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Case No: CA-2025-000986

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
PLANNING COURT
MRS JUSTICE LANG
[2025] EWHC 777 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/11/2025

Before :

LORD JUSTICE MOYLAN
LORD JUSTICE NUGEE
and
LORD JUSTICE HOLGATE

Between :

STOP PORTLAND WASTE INCINERATOR an Appellant
unincorporated association acting through MS DEBORAH
TULETT

- and -

SECRETARY OF STATE FOR HOUSING, First
COMMUNITIES AND LOCAL GOVERNMENT Respondent

- and -

POWERFUEL PORTLAND LIMITED Second
Respondent

- and -

DORSET COUNCIL Third
Respondent

James Burton and Barney McCay (instructed by Leigh Day) for the Appellant
Ryan Kohli and Rowan Clapp (instructed by Government Legal Department) for the First
Respondent
David Elvin KC and Luke Wilcox (instructed by Ashurst LLP) for the Second Respondent

The Third Respondent did not appear and was not represented

Hearing date : 7 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on 6 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Holgate

Introduction

1. The single issue in this appeal is whether the Secretary of State failed to comply with her statutory duty to give reasons for her decision on a planning appeal in relation to part of one policy in a statutory development plan, Policy 4(c) of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 (“the Waste Plan”).
2. On 3 September 2020 the second respondent, Powerfuel Portland Limited (“PPL”), made an application to the third respondent, Dorset Council, as the waste planning authority (“WPA”) for a detailed planning permission for an energy recovery facility (“ERF”) on the Isle of Portland at Portland Port. The ERF would incinerate non-hazardous residual waste from local authority and commercial and industrial sources and produce about 15 MWe of electricity for export to the national grid via a new 33kV substation and potentially also to berths in the port and a local heat network. The ERF would treat up to 202,000 tonnes of waste a year.
3. On 24 March 2023 the WPA refused the application for planning permission for three reasons, the first of which was:

“The proposed development, being located on a site that is not allocated in the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019, fails to demonstrate that it would provide sufficient advantages as a waste management facility over the allocated sites in the Plan. This is by reason of its distance from the main sources of Dorset’s residual waste generation and the site’s limited opportunity to offer co-location with other waste management or transfer facilities which, when considered alongside other adverse impacts of the proposal in relation to heritage and landscape, mean that it would be an unsustainable form of waste management. As a consequence, the proposed development would be contrary to Policies 1 and 4 of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 and paragraph 158 of the NPPF.”

The second reason for refusal related to adverse landscape impacts upon the Isle of Portland within the setting of the Dorset and East Devon Coast World Heritage Site. The third reason for refusal related to adverse impacts upon a range of heritage assets.

4. PPL appealed against that refusal to the Secretary of State, who recovered the matter for her own determination. A Planning Inspector held a public inquiry in December 2023 which sat for 11 days. The Inspector produced a report (“IR”) to the Secretary of State on 24 June 2024 in which he recommended that the appeal be allowed and planning permission granted. On 16 September 2024 the Secretary of State issued a decision letter (“DL”) in which she accepted that recommendation and granted permission. The reasoning in the DL essentially adopted that which was set out in the IR. In DL 4 the Secretary of State agreed with the Inspector’s conclusions except where otherwise stated.

5. The appellant, Stop Portland Waste Incinerator, and the Portland Association were made parties pursuant to rule 6(6) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No. 1624) (“the 2000 Rules”) and so were entitled to appear at the inquiry (rule 11). They instructed counsel to present a joint case and called witnesses. They took a full part in the inquiry (IR 1).
6. Ms. Deborah Tullett is a resident of Portland and a member of the appellant. In her second witness statement, she states that the appellant is a campaign group formed in 2020 to oppose the ERF project. It has about 650 supporters. The appellant is an unincorporated association acting through Ms. Tullett, its co-ordinator.
7. The appellant brought a claim in the High Court under s.288 of the Town and Country Planning Act 1990 (“TCPA 1990”). Eyre J granted permission to apply for statutory review on ground 1 but refused permission on grounds 2 and 3. Ground 1 alleged that the Inspector and the Secretary of State failed to address the “proximity principle” in part of Policy 4(c) of the Waste Plan and thus had either misinterpreted Policy 4 or had applied it irrationally, or had failed to give adequate reasons on a principal, controversial issue concerning that policy.
8. The appellant’s renewed application for permission in relation to grounds 2 and 3 was adjourned to a rolled up hearing to be dealt with at the substantive hearing of ground 1. The matter came before Lang J. In her judgment on 2 April 2025, the judge agreed with Eyre J that permission should be refused on grounds 2 and 3 because they were unarguable. She rejected ground 1 and dismissed the claim, holding that no errors had been committed in relation to the interpretation of Policy 4 of the Waste Plan, there had been no irrationality in the application of policy and no failure to give adequate reasons.
9. The application for permission to appeal to this court only sought to pursue the reasons challenge under ground 1 and not the interpretation or irrationality arguments. Lewison LJ granted permission to appeal on that basis alone.

Development plan policies

10. The Waste Plan relates to the areas of two unitary authorities, Dorset Council and Bournemouth, Christchurch and Poole Council. Between them they cover the whole of the county of Dorset. The plan was adopted on 31 December 2019.
11. Policy 1, dealing with sustainable waste management, provides (in part):

“Proposals for the development of waste management facilities must conform with, and demonstrate how they support the delivery of, the following key underlying principles of the Waste Plan:

The Waste Hierarchy - facilities that contribute to moving waste up the waste hierarchy and demonstrate that waste is being managed at the highest appropriate level

Self Sufficiency - facilities that enable the Bournemouth, Christchurch, Poole and Dorset area to move towards net self-sufficiency

Proximity - facilities that adhere to the proximity principle through being appropriately located relative to the source of the waste.”

12. The “waste hierarchy” is addressed in paras. 3.3 to 3.13 of the Waste Plan. Top priority is given to preventing the production of waste in the first place, then to the reuse of waste which is produced, followed by recycling, recovery (which includes incineration with energy recovery) and last of all landfill.
13. The self-sufficiency principle means that the two waste planning authorities “should as far as practicable aim to ensure that there is sufficient capacity available within the plan area to deal with its waste arisings” (para.3.15).
14. Paragraph 3.16 of the Waste Plan explains the “proximity principle”:

“3.16 The principle of proximity means that waste should be recovered or disposed of, as close as possible to where it is produced and has been another important driver for the Waste Plan. The waste infrastructure network must enable waste to be managed in one of the nearest appropriate facilities, through the most appropriate methods and technologies, in order to ensure a high level of protection of the environment and public health.”

This is reflected in Objective 2 which states that “waste management facilities should be located in appropriate locations, as close as practicable to the origin of waste in order to reduce the total mileage waste is transported”.

15. Chapter 5 of the Waste Plan contains the Spatial Strategy. Paragraphs 5.1 to 5.3 of the explanatory text state:

“5.1 One of the key features of the planning system is to ensure that the spatial aspects of development are properly considered. The main purpose of the Waste Plan is to plan for an appropriate network of facilities to manage waste arisings in Bournemouth, Christchurch, Poole and Dorset to support economic development and meet the needs of society, whilst minimising the impact on environmental assets and amenity.

5.2 The Waste Plan was prepared using the best available evidence to assess current capacity, future waste arisings and the need for new facilities, whilst building in sufficient flexibility to respond to changing circumstances without the need for policy review. The spatial strategy builds on from the vision and objectives seeking to move waste up the waste hierarchy, support the proximity principle and promote self-sufficiency through making provision for a range of sustainable waste management facilities in appropriate locations.

5.3 To achieve this, the Waste Plan has identified in general terms what facilities are likely to be required for the management of different waste streams, and where they will be needed, during

the Plan period. The spatial strategy underpins the approach taken to ensure the provision of adequate capacity to manage our expected waste arisings. The detail and justification for the spatial strategy is provided in the chapters that follow.”

16. The opening paragraph of the Spatial Strategy states:

“The Waste Plan seeks to move waste up the waste hierarchy through making provision for sustainable waste management facilities that optimise waste reduction and reuse, in appropriate locations. This will be achieved by addressing the following identified needs:”

The Strategy then addresses different types of waste management, including:

“**Residual waste management** - Landfill capacity in the Plan area is diminishing and existing treatment capacity for residual waste is insufficient to meet our projected needs. At the end of the Plan period it is estimated that there will be a shortfall of approximately 232,000tpa of capacity for managing non-hazardous waste.

Appropriate facilities are needed to manage this waste, whilst ensuring that value is obtained through the recovery of energy wherever practicable. Provision will be made for residual waste treatment facility(s) to manage waste derived throughout the Plan area. The need for strategic residual waste treatment facilities will primarily be addressed through new capacity in south east Dorset. However, additional capacity may also be appropriate elsewhere to ensure the capacity gap is adequately addressed and when it will result in a good spatial distribution of facilities providing benefits such as a reduction in waste miles.

Four existing waste management sites are allocated to address this need through the intensification or re-development of existing operations (Inset 7, 8, 9 and 10).”

17. The four allocations are identified in Policy 3. The WPA and PPL agreed that only two of the allocations were relevant in the appeal, land at Parley and land at Canford Magna. Policy 3 states that proposals may be permitted on those sites subject to complying with relevant policies of the Waste Plan and the allocated uses in inset maps 7 and 8 respectively. Parley has potential to accommodate about 160,000 tonnes a year of residual waste, but is subject to Green Belt policy. Canford has capacity to accommodate about an additional 25,000 tonnes a year of residual waste and is also subject to Green Belt policy.
18. Policy 4 deals with waste management facilities on sites which have not been allocated in the Waste Plan. So far as material it provides:

“Proposals for waste management facilities on unallocated sites will only be permitted where it is demonstrated that they meet all of the following criteria:

- a. there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site;
- b. the proposal would not sterilise, or prejudice the delivery of, an allocated site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts;
- c. the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in this Plan, moving waste up the waste hierarchy and adhering to the proximity principle; and
- d. the proposal complies with the relevant policies of this Plan.

Proposals should be located:

- e. within allocated or permitted employment land which allows for Class B1, B2 and/or B8 uses; or
- f. within or adjacent to other waste management and/or complementary facilities where the proposed use is compatible with existing and planned development in the locality; or
- g. on previously developed land suitable for employment or industrial purposes.

Waste management facilities may be suitable within an agricultural setting where the proposed use and scale is compatible with the setting, provides opportunities to utilise outputs from the process in the locality and provides advantages over the locations specified in criteria e - g.”

19. Policy 4 goes on to say that other locations may be permitted but only if no suitable site meeting the criteria of that policy is available.
20. The Inspector and the Secretary of State decided that the proposal complied with Policy 4. In other words, they regarded it as satisfying criteria (a) to (d) and also at least one of the locational criteria in (e) to (g). In relation to criterion (c), the appellant accepts that the Secretary of State’s decision sufficiently addressed two out of the three considerations referred to, namely “contributing to meeting the needs identified in this Plan” and “moving waste up the waste hierarchy”. The appellant’s reasons challenge focuses upon the final factor in criterion (c), “adhering to the proximity principle”.

21. Paragraph 6.9 of the explanatory text for Policy 4 recognises the need for flexibility in certain circumstances:

“6.9 Although the Allocated Sites are currently available for waste uses, circumstances may change during the Plan period and sites *may not come forward as expected*. Private sector businesses and, therefore, commercial considerations will determine whether facilities will actually be built and what types of technology will be brought forward. In other cases, it has not been possible to find sufficient, deliverable sites for allocation in the Waste Plan. The Plan allows for other acceptable sites to come forward for waste uses. Such provision will provide additional flexibility including circumstances *where Allocated Sites do not come forward for waste development*.” (emphasis added)

22. Paragraph 6.11 of the explanatory text gives additional guidance on the application of Policy 4:

“6.11 Proposals on unallocated sites will be considered on their merits. They should be in accordance with national policy and the Waste Plan policies and should address the spatial strategy and guiding principles of the Plan, including the waste hierarchy and managing waste in line with the proximity principle. The Waste Planning Authority will need to be satisfied that there are no suitable Allocated Sites capable of meeting the waste management need that would be served by the proposal. Alternatively, applicants would need to demonstrate that *the non-allocated site provides advantages over Allocated Sites*. This might include co-location with complementary facilities or *the provision of a site that can be demonstrated to be in a better strategic and sustainable location and/or that has less impacts than an Allocated Site*. The provision of sustainable localised heat and energy sources could also be a positive consideration in appropriate locations.” (emphasis added)

23. Chapter 7 of the Waste Plan dealt with forecasts of waste arisings through to 2033, the end of the plan period, and the capacity of existing and permitted facilities, so as to arrive at an estimate of the need for additional capacity (7.1). Residual waste was addressed in paras. 7.60 to 7.78. Table 7 identified a shortfall in capacity of 234,000 tonnes a year by 2033. The Waste Plan intended the four allocated sites to be sufficient to meet that need, but added that monitoring would be essential to ensure that appropriate facilities are brought forward (7.76). If that does not happen, the Waste Plan recognised that it may be necessary to rely upon facilities outside the county of Dorset, but that would be contrary to the principles of self-sufficiency and *proximity* (7.78).
24. Although the Spatial Strategy states that the need for strategic residual waste treatment facilities will primarily be met by new capacity in south east Dorset, where the greatest concentration of population in the county is located, the South East Dorset Green Belt also covers much of that part of the plan area, including the two allocations referred to

above. Policy 21 applies to proposals for waste management facilities in that area of Green Belt:

“Proposals for waste management facilities will only be permitted in the South East Dorset Green Belt where:

- a. they do not constitute inappropriate development; or
- b. the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations to an extent that can demonstrate very special circumstances, including a need for the development that cannot be met by alternative suitable non-Green Belt sites; and
- c. the restoration of the site, where relevant, is appropriate to the inclusion of the land in the Green Belt and enhances the beneficial use of the Green Belt.”

Waste management facilities involving built development are “inappropriate development” unless an exception applies, such as the redevelopment of previously developed land having no greater impact on the openness and purposes of the Green Belt than the existing development (IR 12.105-12.106).

25. Thus, the Spatial Strategy recognises that additional capacity for residual waste management facilities may be necessary outside the allocated sites to meet the capacity gap, where it will result in a good spatial distribution of facilities and benefits such as a reduction in waste miles (see [16] above).

Legal principles

26. The relevant legal principles were helpfully set out by Lang J in her judgment at [15]-[30]. Those principles are well-established, they are not in dispute and need not be repeated here.
27. I simply highlight certain points of particular relevance to this appeal:
 - (1) To be legally adequate the reasons for a decision need only provide conclusions on the principal important controversial issues, and not on every material consideration or matter raised;
 - (2) Reasons (a) must not give rise to a substantial doubt as to whether the decision-maker erred in law and (b) should enable unsuccessful opponents of the development proposed to understand how the policy or approach underlying the decision may impact upon future such applications;
 - (3) Decision letters should be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced;

- (4) A reasons challenge will only succeed if the party aggrieved can satisfy the court that it has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.

How the parties addressed the application of Policy 4(c) in this case

28. The way in which the parties dealt with Policy 4(c) before the Inspector and the Secretary of State provides the context for the court's assessment of the legal adequacy of the reasons given on the matter in the decision.
29. The WPA, the appellant and PPL each provided written closing submissions for the Inspector. These submissions formed the basis for the Inspector's summary of each party's case in chapters 6, 7 and 8 respectively of his report. But the Inspector took care to point out that the evidence of each of the parties needed to be read in full in order to gain a proper understanding of their case (IR 6.1, 7.1 and 8.1).
30. Rule 14(1) of the 2000 Rules required the WPA and PPL to prepare an agreed statement of common ground and to provide it to the Secretary of State and any "statutory party" (as defined by rule 2(1)) within 6 weeks of the "starting date", (that is the date of the notice under reg.3A that the appeal is to proceed to an inquiry - rule 2(1)). The statement of common ground was to contain agreed factual information about the proposal (rule 2(1)). The statement also had to identify other agreed matters, as well as the matters in dispute, so as to enable the inquiry to focus on those areas which remained in issue (Annexe R to the Planning Inspectorate's "Procedural Guide: Planning appeals – England"). For example, the proofs of evidence for any party entitled to appear at the inquiry had to be submitted at least 4 weeks before the start of the public inquiry (rule 13).
31. The statement of common ground agreed between PPL and the WPA contained a table (at para. 7.55) setting out "the main areas of dispute" between those parties. In relation to Policy 4(a) the WPA accepted that the proposed development had some locational advantages but saw those as being related to the use of energy rather than the treatment of waste. The authority said that the "allocated sites have specific advantages and are better placed than the Appeal Site in respect to proximity to residual waste arisings (Proximity Principle) and the potential for co-location with other waste uses".
32. PPL contended that the proposal complied with Policy 4(c), but the WPA made this important statement as to how it saw that policy applying in the present case:
- "The Council considers that its allocated sites, principally located in and around the South East Dorset conurbation (the location of the majority of residual waste arisings) and near to the Canford MBT plant are preferable for meeting Dorset's residual waste management needs, accord with the Plan's Spatial Strategy and would minimise waste miles. The Council's position is that its allocated sites are better placed to provide co-location with other waste management facilities and therefore are more sustainable. It notes that the proposal is to move residues via long distance transport rather than provide for its management onsite."

33. Thus, the WPA's application of Policy 4 in this case firstly, saw the proximity principle as being relevant to both criterion (a) and criterion (c), so that there was an overlap between the two, and secondly, raised an issue as to whether the allocated sites would be preferable to the appeal site in terms of the Spatial Strategy and the proximity principle.
34. The main areas of dispute also included a new issue advanced by the WPA, which went beyond the scope of the reasons in its decision notice for refusing planning permission. It contended that the estimated need for additional capacity upon which Waste Plan policies had been based no longer existed:

“The Council accepts that its adopted Waste Plan identified (at the time of adoption) that there was a need for additional residual waste management capacity, and that it allocated sufficient sites to deliver the entirety of that need. Moreover, *the best available and up-to-date data now demonstrates that the claimed need based on driving waste out of landfill does not exist.* In the absence of such a demonstrable need, the proposal puts the local strategies of a number of Waste Planning Authorities at risk, as it will lock in waste to incineration that would otherwise be recycled for the lifetime of the ERF (minimum 25 yrs). It would, therefore, be contrary to the application of the Waste Hierarchy and the Objectives of the adopted plan.” (emphasis added)

35. Ms. Felicity Hart, the Minerals and Waste Planning Manager for the WPA, addressed Policies 1 and 4 of the Waste Plan in paras.8.21 *et seq* of her proof and in paras 2.28 to 2.38 of her rebuttal proof. Her evidence recognised the interrelationship between meeting need, self-sufficiency, moving waste up the waste hierarchy and proximity (see e.g. paras.8.23 to 8.24) as well as the need to compare the appeal proposal with the allocated sites. She pointed out that if the proximity principle is applied in isolation, and if the appeal proposal were to be compared purely with the allocated sites, then the proposed development would increase waste mileage (para.8.48). In relation to the self-sufficiency principle, Ms. Hart acknowledged that a large amount of untreated waste arising in the plan area is transported to facilities outside the county, but she relied heavily on the WPA's updated estimates of need to argue that the appeal proposal was not required to promote self-sufficiency (para.8.39). For example, she referred to the requirement for additional capacity of 234,000 tonnes a year by 2033 as having more than halved to 84,000 tonnes a year. In her rebuttal proof Ms Hart criticised PPL's approach for comparing the proposal on the appeal site with *proposals* on the allocated sites, rather than the *sites* themselves (para.2.24). Nevertheless, there was no dispute that the effect of a waste development proposal at an allocated site on the openness and purposes of the Green Belt would have to be taken into account. But Ms Hart's view was that greater weight would be attached to the adverse impact of the appeal proposal on the World Heritage Site and on other heritage assets and landscape (para.2.32).
36. In his proof of evidence Mr. Alan Potter, who gave evidence for the WPA as an expert in waste management planning, presented reduced estimates of need (as low as 25,000 tonnes a year), which he considered could be met at the Parley site. In addition, Mr. Burton (who appeared for the appellant in court but not at the public inquiry) drew attention to paras.3.12 to 3.31, where Mr. Potter referred to the location of the appeal

proposal in the south west of the county, at a considerable distance from the “South East Dorset conurbation” where most of the county’s waste is produced. He compared the appeal site and the allocated sites, referring to the additional 4 million waste miles which the use of the former would involve. But elsewhere he accepted that the plan area’s waste destined for recovery was being sent to an EFW at Bridgwater in Somerset and that the appeal proposal would contribute towards net self-sufficiency (para.3.11).

37. A considerable part of the WPA’s closing submissions on waste management were devoted to the issue regarding need estimates and the requirement for additional capacity (paras.91 to 119). The Spatial Strategy was addressed more briefly at paras.120 to 125. The WPA submitted that the proximity principle should be applied comparing the appeal site to the Waste Plan’s Spatial Strategy represented by the allocated sites, and not to what is happening in practice to flows of waste to other waste facilities. The WPA accepted that the appeal site was advantageous for dealing with Dorset’s waste compared to Bridgwater, but contended that the allocated sites should be preferred.
38. Thus, it is plain that the WPA’s case was framed consistently with the main issues as defined in the statement of common ground (see [31]-[32] above).
39. The same is true of PPL’s case. Mr. Nick Roberts, PPL’s planning consultant, explained at paras 4.2.4 to 4.2.22 of his proof why, although the allocated sites are close to the South East Dorset conurbation, the very significant planning and environmental restrictions affecting those sites constrained realistic development opportunities for an ERF on the necessary scale as proposed at the appeal site. The appeal proposal also presented significant advantages over the allocated sites (4.2.23). Mr Roberts pointed out in para.5.17 that the allocations in the current Waste Plan and previous plans had failed to deliver any increase in residual waste treatment capacity for over 5 years at Parley and for over 17 years at Canford and another allocation at Binnegar. The Parley site could not physically deliver a plant to meet the identified need in any event. Canford could not provide an ERF of a similar scale to the appeal proposal. Mr Roberts referred to the waste flows out of the county, not only to Bridgwater but also to North Wales, Kent and overseas. Thus, none of the residual waste arising in the area of the Waste Plan is subject to final treatment or disposal within that area. About 261,000 tonnes a year of such waste is sent to out of county landfill, or to ERFs out of county or overseas. In these circumstances, he contended that the appeal proposal would be consistent with the proximity principle.
40. PPL’s closing submissions maintained the same approach.
41. Other than a bare statement agreeing with Mr. Potter’s evidence as to why the proposal would conflict with Policies 1 and 4, the closing submissions for the appellant and the Portland Association made no reference to those matters, in particular Policy 4(c). The main focus of their submissions was on landscape and heritage issues.
42. Nevertheless, in her proof of evidence Ms. Tulett explained why she considered that the appeal proposal conflicted with Policy 4 and the proximity principle. She stated that the site is not in south east Dorset but is “stuck out on a limb with no proximity to the existing network of waste disposal and recovery installations of Dorset”. She relied upon the allocation at Parley and an emerging proposal at Canford. Otherwise her proof essentially did little more than refer to parts of the Waste Plan.

43. Accordingly, I do not accept Mr. Burton’s suggestion that the evidence for the appellant and the Portland Association gave rise to a freestanding, principal controversial issue which the Secretary of State’s reasoning was obliged to address. Their evidence and submissions did not add materially to the case for the WPA on this aspect.

The Inspector’s Report and the Decision Letter

44. The Inspector analysed in some detail the relevant policies of the development plan in IR 5.1 to 5.25. The judge set out particularly relevant paragraphs in [76] of her judgment. The Inspector correctly directed himself in relation to Policies 1 and 4 (IR 5.5 and 5.7 to 5.9). No issue is taken on that part of the IR.
45. In IR 12.2 the Inspector identified the main considerations for the determination of the appeal. He defined the “waste issue” as being whether the proposal would comply with relevant policies of the Waste Plan and represent a sustainable form of waste management in relation to *inter alia* need. He then dealt with the waste issue at IR 12.3 to 12.14.
46. At IR 12.3 the Inspector recorded that all parties agreed that the Waste Plan should not be treated as “out-of-date” for the purposes of applying para.11(c) and (d) of the National Planning Policy Framework (“the NPPF” and see [50] below). The key parts of the Inspector's reasoning between IR 12.5 and IR 12.11 are set out in the judgment of Lang J at [80].
47. The WPA had argued that the Waste Plan could be treated as up to date while at the same time arguing that the need for additional residual waste management capacity had been overtaken by events. That need was significantly lower than the need upon which the Waste Plan had been predicated and it would continue to fall. At an early point during its operating lifetime the capacity of the appeal proposal would significantly outstrip the predicted needs of the plan area (IR 12.5).
48. The Inspector considered that the WPA’s need case was incompatible with maintaining that the Waste Plan was up to date. The whole approach of the Waste Plan, including its objectives and Spatial Strategy allocations in Policy 3 and Policy 4 were based upon the need identified in chapter 7 and Table 7 of the Plan. If the Plan’s forecasts were not to be relied upon, then the approach of the Waste Plan did not remain tenable (IR 12.6).
49. The Inspector concluded that, subject to one agreed adjustment, which pushed the shortfall identified upwards, there was no justification for setting aside the need figures in Table 7 of the Waste Plan and so the plan was “up-to-date” (IR 12.8 to 12.9).
50. The Inspector said that if the Secretary of State were to prefer the WPA’s evidence on need then in terms of para.11(d) of the NPPF, the policies in the Waste Plan which were most important for determining the application would have to be treated as “out-of-date” and the “tilted balance” applied. In short, planning permission should be granted for the development unless *inter alia* any adverse impacts of doing so would “*significantly and demonstrably* outweigh the benefits”, assessed against the policies of the NPPF taken as a whole (explained more fully in *Monkhill Limited v Secretary of State for Housing, Communities and Local Government* [2020] PTSR 416; [2021] PTSR 1432).

51. However, the Inspector, having decided that the important policies in the Waste Plan for determining the application were up to date, did not apply the tilted balance. Instead, he determined the application taking into account the relevant policies of the development plan (s.70(2) of the TCPA 1990) and applying the presumption in favour of the development plan in s.38(6) of the Planning and Compulsory Purchase Act 2004.
52. At IR 12.11 to 12.13 the Inspector began to make his comparison between the appeal proposal and the two allocated sites, Parley and Canford Magna, a main issue identified by PPL and the WPA for the purposes of applying Policy 4 including criterion (c):

“12.11 Returning to my analysis, the approach of the Waste Plan 2019 to dealing with the need it identifies is to allocate sites in Policy 3. However, and perhaps reflective of the fact that these allocations have not been taken up despite having been around for some time, the Waste Plan 2019 also includes provision for waste management facilities to come forward on sites that are not allocated. This is an unusual approach; Policy 4 is permissive of proposals for waste management facilities on unallocated sites where, amongst other things, the non-allocated site provides advantages over the allocated site.

12.12 In relation to the allocated sites, I heard that there is an unimplemented permission for a relatively small-scale ERF (60,000 tpa of residual waste) in the Green Belt at Parley (Inset 7) that is very unlikely to come forward. At Canford Magna (Inset 8), also in the Green Belt, there is an application before BCP Council for a facility designed to process 260,000 tpa of residual waste. Clearly, MVV, the operator behind that application, is of a similar mind to the appellant in terms of the continuing need for residual waste management.

12.13 The workings of Policy 4 require the decision-maker to make a qualitative comparison between the proposal at issue here, and the allocated sites. If it can be concluded that the proposal provides advantages over the allocated site, then, subject to other relevant policies, it could be found to comply with the Waste Plan 2019.”

53. The Inspector noted that waste management facilities had not been developed on the allocated sites, despite the length of time for which they had been identified in development plans, and that the development permitted at Parley was unlikely to come forward. He then noted that there was an undetermined planning application for an ERF at Canford. The Inspector identified the need to compare the appeal proposal and the allocated sites and correctly directed himself in accordance with Policy 4 and para. 6.11 of the Waste Plan that if the proposal provided advantages over the allocations it could be compliant with the Waste Plan, subject to other relevant policies. The Inspector then said at IR 12.14 that he would return to that subject after applying the policies on the historic environment and landscape, because non-compliance with either of those policies would have implications for the application of Policy 4.

54. The Inspector considered the heritage issue at IR 12.15 to IR 12.55 and the landscape issue at IR 12.56 to IR 12.72. He concluded that with one exception involving “less than substantial harm”, the proposal would cause no harm to the setting or significance of any heritage asset and that one instance of harm would be outweighed by the benefits of a “heritage mitigation strategy” (IR 12.53). The Inspector then found that the proposal “would sit comfortably in the context of the port” and would have no harmful impact on the area of National Landscape, the Heritage Coast, or the World Heritage Site and its setting and would have no harmful landscape or visual impacts on receptors on land or at sea (IR 12.64 to IR 12.72).
55. At IR 12.74 to IR 12.97 the Inspector dealt with a range of planning considerations. He found that none of them weighed against the proposal and some would be beneficial (IR 12.97). At IR 12.96 he said that he would deal with the comparison with the approach of the Waste Plan in the following section “Overall balance and conclusions”, which runs between IR 12.98 and IR 12.110.
56. At IR 12.98 to 12.99 the Inspector summarised his earlier conclusions on impact on landscape and heritage assets and other planning considerations and found that the proposal complied, or did not conflict, with development plan policies, leaving to one side Policy 4. The Inspector addressed that policy and struck the final planning balance at IR 12.100 to IR 12.110:

“12.100 That said, there is Policy 4 of the Waste Plan 2019 to consider. As I have set out above, this allows proposals for waste management facilities to come forward on non-allocated sites where the non-allocated site provides advantages over the allocated sites. Unusually, this means that the decision maker in this case must carry out a comparative exercise between the proposal at issue, and allocated sites in the Waste Plan 2019. That is not a straightforward exercise.

12.101 Having said that, the comparison with the site at Parley (Inset 7) is not too difficult for the simple reason that the site is relatively small, and the approved proposal for an ERF upon it is very unlikely to come forward. In any event, the site could not cope alone with the residual waste needs set out in the Waste Plan 2019, and it is in the Green Belt. The appeal site has obvious advantages over that site in that it can cope with the residual waste needs, it is not in the Green Belt, and it can take place without landscape or heritage harm and bring forward other benefits like shore power and a district heating network.

12.102 Comparison with the site in Canford Magna (Inset 8) is more complicated. There is a scheme before BCP Council for a facility upon it that would be able to deal with the residual waste needs set out in the Waste Plan 2019. However, the site is in the Green Belt, in a very sensitive location environmentally.

12.103 In their consultation response, Dorset Council suggests that their evidence on ‘need’ presented at this Inquiry should be considered, in the context of the capacity of the facility proposed,

but conclude that the benefits of the location (co-location with other waste management facilities and location in south-east Dorset/BCP Council, the consequent reduction in distance travelled by the waste, and the diversion from landfill) are all benefits which potentially support a case that very special circumstances exist.

12.104 As far as the allocated site is concerned, which is what Policy 4 actually refers to, I take the appellant's point that it is not big enough to accommodate the facility that has been proposed – the 'red line' of the application is well beyond the confines of the allocation which suggests that the allocated site is too small to cope with the residual waste needs in the Waste Plan 2019, that I have found to be reasonable.

12.105 Turning to the proposal itself, which I feel bound to do notwithstanding what Policy 4 says, it would obviously be inappropriate form of development in the Green Belt, and an enormous imposition that would massively reduce openness. The level of Green Belt harm would be very high indeed. As the Framework sets out, substantial weight would have to be attached to that harm. The Framework goes on to say that the very special circumstances that would be required to justify the proposal would not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In relation to 'any other harm' I understand that there are aviation concerns about the proposed stack, amongst other things. The appellant has also pointed out that the scheme is tightly constrained and may not be able to deliver carbon capture facilities.

12.106 In my view, the 'other considerations' required to justify this level of harm to the Green Belt, and any other harm, would have to be very weighty indeed. The Council in their consultation response has suggested that the proposal is too big (based on their revised position on need) but because the proposal at Canford Magna is in accord with the spatial strategy of the Waste Plan 2019, it may be (in a smaller form I surmise) suitable.

12.107 I have my doubts about that approach. First, as I have set out above, I do not agree with the Council's latest stance on 'need' and rely instead on the Waste Plan 2019. Second, and more importantly, one of the first questions the decision-maker must ask about a proposal like that at Canford Magna in the Green Belt, is whether the provision could be made outside the Green Belt. The scheme at issue here shows that it can be, and, in that situation, it is difficult to see how the necessary very special circumstances could be shown.

12.108 I do not doubt that the proposal at Canford Magna might well perform better in terms of the spatial strategy in the Waste Plan 2019 but that would have to be balanced against the Green Belt harm to which substantial weight would have to be attached, and any other harm. To complicate matters further in terms of the spatial strategy, the locational benefits of the Canford Magna site might well be offset by its inability to accommodate carbon capture technology, and of course IBA would need to be removed by road.

12.109 I have to say that the approach the Waste Plan 2019 requires is an unusual one, but it has been found sound and adopted. For the reasons set out, I find that the proposal at issue here would have very clear advantages over the allocated sites (and the proposals for them) and as such, it complies with Policy 4. On the basis that it complies with Policy 4, I also find that it accords with Policy 1. **[8.60-8.71]**

12.110 As a result, I am satisfied that the proposal complies with the development plan taken as a whole and in my view, there are no material considerations that would justify a decision contrary to the provisions of the development plan. **[6.137-6.140, 6.172-6.177, 7.93, and 8.198-8.204]**”

57. The Secretary of State agreed with the Inspector on the need issue (DL 16).
58. She then adopted the Inspector’s reasoning on the application of Waste Plan Policies 1 and 4, including the analysis comparing the appeal proposal with the Parley and Canford Magna sites (DL 17):

“The Secretary of State had regard to the Inspector’s comparative analysis between the proposed site and sites allocated within the WP at Parley and Canford Magna. For the reasons given at IR12.11-12.13 and IR12.100-109, the Secretary of State agrees with the Inspector that the site at Parley could not cope alone with the residual waste needs set out in the WP 2019, and it is in the Green Belt (12.101). The Secretary of State also agrees that the ‘red line’ of the planning application at Canford Magna is well beyond the confines of the allocation which suggests that the allocated site is too small to cope with the residual waste needs in the WP (IR12.104). She further agrees that although the proposal at Canford Magna might well perform better in terms of the spatial strategy in the WP that would have to be balanced against the Green Belt harm and any other harm (IR12.108). Overall, the Secretary of State agrees with the Inspector that the proposal would have clear advantages over the sites allocated within the WP (and the proposals for them) and as such, it complies with Policy 4 of the WP, and further agrees that it accords with Policy 1 (IR12.109). In reaching this conclusion, the Secretary of State has taken into account the

representation received from Savills on 13 September 2024 on behalf of the applicant for the proposal at Canford Magna (APP/23/00822/FUL), which draws her attention to the fact that the Canford Magna application, which has been recommended for approval by officers, was due to be determined by the LPA on 12 September 2024, but has been deferred to a later committee. She has also taken into account the representation from Stop Portland Waste Incinerator dated 14 September 2024 which draws the committee report on the Canford Magna proposal to her attention, and the representation from tor&co dated 16 September 2024 which provides a legal opinion on the Canford Magna proposal. The Secretary of State does not consider that this information changes her conclusions on the compliance of the proposal which is the subject of this decision letter with Policy 4 or Policy 1 of the WP, and does not change her decision overall. She further does not consider it is necessary to refer back to parties on this matter before reaching her decision.”

The judgment of Lang J

59. The judge said that the appellant had interpreted the Spatial Strategy too narrowly by focusing on the location of sites without sufficient regard to the other elements of the Strategy [82]. She then identified the wider approach laid down by the Waste Plan at [83] to [89] leading to this summary at [90]:
- “Therefore, in summary, the spatial strategy seeks to (i) move waste up the waste hierarchy; (ii) promote self-sufficiency by planning for an appropriate network of facilities to manage the waste arisings in the Plan area; (iii) minimise the impact on environmental assets and amenity; (iv) be sufficiently flexible to respond to changing circumstances without the need for formal policy review; (v) support the proximity principle; (vi) address the need for 232,000 tpa of capacity for managing non-hazardous waste; and (vii) address that need through new capacity primarily in south east Dorset but recognising capacity might be required elsewhere to ensure the capacity gap is adequately addressed.”
60. The judge referred to the Inspector’s concern that although the allocated sites had “been around for some time” none of them had come forward to meet the need identified in the Waste Plan ([92]-[93]).
61. The judge noted the Inspector’s finding that the proposed ERF would result in a clear improvement on the existing situation where waste is taken to landfill or ERF outside the plan area with consequential additional waste miles [96].
62. The judge then summarised the Inspector’s comparative analysis of the relative advantages and disadvantages of PPL’s proposal and the two allocated sites; concluding that the Inspector did apply the locational elements of the Spatial Strategy and the proximity principle, alongside other policy considerations in the Waste Plan. She noted

that the PPL proposal would result in a reduction in waste miles and an improvement in self-sufficiency in comparison with the present position where residual waste is being taken to landfill and incinerators in other counties ([97]-[101]). At [102] the judge said:

“On a proper application of the spatial strategy, the locational elements which favoured Canford were not necessarily conclusive. The Inspector and D1 were also required to consider the other elements of the spatial strategy, which they plainly did. They were entitled to prioritise those other elements, such as promoting self-sufficiency to manage the waste within the Plan area and thus reducing waste miles, and addressing the need for 232,000 tpa of capacity for managing non-hazardous waste. In my judgment, the Claimant’s irrationality challenge does not come close to overcoming the high threshold required.”

63. The judge then rejected the appellant’s criticisms of the Inspector for failing to deal with criteria (a) to (c) of Policy 4 separately and to give adequate reasons on the application of criterion (c). Both the Inspector and the Secretary of State had given adequate reasons for deciding that the proposal complied with the entirety of Policy 4 [103]-[104].

A summary of the appellant’s submissions

64. Although the proximity principle is an important principle in waste planning, among others, and the appellant’s skeleton was lengthy, this appeal simply involves a reasons challenge on the application of only part of one criterion in Policy 4 of the Waste Plan. I will summarise key parts of the appellant’s submissions which bear upon this relatively narrow legal issue, focusing on what emerged from the oral submissions.
65. The appellant defines the issue on the adequacy of the reasoning of the Inspector and the Secretary of State as being whether the proposal supported the Waste Plan’s Spatial Strategy and adhered to the proximity principle (para.3 of skeleton). The appellant’s case is not concerned with whether the Inspector correctly understood the relevant policies, but with whether he correctly understood that issue. Although the question of whether there was a “need/capacity” gap and, if so, its size was a “precondition” to granting planning permission on an unallocated site, whether or not the appeal proposal on the Portland site would address that need so as to support delivery of the Spatial Strategy and comply with the proximity principle was a separate issue which required additional reasoning to be supplied in the decision. Like the Inspector and the Secretary of State, the judge erred by treating the need/capacity gap issue as supplanting the application of the proximity principle. It was insufficient for the Inspector to give reasoning in relation to Policy 4(a) of the Waste Plan but not Policy 4(c).
66. The Inspector’s reasoning, in particular at IR 12.100 to IR 12.109 only addressed the exercise of comparing the appeal proposal with the allocated sites. Although that was relevant to Policy 4(a), it did not provide any explanation as to why Policy 4(c) was satisfied. Furthermore, the Inspector’s conclusions at IR 12.92 to IR 12.95 were simply dealing with highways, climate change and carbon emissions. Those matters were not a proxy for the proximity principle: the need to reduce waste miles is driven by considerations wider than climate change.

67. The Inspector mistakenly thought that the WPA had conceded that if PPL's case on the scale of the unmet need for new management facilities were to be accepted, then the proposal would comply with policies 1, 4 and 6 of the Waste Plan. That helps to explain why the Inspector wrongly failed to deal with the application of the proximity principle as a separate consideration.

Discussion

68. The appellant's case fails to acknowledge that there is some overlap between different parts of Policy 4. For example, the need for additional waste management facilities is a consideration when applying criteria (a), (b) and (c). Not surprisingly, the Spatial Strategy permeates Policy 4. It is expressly referred to in criterion (c), but it is also the foundation for the allocation of sites in south-east Dorset by Policy 3 (and see p.27 of the Waste Plan). Accordingly, the Spatial Strategy is also reflected in criteria (a) and (b) which raise issues as to whether allocated sites are available to meet a need, or whether a non-allocated site would perform better than an allocated site, and whether a proposal on a non-allocated site would prejudice the delivery of an allocated site to meet waste needs.
69. The appellant's case also fails to acknowledge the interrelationship between the elements of the Spatial Strategy and of the criteria in Policy 4. I agree with the judge's summary of the Spatial Strategy in her judgment at [90] (see [59] above). The Strategy seeks *inter alia* to move waste up the waste hierarchy, promote self-sufficiency and support the proximity principle. Although the appellant focuses on the proximity principle in Policy 4(c), that criterion also requires that a proposal for waste management on a non-allocated site should move waste up the waste hierarchy and support the Spatial Strategy, which would include other policy objectives such as self-sufficiency. Policy 4(c) applies to all those considerations.
70. A proposal may well be well-located in relation to the sources of waste arisings, for example, a site in south east Dorset, and yet not perform so well in relation to moving waste up the waste hierarchy. Alternatively, a proposal may perform well in relation to the waste hierarchy and self-sufficiency but increase waste mileage and so not accord with the proximity principle. Plainly, the application of Policy 4 is fact-sensitive. A decision-maker is entitled to decide how much weight to give to a proposal's performance against each element of the Spatial Strategy and to arrive at a balanced judgment as to the overall degree of compliance with the Strategy. Alternatively, he or she might decide that a proposal performs so badly in relation to one element of the Strategy as to merit refusal of the application on that basis alone. These are matters of planning judgment and weight for the decision-maker which are not open to challenge in the courts save on genuine public law grounds.
71. Paragraph 6.11 of the Waste Plan recognises that allocated sites may not come forward and so the plan allows for other non-allocated sites to be developed if acceptable, providing additional flexibility in the delivery of the Strategy.
72. Given the approach taken by PPL and the WPA in the statement of common ground and in their evidence to the circumstances of this case and the application of the Spatial Strategy, including the proximity principle, it was necessary for a comparison between the PPL proposal and the development potential of the allocated sites to be made. The WPA relied upon their estimate of the additional waste mileage which the PPL proposal

would cause compared to development of the allocated sites. On this basis, the WPA said that the proposal did not comply with the proximity principle (reported at IR 6.135). Of course, that comparison begged the question whether development of the allocated sites will take place. If it does not, then in the absence of any other development proposal on a non-allocated site regarded as an acceptable location, the waste generated in the county of Dorset will continue to be transported to other counties and overseas. The Inspector judged at IR 12.95 that PPL's proposal would represent a "clear improvement" on the existing situation, in which waste would continue to be moved to landfill and ERFs beyond Dorset. The Inspector accepted PPL's case, summarised at IR8.29 that its proposal would lead to a reduction in waste miles relative to the existing situation. That plainly was an application of the proximity principle. In effect, the Inspector accepted PPL's case that the proximity principle in para. 3.16 and Policy 4(c) of the Waste Plan should not be applied exclusively by reference to allocated sites in south east Dorset, if development has not come forward on those sites and, indeed, there are strong planning objections to them being developed for waste management facilities on the scale needed for the plan area.

73. The two allocated sites relied upon by the WPA are in the Green Belt. There has been no challenge to the approach which the Inspector took to the application of Green Belt policy. ERF development would be treated as "inappropriate development" in the Green Belt and no planning permission would be obtainable unless the developer demonstrated "very special circumstances" sufficient to "clearly outweigh" harm to the Green Belt and any other harm (2023 NPPF para.153). The Inspector found that ERF development at Canford Magna would cause a very high level of harm to the Green Belt and other harm (IR 12.105). He added that it was difficult to see how very special circumstances could be shown if an ERF could be provided acceptably outside the Green Belt and the PPL scheme demonstrated that it could (IR 12.107). At IR 12.108 the Inspector accepted that the Canford Magna site might well perform better as regards the Spatial Strategy of the Waste Plan. Plainly the Inspector had in mind the policy preference for a site in south east Dorset. In saying that in this respect the Canford Magna site was better than the Portland site, the Inspector was undoubtedly applying the proximity principle. But he then made the unimpeachable point that that factor in favour of Canford Magna had to be balanced against the substantial weight to be given to the Green Belt and other harm it would cause. None of this reasoning is open to legal challenge. It further demonstrates that in the circumstances of this case, the proximity principle could not be applied, and PPL's appeal determined, without a comparison being made between the appeal site and the two allocated sites.
74. This analysis accords with the succinct formulation of the main issue in relation to Policy 4(c), addressing the Spatial Strategy including the proximity principle, agreed by the WPA and PPL in the Statement of Common Ground (see [32] above).
75. Accordingly, the Inspector and the Secretary of State gave adequate, indeed ample, reasons for the decision to grant planning permission and specifically in relation to the issues concerning Policy 4(c), the Spatial Strategy and the proximity principle. As would be expected (see Sir Keith Lindblom SPT in *R (Tesco Stores Limited) v Stockport Metropolitan Borough Council* [2025] EWCA Civ 610 at [36]), they understood and applied the policies with realism and common sense. The appellant's suggestion that opponents of the development do not know why they failed on those matters, or the implications of the decision for future planning applications is untenable.

76. For completeness I will deal with two further small points made on behalf of the appellant.
77. First, Mr. Burton referred to IR 6.139, where the Inspector included the following as part of his summary of the WPA's case:

“6.139 To be clear, even if the appellant's case on need is accepted, meaning that there would be compliance with Policies 1, 4 and 6 of the Waste Plan 2019, the proposal would still not accord with the development plan as a whole because of the significant landscape and heritage harms. Indeed, the three reasons for refusal put forward by the Council each individually justify a refusal of planning permission and stand on their own terms.”

He submitted that this passage, along with the Secretary of State's reliance upon it in part of his skeleton argument, indicated that the Inspector treated this as a concession that the need/capacity issue could be dispositive of the application of policies 1, 4 and 6. According to the appellant, this lent support to the submission that the Inspector had not applied the proximity principle in Policy 4(c) and/or that there was a failure to give adequate reasons on a principal controversial issue.

78. There is nothing in this point. It is inconsistent with the appellant's acceptance that the Inspector did apply and give adequate reasoning in relation to all the other parts of Policy 4, including the reference in criterion (c) to the waste hierarchy. The Inspector's explicit consideration in the IR of all those matters shows that neither he nor the Secretary of State proceeded on the basis that if PPL's assessment of need was accepted rather than the WPA's, there was no requirement to go any further because that was sufficient to demonstrate compliance with Policy 4 (and also policies 1 and 6). What matters is the substance of the Inspector's report and the Secretary of State's decision letter read fairly and as a whole. As explained above, the Inspector and the Secretary of State did apply and reach conclusions on the application of all relevant parts of Policy 4, giving adequate reasons.
79. Furthermore, IR 6.139 was taken from para.128 of the WPA's closing submissions. The real thrust of both paragraphs is that even if PPL were to overcome the first reason for refusal (see [3] above), the second and third reasons for refusal, relating to landscape and heritage harms, were each advanced as freestanding reasons justifying the dismissal of the appeal. There is no evidence that either the parties at the inquiry, or the Inspector in his report, or the Secretary of State in her decision letter, acted on the basis that there would be nothing left of the WPA's first reason for refusal if PPL's case on need were to be accepted.
80. Second, it is said that the cross-references in IR 12.95 to earlier parts of the IR shows that the Inspector had in mind only the transport, climate change and carbon emissions and not the proximity principle. But an Inspector's Report, or a Decision Letter, must be read fairly and as a whole. The references to “waste mileage” and “a clear improvement on the existing situation” show that the Inspector had in mind PPL's case at, for example, IR 8.29. There is no obligation on an Inspector to provide comprehensive cross-referencing. It was therefore inappropriate for Mr. Burton to attempt to read down the language of IR 12.95 by using the cross-references which the

Inspector did give. In any event, there is an obvious connection between reduction in waste mileage, and reduction in carbon emissions and climate change.

Conclusion

81. For all these reasons, I would dismiss the appeal.

Lord Justice Nugee

82. I agree.

Lord Justice Moylan

83. I also agree.