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Judgment Approved by the court for handing down

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: 23 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**

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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

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Judgment

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

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

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 …".

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

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."

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

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

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

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

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.

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.