Integrated Design & Access and Planning Statement

Site:

Land at 1 Vicarage Lane, Scopwick,

LN4 3NT

Applicant:

G Middleton

Prepared by:

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Introduction

Origin Design Studio Ltd has been appointed by G Middleton to submit a planning application for the redevelopment of an existing agriculatural building and associated surrounding land.

This report is an integrated design, access and planning statement prepared to support the planning application for the proposed development by providing jusitifcation against planning policy and rationale for the design.

Figure 1 - Red hatch area indicates site location

Site History & Context

Site Description

The site is located to the northern edge of the village of Scopwick along the north side of Vicarage Lane. Immediately south is a detached dwelling with a modern two storey rear extension. Flanking the western side of the site is minor road B1198. To the north of the site are agricultural fields. To the east of the site is a large hollow formed as a result of the historic work carried out on site.

The site is historically a quarry with the topography of the site showing its origins, particularly to the east. Currently the site is unused with a vacant agricultural building situated to the northern eastern part of the site.

The site's northern boundary is characterised by an overgrown hedgerow.

There are listed buildings in the vicinity of the site and Middle Street is within the Burton Conservation Area, the boundary being the eastern side of the road abutting the application site.

Planning History

The site benefits from the permitted development right for the conversion of an agricultural building to form two dwellings. Plans have been submitted and approved for this development through Prior Approval application 21/1789/PNND.

Neighbourhood Context

The proposed site is in the administrative district of North Kesteven District Council (NKDC).

Site Constraints & Opportunities

Constraints

Existing Buildings

Demolition

There is currently an existing building on site with permission to be converted to residential dwellings. If the proposal were to be approved, this building would be demolished.

The building is of no historic or architectural merit and are therefore not worthy of retention.

Adjacent Buildings

The adjacent buildings are existing dwellings. These have been considered in regard to privacy and overlooking when designing the scheme.

Trees

There are a number of trees on site, particularly to the North. These have been considered when designing the scheme and locating the dwellings.

Site Opportunities

Topography

The slope on the site offer an opportunity to create an interesting design through the use of earth retaining structures and split level arrangement.

Views

Due to the semi-rural location, views towards the open countryside are achieved to the North. These have been considered when orientating the dwellings, whilst also considering privacy of nearby dwelling and impact on the surrounding countryside.

Trees

Although also a constraint, the retained trees will provide shading for the dwellings alongside privacy. Arguably the use of residential will allow them to be appreciated more so than the current agricultural use.

Access

The current site has one access point off Vicarage Lane.

Site Plan Key

Ref.	Description
1	Approximate location of speed change signs
2	Existing hedging and trees to the Western boundary of site
3	Existing pond on site
4	Existing hedging on site to bound the existing dwelling
5	Existing trees on site
6	Western power electricity lines and poles
7	Natural environment area
8	Existing site access
9	Triangles denote existing listed buildings
10	Cemetery and play area close to site

Proposed Development

The application is for detailed planning permission for two residential dwellings to be constructed near to the site of an existing agricultural building which is to be demolished. The application is accompanied by plans and elevations for both dwellings.

Design & Access

Use

The proposed use is for residential use.

Amount

The proposed development is for 2 dwellings with a total GIA of around 538m2. This is split into 267m^2 for Plot 1 and 271m^2 for Plot 2.

Scale

The proposed dwellings are to be two storeys. The proposed buildings will be flat roof, limiting the height. The maximum height of the building is 7.0m. This gives an eaves height of +3.400mAOD.

Layout

The proposed site plan shows the dwellings orientated to be parallel to the northern hedgerow with the northern most first floor rooms taking advantage of the view over the open countryside to the north. The footprint of the proposed dwellings is loosely positioned on the footprint of the agricultural building to be demolished. The layout introduces fragmented levels such that the variation in levels on the site can be appreciated as well as creating visual interest in the design.

Appearance

The proposed appearance of the dwellings move away from the agricultural conversion previously approved for the site and puts forward a more modern design aesthetic whilst retaining the use of traditional materials. The materials used include limestone external walls for use at the ground floor level and timber cladding to the first floor. There are also sections of render included to create separation and a visual break between the stone and timber.

Access

The existing access to the site will be reused. The shared access will then subdivide to serve both properties. There is ample space dedicated to the private drive on each of the plots to enable turning and leaving in a forward gear.

Landscaping

The scheme proposed includes an indicative landscaping scheme that includes for the planting of trees around the site to promote a green and leafy feel to this site at the edge of the settlement.

Planning Policy & Material Considerations

The Development Plan

Planning applications should be determined in accordance with the development plan unless material considerations dictate otherwise. The development plan in this case is the Central Lincolnshire Local Plan (2017) (CLLP).

The Central Lincolnshire Local Plan reflects national policy for the presumption in favour of sustainable development. This is specifically reiterated in policy LP1.

In addition, the following policies are considered relevant: -

- LP2 – The Spatial Strategy and Settlement Hierarchy
- LP3 – Level and Distribution of Growth
- LP4 – Growth In Villages
- LP11 – Meeting housing needs
- LP14 – Managing water resources and flood risk
- LP17 – Landscape, townscape and views
- LP25 – The Historic Environment
- LP26 – Design and Amenity

Policy LP2

Policy LP2 is the Spatial Strategy and Settlement Hierarchy and defines Scopwick as a Small Village. The policy states such settlements will accommodate small scale development of around 4 dwellings in appropriate locations. The term 'appropriate location' means a location which does not conflict, when taken as a whole, with national policy or policies in the Local Plan. In addition, the site, if developed, would need to retain the core shape and form of the settlement, not significantly harm the settlement's character and appearance and not significantly harm the character and appearance of the surrounding countryside or the rural setting of the settlement.

Policy LP3

Policy LP3 sets the level of growth expected over the plan period and where this will be distributed across the plan area. Scopwick is defined as elsewhere and Policy LP4 dictates the level of growth for villages.

Policy LP4

Growth in Villages – This policy advises Scopwick will be permitted to grow by 10% in the number of dwellings over the plan period. As Scopwick falls within category 6 (Small Villages) of the settlement hierarchy, a sequential test will be applied with a priority given as follows:

1. Brownfield land or infill sites, in appropriate locations, within the developed footprint of the settlement.
2. Brownfield sites at the edge of a settlement, in appropriate locations.
3. Greenfield sites at the edge of a settlement, in appropriate locations.

Scopwick has headroom for 10 dwellings across the Plan period to 2036 (as of 28th July 2022).

Policy LP17

Policy LP17 relates to landscape and states development proposals should have particular regard to maintaining and responding positively to any natural and manmade features within the landscape and townscape which positively contribute to the character of an area (e.g historic buildings, topography trees, hedgerows, etc). It also states that where a proposal may result in significant harm, it may, exceptionally, be permitted if the overriding benefits of the

development demonstrably outweigh the harm: in such circumstances the harm should be minimised and mitigated.

All development proposals should take account of views in to, out of and within development areas by creating and protecting views.

Policy LP26

Policy LP26 sets out design and amenity considerations that should be promoted through the development. All development proposals must take into consideration the character and local distinctiveness of the area (and enhance or reinforce it, as appropriate) and create a sense of place. The amenities which all existing and future occupants of neighbouring land and buildings may reasonably expect to enjoy must not be unduly harmed by or as a result of development.

Other Material Considerations

Neighbourhood Plan

A neighbourhood plan is currently being developed for Scopwick and Kirkby Green. Whilst the development plan takes primacy the neighbourhood plan remains a material consideration.

National Planning Policy Framework

The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these should be applied. It is a material consideration in planning decisions.

Development Plan Review

The latest Central Lincolnshire Local Plan (Proposed Submission Draft) (March 2022) has been submitted to the Planning Inspectorate for review.

Fallback

The site benefits from a prior approval permission for permitted development to convert the existing agricultural building. This represents a 'fallback' position and is a material consideration for the proposal.

Assessment of Policy and Material Considerations

It is an unusual scenario for a proposed development to get two bites of the cherry in the determination of a planning applications. In the first instance the development must be assessed against the development plan and if found to be sustainable development should be approved without delay. If conflict with the development plan exists other material considerations can be given significant weight to allow for the proposed development.

A summary of the case for the development proposed

- The site is located at the edge of settlement on land with an extant permission for the construction of 2 dwellings that offers 'fallback' position.
- The development is an 'appropriate location' for development when considering the development management policies of the local plan.

The principle of development

The site is a former agricultural barn with associated land located to the north of Vicarage Lane. The site is located at the edge of the settlement and would not be within the developed footprint of the village. In accordance with the descriptions given in Policy LP4 it would be on the third tier of preferred land to develop. Numerically, Scopwick has sufficient 'headroom' to accommodate a development of 2 new dwellings, with a capacity of 10 dwellings remaining to be delivered over the plan period. It should further be noted that the proposed development would demolish a building that has an extant permission for the construction of two dwellings through the conversion of an existing agricultural building. Due to the demolition of the existing building, it would no longer be possible to construct these dwellings and thus the proposal would not result in a net gain of residential development. Therefore, it is considered that the sequential test is passed. The sequential test in Appendix XX shows that the site could be considered for development for two dwellings.

Crucial to the consideration of the proposal is whether the site could be considered an 'appropriate location'. To do this it is considered important to recognise the existing characteristics of the site.

The part of the site where the development is proposed comprises of an existing agricultural building, which extend in depth by approximately 80m from Vicarage Lane. The building is a large, functional agricultural building constructed in blockwork and cementitious roof sheeting.

The proposed development whilst it would extend the built form of the settlement marginally north it should be judged in the context of the building that exists on the site which has the semblance of previously developed land, and the proposed development would not result in an significant change to the pattern of development in this area of Scopwick.

The replacement of this building for residential development would in principle be reflective of the core shape and form of the village, the existing quarry and farmyard reasonably being a recognisable and constituent part of the

core shape of Scopwick. In depth development of this site can be identified on historic mapping dating back to at least the 1970's. The site plan shows that development is loosely positioned on the footprint of the existing building. The strong mature hedgerow on the northern boundary helps to screen the development from wider views with the exception to the minor cut outs that promote a view of the countryside to the development.

As such, the site is considered to be an 'appropriate location' and the proposal would therefore accord with the provisions of Policy LP2.

Affordable Housing

Policy LP11 of the CLLP requires an affordable housing of 20% on all qualifying housing development sites of 11 dwellings or more, or on development sites of less than 11 units if the total floorspace of the proposed units exceed 1,000m^2.

Considering the development comprises of only two dwellings and the total cumulative floorspace well below 1,000m^2, it is expected that the burden of providing affordable housing and infrastructure contributions will not fall on this development.

Residential Amenity LP26

The proposed dwellings are located some distance from the nearest dwelling which is 1 Vicarage Lane. The large evergreen trees located between the rear boundary of 1 Vicarage Lane and the proposed development will provide sufficient screening and limit the impact of the proposed development on this dwelling. Furthermore, the two dwellings proposed have been designed to take advantage of opposite aspects such that they do not overlook each other. Windows along the boundary line between the two plots are generally restricted to the ground floor but where they are proposed at first floor they serve bathrooms or provide high level daylighting with limited potentially for overlooking. Frosted glazing could be employed to further limit any perceived overlooking.

Overall, the proposal is considered to accord with the amenity considerations set out within Policy LP26 of the CLLP.

Design LP26

The proposed development is a reduction in ground floor footprint when compared to the existing agricultural building. The existing ground floor of the agricultural building being approximately 480m^2 and the proposed ground floor footprint of the proposed development being 315m^2. The proposed development would bring about a change of use to the land and introduce domestication to the area including domestic paraphernalia.

The proposed development retains and supplements the green edges to the site by proposing to bolster hedgerows and the planting of additional trees. As such the development will incorporate appropriate landscape treatment to ensure that the development can be satisfactorily assimilated into the surrounding area.

The development will embrace an opportunity to provide an innovative design and new technologies which sympathetically will complement the prevailing materials used in the area and yet provide an appealing contrast to the predominant local architectural style. However, the modern architectural

appearance will fit with the recently constructed two storey rear extension at 1 Vicarage Lane.

The development is considered to accord with the design considerations set out within Policy LP26 of the CLLP.

Landscape and Visual Impact Considerations

Whilst there will be a change in the form of development on site and therefore to the views of the site these changes will be minimised by the existing green infrastructure surrounding the sites boundaries.

Glimpsed views of the site will be obtained from the junction of Heath Road with the B1188 and along Vicarage Lane between gaps in the hedgerow. The main public views of the site are obtained from Vicarage Lane by viewing north along the access track.

The dwellings will also be made viewable from the agricultural land to the north due to the intentional reduction in height of the hedgerow to promote a visual tease of architecture.

Allowing the building to peek over the reduced hedgerow allows the design to be appreciated from the public bridleway that runs around the adjacent agricultural field to the north of the site.

It should be noted that just because something can be seen does not make it harmful and good design provides a significant role in improving the built environment particularly when it can be appreciated from the public sphere.

Accordingly, the site is in accordance with Policies LP17, LP25 and LP26 of the local plan.

Heritage

The site is not located in the conservation area of Scopwick. Unlike the south of the village where the conservation area is borders with the open countryside much of the northern boundary to the conservation area is surrounded by modern growth. Much o of the modern expansion erodes the quality of the views of the conservation area and some cases poorer quality development.

Although part of the conservation area extends to the southern side of Vicarage Lane. This is limited to The Vicarage and road junction with Farriers Court.

Whilst the access to the site is located opposite to the conservation area, most of the proposed development is set back some way from the boundary of the conservation area. Whilst the development will introduce change to the site it is hard to see how the setting of the conservation area would be harmed in any way. The design whilst modern is of a high standard and the material palette respects the prevailing character of the area. Rather than cause harm the redevelopment of the site will enhance this area of the settlement and accordingly improve the setting of the conservation area.

The nearest Listed building to the site is List Entry 1064302 located some 20m south of The Vicarage. This is a Grade II listed structure which is a limestone archway that was moved to the site in 1848 when the church at Kirkby Green was rebuilt. The proposed development would not impact on the setting of the Listed building.

It is considered that the development would therefore be in accordance with the Policy LP25.

Flooding & Drainage

The site is located in a flood zone 1 as shown on the Environment Agency flood mapping. It is therefore not at risk from fluvial or tidal flooding.

The site does not suffer from any known surface water issue. Given the porous nature of the subsoil and bedrock the scheme proposes that surface water drainage will be dealt with by soakaways.

Foul drainage will connect to the public sewer and will be gravity fed, most likely, to AW Manhole 7101 on Vicarage Lane.

Ecology

An ecology report was prepared to accompany the potential development of the wider site. It is considered to still have relevance to this application as typically ecology reports remain valid for 12-18 months and it encompasses a large area of the site.

Recommendations in the report suggest the existing agricultural building is not a suitable habitat for bats and can be demolished without the need to provide mitigation.

The conclusion from this report suggests that a net gain of biodiversity can be achieved through the inclusion oof several key ecological enhancements. These include the planting of native species hedgerows and trees with a list of recommended species, the inclusion of bat and bird boxes on the development and hedgehog paths.

Class Q Fallback Position Assessment

The current planning application seeks permission for a total of two new build dwellings. Thus, numerically within the threshold of the prior approval as a fall-back option but where, owing to demolition and new build the individual units are larger than those contemplated in the Class Q scenario. In addition, the curtilages of the units would be extended such that instead of forming an effectively redundant farmyard around the perimeter of the development, the whole site would be re-purposed to residential use ie. gardens and amenity space. Whilst Class Q greatly limits the extent of an associated residential curtilage, it is reasoned that the remaining land surrounding the farmyard would effectively be unusable, there would over time be pressure for it to be brought in to residential use: it would be effectively severed from the countryside by the placement of the buildings converted under Class Q so there would be no legitimate planning reason to maintain it either for agricultural use or because it served a countryside function; in the latter point it would be enclosed by buildings and have more of a relationship to the surrounding new residential development than the countryside beyond. In practice, applying the Class Q scenario, the continuance of agricultural activities within the residual part of the farmyard would be unrealistic by virtue of the degree of severance and residential curtilage demarcations afforded through the alternative allowed Class Q scheme.

Having established that the Class Q fall-back exists, it should be afforded a high degree of material weight in the planning balance. Ordinarily as evident from the policy commentary above, new dwellings on the site would fail to accord with the spatial strategy and settlement hierarchy of policy 1 such that the development

would be resisted as contrary to policy. However, the Class Q fall-back adds to the planning balance in this case and establishes that, under the provisions of permitted development, the site could be developed for a total of 2 dwellings and such a development is a real prospect. With the above in mind, the next key consideration, mindful of the approach in Mansell and planning appeal precedents, relates to whether the proposal subject to the planning application represents a 'betterment'. As outlined in the following section, new build dwellings by their very nature offer betterment with regard to thermal efficiency and airtightness.

Betterment

The existing permission on site allows for residential development on site, however due to the constraints of Prior approval permissions, the scheme does not make the most of the site. The existing buildings are not of architectural or historic merit. This proposal seeks to put forward a scheme which would be betterment on site, whilst retaining the character of an agricultural dwelling.

When comparing the two schemes, it is clear that this application would provide betterment on site, firstly through its appearance.

The proposal includes for a material palette of a mix of stone and timber cladding alongside sections of render. Stone and timber are commonly used for agricultural dwellings, particularly in this locale, and therefore assist in retaining the agricultural feel to the site. This shows how this design approach applied in this application is in keeping with the character of the area and vernacular agricultural buildings.

Sustainability

U-Values & Airtightness

The proposed fallback dwellings, due to being newly built, will also be an improvement in regard to energy efficiency. This will enable a more comfortable environment for the future occupants as well as being of benefit to the wider community through reduced emissions and energy wastage. This is as a result of the nature of new build dwellings being able to be constructed in a way which reduced the U-value of a dwelling to a level of which a conversion would not be able to achieve.

U- Values assigned to a building element represent its ability to transmit heat from a warm space to a cold space within a building. The lower the value, the better insulated the element is.

With a new build it is much easier to create an airtight, well insulated dwelling and avoid issues which arise from not fully knowing the history of the building or original construction. A new build also provides the opportunity to specify all construction elements, enabling greater flexibility and opportunity for creating a well-insulated and sealed building.

The building regulations include different targets for existing buildings undergoing conversion and new build dwellings. This is because by the nature of a conversion, they are unable to achieve the same thermal efficiency as new dwellings.

Approved Document L1B: Conservation of fuel and power in existing dwellings outlines U-Value requirements for new thermal elements in existing buildings. These are shown below in table 1.

Table 1

Standards for New thermal Elements in Existing Buildings	
Element	**Standard W/m²K**
Wall	0.28
Roof	0.16-0.18 (dependent on construction type)
Floors	0.22

Approved Document L1A: Conservation of fuel and power in new dwellings outlines U-Value requirements for new build dwellings based on a concurrent notional dwelling. These are shown below in table 2.

Table 2

Summary of concurrent notional dwelling specification	
Wall	0.18
Roof	0.11
Floor	0.13

Standards for Airtightness are also higher for new dwellings than existing as Approved Document L1A: Conservation of fuel and power in new dwellings states a required airtightness level of 5.0m³/h m². By comparison Approved Document L1B: Conservation of fuel and power in existing dwellings mentions airtightness and states the following:

'The building fabric should be constructed so that there are no reasonably avoidable thermal bridges in the insulation layers caused by gaps within the various elements such as those around window and door openings. Reasonable provision should also be made to reduce unwanted air leakage through the new envelope parts. The work should comply with all the requirements of schedule 1, but particular attention should be paid to parts F and J.'

It then follows on to state that 'it is impractical to expect thermal bridge and temperature factor calculations to work in existing buildings.'

Therefore, the building regulations acknowledge that converted existing buildings can never be expected to achieve the same levels of thermal efficiency as new build dwellings. As a result, by the nature of the proposal being a new build rather than a conversion, it is already an improvement on the site as regards to thermal efficiency.

Further to this, the Building Regulations have recently been updated to aid in the plans to move towards net zero carbon. New homes and buildings in England will have to produce substantially less CO_2 under new rules. Under the new regulations, CO_2 emissions from new build homes must be around 30% lower than current standards. The new dwelling would therefore be constructed in line with this and therefore the betterment regarding energy efficiency would be even greater when compared to the existing permission.

Policy LP26 The proposed development is for a two-storey development that is constructed using a palette of materials that would be sympathetic to the historic origins of the site, the predominant vernacular of the village, whilst promoting a modern design aesthetic.

The proposed developed site does not propose to develop beyond the northern boundary of the site. The neighbourhood plan whilst not adopted include an allocation for development on the northern side of Heath Road and the depth of this development would further justify this site. The cemetery and

recreational field to the Therefore, be greenfield and to the north of the prevailing developed foot

Conclusion

The proposal will constitute an environmentally, socially and economically sustainable development.

In the first instance it is considered to compliant with the local plan. It specifically is proposed in an 'appropriate location' as defined by the Central Lincolnshire Local Plan and therefore is considered acceptable in terms of principle of development. Further to this the design is considered to enhance the setting of the conservation area and wider landscape setting.

In the second instance, should the Council find conflict with the local plan, there are a number of material considerations that should be afforded substantial weight in the planning balance and justify support.

The 'established 'fallback' position for the conversion of the agricultural building further provides a material consideration of substantial weight and the proposed development is considered to include planning 'betterment' when compared to the alternative.

Appendices

Appendix 1 – Existing Site Photographs

Appendix 2 -Sequential Test

Introduction

This Sequential Test has been written by Origin Design Studio Limited on behalf of Mr Geoge Middleton in relation to seeking full planning on a site in Scopwick.

This sequential test identifies all potential sites within the village of Scopwick and describes potential reasons in favour and against their development, subsequently identifying the sequentially most preferable site.

Methodology

To identify potential sites, we undertook the following process.

- The first step was to consult the Central Lincolnshire Local Plan to identify what sites were appropriate for development. It was then necessary to identify what land was available in the area.
- We inspected Google Earth for potential sites and consulted the environment agency's flood risk maps to identify which sites, if any would have issues with flooding. North Kesteven's District Council Planning website was also consulted to determine if any sites currently or previously were put through planning and what the outcome was. Maps available on the North Kesteven District Council website were also consulted to determine land which was protected open space.
- A search was also undertaken on Rightmove to determine if any suitable sites are currently available.
- Extant permissions for residential development in the village were also assessed

We identified 10 potential sites as listed below:

A. Land Opposite No. 11, Heath Road
B. Land to the North of Vicarage Lane
C. Land to the North of 42 Springfield Estate, along Vicarage Lane
D. Land to the South of The Royal Oak
E. Land to the East of B1188, next to agricultural building
F. Land to the North of Vicarage Lane (Application site)
G. Land South of Main Street
H. Land off Vicarage Lane, behind 'The Limes' Care home
I. Land North of Wesleyan Chapel
J. Land adjacent to 62 Main Street

The potential sites are shown on a map included within this document as figure 1.

Policy Context

Policy LP4 of the Central Lincolnshire Local Plan requires that in Small and Medium Villages a sequential test will be applied to new housing development proposals, with priority given to development in the following sequential order;

"1. Brownfield land or infill sites, in appropriate locations, within the developed footprint of the settlement

2. Brownfield sites at the edge of a settlement, in appropriate locations

3. Greenfield sites at the edge of a settlement, in appropriate locations."

Policy LP2 of the Central Lincolnshire Local Plan states:

"The spatial strategy will focus on delivering sustainable growth for Central Lincolnshire that meets the needs for homes and jobs, regenerates places and communities, and supports necessary improvements to facilities, services and infrastructure.

Development should create strong, sustainable, cohesive and inclusive communities, making the most effective use of previously developed land (except where that land is of high environmental value), and enabling a larger number of people to access jobs, services and facilities locally.

Development should provide the scale and mix of housing types and a range of new job opportunities that will meet the identified needs of Central Lincolnshire in order to secure balance communities. Decisions on investment in services and facilities, and on the location and scale of development will be assisted by a Central Lincolnshire Settlement Hierarchy."

Scopwick is identified in the Central Lincolnshire Local Plan as a 'Small Village'. As a result, the following applies to potential development:

"Unless otherwise promoted via a neighbourhood plan or through the demonstration of clear local community support, the following applies in these settlements: they will accommodate small scale development of a limited nature in appropriate locations proposals will be considered on their merits but would be limited to around 4 dwellings, or 0.1 hectares per site for employment uses."

Policy LP26(e) of the Central Lincolnshire Local Plan states:

All development should " Not result in ribbon development, nor extend existing linear features of the settlement, and instead retain, where appropriate, a tight village nucleus;"

Exclusion of Sites

From undertaking research into land and properties currently on the market we identified 6 properties which are for sale. However, these have not been included within the sequential test due to them all having very little associated land (garden areas which could not fit further development) As a result any development on these sites would only occur if the existing properties were demolished and a new one built, this would not be a viable option and would not have any gain for the village or the developer. As a result, these properties have been excluded, however details of each are listed below.

- 3 bedroom detached house for sale - The Granaries
- 5 bedroom detached house for sale - Vicarage Lane
- 5 bedroom detached house for sale - Vicarage Lane
- 4 bedroom detached house for sale – Glebe Close
- 4 bedroom detached bungalow for sale - Bridge Lane
- 3 bedroom detached bungalow for sale - Main Street

Assessment of Suitable Sites

Before we began to assess the sites, we noted that the application site currently has an existing active permission on site for two residential dwellings via conversion of the existing agricultural building on site. Since the proposal is for the same amount of dwellings, although being classed as the third class sequentially with respect to LP4, the existing permission results in the site being sequentially preferable.

Further to this, all the other sites identified are also sequentially least preferable (Greenfield edge of settlement) and therefore are no better than the application site. The application site is also the only site out of those identified which is available. Therefore the application site is most sequentially preferable and the proposed development would not result in any additional dwellings than already allowed for through the existing active permission.

Below is a table which summarises certain elements assessed against the sites to show other factors that would potentially impact development.

Site	LP4 Ranking *	Basic appropriate location test LP26 (E)	Flood Zone	Acceptable to develop in relation to flood risk	Current Use	Acceptable for development in relation to use	Sites in accordance with LP2 (appropriate size)	Distance from village centre (zone)**	Additional Comments
A	3	X	1	✓	Field	✓	X	3 and 4	Site has 2 previous refusals.
B	3	X	1	✓	Field	✓	X	2 and 3	Site is within proximity to a listed building. Site has many trees.
C	3	X	1	✓	Cemetry and Playground	X	X	2	
D	3	X	1	✓	Field	✓	✓	2 and 3	Access is a potential issue.
E	3	X	1	✓	Field	✓	X	3 and 4	Access is a potential issue.
F	3	✓	1	✓	Agricultural with permission for residential	✓	✓	1 and 2	Existing active permission for 2 dwellings
G	3	✓	1,2,3	✓	Field	✓	✓	2 and 3	Promimity to listed building.
H	3	✓	1	✓	Field	✓	X	3	Access is a potential issue. Pylon on site.
I	3	✓	1	✓	Field	✓	✓	4	Access is a potential issue.
J	3	✓	1,2,3	✓	Field	✓	✓	5	Site has 2 previous refusals. Access is a potential issue.

Summary Table

*1= Brownfield land or infill sites within developed footprint of the settlement.

2= Brownfield sites at the edge of the settlement.

3= Greenfield sites at the edge of the settlement.

** Zones are indicated on the sequential test map within this document) zones are designated in 100m intervals from the assumed centre of the village being Holy Cross Scopwick Church.

Figure 2 - Sequential test map

Conclusion

Research into potential sites within the village have concluded that there are currently no brownfield sites within the village. There are also no appropriate greenfield sites fully within the village curtilage. As a result, all potential sites are greenfield edge of settlement or outside the village curtilage.

There is no vacant land currently for sale and the properties which are for sale do not have any additional land for development.

Due to all sites being on the same sequential level, the existing permission on the application site make it most preferable. Other important development factors assessed against each site also show the application site is most preferable.

Appendix 3 - Judgement: Mansell V Tonbridge And Malling Bc [2017] Ewca Civ 1314.

Neutral Citation Number: [2017] EWCA Civ 1314

Case No: C1/2016/4488

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE GARNHAM
[2016] EWHC 2832 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 September 2017

Before:

The Chancellor of the High Court
Lord Justice Lindblom
and
Lord Justice Hickinbottom

- - - - - - - - - - - - - - - - - - - -

Between:

Michael Mansell	**Appellant**
- and -	
Tonbridge and Malling Borough Council	**Respondent**
- and -	
(1) Croudace Portland **(2) The East Malling Trust**	**Interested Parties**

- - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - -

Ms Annabel Graham Paul (instructed by **Richard Buxton Environmental and Public Law**) for the **Appellant**
Mr Juan Lopez (instructed by **Tonbridge and Malling Borough Council Legal Services**) for the **Respondent**
The interested parties did not appear and were not represented

Hearing date: 4 July 2017

- - - - - - - - - - - - - - - - - - - -

Lord Justice Lindblom:

Introduction

1. Should the judge in the court below have quashed a local planning authority's grant of planning permission for the redevelopment of the site of a large barn and a bungalow to provide four dwellings? That is what we must decide in this appeal. It is contended that the authority misdirected itself in considering a "fallback position" available to the landowner, and also that it misapplied the "presumption in favour of sustainable development" in the National Planning Policy Framework ("the NPPF") – a question that can now be dealt with in the light of this court's recent decision in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893.

2. The appellant, Mr Michael Mansell, appeals against the order of Garnham J., dated 10 November 2016, dismissing his claim for judicial review of the planning permission granted on 13 January 2016 by the respondent, Tonbridge and Malling Borough Council, for development proposed by the first interested party, Croudace Portland, on land owned by the second interested party, the East Malling Trust, at Rocks Farm, The Rocks Road, East Malling. The proposal was to demolish the barn and the bungalow on the land and to construct four detached dwellings, with garages and gardens. Mr Mansell lives in a neighbouring property, at 132-136 The Rocks Road – a grade II listed building. He was an objector.

3. It was common ground that the proposal was in conflict with the development plan. Rocks Farm is outside the village of East Malling to its south-east, within the "countryside" as designated in the Tonbridge and Malling Borough Core Strategy. The site of the proposed development extends to about 1.3 hectares. The barn, about 600 square metres in area, had once been used to store apples. The bungalow was lived in by a caretaker. The application for planning permission came before the council's Area 3 Planning Committee on 7 January 2016. In his reports to committee the council's planning officer recommended that planning permission be granted, and that recommendation was accepted by the committee. The officer guided the members on the "fallback position" that was said to arise, at least partly, through the "permitted development" rights for changes of use from the use of a building as an agricultural building to its use as a dwelling-house, under Class Q in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

4. Mr Mansell's challenge to the planning permission attacked the officer's approach to the "fallback position" and his assessment of the proposal on its planning merits. Garnham J. dismissed the claim for judicial review on all grounds. Permission to appeal was granted by McCombe L.J. on 21 February 2017.

The issues in the appeal

5. The appeal raises three main issues:

   (1) whether the council correctly interpreted and lawfully applied the provisions of Class Q in the GPDO (ground 1 in the appellant's notice);

(2) whether the council was entitled to accept there was a real prospect of the fallback development being implemented (ground 2); and
(3) whether the council misunderstood or misapplied the "presumption in favour of sustainable development" (ground 3).

Did the council correctly interpret and lawfully apply the provisions of Class Q?

6. When the council determined the application for planning permission the permitted development rights under Class Q were in these terms, so far is relevant here:

> "Q. Permitted development
>
> Development consisting of –
> (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
> (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.
>
> Q.1 Development not permitted
>
> Development is not permitted by Class Q if –
> …
> (b) the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 square metres;
> (c) the cumulative number of separate dwellinghouses developed under Class Q within an established agricultural unit exceeds 3;
> …
> (g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;
> (h) the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
> … ."

The permitted development rights under Class Q are subject to several "Conditions" in paragraph Q.2, none of them controversial here.

7. In section 6 of his main report to committee for its meeting on 7 January 2016 the officer dealt at length with the "Determining Issues". In discussing those issues he considered the "fallback position" in paragraphs 6.14 to 6.19:

> "6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be

converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.

6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fallback position in terms of how the site could be developed.

6.16 I appreciate that discussion concerning realistic 'fallback' positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development.

6.17 In this instance a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms. Specifically, it would have to be developed in a contrived and piecemeal fashion in order to conform to the requirements of the permitted development rights, including the need to adhere to the restrictions on the floor space that can be converted using the permitted development rights.

6.18 I would also mention that should the applicant wish to convert the entire barn for residential purposes, above the permitted development thresholds, such a scheme (subject to detailed design) would wholly accord with adopted policy. Again, this provides a strong indicator as to how the site could be developed in an alternative way that would still retain the same degree of residential activity as proposed by the current application but in a more contrived manner and with a far more direct physical relationship with the nearest residential properties.

6.19 The current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights."

8. For Mr Mansell, Ms Annabel Graham Paul submitted to us, as she did to the judge, that the officer's advice in those six paragraphs betrays a misunderstanding of the provisions of Class Q in the GPDO, in particular sub-paragraphs Q.1(b) and Q.1(h). She argued that the restriction to 450 square metres in sub-paragraph Q.1(b) applies to the total floor space of the agricultural building or buildings in question, not to the floor space actually "changing use". Before the judge, though not in her submissions in this court, Ms Graham Paul sought to bolster that contention with a passage in an inspector's decision letter

relating to a proposal for development on a site referred to by the judge as "Mannings Farm". The inspector had observed that "[the] floor space of the existing building … far exceeds the maximum permitted threshold, of 450 sq m, as set out in [sub-paragraph] Q.1(b)", and that "the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis".

9. Garnham J. rejected Ms Graham Paul's argument. In paragraph 30 of his judgment he said:

> "30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is "*the existing building or buildings*". Paragraph 2 of the Order defines "*building*" as "*any part of a building*". Accordingly, the paragraph should be read as meaning "*the cumulative floor space of the existing building or any part of the building changing use* …". If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use."

10. The judge found support for that conclusion in several inspectors' decisions, one of them a decision on proposed development at Bennetts Lane, Binegar in Somerset. In correspondence in that case the Department for Communities and Local Government had pointed to the definition of a "building" in the "Interpretation" provisions in paragraph 2 of the GPDO. Because that definition included "any part of a building", their view was that "in the case of a large agricultural building, part of it could change use … and the rest remain in agricultural use" (paragraph 32 of the judgment). However, as was accepted on both sides in this appeal, the court must construe the provisions of the GPDO for itself, applying familiar principles of statutory interpretation.

11. In paragraph 34 of his judgment Garnham J. said this:

> "34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provisions should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant's challenge to the Officer's construction of the Class Q provisions in the 2015 Order."

12. Ms Graham Paul submitted that this interpretation of the relevant provisions would render sub-paragraph Q.1(b) of Class Q redundant, because sub-paragraph Q.1(h) already limits the residential floor space resulting from the change of use under Class Q to a maximum of 450 square metres. The statutory provisions for permitted development rights in the GPDO ought to be interpreted consistently. The interpretation favoured by the judge, submitted Ms Graham Paul, depends on reading into sub-paragraph Q.1(b) the additional words "any part of a building" after the words "the existing building or buildings", which, she said, is wholly unnecessary. Statutory provisions ought to be construed on the

assumption that the draftsman was intending to add something of substance in each provision. The judge's interpretation offends that principle, said Ms Graham Paul, because it would, in effect, subsume sub-paragraph Q.1(b) into sub-paragraph Q.1(h). Only her interpretation of sub-paragraph Q.1(b) would enable sub-paragraph Q.1(h) to add something of substance to the provisions of Class Q. And in principle, Ms Graham Paul argued, it makes good sense to prevent, without an express grant of planning permission, the partial conversion of large agricultural buildings to accommodate residential use, leaving other parts of the building either in active agricultural use or simply vacant.

13. Ms Graham Paul sought to reinforce these submissions by pointing to other provisions of the GPDO where similar wording is used: Class M, which provides permitted development rights for changes of use of buildings in retail or betting office or pay day loan shop use to Class C3 use, and states in sub-paragraph M.1(c) that development is not permitted if "the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres"; and Class N, which provides permitted development rights for changes of use from specified sui generis uses, including use as an amusement arcade or centre, and use as a casino, to Class C3 use, and states in sub-paragraph N.1(b) that development is not permitted if "the cumulative floor space of the existing building changing use under Class N exceeds 150 square metres".

14. I cannot accept Ms Graham Paul's argument. I think the judge's understanding of Class Q was correct. The provisions of Class Q relating to the scope of permitted development rights should be given their literal meaning. When this is done, they make perfectly good sense in their statutory context and do not give rise to any duplication or redundancy.

15. The focus here is on the provisions as to development that is "not permitted" under paragraph Q.1, and in particular the provisions of sub-paragraphs Q.1(b) and Q.1(h). Sub-paragraph Q.1(b) establishes the "cumulative floor space of the existing building or buildings" that is "changing use under Class Q …". The limit on such "cumulative floor space …" is 450 square metres. This restriction is stated to be a restriction on the change of use, not on the size of the building or buildings in which the change of use occurs. Sub-paragraph Q.1(b) relates to a single act of development in which the building in question, or part of it, is "changing use". The floor space limit set by it relates not to the total floor space of the building or buildings concerned. It relates, as one would expect, to the permitted development rights themselves, which apply to the "cumulative" amount of floor space actually "changing use under Class Q". The use of the word "cumulative" in this context – as elsewhere in the GPDO – is perfectly clear. It connotes, in relevant circumstances, the adding together of separate elements of floor space within a building or buildings, or, again in relevant circumstances, a single element of floor space, which in either case must not exceed 450 square metres. The total floor space of the building or buildings concerned may itself be more than 450 square metres. But the cumulative amount of floor space whose use is permitted to be changed within that total floor space must not exceed 450 square metres.

16. This interpretation of sub-paragraph Q.1(b) avoids arbitrary consequences in the application of the permitted development rights under Class Q. It does not make the availability of those rights for a qualifying "agricultural building" depend on the total floor space of the building itself. It would not, therefore, create a situation in which the permitted development rights under Class Q would be available for a building whose total floor space was 450 square metres, but not for a building with a floor space of 451 square

metres or an area greater than that. If the consequence is that the permitted development rights, when fully used, would result in a building partly in use as a dwelling-house and partly still in agricultural use, that is an outcome contemplated by the GPDO. I see no difficulty in that.

17. Had the draftsman intended to confer permitted development rights under Class Q only to a building or buildings whose total floor space was not more than 450 square metres, the relevant provision would have been framed differently. There would have been no need to use the word "cumulative" or some other such word. The provision would simply have stated, for example, "the total floor space of the existing building or buildings within an established agricultural unit in which the change of use under Class Q is being undertaken does not exceed 450 square metres". But that is not what sub-paragraph Q.1(b) says, or, in my view, what it means.

18. Nor can I see how an interpretation of sub-paragraph Q.1(b) in which the restriction of 450 square metres applies not to the floor space actually changing use but to the total floor space of the building or buildings in which the change of use is taking place can be reconciled with the definition of "building" in paragraph 2 of the GPDO as including "part of a building". Unless one disapplies that part of the definition of a building to sub-paragraph Q.1(b), one must read that provision as meaning "the cumulative floor space of the existing building or buildings <u>or part of a building</u> changing use under Class Q … exceeds 450 square metres" (my emphasis). That understanding of sub-paragraph Q.1(b) would not sit happily with the concept that the restriction of 450 square metres applies not to the floor space changing use but to the total floor space of the building itself.

19. My interpretation of sub-paragraph Q.1(b) does not leave sub-paragraph Q.1(h) redundant. Sub-paragraph Q.1(h) achieves a different purpose. It prevents, for example, a change of use as "permitted development" in an agricultural building of which part is already in Class C3 use, or an aggregation of successive changes of use through separate acts of development, that would result in more than 450 square metres of floor space in a building or buildings being in Class C3 use. Neither of those outcomes would necessarily be prevented by sub-paragraph Q.1(b).

20. Finally, there is nothing in the provisions of Class M and Class N, or in any other provision of the GPDO, to suggest a different understanding of Class Q. The provisions in sub-paragraphs M.1(c) and N.1(b) also contain the word "cumulative" in referring to the floor space "changing use", not to the total floor space of the "existing building or buildings" in which the change of use is taking place. And in both Class M and Class N the draftsman has also included a provision – respectively in sub-paragraphs M.1(d) and N.1(c) – stating that "the development (together with any previous development under [the relevant class]) would result in more than 150 square metres of floor space in the building having changed use under [the relevant class]". Although we are not deciding those questions, it seems to me that the same analysis would hold good for those provisions too.

21. In my view, therefore, the officer did not misrepresent the permitted development rights under Class Q in his advice to the committee on the "fallback position". The provisions of Class Q were correctly interpreted and lawfully applied.

Was the council entitled to accept that there was a real prospect of the fallback development being implemented?

22. Garnham J. accepted that the council was entitled to conclude that there was a "realistic" fallback. In paragraphs 36 and 37 of his judgment he said:

> "36. In paragraph 6.15 of the report the Officer concluded that the fall back position was "realistic". In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another to develop the site. Alternative proposals had been advanced seeking the Council's likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.
>
> 37. It was not a precondition to the Council's consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site."

23. The judge accepted the submission of Mr Juan Lopez for the council that the committee did not have to ignore fallback development that included elements for which planning permission would be required and had not yet been granted. He noted that "[the] building could be converted, so as to provide dwelling houses limited in floor space to 450m^2 by the construction of internal walls without using the whole of the internal space of the barn" (paragraph 40). And he went on to say (in paragraph 41):

> "41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant's challenge on ground 1."

24. Ms Graham Paul criticized the judge's approach. She said it would enable permitted development rights under the GPDO to be relied on as a fallback even where there was no evidence that the landowner or developer would in fact resort to such development. The judge did not consider whether the council had satisfied itself that there was a "real prospect" of the fallback development being implemented (see the judgment of Sullivan L.J. in *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] J.P.L. 1326, at paragraph 21). The "real prospect", submitted Ms Graham Paul, must relate to a particular fallback development contemplated by the

landowner or developer, not merely some general concept of development that might be possible on the site. Only a specific fallback makes it possible for a comparison to be made between the planning merits of the development proposed and the fallback development. The relevance of a fallback depends on there being a "finding of actually intended use as opposed to a mere legal or theoretical entitlement" (see the judgment of Mr Christopher Lockhart-Mummery Q.C., sitting as a deputy judge of the High Court, in *R. v Secretary of State for the Environment and Havering London Borough Council, ex parte P.F. Ahern (London) Ltd.* [1998] Env. L.R. 189, at p.196).

25. Ms Graham Paul said there was nothing before the council to show that either the East Malling Trust or Croudace Portland contemplated the site being developed in the way the officer described in his report. On the contrary, the conversion of the barn for residential use – as opposed to its demolition and replacement with new dwellings – seems to have been regarded as impracticable or uneconomic. The East Malling Trust's planning consultant, Broadlands Planning Ltd., had submitted a "Planning Statement" to the council in December 2013, seeking the council's advice before the submission of an application for planning permission. In that document two possible schemes for the site were referred to (at paragraph 26). Neither could have been achieved using permitted development rights. One involved the retention of the barn and its conversion to four dwelling-houses, the other a "wholesale redevelopment of the site", perhaps with the replacement of the bungalow, to create five new dwellings. In a letter to Broadlands Planning Ltd. dated 30 January 2014 the council's Senior Planning Officer, Ms Holland, said she was "not convinced that the proposal would result in the building being converted, but rather [that] large portions would be removed and a new building created". And the East Malling Trust's marketing agent, Smiths Gore, in a letter to potential developers dated 27 February 2014, suggested it was "unlikely that a developer would contemplate the conversion of the Apple Store". There was, said Ms Graham Paul, no other contemporaneous evidence to lend substance to the fallback scheme to which the officer referred in his report, and no evidence of the council trying to find out what, if anything, was actually contemplated. The evidence did not demonstrate a "real prospect" – as opposed to a merely "theoretical" prospect – of such a development being carried out. The judge should have recognized that the fallback development referred to in the officer's report was not a material consideration.

26. I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.

27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:

    (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.

    (2) The relevant law as to a "real prospect" of a fallback development being implemented was applied by this court in *Samuel Smith Old Brewery* (see, in particular, paragraphs 17 to 30 of Sullivan L.J.'s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in *R. (on the application of Kverndal) v London Borough of Hounslow Council* [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As

Sullivan L.J. said in his judgment in *Samuel Smith Old Brewery*, in this context a "real" prospect is the antithesis of one that is "merely theoretical" (paragraph 20). The basic principle is that "… for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice" (paragraph 21). Previous decisions at first instance, including *Ahern* and *Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, "… "fall back" cases tend to be very fact-specific" (ibid.). The role of planning judgment is vital. And "[it] is important … not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge's response to the facts of the case before the court" (paragraph 22).

(3) Therefore, when the court is considering whether a decision-maker has properly identified a "real prospect" of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.

28. In this case, in the circumstances as they were when the application for planning permission went before the committee, it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan, in particular policy CP14 of the core strategy. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law.

29. That the East Malling Trust was intent upon achieving the greatest possible value from the redevelopment of the site for housing had by then been made quite plain. The "Planning Statement" of December 2013 had referred to two alternative proposals for the redevelopment of the site (paragraph 26), pointing out that both "[the] redevelopment and replacement of [the] bungalow" and "[the] conversion of the existing storage and packing shed" were "permissible in principle" (paragraph 35). The firm intention of the East Malling Trust to go ahead with a residential development was entirely clear at that stage.

30. In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality – whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer's report to committee. It is

reinforced by evidence before the court – in the witness statement of Mr Humphrey, the council's Director of Planning, Housing and Environmental Health, dated 18 March 2016 (in paragraphs 6 to 24), in the witness statement of Mr Wilkinson, the Land and Sales Manager of Croudace Portland, also dated 18 March 2016 (in paragraphs 4 to 7), in the first witness statement of Ms Flanagan, the Property and Commercial Director of the East Malling Trust, dated 17 March 2016 (in paragraphs 4 to 6), and in Ms Flanagan's second witness statement, dated 17 June 2016 (in paragraphs 2 to 5).

31. As Ms Flanagan says (in paragraph 2 of her second witness statement):

> "2. At paragraph 6 of my first witness statement, I state that there was no doubt that the Trust would consider alternatives to the preferred scheme. To further amplify, the Trust (as a charitable body) is tasked with obtaining best value upon the disposal of its assets. A number of alternative uses were considered for the site, including industrial uses. However the Board was aware that a residential scheme of some type would provide the best value for the application land, even were that to include a conversion of the existing agricultural building."

Ms Flanagan goes on to refer to Smiths Gore's letter of 27 February 2014 (in paragraphs 4 and 5):

> "4. … This letter … states that at that time [Smith Gore's] opinion was that it was unlikely that a scheme of conversion would be contemplated by any developer. However, this letter pre-dated the permitted development rights that subsequently came into effect in April 2014. By the time the planning application had formally been submitted, these permitted development rights were in effect.
>
> 5. Had no other scheme proven acceptable in planning terms, and if planning permission had been refused for the development the subject of the planning application, the Trust would have built out a "permitted development" scheme to the fullest extent possible in order to realise the highest value for the land, in order to thereafter seek disposal to a developer."

32. That evidence is wholly unsurprising. And it confirms the East Malling Trust's intentions as they were when the council made its decision to grant planning permission in January 2016, by which time the current provisions for "permitted development" under Class Q of the GPDO had come into effect. It states the East Malling Trust's position as landowner at that stage – as opposed to the view expressed by an officer of the council, and an opinion by a marketing agent in a letter to developers, almost two years before. It is consistent with what was being said on behalf of the East Malling Trust in its dealings with the council from the outset – in effect, that the site was going to be redeveloped for housing even if this had to involve the conversion and change of use of the barn to residential use. It reflects the fiduciary duty of the trustees. And it bears out what the council's officer said about the "fallback position" in his report to committee.

33. I do not see how it can be said that the officer's assessment of the "fallback position", which the committee adopted, offends any relevant principle in the case law – in particular the concept of a "real prospect" as explained by Sullivan L.J. in *Samuel Smith Old*

Brewery. It was, in my view, a faithful application of the principles in the authorities in the particular circumstances of this case. It also demonstrates common sense.

34. The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee. But the officer's advice in paragraphs 6.14 to 6.19 of his report was, I believe, impeccable. He was right to say, in paragraph 6.14, that the "new permitted development rights" – under Class Q in the GPDO – would enable the barn to be converted into three residential units; in the same paragraph, that the building "could be physically adapted in certain ways that would allow for partial residential occupation …"; and, in paragraph 6.15, that the bungalow "could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building". He was also right to say, therefore, that the site could be developed for "four residential units albeit of a different form and type to that proposed by this application". All of this was factually correct, and represented what the council knew to be so. It did not overstate the position. It went no further than the least that could realistically be achieved by way of a fallback development – through the use of permitted development rights under Class Q and an application for planning permission complying with policy CP14.

35. The officer also guided the committee appropriately in what he said about the realism of the "fallback position". At the end of paragraph 6.15 of his report he said that the fallback development he had described was "a realistic fallback position in terms of how the site could be developed". He was well aware of the need to take into account only a fallback development that was truly "realistic", not merely "theoretical". He came back, in paragraph 6.16, to the question of "realistic 'fallback' positions", again reminding the members that this was what had to be considered. He went on to acknowledge, rightly, that the council had to consider what could be achieved "using permitted development rights for alternative forms of development". The context for this advice was that in his view, as he said in paragraph 6.15, he was dealing with "a realistic fallback position". He went on in paragraph 6.17 to consider what "would" happen if a scheme taking advantage of permitted development rights came forward. And in paragraph 6.18 his advice was that a redevelopment involving the conversion of "the entire barn for residential purposes, above the permitted development thresholds … would wholly accord with adopted policy". That was a legally sound planning judgment. The same may also be said of the officer's conclusion in paragraph 6.19, where he compared the proposal before the committee with the "more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights".

36. In short, none of the advice given to the council's committee on the "fallback position" can, in the particular circumstances of this case, be criticized. It was, I think, unimpeachable.

37. In my view, therefore, the council was entitled to accept that there was a "real prospect" of the fallback development being implemented, and to give the weight it evidently did to that fallback as a material consideration. In doing so, it made no error of law.

Was the judge right to conclude that the council did not misunderstand or misapply the "presumption in favour of sustainable development" in the NPPF?

38. Paragraph 14 of the NPPF states:

> "14. 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:
>
> - 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 [the NPPF] taken as a whole; or
>   – specific policies in [the NPPF] indicate development should be restricted."

39. In *Barwood v East Staffordshire Borough Council* this court stated its understanding of the policy for the "presumption in favour of sustainable development" in the NPPF, and how that presumption is intended to operate (see paragraphs 34 and 35 of my judgment). In doing so, it approved the relevant parts of the judgment of Holgate J. in *Trustees of the Barker Mill Estates v Secretary of State for Communities and Local Government* [2016] EWHC 3028 (Admin) (in particular paragraphs 126, 131, 136, and 140 to 143). Three simple points emerged (see paragraph 35 of my judgment). The first and second of those three points need not be set out again here. The third, however, is worth repeating – because it bears on the issue we are considering now. I shall emphasize the most important principle for our purposes here:

> " …
>
> (3) <u>When the section 38(6) duty is lawfully performed, a development which does not earn the "presumption in favour of sustainable development" – and does not, therefore, have the benefit of the "tilted balance" in its favour – may still merit the grant of planning permission. On the other hand, a development which does have the benefit of the "tilted balance" may still be found unacceptable, and planning permission for it refused … . This is the territory of planning judgment, where the court will not go except to apply the relevant principles of public law</u> … . The "presumption in favour of sustainable development" is not irrebuttable. Thus, in a case where a proposal for the development of housing is in conflict with a local plan whose policies for the supply of housing are out of date, the decision-maker is left to judge, in the particular circumstances of the case in hand, how much weight should be given to that conflict. The absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment (see paragraphs 70 to

74 of the judgment in [*Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin)])."

40. The judgments in this court in *Barwood v East Staffordshire Borough Council* entirely supersede the corresponding parts of several judgments at first instance – including, most recently, *Reigate and Banstead Borough Council v Secretary of State for Communities and Local Government* [2017] EWHC 1562 (Admin). In those cases, judges in the Planning Court have offered various interpretations of NPPF policy for the "presumption in favour of sustainable development", and have explained how, in their view, the presumption should work. There is no need for that to continue. After the decision of the Court of Appeal in *Barwood v East Staffordshire Borough Council*, it is no longer necessary, or appropriate, to cite to this court or to judges in the Planning Court any of the first instance judgments in which the meaning of the presumption has been considered.

41. The Planning Court – and this court too – must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*). The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but – at local level – to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and – on appeal – to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. A particular policy, or even a particular phrase or word in a policy, will sometimes provide planning lawyers with a "doctrinal controversy". But even when the higher courts disagree as to the meaning of the words in dispute, and even when the policy-maker's own understanding of the policy has not been accepted, the debate in which lawyers have engaged may turn out to have been in vain – because, when a planning decision has to be made, the effect of the relevant policies, taken together, may be exactly the same whichever construction is right (see paragraph 22 of my judgment in *Barwood v East Staffordshire Borough Council*). That of course may not always be so. One thing, however, is certain, and ought to be stressed. Planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also – however well or badly a policy is expressed – that the court's interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect – in every case – good sense and fairness in the court's review of a planning decision, not the hypercritical approach the court is often urged to adopt.

42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarize the law as it stands:

    (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxton Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of*

Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

(2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

(3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

43. Was the officer's advice to the members in this case flawed in that way? I do not think so.

44. In paragraph 6.1 of his report the officer said:

> "6.1 As Members are aware, the Council in its role as Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. … The NPPF and the associated [Planning Practice Guidance] are important material considerations."

He went on to consider the relevant policies of the development plan, in particular policies CP11, CP12, CP13 and CP14 of the core strategy, and then advised the committee, in paragraph 6.6:

> "6.6 With the above policy context in mind, it is clear that the proposal relates to new development outside the village confines (on land which is not defined as "previously developed" for the purposes of applying NPPF policy), is not part of a wider plan of farm diversification and is not intended to provide affordable housing as an exceptions site. Consequently, the proposed development falls outside of the requirements of these policies and there is an objection to the principle of the proposed development in the broad policy terms."

and in paragraph 6.7:

> "6.7 It is therefore necessary to establish whether any other material planning considerations exist that outweigh the policy objections to the scheme in these particular circumstances."

45. In paragraph 6.8 the officer acknowledged, in the light of the relevant guidance in the Planning Practice Guidance, that "the policies contained in … the NPPF are material considerations and must be taken into account", and, in paragraph 6.9, that since the core strategy had been adopted in 2007 it was "necessary to establish how consistent the above policies are with the policies contained within the NPPF". His advice in paragraphs 6.10 to 6.13 of his report was this:

> "6.10 With this in mind, it must be noted that paragraph 49 of the NPPF states that applications for new housing development should be considered in the context of the presumption in favour of sustainable development. Paragraph 50 of the NPPF emphasises the importance of providing a wide choice of high quality homes, to widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Paragraph 55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
>
> 6.11 These criteria all demonstrate a clear government momentum in favour of sustainable development to create new homes and drive economic development. The proposed development would create four high quality new homes on the very edge of an existing village settlement.
>
> 6.12 A further indicator of such emphasis is borne out of the recent changes to the regime of permitted development rights set out by national government by the Town and Country Planning (General Permitted Development) Order 2015. This allows for far more development to take place without the need for planning permission from Local Authorities and generally provides a steer as to government's thinking on how to boost the country's economy through the delivery of new homes.
>
> 6.13 Such continued emphasis from government is a material consideration that must be balanced against the policy context set out in the TMBCS."

46. I have already referred to the officer's advice on the "fallback position" in paragraphs 6.14 to 6.19 of his report. In paragraphs 6.20 to 6.42 he considered the planning merits of the proposal and its advantages by comparison with the fallback development, drawing the committee's attention to relevant policies both in the core strategy and in the NPPF. He advised that the design and density of the proposed development were acceptable and beneficial (paragraphs 6.20 to 6.23). In paragraph 6.24 he said:

> "6.24 With these considerations in mind, particularly the emphasis contained within the NPPF concerning sustainable development generally, the impetus behind the provision of new homes, the benefits of removing existing structures and the permitted development "fallback" position, it is my view that, on balance, other material considerations can weigh in favour of the grant of planning permission."

47. He concluded that the effects of the development on the settings of listed buildings and the setting of East Malling Conservation Area would not be harmful (paragraphs 6.25 to 6.30). He also found the proposed arrangements for access to the site and for car parking acceptable (paragraphs 6.31 to 6.36). He advised that "… the existing barn could be partially converted and the existing access retained for use by those units which arguably could have a greater impact on amenity in terms of activity, noise and disturbance than the proposed development simply by virtue of the greater degree of proximity to the existing residential properties" (paragraph 6.33). He told the committee that in his view it "would be counterproductive to seek affordable housing contributions as this would merely limit the ability of the Trust to recycle funds to provide wider support for the Trust" (paragraph 6.37). And the loss of Grade 2 agricultural land was "not … a justifiable reason to refuse planning permission …" (paragraph 6.39).

48. The final paragraph of the officer's report is paragraph 6.42, where he said this:

> "6.42 In conclusion, it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fallback position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."

49. In recording the argument on this issue in the court below, Garnham J. noted Ms Graham Paul's submission that "the presumption in favour of sustainable development set out in paragraph 14 of [the NPPF] was not operative" in this case – because the development plan was in place and up-to-date and the council was able to demonstrate a five-year supply of deliverable housing sites (paragraph 43 of the judgment). Ms Graham Paul had conceded that "sustainability may be capable of being a material consideration in considering a conflict with a development plan". What the officer had done in paragraph 6.10 of his report, said the judge, had been "to invite the committee to note the effect of paragraphs 49, 50 and 55 [of the NPPF]". It was not suggested that those paragraphs of the

NPPF had been misrepresented. Nor was it suggested that the officer had failed to point out that the proposed development "fell outside the local plan"; he had done that in paragraph 6.6 of his report. In those circumstances, said the judge, "it cannot sensibly be argued that the officer misled the committee in any material respect" (paragraph 47). The judge also rejected the submission that paragraphs 49, 50 and 55 of the NPPF were irrelevant. He observed that the NPPF "provides for a presumption in favour of sustainable development which it says should be seen "as a golden thread" running through decision-taking". He added that "[the] weight to be given to those considerations in any given case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant" (paragraph 48). He rejected the submission that the officer had not justified the departure from the development plan. The officer's report, he said, "accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved" (paragraph 49).

50. In the submissions they made to us at the hearing, though not in their respective skeleton arguments, both Ms Graham Paul and Mr Lopez recast their arguments in the light of what this court has now said about the "presumption in favour of sustainable development" in *Barwood v East Staffordshire Borough Council*, including the basic point that the presumption is contained solely in paragraph 14 of the NPPF (see paragraph 35 of my judgment in that appeal). They were right to do so.

51. It was common ground before us, as it was in the court below, that the "presumption in favour of sustainable development" did not apply to the proposal. And the council's officer did not advise the committee that it did. As Ms Graham Paul acknowledged, the only reference to the "presumption in favour of sustainable development" in the officer's report is in the first sentence of paragraph 6.10. But, she submitted, in view of what the officer said in that paragraph of the report, and also in paragraph 6.42, we should conclude that the committee took the presumption into account as a material consideration, which it ought it not to have done. Ms Graham Paul did not submit that the proposal was given the benefit of the so called "tilted balance". But she argued that the effect of the officer's advice was that the "presumption in favour of sustainable development" was one of the "requirements set out within the NPPF …", which the officer treated as "an important material consideration" and a significant factor weighing in favour of the proposal in the planning balance.

52. I disagree. In my view the argument fails on a straightforward reading of the officer's report, in the light of the judgments in this court in *Barwood v East Staffordshire Borough Council*. I do not accept that the officer counted the "presumption in favour of sustainable development" as a material consideration weighing in favour of planning permission being granted.

53. The reference to the "presumption in favour of sustainable development" in paragraph 6.10 of the officer's report is a quotation of the first sentence of paragraph 49 of the NPPF, not of paragraph 14. The quotation is correct. In the same paragraph of the report the officer also referred to two other passages of policy in the NPPF, namely paragraphs 50 and 55. The policies are correctly summarized. The common factor in those three passages of NPPF policy is not the "presumption in favour of sustainable development". It is the promotion, in national planning policy, of sustainable housing development. That this is

what the officer had in mind in this part of the report is very clear from what he went on to say in paragraphs 6.11, 6.12 and 6.13, and then in paragraph 6.24.

54. In those paragraphs the officer was not purporting to apply the "presumption in favour of sustainable development" to the proposal. Nor did he advise the committee that the presumption was engaged, or that it was, in itself, a material consideration weighing in favour of the proposal. He referred, in paragraph 6.11, to "[these] criteria" – meaning the matters to which he had referred in paragraph 6.10 – as demonstrating "a clear government momentum in favour of sustainable development to create new homes and drive economic development"; in paragraphs 6.12 and 6.13 respectively, to "such emphasis" and "[such] continued emphasis from government"; and in paragraph 6.24 to "the emphasis contained within the NPPF concerning sustainable development generally …" (my underlining). The language in those paragraphs is very distinctly not the language one would have expected the officer to have used if he thought he was applying the "presumption in favour of sustainable development". The intervening and subsequent assessment, culminating in his final conclusion on the planning merits of the proposal in paragraph 6.42, is concerned with its credentials and benefits – and advantages when compared with the fallback – as sustainable development.

55. Paragraph 6.42 of the officer's report does not, in my view, betray a misunderstanding of NPPF policy for the "presumption in favour of sustainable development". The advice given to the committee in that paragraph was not inaccurate or misleading. The officer did not undertake the planning balance in terms of the policy for "decision-taking" in paragraph 14 of the NPPF. There can be no suggestion that, contrary to his earlier conclusion and advice in paragraphs 6.6 and 6.7 of his report, he was treating this as a case in which the proposal accorded with the development plan, so that it was to be approved "without delay" under the first limb of the policy for "decision-taking" in paragraph 14. Nor can it be suggested that, contrary to the whole tenor of his assessment of the proposal in paragraphs 6.1 to 6.41, this was a case in which the development plan was "absent" or "silent" or any "relevant policies" of it were "out-of-date", so that the second limb of the policy for "decision-taking" in paragraph 14 applied.

56. This case is clearly and materially different from *Barwood v East Staffordshire Borough Council* – a case that shows what can go wrong when a decision-maker is misled as to the meaning and effect of government policy for the "presumption in favour of sustainable development". Here the officer did not commit an error of the kind made by the inspector –and conceded by the Secretary of State – in that case: the mistake of discerning a "presumption in favour of sustainable development" outside paragraph 14 of the NPPF and treating that wider presumption as a material consideration weighing in favour of the proposal (see paragraphs 43 to 48 of my judgment in *Barwood v East Staffordshire Borough Council*). The officer did not say, as the inspector did in *Barwood v East Staffordshire Borough Council*, that "where a proposal is contrary to the development plan [the "presumption in favour of sustainable development"] is a material consideration that should be taken into account" (paragraph 12 of the decision letter in that case). Unlike the inspector in that case (in paragraphs 37 to 41 of his decision letter), he did not bring the "presumption in favour of sustainable development" into the balancing exercise as a material consideration (see paragraphs 26 and 29 of my judgment). And, in my opinion, it cannot realistically be suggested that the members would have thought they were being invited to apply that presumption in government policy, or to give it weight as a material consideration, in their assessment of the proposal.

57. The “presumption in favour of sustainable development” did not, in fact, feature as a material consideration to which the officer gave any positive weight when undertaking the planning balance. The exercise he conducted in paragraph 6.42 of his report was an entirely conventional and lawful balance of other material considerations against the identified conflict with the development plan, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires. It was, in fact, a classic example of that provision in practice. This is not to say that in his assessment of the proposal he had to refrain from considering the extent to which it complied with relevant NPPF policies – in particular, in the specific respects to which he referred, the sustainability of the proposed development in the light of NPPF policy, as well as its compliance with relevant policies of the development plan. That was a perfectly legitimate, and necessary, part of the planning assessment in this case. Had the officer left it out, he would have been in error, because he would then have been failing to have regard to material considerations. But he did not make that mistake. He assessed the proposal comprehensively on its planning merits, exercising his planning judgment on the relevant planning issues. He took into account the sustainability of the proposed development in the light of NPPF policy, but without giving it the added impetus of the “presumption in favour of sustainable development”. I cannot fault the advice he gave.

58. Finally on this issue, I do not accept the suggestion made by Ms Graham Paul in reply that the council’s response to Mr Mansell’s solicitors’ pre-application protocol letter, in its solicitors’ letter dated 22 February 2016, can be read as conceding the error for which Ms Graham Paul contended. In fact, it squarely denied that error. Having referred to the quotation of the first sentence of paragraph 49 of the NPPF in paragraph 6.10 of the officer’s report, it acknowledged that the proposal was a “departure from the development plan” and that the development plan was not “absent” or “silent” nor were relevant policies “out-of-date”. It then said that neither the officer nor the committee had treated the “presumption in favour of sustainable development” under paragraph 14 of the NPPF as “operative” in this case. It acknowledged, therefore, that neither of the limbs of the policy for “decision-taking” in paragraph 14 of the NPPF could have applied here. And it said that the officer’s report “does not begin to suggest otherwise”. I agree.

59. It follows that this ground of appeal must also fail.

Conclusion

60. For the reasons I have give, I would dismiss this appeal.

Lord Justice Hickinbottom

61. I agree with both judgments. Without diminishing my concurrence with anything my Lords have said, I would wish expressly to endorse the observations of Lindblom L.J. in paragraphs 39-40 to the effect that, in future, reference to pre-*Barwood v East Staffordshire Borough Council* authorities on the meaning and operation of the presumption in paragraph 14 of the NPPF should be avoided; and in paragraph 41, supported by the further comments of the Chancellor, on the respective roles of planning decision-makers and the courts in planning cases.

The Chancellor of the High Court

62. I too agree with Lord Justice Lindblom's judgment, but would add a few words from a more general perspective. In the course of the argument, one could have been forgiven for thinking that the contention that the presumption in favour of sustainable development in the NPPF had been misapplied in the planning officer's report turned on a minute legalistic dissection of that report. It cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the Planning Committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.

63. Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer's report. An appeal will only succeed, as Lindblom L.J. has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer's advice on which they relied.

64. It is also appropriate to reiterate what Lindblom L.J. said at paragraph 35 of the *East Staffordshire* case to the effect that planning decision-makers have to exercise planning judgment as much when the presumption in favour of sustainable development is applicable as they do they do when it is not. The presumption may be rebutted when it is applicable, and planning permission may be granted where it is not. In each case, the decision-makers must use their judgment to decide where the planning balance lies based on material considerations. It is not for the court to second guess that planning judgment once it is exercised, unless as I have said it is based on a distinct and material defect in the report.

65. I agree that this appeal should be dismissed.