Neutral Citation Number: [2023] EWHC 1627 (Admin)

Case No: CO/4777/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/06/2023

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court
Between :

SWINDON BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES	**Defendants**
(2) DANESCOURT (PCDF IV SWINDON) LLP	

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Mr Paul Stinchcombe KC and Mr Ned Helme (instructed by **Swindon Borough Council Legal Services**) for the **claimant**
Mr Leon Glenister (instructed by **Government Legal Department**) for the **first defendant**
Mr Sasha White KC and Mr Matthew Henderson (instructed by **Forsters LLP**) for the **second defendant**

Hearing dates: 21-22 June 2022
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Approved Judgment

This judgment was handed down remotely at 10.30am on 30 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ JARMAN KC:

Introduction

1. In 2015 the claimant, as local planning authority (the authority), adopted the Swindon Borough Local Plan 2026 (the local plan), which allocated some 700 hectares of mainly agricultural land (the allocated land) to the east of Swindon for the development of 8000 homes in interlinked but distinct new villages and the expansion of two others. The following year it adopted the New Eastern Villages Planning Obligations Supplementary Planning Document (the supplementary document) which specifies infrastructural contributions required from developers in respect of each village for their sustainable delivery. The authority hoped for a holistic approach to this development. However, the allocated land is owned by several different landowners. Between 2016 and 2021, various applications for planning permission were made and granted for 6,800 of the 8000 homes together with associated development.

2. By an application redated February 2021, the second defendant (the developer) applied for planning permission for up to 220 dwellings as amended, commercial facilities and a primary school on part of the allocated land to form the north part of one of the villages known as Foxbridge. This would be a small proportion of the development of the allocated land. An application for permission to develop the south part of the village is yet to be determined. The authority refused to grant the developer's application, on the ground, so far as relevant, that the proposal fails to deliver sustainable development and does not comply with several policies in the local plan, as an infrastructure package to meet the infrastructure needs arising from the development had not been secured. The developer appealed under section 78 of the Town and Country Planning Act 1990 (the 1990 Act), and an inspector appointed by the first defendant (the Secretary of State) allowed the appeal and granted planning permission for up to 220 dwellings, commercial facilities, parking, landscaping drainage, a heritage trail with access to a road connecting Foxbridge to the highway network. The inspector noted that that road was currently under construction in accordance with a separate prior planning permission.

3. The authority now seeks a statutory review, under section 288 of the 1990 Act, of the inspector's decision, with the permission of Lang J. It does so on three grounds:

    i) The inspector misinterpreted and misapplied policy IN1 of the local plan, which requires all development to meet the cost of new infrastructure made necessary by the development. Moreover, the inspector whilst accepting the contribution offered by the developer amounted to a significant shortfall of such cost, failed to consider how the shortfall may be made up or how any shortfall which could not be made up might impact on the delivery of the remainder of the allocation.

    ii) The inspector, in concluding that his grant of planning permission despite such shortfall would not set a precedent for future applications for planning permission in respect of the allocation, acted irrationally or failed to give sufficient reasons for that conclusion.

iii) The inspector, in concluding that a primary school would not be necessary in practice in the north part of Foxbridge acted irrationally or without giving sufficient reasons.

The inquiry

4. The inquiry before the inspector lasted seven days. The developer was represented by Sasha White KC with Matthew Henderson, as it was before me. The authority was represented by Paul Stinchcombe KC, as it was before me, with Ned Helme. The Secretary of State was represented before me by Leon Glenister. At the inquiry both sides called expert evidence in several different fields, including planning, education, and viability. There was complete agreement between the viability experts as to the viability of the developer's scheme and what was deliverable. Their agreed position stated:

> "Based upon the updated costs and values agreed…the scheme can make the following contributions towards planning benefits while remining viable and deliverable:
>
> • 15% provision of affordable housing.
>
> • Provision of the school site.
>
> • S.106 Contributions of £1,122,000 equating to £5,100 per residential unit."

5. The developer maintained at the inquiry that it should make only those contributions, as any higher contribution would render its scheme unviable and undeliverable. It further maintained that a primary school was not necessary in practice for the north part only of Foxbridge. The authority, whilst accepting the principle of the development proposed by the developer, maintained that 20% of affordable housing should be provided, so as to be in line with what was required in many of the permissions already granted. It also maintained that the contribution agreed by the viability experts was only one third of the minimum needed to meet the cost of infrastructure made necessary by the proposed development. Moreover, if these were not provided, it would set a precedent for future applications for permission to develop the remainder of the allocated land. Finally, the authority maintained that the developer should be bound by its unilateral undertaking to provide 2.2 hectares of land for a primary school.

The inspector's decision letter

6. At paragraph 6 of the inspector's decision letter, he set out the main issues which he had to determine, and there is no dispute about these. So far as relevant, they were set out as follows:

> "The main issues to be addressed are:
>
> i) whether the appeal proposal makes sufficient and appropriate provision for education facilities, in terms of whether the primary school would be necessary in practice;

ii) whether, with respect to viability, the proposal makes sufficient and appropriate provision for affordable housing;

iii) whether, with respect to viability, the proposal makes sufficient and appropriate provision for the infrastructure required to support the development and mitigate its impacts…"

7. The inspector summarised the relevant planning policy and guidance in paragraphs 12 to 27 of the decision letter, and it is accepted he did so accurately. He dealt firstly with the local plan. Policy NC3 provides for the 8,000 homes with associated sports, leisure, employment, retail, community development and schools. The supporting text states that new primary schools should be at the heart of each village and be capable of accommodating projected peak pupil numbers by way of a temporary form of entry (FE). Policy CM1 provides for primary schools having additional peak accommodation and being sited within the heart of their communities.

8. Policies SD1, 2 and 3 sets out the sustainable development strategy for the Borough, including the allocated land. Policy HA2 provides that on all developments of 15 homes or more on sites larger than 0.5ha, and subject to economic viability assessment, a target of 30% affordable homes should be provided. The supporting text states that in 2010, more than 6,000 households, or 7% of the Borough population, were in housing need, with an average annual shortfall of some 800 affordable homes.

9. Policy IN1 sets out the requirement that all development, "where appropriate and within the context of economic viability," shall make provision to meet the cost of infrastructure made necessary by the development itself and cumulatively with other development. The supporting texts states that, in the context of future infrastructure delivery, where genuinely abnormal costs threaten the economic viability of development, exceptional circumstances may arise where the benefits of development outweigh the harm of not providing for infrastructure.

10. The inspector then dealt with the supplementary document. That acknowledges that contributions by planning obligation under section 106 of the 1990 Act must be compliant with the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 to be necessary and directly, fairly and reasonably related in scale and kind to the development. It provides that the authority would seek to enter into a framework section 106 agreement with the main allocated land landowners to ensure parity of contributions that accord with the statutory tests and provide reasonable triggers and mechanisms for delivery. An equalisation mechanism is set out to ensure fair apportionment of the infrastructure burden. Where the landowners could not agree, the authority would collaborate with them to attempt to agree an equalisation procedure.

11. The inspector then turned to consider the National Planning Policy Framework (NPPF). Paragraphs 7 and 8 set out the central objective of sustainable development in terms of its socio-economic and environmental roles. Paragraph 11 provides a presumption in favour of sustainable development. Proposals that accord with an up-to-date development plan are to be approved without delay. Where a five-year housing land supply cannot be demonstrated, permission is to be granted unless protecting assets of particular importance provide a clear reason for refusal, or any adverse effects would significantly and demonstrably outweigh the benefits, assessed

against the NPPF as a whole. This is known as the tilted balance. The authority shows 4.6 years of housing land supply. Paragraph 12 emphasises that these provisions do not change the statutory status of the development plan under section 38(6) of the Planning and Compulsory Purchase 2004 (the 2004 Act).

12. Paragraph 58 states that it is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the current circumstances in the case. National planning practice guidance (PPG) provides that a developer profit level of 15-20% of gross development value, with a lower return for affordable housing, may be considered a suitable return.

13. Additionally, although not cited by the inspector, paragraph 173 of the NPPF (2012) provides:

> "Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing landowner and willing developer to enable the development to be deliverable."

14. The inspector then dealt in turn with the main issues which he had identified and commenced with the first issue at paragraphs 28 to 45 of the decision letter. He examined the pupil yield figures expected from the proposal and concluded that no primary school was justified by those figures (which are not in dispute). Accordingly, he found that the obligation within the unilateral undertaking to convey 2.2 hectares of land to the authority for a primary school, failed the test of CIL regulation 122 in that it was not necessary or fairly and reasonably related to the appeal development.

15. He dealt with the second issue in paragraphs 46 to 51. He noted that it was not in dispute that there was a shortfall in the supply of affordable housing in the Borough which had worsened in the years since the adoption of the local plan when an annual deficit of 800 homes was recorded. Taking account of the viability position, he considered that 15% of affordable housing was policy compliant.

16. He dealt with the third issue in paragraphs 52 to 62. In the latter paragraph he concluded that the question ultimately was whether the development in question with the affordable housing and infrastructure on offer, is to be regarded as sustainable overall in the final planning balance, despite coming forward as an isolated application at variance with the aspirations of the supplementary document. At paragraph 90, he indicated that he had concluded that the infrastructure contributions offered by the developer are policy compliant on grounds of viability.

17. In paragraphs 87 to 97 the inspector dealt with benefits and planning balance. He concluded that there would be a public benefit from 220 homes, including 33 affordable homes, in the face of supply shortages of undisputed significance. He further concluded that although he had found that the unilateral undertaking to provide land for the primary school carried no weight, the development would still contribute financially to primary and secondary schools along with other infrastructure contributions, within the viability limits agreed by the viability experts. On the first main issue, he concluded that the appeal proposal makes appropriate provision of education in terms of need, but the departure from policies NC3 and CM1 for there to be a primary school at the heart of every village weighed against the proposal. On the second main issue, he found that 15% of affordable homes is compliant with policy HA2 in terms of agreed viability, but that the shortfall was to be taken into account. On the third main issue, he found that the infrastructure contributions are compliant with policy IN1 on grounds of viability, and the outstanding question is one of overall sustainability, given the overall viability shortfall. He recognized the authority's disquiet about the shortfall in the calculated proportionate contributions which it sought in support of the cost of infrastructure, but observed that the contributions offered were the most that can be brought forward on the agreed viability evidence.

18. At paragraph 94 his conclusion was as follows:

> "On a balance of judgment in these circumstances, I consider that these policy conflicts and the disadvantage of the shortfall in infrastructure contributions are together outweighed by the benefits I have identified above such that, in terms of the development plan overall and section 38(6) of the [2004 Act], the degree of non-compliance would be outweighed by other material circumstances."

19. In paragraphs 95-98 he considered NPPF, paragraph 7, 8 and 11, and found that overall, the proposed development would amount to sustainable development in terms of its socio-economic and environmental roles.

Statutory framework and legal principles

20. The relevant statutory framework and legal principles were set out in the skeleton argument of Mr Stinchcombe KC and supplemented by Mr Glenister and Mr White KC. There were no issues about these, so I can summarise them briefly.

21. Subsections 70(2) and 79(4) of the 1990 Act and section 38(6) of the 2004 Act require that applications for planning permission and appeals must be decided in accordance with the development plan unless material considerations indicate otherwise. Accordingly, the development plan is presumed to govern the decision-making process, subject to material considerations (see *Hopkins Homes Ltd v SSCLG* [2017] UKSC 37).

22. Policies contained in such a plan must be interpreted objectively and in accordance with the language used in its proper context. Where a decision-maker fails properly to understand and apply a relevant policy, that amounts to an error of law (see *Tesco Stores v Dundee CC* [2012] UKSC 13, at [17-22]).

23. However, in *St Modwen Developments Ltd v SSCLG* [2018] EWCA Civ 1643 at [6(4)], Lindblom LJ referred to seven principles to guide courts dealing with statutory reviews under section 288 of the 1990 Act, six of which are relevant in the present case, and may be summarised as follows:

    i) Inspectors' decisions are to be construed in a reasonably flexible way. Not every argument needs to be set out.

    ii) Reasons for an appeal decision must be intelligible and adequate on the principal important controversial issues.

    iii) The weight to be attached to any material consideration and all matters of planning judgment are matters for the decision-maker and not for the court unless the decision is irrational.

    iv) Planning policies are not statutory or contractual provisions and should not be construed as if they were. Interpretation is a matter of law for the court, but application is a matter for the decision-maker.

    v) When it said that an inspector has misinterpreted policy, the court must look at what the inspector thought the important planning issues were and decide whether it appears from the way they were dealt with that the policy must have been misunderstood.

    vi) Consistency in decision-making is important both to developers and local planning authorities, but it is not a principle of law that like cases must always be decided alike. Inspectors must exercise their own judgment.

24. Lindblom LJ then in paragraph 7 repeated the caution against the dangers of excessive legalism infecting the planning system and said:

> "There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault…"

25. In carrying out an interpretation exercise, regard must be had to relevant explanatory text which accompanies the policy. Although such text does not have the force of policy and cannot override it, it is plainly relevant to the interpretation of a policy (see *R (Cherkley Campaign Limited) v Mole Valley DC* [2014] EWCA Civ 567, at [16] and *R (Sainsbury's Supermarkets PLC) v SSLG* [2009] EWHC 1501 (Admin), at [21-22]).

26. The extent to which a decision maker must have regard to material considerations depends on the nature of the consideration. Some may be taken into account or not, but others must be. The latter include those which are so obviously material that they must be taken into account (see *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire CC* [2020] UKSC 3, at [32]).

27. A party to a planning appeal must put before an inspector the material on which they rely and make all the representations they wish. Inspectors are entitled to reach their decision based on the material before them. If relevant considerations are not raised, and there is no specific statutory duty to consider them, a failure to have regard to them will not amount to an error of law (see *West v First Secretary of State* [2005] EWHC 729 (Admin) at [42 – 44] and *Cotswold DC v SSCLG* [2013] EWHC 3719 (Admin) at [59].

28. The issue of precedent may be a mandatory material consideration, but there must be evidence in one form or another to require precedent to be taken into account which goes further than mere fear or generalised concern (see *Collis Radio v SSE* (1975) 29 P&CR 390, at pp.395-396, *Poundstretcher Ltd v SSE* [1988] 3 PLR 69, *Rumsey v SSETR* (2001) 81 P. & C.R. 32 (p.465), at [16], and *Sainsbury's Supermarkets*, at [76-88]). Whether it is material in a given case is a matter for the judgement of the decision-maker. However where it is so obviously material that it would be unreasonable to ignore it, a failure to take it into account or to give it any weight will be amenable to an irrationality challenge on review by the courts (see *R (Cooper) v Ashford BC* [2016] PTSR 1455 and *R (Friends of the Earth Ltd) v SST* [2021] PTSR 190 at [121]). Where submissions on precedent are made in a generalised way, an inspector may respond in kind (see *R (Millgate Homes Ltd v The First Secretary of State* [2003] EWHC 2510 (Admin) at [25]).

29. In a review under section 288 of the 1990 Act, if an inspector is found to have made an error, the court should refuse relief only if the decision would inevitably have been the same had the error not been made (see *Forest of Dean DC v SSCLG* [2016] EWHC 2429 (Admin), at [19]).

Ground 1

30. Ground 1 concerns the correct interpretation of the words "where appropriate, and within the context of economic viability" in policy IN1. The inspector dealt with that policy as follows:

> "52. In the same way as Policy [HA2], Policy IN1 is qualified to the effect that the aim of development contributing the cost of infrastructure needed to support it depends on scheme viability. Supporting paragraph 4.223 recognizes that circumstances can exceptionally arise when abnormal costs threaten economic viability but benefits outweigh the harm of not providing related infrastructure. I do not share the expressed view of the Council that this applies a strict test of exceptional circumstances but consider that it complements the discretion accorded to decision-makers by NPPF paragraph 58 in weighing the viability assessment in the overall planning balance.
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> 53. As noted above in connection with affordable housing, in this case there is, unusually, complete expert agreement that the appeal scheme can only afford, in addition to 15% affordable homes, approximately one third of the estimated minimum

> infrastructure costs sought by the Council, as well as the school site, if that is justified.
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> …
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> 57. Like the affordable housing contribution, the infrastructure contributions are compliant with the qualified terms of Policy IN1 of the SBLP. Nowhere in policy is there a requirement for a minimum level of infrastructure contributions and minimum figures put forward by the Council during the process of negotiation can only be regarded as indicative and subject to viability testing. The essential question for this appeal is whether the agreed shortfall in infrastructure contributions is outweighed by other material considerations in the overall planning balance."

31. In paragraph 61, the inspector accorded some weight to the objective of the supplementary document to co-ordinate contributions between main landowners by a framework agreement under section 106 of the 1990 Act, including a unified approach to Foxbridge village. However, he observed that that was highly aspirational and did not have the force of policy and there was no masterplan in the local plan beyond the allocation plan. He continued that the authority had, through no fault of its own, failed to establish a framework planning obligation with the main landowners. This was then followed by the conclusions referred to in paragraph 16 above.

32. In my judgment, the inspector dealt with the supporting text of IN1 in an appropriate way, and I agree that that has no strict test of exceptional circumstances. Rather, the policy sets out what is required, where that is appropriate and where it is within the context of economic viability. Paragraph 4.222 of the supporting text states that the local plan is a long-term plan and must incorporate a degree of flexibility, which is increasingly important given fluctuations in market conditions.

33. Mr Stinchcombe KC focused on three points. First, unlike policy HA2, policy IN1 is not worded so as to make infrastructural contributions "subject to" economic viability, but simply sets viability as a contextual matter to be taken into account. Second, it does not say that development is only required to meet the cost of new infrastructure made necessary by the development to the extent that it is viable to do so. Third, to interpret it in that way would involve rewriting it and would contradict the policy overriding objective whenever a proposed development was insufficiently viable to make the contributions necessary to make that development sustainable.

34. In my judgment, the policy is qualified in two ways. First, it applies "where appropriate." Accordingly, the policy itself expressly recognises that there may be cases where the requirement set out in the policy is not appropriate. As submitted by the defendants, whether it is appropriate in a particular case is a matter of planning judgment for the decision maker. Second, the policy applies "within the context of economic viability." It is true that these words are different to the words "subject to viability" as appear in policy HA2, but policies should not be construed as if they are statutory or contractual provisions. In my judgment, by using these words, the policy clearly calls for a consideration of viability, and for any requirement to be within that context. The policy contemplates cases which may be outside that context. A

requirement of a contribution which was unviable would not be "in the context of economic viability."

35. Mr Stinchcombe KC also criticises the inspector for not grappling with how any shortfall would be made up, or to the extent that it may not be made up, how that may impact on bringing forward the remaining development of the allocated land. He says that those are so obviously material considerations that they ought to have been dealt with. The authority's proofs of evidence, filed after the agreement of the viability experts as indicated above, deal in detail with the shortfall, but not with how it may be made up or what its impact may be. His explanation for that is that the authority's witnesses could not be expected to deal with matters which may involve decisions on the part of the authority as to how to deal with the shortfall. In my judgment, this criticism is unjustified when these matters were not put before the inspector either in evidence or submissions. That may not be surprising given that by the time of the inquiry, only about 15% of the homes allocated on the allocated land remained to be granted planning permission, and that the road needed to access Foxbridge was already under construction. I can see that such considerations may be material in some cases, but on the facts of the present case I am not persuaded that they were so obvious (although not raised by the authority) that the inspector was obliged to deal with them.

Ground 2

36. I turn now to the question of precedent. This issue was raised in two paragraphs of the authority's closing submissions. The inspector dealt with the issue in one paragraph as follows:

> "81. The Council expressed concern that to approve the present proposal without the full calculated developer contributions would set a precedent for other parts of the [allocated land] to come forward without sufficient supporting infrastructure. In fundamental principle however, this appeal is decided on the balance of planning harms and benefits on the individual merits of the particular case. Accordingly, no precedent is set."

37. Mr Stinchcombe KC submits that the reasoning is flawed. There is no reason why a decision on its individual merits cannot set a precedent for future applications. The issue of precedent was so obviously material that to ignore it is irrational. The inspector should have considered the side effects of granting permission and the obvious potential consequences for the sustainable delivery of the remainder of the allocated land. No reason was given.

38. Given that such potential impacts were not dealt with in evidence and dealt with in a few lines or so in the authority's closing submissions, in my judgment the inspector was entitled to respond in kind, as Mr Glenister submits. His conclusion was in the context that "unusually" as he commented, there was agreement as to the viability of this particular scheme, and in the context that only about 15% of the 8000 homes remained to be granted planning permission. As indicated above, the inspector carried out a detailed benefits and planning balance of the scheme. In my judgment in that context, it was not irrational for him to conclude that no precedent would be set, and his reasons were adequate.

Ground 3

39. Finally, I turn to education. The inspector preferred the developer's approach to demographic peak of primary school places, and there is no challenge to that approach, or to the yield figures set out in his decision letter. These figures led the inspector to conclude in paragraph 38 that for the appeal development taken alone on merit, a 1FE primary school was not justified and would only be justified for Foxbridge village as a whole. In paragraphs 43 to 45, he said this:

> "43. I acknowledge that the Council would maintain that a primary school is nonetheless necessary to satisfy the essentially laudable aim of the [allocated land] strategy that there should be a primary school in every village. However, it is material that such an aim may simply not be practical. As matters stand, there is no guarantee that [the south part of Foxbridge] will come forward in practice, given a multiplicity of landowners and no planning permission or planning obligation to provide infrastructure in place. There is nothing in adopted planning policy to require the whole of Foxbridge Village to come forward as a single entity and the appeal falls primarily to be determined on the individual merits of the …proposal refused by the Council.
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> 44. In terms of compliance with adopted Policies NC3 and CM1 of the [local plan], both provide that schools should be in the heart of their communities. That does not amount to an express requirement but any degree of conflict in this respect is to be weighed in the balance with other material considerations.
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> 45. On the first main issue, I conclude that the appeal proposal makes sufficient and appropriate provision for education facilities, on the basis of the overriding material consideration that the primary school would not be necessary in practice."

40. Mr Stinchcombe KC criticises the four reasons which the inspector set out in paragraph 43 and says that he does not explain why the aim of a primary school in each village may not be practical. The inspector included permission for such a school in allowing the appeal. The absence of a policy requirement for the whole of the village to come forward as a single entity does not remove the policy requirement that there should be a primary school in each village, and the village as a whole is likely to justify a 1FE primary school as the inspector found. Paragraph 95 of the NPPF makes it clear that it is important that there should be a choice of school places available. An application for Foxbridge had been submitted in accordance with policy NC3 allocation. For all those reasons, his decision to exclude the school or any part of the land for it from the unilateral undertaking was irrational.

41. In my judgment, the focus of the authority on paragraph 43 of the inspector's decision letter is misplaced, as the defendants submit. That must be read in the context of the decision letter as a whole and in particular of the section dealing with education. From that it is clear why he concluded that the policy aim may not be practical, namely that pupil yields in each village may not support a school. His reference to the absence of

a planning permission or planning obligation to provide infrastructure was in the context of the south part of Foxbridge, and it was not in dispute that that may not come forward.

42. Accordingly, I am not persuaded that the inspector's conclusion was irrational or not adequately reasoned. On the contrary, his reasons were justified and clear.

Conclusion

43. Accordingly, all three grounds fail and the claim is dismissed. The parties helpfully indicated that consequential matters, if not agreed, can be dealt with on the basis of written submissions. A draft order, agreed as far as possible, should be filed within 14 days of hand down of this judgment, together with any such written submissions.