Neutral Citation Number: [2015] EWHC 425 (Admin)

Case No: CO/2468/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday 23rd February 2015

Before :

Mr Justice Lindblom

- -

Between :

Ivan Crane	**Claimant**
- and -	
Secretary of State for Communities and Local Government	**First Defendant**
- and -	
Harborough District Council	**Second Defendant**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Mr Thomas Hill Q.C. and Mr James Corbet Burcher (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Ms Natalie Lieven Q.C. (instructed by **the Treasury Solicitor**) for the **First Defendant**
Mr Jack Smyth (instructed by **the Solicitor to Harborough District Council**) for the **Second Defendant**

Hearing date: 15 December 2014

Judgment
As Approved by the Court

Mr Justice Lindblom:

Introduction

1. Neighbourhood plans are seen by the Government as an important part of its so-called "localism agenda". In this case the court must consider whether a decision on an appeal under section 78 of the Town and Country Planning Act 1990, in which "very substantial negative weight" was given to the proposal's conflict with a recently made neighbourhood plan, was lawful, given that the policies of the development plan for the supply of housing land were acknowledged to be "out of date".

2. The claimant, Mr Ivan Crane, applies under section 288 of the 1990 Act for an order to quash the decision of the first defendant, the Secretary of State for Communities and Local Government, in a decision letter dated 17 April 2014, to dismiss his appeal against the refusal of planning permission by the second defendant, Harborough District Council, for a development of 111 dwellings, a sports hall, a neighbourhood centre, sports pitches, and associated parking, open space, access and landscaping on his land at Crowfoot Way, Broughton Astley in Leicestershire. The application is opposed both by the Secretary of the State and by the council.

The issues for the court

3. Mr Crane's application raises two main issues:

   (1) whether the Secretary of State erred in law in concluding that the proposed development was in conflict with the Broughton Astley Neighbourhood Plan 2013-2028 (ground 1 of the application), whether that conclusion was irrational (ground 4), and whether the reasons the Secretary of State gave for it were lawful (ground 3); and

   (2) whether the Secretary of State misinterpreted or misapplied government policy in the National Planning Policy Framework ("the NPPF") (ground 2), whether the conclusions he reached in applying relevant NPPF policy were irrational (ground 4), and whether the reasons he gave for those conclusions were lawful (ground 3).

Background

4. The appeal site is about 14 hectares of open and undeveloped land, lying to the south of Hallbrook Primary School. Mr Crane's application for outline planning permission was submitted to the council on 29 March 2012. The council refused the application on 22 August 2012. Mr Crane appealed to the Secretary of State on 19 September 2012.

5. At the time of the council's decision, and when the inquiry into the appeal was held in May 2013, the development plan comprised the Harborough Core Strategy, adopted in 2011, and the saved policies of the Harborough District Local Plan, adopted in 2001. The policies for housing development in the core strategy had been based upon the East Midlands Regional Plan, which by the time of the council's decision was no longer extant. Policy CS2 of the core strategy, "Delivering New Housing", set the requirement of an "overall housing provision" of "at least" 7,700 new dwellings for the district of Harborough between 2006 and 2028,

including “at least” 400 in Broughton Astley. Policy CS16, “Broughton Astley”, envisaged the preparation of an allocations development plan document to identify specific sites for development in that settlement. Policy CS2 said that the “Limits to Development” in settlements would be “reviewed through the Allocations DPD in order to enable the scale of new housing envisaged to be accommodated”, and that housing development “will not be permitted outside the Limits to Development … unless at any point there is less than a five year supply of deliverable housing sites and the proposal is in keeping with the scale and character of the settlement concerned”. In December 2012 the council began a review of the core strategy. In March 2013 its consultants, G.L. Hearn, reported on their initial assessment of the housing land supply in the district, concluding that a reasonable basis on which to plan would be a total provision of about 440 new dwellings a year.

The neighbourhood plan

6. The neighbourhood plan was one of the first to proceed towards adoption. The provisions for the preparation of a “neighbourhood development plan” – in sections 38A, 38B and 38C of the Planning and Compulsory Purchase Act 2004 and Schedule 4B to the 1990 Act – were introduced by the Localism Act 2011, and came into effect in April 2012. In July 2012 Broughton Astley Parish Council applied to the council for its parish to be designated a Neighbourhood Area. The designation was made in October 2012. A pre-submission draft of the neighbourhood plan underwent consultation in February and March 2013. On behalf of Mr Crane, his planning consultants, Sworders, responded to this consultation. They said that the three sites proposed for allocation for housing development were not “the most appropriate, when considered against all reasonable alternatives …”, and they urged the advantages of allocating Mr Crane’s land as “an entirely suitable and sustainable site for development”. Between 1 July and 12 August 2013 the parish council formally consulted on the examination draft of the plan. The examination hearing was held in Broughton Astley Village Hall on 19 September 2013. The council received the examiner’s report on 4 October 2013. In his report the examiner acknowledged the “basic conditions” in paragraph 8(2) of Schedule 4B to the 1990 Act, including the requirement that the neighbourhood plan be “in general conformity with the strategic policies contained in the development plan for the area …”. He acknowledged that the proposed allocations in the draft neighbourhood plan “provide for well in excess of the requirement set out in the Core Strategy”, and said he was “satisfied that policy H1 is in general conformity with the adopted development plan, as well as having regard to [the NPPF]”. He also observed that “[numerous] representations sought to compare the merits of the allocated sites with alternative sites”, but that “such matters are outside the scope of this examination”. He concluded that, subject to certain modifications, the neighbourhood plan should proceed to a referendum. On 16 January 2014 a referendum was held. Sufficient support emerged for the making of the plan. On 20 January 2014 the council resolved that the plan should be made. When it came into effect it became part of the development plan, as defined in the amended section 38(3) of the 2004 Act.

7. The title given to the neighbourhood plan by the parish council was “The Big Plan for Broughton Astley”, its sub-title “Our Village – Our Decisions”. It covers the period from 2013 to 2028. In section 1, the “Introduction”, paragraph 1.3, “How the Neighbourhood Plan Fits into the Planning System”, says that the Localism Act allows the neighbourhood plan to provide more than the core strategy requirement of “at least 400 new homes between 2006 and 2028”, but not less. Paragraph 1.4 says that the plan is “about much more” than “deciding where new housing, additional leisure, retail and employment should go”, and that the plan “is a plan for the village as a whole”. Paragraph 1.6 refers to the background information used in the preparation of the neighbourhood plan – the “Evidence Base”.

8. In section 2, “Key Issues, Core Objectives and the Vision for the Future 2013 - 2028”, paragraph 2.1 summarizes the “key issues” that the plan had to address. As for “Housing”, the first two “key issues” are: “Housing in Broughton Astley has expanded rapidly over a relatively short time period but facilities and amenities have not increased accordingly leaving a significant gap”, and “Concerns that additional housing development will put pressure on already stretched amenities such as the local Doctors’ surgery and the Primary Schools”. Paragraph 2.2, “The Core Objectives and Vision of the Neighbourhood Plan”, lists eight objectives, the first two of which are: “1. Accommodate at least 400 new properties in a manner that is appropriate to the character of the village and its countryside setting” and “2. Control development to avoid excessive expansion into surrounding countryside”.

9. In section 3, “The Policies of the Broughton Astley Neighbourhood Plan”, paragraph 3.1, “Housing”, lists some of “[the] key issues raised during community consultation in relation to housing”, including that “[housing] in Broughton Astley has expanded rapidly over a relatively short time period but facilities and amenities have not been increased accordingly leaving a significant gap”; that “[housing] should not be built before additional facilities are provided”; that “[any] new housing should be supported by adequate infrastructure – medical centre, schools, leisure, …”; and “[concerns] that additional housing development will put pressure on already stretched amenities such as the local Doctors’ Surgery and the Primary Schools”.

10. There are three policies for housing development – policies H1, H2 and H3.

11. Policy H1 is the only policy in which specific allocations of land are made for housing, its objective being to allocate land “for at least 400 new homes”. It allocates two sites for new housing development and a reserve site, which in total are intended to produce 528 new dwellings. The two allocated sites are Site 1A, “North of Broughton Way”, for 310 dwellings, and Site 2, “South of Coventry Road”, for 190 dwellings – making a total of 500. The policy says that these two sites “are allocated as a result of the public consultation and Options” (paragraph i). The reserve site, “North of Dunton Road”, is for 28 dwellings. Under the heading “Appraisal Process” the policy explains how development on the allocated sites will be brought forward together with the necessary new infrastructure. It says that “[a] logical sequence of phased construction will be monitored by the Steering Group and its progress assessed to ensure that Broughton Astley is not falling below its allocation of housing (policy P1)” (paragraph iii), and that “[should] new housing not be delivered on the two allocated sites within the proposed phasing sequence … development on the identified reserve site may then be considered” (paragraph iv). Paragraph v of the policy says that “[new] housing development in Broughton Astley will be accompanied simultaneously with the provision of local infrastructure including recreational and leisure facilities, retail provision and employment opportunities”. Paragraph vii says that new housing “should not be constructed on land which is known to be on a floodplain …”. The “Justification” for the policy refers to the core strategy requirement for “at least an additional 400 new homes” to be provided in Broughton Astley by 2028, and to the indication in policy CS16 that locations for housing development will be “set out in an allocations plan, in this case the Neighbourhood Plan”.

12. Policy H2 is concerned with the provision of affordable housing. It requires “at least 30% of all new housing developments” to be “high quality affordable housing”.

13. Policy H3 provides for “windfall and back land development”. Its definition of “[windfall] development …” is “any residential development that is granted consent on land or buildings not specifically allocated for residential development in the Harborough District Core Strategy”. The policy says “[it] is accepted that there may be some windfall developments over

the life of the Neighbourhood Plan on previously developed 'brownfield' or unallocated sites with direct highways access"; that "[small], well designed residential sites which do not have a detrimental effect on the surrounding area and neighbouring properties will be supported" (paragraph i); and that "[in] principle development will be supported on sites of less than 5 dwellings on previously developed land" (paragraph ii).

14. Other policies in section 3 of the plan provide for various forms of development, including a supermarket of between 20,000 and 30,000 square feet on Site 1A (policy S1, "Shopping"), land within Site 1A for employment development (policy E1, "Employment"), "additional community and leisure facilities" on Site 1B to the south of Broughton Way (policy L1, "Improved Leisure Facilities"), and a "healthcare facility" on Site 1B (policy W1, "Improved Healthcare Facilities").

15. Section 3 also contains policies which restrict development in particular ways – including policy EH1, "Environment[,] Heritage and Open Spaces for Protection", whose objective is "to protect the existing open spaces and heritage of the village and provide additional open spaces", and policy EH2, "Area of Separation", whose objective is "to ensure that the community of Sutton in the Elms maintains its identity and character".

16. Policy SD1, "Presumption in Favour of Sustainable Development", says that the parish council will support proposals that accord with the policies in the neighbourhood plan and, where they are relevant, the policies of the core strategy, and that "[when] commenting on development proposals [it] will take a positive approach that reflects the presumption in favour of sustainable development contained in [the NPPF]".

17. Policy CI1 describes the contributions to new infrastructure and facilities which will be required to support the new housing development. Paragraph 3.13, "Allocated Sites for New Development", adds to the explanation given for the allocations in policy H1. It says that "[the] top 2 sites considered suitable for new development as a result of the public consultation and Options Appraisal Process have been allocated for development"; that they can "provide a total of 500 new homes"; that although this number exceeds "the 400 additional properties identified in the sustainability appraisal of housing distribution undertaken as part of the Core Strategy[,] the allocation of the sites does allow a degree of flexibility, and brings benefits in terms of additional community facilities"; and that "[a] further site with potential of providing an additional 28 properties has been allocated as a reserve site". It goes on to say that "[a] full description of the consultation and Options Appraisal Process can be found in the Evidence Base which accompanies the Neighbourhood Plan"; and that "[a] list of the available development sites which were initially considered as reserve sites and which were excluded from the Neighbourhood Plan can be found in the Evidence Base …". The "Evidence Base" is Appendix 1 to the neighbourhood plan. In its electronic form the plan enables one to access the material in the "Evidence Base" via a series of hyperlinks. In section 4, "Consultation and Engagement", the link "S[.] Reserve and excluded sites" takes one to the responses to consultation, including Sworders' for Mr Crane.

18. Paragraph 3.15, "Policies for Allocated Development Sites", introduces policies setting out the particular requirements for the development of the allocated sites. The requirements for both Site 1A and Site 1B are identified in a single policy. Paragraph 3.15.1 refers to these two sites as being "suitable for a maximum of 310 residential units plus supermarket, employment and recreational and community use". Paragraph 1 in the policy says that Site 1A is "allocated for a maximum of 310 residential properties …". Paragraph 6 states that "[a] proportion of Site 1B is allocated for the construction of a community Medical Centre …". The corresponding policy for Site 2, the site south of Coventry Road, is introduced by paragraph 3.15.2, which says that

the site is "suitable for a maximum of 190 residential units plus recreational and community open space". Paragraph 1 in the policy itself refers to the site being "allocated for a maximum of 190 residential properties …". The requirements for the reserve site, the land to the north of Dunton Road, are in a policy introduced by paragraph 3.15.3, which says that this site is "suitable for a maximum of 28 residential units plus recreational and community open space". The policy itself says the site is "allocated as a reserve site for a maximum of 28 residential properties …".

The NPPF

19. The NPPF was published as the Government's policy for planning in England in March 2012.

20. In the section headed "Achieving sustainable development" paragraph 6 of the NPPF says that "the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system".

21. Under the sub-heading "The presumption in favour of sustainable development" paragraph 11 acknowledges that "[planning] law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise". Paragraphs 12 and 17 confirm the Government's commitment to the "plan-led system". Paragraph 12 says that "[proposed] development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise", adding that "[it] is highly desirable that local planning authorities should have an up-to-date plan in place". One of the 12 "Core Planning Principles" set out in paragraph 17 is that planning should "be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area", that "[plans] should be kept up-to-date …" and "should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency". Later, in the section headed "Decision-taking", paragraph 196 refers to section 38(6) of the 2004 Act and says that the NPPF "is a material consideration in planning decisions".

22. Paragraph 14 of the NPPF explains the "presumption in favour of sustainable development":

> "At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
> …
> For decision-taking this means [Here there is a footnote, which says: "Unless material considerations indicate otherwise"]:
>
> - approving development proposals that accord with the development plan without delay; and
> - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
> - specific policies in [the NPPF] indicate development should be restricted."

Paragraph 16 says the presumption in favour of sustainable development "will have implications for how communities engage in neighbourhood planning". "Critically", it says, this will mean that "neighbourhoods" should do three things, one of which is to "develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development".

23. In the section of the NPPF headed "Delivering a wide choice of high quality homes" paragraph 47 explains what local planning authorities should do "[to] boost significantly the supply of housing". Among other things they 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 plan period", and "identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements …". Paragraph 49 says that "[housing] applications should be considered in the context of the presumption in favour of sustainable development", and that "[relevant] policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

24. In the section which deals with "Plan-making", under the heading "Neighbourhood plans", paragraphs 183, 184 and 185 state:

> "183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:
>
> - set planning policies through neighbourhood plans to determine decisions on planning applications; …
>
> …
>
> 184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.
>
> 185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation."

25. Under the heading "Determining Applications", paragraph 198 says that "[where] a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted".

26. In the Planning Practice Guidance ("the PPG") issued by the Government in March 2014, paragraph 041, "How should the policies in a neighbourhood plan be drafted?", advises that a policy in a neighbourhood plan should "reflect and respond to the unique characteristics and planning context of the specific neighbourhood area for which it has been prepared."

The inspector's report

27. The inspector held an inquiry into Mr Crane's appeal on 8, 9 and 23 May 2013. He made his site visit on 10 May 2013. The inquiry was followed by several rounds of written representations, in which the parties had the opportunity to address the issues in the appeal in the light of the emerging neighbourhood plan. On 19 August 2013 the Secretary of State recovered the appeal for his own determination. The inspector's report is dated 21 November 2013 – some two months before the neighbourhood plan was made. He took into account the draft plan as it was at the time of the examination, the examiner's report, and the parties' post-inquiry representations up to and including the council's of 14 November 2013 (paragraphs 11, 12 and 13 of his report). In paragraph 14 he identified three "main considerations" in the appeal: first, "whether a satisfactory level of housing land supply is available within the Council's area", secondly, "the effect of the proposal on the character and appearance of the surrounding area", and thirdly, "whether the proposal would be sufficiently accessible in terms of sustainable development".

28. On the first of those three issues, "Housing Land Supply", the inspector concluded that, on the basis of "the provision of around 440 dwellings per annum …" for the period between 2011 and 2031, which the G.L. Hearn report had concluded was a "reasonable basis for strategic planning purposes", the council "currently has a housing land supply of 4.1 years" (paragraph 15). The G.L. Hearn report had "fatally undermined the Council's position at the Inquiry that it had a five-year supply" of housing land (paragraph 20), and that "policies, and elements of policies where relevant, relating to housing supply are out of date in accordance with [the NPPF]" (paragraph 26). On the second issue, "Character and Appearance", the inspector concluded that the proposed development "would have a moderate/minor harmful effect on the character and appearance of the surrounding area in conflict with [core strategy] Policies CS17 and CS11", but that "[this] harm and conflict would however be restricted to areas immediately surrounding the site and therefore attracts limited weight" (paragraph 36). And on the third issue, "Accessibility", he concluded that "the proposal would be sufficiently accessible in terms of sustainable development and that it would thus accord with [the NPPF] in this regard" (paragraph 42).

29. In paragraphs 43 to 52 of his report the inspector considered the emerging neighbourhood plan. He acknowledged that a referendum had not yet been held, and, therefore, "whilst the plan may be attracting increasing weight as it emerges, this is not the end of the process". He noted, however, that "all submitted versions of the plan identify alternative sites to the appeal site for housing development, and the appeal proposal has attracted much local opposition, including a petition" (paragraph 44). The "combined total of 648 dwellings (528 [provided for in the draft neighbourhood plan] + 120 [completed since the start of the core strategy period in 2006])" was "significantly greater than the [core strategy] requirement of 400 dwellings in Broughton Astley over the [core strategy] period to 2028" (paragraph 45). The emerging plan appeared "capable of meeting some, but not all, of the Council's housing land shortfall …" (paragraph 46). In proposing allocations for housing development, it sought "to regulate housing land supply". In view of government policy in the NPPF, the weight that could be given to its "housing land supply elements" was reduced (paragraph 47). They could be given only "moderate weight" (paragraph 48). There was no evidence that the appeal proposal would

prevent the progress of recently proposed development on the allocated sites. But it would "still assist in addressing the housing land supply shortfall in the district" (paragraph 50). The weight that could be given to the emerging plan in this case was "no more than moderate" (paragraph 51). Allowing the appeal "would undoubtedly have some demoralising effect in terms of the perceived value of neighbourhood planning in Broughton Astley". It "would not however render the neighbourhood planning process pointless, … but would simply restrict the housing land supply aspects of the neighbourhood plan in this particular case". This "adverse effect would therefore carry limited weight" (paragraph 52).

30. At the end of his report, in his "Summary of Conclusions and Planning Balance", the inspector said that the council's "unsatisfactory level of housing land supply renders the related [core strategy] policies out of date, and the appeal should therefore be considered in the context of the presumption in favour of sustainable development" (paragraph 78). The proposed development "would make an important contribution" to the supply of housing land, and this, in his view, attracted "significant weight" (paragraph 79). In paragraph 80 he said that the development's "moderately harmful effect" on "the character and appearance of areas immediately surrounding the site" attracted "limited weight … due to the absence of material harm to the surrounding area generally". He then said this:

> "The conflict between the proposal and the emerging neighbourhood plan attracts moderate weight due to the points already identified. These adverse impacts however would not significantly and demonstrably outweigh the benefit to the housing land supply position. …"

The inspector's ultimate conclusion was that "the proposal would thus accord with the relevant up to date policies of the Development Plan and the Government's policies as set out in [the NPPF] as a whole" (paragraph 81). His recommendation was that the appeal be allowed and planning permission granted (paragraph 82).

The Secretary of State's decision letter

31. In paragraph 3 of his decision letter the Secretary of State said that he disagreed with the inspector's recommendation and had decided to dismiss the appeal. He confirmed that he had taken into account the representations made following the inquiry, including those made after the inspector had produced his report (paragraphs 5 to 8). He acknowledged the requirement in section 38(6) of the 2004 Act that "proposals be determined in accordance with the development plan unless material considerations indicate otherwise". He noted that the development plan comprised the core strategy, the neighbourhood plan, and the remaining saved policies of the local plan adopted in 2001 (paragraph 9). He made it clear that among the material considerations he had taken into account were the NPPF and the PPG (paragraph 10).

32. In his conclusions on "Housing land supply" the Secretary of State said he agreed with the inspector that the council "does not have a 5 year housing land supply". He accepted, as had been submitted for Mr Crane, "that the need figure of 440 dwellings per annum in the 2013 Harborough Housing Requirements Study represents the most up-to-date evidence available and renders the regional strategy-based housing requirements in the Core Strategy out-of-date" (paragraph 12). He also agreed with Mr Crane and the council that "allocated sites 1A and 2 in Policy H1 of the Broughton Astley Neighbourhood Plan, for which there are Council resolutions to grant planning permission for about 500 dwellings, are not part of the housing land supply calculation as at September 2013 which is the most recent base date at which supply can be calculated". He shared the inspector's conclusion that the neighbourhood plan

was "capable of meeting some but not all of the … housing land shortfall" (paragraph 13). He went on to say this, in paragraph 14:

> "Having regard to … paragraph 49 [of the NPPF], the Secretary of State agrees with the Inspector that the relevant development plan policies for the supply of housing are out of date (IR26). This includes the relevant policies in the Broughton Astley Neighbourhood Plan, notably Policy H1, even though that Plan was made very recently. The Secretary of State considers that the presumption at paragraph 14 of [the NPPF] applies to this appeal."

33. The Secretary of State agreed with the inspector that the proposed development "would have a moderate/minor harmful effect on the character and appearance of the surrounding area, in conflict with Core Strategy Policies CS17 and CS11", but that "this harm and conflict would be restricted to areas immediately surrounding the site and therefore attracts limited weight" (paragraph 15). He also agreed with the inspector that the proposed development "would be sufficiently accessible in terms of sustainable development and that it would thus accord with [the NPPF] in this regard". However, Site 1A and Site 2 in the neighbourhood plan, for which the council had now resolved to grant planning permission, were "at a broadly similar stage to the appeal site in terms of progression towards housing delivery". There was "no evidence that the appeal proposal would prevent development on the allocated sites from progressing and delivering the community infrastructure associated with them". However, those sites were "significantly better located than the appeal site in terms of walking distance to facilities at the village centre" (paragraph 16).

34. Under the heading "Neighbourhood Plan", in paragraphs 17, 18 and 19 of his decision letter, the Secretary of State stated these conclusions:

> "17. Policy H1 in the Broughton Astley Neighbourhood Plan states that sites were allocated for development as a result of the public consultation and options appraisal process. These processes are fully documented in the Plan's published evidence base, referenced at appeal inquiry document HDC4. The documentation makes clear why some of the sites considered were allocated and why others were not allocated, including the appeal site which was considered to be relatively remote from the village centre. The Plan also includes Policy H3 which supports windfall development on small sites, but the Secretary of State considers that the appeal proposal for 111 dwellings is too large to accord with the scope of that policy. Accordingly, he considers that the proposal conflicts with the neighbourhood plan and therefore the development plan as a whole.
>
> 18. Policy [SD1] of the Neighbourhood Plan reflects the presumption in favour of sustainable development in [the NPPF]. In this appeal case he considers that the key issue in applying the presumption is whether any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole including its policies on neighbourhood planning as well as policy on housing supply.
>
> 19. The appeal proposal would assist in addressing the housing land supply shortfall (IR50) and the Secretary of State places substantial weight on this benefit. However, though he has had careful regard to the points the Inspector makes at IR43-49, he has also given consideration to the policies on neighbourhood planning at paragraphs 183-185 and 198 of [the NPPF]. Paragraph 198 is clear that, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. In line with paragraph 184 of [the NPPF], the Broughton Astley Neighbourhood Plan does not undermine the strategic policies in the Local Plan (i.e. the

2011 Harborough Core Strategy) nor provide for less development than is set out in that Plan. Paragraph 185 of [the NPPF] states that, outside the strategic elements of the Local Plan, neighbourhood plans will be able to shape and direct sustainable development. The Secretary of State regards this purpose as more than a statement of aspiration. He considers that neighbourhood plans, once made part of the development plan, should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question, for example to ensure that the best located sites are developed. Consequently, in view of … paragraphs 198 and 185 [of the NPPF] the Secretary of State places very substantial negative weight on the conflict between the appeal proposal and the Neighbourhood Plan."

35. In paragraphs 23 to 26, under the heading "Overall balance and conclusion", the Secretary of State said:

> "23. The Secretary of State considers that the lack of a 5 year housing land supply and the contribution that the appeal proposal would make to increasing supply weighs substantively in favour of the appeal.
>
> 24. He considers that the harm and conflict with the Harborough Core Strategy in relation to landscape character and the appearance of the area are nowhere near sufficient to outweigh the benefits of the proposal in terms of housing supply.
>
> 25. However, in view of [the NPPF] policy that neighbourhood plans will be able to shape and direct sustainable development, he places very substantial negative weight on the conflict with the Neighbourhood Plan even though this is currently out of date in terms of housing land supply ahead of its review in 2018.
>
> 26. The Secretary of State considers that the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply. He therefore concludes that there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan."

Issue (1) – conflict with the neighbourhood plan (grounds 1, 3 and 4)

36. On behalf of Mr Crane, Mr Thomas Hill Q.C. submits that the Secretary of State erred in his interpretation of the neighbourhood plan and in applying its policies to Mr Crane's proposal. Although he referred to "conflict" with the neighbourhood plan (in paragraphs 17, 19 and 25 of his decision letter), he did not clearly identify what that conflict was, or how it arose. It could not arise from some consideration distinct from the plan itself, such as the general support for neighbourhood planning in the NPPF (see the judgment of Kenneth Parker J. in *Colman v Secretary of State for Communities and Local Government* [2013] EWHC 1138, at paragraph 23). Conflict with the neighbourhood plan was the only basis on which the Secretary of State rejected the inspector's recommendation to allow the appeal. His failure to identify any real conflict with it vitiates his decision. He evidently misunderstood the policies on which he relied, or misapplied them, thus failing to discharge his most basic duties as a decision-maker under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act (ground 1 of the application). His finding of conflict with the neighbourhood plan in this case was irrational (ground 4). At the very least, in this crucial respect his decision letter falls short of the requirement for intelligible and adequate reasons, and the absence of such reasons has caused Mr Crane substantial prejudice (ground 3).

37. The neighbourhood plan does not define a "settlement boundary" for Broughton Astley, as Policy CS2 of the core strategy envisaged. Nor does it contain any specific policy restricting the development of the appeal site. Policies EH1 and EH2 do not have that effect. So, submits Mr Hill, the Secretary of State could not rely on any conflict with a policy of restriction, and he did not. If he had understood policies H1, H3 and SD1 correctly, he could not have found any conflict with them. Policy H1 simply allocates sites for new housing development in Broughton Astley. It does not preclude development on other sites. The Secretary of State seems to have inferred from policy H1 that there is some "counterpart policy protection for unallocated land". That was not permissible. Policy H3, the policy for "windfall" development, is irrelevant to proposals such as Mr Crane's. It does not prevent housing development being approved on larger sites. Mr Crane's proposal could not properly be found to be in conflict with it. Policy SD1 simply demonstrates support for proposals in accordance with the policies in the neighbourhood plan. A proposal cannot be contrary to that policy unless it is contrary to some other policy of the plan, which Mr Crane's was not.

38. I do not accept that argument.

39. In my view it cannot be suggested that the Secretary of State failed to understand his task under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act (see the decision of the House of Lords in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447, in particular the speech of Lord Clyde at pp.1458 to 1460). Each part of his analysis of the main issues in the appeal contains a clear conclusion, in which the relevant provisions of the development plan are applied and other material considerations, including policy in the NPPF, are taken into account. His final conclusion, at the end of paragraph 26 – "that there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan" – shows beyond any doubt that he had consciously performed his duty under section 38(6), and that, in the exercise of his own planning judgment, he had come to a clear view on the fundamental question to which that duty gives rise. Whether he had done this lawfully is in dispute. But the conclusion itself, and the Secretary of State's route to it, are absolutely clear.

40. Nor can I accept that the Secretary of State misconstrued the neighbourhood plan, or any of its individual provisions. As is submitted by Ms Nathalie Lieven Q.C. for the Secretary of State, and by Mr Jack Smyth for the council, it is important to remember the basic principle, emphasized by Lord Reed in paragraph 19 of his judgment in *Tesco Stores Ltd. v Dundee City Council* [2012] P.T.S.R. 983, that policies in a development plan are not akin to the provisions of a statute or the terms of a contract, and are not to be interpreted as if they were. The court must construe the policies in question sensibly in their context, without resorting to what Lewison L.J. in his judgment in *R. (on the application of TW Logistics) v Tendring District Council* (2013) 2 P. & C.R. 9 (at paragraph 18) referred to as a "strained interpretation" of the relevant policies of the plan, or as he put it, giving one part of the plan "precedence over another" unless the plan says that one should. The plan must be read as a whole, with a focus on its relevant objectives and the policies which give effect to those objectives. One can use the explanation and justification provided in the supporting text as an aid to understanding what the policies themselves actually mean, if it is necessary to do so (see paragraphs 16 and 21 of the judgment of Richards L.J. in *R. (on the application of Cherkley Campaign Ltd.) v Mole Valley District Council* [2014] EWCA Civ 567, with which Underhill and Floyd L.JJ. agreed). When the right approach to construction is applied in this case, I can see no basis for the submission that the Secretary of State misinterpreted the neighbourhood plan as a whole, or any of the particular policies to which he referred.

41. To borrow words used by the Government in paragraph 183 of the NPPF, the neighbourhood plan embodies the "shared vision" of the community in Broughton Astley for their neighbourhood. It displays a comprehensive approach to planning at the neighbourhood level in the period from 2013 to 2028. It is the means by which the parish council has chosen – as paragraph 185 of the NPPF puts it – "to shape and direct sustainable development in [its] area" in that period. With this in mind, I think there are three points that can fairly be made about the relevant parts of the neighbourhood plan.

42. First, it is in my view clear from the passages I have quoted from sections 1, 2 and 3 of the plan that the allocations in policy H1 represent both the acceptable location and the acceptable level of new housing development in Broughton Astley in the plan period, albeit with the latitude for approving "windfall" development in policy H3. The allocations in policy H1 are explicitly the result of a process of selection, having emerged as the sites chosen for allocation in the light of public consultation and the evaluation of options (paragraph i of policy H1). They had been selected in preference to other available sites which developers and landowners – including Mr Crane – had suggested (paragraph 3.13). They are also explicitly the planned "maximum" provision of new housing, as one sees in the subsequent policies setting out the requirements for each of them. Apart from the possible bonus of modest "windfall" sites coming forward under policy H3, the 528 dwellings provided for in policy H1 are the entirety of the planned new housing, including the affordable housing required under policy H2. Phased development on the two large allocated sites is given first priority, the identified reserve site adding to the delivery of new housing on those two sites if need be. The supporting text – including paragraph 2.2, "The Core Objectives and Vision of the Neighbourhood Plan", and the "Justification" for policy H1 – shows that the purpose underlying the allocations in that policy was to meet at least the minimum requirement for new housing in Broughton Astley set by the core strategy, without too much expansion into the "surrounding countryside". The allocations in the policy are clearly intended to strike the right balance. The parish council was seeking to achieve reasonable clarity and certainty as to where the new housing in Broughton Astley would go, and not to encourage developers to promote large proposals on unallocated sites. It achieved this without needing to define a settlement boundary, or "Limits to Development" of the kind contemplated by Policy CS2 of the core strategy.

43. Secondly, it is in my view significant that housing development on sites other than the allocations in policy H1 is deliberately provided for in the way that it is in policy H3. Apart from "windfall" proposals coming forward under that policy, the plan does not provide for, or envisage, any housing development in excess of the 528 dwellings on the sites allocated under policy H1. Policy H3 goes no further than to allow for development "on sites of less than 5 dwellings on previously developed land". If the intention had been to accept the development of housing on larger, unallocated sites, a policy drafted in this way would not have been included in the plan.

44. Thirdly, in deciding which sites should be allocated for housing and which should not, the parish council considered the sustainability of the new housing it was planning. This can be seen in the policies specifying the particular requirements for the allocated housing sites. It can be seen in the policies relating to other allocations. And it can also be seen in the overarching policy for sustainable development – policy SD1. The plan is composed of policies, both specific and general, which connect to each other and form a coherent whole. The effect is to create a full picture of the development and infrastructure for which the parish council has planned.

45. All of this, in my view, is abundantly clear from the policies and text of the neighbourhood plan itself, without having to turn to the "Evidence Base". The plan itself is entirely unambiguous. Whether one could have used the "Evidence Base" as an aid to understanding the plan is not, therefore, a question I have to consider. In fact, I do not think it would have been wrong to do that, because the "Evidence Base" is not merely referred to in the plan but also appended to it, and thus incorporated into it. But if I had relied on the "Evidence Base" in construing the plan, it would only have reinforced the interpretation I favour. It confirms that in choosing sites to allocate for housing – as well as for other forms of development – the parish council considered a number of sites put forward by those who made representations, including Mr Crane.

46. It follows from my understanding of the relevant provisions of the neighbourhood plan that a proposal for housing on a site other than those allocated in policy H1 will only accord with the plan if it finds support in policy H3 as a "windfall" proposal, and is consistent with other relevant policies. Larger proposals for housing on unallocated sites will not accord with the plan. They will be contrary to its strategy for housing development in policies H1 and H3. They will therefore be in conflict both with the neighbourhood plan itself and with the development plan as a whole.

47. I reject the notion that the plan, properly construed, allows for development such as Mr Crane's so long as it does not conflict with specific policies for the protection of the environment, such as policies EH1 and EH2, and would not frustrate or delay development on any of the sites allocated in policy H1. That is not what the plan says, and not what it means. As Ms Lieven and Mr Smyth submit, such an interpretation could not be squared with the plan's obvious purpose in providing for sustainable development in Broughton Astley. It would undo the balance that was struck when the plan was prepared – the balance between the aim of allocating sites for additional housing to satisfy the core strategy's minimum requirement, the aim of avoiding excessive expansion into the countryside, and other relevant goals. It would negate the strategy which the parish council conceived.

48. As Ms Lieven points out, Mr Hill's argument cannot be reconciled with the true purpose and effect of the allocations in policy H1. If the interpretation of the plan urged on me by Mr Hill were right, there would have been no point in the parish council going through the exercise of selecting the sites it allocated for housing development and formulating the policies and text which support those allocations. That, I think, is beyond any sensible dispute.

49. I am therefore in no doubt that the Secretary of State's understanding of the neighbourhood plan, which Ms Lieven and Mr Smyth defend, was correct. When one construes the relevant policies of the plan "objectively in accordance with the language used, read … in [their] proper context", as Lord Reed enjoined in paragraph 18 of his judgment in *Tesco v Dundee City Council*, I do not think any other interpretation is possible. The construction for which Mr Hill contends is, in my view, clearly wrong.

50. Did the Secretary of State misunderstand the neighbourhood plan and its relevant policies? The answer, in my view, is "No".

51. The inspector and the Secretary of State both concluded that Mr Crane's proposal was in conflict with the neighbourhood plan: the inspector in paragraph 80 of his report, the Secretary of State in paragraphs 17, 19 and 26 of his decision letter. The inspector's finding of conflict was with the examination draft of the plan, but that draft was not materially different from the plan once it had been made and become part of the development plan. The Secretary of State's finding of conflict "with the neighbourhood plan, and therefore the development plan as a

whole", at the end of paragraph 17 of his decision letter, is clearly stated. And it is very obviously based on his conclusion that the appeal proposal did not accord with the strategy for housing development in the neighbourhood plan, encapsulated in policies H1 and H3. This is the "conflict between the appeal proposal and the Neighbourhood Plan" to which the Secretary of State referred in the last sentence of paragraph 19, and the "conflict with the Broughton Astley Neighbourhood Plan" to which he referred in paragraph 26. I reject Mr Hill's suggestion that any of this is unclear. It is not. The conflict with development plan policy is identified as distinctly as one could wish.

52. The Secretary of State clearly understood not only what policies H1 and H3 say, which is not difficult, but also how they had emerged and what their purpose is. He referred, in paragraph 17, to "the public consultation and options appraisal process" mentioned in policy H1, and to the rejection of the appeal site as an option for allocation because it was "considered to be relatively remote from the village centre". This does not betray a misunderstanding of policy H1. It shows a sound grasp of the policy, the process behind it, and its purpose. The appeal site was not allocated for development in that policy, and the proposal did not accord with it. This was not merely a matter of interpretation; it was a matter of fact. The Secretary of State also considered the proposed development of 111 dwellings "too large to accord with the scope" of policy H3. This too was right, again not merely as a matter of interpretation but as a matter of fact. In my view, therefore, paragraph 17 of the decision letter shows the Secretary of State's understanding of these two policies was right.

53. Did the Secretary of State, having understood the policies correctly, fail to apply them lawfully? Again, the answer is clearly "No". The conclusion at the end of paragraph 17 that Mr Crane's proposal "conflicts with the neighbourhood plan and therefore the development plan as a whole" follows inevitably from a proper understanding of policies H1 and H3. Because the appeal site was not allocated in policy H1 and the appeal scheme was not a "windfall" proposal within policy H3, the proposed development was in conflict with the neighbourhood plan. The proposal did not have to be in breach of any other policy of the neighbourhood plan to be in conflict with it, and with the development plan as a whole. The proposal was in conflict "with the neighbourhood plan" because it did not comply with the plan's strategy for housing development in policies H1 and H3. All of this is straightforward. The Secretary of State's application of the relevant policies of the neighbourhood plan was legally impeccable, his conclusion inevitable. This is one of those cases in which the court can say that the decision-maker's conclusion applying relevant development plan policy was not only reasonable but also plainly right.

54. There is nothing obscure about the Secretary of State's reasons. They sufficiently explain both his interpretation and his application of the relevant policies. They comfortably meet the standard required (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

55. I therefore reject Mr Hill's submission that in finding Mr Crane's proposal to be in conflict with the development plan the Secretary of State failed to fulfil his duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. He interpreted relevant development plan policy correctly, applied it properly, and gave adequate and intelligible reasons for his conclusions. Whether he fell into error in his treatment of other material considerations – in particular, relevant government policy in the NPPF – is a question which arises in the next issue.

56. This part of Mr Crane's challenge therefore fails.

Issue (2) – government policy in the NPPF (grounds 2, 3 and 4)

57. As Mr Hill acknowledges, this issue arises only if his argument on the previous issue is unsound. The assumption here is that the Secretary of State properly identified and explained the conflict between the proposed development and the neighbourhood plan – which I have held he did. On that assumption Mr Hill submits that the Secretary of State misunderstood and misapplied government policy in the NPPF. This is, he says, a "quintessential paragraph 49 case". In such a case, once the decision-maker has found the "policies for the supply of housing" out of date, paragraph 14 of the NPPF requires him to consider whether the development would have "adverse impacts" that "significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole", or "specific policies in [the NPPF] indicate development should be restricted". The premise here, says Mr Hill, is that the development plan has already been considered, and that the balancing exercise at this stage is confined to the policies of the NPPF itself. Having reduced the weight to be given to the development plan by concluding, in answer to the first question, that the plan is "out-of-date", the decision-maker cannot then, in answer to the second question, dramatically increase its weight to a level that is – as Mr Hill put it in paragraph 72 of his skeleton argument – "overriding". Yet this is what the Secretary of State did here.

58. The Secretary of State's answer to the first question is in paragraph 14 of his decision letter: the policies for the supply of housing in the development plan, including "the relevant policies" in the neighbourhood plan, "notably Policy H1", were "out of date". As the court has held, out of date policies of this kind are likely to command little weight (see, for example, the judgment of Males J. in *Tewkesbury Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 286 (Admin), at paragraphs 13 and 20, and observations made by the court in several other cases – *William Davis Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin) (at paragraph 33), *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin) (at paragraph 72), *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2014] EWHC 573 (Admin) (at paragraphs 38 to 47), and *Grand Union Investments Ltd. v Dacorum Borough Council* [2014] EWHC 1894 (Admin) (at paragraph 78)). The inspector thought that only "moderate weight" could be given to "the housing land supply elements" of the emerging neighbourhood plan (paragraph 48 of his report). The Secretary of State gave "very substantial negative weight" to the conflict he found with the neighbourhood plan (paragraph 19 of the decision letter). This, submits Mr Hill, is impossible to reconcile with the Secretary of State's earlier conclusion that the neighbourhood plan was "out-of-date". It nullified the presumption in paragraph 14 of the NPPF. It was an irrational departure from government policy.

59. Mr Hill argues that the Secretary of State misinterpreted and misapplied policy in paragraphs 185 and 198 of the NPPF. He misdirected himself in three ways: first, in concluding that conflict with an "out-of-date" neighbourhood plan is capable of attracting the normal presumption against approving development in conflict with the neighbourhood plan, in paragraph 198 of the NPPF; secondly, in concluding that such conflict could be regarded as one of the "adverse impacts" contemplated in paragraph 14 of the NPPF; and thirdly, in concluding that such conflict could be given "very substantial negative weight", capable of overriding the "substantial weight" he gave to the benefit of the additional housing proposed – a conclusion contrary to the clear purpose of paragraph 49 of the NPPF. The presumption in paragraph 198 does not override the policy in paragraph 49. Even if the neighbourhood plan sought to "shape and direct sustainable development" away from unallocated sites such as the appeal site, it was nonetheless "out-of-date" because of the absence of a five-year supply of housing land. In the circumstances the Secretary of State could not properly give any

significant weight to the fact that the appeal site had not been selected as one of the "best located sites" in the plan area – a submission strengthened, says Mr Hill, by the Secretary of State's conclusions that the appeal site was "sufficiently accessible in terms of sustainable development", and that the effects of the proposed development on "landscape character and the appearance of the area" were "nowhere near sufficient to outweigh the benefits of the proposal in terms of housing supply".

60. Once again, therefore, Mr Hill submits that the Secretary of State's decision is flawed by his failure to understand relevant policy correctly and to apply it lawfully (ground 2), by irrationality in his conclusions (ground 4), and, in any event, by a lack of adequate and intelligible reasons (ground 3).

61. I do not think those submissions are tenable. In my view they are cogently answered by Ms Lieven and Mr Smyth, who argue that the Secretary of State understood NPPF policy correctly and applied it lawfully, and that he was entitled to give the relevant considerations the weight he did.

62. Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, government policy in the NPPF is a material consideration external to the development plan (see paragraph 23 of Kenneth Parker J.'s judgment in *Colman*). Policy in the NPPF, including the "presumption in favour of sustainable development" in paragraph 14, does not modify the statutory framework for the making of decisions on applications for planning permission. It operates within that framework – as the NPPF itself acknowledges in paragraph 12. It is for the decision-maker to decide what weight should be given to NPPF policy in so far as it is relevant to the proposal. Because this is government policy it is likely always to command significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the *Wednesbury* sense (see paragraph 46 of my judgment in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin)).

63. Once the Secretary of State had found Mr Crane's proposal to be in conflict with the development plan – as I have held he correctly did – he had to consider whether, in the light of the other material considerations in the case, he should nevertheless grant planning permission. That involved, for him, a classic exercise in planning judgment. His task was to weigh the considerations arising in the application of relevant policy in the NPPF, and any other material considerations beyond those arising from the development plan, against the statutory presumption in favour of the development plan enshrined in section 38(6) of the 2004 Act. Indeed, that is just what the NPPF itself envisages, in paragraphs 12 and 196.

64. In my view the Secretary of State did exactly what he had to do, in a legally unassailable way.

65. The NPPF creates a simple sequence of steps for the decision-maker in a case such as this. The first step, under paragraph 49 of the NPPF, is to consider whether relevant "policies for the supply of housing" are out of date because "the local planning authority cannot demonstrate a five-year supply of deliverable housing sites". If that is so, the "presumption in favour of sustainable development" in paragraph 14 of the NPPF will be engaged. The second step will be to consider whether planning permission should be withheld for either of the two possible reasons given in paragraph 14. I see nothing in the Secretary of State's decision letter to suggest that he misunderstood this approach.

66. It is not suggested, nor could it be, that the Secretary of State neglected or misunderstood the imperative in paragraph 47 of the NPPF "to boost significantly the supply of housing" (see

City and District Council of St Albans v Hunston and Secretary of State for Communities and Local Government [2013] EWCA Civ 1610, and *Gallagher Homes v Solihull Metropolitan Borough Council* [2014] EWCA Civ 1610), or that he failed to identify the "[relevant] policies for the supply of housing" within the meaning of paragraph 49 (see the judgment of Ouseley J. in *South Northamptonshire Council*, at paragraphs 45 to 48). Like the inspector, he found that the council could not show a five-year supply of housing land (paragraph 12 of the decision letter). Applying the policy in paragraph 49 of the NPPF, he concluded that the development plan policies for the supply of housing, including those in the neighbourhood plan, were out of date, and that the presumption in paragraph 14 of the NPPF therefore applied (paragraph 14). But in his view that presumption was outweighed, for the first of the two alternative reasons identified in paragraph 14 – because "the adverse impacts of the appeal proposal, especially in terms of the conflict with the Broughton Astley Neighbourhood Plan, would significantly and demonstrably outweigh the benefits in terms of increasing housing supply" (paragraph 26).

67. That was a conclusion unmistakeably expressed in the language of paragraph 14 of the NPPF. It reflected the "key issue" which the Secretary of State saw in applying the presumption in favour of sustainable development in the NPPF – a presumption replicated in policy SD1 of the neighbourhood plan – namely "whether any adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole including its policies on neighbourhood planning as well as policy on housing supply" (paragraph 18 of the decision letter). The "adverse impacts" here included conflicts with the development plan, especially the conflict with the neighbourhood plan (paragraphs 24, 25 and 26). The "benefits" were "the benefits in terms of increasing housing supply" (paragraph 26). The outcome of the balance between "adverse impacts" and "benefits" in the application of NPPF policy was brought into the last stage of the Secretary of State's conclusions. That last stage, in which the Secretary of State answered the question implicit in section 38(6) of the 2004 Act, was his conclusion that there were no material considerations – he said "circumstances" – indicating a decision other than in accordance with the development plan (ibid.).

68. Mr Hill does not question the route by which the Secretary of State reached paragraph 14 of the NPPF. The attack goes to the Secretary of State's application of the "presumption in favour of sustainable development", and in particular his conclusion, in the light of government policy in paragraphs 185 and 198 of the NPPF, that "very substantial negative weight" should be attached to the conflict between the proposal and the neighbourhood plan, sufficient to outweigh the benefit of the additional housing proposed – despite the policy in paragraphs 47 and 49.

69. I do not see any force in Mr Hill's argument. In my view the Secretary of State understood the policy in paragraph 14 of the NPPF correctly, and applied it lawfully.

70. As I have said, the NPPF does not displace the "presumption in favour of the development plan", as Lord Hope of Craighead described it in *City of Edinburgh Council* (at p.1450F-G). And this case is not one of those in which there is another statutory presumption in play – such as *Barnwell Manor Wind Energy Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137, where the decision-maker was under a statutory obligation requiring a particular material consideration to be given "considerable importance and weight" (see paragraphs 22 to 29 of Sullivan L.J.'s judgment in that case). There are passages in the NPPF which refer to the weight to be given to particular considerations where they are relevant to a decision on an application for planning permission: for example, the references to "great weight" in the policies for development in National Parks, the Broads and Areas of Outstanding Natural Beauty (in paragraph 115) and for development affecting "the

significance of a designated heritage asset" (in paragraph 132). But the parts of the NPPF which I am considering here do not do that. The decision-maker is left to judge, in the particular circumstances of the case before him, how much weight should be given to conflict with a plan whose policies for the supply of housing are out of date. This is not a matter of law; it is a matter of planning judgment.

71. As Ms Lieven and Mr Smyth submit, neither paragraph 49 of the NPPF nor paragraph 14 prescribes the weight to be given to policies in a plan which are out of date. Neither of those paragraphs of the NPPF says that a development plan whose policies for the supply of housing are out of date should be given no weight, or minimal weight, or, indeed, any specific amount of weight. One can of course infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out of date policies "for the supply of housing" will normally be less, often considerably less, than the weight due to policies which provide fully for the requisite supply. As I have said, Mr Hill points, for example, to an expression used by Males J. in paragraph 20 of his judgment in *Tewkesbury Borough Council* – "little weight" – when referring to "relevant policies" that are "out of date". In *Grand Union Investments Ltd.* (at paragraph 78) I endorsed a concession made by counsel for the defendant local planning authority that the weight to be given to the "policies for housing development" in its core strategy would, in the circumstances of that case, be "greatly reduced" by the absence of a five-year supply of housing land. However, the weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, or could it be, fixed in the case law of the Planning Court. It will vary according to the circumstances, including, for example, the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall.

72. But in any event, however much weight the decision-maker gives to housing land supply policies that are out of date, the question he has to ask himself under paragraph 14 of the NPPF is whether, in the particular circumstances of the case before him, the harm associated with the development proposed "significantly and demonstrably" outweighs its benefit, or that there are specific policies in the NPPF which indicate that development should be restricted. That is the critical question. The presumption in favour of the grant of planning permission in paragraph 14 is not irrebuttable. And the absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. In this case it was not.

73. The reference in paragraph 14 of the NPPF to its policies being "taken as a whole" is important. It indicates that the decision-maker is required, when applying the presumption in favour of "sustainable development", to consider every relevant policy in the NPPF. As paragraph 6 of the NPPF says, the policies in paragraphs 18 to 219, "taken as a whole", constitute the Government's view of what "sustainable development" means in practice for the planning system. Those 202 paragraphs include the policy on neighbourhood plans in paragraphs 183 to 185, and the policy on determining applications where there is conflict with an extant neighbourhood plan, in paragraph 198. There is no justification for excluding those four paragraphs from the ambit of potentially relevant policy on "sustainable development" in the NPPF. In this case they clearly were relevant.

74. I do not accept the proposition that, in a case where relevant policies for the supply of housing are out of date, the weighing of "any adverse impacts" against "the benefits" under paragraph 14 should proceed – as Mr Hill put it in paragraph 71 of his skeleton argument – "on the basis that the development plan components have been assessed, put to one side, and the balancing act takes place purely within the text of [the NPPF] as a whole". Paragraph 14 of the NPPF does not say that where "relevant policies" in the development plan are out of date, the plan must therefore be ignored. It does not prevent a decision-maker from giving as much weight as

he judges to be right to a proposal's conflict with the strategy in the plan, or, in the case of a neighbourhood plan, the "vision" (as it is described in paragraph 183). It does not remove the general presumption in paragraph 198 against planning permission being granted for development which is in conflict with a neighbourhood plan that has come into effect. These are all matters for the decision-maker's judgment, within *Wednesbury* bounds.

75. In this case the Secretary of State did what paragraph 14 of the NPPF required him to do. In paragraphs 18 and 19 of his decision letter, and then in paragraphs 23 to 26, he balanced the competing considerations. He weighed the "adverse effects" of the proposal against its "benefits", in the light of the policies in the NPPF "taken as a whole" – including both its policy on housing supply and its policies on neighbourhood planning (paragraph 18). On the "benefits" side of the balance he gave "substantial weight" to the ability of the proposed development to "assist in addressing the housing land supply shortfall" (paragraphs 19 and 23). There is no complaint about that conclusion. On the "any adverse impacts" side of the balance he gave "very substantial negative weight" to the conflict between the appeal proposal and the neighbourhood plan (paragraph 19), even though this plan was "currently out of date in terms of housing land supply ahead of its review in 2018" (paragraph 25). He acknowledged what the inspector had said in paragraphs 43 to 49 of his report, including the inspector's conclusion that the "housing land supply elements" of the then emerging neighbourhood plan attracted only "moderate weight" (paragraph 19). However, given that the neighbourhood plan had now been brought into force, he considered the proposal's conflict with that plan under the policy in paragraphs 183 to 185 and 198 of the NPPF (paragraph 19). He was entitled – indeed, required – to do that. The presumption in paragraph 198 was a consideration to which he was entitled to give significant weight. And he clearly did. He attached great importance to the concept, in paragraph 185 of the NPPF, that "neighbourhood plans will be able to shape and direct sustainable development in their area". In his view, as he said, this was "more than a statement of aspiration" (paragraph 19). He explained what he meant by this in the penultimate sentence of paragraph 19: that once a neighbourhood plan has become part of a development plan it "should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question, for example to ensure that the best located sites are developed". This reasoning led to the conclusion that the proposal's conflict with the neighbourhood plan had to be given "very substantial negative weight" – which was enough weight "significantly and demonstrably" to outbalance the benefit of the additional housing proposed (paragraph 26).

76. This does not, in my view, show any misunderstanding of policy in the NPPF, nor a misapplication of it. On the contrary, the Secretary of State carried out the balance between "any adverse impacts" and "benefits", as paragraph 14 of the NPPF requires. The reasons he gave for his conclusions are, again, both intelligible and adequate. They are not in themselves legally deficient. And they betray no error of law.

77. Having given due weight to the benefit of the proposed development in enhancing the supply of housing land in the district of Harborough, the Secretary of State did not accept that he should determine the appeal otherwise than in accordance with the development plan. He recognized that the neighbourhood plan was "currently out of date in terms of housing supply …", and inevitably so because it had been based, as it had to be, on the strategy for housing supply in the council's core strategy, which was itself no longer up to date. In fact, the neighbourhood plan provided for housing development in Broughton Astley well in excess of the minimum requirement in the core strategy. But in any event the Secretary of State saw as crucial in this case the policy in paragraphs 183 to 185 of the NPPF, which underlines the Government's commitment to neighbourhood planning as a process in which communities are able "to develop a shared vision for their neighbourhood …" and to "shape and direct

sustainable development in their area", and the presumption in paragraph 198 against approving development that "conflicts with a neighbourhood plan". He did not say that he was giving very substantial "positive" weight to the out of date policies of the development plan for housing supply. His salient conclusion was that very substantial "negative" weight should be given to the proposal's conflict with the neighbourhood plan. This was a conclusion in line with government policy in the NPPF, and, in the circumstances, perfectly rational. The Secretary of State was not persuaded to make a decision which, in his view, would undermine public confidence in neighbourhood planning. He was, I believe, entitled to give the weight that he did to the proposal's conflict with a neighbourhood plan which had just emerged from its statutory process – including consultation, examination, a referendum and the council's resolution to make it. That process had been completed only three months before he made his decision on the appeal. The appeal site had not come out of it as one of the sites suitable for housing development, despite the efforts made on behalf of Mr Crane to get it allocated. In the Secretary of State's judgment, even though the proposed development would not cause unacceptable harm to the character and appearance of the area and would also be "sufficiently accessible", it was clearly alien to the parish council's vision for its area manifest in the neighbourhood plan.

78. There was, in my view, nothing legally wrong with the Secretary of State's conclusion that although the policies for the supply of housing in the development plan were not up to date, and although this development would add to the supply of housing in the district, the proposal's conflict with the neighbourhood plan was in itself a powerful and decisive factor against granting planning permission. This was not a conclusion beyond the range of reasonable planning judgment allowed to a decision-maker when undertaking the balancing exercise required by government policy in paragraph 14 of the NPPF.

79. In the end, therefore, one comes back to the most elementary principle of planning law, emphasized by Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759 (at p.780F-H): that the weight to be given to material considerations, including statements of government policy, is a matter for the decision-maker to judge, subject only to the constraint of rationality (see Lord Reed's judgment in *Tesco Stores Ltd. v Dundee City Council*, at paragraph 19). In other circumstances the Secretary of State might have struck the balance differently. He might even have struck it differently here, and to have done so might not have been unreasonable. But this does not mean that the decision he did make was irrational (see the judgment of Lord Bingham of Cornhill C.J., as he then was, in *R. v Secretary of State for the Home Department, ex p. Hindley* [1998] QB 751, at p.777A). In short, as Ms Lieven submits, it was reasonably open to the Secretary of State to conclude that the "adverse impacts" of the appeal proposal, and especially its conflict with the Broughton Astley Neighbourhood Plan, would "significantly and demonstrably outweigh the benefits in terms of increasing housing supply". This was, in my view, a wholly unimpeachable planning judgment.

80. For those reasons this part of the challenge also fails.

Conclusion

81. It follows from my conclusions on the two main issues in this case, which dispose of all four of Mr Crane's grounds, that the application must be dismissed.