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Case No: CO/4198/2016

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

Leeds Combined Court Centre,
1 Oxford Road, Leeds, LS1 3BG

30/03/2017

B e f o r e :

HER HONOUR JUDGE BELCHER

Between:

THE QUEEN

(On the application of David Tate)

Claimant

- and -

NORTHUMBERLAND COUNTY COUNCIL

Defendant

Miss Annabel Graham Paul (instructed by Harrison Grant Solicitors) for the Claimant
Mr Juan Lopez (instructed by Northumberland County Council Legal Services) for the Defendant
Hearing date: 22 February 2017

HTML VERSION OF JUDGMENT 

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Her Honour Judge Belcher :

1. This is a judicial review of the Defendant's decision dated 6 July 2016, taken by its strategic planning committee, to grant outline planning permission for the erection of a two-storey, five bed residential dwelling with associated curtilage, parking and access, on land west of Bramblings, Tranwell Woods

near Morpeth (the "Decision"). All references to the trial bundle in this judgment will be by capital letter "B" followed by the relevant page number.

2. This is the third challenge by way of judicial review to the grant of outline planning permission for this development. The original decision was quashed by this court (CO/6007/2014) on 3 March 2015 because the Defendant had failed properly to apply the relevant Green Belt policy. Following the quashing of the planning permission, the Defendant re-determined the matter, and the further grant of planning permission was quashed by this court on 16 April 2016 because the Defendant had failed to apply policy H7 of the local plan (CO/178/2016). This judicial review is a challenge to the second redetermination. The Claimant accepts that the specific errors which resulted in the previous planning permissions being quashed, have not been repeated.
3. There is no dispute between the parties that the land in question is within the Green Belt, and that accordingly the provisions of the National Planning Policy Framework ("NPPF") relating to the protection of Green Belt land apply. The relevant paragraphs are 79 to 92 of the NPPF (B:509-511). The NPPF notes that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Green Belt also assists in safeguarding the countryside from encroachment. By definition, a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (Paragraphs 89 and 87 NPPF). However, paragraph 89 NPPF includes a list of exceptions in which new buildings will not necessarily be considered inappropriate. It follows that in cases falling within the exceptions in paragraph 89 NPPF, it is not necessary for there to be very special circumstances before planning permission is granted. The exceptions listed in paragraph 89 NPPF include "limited infilling in villages". The Decision in this case in favour of the grant of planning permission was based on that exception, namely that the proposed development amounted to limited infilling in a village.
4. That Decision is challenged in these proceedings both in relation to the conclusion that Tranwell Woods is a "village", and in relation to the conclusion that the proposal constitutes "limited infilling". The grounds of the challenge are that in reaching its decision the Defendant has
 - i) misinterpreted the meanings of "village" and "limited infilling" in the context of policy,
 - ii) that the decision is irrational on the facts,
 - iii) that the decision is inconsistent with other decisions and other parts of the Officer's report (the "OR") which was prepared for the planning committee, and further is inconsistent with the recently adopted Neighbourhood Plan,
 - iv) that the decision is inadequately reasoned.
5. There was a dispute between counsel as to whether the challenge based on inadequacy of reasons was directed only to "limited infilling", or whether it also extended to "village". Whilst the grounds listed at paragraph 10 of the Grounds of Challenge (B:11) appear to challenge the inadequacy of reasons in relation to both aspects of the matter, the detail given in relation to the inadequacy of reasons in paragraph 18 of the Grounds (B:18) is directed to the absence of reasoning in relation to "limited infilling". In response to questions from me, Miss Graham Paul conceded that the reasons challenge could only properly be directed to the question of "limited infilling", and she made no application to amend to extend the reasons challenge to "village".
6. I also sought clarification from Miss Graham Paul as to paragraph 20 of her Grounds (B:15) which, at least on one reading, appears to be inviting this Court to provide an appropriate definition of village: ".....So that a consistent interpretation can be adopted". It is no part of the function of this Court to provide definitions for terms which the legislature has deliberately chosen not to define. Miss Graham Paul accepted that she was not asking for an authoritative definition from this Court.
7. There was one further matter which required clarification. Miss Graham Paul characterises the OR, and the Decision made in reliance upon it, as "...trying to squeeze a square peg into a round hole in order to get around the Green Belt status of the site". In response to questions from me, Miss Graham Paul

accepted that she was not asserting improper motivation or malfeasance either by the officer or the strategic planning committee. She advised me that she had used the description of a square peg into a round hole simply to indicate that Tranwell Woods would not fit into the definition of village, and to illustrate that it was irrational.

The Law

8. The parties helpfully provided me with an agreed chronology and an agreed summary of legal propositions. The following is taken from that document. The NPPF is a mandatory material planning consideration in decision taking. The interpretation of planning policy, including the NPPF, is a matter of law for the court (**Tesco Stores Ltd v Secretary of State for the Environment** [1995] 1WLR 759 at 780). Whether or not a proposed development constitutes limited infilling in a village for the purposes of paragraph 89 NPPF is a question of planning judgement and the answer to that question would depend upon an assessment of the position on the ground (**Wood v Secretary of State for Communities and Local Government and Gravesham BC** [2015] EWCA Civ 195 at [12]).
9. The purpose of an OR is not to decide the issue in question, but to inform the Members of the relevant considerations relating to the application. When challenged, planning officers' reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute. What is required is a fair reading of the planning officer's report as a whole. In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who by virtue that membership, may be expected to have a substantial local and background knowledge". (**R v Mendip DC ex parte Fabre** (2000) 80 O & CR 500 at 500).
10. Reasons must be intelligible and adequate (**University of Bristol v North Somerset Council** [2013] EWHC 231 (Admin). Reasons must be given on the principal controversial issues (**South Bucks v Porter (No 2)** [2004] 1 WLR 1953 at [41]-[42]). It is for the Claimant to satisfy the court that any lacuna in the stated reasons is such as to raise a "substantial doubt" as to whether the decision affords a ground for quashing. Reasons can be briefly stated (**R (oao Birchall Gardens LLP v Hertfordshire CC** [2016] EWHC 2794 (Admin) [at 72, 82]).
11. In addition to the above which was taken from the "Agreed Legal Propositions" document, there is no dispute that whilst the interpretation of planning policy, including the NPPF, is a matter of law for the court, the weight to be given to the NPPF and the application of it is a matter of judgement for the decision maker, subject to the bounds of rationality. The role of the court is, of course, restricted to a review of the lawfulness of the decision, and it is not for the court to make its own assessment of the merits. Matters of planning judgement are within the exclusive province of the local authority.

The "Village" Challenge

12. Part of Miss Graham Paul's case was that the question of what amounts to a village is to be construed restrictively, bearing in mind that the purpose of the NPPF is to protect Green Belt. She submitted that the purpose of the exception is the promotion of a policy of continued vitality and operation of villages in the Green Belt, by making a village more dense, rather than permitting sprawling development into countryside. She submitted that the government could have referred to areas of development in close proximity to a village in the NPPF had it wanted to do so, but it chose the word "village" in the exception. She submitted the word "village" must be there for a reason.
13. Whilst paragraphs 80-92 of the NPPF are headed "Protecting Green Belt land" and are plainly directed to construction of new buildings generally being inappropriate in Green Belt, the exceptions listed in paragraph NPPF are precisely that, "exceptions". They are entirely separate from paragraph 87 which requires that inappropriate development should not be approved except in very special circumstances. The exceptions listed in paragraph 89 are exceptions to the requirement that a local planning authority should regard construction of new buildings as inappropriate. In those circumstances, in my judgment, the exceptions are to be construed on their face, and the general policy restricting development in the Green Belt does not assist when considering what is a "village".
14. Tranwell Woods is set within an area of open countryside, located approximately 3 km from Morpeth. This wooded landscape includes dwellings of low density set in extensive grounds (OR paragraph 7.1;

B:342). Paragraphs 7.18 - 7.22 of the OR address the issue as to what might constitute a village and, given the arguments in the case, I consider it appropriate to set them out in full in this judgment:

"7.18 At paragraph 89 of the NPPF 'exception' is the development of a new building that constitutes limited infilling within a village. It is considered that the proposed development would indeed fall within this prescribed exception, thereby not constituting inappropriate development. It follows that very special circumstances need not be demonstrated in respect of the development.

7.19 For the above purposes, a "village" is not defined under the NPPF. Nor is a "village" specifically defined by the development plan, including the Neighbourhood Plan (which identifies some villages, but does not purport to provide an exhaustive list or definition). The same is true in respect of the phrase "infill development". Ultimately a judgment is required to be made as regards what does and does not amount to (limited) infill development within a village. Whilst not providing for any planning-specific classification, the 2011 Rural Urban Classification (RUC) issued by the Department for Environment Food & Rural Affairs, does however seek to explain how a "village" may be characterised. In part, the RUC defines villages as a cluster of dwellings. Further to this, within the characterised hierarchy, the RUC regards a cluster of 3 to 8 farmsteads as a hamlet. Villages, by contrast, disclose a core and are defined on the basis of a distinctive density profile (the different categories of settlement are thus identified on the basis of form, not on the basis of population).

7.20 A cluster of farms that may qualify as a hamlet may equally form part of a group of dwellings that is sufficiently substantial to satisfy density profile guidance as to be regarded as a village. Some small clusters of properties may however neither be classified as a hamlet or a village. These may include traditional rural settlement forms such as isolated farmsteads, with or without additional dwellings, other isolated dwellings and small groups of dwellings such as single terraces that are associated with former mining or rural industrial activity.

7.21 Tranwell has in the region of 27 residential units. Contrastingly, Tranwell Woods has approximately 45 residential units.

7.22 Having regard to the above factors and to all relevant site and geographical location-specific factors, it is adjudged that Tranwell Woods constitutes a "village" for the purposes of applying the paragraph 89 NPPF 'exception' of the limited infill development within a village that does not amount to inappropriate development in the Green Belt. This is so, also having considered previous decisions (including on appeal) made in respect of proposed residential development of the site, and the (appended) June 2016 correspondence received from Dr Tate on this point." B:345-346.

15. There is no dispute that the OR correctly states the position that there is no definition of "village" in the NPPF or other relevant planning documentation. However, Miss Graham Paul submitted that Tranwell Woods cannot, on any sensible interpretation of the word "village", be described as such. She points to descriptions of Tranwell Woods elsewhere in the OR which she submitted are inconsistent with the part of the OR concluding that it is proper to describe Tranwell Woods as a village. In particular she points to paragraphs 7.1 and 7.10 of the OR. At paragraph 7.1 (B: 342) Tranwell Woods is described as an area of open countryside, and as a wooded landscape including dwellings of low density. At paragraph 7.10 (B: 344) it is accepted that Tranwell Woods is outside settlement boundaries, in open countryside, and is described as a small settlement, in contradistinction to Morpeth and Mitford which are described as neighbouring villages.
16. Miss Graham Paul further relied upon the Neighbourhood Plan which lists Hebron, Mitford, Pegswood and Hepscoth as villages. At paragraph 7.19 of the OR, the officer suggests that the Neighbourhood Plan identifies some villages, but does not purport to provide an exhaustive list or definition (B: 345). Miss Graham Paul also pointed to the fact that in the earlier application which was quashed on the basis of the failure properly to apply Green Belt policy, there was no suggestion by the planning officer

that Tranwell Woods was a village. As I understand it, Mr Carter has been the planning officer dealing with this site throughout the planning process.

17. In her skeleton argument, Miss Graham Paul set out a number of sources which she submitted might provide information/guidance to assist the Court in interpreting the term "village". She refers to the Highways Agency guidance which states "It is recognised that there is a variety of widely different circumstances regarding the characteristics of villages across the country, which makes the task of village definition difficult" (B:148). The Highways Agency guidance defines village as a settlement having 20 or more houses on a road frontage and minimum length of 600 m. In those cases, a 30 mph speed restriction is imposed (B:148).
18. DEFRA's 2011 Rural Urban classification ("RUC") which was referred to in the OR, defines villages as a cluster of dwellings and regards a cluster of 3 to 8 farmsteads as a hamlet. It states that villages, by contrast, disclose a core and are defined on the basis of a distinctive density profile. As was correctly pointed out in the OR, the definitions within the RUC are not provided for planning purposes. In her skeleton Miss Graham Paul also cites the BBC's Domesday Project which defined a village by reference to its amenities, for example a church or a village hall (B:156). She also cites Wikipedia's entry for settlement hierarchy which provides that "... a village is a human settlement or community that is larger than a hamlet but smaller than a town. A village generally does not have many services, most likely a church or only a small shop or post office. The population of a village varies, however, the average population can range from hundreds to thousands" (B:157).
19. Whilst accepting that there is no one definition of a village, Miss Graham Paul submitted that in interpreting Green Belt policy, and giving the word 'village' its ordinary reasonable meaning, for a settlement to be considered a village it must have at least one of the following: a clear core, boundaries, an evolution of different housing types and styles, basic services, highway frontage, or a population of between hundreds and thousands. Her skeleton characterise this submission as "must have" at least one of those criteria. In her oral submissions, she accepted the position was more nuanced. She accepted that no one factor was determinative, but she submitted that a village should have at least one of those criteria.
20. In the course of Miss Graham Paul submissions, I discussed with her situations in which the Court would have no hesitation in saying that a characterisation of a village was wholly irrational. I gave as an extreme example, a decision that described the City of Leeds as a village. Equally a single farmstead in the Yorkshire Dales with no other dwellings for some miles could not, in my judgment, logically and rationally be described as a village. Nor could an area of forest or woodland, containing no buildings, be properly described as a village. Those I suggested to her are the black-and-white cases, but that in the grey areas in between, where different people might describe a given settlement in different ways, those it seemed to me were matters of planning judgement. Whilst accepting that the extremes would be obvious and present the court with no real difficulty, Miss Graham Paul submitted that any decision that a settlement which did not have one of the characteristics which I have listed in paragraph 19 above was nevertheless a village, was wholly irrational and one which the Court could and should set aside.
21. In her oral submissions, she went further still. She submitted that there needs to be a community, something to identify a settlement as a village, rather than as a disparate collection of properties. She suggested, by way of example, that there should be history as a village, or a cohesive settlement with links between the properties. She submitted that in this case there is a wood full of trees with low-density executive housing in clearings. She submitted that no one in the council points to what it is about Tranwell Woods that makes it village. That, it seems to me, is close to a reasons challenge which I am not dealing with.
22. In response, Mr Lopez on behalf of the Defendant submitted that the assessment of what constitutes a "village" is a planning judgement, necessarily arrived at through an assessment undertaken of the position on the ground. Whilst acknowledging that the interpretation of policy is ultimately a matter of law, he submitted that the term 'village' is inextricably judgement led and is, inevitably, case-sensitive, responsive to the often unique geography and circumstances of an area. Mr Lopez submitted that the decision made by the Defendant in this case is firmly within the grey areas described in my discussion

with Miss Graham Paul, and is firmly a matter of planning judgement, and not a matter for this Court since it cannot be said to be irrational. He reminded me that matters requiring the exercise of judgement applied to a given set of facts can only be challenged on the grounds of irrationality.

23. Mr Lopez submitted that in essence the Claimant's case amounts to no more than that the Claimant does not agree with the decision of the planning authority. That of course is insufficient to give rise to grounds for a challenge. In the absence of an authoritative planning definition of a "village", Mr Lopez submitted that the court cannot possibly proceed to find irrationality. He submitted that there is no firm line, such that I could possibly conclude that as a minimum, a village must have one the items contained in Miss Graham Paul's list.
24. In the course of discussion with me, Miss Graham Paul accepted that it would be possible to have a situation where two or more of the criteria in her list exist, but it would still be open to a planning authority to rationally conclude that the area in question was not a village. I put to her the situation of two or three houses, fronting a road and with a bus stop close by, and she accepted it would be open to the planning authority rationally to conclude that was not a village. She also accepted in response to questions from me that settlements can change their status over time and that it would be open to a planning authority, in appropriate circumstances, to conclude that a settlement which was not previously considered a village, was now a village, or vice versa.
25. In my judgment, that discussion and Miss Graham Paul's responses, served to emphasise that the question of whether a given settlement is, or is not, a village, is inevitably a matter of planning judgement. The fact that different members of the public, or indeed a different planning authority might take a different view of the matter does not undermine the planning judgment unless it can properly be said to be irrational, that is a decision that no reasonable planning authority could have reached, or in the words of Sedley J (as he then was) in **R v Parliamentary Commissioner for Administration, ex-parte Morris and Balchin** [1997] JPL 917 at 927 "..... a decision which does not add up - in which, in other words, there is an error in reasoning which robs the decision of logic".
26. Mr Lopez submitted that the Claimant cannot point to any single characteristic and say that as long as you have got that, by definition there is a village. He submitted there could be many scenarios where something that was previously a village might no longer be considered a village. He submitted that illustrates the absurdity of trying to tie down what is a matter of planning judgment. He submitted that the list put forward by Miss Graham Paul quite wrongly fetters the planning judgement decision maker. He illustrated this by reference to Miss Graham Paul submissions that Tranwell Woods is not a village, but rather woodland comprising 45 dwellings in an area with trees. Mr Lopez asked the rhetorical question "How many trees are too many such that an area should be characterised as woodland rather than a village?" He submitted that in her skeleton Miss Graham Paul is trying to suggest that Tranwell Woods is in fact a hamlet, another settlement type for which there is equally no definition. He suggested I was being invited to rule, in effect, that this is a hamlet whereas there is nothing in the skeleton to support any decision as to why this is a hamlet.
27. In my judgment I cannot possibly conclude that a village must have at least one of the items on Miss Graham Paul's list, or that in the absence of at least one of the criteria in her list, a decision that a particular settlement amounts to a village is, therefore, irrational. There is no proper basis upon which I could conclude that any of the criteria is required. It would amount to my own subjective view and, in effect, a review of the decision itself (which is not the function of judicial review) rather than a review of the decision making process (which is the function of judicial review). In my view Miss Graham Paul's list is inevitably subjective, and the subjective decisions to be made on the facts of this case are properly to be made collectively by those exercising planning judgement.
28. Nor do I accept the submissions that the OR is internally inconsistent as to whether Tranwell Woods amounts to a village. On the contrary, the OR properly set outs the nature of the area in question, which is plainly relevant background information for the planning committee. I accept Mr Lopez's submission that the description of the area as being open countryside is not necessarily mutually exclusive to a finding that Tranwell Woods is a village. Similarly, pockets of woodland or a woodland area, or indeed a collection of trees, does not necessarily preclude the finding of a village which extends to the area covered by those trees. Whilst some, including plainly the Claimant, would regard the building of

homes in extensive plots within woodland clearings as wholly inconsistent with the finding of a village, others, including the planning committee, would not necessarily do so.

29. I do not consider that the Neighbourhood Plan sets out to list all villages in the area. There is nothing within it to support that, and accordingly the fact that Tranwell Woods is not listed as a village in the Local Plan, does not inform the planning decision as to whether it is a village for the purposes of the Green Belt exception for limited infill in villages. I reject the submission that the decision is irrational on the basis of inconsistency with the Local Plan.
30. Whichever way I approach this question, I am driven to the conclusion that it is ultimately a matter of planning judgement whether Tranwell Woods is a village for the purposes of the Green Belt policy. Whilst others may not agree with the OR and the planning committee that Tranwell Woods is a village, the decision is a planning decision for the planning committee and, in my judgment, there are no grounds on which I could properly find the conclusion that Tranwell Woods is a village is irrational, or outside the bounds of a decision that a reasonable decision maker could hold.

The "Limited Infill" Challenge

31. Miss Graham Paul accepts that the question of whether the proposed development amounted to limited infilling is a matter of planning judgement. However, she submits that the decision that this development is limited infilling is irrational and inconsistent with a previous decision of a planning inspector in 2008 that a development on this site was not infill development. She also challenges this aspect of the decision on the basis of a complete absence of reasoning.
32. Following discussion in the OR which expressly explored possible features of what amounts to a village, the OR concludes as follows at paragraph 7.22:

"..... It is adjudged that Tranwell Woods constitutes a "village" for the purposes of applying the paragraph 89 NPPF 'exception' of limited infill development within a village that does not amount to inappropriate development in the Green Belt. This is so also having considered previous decisions (including on appeal) made in respect of proposed residential development of the site and the (appended) June 2016 correspondence received from Dr Tate on this point" (B:346)

It is clear from paragraph 1.3 of the OR that two previous planning appeal decision letters were appended to the OR, including in particular the decision of planning inspector Peter Davies dated 9 January 2009 (reference: APP/T2920/A/08/2077934). Accordingly, the reference in the OR at paragraph 7.2 to having considered previous decisions, including on appeal, must be a reference to those decisions, copies of which were available to the members of the strategic planning committee.

33. Inspector Davies' appeal decision relates to exactly the same site with which this case is concerned. At paragraph 10 of his decision letter he states as follows:

"The appellant considers the site to be an acceptable form of infill development. No specific definition of acceptable "infill" development is included in the LP documentation before me. None appears in PPS3. The site is enclosed on three sides by dwellings with Belt Plantation to the south, and with an extended shared access from the C151. The development intended does not represent a gap in an otherwise undeveloped (sic) frontage on the C151 through Tranwell Woods- this, in my view, one reasonable test of infill development." (B: 362- 363)

Counsel agreed with me that there is a typographical error and that the paragraph only makes sense if the final sentence I have quoted reads "The development intended does not represent a gap in an otherwise **developed** frontage....." (my emphasis)

34. Miss Graham Paul submitted that in the light of the previous decision by planning Inspector Davies that development on the site was not infill, it was incumbent upon the OR/strategic planning committee to give reasons to support their decision, particularly in circumstances where the conclusion is inconsistent with the previous decision of a planning inspector on appeal. Miss Graham Paul submitted

that the decision of the previous planning inspector must be a material consideration in the context of the application on the same site.

35. She further submitted that the OR fails to explain how the development can be classed as "infill" given the low density development, the extensive grounds and the fact that the site is surrounded by woodland. She submitted that as this is considered to be appropriate development in the Green Belt, there should be proper reasoning to support that conclusion.
36. Mr Lopez submitted that the term "limited infilling" does not require defining in an OR. He submitted it is a concept that is plain to officers and experienced decision-makers and that applying the concept to any development will involve a matter of planning judgement. He referred me to paragraph 12 of the judgement of Sullivan LJ in **Julian Wood v Secretary of State for Communities and Local Government** [2015] EWCA Civ 195 which states as follows:

"Before this court it was common ground that whether or not a proposed development constitutes limited infilling in a village for the purpose of paragraph 89 was a question of planning judgement for the inspector and the inspectors answer to that question would depend upon his assessment of the position on the ground."

37. He further submitted that, in any event, there is no material or meaningful inconsistency between the decision and the earlier decision of the Planning Inspector. As the Planning Inspector noted, there is no specific definition of acceptable infill, and Mr Lopez submitted that the Planning Inspector was not holding out a definitive test of what does or does not characterise "infill development". He points to the fact that the Inspector merely touched upon "one reasonable test of infill development". He submitted that whilst it might be helpful to give reasons for a different decision, it is not required, particularly where there is no submission that the later decision is in fact an error such that the reasoning underlying it would plainly require explanation.
38. Whilst not expressly giving reasons in relation to "limited infill", Mr Lopez submitted that, when read as a whole, the OR taken together with the factors listed below, clearly provides reasons for the recommendation that the development amounts to limited landfill. Mr Lopez's relied upon the following factors:
- i) That the planning committee is a knowledgeable tribunal, and thus a knowledgeable readership of the OR.
 - ii) That this strategic planning committee was particularly experienced in determining applications for development in the Green Belt, and included a member for the ward that includes Tranwell Woods, and also members who have been involved in determining applications for residential developments within Tranwell Woods since 2008. (See Witness Statement of Tony Carter: B:104, paragraphs 8 and 9)
 - iii) That the OR is full and detailed and includes, in particular, a plan of the site in the context of the Tranwell Woods development as a whole (B: 289),
 - iv) That when Mr Carter presented his report to the strategic planning committee, he also provided a PowerPoint presentation, with slides including a detailed site location plan, clear aerial photographs that fully show the geographical location of the site in relation to its immediate and wider surroundings with the aerial photograph showing the density and layout of the dwellings within Tranwell Woods, together with the road layouts (see Witness Statement of Tony Carter at B:111, paragraphs 41 and 42), and
 - v) That the author, an experienced planning officer, had undertaken on site assessments and could properly make decisions as to infill as a matter of planning judgement, as per Sullivan LJ in **Julian Wood v Secretary of State for Communities and Local Government** ... set out at paragraph 36 above).

39. Mr Lopez submitted that the evidence that this was a knowledgeable planning committee is unchallenged. Mr Tate disputes the assertion, contained in Mr Carter's Witness Statement, that the Planning Committee included the member for the ward that includes Tranwell Woods (B:135-136,

paragraph 17). I cannot and do not need to resolve that issue. The point remains that in general terms it is not disputed that this was a knowledgeable planning committee, notwithstanding it may not have included the member for the ward that includes Tranwell Woods. Mr Lopez submitted that the relevant test is correctly set out in the OR: "limited infill development within a village" (B:348, paragraph 7.22), and that the committee had full and proper details from which they could properly consider whether this amounted to infill development. He submitted that the Claimant's complaint in this respect is a matter of form over substance and that the report is unimpeachable. He pointed out that the committee was not bound to find in accordance with the Inspector's previous decision and he submitted that there is no basis for the complaint made on the inadequacy of reasons. He submitted that the OR was not required to dissect and specifically comment upon each and every characteristic of the development and its surroundings, and that this was especially so, given the clarity of the application, and what was appreciated more generally of the site.

40. Mr Lopez submitted that the Claimant is not asserting that the decision is factually wrong, or that the decision has not taken into account specific relevant factors, or that the decision has wrongly taken into account specific irrelevant factors. In other words, the Claimant is not saying that the decision is infected by error, and the challenge is limited to a failure to provide reasons. He submitted that infill is a matter of planning judgement for a seasoned planning officer who will know what it is. He submitted the planning officer does not need to, and cannot, record a line which equates to infill and that it is a matter of planning judgement - "you know it when you see it". He submitted this would apply not only to the OR and the officer's own inspection of the site, but also to the members of the strategic planning committee themselves, especially given that this is a knowledgeable planning committee with the benefit of the PowerPoint presentation.
41. In response to that, Miss Graham Paul submitted that it is not obvious that the proposed development amounted to infill and that the finding that it does required proper reasons. She submitted this is not a case where everyone agreed that it was infill and she relied upon the previous Planning Inspector's decision to support that. She submitted the OR should give reasons for rejecting the previous argument that this was not infill. She further submitted that the fact that there are other houses around is not the issue. This is an area of low density development surrounded by woodland, and the applicant herself was not arguing that this amounted to limited infill in a village. In those circumstances, she submitted, it is not possible to look to the application and draw reasoning from there.
42. In **South Bucks DC v Porter (No 2)** [2004 1WLR 1953](#), at paragraph 36 Lord Browne said as follows:
- "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principle important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties were well aware of the issues involved in the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an inadequately reasoned decision."
43. Miss Graham Paul submitted that there is no way that the Claimant can establish what the reasoning was for finding that this was infill development, and there is no way of understanding how the approach may impact upon future such applications. She submitted this is particularly important given that what is being applied is an exception to the Green Belt status which would otherwise protect this

area from inappropriate development. Mr Lopez submitted that the **South Bucks** decision does not support the submission that there is an imperative for giving reasons and that, in the light of the PowerPoint presentation, members' knowledge, and Mr Carter's knowledge and on the ground assessment, this case is nowhere near supporting a claim that reasons were inadequate.

44. In my judgment, the **South Bucks** decision makes it plain that reasons for important aspects of the decision should be given. They can be given very briefly, but they should be given. Whilst a matter of planning judgement, and whilst it may very well be the case that a knowledgeable planning officer and members of the strategic planning committee "know it when they see it", that does not in my judgment absolve persons exercising that judgment from the need to give reasons. The issues of both "village" and "limited infill" are plainly material considerations, critical to the finding that the exception to inappropriate development in the Green Belt applies.
45. Mr Lopez sought to rely upon the fact that this is obvious and that reasons are not, therefore, required. The fact that individuals (including a Planning Inspector considering this site) may have different views as to what does or does not amount to infill, suggests that the conclusion is not necessarily an obvious one, and the reasoning for it ought to be explained. That reasoning will be a matter of importance in the context of any future planning applications for other development within Tranwell Woods. In my judgment, the approach suggested by Mr Lopez would obviate the need for reasons for many material and important matters on the basis that those are matters of planning judgement which are obvious to experienced decision takers. Put in those stark terms, that simply does not accord with the decision in the **South Bucks** case.
46. I accept Mr Lopez's submissions that the strategic planning committee was in no way bound by the Planning Inspector's earlier decision that development on this site did not amount to infill development. I also accept that it was open to the strategic planning committee to reach a decision which was different to that of the Planning Inspector on this issue. However, given that this was a material consideration and central to the ultimate grant of planning permission, I am satisfied that some reasons should have been given to support the conclusion reached.
47. I have come to the conclusion that, although they need only be limited, reasons should have been given for concluding that the development amounted to limited infill, particularly in the light of the earlier Planning Inspector's decision to the contrary.

Very Special Circumstances

48. Mr Lopez submitted that even if I were to find (as I have) an inadequacy of reasons to support the conclusion that the proposed development amounts to limited infill in a village, the decision is nevertheless unimpeachable as it relies, in the alternative, on the presence of very special circumstances which would justify development within the Green Belt. By paragraph 89 NPPF the local planning authority should regard the construction of new buildings as inappropriate in Green Belt unless within any of the exceptions. If the 'limited infill in villages' exception does not apply, then the development should be regarded as inappropriate. By paragraph 87 NPPF, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. By paragraph 88 NPPF, the local planning authority must ensure that substantial weight is given to any harm to the Green Belt and "... 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations".
49. Mr Lopez submitted that in paragraphs 7.30 and 8.2 of the OR, the officer is saying that he is considering very special circumstances, and that he finds that the benefit of the proposed development in the Green Belt would clearly outweigh the harm that would be caused by the proposed development. Mr Lopez submitted that in other words the officer was setting out in the alternative that very special circumstances are made out, and would justify what would otherwise be inappropriate development within the Green Belt.
50. I consider it unnecessary to set out paragraph 7.30 of the OR since it is subsumed and repeated within paragraph 8.2. Paragraph 8.2 provides as follows:

"The proposed development does not constitute inappropriate development in the Green Belt given that it would constitute (paragraph 89 exception) limited infilling in a village. Separately, only a very limited impact on Green Belt in openness terms would arise, and which would not give rise to any material harm. The proposed development would also not conflict with any of the purposes for including land within the Green Belt. Separately, the development would not give rise to any material harm to the character and appearance of this part of the Green Belt. The less than material harm that would be caused to the Green Belt (to which significant weight must nonetheless be given) would be outweighed (and "clearly" so, albeit the application is not required to demonstrate 'very special circumstances') by other considerations that strongly militate in favour of the proposal as discussed above. These include the key principle of sustainability, the important aim under the NPPF of delivering a wide choice of high-quality homes (which includes executive dwellings, such as the proposal), and the existing need for this particular type of residential development within the area (including the location proposed). This remains so notwithstanding that the proposal is for a single dwelling only. It is noted also that similar type development already exists in and around the local area." (B:353)

51. Mr Lopez submitted that paragraph opened the door to an informed audience making a finding of very special circumstances in the alternative. He submitted it sets out examples of benefits set against the need to give significant weight to any harm that would be caused to the Green Belt. He submitted that the reference to matters clearly outweigh the harm is a clear reference to the test in Paragraph 88 NPPF as to what amounts to very special circumstances (set out in paragraph 48 above). He submitted that to require the officer to flag up to an informed readership that they would be entitled to reach a conclusion, in the alternative, that very special circumstances exist such as to justify development in the Green Belt, is to trespass on the authorities and to require too much of the OR. Whilst accepting the matter could be clearer, Mr Lopez submitted that this is a matter of form over substance, and that it follows that the strategic planning committee applied their minds, in the alternative, to the question of whether very special circumstances existed such as to justify development within the Green Belt.
52. In response to this, Miss Graham Paul submitted that if the OR contains information designed to support a very special circumstances argument, it is so well hidden as to be significantly misleading and/or inadequately reasoned. She reminded me that the burden of proving that very special circumstances are made out, such that the decision would have been no different, is on the Defendant, and she submitted that to save an otherwise unlawful planning permission in that way requires clarity. She submitted that this point was not advanced by Mr Lopez in the Detailed Grounds of Resistance filed on behalf of the Defendant, and had plainly not been spotted by Dove J when granting permission for judicial review in this case. She submitted that it was raised for the first time by Mr Lopez in his skeleton argument for the purposes of this hearing. She suggested it is far from clear that the committee was being invited to consider very special circumstances as an alternative route to the grant of planning permission.
53. Mr Lopez drew my attention to paragraphs 8(v) and (vi) of the Acknowledgement of Service (B:23-24), and paragraphs 3(iv) and 4 of the Detailed Grounds (B:42) where this issue is raised on behalf of the Defendant. In making his submissions on this point, Mr Lopez relies on what he asserts amounts to a discussion of very special circumstances, as being distinct from the main thrust of the report (that the proposed development falls within the limited infilling in a village exception in paragraph 89 NPPF) by reason of the fact that these matters are dealt with in sentences commencing with the word "separately". He submitted that shows the matters being discussed are being raised quite separately from the issue as to whether the 'limited infill in villages' exception applied. In my judgment the obvious difficulty for Mr Lopez in making that submission, is that in the middle of that paragraph, and after the use of the word "separately" on two occasions, there is reference to the fact that the application is not required to demonstrate very special circumstances. Notwithstanding the OR is made available to a knowledgeable readership, in my judgment, when read as a whole, the report comes nowhere near making it clear to the planning committee that the officer is inviting them, if they consider that the 'limited infill in a village exception' is not made out, to conclude in the alternative that there are nevertheless very special circumstances justifying this development within the Green Belt. Undoubtedly general policy matters are addressed in paragraph 8.2, but in my judgment those matters appear in the overall context of the conclusion and recommendation that the proposed development

does not constitute inappropriate development in the Green Belt, given that it would constitute limited infilling in a village.

54. Further, I am entirely satisfied that the conclusion this planning committee reached was that this was indeed limited infill in a village. The minutes of the Strategic Planning Committee are in the Bundle and this application is dealt with at B386 – 388. It is clear that Mr Carter introduced the application with the aid of the PowerPoint presentation to which I have already referred. Mr Tate addressed the committee in objection to the application, with his comments all being directed to the issue as to whether this proposal properly fell within the 'limited infilling in villages' exception. Significantly, in my judgment, the questions from members plainly related to the definition of a village, and whether infill in other villages would be possible under the NPPF (B388), something I pointed out to Mr Lopez when he was making these submissions to me.
55. Of course, the absence of questions in relation to very special circumstances does not of itself preclude the possibility that the committee could have considered them in the alternative. However, in circumstances where the very paragraph of the OR relied upon to show that the committee must have considered very special circumstances in the alternative, states in terms that this application does not require there to be very special circumstances, and in circumstances where the questions from the committee were plainly addressed to the question of the applicability of the exception, I do not consider there is any evidence from which I could properly conclude that this committee addressed its mind to the possibility that the exception did not apply, that the development therefore amounted to inappropriate development for Green Belt policy purposes, and that it was necessary to consider and find that very special circumstances applied to support such development. I reject Mr Lopez' contention that the Decision in this case is unimpeachable by reason of having considered very special circumstances as an alternative route to the grant of planning permission for this proposed development within the Green Belt.

Section 31(2A) Senior Courts Act 1981

56. After the draft of this judgment was circulated, Mr Lopez observed that I had failed to address Section 31(2A) Senior Courts Act 1981. That section provides the High Court must refuse to grant relief on an application for judicial review if it appears to the court to be highly likely that the outcome for the Applicant would not have been substantially different if the conduct complained of had not occurred. That section was not raised by Mr Lopez in oral submissions before the court. For reasons which I shall explain shortly, I do not consider Section 31(2A) assists in this case, and I assumed it was for those reasons that Mr Lopez had not raised it with me in his oral submissions.
57. I do not consider Section 31(2A) assists me in this case. In my judgment, for me to conclude that it is highly likely that the outcome for the applicant would not have been substantially different if there had been adequate reasons in relation to whether the development amounted to limited infill, would necessarily involve me deciding whether the proposed development does indeed amount to limited infill. Whilst Mr Lopez suggested that the answer to that question was obvious not only to planning officers but also, he suggested, to the court, I have already set out my reasons for concluding that whether or not something is limited infill is not necessarily a matter which is obvious.
58. In any event, having reminded me, repeatedly and perfectly properly, during the course of his submissions, that matters of planning judgement are matters for the decision-makers and not for this court, it seems to me that in seeking to rely on Section 31(2A), Mr Lopez is inviting me to substitute my own subjective conclusion as to whether this is limited landfill, in order to decide that the lack of reasoning would not have made any difference. I recognise that in making a further reasoned decision in relation to this planning application, the planning committee may decide that the proposal does indeed amount to limited infill, but that is truly a planning judgement to be made by them and not by me. In my judgment, I cannot properly conclude that the outcome for the applicant in this case would not have been substantially different if the conduct complained of had not occurred.
59. In those circumstances, I have come to the conclusion that the Decision must be quashed.

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