

Neutral Citation Number: [2011] EWHC 2271 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre

Date: 01/09/2011

Before :

**HIS HONOUR JUDGE SYCAMORE (SITTING AS A DEPUTY JUDGE OF THE
HIGH COURT)**

Between :

Metacre Limited	<u>Applicant</u>
- and -	
Secretary of State for Communities and Local Government	<u>First Respondent</u>
- and -	
Fylde Borough Council	<u>Second Respondent</u>

(Transcript of the Handed Down Judgment of
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Mr Roger Lancaster (instructed by **DLA Piper UK LLP**) for the **Applicant**
Mr Giles Cannock (instructed by **the Treasury Solicitor**) for the **First Respondent**
The Second Respondent did not appear and was not represented

Hearing dates: 25th and 26th July 2011

Judgment
As Approved by the Court

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His Honour Judge Sycamore :

Introduction

1. This is an appeal under section 288 of the Town and Country Planning Act 1990 (as amended) (“the Act”) by which the Applicant challenges the decision of the First Respondent contained in a letter dated 23rd March 2011 (“ the decision letter”) and seeks an order quashing that decision. The First Respondent has taken part in the appeal and was represented. The Second Respondent has played no active part in these proceedings.
2. By the decision letter the First Defendant dismissed the Claimant’s appeal and refused planning permission for the demolition of existing buildings and redevelopment comprising up to 264 dwellings on land north of Mowbreck Lane, Wesham, Fylde, Lancashire. The site was almost entirely agricultural covering an area of approximately 14.7 hectares.
3. The Claimant had submitted an application for planning permission to the Second Respondent on 12th December 2008 and on 17th March 2010 the application was refused by the Second Respondent. The Claimant appealed to the First Respondent against that refusal pursuant to section 78 of the Act. The appeal was heard at a public local inquiry before a planning inspector between 14th and 22nd September 2010. The decision on the appeal was recovered for determination by the First Respondent pursuant to section 79 and paragraph 3 of Schedule 6 of the Act, that is to say that the appeal was to be determined by the First Respondent personally as opposed to by an inspector appointed on his behalf.
4. The Inspector’s report and recommendation was issued on 4th November 2010 and the First Respondent issued his decision on 23rd March 2011 in which he agreed with the Inspector’s recommendation that the appeal be dismissed.
5. The First Respondent set out his approach to dismissing the appeal in the decision letter concluding in these terms:

“...20. The appeal proposal would accord with the RSS in terms of numerical provision. It would also accord with PPS3 in contributing towards meeting the shortfall resulting from the Council’s failure to demonstrate a five-year supply of housing land across the Borough, in achieving a good mix of housing shortfall in the area. However, these matters have to be considered against the proposal’s conflict with saved FBLP policies with regard to settlement boundaries, the restriction on development in the countryside, the need for new development to be in keeping with the character of the locality in terms of scale, and the need to avoid the permanent loss of BMV land unless absolutely unavoidable. Having weighed all these considerations in the planning balance, it is the Secretary of State’s opinion that the scales are tipped against the proposal in terms of its overall conformity with the development plan. In particular, he considers that allowing the appeal in advance of establishing the appropriate level of future housing provision across the Borough would pre-empt decisions on revised settlement boundaries before current uncertainties with regard to population growth and distribution can be settled in a statutory planning context. The Secretary of State concludes that these factors are important material considerations in their own right as well as representing conflicts with the saved Local Plan. When taken together, it is his view that they outweigh the conformity of the appeal proposal with the RSS to which he has given limited weight and those material considerations he has identified as being in its favour.

21. Accordingly, for the reasons given above, the Secretary of State hereby dismisses your client’s appeal...”

The Legal Framework for the Statutory Challenge

6. Section 288 of the Act provides that a decision may be challenged as follows:

- (1) (b) (i) that the action is not within the powers of this Act, or
 - (ii) that any of the relevant requirements have not been complied with in relation to that action; and
- ... (5) On any application under this section the High Court—
- ... (b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that order or action.

7. It is well established that a claim under section 288 lies not on the planning merits, but on grounds of law only: grounds upon which a claim for judicial review may be brought. In *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 1 WLR 1320, Lord Denning at 1326 said:

“Under this section it seems to me that the court can interfere with the Minister’s decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come; or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account, or vice versa. It is identical to the position when the Court has power to interfere with the decision of a lower tribunal which has erred in point of law.”

8. The limited nature of the challenge has been made clear by the courts on many occasions. The weight to be given to any particular material consideration and the making of a planning judgment is a matter for the decision maker, not for the court. For example, Lord Hoffman in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 (HL) 780 said at paragraphs 56 and 57:

“...The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process.

This distinction between whether something is a material consideration and the weight which it should be given is only one aspect of a fundamental principle of British planning law, namely that the courts are concerned only with the legality of the decision-making process and not with the merits of the decision. If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State...”

9. In *R (on the application of Newsmith Stainless Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] EWCH Admin 74 Sullivan J, as he then was said at paragraphs 6 to 8:

“An application under section 288 is not an opportunity for a review of the planning merits of an Inspector’s decision. An allegation that an Inspector’s conclusion on the planning merits is Wednesbury perverse is, in principle, within the scope of a challenge under section 288, but the

court must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a rerun of the arguments on the planning merits.

In any case, where an expert tribunal is the fact finding body the threshold of Wednesbury unreasonableness is a difficult obstacle for an applicant to surmount. That difficulty is greatly increased in most planning cases because the Inspector is not simply deciding questions of fact; he or she is reaching a series of planning judgments. For example: is a building in keeping with its surroundings? Could its impact on the landscape be sufficiently ameliorated by landscaping? Is the site sufficiently accessible by public transport? et cetera. Since a significant element of judgment is involved there will usually be scope for a fairly broad range of possible views, none of which can be categorised as unreasonable.

Moreover, the Inspector's conclusions will invariably be based not merely upon the evidence heard at an inquiry or an informal hearing, or contained in written representations but, and this will often be of crucial importance, upon the impressions received on the site inspection. Against this background an applicant alleging an Inspector has reached a Wednesbury unreasonable conclusion on matters of planning judgment, faces a particularly daunting task....”

10. The reasons given for planning decisions must be capable of being understood by the reader but should be treated with a degree of flexibility: see, for example *South Buckinghamshire District Council v Porter (no2)* [2004] 1WLR 1953, Lord Brown at paragraph 36:

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

11. In reaching a decision in exercise of powers under the Act a decision maker is to have regard to the development plan; section 70(2) provides:

“In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.”

Section 38 of the Planning and Compulsory Purchase Act 2004 provides:

“(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)
(6) 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.”

The Background

12. At the time the planning application was submitted to the Second Respondent and refused and at the time the appeal to the First Respondent was made the relevant Development Plan comprised:

- (a) Regional Spatial Strategy for the NorthWest (“RS”); and
- (b) The Saved Policies of Fylde Borough Local Plan (“FBLP”).

13. On the 27th May 2010 the First Respondent wrote to all local planning authorities intimating that RS’s were to be abolished and by a Parliamentary Statement dated 6th July 2010 the First Respondent announced that he had revoked all RS’s then in place. The public local inquiry held in September 2010 therefore proceeded on the basis that the RS for the North West of England had been abolished, although it was noted by the Inspector that a High Court challenge to the lawfulness of the abolition of RS’s was to take place. The Inspector therefore treated the Development Plan as comprising only the saved policies of FBLP and not including RS and his report to the First Respondent was based on that premise.

14. The Inspector delivered his report to the First Respondent on 4th November 2010. On 10th November 2010 the High Court in *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government and Winchester County Council* [2010] EWCH 2866 (“*Cala (1)*”) held that the revocation of RS had been unlawful and that resulted in the re-instatement of RS for the North West as part of the development plan for the area.

15. Thus, at the time the First Respondent issued the decision letter on 23rd March 2011 the Development Plan again comprised:

- (a) RS and
- (b) FBLP

16. After the judgment in *Cala (1)* the First Defendant consulted the parties on the implications for the way in which the appeal should be determined. He invited responses which were received by him in December 2010 and January 2011. The Applicant submitted lengthy further representations and subsequently took the opportunity to make additional submissions commenting on the representations made by the Second Respondent and other interested parties. Significantly, the Applicant did not suggest, and has not subsequently suggested, that there had been any procedural impropriety nor did the Applicant suggest that there was any need for the public local inquiry to reconvene to consider issues and materiality to be given to RS. Indeed, the Applicant acknowledged at paragraph 3.12 of its representations to the First Respondent in December 2010 that its evidence to the inquiry was not undermined, the proposal being in accordance with RS. When issuing his decision the First Defendant indicated that he had taken all responses received into account.

17. The First Defendant also made it clear in his decision of 23rd March 2011 that he had taken into account the implications of the decision of the High Court in *Cala*

Homes (South) Ltd v Secretary of State for Communities and Local Government [2011] EWCH 97 (Admin) (“Cala 2”) saying:

“...which held that the Government’s intention to legislate to revoke regional spatial strategies was capable of being a material consideration. However, while the Secretary of State has taken this matter into account in determining this case, he gives it limited weight at this stage of the parliamentary process.”

18. To see this in context it is helpful to consider the observation of Lindblom J in *Cala 2* at paragraph 67:

“The weight to be given to relevant provisions of regional strategies pending the legislative process will be for decision makers to gauge. Until the end of that process is reached regional strategies will remain in place as part of the development plans, commanding such weight for the purposes of particular decisions as authorities, inspectors and the Secretary of State may reasonably judge to be right...”

The Decision Letter

19. The essential basis of the First Respondent’s decision to dismiss the appeal is set out at paragraph 20 of the decision letter (see paragraph 5 of this judgment). In particular it is clear that the First Respondent was satisfied that:

- (a) The proposal accorded with RS in terms of numerical provision of housing land;
- (b) The proposal complied with National Planning Policy Guidance:
 - (i) by contributing to meeting a 5 year supply of housing land across the Borough, when there was a shortfall measured against the five year supply target;
 - (ii) by contributing to a good mix of housing; and
 - (iii) by meeting the affordable housing shortfall in the area;
- (c) But the First Respondent was also satisfied that the proposal conflicted with saved policies in FBLP regarding:
 - (a) Settlement boundaries;
 - (b) The restriction on development in the countryside;
 - (c) The need for development to be in keeping with the character of the locality in terms of scale;
 - (d) The need to avoid permanent loss of best and most versatile agricultural land unless absolutely avoidable.
- (d) Also at paragraph 20 the First Respondent explained how he had exercised a planning judgment by weighing all considerations in the planning balance and concluding “... *that the scales are tipped against the proposal in terms of its overall conformity with the development plan...*”
- (e) Applying s.38 (6), the SoS therefore considered that there was a failure to comply with the Development Plan (as a whole);
- (f) The First Respondent also explained that allowing the appeal in advance of establishing the appropriate level of future housing provision across the Borough would pre-empt decisions on revised settlement boundaries before current uncertainties with regard to population growth and distribution could be properly settled in the statutory planning context;

(g) The First Respondent made it clear that, in exercising his planning judgment, he attached "limited weight" to the conformity of the proposal with RS, when set against the failure to comply with the saved policies of the Fylde Borough Local Plan;

The Detailed Grounds of Claim

20. It is the Claimant's case that the decision of the First Defendant should be quashed as it contains the following errors of law:

Ground 1 - SOS decision to give limited weight to the requirement in RS to provide 306 new houses per year in Fylde is fundamentally flawed and not within the powers of the Act.

Ground 2 - The weight that SOS attaches to the proposal's conflict with FBLP Saved Policies with regard to settlement boundaries is flawed having regard to the overall contents of the development plan.

Ground 3 - SOS has failed to give proper and adequate reasons which are clear and intelligible for his finding that the proposal is in conflict with FBLP Saved Policy HL2 in respect of the need for development to be in keeping with the character of the locality in terms of scale. His finding is also flawed when considered against the settlement hierarchy in FBLP.

Ground 4 - Whilst the proposal does involve the loss of best and most versatile land (BMV) SOS has failed to take proper account of the fact that the breach of FBLP policy EP22 is of a technical nature and that practically the lost land could not be farmed as BMV land.

Ground 5 - SOS erred in concluding that in the planning balance the scales were tipped against the proposal in terms of overall conformity with the development.

Ground 6 - SOS erred in concluding that the allowing of the appeal in advance of establishing future housing provision across the Borough would pre-empt decisions on revised settlement boundaries with regard to population growth and distribution could properly be settled in a statutory planning context.

Discussion

21. Although there are six detailed grounds the issue which is at the heart of this appeal is the extent to which the First Respondent can be said to have discharged his statutory duties in considering the Development Plan as a whole, that is to say both the RS and FBLP, and whether he dealt adequately with questions of the materiality and weight to be attached to RS in his decision making process. There is the linked issue of adequacy of reasons. What is clear from the analysis of the decision letter at paragraph 19 of this judgment is that the First Respondent did exercise a planning judgment in weighing the policy compliance with the policy conflict before concluding that the scales were tipped against the proposal in terms of overall conformity with the Development Plan. He made it clear (see paragraph 16 of this judgment) that he had taken into account not only the Inspector's report (which was also informed by a site inspection) but also the responses he received in answer to his invitation to the parties after the handing down of the judgment in *Cala 1*.

22. The exercise in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 (see paragraph 11 of this judgment) required the First Respondent to balance the competing tensions of national, regional and local planning policies, that is to say the need to deliver land for housing (for example RS and Planning Policy Statement 3 (“PPS3”) against the restriction of development in the countryside (for example FBSP).

23. At paragraph 4.10.4 of the particulars of claim the claimant specifically prays in aid the national guidance contained in PPS3 in challenging the First Respondent’s decision to treat RS as of limited weight. As I observed at paragraph 19(b) of this judgment the First Respondent accepted that the proposal complied with PPS3. That he did so is clear from the decision letter at paragraph 9:

“ Other material considerations which the Secretary of State has taken into account include: ... PPS3: Housing...”

and at paragraph 20:

“...It would also accord with PPS3 in contributing towards meeting the shortfall resulting from the Council’s failure to demonstrate a five-year supply of housing land across the Borough, in achieving a good mix of housing shortfall in the area...”

24. The First Respondent accepted that PPS3 contained policy which is relevant to the determination of planning applications and planning appeals. This can be found at paragraph 71 of PPS3:

“Where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites...they should consider favourably planning applications for housing, having regard to the policies in this PPS including the considerations in paragraph 69.”

25. Paragraph 69 provides:

“In general, in deciding planning applications, Local Planning Authorities should have regard to;

- Achieving high quality housing.
- Ensuring developments achieve a good mix of housing reflecting the accommodation needs of specific groups, in particular, families and older people.
- The suitability of a site for housing, including its environmental sustainability
- Using land effectively and efficiently
- Ensuring the proposed development is in line with planning for housing. objectives, reflecting the need and demand for housing in, and the spatial vision for, the area and does not undermine wider policy objectives e.g. addressing market renewal issues.”

26.. Such favourable consideration (paragraph 71) is rebuttable as the consideration must be applied in the context of the section 38(6) statutory test and having regard to the considerations contained in paragraph 69 of PPS3.

27. As I observed in paragraph 8 of this judgment when referring to the judgment of Lord Hoffman in *Tesco Stores Ltd v Secretary of State for the Environment* it is clear that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State.

28. Nothing which has been presented in this appeal persuades me that the decision was other than one of a reasonable planning judgment. As was made clear by Lord Hoffman, absent *Wednesbury* irrationality, the weight to be given to any particular material consideration is a matter for the decision maker not for the court.

29. I remind myself of what was said by Sullivan J, as he then was, in *Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions*,

referred to at paragraph 9 of this judgment, "... an application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision..." That principle, in my judgment, is equally applicable to a decision of the Secretary of State.

30. I turn now to the individual grounds.

31. **Ground 1.** This is a challenge to the question of weight attached by the First Respondent to policies and the housing land requirement for Fylde in the RS. I have already referred to the principles which are applicable. In my judgment, the position can be put simply. The First Respondent recognised that RS formed part of the Development Plan and he determined the appeal on that basis. Both RS and FBLP were part of the Development Plan. In the context of section 38(5) of the Planning and Compulsory Purchase Act 2004 (see paragraph 11 of this judgment) the Claimant submitted that as a consequence it was necessary to resolve the conflict in favour of RS. I prefer the approach advanced on behalf of the First Respondent, that is to say that this approach only applies to individual policies as opposed to a policy theme or guidance, as is the status of RS. To conclude otherwise would defeat the purpose of the section 38(6) exercise. For example, if the Claimant's submission was correct, in a situation in which a local plan pre-dated RS, compliance with the local plan would be immaterial, as any conflict would necessarily be resolved in favour of RS. These are ultimately matters for planning judgment.

32. The determining factor in the First Respondent's rejection of the appeal was that the compliance with RS was out weighed by the non-compliance with the local plan. In concluding what weight should be attached it follows that the First Respondent in a proper exercise of a planning judgment concluded that more weight should be attached to conflict with the FBLP and less to the RS policy. It is clear that although the First Respondent did in fact rely in part on the Inspector's reasoning, which he was entitled to do, he made his own decision and gave his own reasons in the light of the Inspector's report and the further (post *Cala 1*) submissions. He also explained that, in the light of *Carla 2* he had given limited weight to the Government's intention to legislate to revoke RS (see paragraph 17 of this judgment). As I have explained in paragraph 23 above the First Respondent has grappled with compliance with PPS3, having found that the proposal did comply with PPS3 but concluding that greater weight should be attached to conflict with the local plan.

33. There is nothing to support the suggestion that the reasoning of the First Respondent was other than adequate in all respects in accordance with the principles set out at paragraphs 6 to 11 of this judgment.

34. **Ground 2.** This ground relates to the First Respondent's conclusion that the proposal was, as agreed between the parties, in conflict with the FBLP SP1 and SP2. SP1 related to settlement boundaries and SP2 to restrictions on development in the countryside. Once again, this is concerned with the question of the weight to be attached by the decision maker to first the agreed conflict and second the agreed conflict compared with the weight to be attached to RS and PPS3. This is a matter of planning judgment for the First Respondent, as decision maker.

35. The suggestion is that the decision was irrational. In my judgment that cannot be said to be so. The issues were adequately addressed in the decision letter in a manner which was consistent with the section 38(6) requirements from which it was clear that conflicts with policies in the Development Plan can justify the refusal of planning permission. It was clear that in considering that conflict in paragraph 20 of the decision letter the First Respondent identified four areas of conflict with FBLP, namely: settlement boundaries (SP1), the restriction on development in the countryside (SP2), the need for new development to be in keeping in scale (HL 2) and the need to avoid the loss of BMV land (EP 22).

36. **Ground 3.** This is concerned with the adequacy of reasons for finding that the proposal was in conflict with FBLP HL2 in respect of the need for the development to be in keeping with the locality in terms of scale. In reality it is concerned with that part of the First Respondent's decision in which he agreed with the Inspector that the proposal would not accord with HL2. In this respect the Inspector concluded:

"On that basis, the proposal is to add around 16% more houses to the existing housing stock of Wesham. Clearly that would be a substantial increase to the housing stock of the locality. I accept the concern which local people have about impact of such a substantial addition on the character of the locality and the capacity of the community to accept the scale of the additional population which would arise [7.7, 8.6, 8.14]. I consider that the appeal proposal would be contrary to FBLP Policy HL2."

The parties also accepted that the Inspector also found that:

- (i) There was no objection to the development by health authorities or schools. None had sought additional developer contributions to cover additional demands on their services.
- (ii) There was no objection by any statutory undertaker.
- (iii) He accepted that Kirkham/Wesham delivered a good range of local services and that the appeal site would provide a sustainable location for housing.
- (iv) In addition to local jobs there was good public transport and access to jobs outside the immediate area. The proposal was consistent with PPG13 There would be no impact on the highway network.
- (v) The proposal would improve the edge of Wesham settlement by providing a less stark transition between the housing and agricultural area than currently existed.
- (vi) There was no unacceptable impact on landscape and visual impact grounds.

37. The Claimant was critical of the fact that the Inspector had been concerned solely with the impact on Wesham whereas the FBLP settlement was described as Kirkham and Wesham. It should be noted that Kirkham and Wesham are two small towns separated by a railway line and, taken together, represent the second largest population within the 2nd Respondent borough (a total of 4512 dwellings). In my judgment it was legitimate for a distinction to be drawn between Kirkham and Wesham as an area of overall settlement on the one hand and on the other as distinct localities for the purposes of the consideration of scale issues. This is what the Inspector did and the First Respondent agreed with him, thus assessing the impact of the scale of the proposed development on the locality of Wesham alone. The proposal would have resulted in a 6% addition to the housing stock of Kirkham and Wesham taken together but a 16% addition to the housing stock of Wesham alone. It was legitimate to consider the impact on that local community as opposed to the overall

settlement area. There is no inconsistency with the other conclusions and the reasoning is adequate. I have reminded myself of the words of Lord Brown in *South Buckinghamshire District Council v Porter (no2)*, referred to at paragraph 10 of this judgment, in reaching this conclusion

38. Ground 4. In this ground it is suggested that the First Respondent has failed to consider whether (practically) the Best and Most Versatile (“BMV”) agricultural land could be farmed. The Claimant recognises that the proposal involves the loss of BMV land. The Claimant’s argument is that the BMV land was spread over four fields and could not be separately farmed and as such the conflict amounted to no more than a technical breach. This was dealt with in the Decision Letter at paragraph 14 as follows:

“For the reasons given at IR 11.49 - 11.55, the Secretary of State agrees with the Inspector at IR11.57 that the appeal proposal would lead to the permanent loss of at least 3 ha of best and most versatile (BMV) agricultural land and that, even though it could not be farmed as BMV land, its loss would still be at odds with the approach of PPS7. The Secretary of State also agrees with the Inspector’s conclusion at IR 11.57 that it has not been shown that the development of agricultural land is unavoidable now.”

At paragraph 11.51 of his report the Inspector had said:

“The Appellants also make the point that the BMV land on the appeal site is found in relatively small patches around the site none of which could be farmed separately. In practice, they should therefore be farmed in line with the lower grade land within which they are located. The point is accepted to some extent by the Council, but they respond that this does not alter the fact that the impracticability of farming the BMV land as such goes to the weight to be attached to the conflict with PPS7 rather than providing a full answer to the point.”

39. In my judgment no error of law is disclosed in the First Respondent’s approach to this. The approach described in the Decision Letter is entirely rational

40. Ground 5. In this ground it is suggested that the First Respondent erred in concluding that the scales were tipped against the proposal. Both parties agreed that this ground is parasitic on grounds 1 to 4. As I have previously observed, matters of planning judgment are for the First Respondent as decision maker and no error of law in that process has been identified.

41. Ground 6. This ground does not go to the body of the First Respondent’s decision. An analysis of paragraph 20 of the Decision Letter discloses that the First Defendant made his decision on the basis of the conflict between the need to deliver land for housing and the restriction of development in the countryside. The First Respondent said this in paragraph 20:

“Having weighed all these considerations in the planning balance, it is the Secretary of State’s opinion that the scales are tipped against the proposal in terms of its overall conformity with the development plan...”

He then goes on to say, having reached that conclusion, that allowing the appeal in advance of establishing the appropriate level of future housing provision across the Borough would pre-empt decisions on revised settlement boundaries.

42. At an earlier stage in the Decision Letter, paragraph 13, the First Respondent makes it clear that prematurity was not a reason for refusal:

“The Inspector points out that ...prematurity in connection with emerging Development Plan Documents will seldom be a valid reason for the refusal of a housing development and the Secretary of State agrees with him that the extent of the delay envisaged by the Council in resolving issues in their DPD’s means that refusal of the appeal application on the grounds of prematurity would not be justified. Nevertheless, for the reasons given at IR 11.96 (and considered further at paragraphs 14 and 20 below) the Secretary of State agrees with the Inspector that there are other factors to be taken into account in deciding whether it would be appropriate to release this site for residential development at this stage.”

In my judgment no error of law on the part of the First Respondent is disclosed in respect of this ground of claim

Conclusion

43. For all of these reasons none of the Claimant’s challenges to the First Respondent’s decision in this case can succeed. The First Respondent concluded having considered the Inspector’s report and the further (post *Cala I*) submissions that there was a conflict within the Development Plan. Although it was recognised that there is a housing need he was not persuaded that such need outweighed or justified development in the countryside. The planning judgments were exercised lawfully in accordance with the statutory test and the correct approach was adopted. The reasons given were in all respects adequate.

I dismiss this statutory challenge.