Neutral Citation Number: [2024] EWHC 2337 (Admin)

Case No: AC-2023-LON-001070

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/09/2024

Before :

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :

BEDFORD PARK DEVELPMENTS	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	**Defendants**
(2) LEWES DISTRICT COUNCIL	

- -
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Hashi Mohamed (instructed by **Dowsett Mayhew**) for the **Claimant**
Katharine Elliot (instructed by **Government Legal Department**) for the **First Defendant**
Ruchi Parekh (instructed by **Lewes District Council Legal Department**) for the **Second Defendant**
Hearing date: 22 May 2024

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APPROVED JUDGMENT

Deputy High Court Judge Karen Ridge:

Introduction

1. This claim for statutory review is brought by the Claimant under section 288 of the Town and Country Planning Act 1990. The Claimant seeks the quashing of a Decision Letter (DL) of the First Defendant's Planning Inspector issued on 6 February 2023 following a hearing into the Claimant's planning appeal. The site which was the subject of the planning appeal was land south of Lewes Road and Laughton Road, Broyleside, Ringmer (the Appeal Site). The site is located some 0.5 kilometres outside the South Downs National Park (SDNP) boundary.

2. The Claimant had been the applicant for outline planning permission for up to 68 residential units with all matters reserved. The planning application was refused by the Second Defendant, Lewes District Council in whose administrative area the Appeal Site is situated. Refusal was for a single reason, namely that the development would cause unacceptable landscape and visual harm. The Claimant then submitted an appeal to the Planning Inspectorate pursuant to section 78 of the 1990 Act.

Background

3. The planning application was submitted on 14 February 2022. In an officer's report dated 27 April 2022 the Council's planning officer recommended that the application be referred to the Secretary of State for call in, and that if the application was not called in, the application be approved subject to conditions.

4. The application was thereafter determined by the Council's planning committee and it was refused by decision notice dated 29 April 2022 for reasons relating to the harm to the setting of the SDNP and the character and appearance of the surrounding countryside. A previous application for the site had been refused due to a lack of information, which included in part, a lack of information about the impact on the SDNP.

5. On submitting its appeal to the Planning Inspectorate, the Claimant had requested that the appeal proceed by way of a public inquiry. On the 7 June 2022 the Planning Inspectorate determined that the appeal should proceed by way of a hearing given that there was a single reason for refusal relating to the impact on the SDNP. The Claimant requested a review of this decision to hold a public inquiry on the 9 June 2022 and on the 16 June 2022 the Inspectorate confirmed that the appeal would be dealt with by way of a hearing.

6. The Claimant began to prepare its case and on the 30 June 2022 the Claimant submitted an updated Statement of Case setting out the basis on which it would appeal the refusal of planning permission. That Statement of Case was submitted with a Landscape and Visual Impact Assessment.

7. In the meantime, on 16 May 2022, another appeal was submitted to the Planning Inspectorate in relation to the non-determination of a planning application for residential development on a site at Broyle Gate Farm, Lewes Road, Ringer (the Croudace appeal). That site sits in close proximity to the Appeal Site in these proceedings.

8. A hearing was duly scheduled for the Claimant's appeal but on 7 September 2022, the Planning Inspectorate rescheduled the hearing to the 22 November 2022. Prior to the hearing the Claimant and the Council had agreed as many uncontentious matters as possible and these were contained within a Statement of Common Ground (SCG) which was submitted to the hearing.

9. The hearing opened on the 22 November 2022. The day before the hearing, on the 21 November 2022, an appeal decision letter (the Croudace Decision) was issued in relation to Broyle Gate Farm site which permitted the development of up to 100 residential dwellings. The Croudace Decision was brought to the attention of the Inspector and all parties agreed that it was a material consideration in the determination of the Claimant's appeal. The hearing proceeded and the decision letter (DL) was issued on 6 February 2023. That DL gave the Inspector's reasons for dismissing the appeal.

These Proceedings

10. The claim was issued on 17 March 2023. It was brought on four grounds. By Order dated 31 May 2023 Mr CMG Ockelton, Vice President of the Upper Tribunal, sitting as a Judge of the High Court, granted permission to apply for planning statutory review on all four grounds.

11. The First Defendant, on submitting its detailed Grounds of Resistance, also submitted a witness statement from the Inspector dated 14 July 2023. The statement attached some 19 documents. The Claimant objected to the inclusion of the witness statement and made an application to exclude it. The Claimant contends that the witness statement is an attempt to further explain the appeal decision which should stand on its own merits and reasoning. Further the Claimant points out that the Courts have repeatedly deprecated the introduction of witness evidence in the context of judicial review proceedings which generally proceed on the basis of primary documents and records.

12. The application to exclude the Inspector's statement was considered on the papers by Mr James Stachan KC sitting as a Deputy High Court Judge on 11 February 2024. Judge Strachan adjourned the application to the substantive hearing. He observed that some parts of the statement were seeking to address matters of fact (such as which documents were before the Inspector) albeit he acknowledged that some parts of the statement went beyond that and moved into the discouraged territory of further reasoning.

13. Prior to the substantive hearing the Claimant and First Defendant reached an agreement to the effect that certain passages in the statement should be redacted. The Claimant made further submissions in relation to the statement in its overall challenge. I have had regard to those submissions and to the redacted statement in my analysis.

Legal Principles

14. The relevant principles are agreed between the parties. In *Bloor Homes East Midlands Ltd. v. Secretary of State for Communities and Local Government and another [2014] EWHC 754 (Admin)* at 19, Lindblom J. (as he was) said:

> "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26, at p.28). "

15. It is long-established that the interpretation of policy is a matter of law, whereas the application of policy is a matter of planning judgement – per *Tesco Stores v Dundee CC [2012] UKSC 13.*

16. The leading case concerning procedural fairness in planning appeals is *Hopkins Developments Ltd v SSCLG [2014] EWCA Civ 470.* There the Court set out the following principles:

> "i) Any party to a planning inquiry is entitled (a) to know the case which he has to meet and (b) to have a reasonable opportunity to adduce evidence and make submissions in relation to that opposing case.
>
> ii) If there is procedural unfairness which materially prejudices a party to a planning inquiry that may be a good ground for quashing the Inspector's decision.
>
> iii) The 2000 Rules are designed to assist in achieving objective (i), avoiding pitfall (ii) and promoting efficiency. Nevertheless the Rules are not a complete code for achieving procedural fairness.
>
> iv) A rule 7 statement or a rule 16 statement identifies what the Inspector regards as the main issues at the time of his statement. Such a statement is likely to assist the parties, but it does not bind the Inspector to disregard evidence on other issues. Nor does it oblige him to give the parties regular updates about his thinking as the Inquiry proceeds.
>
> v) The Inspector will consider any significant issues raised by third parties, even if those issues are not in dispute between the main parties. The main parties should therefore deal with any such issues, unless and until the Inspector expressly states that they need not do so.
>
> vi) If a main party resiles from a matter agreed in the statement of common ground prepared pursuant to rule 15, the Inspector

must give the other party a reasonable opportunity to deal with the new issue which has emerged."

17. In *R.(oao Poole) v SSCLG [2008] EWHC 676 (Admin),* the High Court addressed the scenario whereby an Inspector departed from a Statement of Common Ground:

> "44. Mr Auburn referred to the Inspector's obligation, whatever may or may not have been agreed between an Appellant and a local planning authority, to take account of representations made by third parties. I accept that an Inspector is bound to take into consideration arguments raised by third parties, but the imperative in the Rules requiring the principal parties to focus their attention on the issues that are in dispute would be wholly frustrated if Appellants and local planning authorities were unable to place any degree of reliance on matters that had been apparently resolved in a statement of agreed facts. It would be entirely unsatisfactory if, having agreed such matters, the principal parties to an inquiry would still have to prepare their evidence on the basis that the Inspector might wish to pursue a particular line of reasoning that departed from the agreed statement. While of course it is open to an Inspector to do so, whether of his or her own motion or in response to third party representations, if there is not to be a return to the "bad old days" where proofs were prepared to cover every conceivable eventuality, it is essential that inspectors recognise that if they do intend to depart from what is the agreed position between the principal parties, it may be necessary to accede to applications for adjournments to enable the parties to address the (now disputed) issue or issues properly by way of expert evidence. It may not be good enough to ask a witness who happens to be at the inquiry for his or her view. By definition, that witness may well not have the professional expertise which is relevant to the matter which has been agreed between the parties as set out in the statement of common ground.
>
> …
>
> 46. On the evidence before her, the Inspector, as I have indicated, was entitled to use her planning judgment and Mr Kimblin properly conceded that on that (inadequate) evidence she was entitled to reach the conclusions that she did. However, I accept his submission that if the statement was to be departed from on technical arboricultural grounds, then the applicant should have been given a reasonable opportunity to call the kind of arboricultural evidence that it would have called if it had known that this matter continued to be in issue prior to the inquiry. I say "continued to be in issue", because the only document in which the matter was placed in issue following the refusal notice was the proof of evidence of Ms Antrobus. The matter was in contention for a very brief period because that proof of evidence

> was overtaken either contemporaneously or shortly before or shortly afterwards by the statement of common ground."

18. In *North Wiltshire DC v Secretary of State for the Environment (1993) 65 P. & CR 137*, the court set out principles for dealing with previous appeal decisions. Lord Justice Mann said:

> "It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable ... I do not suggest, and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."

19. The North Wiltshire principles were restated in the more recent case of *R (Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)*:

> "40.1. While a previous appeal decision is capable of being a material consideration when determining a planning application, it is not a principle of law that similar cases must always be decided alike. It is a matter for the inspector to exercise their own judgment on the question if it arises (North Wiltshire DC v SoS for the Environment [1992] 4 WLUK 171).
>
> 40.2. The weight to be attached to a previous appeal decision is a matter within the exclusive jurisdiction of the inspector as decision-maker.
>
> 40.3. If an inspector does disagree with the decision of another inspector on a similar appeal case, they ought to give their reasons for departure from the previous decision. These reasons can be short, for example in the case of disagreement on aesthetics."

20. The principles to be applied to any reasons challenge were first set out in *South Buckinghamshire CC v Porter (No.2) [2004] 1 WLR 1953* and are restated in *Elmbridge*:

> "41.1. The Court must approach the issue based on a straightforward down-to-earth reading of the decision letter without excessive legalism or exegetical sophistication. Decisions are to be construed in a reasonably flexible way and an inspector does not need to rehearse every argument relating to each matter in every paragraph.
>
> 41.2. The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why an appeal (or point within it) was decided as it was. Reasons can be briefly stated.

> The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, but such adverse inference will not readily be drawn.
>
> 41.3. An applicant will only succeed if they can satisfy the Court that they have been substantially prejudiced by the failure to provide an adequately reasoned decision (e.g., because they are genuinely unable to assess their prospects of obtaining some alternative development permission)."

The Statement of Common Ground (SCG) submitted at the Planning Appeal

21. The matters agreed between the Council and the Claimant were set out in section 7 of the SCG and they begin with a series of agreed statements relating to: the location of the proposed development; relevant planning policy; housing delivery and housing density; amenity and living conditions for future occupiers; flooding and drainage; ecology and biodiversity; air quality; land contamination; heritage assets; landscape; highways and transport; impact on local infrastructure and public benefits. Amongst the matters agreed, the following are included:

> "(i)The site represents a highly sustainable and accessible location in the Local Plan;
>
> (ii) The 5YHLS position was at 2.73 years; the 'tilted balance' was engaged and this proposal started with the scales tipped in favour of granting consent;
>
> (iii) There were no listed buildings on the site; it did not fall under any Conservation Area. There was no specific landscape protection nor any sensitive biodiversity interests affected;

22. In relation to heritage assets the SCG records that:

> "7.27. It is agreed that the development of this site could impact the setting of the adjacent heritage assets as referred to above, but that any harm arising would be less than substantial subject to appropriate siting and layout at reserved matters stage.
>
> 7.28. It is agreed that when weighed against the public benefits of the proposals as required by paragraph 202 of the NPPF, the less than substantial harm is outweighed.
>
> 7.29. In terms of archaeology it is agreed that the appeal site falls within an area of archaeological interest but that appropriately worded planning conditions can ensure a suitable programme of works to ensure any archaeological deposits or features that would be disturbed by the development proposals can be either preserved in situ, or where this cannot be achieved, adequately recorded in advance of their loss.

> 7.30. It is agreed that no objections to the application proposals were raised by either the Council's own Design and Conservation Officer or the East Sussex County Council Archaeological Officer, subject to appropriately worded conditions.
>
> 7.31. The application is agreed to comply with the requirements of Policy CP11 of LLP1, and DM22 of LLP2."

23. In relation to the agreements regarding the SDNP, the parties agreed the following:

> "Landscape
>
> 7.32. The site is not subject to any national or local landscape quality designations and is not for the purposes of paragraph 174 of the Framework a valued landscape.
>
> 7.33. The edge of the South Downs National Park is some 0.5km to the south at its very closest.
>
> 7.34. No objection is raised to the methodology followed in the preparation of the Landscape and Visual Impact Assessment (LVIA), nor is there any disagreement over the position and selection, direction and extent of the viewpoints which formed the basis of the visual impact assessment process.
>
> 7.35. The Council's consultee on landscape matters (East Sussex County Council Landscape Architect) raised no objections to the application proposals, concluding that the proposals would have an acceptable impact on local landscape character and views.
>
> 7.36. Whilst the South Downs National Park Authority raised some concerns about the proposals they did not specifically raise an objection.
>
> 7.37 The provision of the Community Woodland whilst not proposed as mitigation for the impact of the development is agreed, over time, to improve outward views from the SDNPA and would enhance the localised landscape fabric and character."

24. Matters which were the subject of disagreement between the Council and the Claim were set out in section 8 of the SCG:

> "The weight to be afforded to the policies most important for determining the appeal.
>
> The extent to which the appeal proposals conflict with the policies most important to their determination.
>
> The nature and extent of any harm arising from the appeal proposals;

> Whether the proposals would represent unacceptable impacts that would cause harm to the setting of the South Downs National Park and the character and appearance of the site and surrounding countryside area.
>
> Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the appeal proposal, when assessed against the provisions of the NPPF taken as a whole."

The Appeal Hearing

25. The appeal hearing and the site visit took place on 22 November 2022. The evidence before the Inspector at the date of the hearing included the LVIA, a landscape and visual assessment statement and two heritage statements. There were also representations from two objectors: the local Parish Council and CPRE Sussex, both of which raised issues about the impact on the SDNP and the issue of coalescence. The Claimant was represented at the hearing by planning counsel, by a planning witness and by its own expert landscape and visual impact witness.

26. The Inspector circulated an agenda at the hearing setting out the main issue and other matters. The main issue was the effect of the proposal on the character and appearance of the surrounding countryside, including the setting of the South Downs National Park. Other matters included heritage assets, housing land supply and weight to be ascribed to relevant planning policies.

The Croudace Decision

27. This appeal decision granted outline planning permission for up to 100 residential dwellings on land to the west of the Appeal Site. That appeal was determined after an Inquiry which took place over 5 days (20-22 September and 3-4 October 2022). The appeal came about due to the Council's failure to give notice of its decision within the prescribed period, an appeal against non-determination. The Council in that case had provided putative reasons for reasons which included the adverse effects on the South Downs National Park (SDNP) and the effect on the character and appearance of the area, the effects upon the settings of designated and non-designated heritage assets, effects on biodiversity and on road users/highway capacity.

28. The Inspector in the Croudace Decision identified landscape character and appearance as a main issue and went on to assess the effects of the proposed development on landscape character and upon the SDNP. The Inspector then made a series of findings and concluded that the proposed development would have an adverse effect upon the landscape, character and appearance of the area. He went on to consider the other main issues and other issues before considering the benefits of the scheme and finally conducting a planning balance exercise. As part of that exercise the Inspector attributed differing weights to each of the considerations. He finally concluded that the adverse impacts would not significantly and demonstrably outweigh the benefits of the scheme when assessed against the National Planning Policy Framework and the appeal was allowed.

The Decision Letter under Challenge

29. The DL sets out the main issues, recognising that the Council's objections related primarily to the effects on character and appearance and on the SDNP, but also adding additional matters for consideration including the spatial strategy and the proposal's effects upon heritage assets (DL5). Paragraphs 7 to 11 deal with the spatial strategy and end with a conclusion that the proposal is in conflict with that strategy and other relevant development plan and neighbourhood plan policies (DM1 of the local plan and policy 4.1 of the Ringmer Neighbourhood Plan).

30. The Inspector goes on to consider the effects on character and appearance starting at DL12, beginning with a description of the site and its environs. DL14 deals with the contribution which the site makes to the sense of separation between Ringmer and Broyle (DL14) before going on to consider the wider landscape context in the SDNP. Conclusions on the role of the site and the effect of development are found at DL15 to DL17.

> "15…Whilst it may not be prominent, the appeal site nevertheless contributes to the setting of the National Park, as it maintains a degree of separation between Ringmer and Broyle Side, and forms part of expansive views from the scarp foothills and open downs across the Low Weald.
>
> 16. The contribution which the site makes to its rural surroundings would however be greatly diminished as a result of the proposal. By virtue of the quantum of development proposed, the appeal scheme would introduce significant change in what largely remains an undeveloped, open field, through a considerable reduction in openness and the loss of an area of countryside which is characteristic of its landscape setting.
>
> 17. In particular, the permanent, adverse effects of this residential scheme would occur on a much larger area than the commercial activities which are presently confined in the north-western part of the site. The construction of up to 68 residential units, together with the extensive areas of hardstanding required for the provision of access, turning and parking, would introduce an urbanising form of development on the site, which would detract from the pleasant character of its rural surroundings. Furthermore, the creation of residential gardens, proliferation of domestic paraphernalia associated with the dwellings and features such as the acoustic fencing would cumulatively emphasise the incongruous nature of the development in relation to its rural context."

31. The Inspector goes on to further consider the effect on the character and appearance of the area having regard to planting proposals and existing and possible future vegetation at DL18-19

> "18. Most of the hedging along the outer boundaries of the site is proposed to be retained, and this would to some extent help with minimising the visual impact of the proposed development. However, whilst the vegetation would filter views into the site

> during the summer months, the development would be noticeably more obvious when trees are not in leaf. Additionally, some of the vegetation would have to be removed to enlarge the existing access onto Lewes Road, which would also increase the prominence of the development in public views.
>
> 19. The ash dieback, which is affecting a significant proportion of the hedgerow boundary, is also likely to lead to the decline and removal of these trees, and this may reduce the level of screening provided by the vegetation. Moreover, I share the concerns raised by the Council regarding the loss of boundary vegetation which could occur in the longer term, as the proposed masterplan shows that a number of properties would have rear gardens adjoining Chamberlaines Lane. This means that there would be no mechanism to prevent future occupiers from removing the existing soft landscaping."

32. At DL20 the Inspector acknowledges that the scheme is in outline form and that the above matters could be addressed as part of a reserved matters application but she concludes that the matters, taken together, raise doubts regarding the level of screening which would be provided. Next she moves on to consider the Croudace decision as follows:

> "21. I must also have regard to the fact that a large mixed use scheme has recently been granted outline planning permission on land at Broyle Gate Farm, which is located on the opposite side of Chamberlaines Lane. This means that the construction of the proposal before me would, in combination with the approved scheme at Broyle Gate Farm, would harmfully consolidate development on the southern side of Lewes Road and lead to the loss of the important green gap which presently contributes to the rural settings of Ringmer and Broyle Side. The resulting loss of this gap between the villages, which would be evident in views from the National Park, would add to the negative impact which the development would have upon the landscape and settlement pattern of this rural area."

33. After considering views from footpath users in immediate and longer distance views, the Inspector concludes that the appeal scheme would have a significant adverse effect on the character and appearance of the area and surrounding countryside, including the setting of the SDNP.

34. The next section deals with the Inspector's own analysis of the effect of the proposal on the significance of heritage assets. She goes on to agree with the common position of the Council and the Claimant that the harm caused to the special interest of the listed buildings would be outweighed by the public benefits of the proposal. After addressing issues raised by third parties and the planning obligation, the Inspector starts to conduct her planning balance exercise at DL41.

> "41. The Council is presently unable to demonstrate a five-year supply of deliverable housing sites. It is agreed between the main

parties that the Council can only demonstrate a supply of 2.73 years, which represents a very significant shortfall. In such circumstances, paragraph 11d) of the Framework states that the policies which are most important for determining the application are deemed out-of-date, and permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

42. The appeal scheme would enable the construction of up to 68 residential units, 40% of which would be affordable. Given the extent of the housing land supply shortfall and the under provision of affordable residential accommodation, these are considerations to which I ascribe significant weight. It is also noted that the proposed dwellings would be sited within an accessible location, and would be constructed on a partially brownfield site. There would be financial benefits associated with the development. The proposal would also support the economy, firstly during the construction phase and then through increased local spending. These are afforded some weight.

43. I have given the benefits arising from the provision of an ecological are and public open space very limited weight. Relatively limited information has been presented in respect of these aspects of the proposal. With regard to the provision of open space in particular, the appellant explained that further details would be provided as part of a subsequent reserved matters stage. As the designation of an area of public open space has not been included within the S106, there would be no mechanism to ensure that it is provided and maintained for the lifetime of the development. This therefore reduces the weight which can be ascribed to this aspect of the proposal. For the reasons detailed earlier in the decision, I have also ascribed very limited weight to the provision of a CWA.

44. Some of the other benefits associated with the proposed development, including the financial contributions towards recycling and travel plan monitoring are essentially intended to mitigate the effects of the development. As some of these could be of benefit to the wider public, I have nevertheless afforded them very limited weight.

45. Against that, the proposal would conflict with the Council's spatial strategy. Furthermore, the appeal scheme would adversely affect the character and appearance of the surrounding countryside, and the setting of the South Downs National Park, to which I ascribe very significant weight. The appeal scheme would fail to accord with Core Policy CP10 of the LPP1, Policy DM1 of the LPP2, and Policy 4.1 of the Ringmer Neighbourhood Plan, though the weight ascribed to these considerations is reduced due to the housing land supply situation.

> 46. The proposed development would also cause less than substantial harm to the significance of the Grade II listed Ringmer Kennels and non-designated Magazine and Hospital. Whilst the harm to the special interest of the listed building would be outweighed by the public benefits associated with the proposal, I nevertheless afford considerable importance and weight to each incidence of harm which would be caused to the significance of the affected heritage assets.
>
> 47. Overall, the adverse impacts of granting permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the proposal in this Framework taken as a whole."

35. After ascribing weight to the various matters, it can be seen that the Inspector applied the tilted planning balance and concluded that the adverse impacts of development significantly and demonstrably outweighed the benefits.

Discussion

36. On behalf of the Claimant Mr Mohamed firstly points to a number of similarities between the Croudace Decision and the decision under challenge. Not surprisingly, given the proximity of the two appeal sites and the period during which both sites were being considered at appeal, there are a number of common factors. These include the relevant development plan policies, the existing housing land supply position and the non-conformity of each proposal with the spatial strategy given their respective locations. Both appeal decisions focus on similar main issues and topics and analyse the impacts on the landscape character and appearance of the local area, the effect on the SDNP and upon the setting of heritage assets.

37. In ground 1, Mr Mohamed contends that the Inspector's decision was procedurally unfair because it departed from the SCG and the Council's stated position at the hearing without affording the Claimant the opportunity to address the case it had to meet. Mr Mohamed says that the Claimant had a legitimate expectation that it would be put on notice as to what he says was a material departure from the SCG.

38. Secondly, Mr Mohamed asserts that there has been inconsistency in decision making because the Inspector failed to explain why she had taken a materially different approach to the Croudace Decision and she had failed to give reasons for departing from the earlier decision. The third ground of challenge rests on a claim that the Inspector reached a judgment which was irrational or perverse and ground 4 is a claim that the Inspector failed to give intelligible and adequate reasons for her decision.

39. Ground 1: in this case the officer's report recommendation was not accepted by the planning committee who rejected the proposal due to the harm to the setting of the SDNP and the character and appearance of the surrounding countryside. The officer's report had also recorded the concerns of the South Downs National Parks Authority about the potential coalescence of Ringmer with Broyleside as a result of the two proposals which were before the Council.

40. In relation to agreed landscape matters, the SCG had recorded factual matters such as the location and designation of the site and the responses from consultees and the national parks authority. The only evaluative assessment to be agreed came in the form of the agreement that the provision of the community woodland would improve outward views from the SDNP over time and would enhance the localised landscape fabric and character.

41. The SCG records as an area of disagreement the weight to be afforded to polices and the nature and extent of any harm arising from the appeal proposals. The other area of disagreement was whether the proposals would represent unacceptable impacts that would cause harm to the setting of the SDNP and the character and appearance of the site and the surrounding area. Those were the very matters which the Inspector included as her main issue and which were the subject of her analysis at DL12- 24. As such I reject the Claimant's assertion that the Inspector 'departed' from the SCG.

42. The main issue of the effect on character and appearance was clearly a matter for discussion at the hearing with all parties putting their respective views. The issue of coalescence had been raised by the National Parks Authority and formed part of the discussion at the hearing. The Inspector's witness statement attests to this.

43. Mr Mohamed relies on the Officer's report recording that the impacts on the character of the area and the views were acceptable but that does not assist the Claimant. The Officer's recommendation was rejected by the planning committee who gave its reasons for refusal and it was those reasons that were being defended at the appeal.

44. Neither does the Inspector ignore the Croudace Decision. Her analysis of the impact of the proposal on the SDNP and on the character and appearance of the area was detailed and reasoned and is set out at DL12-20. At DL21 she recognises that the recent planning permission on the Croudace site was a material consideration and she proceeded to undertake an assessment of the impact of the appeal proposal, together with this already consented scheme, on the important green gap between the two rural settings of Ringmer and Broyle Side. She acknowledges that, in combination, the development of the appeal proposal and the consented scheme would harmfully consolidate development on the southern side of Lewes Road and would lead to the loss of the important green gap.

45. At the point at which the Inspector was determining the appeal, the Croudace scheme had obtained permission and it is only right that the Inspector took the in-combination effects into consideration. This was an important difference in relation to the position faced by the Croudace Inspector. The issue of coalescence was quite properly considered to be part and parcel of the issue of character and appearance and it was a matter which had previously been raised, and pursued, by third parties to the appeal.

46. Mr Mohamed contends that in DL17 the Inspector has conflated two different land use classes because she has confused the impact of the development from to introduction of a residential scheme to the established commercial activities. That is not so. It is clear that the Inspector was assessing the current baseline which included the current commercial activities on part of the appeal site and comparing that existing position with the changes which would be brought by the introduction of the residential scheme.

47. I further reject the Claimant's assertion that the Inspector treated the details which were to be the subject of consideration at reserved matters stage as being fixed. DL18 acknowledges that the hedging is proposed to be retained but expresses reservations about the development being more obvious in winter months. DL19 explores some of the difficulties which could result from ash die back and from some properties potentially having rear gardens adjoining Chamberlaines Lane. However, the Inspector goes on to remind herself at DL20 that this was an outline scheme and these matters could be addressed as part of a reserved matters application. Notwithstanding this, she expresses some doubts as to the level of screening which would be provided.

48. The Inspector was considering the scheme's acceptability in terms of its effect on the character and appearance of the area. Whilst she did not have details of siting, layout and landscaping, it was entirely proper for her to include in her assessment any doubts regarding the screening of the development and the likelihood that it would not be completely screened and the extent to which views of the development would be filtered by such measures.

49. Heritage matters were flagged as an issue in the agenda. The SCG records an agreement between the Council and the Claimant that the appeal proposal could impact the setting of adjacent heritage assets but that any harm arising would be less than substantial harm (subject to an appropriate layout and siting). At DL30 the Inspector summarises her assessment as to the effects on the designated heritage asset (Southdown Hunt Kennels) and the effects on the non-designated heritage asset (the Magazine and Hospital). She concludes that the appeal scheme would cause less than substantial harm to the significance of these assets. Her views aligned with the recorded agreement in the SCG.

50. Further at DL31 she concludes that the less than substantial harm would be outweighed by the public benefits of the proposal. That is exactly the agreement recorded at SCG paragraph 7.28. Again, there is no departure by the Inspector from the agreed position of the Council and Claimant on this matter. The Inspector's conclusions on heritage matters properly went into the overall planning balance but her conclusions on the heritage balance remained, namely that the public benefit outweighed the less than substantial harm which would be caused.

51. The issue of what evidence to submit is a matter for each individual appellant to a planning appeal. The Claimant was aware of the basis on which the planning application had been rejected and marshalled its forces accordingly. The application had been accompanied by a Landscape and Visual Impact Assessment and a landscape statement and by a Heritage Statement which was later supplemented by a further statement. These were all in evidence before the Inspector.

52. It cannot be claimed that the Claimant was not on notice that the Inspector was interested in heritage matters. They are listed in the agenda and the Claimant had put in evidence two heritage statements. Whilst the categorisation as heritage matters went from "another issue" in the agenda, to a "main issue" in the DL, that is of no great import given that the matter had been fully ventilated at the hearing, the Inspector had addressed the positions of all parties and her final conclusions aligned with the SCG.

53. In preparing the agenda and framing the issues to be discussed the Inspector was setting out the areas of disagreement between the main parties, other issues and matters which had been raised by third parties and matters on which she required further information.

That is entirely proper. The agenda provided a framework for the discussions and it is clear that the Claimant was given the opportunity to respond to the points raised on the various issues, to have the last word on each topic and to seek to introduce additional evidence had it wanted to do so. The opening statement of the Claimant acknowledges that the impacts on the SDNP, on heritage matters, the topic of coalescence and the approach in light of the Croudace decision were all live issues to be discussed at the Hearing.

54. On reading the DL and the supporting documentation it is evident that the Inspector ventilated all relevant issues at the hearing. She was not required to go further and inform the Claimant as to the views which she was forming of the evidence during the hearing. For all of these reasons I conclude that there has not been any procedural unfairness as claimed. In any event, it is not clear as to how the Claimant has been prejudiced by such perceived unfairness. The Claimant had produced detailed evidence on landscape and heritage matters and it had the benefit of its planning consultant and landscape expert at the hearing as well as experienced planning counsel.

55. Ground 2: alleges an inconsistency in decision making. Mr Mohamed argues that the Croudace Decision reached clear conclusions which were diametrically opposed to the decision under challenge. Mr Mohamed contends that there has been a patently inconsistent approach taken by two different Inspectors looking at 'almost the same site'. He says that the two decisions are irreconcilable and that is principally due to the failure to give reasons.

56. For obvious reasons the issues in both appeals are similar. The policy context and housing land supply position were identical. Both schemes were for outline planning permission for residential development. The sites both sit within the gap between Ringmer and Broyle Side. But, there were also differences, the appeal decisions relate to different sites which are close to each other but they are not identical. In addition, whilst both proposals related to residential development, in the Croudace decision one half of the site was to be utilised for the provision of community facilities, including a football pitch, tennis courts, outdoor gym, play area, skate park and public open space. There were therefore key differences between the two proposals.

57. Importantly, at the point at which the Inspector made her determination in the appeal subject to this challenge, the Croudace proposal had already obtained planning permission and was a material consideration for this Inspector. As a consented scheme it was necessary for this Inspector to consider not only the sole effects of the development proposed but also the effects of the proposed development having regard to that which had already gained permission. At DL21 the Inspector does that and she describes the harmful in-combination effects of both developments:

> "This means that the construction of the proposal before me would, in combination with the approved scheme at Broyle Gate Farm, would harmfully consolidate development on the southern side of Lewes Road and lead to the loss of the important green gap which presently contributes to the rural settings of Ringmer and Broyle Side. The resulting loss of this gap between the villages, which would be evident in views from the National Park, would add to the negative impact which the development

> would have upon the landscape and settlement pattern of this rural area."

58. Her clear conclusion is that the cumulative impacts of both developments would be detrimental to the character and appearance of the area because, when taken together, they would result in the loss of the important green gap between two rural settlements. The Croudace Inspector only had to consider the single impact of the proposal before him. The two appeal decisions were taken in different circumstances. This Inspector has not departed from the decision of the Croudace Inspector. She acknowledged the Croudace Decision and factored it into her analysis. Whilst differing conclusions on matters such as whether the sites were in an accessible location are more difficult to justify, differing conclusions on the effects on character and appearance are easier to reconcile when each site makes a different contribution to an area's character and appearance and may be visible from different viewpoints given matters of topography and vegetation.

59. This Inspector performed a full assessment of the contribution of the site and the effects of development. Her conclusions at DL21 onwards are adequate and intelligible and form a sound basis for her final conclusions.

60. Mr Mohamed points to four appeal decisions taken after the decision under challenge which reached different conclusions to that of the Inspector in the impugned decision. That does not assist his case. Those decisions were not before the Inspector and there is no suggestion that those proposals were raised as a consideration at the appeal hearing. Neither does the allegation that the DL has caused confusion in local decision making advance the Claimant's case. That assertion is denied by Ms Parekh on behalf of the Council. The DL stands to be read on its own and on its own particular facts. It is not inconsistent when read alongside the Croudace decision. It is clear that each of those decisions ultimately were taken at different points, with some distinct differences (relating to in-combination effects) and the complete loss of the gap between two settlements.

61. Whilst the appeal proposals may have shared some similarities, there is no requirement for like cases to be decided alike. The issue of the impact on character and appearance requires an evaluative assessment and the exercise of the individual planning judgment of the appeal Inspector. The DL provides a clear explanation as to the conclusions on each of the important issues and how they contributed to the overall planning balance. Cogent reasons are provided as to why the Inspector came to a different view to that of the Croudace Inspector in terms of her assessment and character and appearance. For all of the above reasons ground 2 is dismissed.

62. Ground 3: contends that the Inspector erred in departing from the agreed weighting of the issues in the SCG. However, the weight to be attributed to any harms or benefits or conflict with development plan policies is a matter for the planning judgment of the Inspector. In any event the SCG clearly records that the weight to be afforded to individual policies was a matter of disagreement, as was the extent to which the appeal proposal conflicted with the policies important to the determination and the nature and extent of any harm. Those were all matters of disagreement between the parties which were live issues at the hearing and which were properly determined by the Inspector.

63. The SCG recorded that the Council would provide confirmation that each of the planning obligations sought would satisfy the relevant legal tests. That was not to bind the Inspector in her conclusions but is merely a reflection of the fact that when a planning obligation is before an Inspector at appeal, it is incumbent on the parties to satisfy the Inspector that the obligation satisfies the legal tests.

64. Mr Mohamed asserts that the Claimant had reached an agreement with the Council that the provision of the Community Woodland Area would be provided to secure more mitigation. To that end a signed agreement under section 106 of the Act was before the Inspector. The Inspector considered this agreement at DL34 onwards. Importantly she concluded at DL39:

> "39. Policy 4.6 of the Ringmer Neighbourhood Plan refers to a community-managed woodland within the Parish which, it was argued at the hearing, had already been provided as part of an earlier development. I have however seen no substantive evidence which suggests that the proposed CWA would be managed by the Community. The CWA is presented by the appellant as an additional community benefit, above and beyond the policy requirements in respect of open space. It relates to a parcel of land which is clearly separate from the appeal site and, overall, I fail to see how this would be directly related to the development. Accordingly, the provision of the CWA would not meet the relevant tests."

65. To be a material consideration the s106 planning obligation must satisfy the tests in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 which provides that obligations must be: necessary to make the development acceptable in planning terms; directly related to the development and fairly and reasonably related in scale and kind to the development. The Inspector at DL39 explains in clear terms why the proposed Community Woodland Area did not satisfy the relevant tests and as such she ascribed it very limited weight when conducting her planning balance.

66. The Inspector's conclusions in relation to her application of the legal tests in regulation 122(2) are properly reasoned, rational and set out her conclusions on the matter. It is evident that the matter of a community managed woodland already having been provided was raised at the hearing and the matter was fully ventilated by the Inspector. For all of the above reasons ground 3 also fails.

67. Ground 4: asserts that the Inspector failed to give intelligible and adequate reasons generally and in particular in relation to relevant policies. All but one of the matters raised under this ground are raised under the previous grounds and I have already dealt with those arguments.

68. The additional dispute with the DL is raised in relation to the application of the tilted balance in paragraph 11(d) of the National Planning Policy Framework. The planning balance is considered at DL41-47. The Inspector explains that the deficit in the housing land supply position engages the so-called tilted balance in paragraph 11(d) of the Framework. She sets out the planning balance she is going to apply and faithfully applies it in DL42-47. Her conclusions at DL46 are expressed in precisely the terms of paragraph 11(d)(ii) and there can be no complaint that she has misunderstood or

misapplied the approach to national policy in relation to this important matter. Ground 4 also fails.

69. Counsel are asked to prepare a draft order for approval which reflects the terms of this judgment and includes relevant provisions in relation to the question of costs.