Case No: CO/2850/2016

Neutral Citation Number: [2016] EWHC 2733 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 November 2016

Before :

MRS JUSTICE LANG DBE

- -

Between :

SHROPSHIRE COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	
(2) BDW TRADING LIMITED TRADING AS DAVID WILSON HOMES (MERCIA)	**Defendants**
(1) MAGNUS CHARLES MOWAT	
(2) MARTIN JOHN MOWAT	**Interested Parties**

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Anthony Crean QC and Killian Garvey (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Thea Osmund-Smith (instructed by **Humphries Kirk LLP**) for the **First and Second Interested Parties**
The **First and Second Defendants** did not appear and were not represented

Hearing date: 20 October 2016

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Judgment

Mrs Justice Lang:

1. The Claimant applies under section 288 of the Town and Country Planning Act 1990 ("TCPA 1990") to quash the decision of the First Defendant, made on his behalf by an Inspector on 16 May 2016, in which he allowed an appeal brought by the Second Defendant and granted conditional planning permission for a development of 68 dwellings at Teal Drive, Ellesmere, Shropshire, SY12 9PX.

2. The Claimant refused planning permission on the ground that the benefits of the development were outweighed by the unacceptable harm to the open countryside, contrary to the development plan.

3. The Inspector concluded in his Appeal Decision ("AD"):

> "34. It is therefore clear that there is no recent evidence in line with the above requirements of the Framework and the PPG that offers any reliable support to the CS housing requirement, which is, in my view out-of-date being based on the RSS. Further, the Council accept that it is not suggested that the CS housing requirement will be the FOAN for their plan review and that the evidence will ultimately tell what their FOAN is. This confirms that the Council are not at the current time sure what its FOAN is and that this work is yet to be undertaken. In such circumstances, I consider that if the Council does not have a FOAN, then it does not have a robust housing requirement and therefore it must follow that it cannot demonstrate it has a five year housing land supply…"
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> "45. ….I consider that the CS housing requirement is out-of-date and the Council does not have a FOAN. Therefore, the Council does not have a robust housing requirement, in line with the requirements of the Framework and the PPG. Consequently, it follows that the Council cannot demonstrate a five year housing land supply and its policies that relate to the supply of housing are out-of-date….Paragraph 49 of the Framework states that 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. Furthermore, Paragraph 14 of the Framework is engaged, which sets out that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole."
>
> "61. On balance, I consider that the identified adverse impacts of the scheme and the associated development plan conflict are not sufficient to significantly and demonstrably outweigh the substantial benefits of the proposal. As a result, I conclude that the proposal represents sustainable development as set out in the Framework, when read as a whole. Consequently there are

> material considerations that outweigh the identified development plan conflict. This is particularly bearing in mind that the Council cannot demonstrate a five year housing land supply and the associated implication that have been discussed in the above sections."

4. Ouseley J. granted permission on the papers on 14 July 2016, and in the light of his observations, the First Defendant conceded that the decision ought to be quashed. The Second Defendant has also not resisted the application to quash. However, the Interested Parties, who are the trustees of the appeal site, have resisted the Claimant's application.

Legal framework

5. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with and in consequence, the interests of the applicant have been substantially prejudiced.

6. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

7. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties v Secretary of State for the Environment* (1978) 42 P &CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision.

8. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004, read together with section 70(2) TCPA 1990. The National Planning Policy Framework ("NPPF") is a material consideration for these purposes.

9. An Inspector's decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

10. An Inspector is required to give adequate reasons for his decision, pursuant to Rule 18 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. The

standard of reasons required was described by Lord Brown in *South Bucks District Council and another v Porter (No 2)* [2004] 1 WL.R. 1953, at [36].

Policy Framework

11. The NPPF provides:

> "47. To boost significantly the supply of housing, local planning authorities should:
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> - use their evidence base to ensure that their Local Plan meets 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 to the delivery of the housing strategy over the plan period;
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> - identify and update annually a supply of specific deliverable 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 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;
>
> …"
>
> "49. 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."

12. Where a policy is considered out-of-date, there is a presumption in favour of granting planning permission for sustainable development. By NPPF 14, the presumption operates in the following way when decisions are made:

> "where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
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> - any adverse impacts of doing so would significantly and demonstrably outweigh the

benefits, when assessed against the policies in the Framework taken as a whole; or

- specific policies in this Framework indicate development should be restricted."

13. The Planning Practice Guidance ("PPG") provides at paragraph 30:

> "What is the starting point for the five-year housing supply?
>
> The National Planning Policy Framework sets out that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. Therefore local planning authorities should have an identified five-year housing supply at all points during the plan period. Housing requirement figures in up-to-date adopted Local Plans should be used as the starting point for calculating the five year supply. Considerable weight should be given to the housing requirement figures in adopted Local Plans, which have successfully passed through the examination process, unless significant new evidence comes to light. It should be borne in mind that evidence which dates back several years, such as that drawn from revoked regional strategies, may not adequately reflect current needs.
>
> Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested or moderated against relevant constraints. Where there is no robust recent assessment of full housing needs, the household projections published by the Department for Communities and Local Government should be used as the starting point, but the weight given to these should take account of the fact that they have not been tested (which could evidence a different housing requirement to the projection, for example because past events that affect the projection are unlikely to occur again or because of market signals) or moderated against relevant constraints (for example environmental or infrastructure)."

Grounds

14. The basis of the Claimant's challenge was that the Inspector adopted an incorrect approach to the application of NPPF 47 and 49 when he concluded that, since he had found that the Claimant did not have an up-to-date "full, objectively assessed needs" for housing ("FOAN") or housing requirement, the Claimant could not demonstrate that it had a five year housing land supply, under NPPF 49.

15. Under Ground 1, the Claimant submitted that the Inspector erred in failing to engage with the evidence in respect of the FOAN or the Claimant's "housing requirements", as referenced in bullet points 1 and 2 of NPPF 47. He was required to exercise his judgment on this issue, doing the best he could on the available evidence, even if it was unsatisfactory. In this case, there was sufficient material to enable him to do so, whether or not he could identify precise figures. He was also required to explain his reasons for arriving at his conclusions, which he failed to do.

16. Under Ground 2, the Claimant submitted that by failing to identify or engage with the FOAN or the Claimant's housing requirements, the Inspector erred since he had no regard to the extent of the shortfall in the Claimant's five year supply of housing. Accordingly, he incorrectly applied the weighted balancing exercise required under NPPF 14.

17. In response to Ground 1, the Interested Parties submitted that the Inspector directed himself correctly on NPPF 47 and NPPF 49, and followed PPG 30. He gave proper consideration to the relevant material and he was entitled to conclude that there was no reliable housing requirement or FOAN upon which he could place any weight. He found that:

    i) the housing requirement in the 2011 Core Strategy was out-of-date, being based upon 2006 data and the revoked West Midlands Regional Spatial Strategy ("RSS");

    ii) the Strategic Housing Market Assessment ('SHMA') and its updates did not take into account market signals and employment trends and so their support for the housing requirement in the Core Strategy was not sufficiently robust, and did not determine the FOAN;

    iii) the Department of Communities and Local Government ("DCLG") Household Projections 2012, which lent support to the housing requirement in the Core Strategy, had to be approached with caution as the 2012 projections have been criticised for under-estimating population figures because of recessionary trends.

18. The onus was upon the Claimant to demonstrate that it had a five year housing supply under NPPF 49, and it could not do so because it could not produce a reliable up-to-date figure for its housing requirement or FOAN. In the absence of a housing requirement, there was a vacuum since there was nothing against which to measure the supply of housing.

19. As to Ground 2, the Interested Parties submitted that it was dependant upon a finding that the Inspector was required to identify a figure for the FOAN, as otherwise the shortfall could not be calculated. However, it was held in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin), per Gilbart J. at [45], that an Inspector hearing a planning appeal was not required to ascertain the FOAN because of the complexity of the task.

20. The Interested Parties also submitted that the weighted balancing exercise under NPPF 14 did not require the extent of a housing supply shortfall to be taken into account.

Conclusions

21. There is substantial authority in support of the Claimant's submission that, in an appeal concerning housing development, an Inspector must address the issues of housing requirements and housing supply in his decision as they are likely to be material considerations and his judgment on those issues is an essential part of the application of the NPPF.

22. In *Stratford on Avon District Council v Secretary of State for Communities and Local Government & Ors* [2013] EWHC 2074 (Admin), Hickinbottom J. said:

> "34 The first ground of challenge is that the Inspector erred in law in finding that the housing land requirement for the district over the 20-year period 2008–2028 was 11,000–12,000 homes. As Mr Maurici QC for the Secretary of State submitted (see his skeleton argument, paragraph 40), this was characterised in a variety of ways in the Claimant's skeleton argument; but, at the hearing before me, Mr Cairnes focused on the submission that the Inspector effectively usurped the role of the Council by determining the housing requirement for the relevant period. His finding that the requirement was 11,000–12,000, and the inevitable consequence that there was a shortfall against that figure, meant that there was a presumption in favour of permitting the development, against which he weighed the adverse environmental and economic impacts which the Council regarded so highly. In the result, the housing requirement finding effectively determined the application – and, worse, he submitted, the Council has had no alternative but (a) to accept that it cannot demonstrate a five-year housing supply in subsequent applications and appeals ("to contend otherwise would inevitably result in an adverse award of costs on such an issue", he submitted: skeleton argument, footnote 48), and (b) to adopt the figure found by the Inspector as the housing requirement for the purposes of its own future plan.
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> …
>
> 37 Of course, an assessment of future housing requirements is essential for the purposes of the development plan. But, equally, the housing requirement position must be considered when a planning application is made for housing development. First, such consideration is required by NPPF paragraphs 47-49, because, if the supply is less than five years plus buffer, then that favours grant for the reasons given above (see paragraphs 11-12): there is a presumption in favour of granting permission. Second, in the case of Stratford-upon-Avon, at the relevant time the development plan required consideration of housing supply on an application for housing development because, under the Local Plan Review (which formed part of the development plan), release of greenfield land such as the

Site was triggered by unmet need for housing land. Unmet housing need is a product of housing requirement and supply (see paragraphs 18-20 above).

38 There is therefore no doubt that, in the exercise of considering the issues he identified for the purposes of the inquiry, the Inspector had to determine the housing supply issue. Unsurprisingly, it was the second issue in his list in paragraph 476 of his report (see paragraph 7 above), and the parties addressed him on that issue at some length (those arguments being summarised by the Inspector in paragraphs 80-90 and 191–192 respectively in his report). Indeed, Mr Cairnes accepts as much in his skeleton argument (at paragraphs 4.4 and 4.6):

> "The first issue for determination was whether the circumstances had arisen whereby the release of the Site was justified pursuant to those saved development plan policies due to significant unmet need for housing within the district… The question of unmet need is necessarily dependent upon an assessment of the Council's housing land supply against its requirement…"

That necessarily meant determining what the housing requirements and supply were at the time of his report.

39 However, in coming to that necessary assessment in the context of a specific planning application/appeal, the Inspector was of course not binding the Council as to the relevant housing requirement so far as the development plan (now, in the form of the Council's Core Strategy) was concerned. Indeed, the Inspector made it clear that he understood the Council's role in considering housing supply in the context of the Core Strategy, and was not seeking to assume that role. He well-appreciated that:

> "Weighing the options with their differing environmental, economic and social implications for the District is a matter for the Council to consider through the emerging Local Plan" (Inspector's Report, paragraph 491).

40 On the part of the Inspector, these were not merely empty words; because he also made clear that he came to his assessment of housing need on the basis of the evidence before him – and, particularly, the absence of evidence before him as to if and where the displaced demand would be taken up (see paragraph 43(iv) below). This was also stressed by the Secretary of State in his decision letter:

> "For the reasons given by the Inspector *on the information currently before him* , he considers that the figure of 11,000–12,000 dwellings for the period 2008–2028 more closely accords with the requirements of the [NPPF]" (paragraph 14: emphasis added).

…

42 Equally, in deciding on the housing requirement for the district on the evidence before him and for the purposes of the particular planning application he was considering, the Inspector was not seeking to (and did not in fact) bind the Council, or another inspector or the Secretary of State, as to the housing requirement figure in other applications or appeals. The relevant housing requirement figure in another case would depend upon a separate exercise of judgment on the basis of the evidence available in that other case, at the time of the relevant decision, including relevant policy documents such as the local Core Strategy at whatever stage that process had reached.

43 Having, rightly, taken the view that he had to assess the housing requirement to enable him properly to determine the appeal in accordance with both the NPPF and the development plan (which still included the saved parts of the Local Plan Review), the Inspector's approach to determining that figure is unimpeachable, for these reasons.

> i) The determination of the housing supply involves planning judgment, and the discretion of the Inspector in exercising that judgment was wide.
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> ii) Mr Cairnes criticises the Inspector for not grappling with the figure for housing supply which the Council favoured, namely 8,000. However, he did deal with that figure, in terms. In paragraph 491 of his report, he said: "… [The] Hearn study is clear that the lower option is based on an approach of restraint and requires 'displaced demand', with implications for neighbouring authorities, to be addressed… There is no apparent evidence base dealing with this in support of the Core Strategy. The 8,000 figure has yet to be tested through the Core Strategy examination process. The weight to be given to the emerging Plan is dealt with below… but at this stage the adoption of the restraint figure in itself carries limited weight."

…

44 Therefore, in summary, for the purposes of responding to the appeal, the Inspector was required to assess unmet housing need; that required him to assess housing requirements, on the

basis of the evidence before him; he concluded that the figure of 8,000 preferred by the Council was not sufficiently evidence-based and that, on all the evidence before him, the requirement for the period 2008–2028 was 11,000–12,000; and he had at least adequate reason for that assessment. For the reasons I have given, that analysis and conclusion are unimpeachable as a matter of law."

23. In *South Northamptonshire Council v Secretary of State for Communities and Local Government & Ors* [2014] EWHC 573 (Admin), Ouseley J. held:

> "19 The question for the Inspector, applying paragraph 47 NPPF, was to identify "the full objectively assessed needs for market and affordable housing in the housing market area…". He had to make the best of an unsatisfactory situation. The RSS would be, and by the time of decision had been, revoked and was no longer part of the development plan. On the other hand, the local plan, which now constituted the development plan, was time expired, and had drawn on what was by then a very out of date basis. The new emerging strategy was the subject of objection and further examination was required. The Inspector was not willing to treat the IRHP technical papers and resolution of the Council as of themselves sufficient to demonstrate the full, objectively assessed needs. So the Inspector considered the weight to be given to the emerging JCS and to the figures in the former RSS in a search for the most up to date and objective figures. Apart from devising some sources of his own, for which he was not provided with evidence, he had to make a choice between those two unsatisfactory sources. But for all that, the debate over the figures was quite limited. The real question was whether the 616 dwellings which the developer said was a shortfall to be provided for in the current 5-year period, should be dealt with in that way, or whether it was better to cater for them over the whole period 2012–2026 and in a way, as the Council intended, which increased the provision of housing markedly at the end of the current 5-year period and then over the remaining years of the JCS to 2026.
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> …
>
> 30 In my judgment the crucial point to take from the Hunston case is how to interpret paragraph 47(i) of the NPPF, relating the requirement for a full objective assessment of housing needs in the housing market area to the subsequent qualification that that be done so far as is consistent with the policies in the Framework, before the Local Plan is produced, reconciling or balancing the two aims.
>
> 31 Before that happens through the Local Plan, the full objectively assessed housing needs of the area are not subject to

the constraints of policy. Those constraints fall for consideration later on in the development control decision-making process, as the Court of Appeal pointed out; for example in a Green Belt case, the question will be whether a shortfall of housing land supply against those fully assessed needs constitutes very special circumstances so as to permit inappropriate development in the Green Belt. The question is not whether the Green Belt constrains the assessment, but whether the Green Belt constrains meeting the needs assessed. Once the Local Plan is adopted, it is the constrained needs in the Plan which are to be met.

32 A revoked RSS is not a basis for the application of a constraint policy to the assessment of housing needs, because it has been revoked and cannot be part of the Development Plan. The same would be true of an out of date Local Plan which did not set out the current full objectively assessed needs. Until the full, objectively assessed needs are qualified by the policies of an up to date Local Plan, they are the needs which go into the balance against any NPPF policies. It is at that stage that constraints or otherwise may apply. It may be problematic in its application, but that is how paragraph 47 works.

33 In principle, what is said about full objectively assessed housing needs must apply where the revoked RSS figure was based on growth projections or policies which went beyond a full objective assessment of housing needs. In practice, it may be more difficult to judge the extent to which those objectively assessed needs in the housing market include or exclude a former growth strategy in a revoked or out of date plan. But that remains a planning judgment.

34 The first question for the Inspector in this case was what was the best figure for the full objectively assessed housing needs in the housing market area. Here, there was a particular difficulty because there was no up to date local plan; indeed, except for saved policies, it had expired some six years ago. The emerging JCS suffered from sufficient weakness and uncertainty that it could not be regarded as weighty, let alone as containing the full objectively assessed housing needs figure. The Inspector had the RSS figure, objectively assessed, albeit not very up to date. He accepted it because of the view he took of the emerging JCS figure and the trajectory approach of the Council. It is not wrong in principle to use the evidence base of the revoked RSS, provided that its figures are not used to enlarge the housing requirement beyond the full assessment of housing needs. Hunston did not decide that a revoked RSS was expunged from history. It decided that the policies of a revoked RSS, and the same would be true of an out of date Plan, in the

application of paragraph 47 NPPF, could not be used to affect the full objective assessment of housing needs.

35 The Council provided no evidence of the extent to which the RSS figure for South Northamptonshire had been inflated, if at all, by the former growth strategy. The Inspector did however have the evidence, referred to in paragraph 27 IR, that the difference between the RSS and JCS figures 2001–2026 was marginal, with the JCS figure being slightly higher. The now revoked growth policy, insofar as it affected the relevant parts of South Northamptonshire, had not led in fact to a larger figure for the housing needs than the non-growth based figure of the JCS. Over the current period of 5 years, absent the effect of what the Inspector regarded as a shortfall, there was no difference either. So it is difficult to see what basis the Inspector could have had for treating the RSS figure as legally irrelevant, simply because the RSS had been revoked and the underlying growth strategy no longer applied. Although there is the potential for an error of law in this respect, I am satisfied that in fact there was no error of law."

24. In *West Berkshire District Council v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 267 (Admin), Supperstone J. said:

> "52 The Inspector was required to identify an annual housing requirement in the District. If he failed to do so he would not have been able to identify whether the Council was able to demonstrate whether it had a five year supply of housing land. Having rejected the Core Strategy figure the Inspector explained why he favoured the figure of 833 dwellings per annum "as an appropriate point in calculating a five year housing requirement for the purposes of this appeal" (DL33)."

25. In *R (Gladman) v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 683 (Admin), Patterson J. stated:

> "7 …
>
> (v) The Inspector in determining the appeal application was obliged in this case to address the housing requirement and supply in making his judgment. This was the case in Stratford-upon-Avon DC v Secretary of State [2013] EWHC 2074 where Hickinbottom J stated:
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> "Of course, an assessment of future housing requirement is essential for the purposes of the Development Plan. But, equally, the housing requirement position must be considered when a planning application is made for housing development. First, such application is required by NPPF Paragraphs 47 - 49, because, if the

> supply is less than 5 years plus buffer, then that favours the grant for the reasons given above (…): there is a presumption in favour of granting planning permission.""

26. I do not read the judgment of Gilbart J. in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin) as expressing a different view. He said:

> "43 NPPF is not to be used to obstruct sensible decision making. It is there as policy guidance to be had regard to in that process, not to supplant it. Here the Inspector was presented with a Development Plan policy which was not up to date, but which nonetheless provided two ends of a range of figures in whose context a decision could properly be made. One of them (the lower figure) was argued for as the appropriate "needs" figure by DBC. This was not a case where the absence of an up to date assessment of housing needs deprived the decision maker of a context in which to consider any aspect of housing policy, whether or not it made it difficult to establish if there was a failure to identify the 5 year figure against which the available supply was to be measured. For not all issues on housing at an inquiry are the same. Thus in St Albans v Hunston, where the level of housing need was a critical factor in determining whether there was a case for release of a site from the Green Belt, it was wrong of the Inspector to have relied on an out of date plan, having regard to paragraph 47 of NPPF. In Kings Lynn etc. v SSCLG Dove J identified, rightly, that when one does assess up to date needs and arrive at a FOAN, there may be reasons why the figures emerging from the first analysis need to be boosted or reduced by reference to other planning factors, be they (for example) the recognition of the relevance of second homes in Norfolk, or the need to boost housing development in some deprived areas or the need to restrain it in areas of environmental sensitivity.
>
> 44 But here by contrast, there was a context in which the Inspector could make at least some judgements about housing supply. In a case such as this, where there is a choice of two figures relied on by the parties, both of which can be criticised, but which address both ends of the possible range, neither NPPF nor the judicial authority cited above, prevent an Inspector from reaching a judgement on the issue by asking whether, when measured against either figure, there would be a benefit in planning terms in granting permission. In this case no-one suggested that the requirement figure would be below the lower figure, so using both figures to test delivery rates was a sensible way of dealing with the issue. If this were a site where there were significant objections to development, and a real issue on whether its contribution to housing provision

> would be beneficial, it *may* be that a more thorough analysis would have been required, subject always to the actual context of the actual decision in question. That is a matter to be decided on a case by case basis. But there is nothing in either St Albans v Hunston per Sir David Keene nor in Kings Lynn v SSCLG per Dove J which prevents an Inspector from adopting a sensible and pragmatic approach of testing whether, on the lower "needs" figure, there would still be advantage in the grant of permission for housing, and especially not on a site to whose development there was no sustainable objection otherwise.
>
> 45 The alternative is that he would have had to perform some much more thorough analysis. But to derive a requirement for the plan period, so that one had an up to date figure, is a substantial exercise, best conducted in the Development Plan process. In my judgement there was nothing to prevent the Inspector approaching it in the way he did, without his embarking on an analysis of what one must do to derive a robust requirement figure: he would have had to look at census data and projections, household formation rates, average household size, migration patterns, economic performance, vacancy rates, site assessment, completion rates and all the other topics that await one when embarking on the ascertainment of a FOAN. To some, such an exercise is a sojourn in a garden of delights, but one should not underestimate its complexity and substance. Anyone ever instructed or otherwise participating at the time when Development Plan inquiries involved the examination of such topics at public inquiry will know that only too well. That is a burden to be imposed on a s.78 appeal Inspector only if unavoidable, and is truly a matter for the Development Plan process. An Inspector on appeal will not have the ability to consult all who should be consulted, and is only considering one site. If this Court interpreted NPPF paragraph 47 as requiring such an exercise in any case where there is not an up to date FOAN, it would turn many otherwise simple s.78 public inquiries on modest sites (like this 1 hectare site) into major inquiries involving a large amount of very technical evidence."

27. In my judgment, these passages in *Dartford* confirm the other judgments cited to the effect that Inspectors generally will be required to make judgments about housing needs and supply. However, these will not involve the kind of detailed analysis which would be appropriate at a Development Plan inquiry. The Inspector at a planning appeal is only making judgments based on the material before him in the particular case, which may well be imperfect. He is not making an authoritative assessment which binds the local planning authority in other cases.

28. In my judgment, in the instant case, the Inspector was required to make judgments, based on the evidence, as to the Claimant's current FOAN or housing requirements

and its housing supply in order to decide the issues in the appeal. As this was an application for a medium-sized housing development which was not in accordance with the Development Plan, the Inspector had to consider whether other material considerations indicated that planning permission should be granted. The Claimant's level of housing need and supply was a material consideration, as reflected in the NPPF. The Inspector had rightly identified the Council's housing land supply and housing need as a "main issue" in AD 10. In my view, he could not properly apply NPPF 49 (which has to be read together with NPPF 47) and NPPF 14 without first making those judgments. I consider that NPPF 49 requires the Inspector to make his own judgment on the equation between housing needs and housing supply based upon the relevant evidence provided by the local planning authority and any other party to the inquiry. I also accept the Claimant's submission that, in a case where housing needs and supply are in play, the extent of any shortfall in housing supply may well be relevant to the balancing exercise required under NPPF 14: see *Cheshire East Borough Council v Richborough Estates Partnership LLP* [2016] EWCA Civ 168, per Lindblom LJ at [47].

29. In my view, it is apparent from PPG 30 that even if an Inspector finds that a Local Plan is outdated, other sources of information can and should be considered by the Inspector. Where there is no robust recent assessment of full housing needs, the household projections published by the DCLG should be used as the starting point. I accept the Claimant's submission that the Inspector must do the best he can with the material before him. As Ouseley J. said in *South Northamptonshire Council*, at [19], the Inspector has to make the best of an unsatisfactory situation, making a choice between unsatisfactory sources. In this appeal, although the Inspector considered the reliability of the material, he failed to go on to make judgments on housing needs and supply and so he did not complete the task which he was required to perform.

30. I do not accept that this was an exceptional case (of the type referred to by Gilbart J. in *Dartford* at [43]) where the evidence before the Inspector was so lacking that it was impossible for him to perform this task. In fact, in this appeal there was a substantial amount of material relating to housing needs and supply in Shropshire, much of it recent in origin, upon which the Inspector could have made his judgments. The developer's expert report identified a range of figures in respect of housing supply. I acknowledge that the Inspector's task would have been easier if the developer's expert had volunteered some alternative figures for the FOAN or housing requirements, but the absence of such evidence did not absolve the Inspector from making his own judgment on the material before him, as best he could, despite its imperfections. If he was not able to identify a specific figure, he could have identified a bracket, or an approximate uplift on the Claimant's figures and the departmental projections. As I have already explained, he was not required to undertake the kind of detailed analysis which would be appropriate at a Development Plan inquiry and he was not making an authoritative assessment which would bind the local planning authority in other cases.

31. I also accept the Claimant's alternative submission that, if the Inspector was genuinely unable to make the required judgments as to the FOAN, housing requirements, and housing supply, he ought to have given adequate reasons to explain why he could not do so.

32. Finally, I am unable to accept the submission that this is a case in which I ought to exercise my discretion not to quash, as I consider that the flaws in the decision-making process were potentially critical to the outcome of the appeal.

33. For these reasons, the Claimant's application to quash is granted.