



Neutral Citation Number: [2022] EWHC 352 (Admin)

Case No: CO/297/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2022

Before :

Timothy Mould QC
(sitting as a Deputy High Court Judge)

Between :

THURSTON PARISH COUNCIL

Claimant

- and -

MID SUFFOLK DISTRICT COUNCIL

Defendant

-and-

(1) BLOOR HOMES LIMITED
(2) SIR GEORGE AGNEW

Interested
parties

Meyric Lewis (instructed by **Ashtons Legal**) for the **Claimant**
Tom Cosgrove QC and Ruchi Parekh (instructed by **Shared Legal Service**) for the
Defendant
Paul Tucker QC and Kate Olley (instructed by **Gowling WLG (UK) LLP**) for the **Interested**
Parties

Hearing dates: 20/21 October 2021

Approved Judgment

<p>If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.</p>
--

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

TIMOTHY MOULD QC

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 18 February 2022.

Timothy Mould QC:

The Claim

1. This is a claim for judicial review of the decision of the Defendant, Mid Suffolk District Council, to grant outline planning permission [**‘the Planning Permission’**] for development of land to the south of Beyton Road, Thurston, Suffolk [**‘the Site’**]. The Planning Permission was granted on 23 December 2020 in response to an application for planning permission made by the Interested Parties on 22 July 2019. The Planning Permission authorises development of the Site for the erection of up to 210 dwellings, open space and associated infrastructure, including junction improvements [**‘the Development’**]. Permission to bring the claim was given by Lang J on the papers on 23 February 2021.
2. The Claimant, Thurston Parish Council, advances 3 grounds of challenge to the validity of the Planning Permission –
 - (1) The Claimant contends that in resolving that planning permission should be granted for the Development, the Defendant’s Planning Referrals Committee [**‘the Committee’**] was given misleading advice about the weight that should be given to the relevant policies of the Thurston Neighbourhood Plan 2018-2036 [**‘the Neighbourhood Plan’**]. That misleading advice was founded upon an erroneous interpretation of Policy 1 (Thurston Spatial Strategy) of the Neighbourhood Plan and a failure to recognise that the Development was not in accordance with that key, relevant development plan policy. That was an error of law which resulted in the Defendant failing to discharge its duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 [**‘the PCPA’**].
 - (2) The Claimant contends that the Committee was given misleading advice that this was a case in which the presumption in favour of sustainable development applied under paragraph 11(d) of the National Planning Policy Framework (2019) [**‘the NPPF’**] because the development plan policies which were most important for determining the planning application were out-of-date (the so called “tilted balance”). That advice was erroneous, since Policy 1 of the Neighbourhood Plan was the key, relevant development plan policy and was up-to-date. Moreover, the Committee was given misleading advice on paragraph 14 of the NPPF and the application of the tilted balance in a case in which granting planning permission for a housing development would be in conflict with the neighbourhood plan.
 - (3) The Claimant contends that the Defendant’s decision to grant the Planning Permission prejudices the statutory process for preparation of the emerging draft Babergh and Mid Suffolk Joint Local Plan 2018-2036 [**‘the draft Plan’**] since it prejudices important decisions about the location of housing development in and around Thurston which properly fall to be considered under the statutory consultative procedures laid down by the PCPA for the preparation of local plans.

The factual background

3. The majority of the Site lies within the administrative area of the Defendant as local planning authority. The Development extends across the administrative boundary to include highway improvement works at Fishwick Corner which is located within West Suffolk. Those highway improvement works were the subject of a separate planning application by the Interested Parties which was granted planning permission by West Suffolk District Council on 23 December 2020.
4. The Committee considered the planning application at its meeting held on 29 January 2020. The Committee had the benefit of a very detailed report prepared by the planning case officer [**‘the Report’**] which provided a comprehensive appraisal of the Development. The planning officer concluded that, on balance, the Development should be permitted and recommended that planning permission be granted subject to the imposition of conditions and to the prior completion of a planning agreement under section 106 of the Town and Country Planning Act 1990 [**‘the TCPA’**] imposing planning obligations. The Committee resolved to accept the planning officer’s recommendation. Authority was delegated to the Defendant’s Chief Planning Officer to grant outline planning permission, subject to the completion of a satisfactory agreement under section 106 of the TCPA and the imposition of appropriate conditions.
5. Following completion of the section 106 agreement, the Defendant granted the Planning Permission.

The Development Plan

6. In paragraph 3.1 of the Report, the planning officer identified the constituent elements of the then current, statutory development plan. The development plan comprised of the Mid Suffolk Local Plan 1998, the Mid Suffolk Core Strategy 2008, the Mid Suffolk Focused Review Core Strategy 2012 and the Neighbourhood Plan. Part 2 of the Report included a brief summary of policies from each of those plans. The planning officer advised that in the light of recent planning appeal decisions, certain relevant policies in the Core Strategy (2008) and the Local Plan (1998) must now be considered to be out-of-date for the purposes of applying paragraph 11(d) of the NPPF. Those out-of-date policies which were of particular relevance to the Development were Policy CS1 (Settlement Hierarchy), Policy CS2 (Development in the Countryside and Countryside Villages) and Policy H7 (Restricting housing development unrelated to needs of countryside).
7. Conversely, as the planning officer advised, the Neighbourhood Plan was a recently adopted plan (having been approved in October 2019) which accordingly had *“statutory weight and alongside the rest of the development plan it is the starting point for decision-taking purposes”*. The planning officer drew attention to a number of policies of the Neighbourhood Plan as having *“particular relevance”* to consideration of the merits of the Development. Amongst those policies that he mentioned were Policy 1 (Thurston Spatial Strategy), Policy 2 (Meeting Thurston’s Housing Needs) and Policy 7 (Highway Capacity at Key Road Junctions).
8. Policy 1 (Thurston Spatial Strategy) of the Neighbourhood Plan is stated in 5 lettered paragraphs (A-E) as follows –

POLICY 1: THURSTON SPATIAL STRATEGY

- A. *New development in Thurston parish shall be focused within the settlement boundary of Thurston village as defined on the Policies Maps (pages 75-76).*
 - B. *Development proposals within the settlement boundary (as defined on the Policies Maps pages 75-76) will be supported subject to compliance with the other policies in the Neighbourhood Plan.*
 - C. *All new housing proposals will be expected to address the following key matters:*
 - a. *Ensure they address the evidence-based needs of the Thurston Neighbourhood area in accordance with Policy 2; and*
 - b. *In accordance with the statutory tests in the Community Infrastructure Levy Regulations 2010, contribute towards education infrastructure and other key infrastructure which shall include health, transport and movement, community facilities, utilities and public realm improvements, through direct provision and/or developer contributions (including Community Infrastructure Levy and/or Section 106).*
 - c. *Design high quality buildings and deliver them in layouts with high quality natural landscaping in order to retain the rural character and physical structure of Thurston.*
 - D. *Development proposals to meet specialist housing and care needs on sites that are outside the settlement boundary will be permitted where it can be demonstrated that no available and deliverable site exists within the settlement boundary.*
 - E. *Where development uses best and most versatile agricultural land, it must be clearly demonstrated that the remaining parts of any fields remain economically viable for commercial farming.*
9. The Policies Maps show the Site as being located outside the defined “settlement boundary” for Thurston village.
 10. Policy 2 of the Neighbourhood Plan is headed “*Meeting Thurston’s Housing Needs*”. For present purposes, I need to set out the first paragraph of Policy 2 –
 - “A. *Proposals for new residential development must contribute towards Thurston’s role as a Key Service Centre/Core Village. This means addressing both the needs of the wider Housing Market Area and the needs of Thurston as a rural community*”.
 11. Policy 7 of the Neighbourhood Plan states that where a Transport Assessment or a Transport Statement is required in relation to proposed development, it should address the transport impacts at road junctions, including Fishwick Corner, Pockeridge Corner, the junction of Beyton Road and New Road and the railway bridge/junction of Barton Road and Station Hill.

12. It is necessary also to refer to chapters 4 and 5 of the Neighbourhood Plan, which set out both the objectives of Policies 1 and 2 respectively and explain the context in which those policies have been brought forward.

13. Chapter 4 (Spatial Strategy) of the Neighbourhood Plan begins with a stated objective

–

“S1. To develop and sustain the key service centre status of Thurston by ensuring any future development is sustainable and supports a range of employment, services and housing”.

14. Chapter 4 continues –

“4.1 The Babergh and Mid Suffolk emerging Joint Local Plan is required to provide for significant levels of housing growth in order to address the identified needs of the two districts over the Plan period to 2036. Whilst the spatial distribution of this growth will be determined through the development of the Joint Local Plan, Thurston’s status as a proposed ‘core village’ means that it will play a key role in addressing that need.

4.2 The granting of planning permission for a series of large sites in late 2017 has meant that there are over 1,000 dwellings in the planning pipeline for Thurston, i.e. with planning permission but not yet built or occupied. It is for the Joint Local Plan to ultimately address housing need of the two districts over the period to 2036 and also to determine Thurston’s contribution to that. Given (i) the levels of growth in the planning pipeline; (ii) the fundamental concerns of the Suffolk County Council Highways Team about highway capacity; and (iii) the need to deliver major new education infrastructure in the form of a larger primary school on a new site, it is not expected that significant additional growth will need to be planned for in Thurston to support the emerging Joint Local Plan. In light of this, the spatial strategy seeks to be more restrictive of the types of development which can be brought forward outside the settlement boundary, in line with Mid Suffolk Core Strategy Policies CS1 and CS2. In order to reflect a positive approach however, it is considered appropriate to provide some flexibility to address particularly significant needs identified in Thurston. Specifically, this relates to the needs of the ageing population which is discussed in more detail in Section 5 and reflected in Policy 2(B) and Policy 3. The provision of bungalows, sheltered housing and care facilities outside the settlement boundary will be viewed favourably (with more weight being given to proposals that are adjacent to the boundary as opposed to being clearly separate from it). Such proposals would have to demonstrate that there are no other suitable sites within the settlement boundary that are available or deliverable.

4.3 Indeed, the value of agricultural land in the parish means that its protection is important; once lost, the ability to produce crops is gone forever. Development of some parts of the agricultural fields has ultimately meant that it is no longer economically viable to farm the remainder of the fields. As a result, a wider area is lost to agricultural production. It is therefore a requirement of Policy 1 that, if a site is brought forward which results in the loss of part of a field, then it must clearly be demonstrated that this will not make it uneconomic to farm the remainder of the field once the development has been delivered.

4.4 What is important is that all growth is supported by the infrastructure that is most needed in Thurston and will provide the greatest benefit to the wider community.

4.5 Therefore, the general approach in the Thurston Neighbourhood Plan is that growth will be focused on the sites with planning permission (which are located within the amended settlement boundary) and on small scale infill sites within the settlement boundary.

4.6 The Neighbourhood Plan (pages 75-76) identifies the sites in the planning pipeline which are expected to deliver housing along with a range of specific infrastructure and community facilities. More generally, these sites and other developments are expected to provide high quality schemes which generally enhance the public realm and improve accessibility for pedestrians and cyclists”.

15. Chapter 5 (Housing and Design)) of the Neighbourhood Plan begins with four stated objectives, including –

“H4. To provide the infrastructure necessary to ensure that growth is sustainable”.

16. Chapter 5 continues –

“5.1 As one of the larger villages in Mid Suffolk district, the Mid Suffolk Core Strategy (2008) identifies Thurston as a Key Service Centre with potential to accommodate development which is sympathetic to local character and of an appropriate scale and nature in relation to local housing and employment needs. Whilst the Core Strategy is under review, its principles hold. The Babergh and Mid Suffolk (BMSDC) emerging joint Local Plan (which will ultimately replace the Core Strategy) proposes defining Thurston as a Core Village. However, Thurston’s role in addressing not only its own needs but also the needs of its hinterland villages will continue. In this regard, Thurston is a focus for growth over the period of the Plan.

5.2 In late 2017, a number of large-scale developments in Thurston were granted planning permission as defined in the Policies Maps on pages 75-76. The provision of the necessary infrastructure to support these developments is a significant issue. The 2017 permissions came with planning conditions aimed at mitigating some of the problems associated with what would otherwise be serious highways and rail infrastructure safety and capacity issues.

5.3 As explained in the Infrastructure section, Suffolk County Council (SCC) Highways Team has identified that, following the implementation of mitigation measures, the roads in and around Thurston will be operating at, or close to, capacity if all the developments go ahead. The SCC Highways Team has specifically identified locations where, unless further mitigations can be found (if indeed this is possible), additional development should not proceed. These substantial limitations within the highways network must be addressed in order to ensure that any future development is sustainable.

5.4 The Neighbourhood Plan recognises the national need for additional housing and the needs identified in BMSDC's emerging Joint Local Plan towards which its proposed Core Villages, including Thurston, are expected to contribute...

...

5.6 The significant number of large developments granted planning permission in late 2017 are likely to come forward early in the Neighbourhood Plan period. It is considered that this scale of development is likely to adequately address the requirements of Thurston to support growth as a Key Service Centre/Core Village. It will be important that these developments are allowed to 'bed in' to the community. Any further development should be sustainable and be relatively limited in scale. Therefore it is not considered appropriate or necessary to identify any additional sites in the Neighbourhood Plan.

5.7 Rather, the Neighbourhood Plan's policies identify the issues that future development should address and provide criteria to ensure these are achieved. These policies shall also apply, where relevant, to the sites recently granted outline planning permission but without reserved matters approval. Over the lifetime of the Neighbourhood Plan, and providing infrastructure limitations can be overcome, housing growth could potentially be accommodated in a sensitive way within the parish. Such development would be tailored to address the housing needs of each sector of the population and would help meet the housing objectives identified in the BMSDC's Joint Local Plan".

The Draft Plan

17. In Part 2 of the Report the planning officer referred to proposal LA087 of the draft Plan, which allocated the Site for the development of approximately 200 dwellings subject to compliance with a series of policy requirements, including *"mitigation measures at crossways junctions near the site"*. The planning officer advised that since the draft Plan was in the process of preparation it had *"limited weight"* and that *"the existing adopted Local Plan and the NPPF hold more weight along with the Neighbourhood Plan which is part of the development plan"*. The planning officer continued *"Nevertheless, the emerging Plan does provide an indication of the intended 'direction of travel' with regard to the Council's approach to sustainable growth within The District and within Thurston in order to meet continuing needs locally and within the District"*.

The NPPF

18. Paragraph 11 of the NPPF states that those taking decisions on planning applications should apply a presumption in favour of sustainable development –

*"For **decision-taking** this means:*

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless:

- i. the application of policies in this Framework that protect assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.*

19. Footnote 7 of the NPPF makes clear that for applications involving the provision of housing, policies may be “out-of-date” in cases in which the local planning authority cannot demonstrate a five year supply of deliverable housing sites; or where the Housing Delivery Test indicates that the delivery of housing has been substantially below (less than 75% of) the housing requirement over the previous three years. In the present case, in paragraph 3.9.1 of the Report the planning officer advised that the Defendant was able to demonstrate in excess of the requisite five year supply of housing sites. It was not suggested that the relevant development plan policies were to be regarded as “out-of-date” in the light of footnote 7 of the NPPF.

20. Paragraphs 12 to 14 of the NPPF go on to set the policy presumption in favour of sustainable development in the context of the status given to the statutory development plan by section 38(6) of the PCPA (including a neighbourhood plan) –

“12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.

13. The application of the presumption has implications for the way communities engage in neighbourhood planning. Neighbourhood plans should support the delivery of strategic policies contained in local plans or spatial development strategies; and should shape and direct development that is outside of these strategic policies.

14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, providing all of the following apply:

a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;

b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;

c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and

d) the local planning authority's housing delivery was at least 45% of that required over the previous three years".

21. Paragraph 48 of the NPPF gives familiar policy guidance on the weight to be given to relevant policies in emerging plans when determining applications for planning permission –

"Local planning authorities may give weight to relevant policies in emerging plans according to:

a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and

c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)".

The Report

22. I have already referred in paragraphs 6, 7 and 18 of this judgment to Part 2 of the Report in which the planning officer not only provided the Committee with a summary of the relevant policies in the various plans comprising the statutory development plan in the present case, including the Neighbourhood Plan; but also advised the Committee as to the status of the Neighbourhood Plan, those relevant policies of the adopted Core Strategy and Local Plan which must now be taken to be out-of-date and the weight to be given to the Draft Plan.

23. Part 2 of the Report also provided a detailed exposition of and commentary on consultation responses received by the Defendant, including the extensive representations made by the Claimant. Understandably, the Claimant had emphasised the general approach taken by the recently adopted Neighbourhood Plan, including the spatial strategy under Policy 1 of that plan and the focus of housing growth upon the five sites which had achieved planning permission during 2017 (and which were now included within the defined settlement boundary for the reasons given in chapters 4 and 5 of the Neighbourhood Plan). The Claimant summarised its response to the planning application in the following terms –

"In summary, the Parish Council contends that this application should not be supported as it fails to adhere to the main policies in the Thurston NDP. The Parish Council requests that the desires of the community, which were clearly expressed through engagement in the production of the Thurston NDP, are respected and that

sites coming forward should demonstrate that they are in conformity with the Thurston NDP”.

24. In the course of his commentary on the Claimant’s representations the planning officer said this-

“...It is officers’ opinion that the extension of the settlement boundary to reflect the Thurston Five planning permissions does not meet the test required by paragraph 14b of the NPPF (as shall be explained later) in that the Neighbourhood Plan fails to address the housing requirement for Thurston identified by [Mid Suffolk District Council]. The Joint Local Plan Preferred Options document identifies this site as being appropriate for residential development. Whilst it currently sits in what is defined as countryside (Adopted Local Plan) it clearly adjoins a highly sustainable village in a highly sustainable location. This fact cannot be ignored as cannot the presumption in favour of sustainable development”.

25. In section 3 (pages 73 to 106) of the Report the planning officer provided a detailed and comprehensive assessment of the planning merits of the Development. Having reminded the Committee of the Defendant’s duty under section 38(6) of the PCPA and of the composition of the statutory development plan, the planning officer advised that the question whether residential development of the Site was acceptable in principle must be addressed in order to determine the application for outline planning permission for the Development. At paragraph 3.4.1 of the Report he said –

“Much of this report will, of necessity, explore the extent to which the very principle of residential development on this site is or is not acceptable. Charting a course that will provide answers is made more difficult on this occasion by a complex interplay of material planning policy considerations that on the face of it appear to produce some diametrically opposed paths to a recommendation [approve or refuse]. We are required to consider a number of documents and to ascertain whether despite initial appearances to the contrary there is a consistent approach between them or if not how much weight do we need to give to each compared to the other when trying to resolve the question – “Is the development unacceptable or acceptable in principle?”

As with many things in planning this ultimately will come down to questions of policy interpretation, an examination of the hard evidence, applying appropriate weight, undertaking a careful balance and finally exercising one’s own reasonable judgement after taking account of material planning considerations”.

26. In section 3.5 of the Report, the planning officer turned to consider the Neighbourhood Plan. He advised that the Neighbourhood Plan –

“...is an ‘up-to-date’ plan that now forms part of the Council’s Adopted Development Plan for Mid Suffolk and as such it now benefits from the statutory presumption of s38(6); it must be the starting point for decision taking. The weight to be attributed to that document must however, as always, be balanced with and against all other material considerations”.

27. Having referred to the underlying justification given in Chapters 4 and 5 of the Neighbourhood Plan for making no additional housing land allocations at Thurston, i.e.

given the existence in the pipeline of the five housing developments granted planning permission during 2017, the planning officer carried out his appraisal of the Development against the five paragraphs of Policy 1 of the Neighbourhood Plan. That advice included the following comments –

(1) In relation to Policy 1(A) –

“The application site is outside the defined village settlement boundary and is not included as an allocation on the policy maps referred to. It should however be noted that the Thurston Neighbourhood Plan does not allocate new sites for development but rather reflects the likely status quo arising from extant planning permissions. The Plan appears not to make any reference to the number of dwellings that are considered to be required within the plan period and nor does it suggest how the extended settlement boundary to include sites with extant planning permissions will or won’t meet a predicted requirement up to 2036. This position will be explored in greater detail shortly within this report”.

(2) In relation to Policy 1(B) –

“This criteria is not relevant as the site lies outside of the defined settlement boundary shown in the Neighbourhood Plan”.

(3) In relation to Policy 1(C)(a) –

“It is clear that there is a critical difference of opinion between the Parish Council and the District Council based on evidence as to how much development is required to be accommodated in Thurston during the Plan Period 2018-2036. It is this fundamental difference that sits at the heart of discussion around the merits of the current proposal. Ultimately Members will need to pick their way through the evidence and apply their own judgment.

Of relevance to this debate is the fact that whilst the site is not allocated for development in the Thurston Neighbourhood Plan it is allocated for residential development in the Babergh Mid Suffolk Joint Local Plan Preferred Options document of July 2019 (i.e. LA087).

As an expression of the Council’s intended strategic direction the JLPPO document was agreed by Full Council and to that extent the proposed allocations need to be seen as this Council’s latest advancing expression of identified housing requirement and preferred strategic distribution for that requirement. The significance of this will be discussed more fully later on in this report”.

(4) In relation to Policy 1(D) –

“The housing being proposed by Bloor Homes does not fall into the category of specialist and care needs housing. It is general housing. Consequently, it cannot draw on this policy support for specialist residential use outside of the defined settlement boundary”.

28. The planning officer then reminded the Committee of the presumption in favour of sustainable development which is brought into play in the various sets of circumstances explained in paragraph 11 of the NPPF. He offered some specific guidance on the application of paragraph 14 of the NPPF, in light of the existence of the Neighbourhood Plan. He advised that the Neighbourhood Plan had become part of the development plan within the period of two years stated in paragraph 14(a); that the Defendant enjoyed the requisite supply of deliverable housing sites for the purposes of paragraph 14(c); and that housing delivery had been at least 45% of that required over the previous three years, this satisfying paragraph 14(d). In relation to the requirement stated in paragraph 14(b) of the NPPF that the neighbourhood plan should contain policies and allocations to meet its identified housing requirement, the planning officer gave the following advice –

“The Adopted Thurston Neighbourhood Plan does not meet its identified housing need as now expressed in the Draft Joint Local Plan Preferred Options Document of 2019. On this basis further careful consideration needs to be given to the extent to which the presumption against approving development that is contrary to an up to date Neighbourhood Plan can be applied especially where the Neighbourhood Plan does not itself identify a minimum housing requirement.

It is therefore critical to analyse this situation because the Parish Council, and many villagers understandably believe that large scale new development such as this can now be resisted [ie refused] on the basis that the site is not allocated in the Adopted Neighbourhood Plan. Having been adopted as recently as October 2019 any challenge to the of [sic] the Neighbourhood Plan is likely not to be well received locally. In such circumstances it would be easy to understand the local reaction “Well what was the point of us going through the Neighbourhood Plan process if we cannot rely on it to protect us from development to which we object?” Generally there would be considerable sympathy for that expression of exasperation and disbelief. Members of the Committee however know from experience that planning never stays still for long and it is clear from paragraph 14 that the Government continues to drive housing delivery and that Neighbourhood Plans are not immune from that direction if they fail to allocate sufficient sites to meet the ongoing housing requirement as identified by the District Council as local plan making authority. The Government reiterates this at NPPF para 59 where a key planning objective is to significantly boost the supply of new homes. The extent to which the Adopted Thurston Neighbourhood Plan does or does not meet that requirement is considered further below”.

29. In section 3.6 of the Report, the planning officer compared the housing numbers likely to be delivered under the Neighbourhood Plan with the then current housing requirement under the Draft Joint Plan Preferred Options Document. Having reminded the Committee of the limited weight to be given to the Draft Plan, he advised that –

“...The trajectory of its progress is however forwards and that the Council has already set out its intent to allocate the site for development, alongside setting out minimum housing requirements for neighbourhood plan areas, is an important one. The needs for Thurston in the next plan period are identified as being 1468 dwellings; the housing figures within the existing district plan documents have expired by virtue of their age. The number represented by the “Thurston 5” is 818 dwellings.

The Draft JP Preferred Options Document is an expression of how the Council would prefer to meet its overall housing requirement in terms of spatial strategy and geographic distribution of new housing. To that extent it does highlight a direction of travel... ”.

30. The planning officer then referred to guidance given in National Planning Practice Guidance [‘PPG’] which he advised was helpful in relation to the question whether the Neighbourhood Plan proposed sufficient sites to meet or exceed the housing requirement for Thurston which the Defendant had now identified -

“Where a qualifying body wants to benefit from the protection of paragraph 14, why is it important that they should include policies and allocations in their neighbourhood plan?”

Allocating sites and producing housing policies demonstrates that the neighbourhood plan is planning positively for new homes, and provides greater certainty for developers, infrastructure providers and the community. In turn this also contributes to the local authorities’ housing land supply, ensuring that the right homes are delivered in the right places.

Paragraph 096

“In the context of paragraph 14 of the National Planning Policy Framework, what does ‘policies and allocations to meet its identified housing requirement’ mean for neighbourhood plans?”

In order for a neighbourhood plan to meet the criteria set out in paragraph 14b of the Framework, the ‘policies and allocations’ in the plan should meet the identified housing requirement in full, whether it is derived from the housing figure for the neighbourhood area set out in the relevant strategic policies, an indicative figure provided by the local planning authority, or where it has exceptionally been determined by the neighbourhood planning body. For example, a neighbourhood housing requirement of 50 units could be met through 2 sites allocated for 20 housing units each and a policy for a windfall allowance of 10 units. However, a policy on a windfall allowance alone would not be sufficient.

Policies and allocations within other development plan documents, for example strategic site allocations or windfall development set out in a local plan or spatial development strategy, will not meet criterion 14b of the National Planning Policy Framework.

Paragraph 097”.

31. In paragraphs 3.8.2 and 3.8.3 of the Report the planning officer advised that allowing for the projected yield of 818 dwellings from development of the “Thurston 5” and in the light of the requirement now identified by the Defendant in the Draft Plan for 1468 additional dwellings within Thurston in the plan period to 2036, there remained a shortfall of some 650 dwellings for which the Neighbourhood Plan made no provision. He described that shortfall as “significant” and questioned whether, in those circumstances –

“...the village can rely on its Neighbourhood Plan to resist the principle of more residential development as the situation runs counter to that expected by paragraph 14(b) of the NPPF (2019) if the presumption in favour of refusal is to be applicable”.

32. In paragraph 3.8.4 of the Report, the planning officer summarised his conclusions on whether paragraph 14 of the NPPF applied for the purposes of determining the planning application before the Committee –

“This is a fundamental point and cannot be dismissed. Whilst the status of the Draft JLP Preferred Options Document can be questioned the massive difference between the housing requirement in it for Thurston and that now in the Adopted Neighbourhood Plan draws attention to a serious conflict in approach. As set out in the NPPF, a Neighbourhood Plan should conform with the strategic plan and meet the identified housing need for the area. As the Thurston Neighbourhood Plan does not allocate sites to meet the identified housing need, paragraph 14 of the NPPF does not apply and the site not being allocated in the Neighbourhood Plan does not in itself represent an adverse impact that would significantly and demonstrably outweigh the benefits”.

33. In paragraph 3.8.8 of the Report the planning officer reminded the Committee that the Site was the subject of a proposed allocation in the Draft Plan for housing development for approximately 200 dwellings. As to whether the Development would comply with the relevant policies of the Draft Plan, he advised that –

“It does alongside meeting the requirements of the current development plan, save for its siting outside of an existing settlement boundary”.

34. In that paragraph, the planning officer also advised on the junction improvement works which formed part of the Development –

“The proposal if approved will deliver major highway improvements at not just Fishwick Corner but also Pokeriage Corner, Beyton Road, Thedwastre Road railway bridge, Beyton Road and the Beyton Road/Norton Road junction. Many of these improvements could not be secured at the time of the determination of the 5 major Thurston sites because land was not available within the control of the respective applicants or the Highways authority. In many ways it is this proposed development that can unlock all the necessary highway improvements needed south of the railway to improve traffic flow around the entire village and for all village road users [or at least the majority who travel southwards to destinations rather than northwards] and have not seen such improvements as being achievable until now”.

35. Having referred to Policy 2 of the Neighbourhood Plan and to local concerns about the potentially rapid growth resulting from approval of the “Thurston 5”, the planning officer advised (in paragraph 3.8.14) that by virtue of the proposed junction improvements, the Development would (were it to proceed) have “significant benefits to the majority of village occupants”.

36. In section 3.10 of the Report, the planning officer advised on the application of the “tilted balance” under paragraph 11 of the NPPF. At paragraph 3.10.3 he said –

“...Members are advised that the ‘Tilted Balance’ described in paragraph 11 of the NPPF (2019) is triggered by the fact that some of the Council’s relevant adopted planning policies are ‘out-of-date’ and the fact that the Thurston Neighbourhood Plan (2019) fails to satisfy the requirement contained in paragraph 14b of the NPPF (2019). The latter meaning the Neighbourhood Plan cannot in itself be relied on to resist sustainable development outside of the defined settlement for reasons previously discussed. This will without doubt frustrate and anger many in Thurston. Just as with many other aspects of planning policy and guidance Neighbourhood Plan goal-posts are moved by the Government to ensure that housing delivery continues to be driven hard”.

37. Paragraph 3.12.1 of the Report drew together a summary of the planning officer’s reasons for concluding that the Development was acceptable in principle –

“The proposed use is considered acceptable for reasons that include:

- It helps to achieve delivery of dwellings identified as required in the emerging Joint Local Plan and within the context of needing to significantly boost the supply of new homes.*
- Conflict with policies CS2 and H7 is deemed to be of little significance where the development is in a sustainable and preferable location having regard to the underlying aims of those policies and the settlement hierarchy.*
- It represents highly sustainable development.*
- It delivers a raft of highway improvements required in the Thurston Neighbourhood Plan.*
- It provides significant construction jobs.*
- It will deliver 35% much needed affordable dwellings which could equate to 74 units [at 210 dwellings overall].*
- It will result in ecological enhancement.*
- It delivers a high quality scheme”.*

38. Sections 3.15 to 3.17 of the Report provided further detailed assessment of the package of highway improvement works proposed as a component of the Development. The planning officer referred to Policy 7 of the Neighbourhood Plan as drawing “strong attention to the junctions that are seen in the village as an impediment to further development”. In paragraph 3.17.3, the planning officer repeated his advice that the “much needed” highway improvements were one of the “main public benefits associated with this proposed development” –

“If Members are persuaded that these benefits [along with others] outweigh any associated harm [and this is the view of officers] then it is imperative that the village sees the provision of these improvements at an early stage and not some illusive or elusive point in the future. This is a must”.

39. Paragraphs 4.1 to 4.4 of the Report set out the planning officer's overall assessment of the planning balance and conclusions –

“4.1 Where the proposed development conflicts with the housing settlement policies of the Council it does not accord with the development plan taken as a whole. However, officers consider that there are other material considerations which direct that planning permission should nevertheless be granted, not least through acknowledging that such policies are inconsistent with the NPPF and where the underlying aims of those policies would be otherwise met. It is acknowledged that the proposal causes some tension between what is expected as a constraint on future development within Thurston as envisaged in the Thurston Neighbourhood Plan and what is clearly a sustainable development proposal in line with the NPPF.

4.2 Whilst the Neighbourhood Plan includes expansion of the village envelope this is to embrace sites that have already been granted planning permission. The Neighbourhood Plan does not identify [allocate] sites for future expansion and this conflicts with the direction of travel of the Draft Local Plan. The District Council as local plan making authority has indicated a requirement to allocate the application site [and others] for residential development. This application conforms with that objective and will help to meet the identified requirements for Thurston during the Plan period up to 2036.

4.3 This proposal delivers a raft of benefits chief of which is a package of highway improvements south of Thurston Railway Bridge that will have village wide [and beyond] benefits in terms of highway safety and ease of access. These works are identified in the Thurston Neighbourhood Plan as being key to future development. This proposal represents the best way of securing the improvements because no other applicant has controlled sufficient land to make them possible [including the Thurston Five]. Suffolk County Council as local highway authority has indicated that it is not in a position to deliver the package of improvements. Consequently when exercising the tilted balance these highway works alone significantly tip the balance in favour of supporting the proposal. When all the benefits are taken into account the adverse impact of permitting another 210 dwellings in Thurston is outweighed.

4.4 On that basis the Committee is recommended to GRANT planning permission subject to a S106 Agreement to secure the matters identified earlier and conditions”.

The Committee meeting

40. I have been provided with a transcript of that part of the Committee's meeting on 29 January 2020 during which, following consideration of the Report and further oral advice from officers including from the Chief Planning Officer, Members decided to accept the planning officer's recommendation and to grant planning permission for the Development. The proceedings before the Committee were lengthy and the discussion prolonged. It is common ground before me that the transcript presents a reliable record of those proceedings.
41. It is appropriate to refer to two passages of oral advice given during the meeting.

42. Firstly, at 1:32:12 minutes into the meeting, the planning officer advised as follows –

“...The Site is outside the Settlement Boundary that appears in the Neighbourhood Plan...my understanding is that in producing the Neighbourhood Plan what the village did was to identify the five sites which already have consent and...incorporate those five into an expanded village Settlement Boundary. However, the emerging Local Plan allocates or identifies a need for significantly more dwellings...nearly 600 more, than has been allocated in the Neighbourhood Plan. So there is a tension between the Neighbourhood Plan and your emerging Local Plan insofar as there is now insufficient land allocated within the Neighbourhood Plan to accommodate the growth the District Council envisage will occur in Thurston going forward”.

43. Secondly at 1:35:52 minutes into the meeting, the Chief Planning Officer advised -

“...the Neighbourhood Plan is a major document you should make your decision in accordance with it. However, there is not a conflict that dis-engages the presumption in favour of sustainable development and I say that because the Neighbourhood Plan very specifically recognises the role of the district to deal with need across the district and that in its language that Thurston must play its part. So there is no explicit statement that development outside of the Settlement Boundaries of the Neighbourhood Plan should not come forward. There is a statement that the onus should be focused within. However, underpinning all of this is the evidence of housing need and the way in which that is addressed across the District and that at the present point in time has been described in your Joint Local Plan as an approach to spatial strategy and that is what I set out right at the beginning because in these sites, all the sites you will see today, impinge upon how that approach follows through and in relation to this Neighbourhood Plan the presumption in favour of sustainable development... continues to apply and that the Neighbourhood Plan itself very specifically does not de-bar development on this albeit clearly intends to focus it within the Settlement Boundaries but also acknowledges that it is for the District to set the level of housing growth which Thurston must deal with and to do so through the Joint Local Plan”.

44. Paragraph 27.6 of the Minutes of the Committee meeting record that –

“The Chief Planning Officer clarified that the Thurston Neighbourhood plan acknowledged that the District would address housing need outside of the plan and that there was not a conflict between the Neighbourhood Plan and the Draft Joint Local Plan”.

45. Paragraphs 27.22 and 27.23 of the Minutes record the Committee’s resolution by a majority of seven votes to six to grant planning permission for the Development.

Legal principles

46. The relevant legal principles governing the determination of an application for planning permission and the interpretation of planning policy were summarised by Lindblom LJ in *Gladman Developments Limited v Canterbury City Council* [2019] EWCA Civ 669 at [21]-[22] –

- (1) Section 38(6) of the PCPA requires the determination to be made in accordance with the development plan unless material considerations indicate otherwise.
- (2) The development plan thus has statutory primacy, and a statutory presumption in its favour. Under the statutory scheme, the policies of the plan operate to ensure consistency in decision-making.
- (3) If the section 38(6) duty is to be performed properly, the decision-maker must identify and understand the relevant policies of the statutory development plan; and must establish whether or not the proposal accords with the plan, read as a whole. A failure to comprehend the relevant policies is liable to be fatal to the decision.
- (4) The interpretation of development plan policy is ultimately a matter of law for the court. The court does not approach that task with the same linguistic rigour as it applies to the construction of a statute or contract. It must seek to discern from the language used in formulating the plan the sensible meaning of the policies in question, in their full context, and thus their true effect. The context includes the objectives to which the policies are directed, other relevant policies in the plan, and the relevant supporting text. The court will always keep in mind that the creation of development plan policy by a local planning authority is not an end in itself, but a means to the end of coherent and reasonably predictable decision-making, in the public interest.

47. See also *Chichester District Council v Secretary of State for Housing, Communities and Local Government* [2019] EWCA Civ 1640; [2020] 1 P&CR 9 at [31]-[32], where Lindblom LJ said that the circumstances in which those basic principles are applied will vary widely. Reading the analysis in one case across into another can be mistaken. No two plans are the same. The policies of each are unique, crafted for the area or neighbourhood to which they relate, not to fit some wider pattern or prescription.

48. The principles to be applied by the Court in a case where a challenge to the validity of a grant of planning permission is founded upon criticisms of the planning officer's report to the planning committee are stated in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314; [2019] PTSR 1452 at [41]-[42] –

- (1) 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.
- (2) 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.
- (3) 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.

- (4) One example given of such a case is where the planning officer has plainly misdirected the committee as to the meaning of a relevant policy.

Ground 1

Submissions

49. Mr Meyric Lewis for the Claimant submitted that the planning officers had plainly misdirected the Committee as to the correct interpretation of Policy 1 of the Neighbourhood Plan. The development of land outside the defined settlement boundary shown on the Policies Map for general housing was neither in accordance with Policy 1 of the Neighbourhood Plan nor with the Plan's objectives and spatial strategy as explained in paragraphs 4.1 to 4.6 of the Plan. There was no support for the Development under Policy 2 of the Plan. The position was unaffected either by the contribution which the Development might make towards housing targets in the Draft Plan or by the opportunity to realise much needed highway improvements in the village. There was a fundamental conflict between the proposed development of the Site for general housing and the key spatial policy and objectives of the Neighbourhood Plan.
50. The planning officer had failed to recognise and to draw attention to that conflict in the Report. On the contrary, both the planning officer in the Report and the Chief Planning Officer in his oral comments to the Committee had gone so far as to assert that the Development was not in conflict with the Neighbourhood Plan. As a correct interpretation of the spatial strategy and Policy 1 of the Neighbourhood Plan, that advice was simply unsustainable.
51. Planning officers had misled the Committee by asserting that there was a tension between the Neighbourhood Plan and the Draft Plan. That advice, repeated both in the Report and orally during the Committee meeting, was materially misleading. It failed to acknowledge the material fact that the Development was not in accordance with the key relevant policy of the up-to-date component of the statutory development plan. Instead, it confused the question whether the Development was in accordance with the development plan with a quite different question, namely whether the policy and objectives of the up-to-date component of the development plan were in accordance with those of the Draft Plan, the latter being no more than a material consideration of limited weight. Read as a whole, the correct interpretation of the statutory development plan was that it simply did not support the release of the Site for the Development.
52. In summary, planning officers had failed to comprehend the key relevant policy of the up-to-date component of the statutory development plan, a legal error which was fatal to the Defendant's decision to grant planning permission: *Gladman Developments Limited* at [21]. That error vitiated the planning officer's evaluation of the planning balance in paragraphs 4.1 to 4.4 of the Report and the oral planning advice given to the

Committee, since both were founded upon a clear misunderstanding of the spatial strategy of the Neighbourhood Plan.

53. For the Defendant, Mr Tom Cosgrove QC submitted that the Claimant's contentions were untenable. Policy 1 of the Neighbourhood Plan must be read and understood in the context of the Neighbourhood Plan as a whole, including the context in which its policies were formulated, the objectives of those policies and their supporting text. Read and understood in that way, it was clear that the planning officers' advice both in the Report and orally to the Committee was founded upon a proper understanding and interpretation of the Neighbourhood Plan.
54. In particular, chapter 4 of the Neighbourhood Plan explained that its housing strategy was purposefully split between the Neighbourhood Plan and other elements of the development plan. The spatial strategy acknowledged that Thurston would play a key role in addressing housing need during the period to 2036. The timing of preparation of the Neighbourhood Plan had meant that it had not been possible to make proposals for distribution of housing sites to meet that need. The Neighbourhood Plan made clear that decisions about the distribution of growth to meet that housing need would therefore be made by the emerging Joint Local Plan. Those levels of growth were expected to be significant.
55. The Neighbourhood Plan's strategic objective was stated in S1. Developing and sustaining Thurston's status as a Key Service Centre depended (amongst other considerations) upon determining Thurston's contribution to meeting the District's objectively assessed housing need. Paragraph 4.2 of the Neighbourhood Plan stated that it was for the Joint Local Plan ultimately to address that question.
56. It was critical to have these elements of the Neighbourhood Plan's context and strategy firmly in mind for the purpose of understanding the function and purpose of the defined settlement boundary under Policy 1. Under Policy 1, the general approach was for growth to be focused on sites with planning permission within that boundary, including the five planning permissions granted in 2017. But it did not follow that bringing forward the Site for housing development was in conflict with the Neighbourhood Plan. The Neighbourhood Plan did not identify or allocate any sites for future housing, yet the Plan also recognised that it would be necessary to accommodate housing need assessed under the Joint Local Plan in the context of a settlement boundary expanded so as to include only those housing sites which already enjoyed planning permission.
57. The natural and necessary inference, reading the Neighbourhood Plan as a whole, was that there may well be a need for further housing to be accommodated beyond the defined settlement boundary and that the Joint Local Plan would play a significant role in determining the location of such housing.
58. Planning officers had accordingly been correct in their interpretation of the Neighbourhood Plan both in the Report and in oral advice to the Committee. There was an obvious tension in that the Site lies outside the defined settlement boundary and so beyond the area of Thurston that is identified as the focus of growth under Policy 1. However, the Development is not in conflict with the Neighbourhood Plan, because the Plan clearly does not preclude development outside that defined boundary which is brought forward to enable Thurston to make its contribution to meeting objectively

assessed housing need identified in the Joint Local Plan and consistently with the village's status as a Key Service Centre/Core Village.

59. That analysis applies proper interpretative principles: see *Gladman Developments Limited* at [22] and *Chichester District Council* at [32]. It is reinforced by the opportunity offered by the Development (but not by the Thurston Five) to realise a further core element of the strategy of the Neighbourhood Plan, namely the identified highways improvements which the Plan judges to be essential before any additional development is able to proceed.
60. For the Interested Parties, Mr Paul Tucker QC supported the Defendant's submissions in response to Ground 1. He emphasised the clear recognition in the Neighbourhood Plan that it would be for the Joint Local Plan to determine the distribution of new housing to meet the District's objectively assessed housing need. The Neighbourhood Plan had not been able to address that question effectively for the period to 2036, for the simple reason of the timing of its preparation. Instead, that Plan had done no more than to define the settlement boundary so as to reflect planning permissions granted in 2017. No provision had been made for further growth and its distribution at Thurston, that important question being left over for the Joint Local Plan to resolve.
61. The result of this approach taken by the Neighbourhood Plan had been the tension that the planning officers had rightly drawn to the Committee's attention both in the Report and in their oral advice. But there was in substance no conflict between the Development and the Neighbourhood Plan and planning officers had been correct in their advice. The Claimant's contentions failed to recognise the nuanced position that resulted from the relationship between the Neighbourhood Plan and the emerging Joint Local Plan, a relationship that the Neighbourhood Plan itself recognised and was based upon: see paragraphs 4.1 and 4.2 of the Neighbourhood Plan. The Claimant's argument was, moreover, wrong in principle. It founded upon an overly forensic dissection of the Report which ignored the essential thrust of planning officers' advice, that the planning balance strongly favoured the grant of planning permission. That balance had been struck on the basis of a proper and correct understanding and application of Policy 1 of the Neighbourhood Plan, when read in the context of the Plan as a whole and a true appreciation of its strategy and objectives.

Discussion

62. In my view, the question which I have to address under Ground 1 is whether it was in accordance with Policy 1 of the Neighbourhood Plan to release the Site for general housing development. On the Claimant's case, the release of the Site for that purpose was in conflict with that policy and the determination of the planning application should have been made on that basis. On the Defendant's case, the fact that the proposed location of the Development lay outside the defined settlement boundary did not create a conflict with Policy 1 of the Neighbourhood Plan, when that policy was properly understood in the context of the Plan as a whole and its stated objectives. That was the correct advice given to the Committee in the Report and succinctly summarised by the Chief Planning Officer at the meeting on 29 January 2020.
63. In order to answer that question, it is necessary to understand correctly not only the terms of Policy 1 itself, but also the context for that policy that is given both by the Plan's overall spatial strategy and objectives for growth and meeting housing need, as

stated in chapters 4 and 5 of the Plan. The crux of the Defendant's interpretation of the policy, and the spatial strategy that it promulgates for Thurston, is that although it focuses new development within the defined settlement boundary, it does not seek to set up a barrier to development coming forward on sites outside that defined boundary where such development is brought forward to meet housing requirements identified in the Joint Local Plan. Although that Joint Local Plan was only in preparation at the date of the Committee's decision (the Draft Plan), the Neighbourhood Plan itself acknowledged the key role of that emerging plan in directing development to meet future housing needs in Thurston.

64. There is no explicit support for the Defendant's interpretation to be found in the terms of Policy 1 of the Neighbourhood Plan itself. The purpose of the defined settlement boundary is clearly stated in paragraphs (A) and (B) of Policy 1. It defines the boundary of the area within which new development is expected to be focused and, within that defined area, new development will, in principle, be supported. There is no suggestion in the terms of either those paragraphs that new development proposed on land situated outside that defined settlement boundary enjoys support under the spatial strategy of the Neighbourhood Plan. Nor does paragraph (C) of Policy 1, which is concerned specifically with new housing proposals, suggest that such development is likely to be supported on a site which lies outside the defined settlement boundary. The stated expectation that such proposals should meet the evidence-based needs of the Thurston Neighbourhood area in accordance with Policy 2 is, in my view, clearly concerned with the qualitative aspects of new housing – the mix and tenure of dwellings comprised within such development. That expectation is not to be understood as indicative of any broadening of the locational focus clearly articulated in paragraph (A) of Policy 1. Paragraph (C) does not treat new housing proposals, in contrast to other new development (see paragraph (B)), as worthy of support on a site that lies outside the defined settlement boundary. On the contrary, the fact that the location of new housing generally is to be governed by the spatial strategy identified by paragraphs (A) and (B) of Policy 1 is evident from the exceptional treatment of development proposals to meet specialist housing and care needs under paragraph (D) of Policy 1. Such specialist housing proposals may be permitted on sites outside the defined settlement boundary, but only where it has been shown that there is no available and deliverable site for the proposed specialist housing within that defined boundary. Paragraph (D) of Policy 1 seems to me to reinforce the correctness of the interpretation that read as a whole, Policy 1 expects proposals for new housing development generally to be located within the defined development boundary and gives no support to the development of new housing (other than for specialist and care needs) on sites that lie outside that defined boundary.
65. That conclusion, however, does not in itself show that the planning officers' advice in the Report and orally to the Committee was founded on a misinterpretation of the Neighbourhood Plan. It is necessary to consider whether the Plan read as a whole reveals a more nuanced approach to the location of new housing development and an acknowledgement that the defined settlement boundary was not to be treated for development management purposes as a barrier to the release of a site lying outside that boundary for general housing.
66. The case for that more nuanced approach is essentially founded upon the explanation of the context for and objectives of the Plan's spatial strategy given in paragraphs 4.1 to 4.6 of the Neighbourhood Plan.

67. There is no doubt that chapter 4 of the Neighbourhood Plan anticipates the possibility of further development at Thurston in the period to 2036, specifically in the light of the Joint Local Plan's determination of the spatial distribution of growth and objective assessment of housing need over that period. Moreover, the Neighbourhood Plan recognises that Thurston's proposed status as a Key Service Centre/Core Village in the Joint Local Plan means that it will play a key role in addressing that need. For the Interested Party, Mr Tucker also drew my attention to paragraphs 1.6 and 1.15 of the Neighbourhood Plan. Those paragraphs state that the Neighbourhood Plan has sought *"to reflect as far as possible the emerging Joint Local Plan but, given its early stage of preparation, this has been limited"*. There was express acknowledgement also that the ongoing development of the Joint Local Plan meant that the Neighbourhood Plan was likely to be reviewed within five years of being "made" (i.e. within five years of its adoption as a component of the statutory development plan). Counsel for both the Defendant and the Interested Party submitted that there was clear acknowledgement in the Neighbourhood Plan of the context set by the emerging Joint Local Plan. That context was vital to a correct understanding of Policy 1 and resolution of the question whether the defined settlement boundary was properly to be treated as a barrier to new housing development on a site lying outside it which, if developed, would make an early and significant contribution to meeting the significant level of housing need now identified in the emerging Draft Plan.
68. I can well understand planning officers' advice that the Development offered an early and valuable opportunity to bring forward a significant contribution to meeting housing needs at Thurston as identified during the current preparation of the Draft Plan (i.e. the future Joint Local Plan). In other words, I can see the force of the argument that the Development was consistent with the "direction of travel" of the housing policies in the emerging Joint Local Plan (i.e. the Draft Plan). As paragraphs 4.1 and 4.2 of the Neighbourhood Plan expressly acknowledged, following the adoption of the Joint Local Plan, it would be those policies which would determine both the spatial distribution of new housing and the level of Thurston's contribution towards delivery of that new housing over the period to 2036. As Mr Tucker rightly emphasised, the Joint Local Plan was acknowledged as a likely trigger for a relatively early review of the Neighbourhood Plan.
69. These matters were material considerations to which planning officers gave significant weight both in the Report and their oral advice. They were entitled to do so. It does not, however, follow that the Neighbourhood Plan is to be interpreted as contemplating the release of sites outside the defined settlement boundary for general housing development prior to the adoption of the Joint Local Plan, essentially in anticipation of the Joint Local Plan's future determination of the spatial distribution of new housing and the level of Thurston's contribution towards delivery of that new housing over the period to 2036. The question is whether, notwithstanding the terms of Policy 1, the Neighbourhood Plan is properly to be understood as sanctioning the release of such a site prior to the adoption of the Joint Local Plan, and that such a release is to be interpreted as being in accordance with the Neighbourhood Plan.
70. In my view, the answer to that question is clear from paragraphs 4.1 to 4.6 of the Neighbourhood Plan. It seems to me that the strategy and objectives of the Neighbourhood Plan are fully aligned to the terms of Policy 1 itself. Although properly anticipating and recognising the future role of the Joint Local Plan, paragraphs 4.1 to

4.6 emphasise that the current strategy and objectives of the Neighbourhood Plan are to focus new development, including housing development within the defined settlement boundary and to restrict the types of development that may be brought forward outside that defined boundary. The development of land for general housing is not to be seen as one of the limited categories of new development that is to be supported on land outside the defined settlement boundary. The principal justification for that locational constraint on housing development is the existence of over 1,000 new dwellings in the planning pipeline since 2017 - the Thurston Five. As paragraph 4.5 of the Neighbourhood Plan states “...*the general approach in the Thurston Neighbourhood Plan is that growth will be focused on the sites with planning permission (which are located within the amended settlement boundary) and on small scale infill sites within the settlement boundary*”.

71. The planning officers criticised the Neighbourhood Plan’s reliance on the housing developments already in the pipeline; and failure to allocate further land at Thurston to accommodate further housing growth and housing need as identified through the preparation and adoption of the Joint Local Plan. The Neighbourhood Plan, however, acknowledged that the Joint Local Plan might necessitate a relatively early review of its growth strategy, laying down the marker in paragraph 4.2 that it doubted that it would be necessary for “*significant additional growth*” to be planned for in Thurston to support the emerging Joint Local Plan. That reasoning, as I see it, is completely consistent with my interpretation of Policy 1 of the Neighbourhood Plan. The whole thrust of both the policy itself, its stated justification and the stated context for and objectives of the Neighbourhood Plan is against the development of land outside the defined settlement boundary for general housing.
72. For these reasons, I accept Mr Lewis’ submissions which I have sought to summarise in paragraphs 49 to 52 of this judgment. On the correct interpretation of Policy 1 and of the underlying spatial strategy and objectives of the Neighbourhood Plan, the release of the Site for the Development is not in accordance with the Neighbourhood Plan. On the contrary, development of the Site for general housing is properly to be seen as being in conflict with the principal, relevant policy of the Neighbourhood Plan. That conclusion is unaffected by the fact that the Development may be able both to fulfil the qualitative requirements of Policy 2 and to fulfil the requirements of Policy 7 to address its impacts on the road junctions identified in that policy. Neither of those factors affect the fundamental locational objection to the development of the Site for general housing that arises on the correct interpretation of Policy 1 of the Neighbourhood Plan.
73. It follows that I must conclude that the Defendant’s Committee was misled both by the advice that it received in the Report and the oral advice of planning officers at the meeting on 29 January 2020. The Committee was advised that the Neighbourhood Plan was not to be understood as treating the defined settlement boundary as a barrier to housing development on a site which lay outside that boundary. For the reasons I have given, that advice was a misinterpretation of Policy 1 of the Plan. Contrary to the submissions advanced on behalf of both the Defendant and the Interested Party, that advice is not vindicated by consideration of the Plan as a whole, its context, strategy and objectives. On the contrary, consideration of those matters only serves to reinforce the terms of Policy 1 itself, that there is, and is intended to be, no policy support for general housing development on land outside the defined settlement boundary. Planning officers’ advice that there was a tension between the Neighbourhood Plan and

the emerging Draft Local Plan was confusing and begged the question whether the Development was properly to be seen as in accordance with the Neighbourhood Plan. For the reasons I have given, that question was never properly answered by the planning officers.

Conclusion

74. I have approached the dispute which arises under Ground 1 by applying the approach stated by Lindblom LJ at [31]-[32] in *Chichester District Council*. In my judgment, the Defendant's Committee was materially misled by the failure correctly to interpret and to advise on the question whether the Development was in accordance with or in conflict with the Neighbourhood Plan. Planning officers acknowledged that the Neighbourhood Plan was up-to-date. Indeed it was, on the advice given both in the Report and orally, the only component of the statutory development plan which contained up-to-date, relevant policies going to the principle of development of the Site for general housing purposes. Yet there was no acknowledgement of the true position, that the Development did not accord with those up-to-date, relevant policies, in the planning officer's conclusions on the principle of the Development in paragraph 3.12.1 of the Report. Indeed that critical paragraph simply did not address the spatial strategy and locational policy of the Neighbourhood Plan. The same error vitiates the paragraphs 4.1 to 4.3 of the Report. As a result of the misleading advice given both in the Report and orally, the Defendant failed to understand those policies and to establish, on a correct understanding of those policies, whether or not the Development was in accordance with the development plan. It is evident from the transcript of the Committee's deliberations that Members were particularly concerned to understand whether or not the Development should properly be regarded as being in accordance with the relevant policies of the Neighbourhood Plan. This was a material error (see *Mansell* at [41]-[42]) and one which was liable to be fatal to the decision to grant planning permission (*Gladman Developments Limited* at [21]).
75. I conclude that the Claimant has made out Ground 1 of its claim.

Ground 2

Submissions

76. Mr Lewis submitted that the advice given by the planning officer in paragraph 3.10.3 of the Report was materially misleading and compounded the misinterpretation of the relevant policies of the Neighbourhood Plan which was the subject matter of Ground 1 of the claim.
77. In paragraph 3.10.3 of the Report, the planning officer had advised the Committee that the tilted balance under paragraph 11(d) of the NPPF applied in the case of the Development. The planning officer gave two reasons for that advice. The first was that the tilted balance was engaged by the fact that some of the Defendant's relevant adopted planning policies (i.e. policies CS1, CS2 and H7) had been found to be out-of-date for the purposes of applying the policy presumption in favour of sustainable development. The second reason was that the Neighbourhood Plan could not be given significant weight in applying the tilted balance, because that Plan did not contain policies and allocations to enable Thurston to make its contribution to meeting the housing need identified in the Draft Plan; and so failed to satisfy paragraph 14(b) of the NPPF.

78. Mr Lewis submitted that in advising in the context of paragraph 11(d) of the NPPF whether the most important development plan policies for determining the planning application for the Development policies were out-of-date, the planning officer had ignored Policy 1 of the Neighbourhood Plan. Yet for the reasons given under Ground 1, Policy 1 was the most important and relevant policy. Mr Lewis relied on *Wavendon Properties Limited v Secretary of State for Housing, Communities and Local Government* [2019] PTSR 2077; [2019] EWHC 1524 (Admin) at [55]-[58] in support of his submission. In order properly to decide whether the tilted balance was engaged in this case, it was necessary for the planning officer to include Policy 1 of the Neighbourhood Plan within his assessment of whether or not the development plan policies which were most important to the determination of the planning application for the Development were out-of-date. Assuming a correct interpretation of Policy 1 of the Neighbourhood Plan, the relevant question in this case was not whether “some” of the Defendant’s relevant adopted planning policies were out-of-date; the relevant question was whether the “policies which are most important for determining the application” were out-of-date. Policy 1 of the Neighbourhood Plan was unarguably at the forefront of such policies, but had been left out of account because of planning officers’ failure to grasp its true significance (see Ground 1).
79. Mr Lewis also criticised the planning officer’s advice on the application of paragraph 14(b) of the NPPF in this case. He submitted that the planning officer had failed to recognise the context in which paragraph 14 of the NPPF arose for consideration. Paragraph 14 arose for consideration only in a case in which the tilted balance had been engaged under paragraph 11(d) of the NPPF. Had planning officers approached that prior question on a proper understanding of Policy 1 and of the relevance and significance of that up-to-date policy of the statutory development plan to the determination of the planning application for the Development, there would have been no question of the tilted balance being applied here. In any event, the Neighbourhood Plan satisfied three of the four requirements stated in paragraph 14 of the NPPF; and the planning officer’s analysis of the position in relation to paragraph 14(b) was vitiated by his misunderstanding of Policy 1 and the underlying strategy and objectives of the Neighbourhood Plan. It was clear from chapter 4 of that Plan that Policies 1 and 2 had been prepared to ensure that the *identified* housing requirement for Thurston at the time of the Plan’s preparation and adoption could and would be delivered within the development strategy stated in Policy 1 of the Plan.
80. For the Defendant, Mr Cosgrove emphasised that it is a question of planning judgment in the given case whether, in the context of paragraph 11(d) of the NPPF, those development plan policies which are most important for determining the application are out-of-date: see *Wavendon Properties Limited* at [58]. In the present case, planning officers had correctly identified those policies which were acknowledged to be out-of-date and those which were rightly to be regarded as up-to-date. The latter included the policies of the Neighbourhood Plan, including Policy 1 of that Plan. Planning officers were acting well within the scope of their legitimate planning judgment in concluding that because the most relevant policies of the Core Strategy and the Local Plan were no longer up-to-date, the tilted balance was engaged in this case.
81. Turning to paragraph 14 of the NPPF, Mr Cosgrove pointed out that it was not enough that the Neighbourhood Plan fulfilled paragraphs 14(a), (c) and (d) – as the planning officer had expressly acknowledged on pages 78 and 79 of the Report. It was clear from

paragraph 14 that in case in which the tilted balance applies to a case involving the provision of housing, all of the circumstances stated in 14(a)-(d) must be found to apply if the adverse impact of allowing development that conflicts with a neighbourhood plan is to weigh significantly against the presumption in favour of sustainable development under paragraph 11(d) of the NPPF.

82. In the present case, planning officers' advice in the Report that the Neighbourhood Plan "does not meet its identified housing need as now expressed in the Draft Joint Local Plan Preferred Options Document of 2019" and "does not of itself identify a minimum housing requirement" made it clear why paragraph 14(b) of the NPPF was not fulfilled in the case of the Neighbourhood Plan. Consequently the Defendant's application of the presumption in favour of sustainable development, the tilted balance under paragraph 11(d) of the NPPF, was justified in the case of the Development.
83. For the Interested Party, Mr Tucker made submissions supporting the Defendant's response to this ground of challenge.

Discussion and conclusions

84. In [55] of *Wavendon Properties Limited*, Dove J recorded the submission of Counsel as to the exercise required by paragraph 11(d) of the NPPF in relation to the assessment of the question as to whether the policies which were of most importance for determining the application were out-of-date –

"the first step was to identify which were the policies which were most important for determining the application. Having done so, it is then necessary for the decision-taker to examine each of those policies, applying the Framework and the approach in the Bloor Homes case [2017] PTSR 1283, to see whether they are out-of-date. Having done so, the next step required by paragraph 11(d) is an assessment of all the basket of policies most important to the decision in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. If they were out-of-date then the presumption would be triggered".

85. Having stated that he accepted that interpretation of the exercise required of the decision-taker under paragraph 11(d) of the NPPF as being correct, at [58] Dove J said

"It needs to be remembered, in accordance with the principles of interpretation set out above, that this is a policy designed to shape and direct the exercise of planning judgment. It is neither a rule nor a tick box instruction. The language does not warrant the conclusion that it requires every one of the most important policies to be up-of-date before the tilted balance is not to be engaged. In my view the plain words of the policy clearly require that having established which are the policies most important for determining the application, and having examined each of them in relation to the question of whether or not they are out of date applying the current Framework and the approach set out in the Bloor Homes case, an overall judgment must be formed as to whether or not taken as a whole these policies are to regarded as out-of-date for the purpose of the decision. This approach is also consistent with the Framework's emphasis (consonant with the statutory framework) that the decision-taking process

should be plan-led, and the question of consistency with the development plan is to be determined against the policies of the development plan taken as a whole. A similar holistic approach to the consideration of whether the most important policies in relation to the decision are out-of-date is consistent with the purpose of the policy to put up-to-date plans and plan-led decision-taking at the heart of the development control process. The application of the tilted balance in cases where only one policy of several of those most important for the decision was out-of-date and, several others were up-to-date and did not support the grant of consent, would be inconsistent with that purpose”.

86. In my view, it is necessarily implicit in the approach approved by Dove J in *Wavendon Properties Limited* that, in order properly to determine whether the development plan policies which are most important for determining the application are out-of-date, the decision-taker must be correctly advised as to the interpretation of those policies. The decision-taker must base its overall conclusion on the question whether the tilted balance applies on a correct interpretation of each of those policies that are candidates for inclusion in the “basket” of policies most important to the decision to be taken. Otherwise, the decision-taker will not be in a sound position properly to evaluate the relative importance of each of the policies which fall to be considered for that purpose. Consequently, any conclusion as to the relative importance of those policies taken together will almost certainly be unreliable for the purpose of making the overall judgment required under paragraph 11(d), as to whether the presumption in favour of sustainable development – the tilted balance – should be applied to the determination of the planning application under consideration.
87. In the present case, Policy 1 of the Neighbourhood Plan was unarguably a candidate for inclusion in the basket of development plan policies for the purposes of the Defendant’s consideration whether the tilted balance was to be applied in the determination of the planning application for the Development. At least arguably, as the principal relevant policy in that component of the development plan which was *prima facie* up-to-date, Policy 1 of the Neighbourhood Plan was of critical importance to the overall judgment required under paragraph 11(d) of the NPPF. It was of particular importance to the proper exercise of that overall judgment in accordance with the approach approved by Dove J in *Wavendon Properties Limited* that planning officers should find their own judgment and their advice to the Committee on a correct interpretation of Policy 1 of the Neighbourhood Plan.
88. For the reasons I have already given in my discussion of Ground 1 of this claim, that was not what happened. The issue, therefore, is not the breadth of the planning judgment offered to the decision-taker in the given case as to whether, in the context of paragraph 11(d) of the NPPF, those development plan policies which are most important for determining the application are out-of-date. The issue is whether the exercise of that planning judgment in the present case is likely to have been vitiated by the legal error which I have found to be made out under Ground 1. Given firstly, the central importance of Policy 1 of the Neighbourhood Plan to the determination of the planning application, and secondly, the Defendant’s misinterpretation of that policy and of its significance to the assessment of the Development under section 38(6) of the PCPA, I am driven to the conclusion that the application of the tilted balance under paragraph 11(d) of the NPPF in this case has been shown to have been legally flawed.

89. For those reasons, I conclude that Ground 2 of the claim is made out. It is not strictly necessary for me to address the issue arising in relation to paragraph 14 of the NPPF, since it is clear that paragraph arises for consideration only in a case in which the tilted balance has been judged on a proper legal basis to apply to the proposed development. It will be for the Defendant upon reconsideration of the planning application in the light of this judgment to determine afresh whether the tilted balance applies to the Development.
90. Nevertheless, I should state my conclusions on the issues that arose in relation to paragraph 14 of the NPPF. I accept Mr Cosgrove's submission that if the adverse impact of allowing development that conflicts with a neighbourhood plan is to weigh significantly against the presumption in favour of sustainable development under paragraph 11(d) of the NPPF in a case involving the provision of housing, all of the circumstances stated in 14(a)-(d) of the NPPF must be found to apply. Contrary to Mr Lewis's submission on that issue, the terms in which paragraph 14 is expressed make it clear that partial fulfilment of those conditions is insufficient for that purpose.
91. In my view, however, there is much greater force in Mr Lewis' argument that the planning officer's analysis of the position in relation to paragraph 14(b) of the NPPF was vitiated by his misunderstanding of Policy 1 and the underlying strategy and objectives of the Neighbourhood Plan. It seems to me that the principal reason given in the Report for the advice that paragraph 14(b) was not satisfied in this case is undermined by the very misunderstanding of Policy 1 and the Neighbourhood Plan's underlying strategy and objectives which I have found to be established under Ground 1. The question raised by paragraph 14(b) of the NPPF is whether the Neighbourhood Plan has made adequate provision for the housing requirement that was identified for the purposes of its preparation. It is, in my view, difficult to see how the Neighbourhood Plan's lack of allocations to meet Thurston's housing need as now identified in the Draft Plan (the emerging Joint Local Plan) is material to that question. As I have found, the Neighbourhood Plan clearly explains that its spatial strategy and policies for housing development are founded upon the existing pipeline of housing which is expected to be delivered during the early years of the Plan. For that reason, it is not expected that there will be the need to make provision for further general housing development beyond the defined settlement boundary (expanded as it was to embrace the housing sites permitted during 2017). The general guidance given in paragraphs 096 and 097 of the PPG (to which the Report referred) does not show that the approach taken by the Neighbourhood Plan was insufficiently positive to fulfil the requirements of paragraph 14(b) of the NPPF.
92. In my view, it was necessary for planning officers to address those matters upon a proper understanding of Policy 1 of the Neighbourhood Plan and of the underlying spatial strategy and objectives which are the foundation for that policy in that Plan. For the reasons I have given in addressing Ground 1, I have concluded that they did not put themselves in the position to do so.
93. I conclude that Ground 2 is also made out.

Ground 3

94. I can deal with Ground 3 relatively briefly. In short, I agree with Mr Cosgrove and Mr Tucker that it is misconceived.

95. That misconception is evident from the very terms of section 38(6) of the PCPA itself. It is beyond argument that a policy or proposal in a draft or emerging development plan, that is to say a plan that is under preparation under the statutory procedures found in part 2 of the PCPA, is capable of being treated as a material consideration within the meaning of section 38(6) of the PCPA. In other words, in an appropriate case where the planning circumstances are judged to merit it, such a policy or proposal may lawfully be brought into account and evaluated as a material consideration in the determination of an application for planning permission.
96. It must follow that it is in accordance with the legislative intention of the PCPA that a determination may be made in favour of the grant of planning permission for development which, to a greater or lesser degree, limits or even closes off consideration of the appropriateness of a current proposal to allocate the application site in an emerging development plan. Moreover, it must also follow that it is in accordance with the legislative intention of the PCPA to make such a determination even in a case where the effect may well be to limit or to deny the opportunity to debate the credentials of the site in question either in its own right or in comparison to other candidate sites either proposed in the draft plan or advocated for inclusion by those objecting to the draft plan.
97. As a matter of policy, paragraphs 47 to 50 of the NPPF provide planning authorities with a measure of control in certain cases where the “prematurity” of the planning application in the context of the emerging plan is judged to be likely to undermine the plan-making process and the draft plan is at a sufficiently advanced stage in its preparation. It is common ground that the present case does not fall within the scope of paragraph 49 of the NPPF.
98. The legal flaw in the present claim is not that the Defendant gave weight to the emerging policies of the Draft Plan: the Defendant was entitled to take those emerging policies into account, insofar as they were relevant to the determination of the planning application for the Development and to give such weight to those emerging policies as it judged to be appropriate. The legal flaw was the Defendant’s failure correctly to understand the principal, relevant policy of the up-to-date component of the statutory development plan, which in this case was Policy 1 of the Neighbourhood Plan. As a result, the Defendant failed to make a proper determination whether or not the Development was in accordance with the development plan; and so failed in its statutory duty to determine the planning application in accordance with the development plan unless material considerations indicated otherwise.
99. Ground 3 must be rejected.

Application to admit further evidence

100. Following the hearing of this claim, on 20 December 2021 the Claimant made an application to admit further evidence in support of its case under Grounds 1 and 3. The further evidence consisted of correspondence dated 9 December 2021 and 10 December 2021 between the planning inspectors appointed to consider the soundness of the Draft Plan and the Defendant. It is obvious that the correspondence came into existence long after the grant of the planning permission that is the subject matter of this claim; and long after the Defendant’s Committee resolved to grant planning permission for the

Development on the recommendation of planning officers in the Report and orally at its meeting on 29 January 2020.

101. The asserted basis upon which the Claimant seeks to admit the correspondence is that it “*forcibly corroborates*” the Claimant’s submissions, essentially because it is said that the letter date 9 December 2021 from the inspectors casts doubt on the soundness of the emerging housing policies in the Draft Plan; and so adds force to the Claimant’s complaints about the validity of the Defendant’s reliance on the asserted direction of travel of that Draft Plan, in order to justify the grant of planning permission for the Development.
102. Both the Defendant and the Interested Party oppose the application to admit this further evidence and invite me to dismiss it. The Defendant relies on the established principle that save in certain exceptional circumstances, the Court will not receive documentary evidence in a judicial review claim which was not available to the decision maker at the time of the decision under challenge.
103. I refuse the Claimant’s application to admit fresh evidence. I can see no proper basis upon which it would be appropriate for me in deciding this claim for judicial review to take account of the December 2021 correspondence between the planning inspectors and the Defendant. I accept the Defendant’s submissions in its written response to the Claimant’s application. I have not taken any account of the exchange of correspondence between the planning inspector and the Defendant in my consideration of this claim for judicial review.

Relief

104. Both the Defendant and the Interested Party drew my attention to the robustness of the planning officer’s evaluation of the planning balance in paragraphs 4.1 to 4.3 of the Report. In particular, it was submitted that there is no challenge to the evaluation in paragraph 4.3 of the Report of the benefits that the Development alone is able to bring through delivery of the highway improvement works at Thurston which are themselves a key objective of the Neighbourhood Plan. This is a case in which there were powerful other material considerations which would have prevailed with the Defendant’s Committee in any event, given the Neighbourhood Plan’s own acknowledgement that it was likely to require early review following and in the light of the adoption of the Joint Local Plan.
105. Whilst I can see some force in these submissions, I am in no doubt that the consequence of my conclusions on Grounds 1 and 2 is that I should grant this application for judicial review. The Planning Permission must be quashed and the planning application for the Development reconsidered by the Defendant, on the basis of the correct interpretation of Policy 1 of the Neighbourhood Plan and that the release of the Site for general housing development is not in accordance either with that policy or with the underlying spatial strategy and objectives of that Plan. I am satisfied that this is a case in which the Defendant’s Committee was materially misled by the advice it received; and the Defendant’s failure to comprehend the principal, relevant policy of the development plan must be taken to have been fatal to its decision to grant the Planning Permission: *Gladman Developments Limited* at [21] per Lindblom LJ.

106. I should like to record my thanks to Counsel and their respective teams for the clear and helpful way in which the case was presented and argued.
107. This claim is allowed.