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Case No: AC-2023-LON-003350

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 June 2024

Before :

MRS JUSTICE LANG DBE

- -

Between :

LONDON BOROUGH OF LAMBETH	**Claimant**
- and -	
SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	**Defendant**
KATHRYN VAN ROOYEN	**Interested Party**

- -
- -

William Upton KC (instructed by **Lambeth Borough Council Legal Services**) for the **Claimant**
Ben Du Feu (instructed by the **Government Legal Department**) for the **Defendant**
Richard Harwood KC (instructed by **Town Legal LLP**) for the **Interested Party**

Hearing dates: 14 & 15 May 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on 10 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice Lang :

1. The Claimant applies for Planning Statutory Review, pursuant to section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decisions of an Inspector, appointed by the Defendant, dated 13 October 2023, to allow the two appeals of the Interested Party ("IP") against the decisions made by the Claimant ("Lambeth"), and to grant a Lawful Development Certificate ("LDC") on Appeal A, and planning permission on Appeal B, for the proposed amalgamation of Flats 26 and 27, Peninsula Heights, 93 Albert Embankment, London SE1 7TY into one dwelling.

2. I granted permission on the papers on 1 February 2024.

Planning history

3. The IP holds a 999 year lease of Flat 27 and has resided there with her family for some 15 years. It is her main residence. The IP has recently purchased a 999 year lease of Flat 26, which adjoins Flat 27 on Floor 7 of the block of flats. The freehold titles are held by Peninsula Heights Freehold Limited, of which the IP is a director and shareholder, in common with other leaseholders.

4. The IP's proposal is to amalgamate the two Flats by removing an internal wall between the family room in Flat 27 and a bedroom in Flat 26. No external works are required and both existing external entrance doors would be retained. The result would be a single four-bedroom flat, in place of a three-bedroom flat and a 2-bedroom flat. The amalgamation will mean that the IP's elderly parents will be able to live with the IP, should they no longer be able to live on their own.

5. On 17 May 2022, Lambeth refused the IP's application for planning permission, made on 5 November 2021, to amalgamate Flat 26 and 27 to form a single dwelling. The reason given was that:

> "The proposed development results in the loss of an existing self-contained unit. No exceptional circumstances have been demonstrated, therefore the development fails to comply with Policy H3 of the Lambeth Local Plan (2021)".

6. On 23 May 2022, Lambeth refused the IP's application for a LDC, which was made on 4 November 2021. The decision notice stated:

> "The London Borough of Lambeth hereby certifies that on 5 November 2021 (the date of this application) the use/operations as described in the First Schedule to this certificate ….. would **not** have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 … for the following reason(s):
>
> 1. the proposed amalgamation of Flats 26 and 27 at Peninsula Heights, 93, Albert Embankment into a single unit of residential accommodation would amount to a material change of use for the purposes of section 55 of the Town and

> Country Planning Act 1990 for which a grant of planning permission would be required."

The Inspector's decisions

7. The Inspector refused the application for a Hearing and determined the appeals on 13 October 2023, on the basis of written representations, with a site visit on 26 June 2023.

8. Appeal A was made under section 195 TCPA 1990, against the refusal of a LDC. The Inspector allowed the appeal.

9. Appeal B was made under section 78 TCPA 1990 against the refusal of planning permission. The Inspector allowed the appeal.

10. On Appeal A, the Inspector identified the main issue was whether the proposed use would amount to a material change of use, and therefore development for the purposes of section 55(1) TCPA 1990 (Decision Letter paragraph 3 ("DL/3")).

11. The Inspector found, at DL/13-14, that the existing primary use of the land was a lawful residential use. The two flats were, at present, physically and functionally separate and therefore comprised separate planning units. The pattern of use, in terms of the comings and goings associated with a single dwelling, would be of a similar level to the two separate flats, given the number of people they would comparably be able to house.

12. The Inspector considered the London Plan (March 2021) and the Lambeth Local Plan 2020-2035 (September 2021). He concluded:

    i) The purpose of London Plan Policy H1 and H2 is to increase the overall supply of housing. They do not specifically seek to resist amalgamations (DL/20). However, the amalgamation would result in a net loss of self-contained residential units, from two to one (DL/24).

    ii) London Plan Policy H8 states that the loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. While the proposal may result in the loss of housing, it will be replaced with housing with the equivalent amount of floorspace (DL/21).

    iii) Lambeth Local Plan Policy H3 refers to self-contained C3 housing being safeguarded in accordance with the London Plan. Since the London Plan contains no policies which restrict amalgamations, then Policy H3 does not prohibit amalgamations (DL/23). However the London Plan does require the Borough to increase its supply of housing. This proposal will result in a net loss of self-contained C3 housing (DL/24).

13. Having considered the relevant statutory provisions and the authorities, the Inspector directed himself that the particular site and its circumstances must be considered individually in the context of the relevant development plan policies. The Inspector accepted that the need for housing was a planning purpose which related to the character of the use of land, and that the amalgamation would have planning consequences as a

result of the net reduction of one unit from the Borough's housing stock. The question in this case was whether the planning consequences were of significance.

14. The Inspector considered a substantial amount of evidence on Lambeth's housing needs and supply of housing. He rejected Lambeth's submission that the amalgamation of separate flats into large homes was leading to the sustained loss of homes in the Borough (DL/33-34). He found that there was still a housing need for larger family dwellings (DL/35-37). He also found that the number of applications for amalgamations was proportionately very small (DL/40-41).

15. The Inspector concluded, at DL/43 - DL/45:

    i) The loss of a single unit, in the context of current housing delivery in the Borough, would not be a planning consequence of significance.

    ii) The proposed deconversion of the two flats to a single dwelling would not result in any significant difference in the character of the activities, as a matter of fact and degree, nor would there be any planning consequences of significance as a result of the change.

16. Therefore the Inspector granted a LDC in the following terms:

> "It is hereby certified that on 4 November 2021 the use described in the First Schedule hereto ….. would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 … for the following reason:
>
> The proposed deconversion of two flats to a single dwelling would not be a material change of use. Consequently, the proposal would not constitute development under S55(1) of the Act and therefore would have been lawful at the date the LDC application was made."

17. On Appeal B, the Inspector identified the main issue as the effect of the development on the supply of housing in the Borough (DL/49).

18. The Inspector relied on his earlier finding that the proposed net loss of a single dwelling would be a planning consequence of no significance (DL/50).

19. The Inspector found as follows:

    i) there would be no conflict with London Plan Policy H1 as the proposal would not materially affect Lambeth's ability to boost the supply of housing (DL/51);

    ii) there would be no conflict with London Plan Policy H2 as it would not materially affect Lambeth's ability to increase the contribution of small sites to meeting housing need and there was no evidence that the proposal would lead to a sustained loss of homes or failure to meet the identified requirements of large families (DL/51);

    iii) there would be no conflict with London Plan Policy H8 as there would be no loss of residential floorspace (DL/52);

iv) there be no conflict with Lambeth Local Plan Policy H3 as housing would be safeguarded in accordance with London Plan policies (DL/52).

20. The Inspector therefore concluded that the proposal would not have a harmful effect on the supply of housing in the Borough and would not therefore conflict with the development plan as a whole (DL/57).

21. Planning permission was granted for the amalgamation of Flats 26 and 27 to form a single dwelling.

Legal framework

(i) Applications under section 288 TCPA 1990

22. 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.

23. 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.

24. 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 Ltd v Secretary of State for the Environment* (1981) 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….."

25. A 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 Ltd 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.

Certificates of lawfulness of proposed use or development

26. Section 192 TCPA 1990 provides:

> "**192.— Certificate of lawfulness of proposed use or development.**
>
> (1) If any person wishes to ascertain whether—

> (a) any proposed use of buildings or other land; or
>
> (b) any operations proposed to be carried out in, on, over or under land,
>
> would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
>
> (2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
>
> (3) A certificate under this section shall—
>
> (a) specify the land to which it relates;
>
> (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
>
> (c) give the reasons for determining the use or operations to be lawful; and
>
> (d) specify the date of the application for the certificate.
>
> (4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness."

Applications for planning permission

27. The determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") provides:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Interpretation of policies

28. In *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, Lord Reed (with whose judgment Lord Brown, Lord Hope, Lord Kerr and Lord Dyson agreed), rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within the limits of rationality. He said:

> "18. … The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that, in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. They are intended to guide the decisions of planning authorities, who should only depart from them for good reason.
>
> 19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v. Secretary of State for the Environment* [1995] 1 WLR 659, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

29. In *St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, Lindblom LJ summarised the applicable principles, at [6]:

> "(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).
>
> (5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H)."

30. In *R(Cherkley Campaign Limited) v Mole Valley District Council* [2014] EWCA Civ 567, Richards LJ explained the distinction between a policy and its supporting text, as follows:

> "16. ….when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of *descriptive and interpretative matter* in respect of the policies and/or a *reasoned justification* of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy….."

Grounds of challenge

31. Lambeth's grounds of challenge may be summarised as follows:

Ground 1

32. Since the Inspector found, on Appeal A, that the proposed works did not amount to development for which planning permission was required, the grant of planning permission on Appeal B was irrational and an error of law.

Ground 2

33. The Inspector made an error of law in his interpretation of the development plan policies, with regard to the LDC (Appeal A).

Ground 3

34. The Inspector made an error of law in his interpretation of the development plan policies, with regard to the grant of planning permission (Appeal B).

Ground 4

35. The Inspector made an error of law in his application of section 55(1) TCPA 1990 in the light of the development plan policies (Appeal A).

Ground 5

36. The Inspector made an error of law in treating the effect of a decision on an individual appeal site as an insignificant planning consequence (Appeals A and B).

Ground 6

37. The Inspector failed to take into account other relevant planning appeal decisions, and the Secretary of State had acted inconsistently in his decision-making (Appeals A and B).

Ground 1

Submissions

38. Lambeth submitted that the Inspector's decision was irrational and an error of law because it contained a fundamental contradiction. The Inspector granted planning permission in Appeal B, even though he had already decided in Appeal A that the use was not "development" for which planning permission was required and so, logically, could not be granted.

39. The Defendant and the IP submitted that the appeals were brought "without prejudice" to each other. The Inspector was entitled to determine them on that basis.

Conclusions

40. The IP made applications for a LDC and for planning permission, at the same time, expressly on a "without prejudice" basis. Lambeth made two separate decisions, one refusing planning permission and the other refusing the application for a LDC.

41. Two appeal notices were lodged, expressly stated to be on a "without prejudice" basis. Both appeals were listed for determination before the Inspector. Neither party submitted that the Inspector should not determine Appeal B if Appeal A was allowed.

42. In my judgment, the Inspector was entitled to proceed to determine Appeal B, despite the fact that it had become academic once he decided Appeal A in the IP's favour. If his conclusion on Appeal A were to be overturned on appeal, Appeal B would cease to

be academic. The Inspector probably ought to have included a sentence in his DL explaining that he was determining Appeal B, in the alternative, in case his decision on Appeal A was overturned on appeal. However, as both parties had adopted the same approach throughout, it is unlikely that they were in any genuine, as opposed to forensic, doubt as to the basis upon which he was determining Appeal B.

43. For these reasons, Ground 1 does not succeed.

Grounds 2 and 3

Submissions

44. Lambeth submitted that the Inspector erred in his interpretation of Policy H3 of the Lambeth Local Plan by not recognising that it positively safeguards existing self-contained C3 housing stock, and therefore restricts amalgamations, to the extent allowed for by the London Plan.

45. Lambeth also submitted that the Inspector erred in his interpretation of the London Plan by failing to recognise the policy against the loss of existing housing (including from amalgamations) in Policy H8. He also erred in only considering floorspace, not density. The loss of housing units (including from amalgamations) potentially affected the ability of Boroughs to achieve the net increases in housing sought by Policies H1 and H2.

46. The Defendant and the IP submitted that the development plan did not prohibit amalgamations. The Lambeth Local Plan Policy H3 makes no mention of amalgamations and ties any safeguarding of housing into the relevant London Plan policies. The London Plan does not prohibit amalgamations. The references to amalgamations in the supporting text to Policy H1 (paragraph 4.1.9) and in Policy H2 (at paragraph 4.2.8) envisage that amalgamations are permitted.

47. As to London Plan Policy H8, the Defendant and the IP submitted that the term "existing or higher densities" is not defined in the policy. It is left to the planning judgment of the decision-maker as to whether that test is satisfied. It cannot properly be interpreted as prohibiting all amalgamations. The Inspector adopted a lawful approach and was entitled to reach his conclusions as an exercise of judgment on the facts of the particular proposal.

Conclusions

48. Lambeth's development plan includes the Lambeth Local Plan 2020-2035 (September 2021) and the London Plan (March 2021).

49. Under the legislation establishing the Greater London Authority, the Mayor of London is required to publish a Spatial Development Strategy ("SDS") and keep it under review. The SDS is known as the London Plan. The London Plan contains the Mayor's strategy for spatial development and his general policies, together with a reasoned justification. The reasoned justification is relevant to the interpretation of policy but is not of itself policy: see Town and Country Planning (London Spatial Development

Strategy) Regulations 2000, regulation 4(1)(2) and *Mayor of London v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 1176 (Admin), [2020] JPL 138, at [13].

50. The Introduction to the Lambeth Local Plan explains that "[every] London borough local plan must be in general conformity with the London Plan" (paragraph 1.14) and

> "As with national policy, Lambeth's Local Plan only elaborates on London Plan policy where this is considered necessary to meet local objectives and achieve local distinctiveness. Otherwise, cross-references are made to London Plan policies and these will be applied in addition to the policies in the revised Local Plan."

51. **Lambeth Local Plan Policy H3** provides:

> "Policy H3: Safeguarding existing housing
>
> A Existing self-contained C3 housing will be safeguarded in accordance with London Plan policy. Exceptionally, the net loss of self-contained residential accommodation may be acceptable where the proposal is for specialist non-self-contained accommodation (use class C2) to meet an identified local need in accordance with the requirements of Local Plan policy H8."

52. The term "C3 housing" is a reference to Use Class C3 (dwelling houses) which includes households living in self-contained accommodation. Flats 26 and 27 fall within this class. There is no express reference to amalgamations in the Policy wording or the supporting text.

53. The ordinary meaning of the word "safeguard" is to protect. The words "in accordance with London Plan policy" indicate that Lambeth's policy on the safeguarding of existing C3 housing is tied into the relevant London Plan policies, and does not extend any further than the London Plan. I agree with the Inspector's view at DL/22 that whilst the background to the formulation of Policy H3 provides context, the Policy has to be applied on the basis of the wording that was eventually adopted.

54. **London Plan Policy H1** 'Increasing housing supply' makes provision, at paragraph A, for ten year targets for net housing completions that each local planning authority should plan for. Boroughs must include these targets in their Development Plan Documents. The ten year target for net housing completions for Lambeth is 13,350, of which 400 should be delivered on small sites, pursuant to Policy H2 (less than 0.25 ha).

55. At paragraph B(2), Policy H1 provides that Boroughs should "optimise the potential for housing delivery on all suitable and available brownfield sites through their Development Plans and planning decisions", especially from the sources that are listed. As the Inspector correctly observed, paragraph B(2) does not include resisting amalgamations in the list of sources of capacity (DL/16).

56. The supporting text at paragraph 4.1.9 provides that the ten year housing targets should "be monitored in net terms taking into account homes lost through demolition, amalgamations or change of use". Footnote 43 explains that "amalgamations" refers to "amalgamating flats into larger homes".

57. Thus, it is envisaged that amalgamations will be permitted, but reductions in the number of homes by amalgamating several units into a single unit, will count as losses for the purpose of calculating the fulfilment of the net target. This is an explicit reference to the relationship between delivery against housing targets and the impact of homes lost through amalgamations. The Inspector accepted that this proposal would result in a net loss of housing as two residential units will be replaced by one (DL/24). However, as the Inspector found, the Policy does not specifically resist the loss of housing; its focus is to boost the supply (DL/16), which can be achieved in a number of different ways.

58. **London Plan Policy H2 'Small sites'** provides that increasing the rate of housing delivery of new homes on small sites should be a strategic priority for Boroughs and targets are set out in Table 4.2.

59. Paragraph 4.2.8 of the supporting text provides:

> "Where existing houses are redeveloped or subdivided, boroughs may require the provision of family-sized units (3 bed + units) providing sufficient design flexibility is provided to allow the existing footprint of a house to be enlarged in order to meet this requirement. Where the amalgamation of separate flats into larger homes is leading to the sustained loss of homes and is not meeting the identified requirements of large families, boroughs are encouraged to resist this process."

60. Paragraph 4.2.8 encourages Boroughs to resist amalgamations, but only in certain specific circumstances, namely, where they are leading to a sustained loss of homes and the requirements of large families are not being met. However, paragraph 4.2.8 cannot be interpreted as a London Plan policy against amalgamations as it is merely supporting text which is not reflected in the wording of Policy H2. As the Inspector found, Policy H2 does not set out how Boroughs should deal with the amalgamation of dwellings and does not refer to resisting amalgamations as a means to boost the supply of housing through small sites (DL/18).

61. I agree with the Inspector's interpretation at DL/20, that "both London Plan Policy H1 and H2 are concerned with the broader purpose of increasing the overall supply, not specifically seeking to resist amalgamations….".

62. **London Plan Policy H8 'Loss of existing housing and estate redevelopment'** addresses the loss of existing housing and estate redevelopment. The relevant paragraph provides:

> "A Loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace."

63. The term "density" is not defined in the Policy or the supporting text. Mr Upton KC referred to Policy D3 'Optimising site capacity through the design-led approach' in another chapter of the London Plan. The supporting text states:

> "3.3.22 To help assess, monitor and compare development proposals several measures of density are required to be provided by the applicant. Density measures related to the residential population will be relevant for infrastructure provision, while measures of density related to the built form and massing will inform its integration with the surrounding context. The following **measurements of density** should be provided for all planning applications that include new residential units:
>
> 1. number of units per hectare
> 2. number of habitable rooms per hectare
> 3. number of bedrooms per hectare
> 4. number of bedspaces per hectare."

64. As far as I am aware, the Inspector was not referred to Policy D3 by either party in the appeal. The supporting text above is guidance for planning applications, and on my interpretation, was not intended to be applied to Policy H8. Indeed, it is difficult to see how such measurements could be applied to a small-scale proposal such as this one.

65. I do not accept Lambeth's submission that the density requirement has the effect of prohibiting proposals for amalgamation as they will invariably result in a reduction of housing units. The London Plan does not expressly prohibit or restrict amalgamations and the references to amalgamations in the supporting text to Policy H1 (paragraph 4.1.9) and in Policy H2 (at paragraph 4.2.8) envisage that amalgamations are permitted. If the London Plan intended to prohibit or restrict amalgamations, I would expect the policy to be expressly stated, because of its significance, and not introduced indirectly by means of Policy H8.

66. I accept the Defendant's submission that, in the absence of any definition or guidance in Policy H8, it was a matter for the planning judgment of the decision-maker to decide whether the density requirement was satisfied.

67. The Inspector applied Policy H8 to this proposal at DL/21, concluding that: "[w]hile the proposal may result in the loss of housing, it would be replaced with the equivalent level of floor space, since the amalgamation would not result in the loss of any residential floorspace". Thus, he accepted that Policy H8 was engaged because a unit of existing housing would be lost when Flats 26 and 27 were amalgamated into a single unit. As required by Policy H8, the existing housing would be replaced by new housing, not by some other use. He addressed density and floorspace together, concluding that, while one unit of housing would be lost, there would be no loss of residential floorspace overall. It can be assumed that he reached this conclusion on the basis of his earlier findings at DL/13 and DL/14, including that an internal wall between the family room in Flat 27 and a bedroom in Flat 26 would be removed, to enable access. This would result in a reduction in the number of bedrooms overall (from 5 to 4), but not a reduction in the number of habitable rooms or floorspace. I consider that he was entitled to take that approach, and reach that conclusion, as an exercise of judgment on the facts of the particular proposal.

68. Lambeth criticises an apparent inconsistency in the Inspector's reasoning because, at DL/14, he stated that there were currently 5 bedrooms in two flats which would become 4 bedrooms in a single flat, whereas at DL/24 he said that the number of bedrooms "may well remain the same". The number of bedrooms described at DL/14 is consistent with the submissions made to the Inspector by both parties: see Lambeth's Statement of Case in the planning permission appeal (paragraph 3.1) and Mr Harwood KC's Advice (paragraph 2), dated 10 October 2021, on behalf of the IP. DL/24 may simply have been a slip on the part of the Inspector. Alternatively, the Inspector may have been making the broader point, that, even if the number of rooms and floorspace were to remain the same, there would still be a net loss of self-contained residential accommodation, when rejecting the IP's submission on net loss.

69. Following his review of London Plan, the Inspector concluded, at DL/23 – DL/24:

> "23. As a result, since LP Policy H3 refers to housing being safeguarded in accordance with the London Plan contains no policies which restrict amalgamations, then Policy H3 does not prohibit amalgamations.
>
> 24. However, the London Plan does, particularly through Policies H1 and H2, require the borough to increase its supply of housing. Whilst I note that Flats 26 and 27 would remain as self-contained C3 housing, I cannot agree with the appellant that there would be no net loss of self-contained residential accommodation. The number of bedrooms, habitable rooms and floor space may well remain the same, but fundamentally, the number of single households able to occupy the properties will reduce from two to one. It will, as a matter of fact, result in the creation of a single residential unit, where previously there were two."

70. In my judgment, the Inspector's interpretation of Lambeth Local Plan Policy H3, read in accordance with the London Plan, was correct. He found that there were no policies that prohibited amalgamations. However, he also recognised the policy imperative in London Plan Policies H1 and H2 to increase the supply of housing, and the policy to "safeguard existing self-contained C3 housing" in Lambeth Local Plan Policy H3, which required consideration of the planning consequences of the net reduction of one unit from Lambeth's housing stock (DL/26).

71. For these reasons, Grounds 2 and 3 do not succeed.

Ground 4

Submissions

72. Lambeth submitted that, in Appeal A, the Inspector erred in law in the application of section 55(1) TCPA 1990 in the light of the development plan policies.

73. In *R(Royal Borough of Kensington and Chelsea) v Secretary of State for Communities and Local Government* [2016] EWHC 1785 (Admin) ("*RBKC*"), the list of principles set out by Holgate J. include:

> "(4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;
>
> ….
>
> (6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above."

74. Lambeth submitted that, since there was no relevant development plan policy in the *RBKC* case, principle 6 was *obiter dicta* and was not binding on this Court. In contrast, in this case, Lambeth Local Plan Policy H3 is a development plan policy which addresses the change of use directly, and so it should be treated as the full answer to the question whether such a change has significant planning consequences for the purposes of section 55(1) TCPA 1990. The safeguarding of existing housing units has been held to serve a planning purpose which relates to the character of the use of the land. Any departure from that policy may arise upon an application for planning permission, as a potential material consideration. It is not for consideration when deciding whether the proposal amounts to development under section 55(1) TCPA 1990.

75. The current state of the local supply of housing may affect the planning merits of a proposal but it does not affect whether there is a requirement for planning permission in the first place.

76. The Defendant and the IP submitted that Lambeth's submission was contrary to Holgate J.'s judgment, at [7], and therefore Lambeth would have to establish that *RBKC* was wrongly decided on this point. Principle (6) was not *obiter dicta*, it was part of the ratio of the judgment as it was a breach of that principle which amounted to the error of law conceded by the Secretary of State in that case.

77. The Inspector correctly directed himself by reference to the principles in *RBKC* and applied the principles to the facts of this case. His approach did not disclose any error of law.

Conclusions

78. Lambeth's submissions were predicated on the assumption that the Inspector misinterpreted the development plan, whereas I have found, under Grounds 2 and 3, that the Inspector correctly interpreted the development plan.

79. The meaning of development is set out in section 55 TCPA 1990, so far as is material, as follows:

> "(1) Subject to the following provisions of this section, in this Act, except where the context otherwise

> requires, *"development,"* means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
>
> (1A) For the purposes of this Act *"building operations"* includes—
>
> (a) demolition of buildings;
>
> (b) rebuilding;
>
> (c) structural alterations of or additions to buildings; and
>
> (d) other operations normally undertaken by a person carrying on business as a builder.
>
> (2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—
>
> (a) the carrying out for the maintenance, improvement or other alteration of any building of works which—
>
> (i) affect only the interior of the building, or
>
> (ii) do not materially affect the external appearance of the building,
>
> and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;
>
> …
>
> (3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
>
> (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;
>
> …"

80. In *RBKC*, the local planning authority challenged the Inspector's decision to grant a LDC for the proposed amalgamation of two flats into a single dwelling on the basis that it was not a material change of use. Amalgamations of this size were not contrary to the Local Plan, but RBKC submitted that the loss of a housing unit was a material planning consideration that related to the character of the use of the land. Holgate J. accepted, at [43], that the mere absence of any policies in the Local Plan was not a sufficient basis for concluding that they were of no significance to the application of planning control,

and went on to hold that the Inspector erred in law by treating the absence of policy support as determinative.

81. Holgate J. gave general guidance on the principles to be applied in such cases. At [48], he emphasised that decision-makers should not confuse the threshold question as to whether the proposal constituted "development" within the meaning of section 55 TCPA, with the planning merits of the proposal. He said:

> "A decision that a planning consideration is not significant for the purposes of section 55(1) means that it does not even merit assessment under section 70(1) in the exercise of planning control."

82. Holgate J. summarised the approach to be taken to determining the question whether there was a material change of use planning control under section 55(1) TCPA 1990 at [7]:

> "In relation to the determination by the Inspector of the appeal against the refusal of the section 192 certificate, the main legal principles established in *Westminster City Council v Great Portland Estates plc* [1985] 661, 669-670; *Mitchell v Secretary of State for Environment* (1995) 69 P & CR 60, 62; and *Richmond LBC v Secretary of State for Environment Transport and the Regions* [1994] 2 PLR 115, 120-124; may be summarised as follows:
>
> > "(1) A planning purpose is one which relates to the character of the use of land;
> >
> > (2) Whether there would be a material change in the use of land or buildings falling within the definition of "development" in section 55 of TCPA 1990 depends upon whether there would be a change in the character of the use of land;
> >
> > (3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;
> >
> > (4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;
> >
> > (5) The issues in (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;

> (6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above.""

83. In my judgment, principle (6) above was part of the ratio of the case, as it was the basis upon which the Inspector's decision was quashed. Furthermore, I consider that principle (6) is correct in law. Section 55 TCPA 1990 does not treat the statutory development plan as determinative; indeed, it makes no mention of it. Even where the development plan addresses the loss of an existing use, wider considerations may be relevant in determining the materiality of the change of use. As Holgate J. said, at [8], "in some cases, an "assessment" of the "significance" of a planning consequence or factor will be necessary". Ultimately, the question as to whether there has been a material change of use in any particular case remains one of fact and degree for the decision-maker. Whether a change of use is material is to be judged in the circumstances of the particular case. The amalgamation or subdivision of a dwelling house may not always be a material change of use, hence Parliament considered it appropriate to enact section 55(3)(a) TCPA 1990 which expressly makes the sub-division of dwellings a material change of use, for the avoidance of doubt. *Westminster City Council v Great Portland Estates plc* [1985] 1 AC 661 does not lend support to any contrary conclusion.

84. In my judgment, the Inspector properly directed himself by reference to the principles set out in *RBKC*, at DL/12. The Inspector found that the proposal would have a planning consequence, namely, "the net reduction of one unit from the borough's housing stock" (DL/25). He accepted, consistently with principle [7(3)] in *RBKC*, that "the need for housing is clearly also a planning purpose which relates to the character of the use of land" and in accordance with principle [7(4)], he went on to consider whether the planning consequences of the change were significant ones (DL/26).

85. The Inspector approached this issue by examining the delivery of housing within the Borough in line with the relevant development plan polices, and the effect of the loss of the unit upon that delivery (DL/26). At DL/27 – DL/32, he considered the delivery of housing within the Borough, concluding that the "overall picture" was one of "the Borough substantially exceeding its delivery targets in boosting the supply of housing." Having examined that issue he went on to consider the impact of amalgamations on the Borough's ability to boost its supply of housing, and concluded at DL/34 that amalgamations had "not materially impacted the borough's ability to boost the supply of housing". This analysis fed into the overall conclusion at DL/43 that the loss of a single unit, in the context of the current housing delivery in the Borough, would not be a planning consequence of significance.

86. In my view, the Inspector correctly applied the principles set out by Holgate J. in *RBKC* and his approach did not disclose any error of law.

87. For these reasons, Ground 4 does not succeed.

Ground 5

Submissions

88. Lambeth submitted that the Inspector made an irrational decision, or failed to take into account material considerations, when he treated the effect of the proposed net loss as an insignificant planning consequence. Any individual decision may be insignificant on its own, but there is likely to be a cumulative effect if other similar decisions are made. Lambeth submitted that the ability to deliver its housing target was finely balanced so safeguarding every unit did count. The proposed net loss of a single dwelling would be a planning consequence of significance. The Inspector failed to consider Lambeth's submissions.

89. The Defendant and the IP submitted that the Inspector made a rational exercise of planning judgment on merits of the particular appeal that was before him. Future decisions would depend upon the planning judgment of the relevant decision-maker and the wider circumstances in which the decision was reached. The Inspector did not accept Lambeth's submission that the ability to deliver its housing target was finely balanced and that every unit counted. He explained thoroughly why the change would not be significant, and Lambeth simply disagreed with the Inspector's conclusions.

Conclusions

90. The Inspector directed himself correctly in law on the approach to take, at DL/25 – DL/26:

> "25. Nonetheless, the particular site and its circumstances must be considered individually in the context of the relevant development plan policies. It is not possible to take a blanket approach to a local authority area and say that housing need is so great and supply so tight that any amalgamations would be development. One must apply the relevant test established in the courts.
>
> 26. To my mind, having regard to the relevant tests, the proposed dwelling would continue to serve the planning purpose of providing housing, in this case a four-bedroom dwelling. However, the change would have planning consequences as a result of the net reduction of one unit from the borough's housing stock. The need for housing is clearly also a planning purpose which relates to the character of the use of land. The question in this case is therefore whether the planning consequences are of significance. In that context, it is important to examine the delivery of housing within the borough in line with the relevant development plan policies, and the effect of the loss of the unit upon that delivery."

91. The parties submitted extensive evidence to the Inspector which he carefully considered. He made detailed findings at DL/27 to DL/41. He rejected Lambeth's

submission that the amalgamation of separate flats into large homes was leading to the sustained loss of homes in the Borough, finding that the net change as a result of amalgamations (14 losses per annum, equivalent to only 1% of the Borough's annual net housing delivery target) had not materially impacted upon the Borough's ability to boost the supply of housing (DL/33-34). He did not ignore Lambeth's submission that the ability to deliver its housing target was finely balanced and that every unit counted. He simply disagreed with it, which he was entitled to do.

92. The Inspector found that, while the majority of the housing need in the Borough was for smaller units, there was still a housing need for larger family dwellings (DL/35-37).

93. The Inspector also found that the number of applications for amalgamations (18 applications between September 2021 and 31 July 2022, of which 15 were refused, one was withdrawn and two were granted planning permission) was proportionately very small (DL/40-41).

94. The Inspector's conclusion that the loss of a single unit, in the context of current housing delivery in the Borough, would not be a planning consequence of significance, was a planning judgment which he was entitled to make, for the reasons he gave. Lambeth plainly disagreed with the Inspector's assessment but it is not entitled to challenge the merits of the Inspector's decision under section 288 TCPA 1990.

95. Each planning appeal has to be considered individually and on its own merits, not by reference to hypothetical applications which might be made in regard to other sites. Future decisions on other applications will also be decided on their individual merits, in the context of the circumstances which exist at the relevant time, which may or may not be different to those found by this Inspector.

96. For these reasons, Ground 5 does not succeed.

Ground 6

Submissions

97. Lambeth submitted that the Inspector failed to take into account material considerations, namely, three other appeal decisions, in which the Inspector accepted Lambeth's interpretation of Lambeth Local Plan Policy H3 and the London Plan Policy H8. Therefore the Defendant was acting inconsistently in his decision-making.

98. The Defendant and the IP accepted that previous decisions of Inspectors were capable of being material considerations. However, the general rule was that an Inspector was not obliged to take into account previous planning decisions if they are not drawn to his attention: see *Cotswold DC v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), per Lewis J., at [60] – [61]. The decision of the Court of Appeal in *DLA Delivery Ltd v Baroness Cumberledge of Newick* [2018] EWCA Civ 1305, relied on by Lambeth, is an example of a departure from that general rule on the specific facts of that case, and is distinguishable from this appeal.

99. Here the Inspector was not aware of the appeal decisions, and was not notified of them by Lambeth, even though Lambeth was a party to each of the appeals and so was aware

of them. Under the 'Procedural Guide: Planning appeals – England' issued by the Planning Inspectorate ("PINS"), paragraph 9.4.8.3, Lambeth was under an obligation to alert PINS of any relevant appeal, even after the deadline for the submission of documents.

100. Even if the Inspector had considered the other three appeal decisions, it would not have made any difference to the outcome. The Inspector's reasons for interpreting the development plan policies as he did were clearly set out, and ultimately it was a matter for the Court to determine the correct interpretation.

Conclusions

101. In *Cotswold DC v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), Lewis J. held that an Inspector was not obliged to take into account previous planning decisions if they were not brought to his attention. His reasoning was as follows:

> "60. In general terms, previous decisions of inspectors may, depending on the particular circumstances, be capable of being a material planning consideration. If such a decision is drawn to the attention of the decision-maker, the decision-maker will have to have regard to such a decision (assuming that it is material). The decision-maker is entitled to depart from an earlier decision but before doing so the decision-maker should have regard to the importance of consistency and give the reasons for departure from that earlier decision: see *North Wiltshire District Council v the Secretary of State for the Environment and Clover* [(1992) 675 P & C.R. 138 at page 145 and see *Dunster Properties Limited v First Secretary of State* [2007] EWCA Civ 236.
>
> 61. In general terms, however, the Secretary of State (or an inspector) is not obliged to take into account previous planning decisions if they are not draw to his attention. The Secretary of State (or an inspector) is not required to make his own inquiries in order to establish if there is a previous decision which may be potentially relevant. The general position, in my judgment, is set out in *Granchester Retail Parks plc v Secretary of State for Transport, Local Government and the Regions and Luton Borough Council* [2003] EWHC 92 (Admin.) at paragraphs 26 to 28:
>
> > "26. It is quite correct that the Matalan decision, if it had been brought to the inspector's attention, would have been a relevant consideration. It did not create any kind of binding precendent, but nevertheless the inspector would have taken it into account if he had known about it. The fatal flaw in this limb of the claimant's case, however, is that the Matalan decision was not drawn to the inspector's attention until after he had given his own decision. As a general principle a decision-maker does not err in law if he fails to take into

> account relevant matters which are not drawn to his attention and of which he is unaware. There is abundant authority for the proposition that a planning inspector's duty to take into account relevant decisions of his colleagues only extends to decisions drawn to his attention: see *Rockhold ltd v Secretary of State for the Environment* [1986] JPL 130 at 131; *Barnet Meeting Room Trust v SOSE* [1990] 3 PLR 21 at 28A to B; *North Wiltshire DC v SOSE* [1992] JPL 955 at 960; *R v SOSE, Chiltern DC, ex parte David Baber* [1996] JPL 1034 at 1037 to 1038, and 1040.
>
> 27. In my view the earlier decision of *Hollis v Secretary of State for the Environment* [1982] P&CR 351, upon which Mr Kolinsky relies, does not support the opposite conclusion. Mr Kolinsky submitted that the duty of planning officers to be consistent with one another was an onerous one. Accordingly it was their duty to take into account relevant decisions of colleagues, whether or not such decisions were cited in argument. This duty could be performed by carrying out a computer check of the database of all inspectors' decisions.
>
> 28. To my mind this is an unsound argument. It flies in the face of both principle and authority, as previously mentioned. Furthermore, if correct, the proposition of law advanced by Mr Kolinsky would impose a wholly intolerable burden upon the planning inspectorate. It should be borne in mind that there are some 400 planning inspectors, all engaged upon producing decisions. It is the duty of an inspector to decide cases, not to carry out extensive research on behalf of the parties."
>
> That general approach is also reflected in the decision *of London Borough of Hounslow v Secretary of State for Communities and Local Government and Kapoor* [2009] EWHC 1055 at paragraph 18."

102. In *DLA Delivery Ltd v Baroness Cumberledge of Newick* [2018] EWCA Civ 1305, the Court of Appeal confirmed the general principle that the Secretary of State or Inspectors were not required, as a matter of law, to be aware of every previous decision made. Lindblom LJ said, at [36]:

> "In my view that concept is unrealistic and unworkable given the number of decisions on planning appeals that have been made, …".

103. However, Lindblom LJ went on to hold:

> "There will, however, be circumstances in which, having regard to the interests of consistency in decision-making, the court is prepared to hold that the Secretary of State has acted

> unreasonably in not taking into account a previous decision of his own. Whether this is so in a particular case will always depend on the facts and circumstances …."

104. The Court held that it was unreasonable for the Secretary of State to have failed to have regard to decision A in determining decision B in that case because:

i) the two proposals were for the same form of development in the same district engaging the same policy considerations and were determined at similar times (at [43]);

ii) the appeals had been recovered for determination by the Secretary of State for the same reason. Implicit in the decision to recover appeals in such cases was the need for a consistent approach to their determination (at [44]); and

iii) the appeals were before the Secretary of State at the same time, and the two decision-making processes were largely concurrent (see [45]).

105. In those "particular circumstances" the Court concluded at [46] that:

> "…no reasonable Secretary of State, aware of his responsibility for securing consistency in development control decision-making, would have failed to take reasonable steps to ensure that his own decisions on cases of the same kind, in the same district, taken within the same period, and which, for the same reason, he had recovered to determine himself, were consistent with each other or, if they were not consistent, that the inconsistency was clearly explained. In determining the Newick appeal, he was, in my view, obliged to have regard to his very recent decision in the Ringmer case, even though none of the parties had sought to rely on that decision or brought it to his attention. In the circumstances the onus lay on him to inform himself of the decision, and to have regard to it."

106. The three appeal decisions in issue in this case were appeals against Lambeth's refusal of planning permission for proposed amalgamations. In each appeal, the Inspector accepted Lambeth's submission that the proposal would result in a net loss of a housing unit which automatically conflicted with the policies in Lambeth Local Plan Policy H3 and London Plan Policy H8 which protect existing housing. Therefore they reached a different conclusion to the Inspector in this case on the interpretation of the development plan. In my view, they were capable of being material considerations if they had been brought to the attention of the Inspector.

107. Lambeth failed to bring these decisions to the attention of the Inspector in this appeal. In my view, it could and should have done so, in accordance with PINS guidance. The 'Procedural Guide: Planning appeals – England' issued by PINS gives guidance on 'Written Representations' at paragraph 9. It advises that documents must be filed in accordance with the statutory time limits, and normally late documents will not be accepted. However paragraph 9.4.8.3 provides:

> "Where there is a change in circumstances, we will consider accepting late documents. This includes but is not limited to:
>
> …..
>
> - A relevant decision is made on another case – the LPA must alert us in writing, as soon as possible, if it makes a decision …..on a similar development and it should alert us if it becomes aware of a decision on an appeal that is relevant (the appellant may also do this in writing"

108. In this appeal, Lambeth refused the IP's applications on 17 and 23 May 2022. The IP's appeals were lodged on or about 5 July 2022 and 22 August 2022. On 12 May 2023, PINS informed the parties that appeals would be determined by way of written representations and the deadline for submissions was 2 June 2023. There was a site visit on 26 June 2023. The Inspector's decision was made on 13 October 2023.

109. The chronology of the three appeals was as set out below:

i) **Appeal 1. 6 and 7 Myton Road**. Application for planning permission for an amalgamation made on 17 June 2021, and refused by Lambeth on 16 September 2021. PINS notified the parties of the appeal on 13 June 2022. The Inspector's decision dismissing the appeal was dated 1 December 2022.

ii) **Appeal 2. 3 Offley Road**. Application for planning permission for an amalgamation made on 14 April 2022, and refused by Lambeth on 9 June 2022. PINS notified the parties of the appeal on 24 January 2023. The Inspector's decision allowing the appeal was dated 28 June 2023.

iii) **Appeal 3. 30 Romola Road**. Application for planning permission for an amalgamation made on 17 November 2022, and refused by Lambeth on 16 January 2023. PINS notified the parties of the appeal on 18 May 2023. The Inspector's decision allowing the appeal was dated 13 September 2023.

110. It is clear that the three decisions were made prior to the Inspector's decision in this case. Lambeth knew that these appeals had been lodged before the deadline for submissions in this appeal. Appeal 1 was decided before the deadline for submissions on 2 June 2023. Although Appeals 2 and 3 were decided after the deadline for submissions, the Procedural Guide makes it clear that PINS will accept submissions on other appeal decisions after the deadline for submissions has expired and advises a local planning authority that it "should alert us if it becomes aware of a decision on an appeal that is relevant".

111. I note that in Appeal 2, Lambeth drew the Inspector's attention to the decision in Appeal 1, indicating that it was aware of the possibility of providing other appeal decisions.

112. In my view, neither the Inspector nor the Secretary of State was under a legal duty to conduct a general search for other appeal decisions concerning Lambeth's housing policies. The expectation was that the parties would draw any such decisions to the attention of PINS. The circumstances of this case are distinguishable from the circumstances in the *DLA Delivery Ltd* case.

113. In any event, I do not consider that the outcome would have been different in this appeal even if the other appeal decisions had been made available to the Inspector. The three appeals were solely against the refusal of planning permission and did not consider whether the proposed amalgamation was a material change of use which amounted to development under section 55 TCPA 1990. Planning permission was granted in any event in two of the three appeals. The assessment of policy was brief and far less than in the submissions in this appeal. There was no assessment of housing supply and only a limited reference to the evidence of the loss of housing in Appeal 2, at paragraph 12. The Inspector's decision in this appeal was far more detailed and carefully reasoned than the other three decisions. In my judgment, the Inspector's interpretation of the development plan policies was correct in law.

114. For these reasons, Ground 6 does not succeed.

Final conclusion

115. The application for planning statutory review is dismissed, for the reasons given above.