Neutral Citation Number: [2025] EWHC 1455 (Admin)

Claim No: AC-2024-LDS-000200

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

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

Date: 13 June 2025

Before :

ROBERT PALMER KC
sitting as a Deputy Judge of the High Court

- -

Between :

BELLWAY HOMES LIMITED

Claimant

- and -

SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

Defendant

- and -

DURHAM COUNTY COUNCIL

Interested Party

- -
- -

Hashi Mohamed (instructed by **Womble Bond Dickinson (UK) LLP**) for the **Claimant**
Ben Du Feu (instructed by the **Government Legal Department**) for the **Defendant**
John Barrett (instructed by **Durham County Council**) for the **Interested Party**

Hearing date: 1 April 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 13 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ROBERT PALMER KC sitting as a Deputy Judge of the High Court

ROBERT PALMER KC sitting as a Deputy Judge of the High Court:

Introduction

1. This is an application under section 288 of the Town and Country Planning Act 1990 (**"the Act"**). Bellway Homes Ltd (**"the Claimant"**) is aggrieved by the decision dated 16 May 2024 of an Inspector appointed by the Secretary of State to dismiss its appeal against the refusal of planning permission by Durham County Council (**"the Council"**) in relation to land to the north of George Pit Lane, Great Lumley, County Durham **("the site"**).

2. The site comprises approximately 8.1 ha of agricultural fields, and wraps around the south-eastern edge of the village of Great Lumley. It is located immediately adjacent to existing built residential development. The site is not subject to any allocations or designations within the County Durham Plan 2020 (**"the CDP"**).

3. The Claimant had applied for planning permission for "Erection of 148 dwellings with associated access, infrastructure and landscaping" (**"the proposed development"**). The Council as local planning authority had refused the application. Its reasons for refusal centred around two main concerns. The first related to the visual impact of the proposed development and its effect on the landscape. The second related to whether the proposed development would have good access by sustainable modes of transport to services and facilities in Great Lumley.

4. The Claimant appealed against the refusal of planning permission, pursuant to section 78 of the Act. The appeal was heard by an Inspector appointed by the Secretary of State, at an inquiry held on 3 April 2024. In his decision letter (**"DL"**), the Inspector accepted that the development would not result in material unacceptable landscape and visual harm. However, he dismissed the appeal on the basis that the site did not represent a sustainable location and that the proposed development could not be regarded as being well-related to the settlement of Great Lumley. He considered that these were fundamental conflicts with the development plan and that the harm that would result, when taken as a whole, was not outweighed by the various benefits of the development which he had also identified.

5. The Claimant originally advanced four grounds of challenge. However when the matter came before Karen Ridge (sitting as a deputy High Court Judge) on the papers, permission was granted only in respect of Ground 1 and refused in respect of the other three grounds. The Claimant's renewed application for permission on Grounds 2 to 4 was refused on 19 December 2024, following an oral hearing before HH Judge Klein (sitting as a Judge of the High Court).

6. Ground 1 alleges that the Inspector erred in law by misconstruing Policy 6 of the CDP. As I shall explain, Policy 6 is concerned with development on unallocated sites. It provides that the development of sites which are not allocated in the CDP or in a Neighbourhood Plan and which are either (i) within the built up area or (ii) outside the built up area but "*well-related*" to a settlement, will be permitted provided the proposal accords with all relevant development plan policies and fulfils each of the separate criteria set out at (a) to (j). Those criteria include at Policy 6(f) that the proposal "*has good access by sustainable modes of transport to relevant services and facilities and*

reflects the size of the settlement and the level of service provision within that settlement."

7. The essential complaint made by the Claimant under Ground 1 is that the Inspector failed to recognise that the policy operates in two stages, requiring the decision-maker, first, to establish whether a proposed site can pass through the "*gateway*" of being either (i) within the built up area, or (ii) outside the built up area but "*well-related*" to the settlement, and only secondly – if the proposed site has passed through that gateway – to decide whether the proposal accords with all relevant development plan policies and the requirements set out at parts (a) to (j) of Policy 6. It is said that the Inspector failed to follow this approach, and that he had not only conflated the two separate steps but in fact reversed them, in that he had used his conclusion that the policy did not comply with Policy 6(f) to determine the prior question of whether the proposed development site was well-related to the existing settlement, to the exclusion of other key considerations.

8. I note that Ground 2, in respect of which permission was refused, was a complaint that the judgement reached by the Inspector on locational sustainability was irrational and/or perverse. Although in his skeleton argument Mr Mohamed invited the Court "*to make obiter comments in respect of the Inspector's findings on location sustainability*", he accepted in oral submissions that it was not open to him to advance points directed at establishing that the Inspector's findings on the sustainability of the location were irrational. I will proceed on the basis that the Inspector was entitled to find as he did in relation to the sustainability of the site.

The relevant legal principles

9. It is helpful to recall at the outset the well-established principles as to the approach that the Planning Court should take to the interpretation of planning policy. The position was summarised by Sir Keith Lindblom SPT in *Corbett v Cornwall Council* [2022] EWCA Civ 1069 at [19] as follows:

> "There is ample case law relevant to the interpretation of development plan policies, both in the Supreme Court and in this court. Some basic points are worth repeating here:
>
> (1) Ascertaining the meaning of a development plan policy is, ultimately, a matter of law for the court, whereas its application is for the decision-maker, subject to review on public law grounds (see the judgment of Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 W.L.R. 1865, at paragraphs 22 to 26). The interpretation of planning policy should not, however, be approached with the same linguistic rigour as the interpretation of a statute or contract. Local planning authorities 'cannot make the development plan mean whatever they would like it to mean' (see the judgment of Lord Reed in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983, at paragraphs 17 to 19). But as was said in this court in *R. (on the application of Corbett) v Cornwall Council* [2020] EWCA Civ 508 (at paragraph 66), 'the professional officers of a local planning authority, and members who sit regularly on a planning committee, will not often be shown to have misinterpreted the policies of its development plan'.

(2) In seeking to establish the meaning of a development plan policy, the court must not allow itself to be drawn into the exercise of construing and parsing the policy exhaustively. Unduly complex or strict interpretations should be avoided. One must remember that development plan policy is not an end in itself but a means to the end of coherent and reasonably predictable decision-making in the public interest, and the product of the local planning authority's own work as author of the plan. Policies are often not rigid, but flexible enough to allow for, and require, the exercise of planning judgment in the various circumstances to which the policy in question applies. The court should have in mind the underlying aims of the policy. Context, as ever, is important (see *Gladman Developments Ltd. v Canterbury City Council* [2019] EWCA Civ 699, at paragraph 22, and *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, at paragraphs 16, 17 and 39).

(3) The words of a policy should be understood as they are stated, rather than through gloss or substitution. The court must consider the language of the policy itself, and avoid the seduction of paraphrase. Often it will be entitled to say that the policy means what it says and needs little exposition. As Lord Justice Laws said in *Persimmon Homes (Thames Valley) Ltd. v Stevenage Borough Council* [2005] EWCA Civ 1365 (at paragraph 24), albeit in the context of statutory interpretation, attempts to elicit the exact meaning of a term can 'founder on what may be called the rock of substitution – that is, one would simply be offering an alternative form of words which in its turn would call for further elucidation'."

10. See to similar effect *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at [19(4)], per Lindblom J; and *East Staffordshire BC v Secretary of State for Communities and Local Government* [2017] EWCA Civ 893 at [8].

11. In *East Staffordshire* at [50], Lindblom LJ additionally stressed that

> "Excessive legalism has no place in the planning system, or in proceedings before the Planning Court, or in subsequent appeals to this court. The court should always resist over complication of concepts that are basically simple. Planning decision-making is far from being a mechanical, or quasi-mathematical activity. It is essentially a flexible process, not rigid or formulaic. It involves, largely, an exercise of planning judgment, in which the decision-maker must understand relevant national and local policy correctly and apply it lawfully to the particular facts and circumstances of the case in hand, in accordance with the requirements of the statutory scheme. The duties imposed by section 70(2) of the 1990 Act and section 38(6) of the 2004 Act leave with the decision-maker a wide discretion. The making of a planning decision is, therefore, quite different from the adjudication by a court on an issue of law."

12. See also in this regard:

i) *R (Mansell) v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 at [41], per Lindblom LJ: "The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges,

but—at local level—to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and —on appeal—to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. A particular policy, or even a particular phrase or word in a policy, will sometimes provide planning lawyers with a "doctrinal controversy". But even when the higher courts disagree as to the meaning of the words in dispute, and even when the policy-maker's own understanding of the policy has not been accepted, the debate in which lawyers have engaged may turn out to have been in vain—because, when a planning decision has to be made, the effect of the relevant policies, taken together, may be exactly the same whichever construction is right: see para 22 of my judgment in the *East Staffordshire* case [2018] PTSR 88. That of course may not always be so. One thing, however, is certain, and ought to be stressed. Planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also—however well or badly a policy is expressed—that the court's interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect—in every case—good sense and fairness in the court's review of a planning decision, not the hypercritical approach the court is often urged to adopt.

ii) *R (Asda Stores Ltd) v Leeds City Council* [2021] EWCA Civ 32 at [35], per Sir Keith Lindblom SPT: "Bearing in mind that the purpose of planning policy is to achieve 'reasonably predictable decision-making, consistent with the aims of the policy-maker', [the court] will look for an interpretation that is 'straightforward, without undue or elaborate exposition'."

13. Finally, it is also right to recall the familiar principles setting out the approach the court should take to the reading of an Inspector's decision letter, as set out by Lindblom LJ in *St Modwen Developments Ltd v Secretary of State* [2017] EWCA Civ 1643 at [6]-[7], including that:

i) 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).

ii) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech

of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 WLR 1953, at p.1964B-G).

iii) There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that [the Court of Appeal] 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.

The Development Plan

14. The central policy of the CDP for the purposes of this claim is Policy 6, entitled "Development on Unallocated Sites". It provides as follows:

> "The development of sites which are not allocated in the Plan or in a Neighbourhood Plan which are either (i) within the built-up area; or (ii) outside the built-up area (except where a settlement boundary has been defined in a neighbourhood plan) but well-related to a settlement, will be permitted provided the proposal accords with all relevant development plan policies and:

a. is compatible with, and is not prejudicial to, any existing, allocated or permitted use of adjacent land;

b. does not contribute to coalescence with neighbouring settlements, would not result in ribbon development, or inappropriate backland development;

c. does not result in the loss of open land that has recreational, ecological or heritage value, or contributes to the character of the locality which cannot be adequately mitigated or compensated for;

d. is appropriate in terms of scale, design, layout, and location to the character, function, form and setting of, the settlement;

e. will not be prejudicial to highway safety or have a severe residual cumulative impact on network capacity;

f. has good access by sustainable modes of transport to relevant services and facilities and reflects the size of the settlement and the level of service provision within that settlement;

g. does not result in the loss of a settlement's or neighbourhood's valued facilities or services unless it has been demonstrated that they are no longer viable;

h. minimises vulnerability and provides resilience to impacts arising from climate change, including but not limited to, flooding;

i. where relevant, makes as much use as possible of previously developed (brownfield) land; and

j. where appropriate, it reflects priorities for urban regeneration."

15. The supporting text, so far as is material, states as follows:

> "4.109 This policy recognises that in addition to the development of specifically allocated sites, there will be situations where future opportunities arise for additional new development over and above that identified in the development plan for the area. This policy sets out the circumstances where such opportunities will be acceptable. This will include new build housing on suitable previously developed or greenfield sites, as well as conversions to accommodate new uses, the expansion or replacement of existing buildings, along with proposals including for example live/work units, community facilities, leisure, specialist living accommodation, small scale retailing, employment, infrastructure and other economic generating uses.
>
> 4.110 This policy applies to new development proposals within existing built-up areas or outside the built-up area but which are well-related to a settlement. For the purposes of this policy the built-up area is contained within the main body of existing built development of a settlement or within a settlement boundary defined in a neighbourhood plan. When assessing whether a site is well-related, the physical and visual relationship of the site to the existing built-up area of the settlement will be a key consideration.
>
> 4.111 We want to ensure that new development does not detract from the existing form and character of settlements and will not be harmful to their surroundings. Therefore, not all undeveloped land within the built-up area will be suitable for development. Where buildings already exist on site, their retention will be encouraged where they make a positive contribution to the area or have intrinsic value. In determining whether a site is appropriate for new development, the relationship with adjacent buildings and the surrounding area will be taken into account along with the current use of the site and compatibility of the proposal with neighbouring uses. New development should also not contribute to coalescence with neighbouring settlements, result in ribbon development or inappropriate backland development."

16. Other policies of the CDP which are of relevance for present purposes are, in broad summary, as follows:

i) Policy 10 ("Development in the Countryside") provides that development in the countryside will not be permitted unless allowed for by specific policies in the Plan or an adopted neighbourhood plan (subject to various exceptions which are set out within Policy 10 itself). It is common ground that Policy 6 is one of the "specific policies in the Plan" which do allow for development in the countryside.

ii) Policy 21 ("Delivering Sustainable Transport") provides that the transport implications of development must be addressed as part of any planning application, and that all development should deliver sustainable transport, including by delivering investment in safe sustainable modes of transport (including among other things walking, cycling and bus transport, in order of

priority), and by "providing appropriate, well designed, permeable and direct routes for walking, cycling and bus access, so that new developments clearly link to existing services and facilities together with existing routes for the convenience of all users."

iii) Policy 29 ("Sustainable Design") provides that all development proposals are required to achieve well designed buildings and places, and (among other things) contribute positively to an area's character, identity, heritage significance, townscape and landscape features, helping to create and reinforce locally distinctive and sustainable communities. Landscape proposals should (among other things) respond creatively to topography and to existing features of landscape or heritage interest and wildlife habitats; respect and where appropriate take opportunities to create attractive views of and from the site; and, in the case of edge of settlement development, provide for an appropriate level of structural landscaping to screen or assimilate the development into its surroundings and provide an attractive new settlement boundary.

iv) Policy 39 ("Landscape") provides among other things that proposals for new development will be permitted where they would not cause unacceptable harm to the character, quality or distinctiveness of the landscape, or to important features or views.

17. Paragraph 109 of the National Planning Policy Framework (as at December 2023) also provided: "Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes."

The Inspector's Decision Letter

18. The Inspector's Decision Letter (**"DL"**) identified the two main issues in the appeal at DL/7 as being:

> "The landscape and visual impact of the proposed development and whether the proposed development would constitute sustainable development having regard to the location of the site in relation to services and public transport."

19. At DL/8-11, he identified the most relevant CDP policies as being Policies 6, 10, 21, 29 and 39. He summarised each of their effects, and in relation to Policy 6 specifically identified the relevant criteria as being (c), (d) and (f).

20. At DL/13-22, he considered the first main issue, being the effect of the development on the landscape and its visual impact. Having analysed the effect of the proposed development on landscape character and considered its visual impacts, he recalled the provisions of Policy 39 of the CDP and concluded at DL/22 that:

i) although the proposed development would result in the loss of open land with the boundary of the built-up area extended to the south and the east, the development, through its outward looking emphasis and implementation of the comprehensive landscaping strategy, would achieve the objective of the County Character Area within which it fell by improving the urban fringe environment; and

ii) when taken in the round, whilst the scheme would result in a highly localised Minor/Moderate Adverse effect, with mitigation the development would not result in material unacceptable landscape and visual harm.

21. At DL/23-37, the Inspector set out his conclusions in respect of the second main issue, namely whether the proposed development would constitute sustainable development having regard to the location of the site in relation to services and public transport.

i) At DL/23-33, he dealt first with the nature of the pedestrian links from the development. He assessed the three different pedestrian routes that residents would have to local facilities and services. He found they were not unattractive or difficult walks. Most facilities would be within a convenient cycling distance. However, he found that the walking distances from the mid-point dwelling to most key facilities (including the pharmacy, the community centre and in particular the Co-op, the post office and the infant school) were outside, or well outside, the 800m or 10-minute threshold applied in several sources of guidance on acceptable walking distances. He concluded that given those distances, "it is unlikely that many residents would, particularly in winter or bad weather, choose to walk to the local services in preference to the private car."

ii) At DL/34-35, he assessed the bus links. He found that the walking distance to nearby bus stops would not be unacceptable; however the frequency and destination of the services were limited. One hourly service would serve the village and run to either Seaham or Chester-Le-Street. A second service serving the village would run twice hourly, to Sunderland and Consett, but from bus stops that were further away. Neither service would run to the key regional and sub-regional employment and retail centres of Newcastle and Durham. Thus, he concluded, "notwithstanding the relative convenience of the stops and the provisions of the travel plan, given the limited frequence and destinations served, public transport would not provide a realistic opportunity for future residents to access employment/shopping by public transport."

iii) He concluded at DL/37: "Drawing the above together, notwithstanding my conclusions on the utility of various routes for walking and cycling, the opportunity to substitute walking or public transport in place of the car would be extremely limited. Walking and public transport would not provide for a genuine choice of transport modes so as to realistically reduce dependency on the private car. Prospective residents are more likely to choose the car over walking/public transport to meet their employment/shopping needs. **As such, the development cannot be regarded as being well related to the settlement or a sustainable location.** This conclusion is consistent with Great Lumley's low position in the [County Durham Settlement Study 2018]." The sentence in bold emphasis, which I have added, is the particular focus of criticism by the Claimant.

22. At DL/38-42, the Inspector addressed other material considerations, most of which, to varying degrees, he considered to weigh in favour of the proposed development. In particular, he attached substantial weight to the proposed development's provision of affordable and specialist housing for the elderly and those with mobility difficulties. He also attached moderate weight to the economic benefits of the proposal and to the

provision of public open space and a suite of environmental benefits, and significant weight to the Biodiversity Net Gain.

23. Finally, at DL/43-45, he addressed the planning balance and his overall conclusions. At DL/43, he recognised that the Council's witnesses had made significant concessions in cross-examination, but explained that he had used his own judgement, based on his own professional experience and the relevant policies of the development plan. He then concluded as follows (again, with added bold emphasis in respect of the conclusion which is the focus of criticism by the Claimant):

> "44. Notwithstanding my conclusion, relating to the effect on landscape and visual amenity, I am clear that when the issue of the location of the site in relation to services and public transport is addressed in the round, it does not represent a sustainable location. Even with the Travel Plan and the improvements to public transport, there would be no material change in travel modes thereby reducing reliance on travel by private car. **As such, the proposal would not be physically well related to the existing settlement, would conflict with Policy 6 criterion f and Policy 6 when read as a whole, Policy 21 and by definition Policy 10 regarding development in the countryside.** Planning proposals are to be determined in accordance with the development plan unless material considerations indicate otherwise. These fundamental conflicts with the development plan and the harm that would result, when taken as a whole, are not outweighed by the acknowledged benefits of the development.
>
> 45. For the above reasons, and having regard to all other matters, I conclude that the proposal would conflict with the development plan read as a whole and the appeal is dismissed."

Submissions

(i) The Claimant's submissions

24. On behalf of the Claimant, Mr Hashi Mohamed made three main submissions.

25. First, he submitted that Policy 6 should be read in two parts:

> i) Policy 6 first provides for a "gateway" for unallocated sites: the site must *either* be within the built-up area, *or* outside the built-up area (where no settlement boundary has been defined) but well-related to a settlement;
>
> ii) If (and only if) a site passes through that gateway, it must then be assessed against the criteria set out at (a)-(j), each of which must be met.

26. Thus, he submitted, if a site fails to meet the initial gateway test, it would not get the chance to be assessed against the criteria set out at (a)-(j). That is how Policy 6 reads on its ordinary English meaning (including in particular the use of the word "*and*" at the end of the first paragraph of the policy), and reflects its structure. Further, paragraph 4.110 of the supporting text stated that when assessing whether a site is "well-related" for the purposes of the gateway, "a key consideration" was the physical and visual relationship of the site to the existing built-up area of the settlement. This made clear that a site was required to have a physical and visual relationship to a

settlement: to suggest that this was "a key consideration" was consistent with an interpretation of Policy 6(f) to mean that without meeting that key consideration, a site would not proceed to be assessed against the criteria. A decision-maker was therefore required to engage with that point first, and reach a view on it, and only if that led to the conclusion that the site was "well-related" to a settlement would it be appropriate to proceed to consider whether it met the further criteria of Policy 6(a)-(j) (and whether it accords with all other relevant development plan policies).

27. Contrary to this approach to the interpretation of Policy 6, Mr Mohamed submitted, the Inspector had wrongly conflated and then reversed the two separate stages of Policy 6: he had not started by addressing the gateway question of whether the site was well-related to the settlement of Great Lumley in physical and visual terms, but had jumped to the criteria in Policy 6(f), which he found had not been met, and had then reversed his conclusion back into the question of whether the site was well-related to the settlement. The Inspector must have been alert to Policies 6(c) and (d), given they were cited specifically at DL/10, and must have found no breach: that was obvious given the terms in which DL/13-22 had addressed the question of landscape character and visual impact. However, the Inspector had not reached any conclusion on that basis as to whether the site was "well-related" to the settlement. Nor had the discussion of pedestrian routes at DL/23-33 reached any judgment on whether the site was physically or visually well-related to the settlement. This ignored the structure of Policy 6. The policy did not say that the requirement to be "well-related" to a settlement was to be demonstrated by reference to the criteria which followed.

28. Under pressure of oral argument, Mr Mohamed accepted that the extent to which a proposed development met (at least) criteria (c) and (d) could inform his conclusion as to whether the site was "well-related" to a settlement, as they overlapped with that question: the criteria were not, therefore, "hermetically sealed" from the judgement as to whether a site was "well-related". He also accepted in reply submissions that the term "well-related" included a functional element, as well as physical and visual ones. To that extent, criterion (f) could inform the conclusion as to whether a site was "well-related" to a settlement. However, he maintained his argument that it was wrong in principle to start with criterion (f) and then to return to the question of whether a site was "well-related" to a settlement. That was because the physical and visual relationship was the "entry point gateway", requiring the acceptance of a physical connection to the settlement. This "gateway" needed to be considered first, even if the Inspector then passed through the gateway (by finding the test satisfied), found conflict with one or more of the criteria, and then revisited his initial conclusion on whether the site was well-related to the settlement in question in light of that conflict. To do otherwise was to conflate the gateway question with the criteria. The structure of the policy had to be respected.

29. Noting the Secretary of State's reliance upon the familiar legal principles set out above at paragraphs 9-11 above as to the need to avoid an excessively legalistic approach, and that planning policy should not be approached with the same linguistic rigour as the interpretation of a statute or contract, Mr Mohamed argued that this provided no answer to his submission: the structure of Policy 6 could not simply be ignored. He recalled the words of Lord Reed in *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983 at [19]: "planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

30. Second, Mr Mohamed submitted that all parties at the inquiry had approached Policy 6 on the basis that it provided for a two stage test:

    i) The Statement of Common Ground had identified the issues as which there was disagreement, and had identified separate issues as to (i) the extent to which the proposals related well or poorly to the existing settlement both physically and visually, and (ii) the accessibility of the site to services and facilities in Great Lumley.

    ii) The Council's closing submissions had been consistent with the Claimant's approach: it had submitted that it was "clear that the wording of Policy 6 requires compliance in all its aspects and, in particular, it being 'well-related to a settlement' and then meeting the specific criteria listed within the body of the policy." Its subsequent submissions had not suggested that the matters relevant to sustainability related to the issue of whether the site was well-related to a settlement.

    iii) The Claimant's closing submissions had started by addressing "spatial policy" and the question of whether the site was visually or physically related to the settlement, and had then gone on separately to deal with issues such as sustainable transport. In addressing the planning balance at the conclusion of the submissions, the submissions had started by addressing the question of whether the site was well-related to the built-up area both visually and physically, and had then gone on to address the criteria at (c), (d) and (f) (which were the only criteria with which the Council had taken issue).

31. Third, Mr Mohamed made a submission that appeared neither under Ground 1 of his Statement of Facts and Grounds nor in his skeleton argument. (A related, but distinct, point had been raised under Ground 3, in respect of which permission had been refused.) He submitted that it was clear that Policy 6 did not say that the ability to be "well-related" to a site was dependent on its physical connection to other settlements beyond the built up area of the specific settlement where the development is proposed. However, it was clear that the reason why the Inspector had conflated the test on what it meant to be "well-related" by starting with Policy 6(f) and then back to gateway question, was that he clearly thought that the site needed to have a sustainable connection with other settlements via other modes of transport. DL/37 and 44 showed that the Inspector had been under the impression that to have that relationship, future residents needed to be able to get to Newcastle and Durham. In particular, at DL/37 the Inspector was saying that to be a "well-related settlement", the site needed to have much better bus connections to Newcastle and Durham. His view was that the physical relationship was one that could only be achieved via Policy 6(f) on the facts of this case. He had confused how the policy ought to be read concerning the physical and visual relationship with Great Lumley, with what Policy 6(f) was addressing, which was connectivity between Great Lumley and the surrounding settlements. The physical relationship to the settlement (so as to be well-related) could not be predicated on whether future residents could get to Durham or Newcastle by bus. The Inspector had used Policy 6(f) to undermine the basic judgment that the site was well-related to the settlement of Great Lumley. The whole of the assessment of the planning balance at DL/44 had proceeded from an incorrect basis and was therefore wrong.

32. In consequence, Mr Mohamed concluded, the Inspector's decision should be quashed. It was not possible to be sure of the outcome of the appeal had Policy 6 been approached in the correct manner. The decision could not be read so as to extrapolate a standalone judgement on Policy 6(f) alone that would have justified the refusal of planning permission on that basis alone. In any event, there was nothing in the DL that grappled with the key consideration of whether the site was physically and visually well-related to the settlement.

(ii) The Secretary of State's submissions

33. On behalf of the Secretary of State, Mr Ben Du Feu submitted that, as to the interpretation of Policy 6, the term "well-related" connoted an assessment that denoted a wider range of factors than just the geographical relationship of the proposed development to the existing settlement. It required an exercise of judgement, as to which nothing was impermissible to take into account.

34. The two stage approach advanced by Mr Mohamed, with its over reliance on the use of the word "and", was overly legalistic: it was mechanistic and rigid, the very approach which was to be avoided. There was nothing in the language or structure of the policy which meant that the decision-maker must exclude consideration of accessibility or sustainability when considering whether the site was "well-related" to a settlement. There was nothing which required the decision-maker to ignore any of the matters set out in criteria (a)-(j). Those matters could inform the judgement as to whether a site was "well-related" to a settlement. Not all of them were relevant, but some would be: for example criterion (d) required the proposed development to be "appropriate in terms of scale, design, layout, and location to the character, function, form and setting of, the settlement". That plainly covered matters which would inform the judgement as to whether the site was "well-related" to a settlement. There was no reason to take a different approach to criterion (f).

35. The supporting text at paragraph 4.110 did not seek to limit the considerations which were relevant to this judgement: it simply identified "a key consideration", but this did not mean that no other considerations were relevant. Consideration of the "physical" relationship was in event capable of including accessibility – it encompassed a broader range of factors than simply whether development proposals were adjacent to an existing settlement.

36. Mr Du Feu sought to draw inspiration from the facts of *Corbett*:

    i) In that case, the Court of Appeal concluded that the words "immediately adjoining" in a planning policy did not import a legal concept, but were a concept of planning policy requiring the exercise of planning judgement on the particular facts of the site and proposal in hand. Sir Keith Lindblom SPT said at [24] that the words did not need an elaborate explanation and should not be given an unduly prescriptive meaning. This applied also, Mr Du Feu submitted, to the words "well-related" in the context of Policy 6. (Mr Mohamed responded that he was not seeking to redefine the words "well-related", so this point did not assist.)

    ii) Further, Sir Keith Lindblom SPT had also held in *Corbett* at [35] that though the main focus of the relevant part of the policy at issue in that case was on the

physical and visual relationship between the site and development and the settlement, it did not follow that the functional relationship between them could have no bearing upon the necessary exercise of planning judgement. That consideration was neither explicitly nor implicitly, and there was no reason to think it was regarded as irrelevant by the council when formulating the policy. The same applied in the present case to Policy 6, Mr Du Feu submitted. (As indicated above, Mr Mohamed made clear in reply that he accepted "well-related" included a functional element, as well as physical and visual ones.)

37. Mr Du Feu submitted that the argument that the Inspector had taken into account the absence of a bus to Durham or Newcastle in forming his view that the site was not "well-related" to the settlement had not appeared at any stage in the pleadings. However, reading the DL with common sense, it was dealing with all issues of sustainability at DL/23-37. That included consideration of the accessibility of local services, as well as public transport to other services including employment and shopping. It was an overly forensic approach to read DL/37 and DL/44 as suggesting that the Inspector considered that the proposed development was not well-related to the settlement by virtue of a lack of adequate public transport links to other locations.

38. As to the consequences, Mr Du Feu submitted that the effect of the Inspector's conclusions as to Policy 6(f) were the same whichever construction of Policy 6 was right. It was common ground before the Inspector that Policy 6 required all the criteria to be met. That was important as the Claimant's Ground 2 – which included a challenge to the rationality of the Inspector's conclusion that the site was in an unsustainable location and breached Policy 6(f) – had been refused permission and was no longer pursued. The issue of location sustainability had therefore been determinative of the appeal. It followed that Ground 1, at its height, concerned a matter of policy interpretation which had not been determinative of the decision-making process. No relief could follow even if the Claimant was right on the interpretation of Policy 6.

(iii) The Council's submissions

39. On behalf of the Council, Mr John Barrett adopted the Secretary of State's submissions. As to the first submission, the Claimant's interpretation of Policy 6 was "overzealous". There was nothing that required the disaggregation of the policy into separate component elements. Mr Barrett stressed that the visual relationship of the site was not the sole consideration of whether a site was well-related to a settlement. For example, the matters set out under Policy 6 (c), (d) and (f) could all be a function of the physical relationship between site and settlement. There was nothing in the policy that mandated a "gateway" policy which required the exclusion of all the matters raised in (a)-(j): some would and some would not be relevant. The term "well-related" pointed to a judgement to be made by a decision-maker on the specific facts of the individual case.

40. As to the Claimant's second submission, the Council's closing submissions had in fact referred to the sustainability of the site – and in particular the fact that most dwellings would be outside the accepted walking distances to facilities (including bus stops), with the result that residents would be likely to be over-reliant on the private car for accessing facilities – in the context of its submissions on whether the site was "well-related to a settlement".

41. As to the third submission, an additional point had been made as to the availability of public transport, which was taken into account within the context of sustainability and Policy 6(f), which also reflected national policy. The overall planning balance had been approached by Inspector with some care: he had conducted a balance between the identified conflict with policy and the benefits of the proposed development. DL/44 had drawn the threads together and the balance had been struck. It should not be read as relating only to the public transport point.

42. The original Ground 2 challenging the rationality of that conclusion was refused permission. The result was that there was an unassailable conclusion that the proposed development was in breach of Policy 6(f), with the result that this claim was academic. The Claimant could not overcome that essential finding of fact. In those circumstances, the claim must be dismissed.

Discussion

43. I agree with Mr Du Feu and Mr Barrett that the Claimant's submissions on the interpretation of Policy 6 adopt precisely the unduly strict and legalistic approach which the courts have repeatedly deprecated (see paragraphs 9-12 above), by inappropriately seeking to apply the same linguistic rigour as would be applied to the interpretation of a statute or contract. It is unduly formalistic to seek to divide Policy 6 into two parts, consisting first of a "gateway" and then of criteria which only become relevant once a judgement has already been made that the proposed development has passed through the gateway. There is no basis for any suggestion that the question of whether a site outside the built-up area is well-related to a settlement must be considered in isolation from any of the criteria which follow, whether as a matter of initial consideration or at all. (In particular, the use of the word "and" at the end of the first paragraph of Policy 6 does not provide any such basis.) Nor is there any basis for the suggestion that the application of the different elements of Policy 6 must be approached in a certain order. It does no violence to the wording, purpose or context of Policy 6 to approach it on the basis that it provides that development of a site will be supported by that policy if it accords with all relevant development plans and each of the criteria (a)-(j), and which although located outside the built-up area is well-related to a settlement.

44. As Mr Mohamed was constrained to accept during oral argument, the question of whether a site is well-related to a settlement cannot be treated as hermetically sealed from the substance of a number of the criteria, some of which may directly concern or touch on matters which are capable of informing the judgement to be made as to whether a given site outside the built-up area is well-related to the settlement in question. These include most obviously criterion (d), but also criteria (c) and (f). (It equally appears to be perfectly possible in principle for at least criteria (a) and (b) also to bear on the question of whether a site is "well-related to a settlement".) It follows that in some cases, it may be convenient for an Inspector (or planning officer in a report to committee) to explain why the site fails to accord with certain of those criteria before setting out a judgement that the site is not well-related to the relevant settlement.

45. In particular, criterion (f) requires that the proposed site must have good access by sustainable modes of transport to relevant services and facilities and reflect the size of the settlement and the level of service provision within that settlement. It therefore concerns one way in which a proposed site relates to the settlement in question. It does

not concern the visual relationship with the settlement, but it does concern both a physical and a functional one.

46. The supporting text at paragraph 4.110 makes clear that when assessing whether a site is well-related, "a key consideration" will be the physical and visual relationship of the site to the existing built-up area of the settlement. The fact that the physical and visual relationship will be "a key consideration" does not mean that it will be the only consideration. Mr Mohamed accepted that there is nothing in Policy 6 which excludes the relevance of a functional relationship. (That conclusion chimes with that reached in *Corbett* at [35], but there is no direct read across in that regard: each policy must be considered on its own terms.)

47. Further, I reject Mr Mohamed's submission that the effect of paragraph 4.110 was to require the Inspector to reach a decision on the physical and visual relationship of the site to Great Lumley before considering any other aspect of the relationship or any of the criteria, and to reach a conclusion as to whether the site was well-related to the settlement on that basis. That is not what the policy says. It is not even what the supporting text says. Even if paragraph 4.110 purported to have such an effect, while, as supporting text, it would be relevant to the interpretation of the policy, "it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy": *R (Cherkley Campaign Ltd v Mole Valley DC v Longshot Cherkley Court Ltd* [2014] EWCA Civ 567 at [16]. The policy makes no such prescription.

48. The effect of Mr Mohamed's interpretation was, as he accepted, that the Inspector was required to start by forming a judgement as to whether the site was well-related to the settlement in the limited context of its physical and visual relationship, and (if and only if the answer was that it was well-related) then to consider the criteria – but then, if consideration of those criteria revealed other matters relevant to the question of whether the site was well-related to the settlement, the Inspector could nonetheless revisit his initial conclusion on whether the site was "well-related" and factor in those further considerations.

49. This is, to borrow the words of Lindblom LJ in *East Staffordshire*, an unnecessary over-complication of a concept that is basically simple. All that is required is a judgement as to whether the site is well-related to the settlement in question. That judgment will be informed by a consideration of its physical and visual relationship, but also by its functional relationship, and any other matters which are relevant to that question whether or not they may arise from any of the criteria or other relevant development plan policies or otherwise. To take such an approach does not impose an interpretation at which only Humpty Dumpty could arrive; to the contrary, it reflects a straightforward interpretation, without undue or elaborate exposition (to adopt the language of Lindblom LJ in *Mansell*), in contrast to the approach advanced on behalf of the Claimant.

50. This is the approach that the Inspector rightly took in the present case.

    i) He considered the physical and visual relationship of the site to the settlement at DL/13-32, in the context of his conclusion that Policy 39 was met. Although he did not explicitly say so, as Mr Mohamed submitted, he must have been satisfied that the criteria in Policy 6(c) and (d) were met, as well as Policy 39. He had specifically identified them as relevant at DL/10, and there is no

suggestion anywhere of any conflict with them: to the contrary, his conclusions as to landscape character and visual impact could only be consistent with a conclusion that the development accorded with those criteria.

ii) However, he identified a conflict with matters which were plainly relevant to criterion (f), finding that most (even if not all) of the key services in the settlement were beyond an acceptable walking distance, meaning that not many residents would walk to them rather than use a private car: DL/31-33. Bus services to the village were of limited frequency, even if the distances to the bus stops was not unacceptable: DL/35. At DL/37, he restated (by way of interim conclusion) that the opportunity to substitute walking or public transport in place of the car would be extremely limited. Walking and public transport would not provide for a genuine choice of transport modes so as to realistically reduce dependency on the private car.

iii) The Inspector accordingly concluded at DL/37 that the development could not be regarded as being well-related to the settlement.

51. I see no basis for impugning that conclusion. It was based upon a correct approach to the policy, and upon relevant considerations to which the weight to be attached was a matter for him alone. It is nothing to the point if the parties structured their submissions so as to address the "well-related" point separately from the criteria. The Inspector was entitled to approach Policy 6 as he did. In any event, as Mr Barrett pointed out, the Council's submissions were not in fact advanced in such strictly discrete silos.

52. The Inspector also concluded (in the same sentence of DL/37) that the development was not in a sustainable location. This was a separate (albeit overlapping) point, and depended also on his conclusion DL/35 that public transport did not provide a realistic opportunity for future residents to access employment/shopping by public transport, which was in turn informed by his observation that neither of the bus services serving the village ran to the key regional and sub-regional employment and retail centres of Newcastle and Durham. He observed at DL/37 that prospective residents were more likely to choose the car over walking/public transport to meet their employment/shopping needs. He added at DL/37 that this conclusion was consistent with Great Lumley's low position in the County Durham Settlement Study 2018. All of these matters were material to Policy 21, whose relevance he had identified at DL/11.

53. It is true that his conclusion regarding Policy 6 criterion (f), Policy 6 as a whole, and Policy 21 were intertwined with each other in DL/33-37. That is because the Inspector was considering those matters compendiously within the context of his consideration of the second main issue identified at DL/7, being "whether the proposed development would constitute sustainable development having regard to the location of the site in relation to services and public transport." This issue directly engaged both Policy 6 and Policy 21.

54. The compendious nature of the Inspector's consideration of those policies is again apparent from his overall conclusions on the planning balance at DL/44, where he drew all his conclusions together. Those conclusions reflected not only his (positive) conclusion relating to the effect on landscape and visual amenity (embracing Policy 39 as well as Policy 6 criteria (c)-(d)), but also his clear conclusion that "when the

issue of the location of the site in relation to services and public transport is addressed in the round, it does not represent a sustainable location." He had both aspects of the sustainability of the site in mind – its relationship both to the immediate settlement of Great Lumley (as per Policy 6), and the more distant employment and retail centres (as per Policy 21): that is clear from his conclusion that "As such, the proposal would not be physically well related to the existing settlement, would conflict with **Policy 6 criterion f and Policy 6 when read as a whole, Policy 21** and by definition Policy 10 regarding development in the countryside."

55. This provides the answer to Mr Mohamed's point to the effect that the Inspector had mistakenly concluded that the adequacy of public transport links to Newcastle and Durham was relevant to the question of whether the site was well-related to the settlement of Great Lumley raised by Policy 6. The Inspector was very plainly under no such misapprehension. The submission to the contrary is the result of a laborious dissection of the decision letter in an effort to find fault (to use the language of Lindblom LJ in *St Modwen Developments*). It takes no account of the Inspector's coterminous consideration of Policy 21.

56. Given that there is no longer any challenge to the rationality of the Inspector's conclusion that the site was not in a sustainable location, his ultimate conclusion is unimpeachable, both in respect of Policy 6 and in respect of Policy 21 (and in consequence, Policy 10). The Inspector was entitled to find a fundamental conflict with the development plan, to find that this was not outweighed by the acknowledged benefits of the proposal, and to dismiss the appeal accordingly.

Conclusion

57. It follows that the Claimant's application must be dismissed.

58. I am grateful to all counsel for their helpful and well argued submissions.