

IN THE MANCHESTER CIVIL JUSTICE CENTRE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester,
Greater Manchester,
M60 9DJ

Date: 25/03/2013

Before:

THE HONOURABLE MR JUSTICE STUART-SMITH

Between:

**WAINHOMES (SOUTH WEST) HOLDINGS
LIMITED**

Claimant

- and -

**(1) THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT**

Defendant

**(1) WILTSHIRE COUNCIL
(2) CHRISTOPHER RALPH CORNELL AND SARAH CECILIA CORNELL**

Interested Parties

David Manley Q.C. (instructed by **Ashfords LLP**) for the **Claimant**
Lisa Busch (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing date: 11 March 2013

Judgment

Mr Justice Stuart-Smith:

Introduction

1. This is a claim under s.288 of the Town and Country Planning Act 1990. The Claimant (“Wainhomes”) challenges a decision dated 5 October 2012 by which inspector Mike Robins dismissed an appeal against the non-determination by Wiltshire Council (“the Council”) of a proposal to build up to 50 houses on land at Widham Farm, Widham Grove, Station Road, Purton, in Wiltshire. The inquiry was undertaken on the appeal of Mr and Mrs Cornell, who are now interested parties in these proceedings, against the Council’s non-determination of their application for planning permission. Wainhomes has an interest in the land the subject of the challenge by reason of an option agreement dated 13 November 2012.

2. The inspector indentified as one of the main issues in the case, whether or not there were material considerations that would outweigh the development plan presumption against development in the countryside. Central to that issue was whether or not there was a supply of specific deliverable sites sufficient to provide five years worth of housing against the Council's relevant housing requirements with an additional buffer of five per cent to ensure choice and competition in the market for land, as required by paragraph 47 of the National Planning Policy Framework ("NPPF"). As discussed in greater detail below, that issue involved consideration of whether the strategic sites included in Wiltshire's draft Core Strategy and AMR should be included by the inspector when determining the supply of deliverable sites over the next five years. The Council contended that they should be included; the appellants said that they should be excluded. After the hearing of the inquiry two decisions by another inspector (Inspector Papworth) were promulgated in relation to sites in Calne, which is also in Wiltshire. Those decisions decided, in materially identical terms, that strategic sites should be excluded from consideration of the supply of deliverable sites. Those decisions were sent promptly to the inspectorate by those who were at that time advising Mr and Mrs Cornell; but they were not considered by Inspector Robins. When he made his decision on 5 October 2012 he found against the appellants and included the strategic sites. Having done so he concluded that a five year housing supply had been shown.
3. By these proceedings Wainhomes advances five grounds of appeal, namely:
 - i) The inspector failed to have regard to a material consideration namely the two decisions at Calne or give reasons for not following the approach taken in those cases to the five year housing land supply;
 - ii) The inspector failed correctly to interpret the NPPF;
 - iii) The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational;
 - iv) The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding;
 - v) The inspector made a mistake or otherwise reached a conclusion based on no evidence.
4. In summary, this judgment concludes that:
 - i) Ground 1 of the challenge is established. The inspector failed properly to exercise his discretion in deciding whether or not to admit the Calne decisions for consideration and failed to give proper reasons for his decision;
 - ii) The other grounds of challenge fail because when the Decision Letter is read fairly and with the reasonable latitude appropriate to a review of such decisions, it appears that the inspector made no material error of law, reached conclusions that it was open to him to reach on the material he considered, and gave adequate reasons for his decision.

The applicable principles

5. The principles applicable to a challenge under s.228 of the Town and Country Planning Act 1990 have been set out frequently and repeatedly in many decisions including decisions of the highest authority. It is neither necessary nor desirable to provide a comprehensive review in this case, and I merely highlight principles that are directly in point for this challenge.
6. In *Wiltshire Council v Secretary of State for Communities and Local Government and Robert Hitchins Limited* [2010] EWHC 1009 (Admin) Simon J provided a useful summary of the applicable principles at [7-8] which I gratefully adopt without setting it out again. I bear in mind at all times that:
 - a) Where an expert tribunal (such as a planning inspector) is the fact finding body, the *Wednesbury* unreasonable test will be “a difficult obstacle” and poses a “particularly daunting task” for an applicant under s.288;
 - b) A decision letter must be read in good faith and as a whole. It should be construed in a practical manner and not as if it were a contract or statute.
7. The scope and extent of an inspector’s obligation to provide reasons were explained in *South Buckinghamshire DC v Porter (no.2)* [2004] 1 WLR 1953 by Lord Brown of Eaton-Under- Heywood at [36]:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

8. A decision maker ought to take into account all matters which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. That includes considerations where there is a real possibility that the decision maker would reach a different conclusion if he did take that consideration into account. If a matter is excluded from consideration and it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, a Judge is able to hold that the decision was not validly made. But if the Judge is uncertain whether the matter would have this effect or was of such importance in the decision-making process then he does not have before him the material necessary for him to conclude that the decision was invalid: see *Bolton MBC v SoSE* [1991] P&CR 343, 352-353. This obligation derives from s.70 (2) of the Town and Country Planning Act 1990 which applies to the determination of appeals by virtue of s.79 (4) of the Act: and see *R (on the application of Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370 at [122-127]. *Kides* establishes that the obligation to have regard to material considerations continues up to the time that the decision maker (in this case the inspector) makes his decision.
9. It is common ground that a previous inspector's planning decision is capable of being a material consideration, though the importance to be attached to a previous decision will depend upon the extent to which the issues in the previous decision and the current decision overlap. In *North Wiltshire DC v SoSE and Clover* [1992] 605 P&CR 137 Mann J addressed the limits of the inspector's obligation to have regard to previous decisions. At page 145 he said that 'an inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision'. Mann J provided what he called 'a practical test for the inspector' which was to ask 'whether if I decide this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in a previous case?' This guidance cannot simply be applied by rote. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise; and this requirement is reflected and reiterated. The development plan may itself be in a state of flux and development. That being so, previous decisions that were made when the planning regime or development plan were significantly different are likely to be of less materiality than recent decisions made in the same or a closely similar planning context.
10. The Town and Country Planning Appeals (Determination by Inspectors) (Enquiries Procedure) (England) Rules 2000 provides the procedural framework for the conducting of inquiries. They include rules that are intended to ensure that all relevant materials upon which the inspector will make his decision are available both to the inspector and to other parties according to an orderly timetable. The rationale for this procedural framework is self evident: the late submission of additional materials is liable to produce inefficiency, delay, increased expense and, at worst, injustice. However, it is inevitable that there will be occasions when information that is material to an inspector's decision will become available for the first time at a date which prevents compliance with the normal framework and rules. Against that eventuality the inspector has a discretion to admit materials which have not been provided in accordance with the normal procedural timetable. That discretion continues up to the

time that he makes his decision. Rule 18 makes express provision for the admission of material after the inquiry has been held and before he has made his decision as follows:

“(2) When making his decision the inspector may disregard any written representations or evidence or any other document received after the close of the inquiry.

(3) If, after the close of an inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first (a) Notifying [in writing] the persons entitled to appear at the inquiry who appeared at the matter in question; and (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. And they shall ensure that such written representations or requests to re-open the inquiry are received by the Secretary of State within three weeks of the date of notification.

(4) An inspector may, as he thinks fit, cause an inquiry to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned within paragraph (3): and where an inquiry is re-opened – (a) The inspector shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited;...”

11. The inspector’s power to admit material after an inquiry and the basis upon which he should exercise his discretion when asked to consider further material is the subject of Planning Inspectorate Good Practice Advice Notes. Advice Note 07 says at [67]:

“At any point before deciding the appeal the inspector may exercise his/her powers to seek further information from the parties if it is considered necessary to enable a properly informed, and reasoned, decision to be made.”

Advice note 10 says (at [7]) that, if new matters arise which are considered likely to be material to the inspector’s consideration of the case, the relevant material should be submitted at the earliest possible stage. At [9] the note says:

“The Secretary of State and Inspectors have discretion as to how to treat new materials submitted with or during the consideration of an appeal. They will apply their discretion on the basis of the relevance of the material to the appeal proposal, whether it simply repeats something that is already before the Inspector (for example, rebuttal evidence which adds nothing to what is already recovered in a proof of evidence) and whether it

would be procedurally fair to all parties “including interested persons” if the material were taken into account...”

12. These being principles that are relevant to apply in this case, I turn to consider the grounds of challenge.

Ground 1: The inspector failed to have regard to a material consideration namely the two decisions at Calne or to give reasons for not following the approach taken in those cases to the five year housing land supply

13. It is necessary to examine the factual background in more detail to put this ground of challenge in context. For convenient reference, the relevant passages of the Decision Letter are reproduced at Annexe A and are not set out again in the body of this judgment.

Factual background

14. The NPPF was introduced in March 2012. Under the heading “Delivering a wide choice of high quality homes”, [47] of the NPPF provides:

“To boost significantly the supply of housing, local planning authorities should:

- 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 planned periods;
- Identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of five per cent (moved forward from later in the planned period) to ensure choice and competition in the market for land...”

15. A footnote attached to the word “deliverable” in the second bullet point (“Footnote 11”) defines what that word means in [47] as follows:

“To be considered deliverable, sites should be available now, offer a 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 5 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.”

16. It was central to the appellants' case before the inspector that there was an insufficient supply of deliverable sites and that insufficiency was a material consideration in favour of the appellant's proposal. The importance of the existence or otherwise of deliverable sites sufficient to provide 5.25 years worth of housing against the identified housing requirements was made clear by Tracy Smith, the Council's Area Team Leader, who expressly accepted in evidence that if it were to be concluded that there was a shortfall in the 5 year housing land supply and if it were to be concluded (as the inspector did conclude in the Decision Letter) that prematurity was not a legitimate basis on which to reject the appeal then development of the appeal site would be permissible in principle subject to satisfactory s 106 contributions being made. She also accepted that the Council was not suggesting that any more sustainable sites existed within the settlement boundaries of Purton, that the site had no constraints that would preclude its development, and that the development of up to 50 units could not be characterised as "large scale". Accordingly, given the inspector's conclusion on prematurity, the sufficiency of the housing land supply was of primary importance.
17. Various different sources of data relating to land supply were available. The appellants favoured the evidence base that had underpinned the dRSS while the Council favoured the approach adopted in the emerging Core Strategy for Wiltshire ("eWCS"). A number of reasons were put forward by the parties in support of their respective positions, which were encapsulated in the witness statements of Mr Stephen Harris, a Chartered Town Planner who gave evidence for the appellants, and Mr Neil Tiley, who gave evidence for the Council and who was the Council's Manager of Monitoring and Evidence within Economy and Regeneration.
18. The inspector set out the competing positions at [11-14] of the Decision Letter. In summary, both parties accepted that the data and projections found in the adopted development plan were out of date. Revised housing requirements were promoted during the development of the dRSS, which was subject to Examination in Public and revision for the version that was published for consultation in 2008. However, because of the Coalition Government's antipathy towards RSSs, it was recognised that although the dRSS had reached an advanced stage it was extremely unlikely to be adopted. In response to this state of affairs, the Council reconsidered the housing requirements for Wiltshire and its reconsideration informed the eWCS. The eWCS had reached the stage of being submitted for Examination in Public but that examination had not taken place. The Council preferred to rely on the eWCS evidence base because extensive consultation had already taken place; but the outcome of the EIP was as yet unknown and uncertain, not least because it was subject to objections to proposed housing numbers and because concerns had been raised which suggested a need for the Council to re-consult.
19. A discrete but important argument related to what sites could properly be regarded as "deliverable" within the meaning of Footnote 11. The Council had included in its calculations 1,657 units from sites identified as "strategic sites" in the eWCS. None of these sites had planning permission. Mr Tiley did not know which, if any, were objected to. Mr Harris gave unchallenged evidence that, to the best of his knowledge, all were subject to objection. Mr Tiley was unable to identify any case in which the Secretary of State had deemed it appropriate to include emerging Core Strategy "strategic sites" in a calculation of the 5 year housing land supply where such sites

were subject to objection. At the present hearing, the Court was informed that no such decision of the Secretary of State had been identified but that there are decisions of the Secretary of State going the other way (i.e. excluding strategic sites which were subject to objection from inclusion in the calculation of the 5 year housing land supply). No further details about these decisions have been provided¹.

20. The potential impact of this dispute about strategic sites on the raw figures as found by the inspector emerges clearly from the evidence of Mr Harris for the present proceedings. Inspector Robins included strategic sites in his calculations, which led him to produce a table at [52] of the decision letter as follows:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Assessment (years)
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3
eWCS North and West HMA	15,249	5,083	6292	6.2

In other words, adopting the Appellant’s favoured approach by reference to the dRSS North Wiltshire would support the conclusion that there was a shortfall in supply but adopting the Council’s favoured approach by reference to the eWCS North and West HMA would support the conclusion that there was not.

21. Mr Harris, whose evidence is not contradicted, says that “for North Wiltshire the total supply from [strategic sites] in the next 5 years was 990 dwellings ... and 1,657 dwellings for the North and West HMA ...” The effect of excluding these dwellings upon the inspector’s table is shown in the right hand column of the adjusted table below:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Inspector Robins’ Assessment (years)	Adjusted assessment excluding strategic sites
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3	2.9
eWCS North and West HMA	15,249	5,083	6292	6.2	4.6

¹ Save possibly for a reference to one decision in the Calne Decision letters: see [26] below.

In other words, if the strategic sites are excluded there is a much greater shortfall by reference to the dRSS for North Wiltshire and there is also a shortfall by reference to the eWCS North and West HMA.

22. During the inquiry the inspector was referred to three previous decisions which touched on the issue of inclusion or exclusion of strategic sites. The decisions predated the introduction of the NPPF and were referred to at [22-23] of the Decision Letter. The decisions were:

i) The decision of Inspector Youle relating to land at Meadow Lane, Ruands, in Northamptonshire dated 18 January 2010. At [41] of his decision the inspector referred to “impending consents and DPD allocation” which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“This includes a number of sites which are proposed as housing allocations in the Preferred Options versions of the TTP and the RAP. However, these Plans have not been subject to independent testing through an examination and several of the sites do not appear to have planning permission or to be allocated for housing in the Local Plan. In addition, some sites appear to have constraints which could impede deliverability. Consequently I have not been given sufficient evidence to indicate that these sites can be regarded as being available, suitable and achievable as required by PPS3. Therefore, it has not been demonstrated that a five year supply exists.”;

ii) The decision of Inspector Graham relating to land at Moat House Farm, Marston Green, in the area of Solihull MBC dated 21 February 2012. At [11] of her decision she addressed the question of Draft Local Plan sites, which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“The draft Local Plan identifies proposed sites for 1,445 net additional dwellings, and the Council maintains that these should be taken into account when calculating the 5 years supply position. However, it is important to bear in my mind that this emerging Local Plan is still only a draft, which has yet to be the subject of further consultation, representations, and Examination in Public. Paragraph 54 of PPS3 explains that to be considered deliverable, sites should be available, suitable and achievable at the point of adoption of the relevant Local Development Document. There can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan, which in any event will not be adopted before 2013. As the situation stands at present, I consider that these sites should not be included when calculating the current five year land supply position”

iii) The later decision of Inspector Graham relating to land at Park Road, Malmesbury, Wiltshire dated 15 March 2012. At [18] of her decision she

accepted that “the Council’s 2010/2011 Annual Monitoring Report (AMR) provides the logical starting point for assessing the supply of deliverable housing sites.” She then considered specific sites, and at [23] she addressed the inclusion of three strategic sites at Chippenham which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“It is fair to note that all three sites have physical, environmental and infrastructure constraints that will need to be addressed. However, the council has liaised with the developers of each, and obtained delivery trajectories which update the information provided in AMR. I see no convincing reason to doubt these revised figures, which indicate that within the five year period an additional 420 dwellings will be provided at the north Chippenham site, and a further 110 at the East Chippenham site. ”

23. Certain points may immediately be noted:

- i) Each inspector was prepared in principle to treat sites which did not yet have planning permission as potentially satisfying the PPS3 requirements;
- ii) The inspectors at Meadow Lane and Moat House Farm identified the fact that the Plans in those cases had not been subjected to Examination in Public as a feature weighing against the inclusion of the sites there listed;
- iii) In the Malmesbury decision, the inspector’s reservations about the status of two of the sites² were resolved by the calling of site specific evidence about their availability and deliverability. By contrast, no such evidence had been called in the other two appeals.

24. In the present case it was not suggested before the inspector and is not suggested now that strategic sites which did not yet have planning permission were necessarily to be excluded from the calculation of the housing land supply. The case advanced before the inspector (relying upon the previous decisions from Meadow Lane and Moat House Farm) was that because the eWCS had not been adopted, sites could not be regarded as available by virtue of their inclusion in the eWCS since their deliverability would be assessed through the Core Strategy process³. Inspector Robins dealt with the previous decisions specifically at [22-23] of the Decision Letter. He accepted that he should not prejudge the outcome of the eWCS Examination in Public and that the weight to be ascribed to the eWCS depended upon “the specific stage of preparation of the evidence base and the evidence supporting deliverability.” In contrast to what had happened at Malmesbury, no site specific evidence of deliverability was presented to Inspector Robins. Referring to that decision he said that “the Inspector in that case also accepted the principle of including strategic sites.”

² The reference to “the North Chippenham site, and ... the East Chippenham Site” suggests that they were two of the three strategic sites being considered in [23], with the third site not being named or included. However, it makes no difference to the argument if the North Chippenham and East Chippenham Sites in fact comprised all three sites: whether two or three strategic sites were included by the inspector, they were included after the provision of site-specific evidence.

³ See Mr Harris’ Witness Statement to the inquiry at [7.24-25]

It is evident that he saw the Malmesbury decision as supporting the conclusion (which he ultimately reached) that the strategic sites in the present case should be included.

25. Before Inspector Robins made his decision, two potentially relevant events occurred. First, on 3 September 2012 Mr Harris sent to the inspector a copy of a letter to the Council dated 29 August 2012 from Mr Andrew Seaman, the Senior Housing and Planning Inspector who was to conduct the Examination in Public of the eWCS. That letter raised a number of concerns about the eWCS and its prospects when submitted to the EIP. There were concerns relating to the soundness of the evidence base underpinning the housing chapter and the quality of the sustainability appraisal that had been carried out. Mr Seaman noted that the Council was “undertaking further consultation on its proposed pre-submission changes which will include details of the revised Sustainability Appraisal and an opportunity to comment upon the implications of the [NPPF] and Government Policy for Gypsies and Travellers.” He foresaw that the Examination would certainly extend into 2013. This further information was admitted by Inspector Robins. It seems likely that he had it in mind when he said, at [12] of his Decision Letter, that “the Council’s ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.”
26. The second potentially relevant event was that Inspector Papworth made two decisions on 18 September 2012. Each decision related to land at Calne, in Wiltshire. Each considered in some depth (and in identical terms) the principles of development to be applied, at and from [9]. At [13-15] Inspector Papworth considered the housing requirement side of the equation established by [47] of the NPPF. He regarded the Malmesbury decision as “an anomaly” and contrasted it with a decision of the Secretary of State at Salisbury which “expressed a different view on a more advanced core strategy.” Turning to the state of development of the eWCS he said that it was “advanced inasmuch as an Examination is imminent, but in view of the extent of unresolved objections, including to the adequacy of the provisions for housing, there must remain doubts over the outcome and the consistency with Framework policies on increasing the supply of housing.” He held that the assumption that the Regional Strategy will not now be taken further does not materially alter the weight that can be attached to that evidence base relative to that presently informing the emerging Core Strategy”; and he concluded that, having regard to the first bullet point of Framework [47] “it is appropriate to regard the figures derived from the evidence for the Regional Strategy as a robust basis for determining the requirement.”
27. Turning to the supply side of the equation at [16], Inspector Papworth took the view that “to ensure a robust appraisal it is necessary to look further at the list of sites as discussed at the hearing.” It is apparent that site specific evidence had been presented in relation to some but not all sites, and that no site specific evidence had been submitted in relation to strategic sites, because Inspector Papworth said at [17-18]:

“17. Of the large permitted areas, there does appear to be doubt over the delivery of the former Bath and Portland Stoneworks site given its past history, not being in the 2009/10 Annual Monitoring Report, and little evidence that matters have moved on substantially since. Similarly with the Blue Hills Site, this appears to have been subject to persistent delays and to being put back in time in the successive Annual Monitoring Reports.

The delivery timescale for land adjacent to the scrap yard at Trowbridge also appears to be receding and reduction here is appropriate.

18. Other sites with permissions that had been previously dismissed have been brought back into the list, but it is apparent that even with the acceptance of these sites in total, a shortfall is possible. The Council has added 183 units in this category where none were previously included. Footnote 11 of the framework does provide for live permissions to be counted unless there is clear evidence that the schemes will not be implemented within 5 years, for example, they will not be viable, there is no longer a demand for the type of units or sites or sites have long term phasing plans. Clearly those where the permission has expired should not be included and where land was bought at or near the height of the market, doubts over viability would be legitimate. The prospect of new permissions on new land being required to replace such stalled schemes was discussed. Windfalls have also been significantly increased and that is provided for in paragraph 48 of the framework subject to certain requirements on historic evidence. There appears to be good reason to reduce the figure on that basis as suggested, *Vision and strategic sites are disputed in their entirety, and given the process to be gone through and the doubts over delivery, a degree of caution is appropriate. The requirement is to identify a supply of specific deliverable sites and to be considered deliverable, sites should be available now. These sites cannot truly be described as being available now.*” [Emphasis added]

28. Inspector Papworth concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to increase further the shortfall which he had already found to have existed by reference to the various evidence bases even if those sites were included.
29. On 26 September 2012 Mr Harris had a conversation with someone at the relevant PINS team who advised him to send the Calne decisions together with a brief note. As a result of that conversation he sent the Calne decisions by email times at 10:35 that day. In that email he provided the suggested note in the following terms:

“Following our conversation earlier, I understand that the Council has not commented on the letter from Wiltshire Core Strategy Inspector and therefore you do not require any further comment from the Appellant.

We also discussed two appeal decisions which were issued last week for the two sites in Calne, Wiltshire. As they are in the same policy area of North Wiltshire we consider that they are relevant to our appeal as they deal with similar issues. However we are conscious that the Inquiry closed a number of weeks ago. Therefore you requested that we send the decisions to you

and you would decide whether or not they can be taken into account on this appeal.

Both of the attached appeals were heard at the same hearing in July this year. The first (APP/Y3940/A/12/2171106/NWF) was for some 154 dwellings and the second (APP/Y3940/A/12/2169716) was for up to 200 dwellings. Therefore both appeals (some 354 dwellings) would meet the 370 dwellings that remain to be planned for in the emerging Core Strategy for Calne. These decisions conclude that:

- The housing requirement to be used is the RSS Proposed Changes;
- The geographical area to determine the supply is the former North Wiltshire;
- Limited weight can be given to the emerging Core Strategy due to the stage it has reached;
- There are concerns on the deliverability of commitments and emerging allocations;
- The appeals would not result in prematurity against the emerging Core Strategy and neighbourhood plan.

Should you require any further information please do not hesitate to contact me”

30. Receipt of Mr Harris’ email was acknowledged at 15:50 on 26 September 2012. The only additional comment made by the person acknowledging receipt was the accurate but inconsequential statement that “The Appeals referred to have now been decided and the Decisions issued on 18 September”, which Mr Harris obviously knew already.
31. No further response was sent until 14:11 on Tuesday 2 October 2012 when a Case Officer from the relevant team at PINS emailed Mr Harris above a copy of the email with which he had sent the Calne decisions:

“Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector.”
32. Inspector Robins’ decision was made on 5 October 2012. No reference was made in the Decision Letter to the Calne decisions; nor has any further information or reason been given to explain why Mr Harris’ email of 26 September 2012 and the Calne decision he had attached to it were not considered by the inspector.
33. The relevant passages in the Decision Letter are set out in Annexe A. The following features may conveniently be highlighted here:
 - i) The Decision Letter addresses the issue of “deliverable” sites and whether strategic sites should be included specifically at [21-24] and [51-54];

- ii) At [21] the inspector's acceptance that allocated sites, including those within emerging plans, could be included was subject to two provisos:
 - a) Acceptance would be "subject to the weight that can be given to that plan and its evidence base"; and
 - b) Acceptance would be "subject to ... the submission of information indicating a reasonable likelihood of them progressing within the five year period."
- iii) At [22] and [24] the inspector accepted that the existence of outstanding objections to sites meant that housing supply from such sites could not be guaranteed; and that he could not prejudge the outcome of the eWCS Examination. He treated these as matters going to the weight that he was able to attach to the Council's assertion that such allocations should be included;
- iv) At [23] he identified the evidential factors supporting his conclusion that exclusion of all the draft allocations was not appropriate, including that the Malmesbury inspector had "accepted the principle of including strategic sites.";
- v) He referred to the Moat House Farm and Meadow Lane decisions at [22]. There was no discussion of the basis or reasoning supporting either of those decisions or the Malmesbury decision. In particular, the Decision Letter does not evidence an appreciation that there was site specific evidence in the Malmesbury decision (but not in the other two) or that this might be a significant factor, despite his statement in [21] that acceptance would be subject to the submission of evidence indicating a reasonable likelihood of sites progressing within the five year period;
- vi) He accepted at [24] that, although exclusion of all the draft allocations was not appropriate, "full weight cannot be given to the precise numbers put forward by the Council"; but he concluded that it was "reasonable to include these sites in absence of specific evidence that they cannot be delivered.";
- vii) At [53], reviewing the contents of his table, he concluded that the Council had shown a 5-year housing supply relative to the dRSS Rest of North Wiltshire figures and the eWCS North and West HMA figures but had failed to demonstrate adequate supply for the dRSS North Wiltshire Area. He concluded that the weight to be given both to the dRSS figures and the eWCS figures was "somewhat lessened", to a similar degree in each case;
- viii) At [54] he stated that he did not rely upon the exact (or raw) figures in his table, but regarded the figures (taken broadly) to demonstrate a 5 year housing supply except in relation to the former North Wiltshire District, where he considered that the 4.3 years, set against an expectation of 5.25 years, did not represent a serious shortfall. As a result, he did not consider that there was an "overwhelming need for development to meet" the specific demand in the former North Wiltshire District. He therefore considered that a 5-year housing supply had been shown.

Discussion

34. The issue for the inspector was whether the strategic sites were “deliverable” as defined by Footnote 11 so that they fell within the meaning of [47] and should have been included in the assessment of housing land supply. Footnote 11 is not entirely straightforward, but the following points are relevant to its interpretation:
- i) It is common ground that planning permission is not a necessary prerequisite to a site being “deliverable”. This must be so because of the second sentence of Footnote 11 and because it would be quite unrealistic and unworkable to suggest that all of the housing land supply for the following five year period will have achieved planning permission at the start of the period;
 - ii) The parties are agreed that a site which is, for example, occupied by a factory which has not been derequisitioned, or which is contaminated so that housing could not be placed upon it, is not “available now” within the meaning of the first sentence of Footnote 11. However, what is meant by “available now” is not explained in Footnote 11 or elsewhere. It is to be read in the context that there are other requirements, which should be assumed to be distinct from the requirement of being “available now”, though there may be a degree of overlap in their application. This suggests that being available now is not a function of (a) being a suitable location for development now or (b) being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable. Given the presence of those additional requirements, I would accept Ms Busch’s submission for the Secretary of State: “available now” connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent immediate development;
 - iii) Questions as to the viability of the proposed development or, for example, whether a developer had been identified or was in a position immediately to start work, would go to the question whether there was a realistic prospect of delivery within five years, but not to the question whether the site was available now. For the same reason, the fact that a site does not “offer a suitable location” does not affect whether or not it is “available now”, suitability of the location being a separate requirement;
 - iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years;

- v) For similar reasons, where sites are in contemplation because of being included in an emerging policy document such as the eWCS, and the document is still subject to public examination, that must increase the lack of certainty as to outcome. That is implicitly recognised by [216] of NPPF which requires decision-takers to “give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)” and to “the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given)... .” As Inspector Graham pointed out in the Moat House Farm decision, there can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan. The approach taken by the various inspectors whose decisions have been considered in this case (including Inspector Robins at [22]) is therefore correct: the stage of preparation of the evidence base and the progress of the draft document are important considerations going to the prospects of housing being delivered within five years and therefore being “deliverable” within the meaning of Footnote 11.
35. I would accept as a starting point that inclusion of a site in the eWCS or the AMR is some evidence that the site is deliverable, since it should normally be assumed that inclusion in the AMR is the result of the planning authority’s responsible attempt to comply with the requirement of [47] of the NPPF to identify sites that are deliverable. However, the points identified in [34] above lead to the conclusion that inclusion in the eWCS or the AMR is only a starting point. More importantly, in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority’s evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court.
36. The first limb of the challenge under Ground 1 is that the inspector failed to have regard to the two decisions at Calne. While it is common ground that the inspector had a discretion whether to admit or to refuse to admit the late-submitted material, this limb raises the following questions:
- i) Whether the Calne decisions were material that might have caused him to reach a different conclusion to that he in fact reached without taking them into account; and, if they were

- ii) Whether the inspector's decision not to consider them was a lawful exercise of his discretion. This second question raises two sub-questions:
 - a) Whether the decision not to consider them could be and was a proper exercise of discretion in the circumstances prevailing; and
 - b) Whether the inspector was obliged to give any or proper reasons for his decision and, if so, whether he did so.
37. The Secretary of State accepts that it would have been open to him to submit evidence providing information about the circumstances in which the inspector decided not to consider the Calne decisions. Ms Busch correctly points out that the submission of such evidence could give rise to a risk of retrospective and unreliable justifications being advanced. That point is well made. However, once the risk is recognised, it can be addressed by the witness and should not be exaggerated; and the decision not to submit evidence covers not merely evidence about any reasoning that may have informed the inspector's decision but also primary factual evidence that may have been relevant. As it is, in the absence of such evidence, nothing is known save that the Calne decisions were submitted and received after the inquiry but nine days before the inspector made his decision on 5 October 2012.
38. Turning to the first question, there can be no real doubt that the Calne decisions were material that might have caused the inspector to reach a different conclusion to that he in fact reached without taking them into account. Ms Busch did not argue the contrary. It is, however, important to identify the features of the Calne decisions that gave them particular significance:
- i) While Inspector Robins already had before him three other decisions that were said to be relevant, they all pre-dated the introduction of the NPPF. The Calne decisions directly addressed the requirements of [47] of the NPPF, as Inspector Robins was required to do. It was therefore a previous decision that was directly in point;
 - ii) Inspector Papworth's Decision Letter identified the possibility of site specific evidence and that there had been none submitted in relation to the strategic sites in his case. His conclusion was that Malmesbury (where there had been site specific evidence) was "an anomaly" and he referred to a decision of the Secretary of State in relation to land at Salisbury going the other way, which does not appear to have featured in the material considered by Inspector Robins in his decision letter;
 - iii) Given its timing and the fact that Calne was also in Wiltshire, Inspector Papworth's decision was doubly relevant. It was relevant geographically since it addressed the same eWCS and other aspects of the Development Plan as applied to the Purton appeal; and it addressed them at the same stage of their progress as applied to the Purton appeal;
 - iv) Inspector Papworth had concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to reduce the number of such sites that should be regarded as deliverable.

39. In these circumstances, there must have been (at least) a real possibility that considering the Calne decisions would have led Inspector Robins to a different conclusion. Although it would have been his decision and he would have been entitled to disagree with Inspector Papworth's conclusion, before doing so he would have been obliged to have regard to the importance of consistency and to give his reasons for departure from Inspector Papworth's decision. Given the features identified above, the result of applying Mann J's practical test would have been that he was disagreeing with a critical aspect of Inspector Papworth's decision, namely the conclusion that, there being no site specific evidence, the stage of progress of the development plan and the Council's evidence base did not justify the inclusion of the strategic sites as deliverable.
40. It would have been obvious to anyone receiving and reading the email (even without reading the attached Calne decisions themselves) that the decisions dealt with the same issues as were central to the Purton inquiry, that the decisions had been issued the previous week (and so could not have been provided earlier), and that, as very recent decisions, they were likely to address the same issues as arose in the Purton inquiry by reference to Wiltshire's Development Plan in its current state of development. Even a cursory review of the Calne decisions would have confirmed that this was so. In particular it would have confirmed that Inspector Papworth had produced a very recent assessment of whether, in the absence of site specific evidence, strategic sites included in the eWCS should be regarded as deliverable within the meaning of [47] of the NPPF.
41. That being so, the principle that a decision maker ought to take into account all matters which might cause him to reach a different conclusion and the obligation to have regard to material considerations up to the time that the decision is made weighed heavily in favour of Inspector Robins exercising his discretion in favour of admitting the Calne decisions for consideration.
42. In support of her opposition to Ground 1 Ms Busch submitted that the late submission of the Calne decisions was a breach of the 2000 Rules. That submission is rejected. No sensible interpretation of the rules can require the submission of information before it is in existence. Furthermore, Rule 18(2)-(4) of the 2000 Rules expressly contemplates the submission of late information and that it may be admitted by the inspector in accordance with the rules. Reference to The Good Practice Advice Note 10 also weighed in favour of admitting the decisions for consideration. It provided that the inspector would apply his discretion on the basis of:
- i) The relevance of the material to the appeal proposal: the material was highly relevant and potentially decisive in persuading Inspector Robins to find in the appellants' favour on the issue of strategic sites. Had he done so the balance of evidence in favour of a finding that the existence of a 5-year land supply was not shown would shift markedly, as Mr Harris' evidence and the revised tables set out above show;
 - ii) Whether it simply repeats something that is already before the inspector: it did not; and
 - iii) Whether it would have been procedurally fair to all parties if the material were taken into account: even if some modest delay were to be incurred in bringing

out the decision (as to which, see below) the admission of the Calne decisions could be handled in a way that was procedurally fair. The Secretary of State has not submitted to the contrary, which is realistic and correct.

43. I would accept that in some cases where information is submitted late there may be a tension between the need for finality and proportionate expense on the one hand and a willingness to admit evidence which has not been submitted in accordance with the normal procedural timetable under the Rules. However, there is no material available to the Court to suggest that there was any significant tension in this case. In particular, there is no evidence to suggest that the Calne decisions, though highly material, would open up any new issues or indicate the need for further evidence or hearings. On the evidence that is available to the Court, it would have been possible for any supplementary submissions to have been made shortly and in writing. It is not realistic to suggest, and it has not been suggested, that it would have been necessary to re-open the inquiry or that significant delay would have been caused by taking the Calne decisions into account. There is therefore no evidential basis upon which it could be said that it was disproportionate or contrary to the wider interests of justice for the Calne decisions to be taken into account.
44. In her oral submissions Ms Busch submitted that there was no obligation upon the inspector to state a reason for his decision not to take the Calne decisions into account because the Rules do not expressly require him to give reasons when exercising his discretion in these circumstances. That submission is rejected. No such implication can be deduced from the silence of the rules. On the contrary, the obligation on a decision maker to give reasons for his decisions (including exercises of discretion) which will or may affect the rights and obligations of parties to legal proceedings over which he is presiding is a general one which covers the exercise of Inspector Robins' discretion in this case. Reasons were required in accordance with the guidance in *South Buckinghamshire DC*: see [7] above.
45. To the extent that any reason can be said to have been given at all, it was the statement in the email of 2 October 2012: "Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector." Taken at face value this says that not merely the Calne decisions but Mr Harris' email were not considered at all by the inspector, but it is plain that the email was read, at least by one or more case-workers. What is neither self-evident nor the subject of evidence is whether the inspector (or anyone to whom he reasonably delegated the task) looked at the Calne decisions themselves before deciding that they would not be taken into account by the inspector for the purposes of reaching his decision.
46. The position confronting the Court when considering this limb of Ground 1 is that there is no evidence to suggest that the inspector (or anyone on his behalf) carried out a reasoned assessment of the materiality of the Calne decisions or whether, applying the approach advocated by Good Practice Advice Note 10 or any other reasonable balancing exercise, the decisions should be admitted and taken into account. For completeness I record that it was not submitted by Ms Busch that he had done so. While she submitted that there was material which could have justified him in reaching a reasoned decision to reject the late submission of the Calne decisions, she did not (and could not in the absence of any reasons being given by the inspector) submit that he in fact did take such a reasoned decision. She concentrated upon the fact that the submission that the information was submitted late and that, as she

submitted, no one with knowledge of planning practice would be surprised to see the submission of the Calne decisions rejected on the basis that it was “just too late”.

47. Whether or not competent practitioners in the field would be surprised to see a late submission of information being knocked back on the basis that it is too late should depend upon the circumstances of the particular case, for two reasons. First, lateness is not of itself necessarily or even probably the determinative consideration. Secondly, the determinative considerations should be those that go into the mix of a reasoned assessment which balances those factors that tend in favour admission or rejection on the facts of a particular case. That assessment may be relatively simple or it may be complex; but in either event, the parties concerned are entitled to reasons that are intelligible and adequate to enable the reader to understand why the matter was decided as it was.
48. On the facts of this case, there is no information to support the suggestion that the Calne decisions were received too late to be considered by Inspector Robins and all the available information contradicts the assertion. The decisions were submitted promptly and were received 9 days before he made his decision on 5 October 2012. There is no evidence to suggest that he required that length of time to take them into account, or that his decision had in fact been taken by 29 September 2012, or that 5 October 2012 was an immutable deadline, or that reasonable accommodation could not have been made to ensure procedural fairness if the decisions were taken into account. In the absence of any reason or other material to explain why the date of the receipt of information trumped all other relevant considerations I am driven to the conclusion that the reason given is unsupportable. At its lowest, there was a failure to give adequate reasons so that the reader could know why, if any reasoned balancing exercise was in fact carried out, it led to the exclusion of the Calne decisions.
49. For these reasons, I therefore uphold Ground 1 of the challenge. In summary, his decision to exclude the Calne decisions from consideration should be set aside because:
 - i) The inspector failed to exercise his discretion properly. A proper exercise of his discretion would have involved a balancing exercise either in accordance with or similar to that advocated by Good Practice Advice Note 10. Had he carried out such an exercise, he should have concluded that the considerations that weighed in favour of admitting the Calne decisions outweighed those that weighed in favour of excluding them;
 - ii) The reason given by the inspector, namely that the material was submitted too late to be considered by the inspector, was unsustainable;
 - iii) The inspector failed to give adequate reasons for his decision not to take the Calne decisions into account.
50. Given that he did not take the Calne decisions into account, it is somewhat academic to advance as a separate head of challenge that the inspector failed to give reasons for not following the approach taken in them. That said, in accordance with the principles established in *North Wiltshire DC v SoSE and Clover*, if he had taken them into account and decided not to follow them, he should have given his reasons for

doing so. This would have been particularly important given the geographical and temporal overlap between the Calne and the Purton decisions.

Ground 2: The inspector failed to correctly interpret the NPPF.

Ground 3: The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational.

Ground 4: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

51. Although these are separate and distinct grounds of challenge, they overlap to the extent that they may be seen as different facets of the same argument, and I shall address them together. These Grounds fall to be considered by reference to the material actually considered by the inspector, without reference to the excluded Calne decisions.
52. Ground 2 is based upon an alleged disparity between the terms of [21] and [24] of the decision letter. In [21] the inspector wrote:

“In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.”

In [24] he wrote:

“While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.”

53. The Claimant submits that this shows that the inspector failed to apply the test required by [47] of NPPF. It is common ground that the correct test for sites not having planning permission, such as the strategic sites, is that set out in the first sentence of Footnote 11. The Claimant submits that the inspector failed to apply that test. It submits that the inspector has applied a presumption in favour of including sites in the absence of specific evidence that they cannot be delivered and that this is only appropriate in the case of sites having planning permission, where the approach is permitted and mandated by the second sentence of Footnote 11.
54. I have discussed Footnote 11 at [34-35] above. I accept that, for sites which fall to be considered under the first sentence of Footnote 11 to be taken as deliverable, it must be shown that they satisfy the requirements there set out. There is no a priori assumption that sites not having planning permission are deliverable. However, the fact that sites have been included in an emerging policy document or evidence base

may (and often will) be a starting point. In other words, inclusion may be evidence in support of a conclusion that the sites so included are deliverable. Once that is accepted, there is no reason in principle or on the proper interpretation of Footnote 11 why the fact that sites are included in the eWCS or the AMR may not be taken as sufficient evidence that they are deliverable in the absence of evidence (specific or otherwise) that they are not. The weight to be attached to the evidence that they are deliverable will vary from case to case and is a matter of planning judgment for the inspector: see [35] above. So too will be the weight to be attached to any evidence that they are not. Evidence that they cannot be delivered can in principle be specific (e.g. site specific evidence that a site is contaminated or in delay) or general (e.g. evidence that all sites are subject to objection, though this evidence may be refined to the extent that the objections to particular sites are identified and capable of being considered).

55. Once [24] is read in its entirety and in context, it appears that the inspector was adopting this approach. Having set out the Footnote 11 test at the commencement of [21], he acknowledged the existence of objections at [22] and identified that it was for him to decide what weight he should attach to the sites having been allocated. At [23] he identified as a reason for including the sites that they had been identified by the Council in the course of the development of the eWCS. He acknowledged the weakness inherent in that process at the start of [24] but came to a planning judgment that sufficient weight could be given to the evidence in favour of inclusion so that the sites could be included in the absence of other, specific, evidence that they could not be included. Seen in this light, it is apparent that he did not misinterpret Footnote 11 in the way suggested by the Claimant. While other inspectors may have given different weight to particular aspects of the evidence, that does not cast doubt on the interpretation adopted.
56. Two further questions need to be considered. The first is the significance or otherwise of the cited passage from [21] of the Decision Letter. Bearing in mind the obligation on the Court to read the Decision Letter in good faith and as a whole, construing it in a practical manner, the cited passage does not subvert the conclusion that the inspector did not misinterpret Footnote 11. If anything it states too demanding a test, since it suggests that the plan and evidence base can never be enough to support a finding that sites are deliverable in the absence of additional information indicating a reasonable likelihood of them progressing within the five year period. However, the passage should not be taken in isolation and, viewed overall, it appears that the inspector applied the correct test.
57. The second question is how an inspector should deal with the fact that, as Inspector Robins acknowledged, the housing supply from the sites could not be guaranteed. The logical consequence of this lack of certainty at first blush appears to be that the raw numbers should be discounted for the probability or certainty that not all included sites are in fact deliverable. Inspector Robins dealt with this in terms of weight, both at [21]-[24] and when tying his findings together at [51-54]. On a fair reading, at [54] he carried out a balancing exercise which started with the express recognition that “the exact numbers cannot be relied upon.” Prudently, in my judgment, he did not try to apply a precise numerical discount to reflect the uncertainty that he had identified. Instead, having acknowledged the uncertainty and after rehearsing the context in which the raw figures were generated, he reached the conclusion that the Council had

demonstrated a 5-year housing supply. On a detailed semantic analysis, his reference to 4.3 years set against an expectation of 5.25 years not representing a serious shortfall may be criticised on two grounds. First, it suggests that, despite his balancing exercise, he is still adhering to the raw and exact figure of 4.3 years. Second, it may fairly be pointed out that the issue was whether there was adequate provision and, on the basis of a finding of 4.3 years supply, there was not. However, while it might have been preferable for the inspector to have inserted a qualification to show that he was not “sticking” at 4.3 years, a fair reading of the relevant paragraphs as a whole shows that he did in fact recognise the weakness of the raw figures and was not committed to them; and the thrust of the sentence was that no overwhelming need for development had been shown, which was a conclusion that was open to him on his findings.

58. In summary, I would accept that the inspector could have included an additional sentence or two which would have made [54] more transparent; but in my judgment, fair reflection upon [54] shows that he has carried out a balancing exercise to reflect the lack of certainty he had identified.
59. In support of Ground 3 of the challenge, the Claimant criticises [23] of the Decision Letter. The first criticism, as advanced in the Claimant’s skeleton argument, is that the inspector failed to engage with the issue whether Malmesbury inspector’s approach was still valid in the light of the NFFP and the fact that it was designed to address economic stagnation and boost the housing land supply. At the hearing, however, although the Claimant again pointed out the broad economic purpose of the NPPF, its focus on the Malmesbury decision was different: it is now alleged that the significance of the Malmesbury decision is that there was site specific evidence justifying the inclusion of the sites. That observation is correct, but does not advance the criticism that had been advanced in the Skeleton Argument. In my judgment, while there is no sign that Inspector Robins identified the distinguishing feature that there had been site specific evidence available to the Malmesbury inspector in relation to strategic sites, that does not vitiate his decision. Furthermore, there is substance in the Secretary of State’s submission that the thrust of the second half of [23], including the reference to the Malmesbury decision, was to support the undoubtedly correct view that the weight to be attached to an emerging plan and its evidence base depended upon the stage of progress it had achieved.
60. The Claimant’s second criticism under Ground 3 is that [24] is opaque. If the Decision Letter had been a statute, it might have been profitable to observe that it could have been more detailed and precise; but it is not a statute. Having had the opportunity to reflect again upon the Decision Letter as a whole, I conclude that the inspector gave adequate reasons which were well capable of being understood by the parties. His reasons were not irrational, though other inspectors may have given different weight to the materials which he considered. On the contrary, having interpreted Footnote 11 correctly, he was entitled to reach the conclusions he did on the materials he considered and for the reasons he gave. The Court should in those circumstances be slow to interfere and I am not persuaded to do so.
61. Ground 4 is supported by a direct challenge to [54], which is said to be opaque. I reject that criticism. The Claimant points specifically to the words “...within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political

boundaries ...”. When read fairly and in context those words are identifying the source and provenance of the “exact” figures that the inspector had set out in his table at [52] and which he had just acknowledged could not be relied on as such. Identifying the source and provenance of the figures served a useful and not unduly opaque purpose by giving some qualitative colour to the figures that he was balancing in that paragraph. Once again, the Court should be slow to interfere, and I am not persuaded to do so.

62. For these reasons I reject Grounds 2, 3 and 4 of the challenge. In summary, when read fairly, it appears that the inspector did not misinterpret Footnote 11, his reasons were adequate and rational and, on the basis of the materials that he considered, reflected planning judgments with which the Court should not interfere.

Ground 5: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

63. This challenge relates to [58] of the Decision Letter where the inspector stated that the appropriateness of Purton’s settlement boundaries had been considered as part of the eWCS. He therefore concluded that the boundaries were up to date. On the evidence of Mr Harris, this was not based on any evidence and was wrong. It is alleged that this caused him to place more than limited weight on Policy H4 of the Local Plan which provided that New Dwellings in the Countryside outside the Framework boundaries will be permitted in strictly limited circumstances w were not applicable to the Purton proposals.
64. In my judgment there is no substance in this ground of challenge. Although his belief that the settlement boundaries had been considered as part of the eWCS was incorrect, the central fact was that the boundaries remained and were not changed by the eWCS. He was therefore entitled to conclude that the Policy H4 was not out of date and conformed to the Framework.
65. Ground 5 of the challenge is therefore rejected.

Conclusion

66. For the reasons set out above, Ground 1 of the grounds of challenge is established. Grounds 2, 3, 4, and 5 are rejected.

Annexe A
RELEVANT EXTRACTS FROM DECISION
LETTER
DATED 5 OCTOBER 2012

Background

...

11. In terms of housing supply both main parties accepted that the data and projections found in the adopted development plan are out of date. In this respect

revised housing requirements were promoted during the development of the draft Regional Spatial Strategy, (dRSS). This was subject to Examination in Public, incorporation of proposed changes and a version was published for consultation in July 2008. Although reaching an advanced stage, the likelihood of this plan being adopted is considered extremely low in light of the Secretary of State's avowed intention to revoke Regional Strategies, and the enactment of the Localism Act, which prevents further Regional Strategies from being created.

12. In response to the Government's position on Regional Strategies, the Council indicated that they moved to reconsider the housing requirements for Wiltshire to inform an emerging Core Strategy, (eWCS). This document has now reached a relatively advanced stage with a resolution by the Council and its submission for examination. The Council's ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.

13. Notwithstanding this the Council point to an extensive consultation process involved in the development of evidence base and suggest that the eWCS is preferable, both in terms of the housing requirement and the strategic approach to delivery, to either the out of date WSSP or the figures promotes in the dRSS.

14. The appellant raised concerns over the weight that should be afforded to the eWCS in light of the objections to the proposed housing numbers, declaring a preference for the publicly tested dRSS. However, the appellant goes further, suggesting an additional proposition that irrespective of the housing land supply position, the proposal represents a sustainable development. As such it would benefit from the Frameworks' presumption in its favour, in light of a contention that the development plan policies are out of date.

...

Sites

...

19. Thus the appellant suggests a difference between the Council's housing supply and their own of some 4,045 dwellings, made up in part by site specific differences and in part by a disagreement over which elements should be included. Some 80% of the difference relates to the strategic sites, the Vision Sites, windfalls and previously discounted sites.

20. The Council refer to paragraph 47 of the Framework and its footnote regarding the inclusion of strategic sites, specifically allocations in the eWCS. This paragraph seeks to significantly boost the supply of housing and requires that local planning authorities should 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". It specifically includes "key sites critical to the delivery of the strategy over the plan period".

21. The footnote sets out a definition for specific, deliverable sites: that they should be available now, offer a stable location for development now, and be achievable with a realistic prospect of delivery within five years. While on the face of it the requirement for sites to be available now would appear to preclude

sites without permission, the definition continues by addressing permitted sites directly. In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.

22. I accept that where there are outstanding objections to sites, such matters need to be addressed and resolved, however, it is not for me to prejudge the outcome of the eWCS examination. I must decide on what weight I can give to the Council's assertion that these allocations should be included. In doing this it is necessary to separate the weight that can be given to the emerging plan from that associated with the evidence base associated with that plan. While I have been given examples from East Northampton and from Preston where draft allocations have not been included, the relevant weight must be ascribed based on the specific stage of preparation of the evidence base and the evidence supporting deliverability.

23. In this case I consider that exclusion of all the draft allocations is not appropriate. The Council have identified the sites following public consultation and they report that they have been subject to a Sustainability Appraisal. The sites are included within the AMR. While I note the appellant's concern over the recent appeal decision in Malmesbury the Inspector in that case also accepted the principle of including strategic sites. The Council relied on this decision to support their position that the sites were available and deliverable. The appellant referred me to a slightly earlier decision by the same Inspector which discounted draft Local Plan sites, however, it strikes me that this differs in the progress of the emerging plan and the evidence therefore available to the Inspector. The decision clearly refers to the need for consultation and representations on the emerging plan.

24. I accept that until planning permission is secured and the sites are built out, the housing supply from the sites cannot be guaranteed. Nonetheless to exclude such sites risks Councils having to plan to meet housing supply in a dynamic market on the basis of only sites with planning permission or from relatively old plans. This would risk devaluing the process of strategic planning. While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.

25. Turning to Vision Sites similar arguments apply, albeit that they are not formally proposed as allocations. They are included in the AMR and the eWCS sets out a specific policy for their delivery. The Council presented evidence that two sites, Foundary Lane and Hygrade Factory, while not currently having permission, are likely to be delivered within the five year period. While there may be some matters to be resolved on these sites, and the appellant points to part of the Foundary Lane site and the Hygrade site as being still partly occupied, this does not mean they cannot be delivered. On balance I consider that the dwellings associated with these sites can be included.

...

Housing Requirements

39. This is not therefore, as the Council set out, a simple case of “a stark choice” between the dRSS and the eWCS. Although I favour the RSS figures at this stage, which furthermore provide a conservative approach to ensuring adequate provision of housing, I must give some weight to the emerging evidence base in light of its more up to date projections and the extent of more local engagement in assessment of needs.

...

Conclusions on the 5-Year Housing Supply

51. It has been necessary to carefully consider the housing requirement and supply situation in Wiltshire as a result of the changes being introduced at both national and local level. My conclusions are by necessity based on the evidence put before me and can in no way prejudice the outcome of the eWCS Examination in Public which may take place later in this year or early 2013.

52. I consider that the principal assessment should be made between the housing requirement for the RoNW and the housing supply presented by the Council, amended in response to the evidence provided at the Inquiry. This must be further considered in light of the housing demand across North Wiltshire and the emerging strategic approach for the North and West HMA. I have summarised this in the following table:

Plan/Policy	Housing Requirement	5-year Housing Requirement	Housing Supply	Assessment (years)*
dRSS Rest of North Wiltshire	3,024	1,008	1,522	7.5
dRSS North Wiltshire	10,684	3,549	3,052	4.3
eWCS North and West HMA	15,249	5,083	6,292	6.2

*5.25 years required to meet the 5% buffer

53. This indicates that the appellant’s proposition that even using the eWCS figures the Council cannot demonstrate a 5-year housing supply is not well founded. The Council have shown a 5-year housing supply relative to the RoNW dRSS figures and the eWCS North and West HMA, but have failed to demonstrate adequate supply for the dRSS North Wiltshire area. As set out above, I consider that the weight that can be given to the dRSS figures is somewhat lessened by the length of time since their preparation and examination, but also that the weight I can give to the emerging figures is similarly limited.

54. Nonetheless, although the exact numbers cannot be relied on, I am satisfied that the resulting figures indicate that within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to

the existing settlement pattern rather than political boundaries, the Council have demonstrated a 5-year housing supply. Furthermore I do not consider that the 4.3 years, set against an expectation of 5.25 years, represent a serious shortfall in the former North Wiltshire District, such that there is an overwhelming need for development to meet the specific demand.

55. In such circumstances I consider that there is sufficient evidence to support that, for this location, a 5-year housing supply has been shown.

...

58. My reading of the previous appeal decision on this site suggests that the boundaries were considered in both the preparation and Examination of the Local Plan in 2006, and while they do not appear to have been assessed against the significant increase in supply sought by the dRSS, they have been against the large increase currently promoted in the eWCS. This process has not led to a redrawing of the boundaries, consequently I do not consider that Policy H4, which they inform, is out of date or fails to conform with the Framework.