for in the CS with the distribution recommended in a housing study. The distribution recommended in the housing study is not the distribution arising from use of the standard method.

81. The standard method provides figures for individual local planning authorities. It does not provide a figure for the CHLMA. If the standard method is applied the resulting distribution within the CHLMA would provide for 23.3% in PCC, 56.1% in CC and 20.6% in D2. It is this distribution which had to be compared to the CS distribution. The Inspector failed to consider the relevant figures.

82. The Inspector failed to give intelligible and adequate reasons for her decision. Her reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds.

83. The Inspector failed properly to understand and apply relevant policy and failed to have regard to material considerations and/or took into account immaterial considerations.

Conclusion

84. There are multiple errors in the DL.

85. In the circumstances it is submitted that D1's decision should be quashed.

86. The Claimant seeks (i) permission to bring proceedings, (ii) that the decision of the Minister be quashed, (iii) an order that the First Defendant pay the Claimant's costs.

VINCENT FRASER QC