Neutral Citation Number: [2025] EWHC 2908 (Admin)

Case No: AC-2025-LON-001040

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

**In the matter of an application for Planning Statutory Review**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/11/2025

**Before** :

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

**Between :**

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| **EDITH WESTON PARISH COUNCIL** | **Claimant** |
| **- and -** | |
| **(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** | **Defendants** |
| **(2) RUTLAND COUNTY COUNCIL** | |
| **-and-** | |
| **PHILIP DAVIES** | **Interested Party** |

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**Miss Celina Colquhoun** (instructed by **Addleshaw Goddard LLP**) for the **claimant.**
**Ms Heather Sargent** (instructed by **Government Legal Department**) for the **first defendant.**
The other parties did not appear and were not represented.

Hearing dates: 30 October 2025
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# Approved Judgment

This judgment was handed down remotely at 10am on 7 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE JARMAN KC

**HHJ JARMAN KC:**

*Introduction*

1. It is not in dispute that a planning inspector appointed by the first defendant (the Secretary of State) made an error in a decision dated 25 February 2025 allowing an appeal under section 78 of the Town and County Planning Act 1990 by the interested party and granting outline planning permission for up to 62 dwellings on land in the countryside to the east of Normanton Road, Edith Weston. The error was that he proceeded on the basis that the Edith Weston Neighbourhood Plan 2023-2041 (EWNP) had not been made and took it into account as a material consideration. Some five days earlier as a result of a referendum the plan became part of the development plan and replaced the previous 2012-2026 neighbourhood plan (NP). For reasons which remain unclear it appears that no-one bothered to tell the inspector.

2. The claimant Parish Council argues that this mistake means that the decision should be quashed. The Secretary of State argues that had this mistake not been made, the inspector would necessarily still have allowed the appeal. The second ground of challenge is that the inspector made a further mistake in not applying the National Planning Policy Framework (NPPF)[14] which provides that in certain circumstances, the adverse impact of allowing housing development that conflicts with a neighbourhood plan is likely significantly and demonstrably to outweigh the benefits. The Secretary of State maintains that NPPF[14] is not applicable.

*Legal framework*

3. The statutory scheme, as applicable, is as follows. Section 70(2) of the Town and County Planning Act 1990 provides that in dealing with an application for planning permission the local planning authority (the second defendant in this case- the LPA) shall have regard to (a) the provision of the development plan so far as material to the application, (aza) a post examination draft neighbourhood plan, so far as material to the application and (c) any other material considerations. It is common ground that prior to the referendum result on 21 February 2025 the EWNP came within subsection (aza).

4. By section 79(2)(a) of the 1990 Act, section 70 of the 1990 Act applies to an appeal under section 78.

5. Section 38(3) of the Planning and Compulsory Purchase Act 2004 materially provides that the development plan is (b) the development plan documents (taken as a whole) which have been adopted or approved in relation to the area and (c) the neighbourhood development plans which have been made in relation to the area. Section 38 (3A) provides that a neighbourhood development plan which has been approved by referendum but has not yet been made by the local planning authority also forms part of the development plan (and see section 38A(4)).Section 38(6) provides that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

*Legal principles*

6. There was no substantial dispute before me as to the relevant legal principles and these can be shortly summarised for present purposes.

7. The duty under section 36(8) of the 2004 Act is the essential component of the plan-led system of development control so that there is a presumption in favour of the development plan, see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447 (Lord Hope at 1449H). Lord Clyde at 1458B described it as a priority to be given to the development plan in the determination of planning matters.

8. More recently Lindblom LJ, in *Secretary of State for Communities and Local Government v BDW Trading Ltd (t/a David Wilson Homes (Central, Mercia and West Midlands))* [2017] PTSR 1337 [21-23,] after reviewing the authorities, drew five points from them, pointing out that these were not exhaustive.

> "21. First, the section 38(6) duty is a duty to make a decision (or "determination") by giving the development plan priority, but weighing all other material considerations in the balance to establish whether the decision should be made, as the statute presumes, in accordance with the plan (see Lord Clyde's speech in City of Edinburgh Council , at p.1458D to p.1459A, and p.1459D-G).
>
> Secondly, therefore, the decision-maker must understand the relevant provisions of the plan, recognizing that they may sometimes pull in different directions (see Lord Clyde's speech in City of Edinburgh Council , at p.1459D-F, the judgments of Lord Reed and Lord Hope in *Tesco Stores Ltd. v Dundee City Council [2012] UKSC 13* , respectively at paragraphs 19 and 34, and the judgment of Sullivan J., as he then was, in *R. v Rochdale Metropolitan Borough Council, ex p. Milne [2001] J.P.L. 470* , at paragraphs 48 to 50).
>
> Thirdly, section 38(6) does not prescribe the way in which the decision-maker is to go about discharging the duty. It does not specify, for all cases, a two-stage exercise, in which, first, the decision-maker decides "whether the development plan should or should not be accorded its statutory priority", and secondly, "if he decides that it should not be given that priority it should be put aside and attention concentrated upon the material factors which remain for consideration" (see Lord Clyde's speech in City of Edinburgh Council , at p.1459H to p.1460D).
>
> Fourthly, however, the duty can only be properly performed if the decision-maker, in the course of making the decision, establishes whether or not the proposal accords with the development plan as a whole (see the judgment of Richards L.J. in *R. (on the application of Hampton Bishop Parish Council) v Herefordshire Council [2014] EWCA Civ 878* , at paragraph 28, and the judgment of Patterson J. in *Tiviot Way Investments Ltd. v Secretary of State for Communities and Local Government [2015] EWHC 2489 (Admin)* , at paragraphs 27 to 36).

> And fifthly, the duty under section 38(6) is not displaced or modified by government policy in the NPPF. Such policy does not have the force of statute. Nor does it have the same status in the statutory scheme as the development plan. Under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act, its relevance to a planning decision is as one of the other material considerations to be weighed in the balance (see the judgment of Richards L.J. in Hampton Bishop Parish Council , at paragraph 30."

9. The weight to be given to any conflict with relevant policies is a matter for the planning judgement of the decision-maker: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at 780H, whether the planning policy in question is part of the development plan or a material consideration.

10. If the inspector would inevitably still have allowed the appeal had the inspector not made the undisputed error, his decision should not be quashed: *Simplex GE (Holdings) Ltd v Secretary of State for the Environment* [2017] PTSR 1041 (CA) at 1060C. Holgate J (as he then was) in *R (oao Weston Homes plc) v SSLUHC* [2024] EWHC 2089 (Admin) referred to the test as being whether it is possible for the court to say that without the error "the decision would inevitably have been the same."

11. 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: *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452 (CA), *per* Lindblom LJ (as he then was) at [41].

*The inspector's decision letter*

12. The development plan to which regard had to be had in the present case includes the Rutland Local Development Framework, Core Strategy Development Plan (CS) adopted in July 2011 and the Site Allocations and Policies Development Plan Document (DPD) adopted in October 2014. In his decision letter, DL[5], the inspector noted that the EWNP was at an advanced stage of preparation and that a referendum was held on 20 February 2025. He continued:

> "At the time of writing, the outcome of the referendum has not been confirmed and the plan has not been made. Nevertheless, Section 70(2) of the Town and Country Planning Act 1990 states that I must have regard to the post examination draft neighbourhood plan so far as material to the application."

13. The inspector also noted at DL[9] that the LPA had failed to determine the interested party's application for planning permission in time but that all matters between them had been resolved and both parties agreed that the appeal should be allowed and planning permission granted.

14. The inspector found that as the proposed development will be sited in the countryside there would be conflicts with policies in the CS, the DPD, and the NP and the EWNP.

The inspector found however that the benefit of providing 62 houses quickly, including 40% as affordable housing, outweighed these harms.

15. The conflicts were set out in the decision letter [10]-[18] as follows:

> "*Whether the appeal site is a suitable location for the proposed development, with reference to the spatial strategy in the development plan*
>
> 10. To ensure local services are available and the need to travel is reduced, Policy CS2 of the Core Strategy1 (CS) seeks to focus new development in sustainable locations, primarily the towns and local service centres. In turn, Policy CS3 outlines a settlement hierarchy and Policy CS4 directs development in accordance with that hierarchy. Edith Weston is a Local Service Centre where some growth will be accommodated mainly in the form of smalls scale allocations, affordable housing sites and infilling.
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> 11. The appeal site is not located within the defined settlement boundary of the village where infilling is supported and is not allocated for development either. Indeed, the appeal site is defined as 'Countryside' in the settlement hierarchy. Policy CS4 explains that development in the Countryside will be strictly limited to certain types that have an essential need to be in the countryside. The appeal scheme is not the type of development that inherently needs a countryside location. The proposal would therefore be at odds with Policy CS4 of the CS.
>
> 12. Policy SP6 of the of the DPD2 states that new housing will not be permitted in the countryside unless there is a demonstrated operational need related to agriculture, forestry or rural workers accommodation or affordable housing meeting an identified local need. The proposal would not adhere to this policy either.
>
> 13. Policy EW1 of the Neighbourhood Plan (NP) chimes with the aforementioned policies and has similar underlying aims. It states that new development will be expected to fall within the boundary of the planned limits of development unless it is a small-scale allocation, small scale affordable housing or other specified development types of a modest scale. Again, the appeal scheme would be at odds with this policy.
>
> 14. The EWNP is intended to replace the NP and is at a very advanced stage of preparation. The evidence base for this document includes a Housing Needs Assessment which suggested a need for 21 homes over the plan period. Rutland County Council provided an indicative housing requirement figure of 51 homes.

> 15. Accordingly, Policy EW-SG01 of the EWNP states that development will be supported within the Planned Limits of Development (PLD). The corollary is that development outside the PLD will not be supported. In addition, Policy EW-SG02 sets out design principles for the redevelopment of St George's Barracks Officers' Mess, which was granted outline planning permission (Ref. 2023/0822/OUT) for 85 homes on 28 November 2024. This quantum of development would exceed the indicative housing figure.
>
> 16. When discussing the overall planning strategy, the document explains that 'The Plan does not undertake housing site allocations, leaving this to the adopted Core Strategy'. In this respect, Policy CS6 of the adopted CS is concerned with the reuse of redundant military bases. I therefore share the view of the Council and appellant that Policy EW-SG02 does not allocate development. Instead, it provides a type of concept plan, which will now inform the reserved matters submission pursuant to the outline permission 2023/0822/OUT.
>
> 17. As such, the effect of allowing the appeal scheme would not be to substitute a planned allocation with an unallocated development, thereby jeopardising the delivery of the former. Accordingly, the proposal would not undermine a central component of the emerging planned strategy or prejudice the outcome of the plan making process. It would not be premature and falls to be considered on its merits. That is not, however, to suggest the proposal would adhere to the EWNP. It is quite the opposite, as the proposal would be a large body of houses outside the PLD and thus at odds with Policy EW-SG01 of the emerging EWNP.
>
> 18. In conclusion, the proposal would not be a suitable location for the appeal scheme when applying the spatial strategy in the development plan. The proposal would also be at odds with the emerging EWNP. This would harm the public interest of having a genuinely plan led system that provides consistency and direction."

16. Several relevant points emerge from those paragraphs. The first is that the inspector noted that EW1 of the NP "chimes," to use his word, with the quoted policies of the CS and DPD and has "similar underlying aims." Second, he noted that the EWNP is intended to replace the NP and was at a very advanced stage of preparation. Third, policy EW-SGO1 of the EWNP states that development would be supported in planned limits of development (PLD) so that as the proposal was for a large number of houses outside this development limit it would conflict with that policy of the emerging EWNP. Accordingly the inspector concluded that the proposal would not be a suitable location of the appeal scheme when applying the spatial strategy in the development plan and would be at odds with the emerging EWNP.

17. The inspector then went on to deal with the accessibility of services and facilities and concluded at DL[24] that there would be moderate harm from sub-optimal access and conflict with policies CS1(c) and CS2(a) and policy EW-TM01 of the emerging EWNP. The next section dealt with the effect of the character and appearance of the area. At DL[32] and [35] he indicated that he was concerned about harm to the countryside as there would be a large number of homes on the edge of a small rural village. He found that the overall impact would be moderate adverse and conflict with policy EW4 of the NP (it is agreed that the reference to EWNP is mistaken). He then went on to consider the effect on the integrity of the Rutland Water Special Protection Area but concluded at DL[43] that there would be no adverse effect. He came to similar conclusions at DL[44] to [51] in relation to other matters such as effects on heritage assets, the Edith Weston Conservation Area, highway, and ecology.

18. The next section is headed *Whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits*. At DL[52] the inspector repeated that the proposal conflicted with the development plan and must be determined in accordance with that plan unless material considerations indicate otherwise. He said that "a very important consideration" in the appeal was that the LPA was currently unable to demonstrate a five year housing supply. He then referred to NPPF[11] as directing, in such circumstances, that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the NPPF as a whole.

19. One such relevant policy is NPPF[14], which materially provides:

> "14. In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply:
>
> a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and
>
> b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 69-70);"

20. DL[53] to [56], in which the LPA is referred as the Council, read as follows:

> "53. As an adverse impact, the proposal would be at odds with the spatial strategy for housing set out in the NP and LP. However, the spatial strategy was formulated some time ago when the housing requirement was very different and before the recent changes to the Framework. The Council has not disputed the appellant's analysis that the housing requirement has gone from 123 dwellings a year to 266. The best-case scenario for the Council is that it is currently able to demonstrate a supply of 946 dwellings. Accordingly, the five-year housing land supply has fallen from 7.69 years to 3.55 years. When the Housing Delivery Test measure of 80% is factored in, and an additional 20% buffer

> added to the requirement, the housing supply falls to 2.96 years. This is a very significant shortfall.
>
> 54. In this context, a rigorous application of the spatial strategy would undermine attempts to remedy the housing deficit. Indeed, the Council seems to be relying on approving schemes contrary to the spatial strategy to achieve the current housing supply. Moreover, it is unclear how the Council intends to address the housing land supply shortfall. It would seem likely that more housing sites will need to be identified, probably in the countryside. The conflict with the spatial strategy currently carries only moderate weight.
>
> 55. The conflict with the emerging EWNP also needs to be seen in the context of the significant uplift in the housing requirement. The indicative housing requirement figure of 51 homes, which is a minimum rather than a ceiling, now appears out of date given the County's housing requirement and Edith Weston's position in the settlement hierarchy as one of the largest villages in Rutland.
>
> 56. In coming to this view, I note that the EWNP is at a very advanced stage of preparation. I am therefore acutely aware of the understandable local frustration allowing the proposal would naturally provoke. However, it is important to note that Paragraph 14 of the Framework is not engaged because the EWNP does not include allocations to meet its identified housing requirement. The proposal is therefore to be determined in accordance with Paragraph 11 of the Framework."

21. At DL[57] the inspector again deals with the moderate weight which he afforded to the sub-optimal access to services and facilities, the moderate weight which he afforded to the moderate harm to the countryside and the modest loss of Grade 3 Agricultural land. He concluded on these by saying that overall he attached "significant weight to the harms."

22. He then continued at DL[58] to [61] as follows:

> "58. Against this, the appeal scheme would deliver up to 62 homes. In so doing, the proposal could provide a mix of homes that would benefit housing choice. There would also be a moderate benefit to the construction industry and the subsequent occupation could provide a boost to the provision and retention of local services and facilities. The new residents could also provide vitality to the community by getting involved in local clubs and village life.
>
> 59. However, there is little substantive evidence before me to indicate that the services, facilities or clubs in the village are suffering for lack of patronage, and a large number of homes

> have already been approved. As a result, my start point is that the delivery of housing would be a moderate benefit.
>
> 60. Nevertheless, it is common ground that the Council are currently unable to demonstrate a five-year housing land supply, and the shortfall is acute. The delivery of 62 homes would notably boost housing land supply in the County. The housing could be delivered quickly as evidence by an expression of interest from a developer. In addition, 40% of the proposed dwellings would be affordable housing. This is a notable benefit given the need. Five custom and self-build. dwellings would also be a moderate benefit given the need for this type of housing as well. The delivery of housing would therefore be a benefit of high order. The scheme would also deliver biodiversity net gain and areas of open space. These would be further limited benefits.
>
> 61. Accordingly, the appeal scheme would cumulatively provide benefits of at least significant weight which would deliver positively against several policies in the Framework. Most notably the aim to significantly boost the supply of housing, including delivery of affordable housing. Thus, the cumulative adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This indicates that on this occasion, the decision should be taken otherwise than in accordance with the development plan."

*Ground 1*

23. I turn therefore to consider the two grounds of challenge. The only issue under ground 1 is whether the outcome would inevitably have been the same if the inspector had treated EWNP as replacing NP and becoming part of the development plan with the presumption and priority accorded to it by statute, rather than just a material consideration. This is a high threshold. Nothing less will do, otherwise there is a danger that the court may encroach upon matters of planning judgment which is the exclusive preserve of the decision maker. Miss Colquhoun, for the Parish Council, submits that had the inspector treated the EWNP as part of the development plan, as undoubtedly he should have done, then it would have been accorded the presumption and priority of the plan rather than the lesser weight of a material consideration. She submits that the inspector does not say what weight he gave to it, and that it is clear that the balancing exercise he carried out was finely balanced. Accordingly, it is not possible to say that the mistake made no difference.

24. Ms Sargent, for the Secretary of State, points to the fact that the Parish Council's own submissions before the inspector were that the EWNP should be accorded full weight, the LPA's case was that the appeal should be allowed and that there was no indication in the decision letter of any lesser weight attached. Further the inspector noted the conflict with EWMP and at DL[18] said that this would harm the public interest in having a consistent "plan led system." The conclusion at DL[54] and [55] was that because of the housing land supply shortage the conflict with the spatial strategy carries only moderate weight.

25. In my judgment, reading the decision letter fairly as a whole, although the EWNP was referred to as a material consideration and although no specific reference was made to the weight to be attached to the relevant policies of the EWNP, it is clear that the inspector had regard to the fact that it was at a very advanced stage of preparation. The conflicts referred to at DL[10]-[18] with the policies of the NP and with the EWNP were of the same nature as the conflict with the development plan policies of the CS and DPD, namely development in the countryside or outside limits of development. As the inspector put it the relevant policy of NP "chimed" with the development plan policies and had similar underlying aims. It is clear that the relevant policy of EWNP also had similar underlying aims, namely the lack of policy support for development outside the limits of development.

26. Because of the housing land supply shortfall and the likelihood that more housing sites would need to be addressed, probably in the countryside, the conflict with what the inspector termed the spatial strategy carried only moderate weight. On the other hand, the delivery of housing would be a benefit of high order-DL60. This was a matter for the inspector. In my judgment because of this shortfall, such weight would have inevitably been the same whether there were three, rather than two, development plan policies against development in the countryside or outside development limits. The mistake could not affect the overall conclusion of the inspector that the proposal conflicted with the development plan as a whole because it involved housing in the countryside.

27. Accordingly, whilst an error was made, there is no justification for quashing the decision under ground 1.

*Ground 2*

28. The issue under ground 2 is whether the inspector was correct to say at DL[56] that NPPF[14] was not engaged because the EWNP does not include allocations to meet its identified housing requirement. Miss Colquhoun realistically accepts that for the likelihood referred to in NPPF[14] to apply to the EWNP, it must contain not only policies but also allocations and that the EWNP expressly states that it does not contain allocations.

29. Nevertheless, she submits that, as the inspector noted in DL[15], policy EW-SG02 of the EWNP sets out design principles for the redevelopment of St George's Barracks Officers' Mess, to the south of the village, which was granted outline planning permission for 85 homes on 28 November 2024. However, she submits that he was wrong to say at DL[16] that that policy does not allocate development but instead provides a type of concept plan which will inform reserved matters. The fact that this policy set out principles for this development is, Miss Colquhoun submits, good enough to amount to an allocation within the meaning of NPPF[14] and provides for all of the housing needs identified by the LPA.

30. Ms Sargent points to section 3.2 of EWNP which states that "Site allocations will be dealt with through the Local Plan owing to the constraints of the Neighbourhood Area including a Site of Special Scientific Interest (SSSI), RAMSAR site and a Special Protection Area (SPA)." She also points to policy EW-SG02 which expressly states that it sets out "development and design principles" for the redevelopment of the Officers' Mess. She relies on the expectation that policies will be clear and straightforward. She

also relies on guidance on NPPF[14] given in Planning Policy Guidance which performs a valuable role in explaining, clarifying or elucidating the policies in the NPPF, see *Mead Realisations Ltd v SSHCLG* [2025] 1 P&CR 16 at [33]. PPG states:

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

31. In my judgment the inspector was entitled to conclude that policy EW-SG02 in referring to the Officers' Mess did not allocate but informed reserved matters. It does not amount to a local plan allocation to meet the identified housing requirement in full. As the inspector observed in DL[18], there is public interest in having a plan led system which provides consistency and direction. It is clear that the inspector was aware of this outline planning permission, but observed in DL[53] that the LPA did not dispute that the housing requirement had gone from 123 dwellings a year to 266 and that the shortfall of five year housing land supply was very significant. He also observed at DL[60] that the delivery of the appeal housing would boost housing land supply quickly, as there was developer interest.

32. NPPF[14] is couched in clear and simple terms and should be interpreted as such. The EWNP specifically disallows allocation, which is to be found elsewhere. In my judgment ground 2 is not made out.

*Conclusion*

33. It follows that this challenge fails and the inspector's decision stands. I would hope that the parties can agree consequential matters and counsel helpfully indicated that a draft order can be submitted together with any written submissions on such matters which cannot be agreed. These should be filed within 14 days of hand down of this judgment.