



Neutral Citation Number: [2026] EWHC 422 (Admin)

Case No: AC-2025-LON-000779

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2026

Before :

MR JUSTICE MOULD

Between :

SANDY PARK FARM PARTNERSHIP

Claimant

- and -

**(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**

- and -

(2) WADDETON PARK LIMITED

- and -

(3) EXETER CITY COUNCIL

Defendants

Richard Kimblin KC & James Corbet Burcher (instructed by **DLA Piper UK LLP**) for the
Claimant

Ashley Bowes (instructed by **Government Legal Department**) for the **First Defendant**

Lord Banner KC & Nick Grant (instructed by **Ashfords LLP**) for the **Second Defendant**

Hearing dates: 28-29 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on Thursday 26 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE MOULD

MR JUSTICE MOULD :

Introduction

1. By this application made under section 288 of the Town and Country Planning Act 1990 [**“the 1990 Act”**] the Claimant seeks an order to quash the decision of an inspector appointed by the First Defendant dated 30 January 2025 on a planning appeal made by the Second Defendant under section 78 of the 1990 Act. The Second Defendant had appealed to the First Defendant against the Third Defendant’s failure, acting as local planning authority, to determine an application for planning permission within the requisite period.
2. The Second Defendant’s planning application under reference 23/1320/OUT [**“the planning application”**] was submitted to the Third Defendant on 30 October 2023. The Second Defendant sought planning permission for the demolition of existing buildings and structures and the phased development of up to 350 dwellings and associated infrastructure and open space [**“the development”**] on land at St Bridget Nursery, Old Rydon Lane, Exeter EX2 7JY [**“the appeal site”**]. The planning application was made in outline with all matters other than means of access being reserved. The planning inspector held a local inquiry into the planning appeal on 11 December 2024. He visited the appeal site on 11 and 12 December 2024.
3. By his decision letter dated 30 January 2025 [**“the DL”**], the inspector allowed the Second Defendant’s planning appeal and granted outline planning permission subject to 30 conditions for the development [**“the planning permission”**]. In granting the planning permission, the inspector took account of a number of planning obligations contained in a deed of agreement dated 18 December 2024 which had been made under section 106 of the 1990 Act, the parties to which were the owners of the appeal site, the Second Defendant as developer, the Third Defendant and Devon County Council.
4. On 31 July 2023 the Third Defendant had granted planning consent on a previous application by the Second Defendant for essentially the same development as that now comprised in the planning permission. On 2 February 2024 this court granted an application for judicial review of the Third Defendant’s decision and quashed that earlier grant of planning permission; see R (Pratt) v Exeter City Council [2024] EWHC 185 (Admin) [**“Pratt”**].
5. Both the Second and Third Defendants attended and participated in the local inquiry held by the inspector on 11 December 2024. The Third Defendant’s case as local planning authority was that the development should be granted planning permission. The Claimant did not attend the local inquiry, but its planning consultants did submit written representations on its behalf to the inspector opposing the Second Defendant’s planning appeal and objecting to the development.
6. The focus of the present claim is upon two matters: firstly, the access arrangements for the development which have been authorised by the planning permission; and secondly, the impact of the development on protected species of bat which roost in buildings on the appeal site whose demolition is authorised by the planning permission.

7. In summary, the Claimant's grounds of challenge are as follows –
- (1) The inspector based his decision to grant the planning permission on a misunderstanding of a relevant and important policy of the statutory development plan, policy CP19 of the Exeter Core Strategy (2012) [**“the Core Strategy”**].
 - (2) The inspector failed to give legally adequate reasons for limiting the weight which he gave to the Newcourt Masterplan (2010) [**“the Masterplan”**] as a material consideration. Alternatively, the inspector's conclusion that the Masterplan was a material consideration of only limited weight was irrational.
 - (3) The inspector's consideration of the impact of the development on protected species of bat was in breach of his duty as competent authority under the Conservation of Habitats and Species Regulations 2017 [**“the 2017 Regulations”**] and failed to accord with the strict system of species protection under article 12 of Council Directive 1992/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora [**“the Directive”**].

The inspector's decision in summary

8. In DL6 and DL7 the inspector gave a brief description of the appeal site and the proposed access arrangements for the development.
9. The appeal site comprises the former St Bridget Nurseries garden centre. The garden centre is currently closed to the public but still in some limited use as a nursery. The appeal site lies within the south-eastern area of Exeter. Beyond the north-eastern boundary of the appeal site lies a parcel of farmland known as “Wynards and Poultons” [**“the adjacent land”**] which separates the appeal site from Newcourt Way. I understand that the Claimant is the beneficial owner of the adjacent land. The A379 Rydon Lane runs along the western boundary of the appeal site. Immediately beyond the southern boundary of the appeal site runs Old Rydon Lane, which the inspector described as a simple, single carriageway.
10. At its western end, Old Rydon Lane meets the A379 Rydon Lane at a T-junction. Towards its eastern end, some distance beyond the eastern boundary of the appeal site, Old Rydon Lane meets Newcourt Way. There are existing dwellings along the southern frontage of Old Rydon Lane as one moves eastwards along its route from its junction with Rydon Lane. Further east along Old Rydon Lane's southern frontage, facing the eastern end of the appeal site, lies the Heritage Homes development which gains access to Old Rydon Lane via Holland Park. Vehicular access to the former garden centre is via this section of Old Rydon Lane. Moving further eastwards along Old Rydon Lane towards its junction with Newcourt Way, there is a junction with Newcourt Drive which joins Old Rydon Lane from the south.
11. The inspector gave the following description of the vehicular access arrangements proposed to serve the development and associated modifications to the use of Old Rydon Lane for vehicular traffic –

“The proposed development seeks access from a modified Old Rydon Lane, via its junction with the A379 Rydon Lane. There is an eastbound one-way section for vehicular traffic at the east end of Old Rydon Lane until it meets Newcourt Way. This

means that the junction with Rydon Lane is the only way for vehicles to access the properties that front this section of Old Rydon Lane. This is also the case for the 'Heritage Homes' development southeast of the appeal site, the former garden centre itself, and the NHS facility at Newcourt House. To facilitate the site egress arrangement, it is intended to extend the one-way system westwards down Old Rydon Lane, past the entrance to the dwelling Newcourt Lodge and up to the southeast edge of the appeal site, by way of a Traffic Regulation Order (TRO)".

12. The inspector identified the following main issues in the planning appeal –
 - (1) The principle of the proposed development having regard to the development plan and other material considerations, including the Newcourt Masterplan.
 - (2) The effect of the proposal on highway safety and the highway network.
 - (3) The effect of the proposal on the living conditions of neighbouring residents.
13. The inspector considered the first of those main issues in DL8 to DL13. He concluded that having regard to the statutory development plan and other material considerations including the Masterplan, the proposed development was acceptable in principle and in accordance with relevant policies of the development plan. The Claimant's case is that the inspector reached that conclusion on the basis of a misunderstanding of those policies. I shall therefore need to return to the detail of the inspector's reasoning in DL8 to DL13 when I turn to grounds (1) and (2) below.
14. In DL14 to DL37 the inspector addressed the effects of the development on highway safety and the highway network. He concluded that those effects would be acceptable and that the development would accord with the relevant highways and transport planning objectives of the development plan and the National Planning Policy Framework. The inspector considered the effects of the development on the living conditions of neighbouring occupiers in DL38 to DL42, concluding that those effects would be acceptable and in accordance with relevant policy objectives.
15. The inspector then turned to consider the possible effects of the development on protected nature conservation interests. In DL43 to DL48 the inspector discharged his duty as competent authority under regulation 63 of the 2017 Regulations. Having carried out appropriate assessment he concluded that with the provision of mitigation, the development would not adversely affect the integrity of European Protected Sites. In DL49 to DL51 the inspector addressed the effects of the development on certain protected species, including those species of bat which are protected under the 2017 Regulations and the Directive. I shall return to the inspector's assessment in the context of ground (3) below.
16. Having briefly dealt with certain other matters, in DL54 to DL72 the inspector gave detailed consideration to the planning obligations offered in the section 106 agreement and to the appropriate conditions to be imposed on the planning permission. In DL73 and DL74 he drew the planning balance, concluding that the development accorded with the development plan and would deliver significant socio-economic benefits. Other material considerations did not support a decision other than in accordance with the development plan. In DL75 he concluded that the appeal should be allowed.

Legal framework

Determining planning applications and appeals

17. The approach which a local planning authority is required to take when determining an application for planning permission is stated in section 70(2) of the 1990 Act –

"70(2) In dealing with an application for planning permission ... the authority shall have regard to –

(a) the provisions of the development plan, so far as material to the application,

... and,

(c) any other material considerations."

18. Section 79 of the 1990 Act governs the determination of planning appeals by the First Defendant or, as in this case, by an inspector appointed by him –

"79(1) On an appeal under section 78 the Secretary of State may -

(a) allow or dismiss the appeal, or

(b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance."

19. By virtue of section 79(4) of the 1990 Act, section 70 of that Act applies in relation to an appeal to the First Defendant under section 78 as that section applies in relation to an application for planning permission which falls to be determined by the local planning authority.

20. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides –

"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".

The court's approach to legal challenges to planning appeal decisions

21. In St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2018] PTSR 746 at [6], Lindblom LJ set out seven familiar principles which guide the court in determining a challenge to a planning appeal decision by an inspector brought under section 288 of the 1990 Act. I summarise those principles below (omitting the familiar case references upon which they were founded in Lindblom LJ's exposition of them) –

(1) A planning appeal decision letter is to be construed in a reasonably flexible way. Such decisions are written principally for the parties who know what the issues

between them are and what evidence and argument has been deployed on those issues. The inspector need not rehearse every argument or cover every point raised before him.

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

(3) The weight to be attached to any material consideration and all matters of planning judgment are for the inspector and not for the court to determine. An application under section 288 of the 1990 Act does not provide an opportunity for the court to review the planning merits of the proposed development.

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration.

(5) When it is suggested that the inspector has failed to grasp a relevant policy, one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question.

(6) Because it is reasonable to assume that national planning policy is familiar to planning inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored.

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system.

Ground (1) – misinterpretation of policy

Introduction

22. In DL13, the inspector concluded that the development would accord with the requirements of policies CP1, CP9 and CP19 of the Core Strategy. The Claimant's argument in support of ground (1) is essentially that the inspector's conclusion is founded upon a misunderstanding of policy CP19, which the Claimant characterises as a critical policy of the development plan. That misunderstanding is said to be evident firstly, from the inspector's finding that policy CP19 allows for the development to take its primary access to the appeal site other than from Newcourt Way; and secondly, from his finding that policy CP19 allows for Old Rydon Lane to

be a primary vehicular route for the several hundred new dwellings to be provided by the development. In each instance, the Claimant submits, the inspector has misunderstood policy CP19 when read in its proper context. That in turn has led the inspector to misapply policy CP19 in his determination of the Second Defendant's planning appeal.

23. In order to examine these contentions, it is necessary both to consider policy CP19 of the Core Strategy and the policy background which is said to form part of that policy's context.

Policy CP19 of the Core Strategy

24. Policy CP1 of the Core Strategy states the Third Defendant's spatial strategy for the plan period 2006-2026 which is to identify opportunities for Exeter to grow within its environmental limits. Amongst the growth proposals promulgated under policy CP1 to deliver the spatial strategy are the promotion of land at Newcourt, as one of a limited number of comprehensively planned and fully integrated mixed-use urban extensions to provide substantial quantities of employment land and new dwellings. Those urban extensions are identified as strategic allocations, each of which is the subject of a more detailed and specific policy in chapter 12 of the Core Strategy. Paragraph 12.2 states that each section of chapter 12 identifies some of the features that will be important in creating strong, safe and prosperous communities, together with the infrastructure requirements to ensure their delivery. For the Newcourt area, those matters are considered in paragraphs 12.5 to 12.13 of chapter 12.
25. Policy CP19 of the Core Strategy provides the policy for development and delivery of each of the three identified strategic allocations. For the Newcourt area, policy CP19 states –

“The Newcourt area (identified on plan 1, page 100) is proposed for around 3500 dwellings (including 1176 with planning permission), around 16 hectares of employment land and all associated infrastructure including:

- *local centre to provide shops and community facilities including a health centre;*
- *two new primary schools;*
- *gypsy and traveller site provision if necessary;*
- *green infrastructure framework;*
- *low and zero carbon infrastructure;*
- *new pedestrian and cycle crossings of the A379 and the railway line;*
- *transport hub to include rail halt and bus interchange;*
- *new link road through the development with access onto the A379;*
- *improvements to the strategic road network particularly at Countess Wear roundabout; and*

- *contributions towards other educational, social and community facilities”.*

26. Each of the strategic allocations is identified on a plan. As noted in policy CP19 itself, Plan 1 identifies the boundary of the Newcourt Allocation. Both the appeal site and the adjacent land are situated within the identified Allocation Boundary on Plan 1. Plan 1 also identifies key elements of the Newcourt area strategic allocation. Those elements include a new link road, shown by a dashed notation following the line of Newcourt Way from Old Rydon Lane northwards to its junction with the A379; and green infrastructure routes, which include a route along the line of Old Rydon Lane alongside the southern boundary of the appeal site between Newcourt Way and the junction with the A379 Rydon Lane at the south western corner of the appeal site.

27. Paragraph 12.5 of the Core Strategy states the objective for the Newcourt area to deliver a mix of residential, employment and community uses together with open spaces, green corridors and essential infrastructure. Paragraph 12.9 says that development of the Newcourt area will have a strong regard to the principles of urban design, so as to ensure an attractive and locally distinctive environment. That paragraph also says –

“A green infrastructure framework, comprising a range of linked formal and informal open spaces (including parks, playing fields and allotments), will meet local sporting and recreational needs, as well as providing health, social and environmental benefits”.

28. Paragraph 12.11 says that good permeability must be achieved throughout the development area and links established to the surrounding urban area. It continues –

“A green network will radiate from the local centre and will provide convenient and safe walking and cycling routes to link existing and proposed housing, employment and community areas to each other and provide access to existing facilities beyond the development area. The potential for a bus route along Old Rydon Lane and an enhanced public transport system route will be explored fully. Proposals for development of the area must not preclude these options. Further bus priority along Topsham Road is also being investigated. Access onto the A379 has already gained consent and is required to serve existing development proposals. Improvements to the strategic road network may also be required, particularly at Countess Wear roundabout”.

29. Paragraph 12.13 states –

“The development of this area should have general regard to guidance contained within the Newcourt Masterplanning Study”.

The Exeter Local Plan 2005

30. Prior to the adoption of the Core Strategy in February 2012, development plan policy for the development of land in the Newcourt area had been provided by policy KP8 of the Exeter Local Plan (March 2005) [**“the Local Plan”**]. In summary, policy KP8 proposed land in the Newcourt area for housing and employment development supported by new community facilities and informed by a clear landscape and urban

design concept for the area. The appeal site was not included with the boundary of the site allocation for policy KP8.

31. Policy KP8 identified a series of elements to be provided for in development proposals, including –

“Vehicle access to the land north of Old Rydon Lane from the A379 and to the upper depot site from Topsham Road and, after completion of the 200th dwelling on the upper site, to the whole of the development in this proposal from both the A379 and Topsham Road...”

32. Policy T14 of the Local Plan proposed a series of local highway schemes including Topsham Road to the A379. The justification for that proposal was as follows –

“Former Royal Naval Stores Depot: A road link will be required between the lower RNSD site on Topsham Road and the upper RNSD housing site. This link will connect with access roads through the Newcourt development area, north of Old Rydon Lane, to the A379”

The Masterplan

33. The Third Defendant published the Masterplan in November 2010. The opening paragraphs of the Masterplan refer to the Newcourt area as having been identified as a strategic allocation in the then emerging Core Strategy. The stated purpose of the Masterplan was to provide guidance for developers as to how the Newcourt area can be developed in a comprehensive and co-ordinated way to deliver a high quality sustainable form of development. The Masterplan was subject to public consultation, following which it was approved for development management purposes.

34. The Masterplan Figure shows the appeal site and the adjacent land as areas for residential and employment development within the Newcourt area. The Figure shows a primary route through the Newcourt area along the line of what is now Newcourt Way leading to the A379 to the north and continuing in a south westerly alignment to join Topsham Road to the south of the Masterplan area. Also shown diagrammatically as a primary route is a spur off the line of Newcourt Way running southwest, via the adjacent land and on to the appeal site. Old Rydon Lane is shown as a secondary route, including for cycling, and as a habitat link.

35. Under the heading “Transport”, the Masterplan states –

“The primary access to the Newcourt Masterplan area will be the new spine road that links the A379 with Topsham Road ... Old Rydon Lane will be managed with the aim of avoiding additional traffic using this route to access the Masterplan area and to ensure that it does not become attractive as a through route for private vehicular traffic ... Old Rydon Lane will be managed to make this route attractive to cyclists”

36. Under the heading “Green Infrastructure”, the Masterplan says –

“A framework of green infrastructure will be provided across the site, connecting the new green spaces with existing green spaces and protecting and enhancing the existing wildlife habitats within the study area. Key habitat links including those

along the line of the rail line, Old Rydon Lane and Sea Brook as shown on the Masterplan figure shall be provided on site and maintained as such”.

Green infrastructure

37. Paragraphs 10.32 to 10.34 of the Core Strategy explain the policy approach to the provision of green infrastructure. Networks of green infrastructure will be required to enhance quality of life in the region and support the successful accommodation of change. Examples of green assets include public rights of way and wildlife areas. Key elements of the approach to green infrastructure at Exeter are the provision of a green infrastructure framework for the development of the urban extensions, including Newcourt, and a sustainable movement network to enhance walking and cycling links between the urban extensions, the urban area and the open countryside. Paragraph 10.33 says –

“A Green Infrastructure Strategy has been prepared for the Exeter area that sets out a framework to link existing and planned communities through a coordinated and easily accessible network. The Strategy, in particular, provides the basis to ensure that [green infrastructure] is an integral part of new development. The findings of the Strategy underpin the [green infrastructure] policy set out in this Core Strategy...”.

38. Policy CP16 provides the green infrastructure policy in the Core Strategy. It includes the following statement -

“[Green infrastructure] will be an integral part of planning for the urban extensions at Monkerton/Hill Barton, Newcourt and Alphington. New multifunctional areas of green space and green corridors will be created to meet the needs of these new communities. A sustainable movement network will link the urban area to the urban extensions and beyond to the open countryside. To the east of the city green corridors, that incorporate multi-use trails (for cycling, walking and horse riding) and provide high quality biodiversity habitat, will link Exeter to the proposed Clyst Valley Park and on to Cranbrook”.

39. Policy CP17 of the Core Strategy is concerned with delivering sustainable design. It includes the following –

“Development at Newcourt will ... be set around a high quality sustainable movement network to encourage pedestrian and cycle trips and to provide easy access to the Exe Valley strategic greenway and to Ludwell Valley Park”.

Green infrastructure strategy

40. The Third Defendant’s Green Infrastructure Strategy [**“the GI Strategy”**], to which reference is made in paragraph 10.33 of the Core Strategy, was adopted in December 2009. The GI Strategy includes a Strategic Investment Plan which identifies three Area GI Frameworks, one of which covers the Newcourt area. The Strategic Investment Plan also identifies a Sustainable Movement Network, including Old Rydon Lane as a *“neighbourhood connector”*. The role of a neighbourhood connector is explained as follows –

“These connectors build upon the local network of urban routes to provide connectivity between different neighbourhoods within urban areas and connections into the strategic primary network of Greenways. They are routed to take advantage of parks and green space assets and other notable features such as civic spaces or historic character. Investment in Neighbourhood Connectors should largely concentrate upon: where necessary enhancing the public realm along these routes, respecting and reinforcing local distinctiveness and character in the choice of materials, street furniture and lighting; enhancing the pedestrian and cycle environment to create safer and more attractive routes, including improved road crossings where necessary; ensuring routes feel safe for pedestrians and cyclists after dark with adequate lighting; improving signage where necessary; “greening” routes to provide a network of “green corridors” throughout the urban areas”.

41. The GI Strategy includes an area framework for Newcourt. The Newcourt Area Framework Plan shows Old Rydon Lane as having the role of a key cycle/footpath on a quiet road. The Lane is seen as providing an opportunity to form part of a direct footpath linking over the A379 Rydon Lane to Ludwell Valley Park to the west and to form part of a continuous and coherent chain of green routes through the Newcourt area.

Newcourt Way

42. In October 2007 the Third Defendant granted planning permission for the provision of a road link between the A379 to the north of the Newcourt area and Old Rydon Lane. That road has since been constructed as Newcourt Way. It includes the provision of a roundabout [**“the IKEA roundabout”**] along its route which provides access to the IKEA store which has been developed to the east of Newcourt Way. Newcourt Way was designed and constructed with the capacity to accommodate future traffic generated through development of the Newcourt area, including the appeal site. The IKEA roundabout includes an arm with a short stub which would enable an access road to be constructed to serve future development of land to the west, including the adjacent land and the appeal site.

The inspector’s assessment in the decision letter

43. In DL8, the inspector summarised the position in relation to the allocation of the appeal site for development in both the Core Strategy and the saved policies of the Local Plan. He said that the appeal site is allocated for residential and/or employment development as part of the Newcourt area allocation pursuant to policies CP1 and CP19 of the Core Strategy. The Newcourt area had already been allocated for development in 2005 by saved policy KP8 of the Local Plan. That earlier policy allocation had not included the appeal site. He said that the majority of the Newcourt area had either now been developed or was under development. He referred to the policy requirement under policy T14 of the Local Plan for a spine road through the Newcourt allocation connecting the A379 to Topsham Road. That spine road had now been provided as Newcourt Way. He observed that as the appeal site was not allocated by the Local Plan, it does not fall within the ambit of saved policies KP8 or T14.

44. In my view, none of those findings is open to criticism. The inspector's summary of those matters is both accurate and properly reflects the policies and developments in the Newcourt area to which he refers.
45. The inspector then turned to consider whether the development of the appeal site proposed by the planning application, in particular the proposed access arrangement via Old Rydon Lane, would be in accordance with policy CP19 of the Core Strategy. He set out his reasons in relation to that issue in DL9 and DL10 –

“9. Each allocation in the [Core Strategy] is accompanied by a plan identifying the allocation and sometimes showing certain infrastructure, including ‘green infrastructure routes’. Old Rydon Lane is shown as one such route on the relevant Plan 1. However, there is no explanation as to what a green infrastructure route entails and if, for instance, these routes should preclude vehicular traffic. This appears unlikely, given the existing dwellings on Old Rydon Lane, and also given that Policy CP19’s supporting text refers to the potential for it to be used by buses.

10. Policy CP19’s wording for Newcourt only refers to the delivery of a ‘green infrastructure framework’ rather than specific ‘routes’ and states that Plan 1 identifies the allocation; no more, no less. The supporting text states that the green network is intended to offer convenient and safe walking and cycling routes to link existing and proposed housing. The proposal seeks to provide segregated pedestrian and cycle routes along parts of Old Rydon Lane and remove through traffic, downgrading much of it to a ‘quiet street’. As such, the development, and its access arrangement, would accord with Policy CP19”.

46. Having found the development and its proposed access arrangement to accord with policy CP19 of the Core Strategy, in DL11 and DL12 the inspector addressed the same question in relation to the Masterplan –

“11. The [Masterplan] puts forward a more detailed strategy for the allocation. Despite predating the [Core Strategy], it incorporates the St Bridget Nurseries site. The Masterplan identifies access to the appeal site from the northeast via Newcourt Way. Vehicular access from the northeast is the preferred route for the Rule 6 Party and interested parties. There was a previous intention by the Council for access to come this way too, and a road spur is already in situ. That the Masterplan promotes this access point is reinforced by its text which guides that Old Rydon Lane should be managed to avoid more traffic using it to access the Newcourt Area. The proposed access and egress are dependent on Old Rydon Lane and so the scheme is at odds with the Masterplan in this respect.

12. However, the Masterplan is not part of the development plan nor a supplementary planning document. It has been deviated from several times, not least with the construction of the IKEA store at the Newcourt Way and A379 junction instead of housing. The [Core Strategy] only refers to the Masterplan insofar as development should have ‘general regard’ to its ‘guidance’. This makes its status relative to the development plan clear. As such, notwithstanding the aspirations of stakeholders previously involved with Newcourt, the Masterplan contains no requirement, policy based or otherwise, that development of the appeal site must take its access from the northeast and not as proposed. For these reasons, the Masterplan is a material consideration of limited weight”.

47. In DL13 the inspector gave his conclusions on the first main issue in the planning appeal -

“13. I therefore conclude on this issue that the principle of the proposed development is acceptable, having regard to the development plan and other material considerations, including the Newcourt Masterplan. Whilst conflict with the Newcourt Masterplan, as a non-development plan document, would arise, the proposed development would accord with the requirements of Policies CP1, CP9 and CP19 of the [Core Strategy]”.

The Claimant’s submissions in summary

48. For the Claimant, Mr Kimblin KC submitted that the inspector’s conclusion that the proposed access arrangement for the development would accord with policy CP19 of the Core Strategy was founded upon a misunderstanding of that policy and so erroneous in law.

49. Counsel relied upon the judgment of Lord Reed at [17]-[18] in Tesco Stores Limited v Dundee City Council [2012] PTSR 983. The inspector was required to proceed on a proper understanding of the material policies of the development plan –

“The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle the matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context”.

50. It was submitted that the inspector was under a duty to interpret policy CP19 in accordance with the principle there stated by Lord Reed. Reliance was placed on the endorsement that approach by Lord Carnwath at [22] in Hopkins Homes Limited v Secretary of State for Communities and Local Government [2017] 1 WLR 1865; and by Lord Gill at [81], where he said that the interpretation of a planning policy should be informed by both the policy context in which it is found and the planning objective which it seeks to achieve.

51. Counsel argued that the inspector had failed to follow these principles. He had adopted too narrow an approach to interpreting policy CP19. True it was that policy CP19 does not include an express requirement for residential development of the appeal site to take its access to the northeast via the IKEA roundabout and onto Newcourt Way. Nor does the policy expressly prohibit the use of Old Rydon Lane as the primary access to serve such development. Properly understood, however, in the context set by both the Core Strategy and the Masterplan, it was submitted to be clear that policy CP19 expresses two relevant policy objectives. The first objective is that traffic from the development of land in the Newcourt allocation, including the appeal

site, should be routed onto the new link road through the development area with access onto the A379; in other words, onto Newcourt Way. The second objective is that such development traffic should not be routed onto Old Rydon Lane.

52. It was submitted that the first policy objective is established by the obvious importance given to the new link road, Newcourt Way, as the key component of the access strategy for new development within the Newcourt allocation. Its status as such was confirmed by policy CP19 itself, by that new link road being identified on Plan 1 to which policy CP19 refers and by the Masterplan, which paragraph 12.13 of the Core Strategy endorses as a source of guidance on the development of land within the strategic allocation.
53. Counsel argued that the second policy objective is established by a number of linked matters of context. Firstly, policy CP19 itself states the need for development at Newcourt to come forward within a green infrastructure framework. Secondly, Plan 1 identifies Old Rydon Lane as a green infrastructure route. Thirdly, paragraphs 12.5, 12.9 and 12.11 of the Core Strategy state the need for the Newcourt area to deliver green corridors and a green infrastructure framework which includes provision of safe walking and cycling routes, to meet local recreational needs and create permeable links within and beyond the strategic allocation. Policy CP16 seeks the creation of a sustainable movement network including public rights of way for walkers, cyclists and horse riders as part of the green infrastructure for Newcourt.
54. Mr Kimblin KC submitted that unless policy CP19 was correctly understood in that way and applied in line with those two objectives, its application would be legally flawed. As is revealed by the inspector's reasoning, that was the position in the present case.

Discussion and conclusions

55. The starting point, in my view, is the obvious observation that policy CP19 of the Core Strategy makes no express provision for the means by which any development of the appeal site is to gain access to the immediate and wider highway network. On Plan 1, the appeal site lies within the delineated boundary of the Newcourt area allocation. Beyond that, the appeal site is neither itself delineated nor is any specific notation applied to it. We are told in paragraph 12.2 of the Core Strategy that the purpose of paragraphs 12.5 to 12.13 is to identify some of the features for the Newcourt strategic allocation that will be important in creating strong, safe and prosperous communities, together with the infrastructure requirements to ensure its delivery. Again, nothing specific is said in those paragraphs about the access arrangements to serve the appeal site.
56. Paragraph 12.11 refers to the fact that access onto the A379 has already gained consent and is required to serve existing development proposals. That paragraph was presumably written in the light of the then relatively recent grant of planning permission for the construction of Newcourt Way. At the date of adoption of the Core Strategy in 2012, that was to be the "*new link road through the development with access onto the A379*" which was identified as "*associated infrastructure*" in policy CP12 itself.

57. Paragraph 12.13 of the Core Strategy draws the reader's attention to the Newcourt Masterplanning Study. It is common ground that this is a reference to the Masterplan. Paragraph 12.13 advises that the development of the Newcourt Area should have "*general regard to guidance contained within*" the Masterplan.
58. The Masterplan gives guidance on transport. It says that the primary highway access to the Newcourt Masterplan area will be "*the new spine road that links the A379 with Topsham Road*". The Masterplan was finalised in 2010. That reference also was to the forthcoming construction of Newcourt Way, which was included in the first phase of delivery of the Masterplan in conjunction with a series of consented housing developments in the centre of the Newcourt area.
59. On the Masterplan Figure, the appeal site is notated as land for residential and/or employment development. Nothing specific is said in the text of the Masterplan about access arrangements to serve future development of the appeal site. There is, however, the red dashed notation on the Masterplan Figure which indicates a spur road running in a south westerly direction along the adjacent land and on to the appeal site. That indicative route is consistent with the planning permission for Newcourt Way, which included the IKEA roundabout with its fourth arm and westerly aligned short stub.
60. In DL11, the inspector interpreted the Masterplan as identifying and promoting the provision of vehicular access to serve development of the appeal site from the northeast, joining the soon to be constructed Newcourt Way via the IKEA roundabout. He found it to have been the previous intention of the Third Defendant as local planning authority that access to the appeal site should be achieved in that way. Those aspects of the inspector's reasoning reveal no misunderstanding of policy CP19, of Plan 1, of the Newcourt section in chapter 12 of the Core Strategy or of the Masterplan. The inspector was also correct in his understanding of the extent to which policy CP19 and those contextual sources express any objective or guidance on access arrangements to serve development of the appeal site. In short, it consisted of the guidance given by the Masterplan which promoted the provision of such access from the northeast, via a spur onto the new spine road that has since been constructed as Newcourt Way.
61. There could be no argument that an access arrangement which followed the guidance given by the Masterplan, that vehicles should access the appeal site primarily via a new spur road onto the IKEA roundabout and Newcourt Way, would be in accordance with policy CP19 of the Core Strategy. General regard to the guidance given by the Masterplan, taken together with the policy objective of delivering the new link road with access onto the A379 to serve development within the strategic allocation, would show that to be a proper understanding and reasonable application of policy CP19.
62. It does not follow that an alternative access arrangement for development of the appeal site is, without more, not in accordance with policy CP19. The mere fact that the posited alternative access arrangement differs from that promoted by the Masterplan does not mean that it necessarily fails to accord with policy CP19. Even interpreted in the context of Plan 1 and the Masterplan, Policy CP19 is not so prescriptive either in its terms or its objectives. It can reasonably be said that the Masterplan promotes one solution to the problem of providing vehicular access to serve development of the appeal site. By promoting the delivery of the new link road,

policy CP19 enables that solution to be achieved, as shown diagrammatically on Plan 1. It is, however, within the proper contemplation of policy CP19 that an alternative solution may be found to that problem, which does not depend upon providing vehicular access to the appeal site via a spur onto Newcourt Way.

63. That analysis, however, does not address the gravamen of the Claimant's complaint under ground (1). The critical question for the inspector was whether the alternative access arrangement now proposed for the development, which uses Old Rydon Lane as the primary means of vehicular access to serve 350 additional dwellings, can properly be found to be in accordance with policy CP19 of the Core Strategy, on a true contextual understanding of that policy of the development plan. As Mr Kimblin KC submitted, in order to answer that question the inspector needed properly to understand the Core Strategy's policy objective in respect of Old Rydon Lane.
64. Policy CP19 identifies a green infrastructure framework as one of the elements of associated infrastructure proposed in conjunction with the development of the strategic allocation. Although Old Rydon Lane is not mentioned specifically in policy CP19, it is identified on Plan 1 as a "*Green Infrastructure Route*". There is neither an explanation in CP19 of the purpose of the green infrastructure routes identified on Plan 1 nor a policy definition of that concept in the Core Strategy.
65. Paragraph 12.5 of the Core Strategy says that the Newcourt area should deliver green corridors and essential infrastructure. Paragraph 12.9 identifies a range of linked formal and informal spaces as a key component of the proposed green infrastructure framework. Paragraph 12.11 proposes a green network radiating from the local centre and providing convenient and safe walking and cycling routes to link existing and proposed housing, employment and community areas to each other; and access to existing facilities beyond the development area. The same paragraph identifies the potential for Old Rydon Lane to serve as a bus route; and the need fully to explore the potential for an enhanced public transport system. Paragraph 12.11 then states –

"Proposals for development of the area must not preclude these options".
66. I have referred already to policy CP16 of the Core Strategy. That policy sets general policy objectives for the City's green infrastructure network, one of which is that green infrastructure should be an integral part of planning for the Newcourt area. Policy CP16 refers specifically to the creation of a sustainable movement network to link the urban extensions to the wider urban area and to the open countryside. Reference is also made to facilitating walking, cycling and horse riding. These more general policy objectives are essentially consistent with those identified in paragraph 12.11, in the specific context of policy CP19 and Plan 1. I note that paragraph 10.34 of the reasoned justification for policy CP16 directs the reader to section 12 of the Core Strategy, for further information about the provision of a green infrastructure framework in the overall delivery of the urban extension at Newcourt.
67. In summary, the Core Strategy's policy objective for Old Rydon Lane as a green infrastructure route is that it should function as an element of the green infrastructure framework for the Newcourt strategic allocation. Its primary role is to operate as a component of a sustainable movement network both within the Newcourt urban extension and into the wider urban area and countryside beyond. In order to fulfil that role, Old Rydon Lane should provide a safe and convenient route for walkers,

cyclists and potentially horse riders. Old Rydon Lane may also be expected to function in future as a bus route. In fulfilling these objectives, Old Rydon Lane will contribute to the policy objective of providing a green infrastructure framework in association with the delivery of housing and employment development within the strategic allocation under policy CP19 of the Core Strategy. The key policy constraint is that stated in paragraph 12.11 of the Core Strategy, that proposals for development in the Newcourt area “*must not preclude*” the achievement of these objectives.

68. That analysis of the role ascribed to Old Rydon Lane as a green infrastructure route in the Core Strategy is consistent with the Lane’s treatment in the GI Strategy. The Newcourt Area Framework Plan in the GI Strategy identifies Old Rydon Lane as a neighbourhood connector providing a key cycle/footpath on a quiet road, as a part of the sustainable movement network.
69. The Masterplan, to which the Core Strategy says that general regard should be had for guidance in the development of the Newcourt area, says that Old Rydon Lane will be managed with the aim of avoiding additional traffic using it as a route to access the Masterplan area; and to ensure that it does not become attractive as a through route for private vehicular traffic.
70. The inspector grappled with the policy status of and policy objectives for Old Rydon Lane in the Core Strategy in DL9 and DL10. He acknowledged that Old Rydon Lane is identified as a green infrastructure route on Plan 1. He said that there is no explanation as to what a green infrastructure route entails. I understand the inspector to be making the point that the policy concept is not itself defined in the Core Strategy. He was correct about that. He drew on paragraph 12.11 of the Core Strategy, observing that it appears unlikely that the policy objective is to preclude vehicular traffic from green infrastructure routes. In the case of Old Rydon Lane, he said that it already provides vehicular access for existing frontage properties to the wider highway network; and that there is a stated policy aspiration for it to be used as a bus route. These observations are correct, as far as they go. They do not in themselves answer the critical question. It remained necessary for the inspector to consider whether it was in accordance with the policy CP19’s objectives, properly understood in context, for Old Rydon Lane to accommodate significant additional vehicular traffic from development of the appeal site.
71. The inspector knew and accepted that the proposed access arrangement for the development would add vehicular traffic onto Old Rydon Lane. It would have that effect on two sections of Old Rydon Lane: firstly, at the Lane’s modified approach to the junction with the A379 Rydon Lane; and secondly, at the eastern end of the Lane, beyond the proposed westward extension of the one-way section as the Lane approaches its junction with Newcourt Way.
72. However, the policy constraint stated in the reasoned justification for policy CP19 of the Core Strategy is not to preclude additional vehicular traffic on routes forming part of the green network. That policy constraint, as clearly stated in paragraph 12.11, is that development in the Newcourt area should not preclude the green network fulfilling the policy objective of providing safe and convenient walking and cycling routes to link existing and proposed housing.

73. As is clear from the inspector's reasoning in DL10 (and as supported by his more detailed findings in relation to the second main issue in the planning appeal), he found that the proposed access arrangement would not have that preclusive effect. The inspector referred to the supporting text to policy CP19. He was correct in his understanding that the green network is intended to offer convenient and safe walking and cycling routes to link existing and proposed housing. He said that the development seeks to provide segregated pedestrian and cycle routes along parts of Old Rydon Lane and to remove through traffic, downgrading much of the Lane to a quiet street. The Inspector clearly had in mind the policy objective for Old Rydon Lane that is evident in paragraph 12.11 of the Core Strategy.
74. In summary, the inspector's reasons in DL10 reveal no misunderstanding of the function which policy CP19 requires of Old Rydon Lane as an identified green infrastructure route and as part of the green infrastructure framework for the Newcourt area.
75. Nor does the inspector's reasoning in DL10 and DL11 support the Claimant's argument that he failed rationally to apply policy CP19 of the Core Strategy. In DL11, the inspector acknowledged that by adding vehicular traffic onto Old Rydon Lane, the access arrangement proposed for the development would be in conflict with the stated aim of the Masterplan for the management of traffic on Lane. The policy constraint stated in paragraph 12.11 of the Core Strategy is more nuanced, in providing that development in the Newcourt area should not preclude the green network fulfilling the policy objective of providing safe and convenient walking and cycling routes to link existing and proposed housing. Paragraph 12.13 of the Core Strategy treats the Masterplan as guidance to which general regard should be had in relation to the development of Newcourt. The inspector undoubtedly had regard to the Masterplan's aim of avoiding additional traffic using Old Rydon Lane to access the Newcourt area. For the inspector to interpret and apply CP19 primarily on the basis of the supporting text in paragraph 12.11 of the Core Strategy discloses no misunderstanding of policy CP19. Nor does it support the contention that in applying that policy, the inspector failed to have regard to the Masterplan as advised in paragraph 12.13 of the Core Strategy.
76. The question whether the Inspector failed to give a rational explanation for giving less weight to the conflict with the Masterplan in his reaching his judgment whether the access arrangements were acceptable in principle, falls to be considered under ground (2).
77. In conclusion, I am unable to accept the Claimant's argument under ground (1). In my judgment, the inspector's conclusion in DL10 that the access arrangements for the development would accord with policy CP19 of the Core Strategy was not based on a misunderstanding of that policy, when interpreted objectively and in its proper context. Properly understood in accordance with the approach approved by the Supreme Court in Tesco and Hopkins Homes, it is in accordance with policy CP19 to propose an alternative primary access arrangement for residential development of the appeal site to that promoted in the Masterplan. Policy CP19 does not preclude an access arrangement for development at Newcourt which would introduce additional development traffic onto Old Rydon Lane. Policy CP19 requires such an access arrangement not to preclude Old Rydon Lane from fulfilling the function of providing a safe and convenient route for walkers and cyclists, as part of the green infrastructure

framework for the Newcourt area. Whether the proposed access arrangement had that effect was for the inspector to judge. It was the inspector's reasonable judgment that the proposed access arrangement would not have that adverse effect. Ground (1) does not succeed.

Ground (2) – weight to the Masterplan

The issue

78. The issue under ground (2) is whether the inspector's explanation for concluding in DL12 that the Masterplan was a material consideration of limited weight in his evaluation of the acceptability of the principle of the development, including the proposed access arrangements, was inadequate and irrational. The Claimant rightly acknowledges that the attribution of appropriate weight to the Masterplan as a material consideration was for the planning inspector to judge. Nevertheless, the inspector had purported to give his reasons for concluding that the Masterplan should be given only limited weight. If, on analysis, that conclusion is found to be irrational in the second sense described at [98] in R (Law Society) v Lord Chancellor [2019] 1 WLR 1649, in that there is a demonstrable flaw in the reasons which led to it; or simply founded upon inadequate reasons in the sense described at [36] in South Bucks District Council v Porter (No 2) [2004] 1 WLR 1953, the court may intervene.

The Claimant's submissions in summary

79. Mr Kimblin KC submitted that consideration of the inspector's reasons in DL12 demonstrated that his attribution of only limited weight to the Masterplan was both irrational and inadequately reasoned. Whilst it is factually correct that the Masterplan does not form part of the statutory development plan, that says nothing about the weight to be given to the Masterplan as a material consideration. Nor does the fact that the Core Strategy treats the Masterplan as guidance shed any useful light on why, as an acknowledged material consideration, it is given only limited weight. DL12 was argued to reveal a confusion in the inspector's understanding of what the Masterplan requires. In DL11, the inspector had found the proposed access arrangements to be at odds with the Masterplan, However, in DL12 he said that the Masterplan contained no requirement that development of the appeal site should take its access from the northeast and not as proposed. In any event, what the Masterplan requires does not assist in determining the degree of weight to be given to it as a material consideration. The fact that there may have been deviations from the Masterplan was not illuminating. The relevant factor was the lack of deviation from the Masterplan's proposed access arrangements, which (as Lang J had recorded at [12] in *Pratt*) the Third Defendant had consistently supported for many years.

Discussion and conclusions

80. It is helpful to begin with long-established principle. In Mead Realisations Limited v Secretary of State for Levelling Up, Housing and Communities [2025] 1 PTSR 1158 at [38]-[39], Sir Keith Lindblom SPT identified that principle and some of the factors that may be relevant to the assessment of weight –

“38. Both the policies in the NPPF and the guidance in the PPG are capable of being material considerations in decision-making on planning applications and appeals.

And the weight to be given to such policy or guidance in a planning decision is a matter for the decision-maker, subject to the court's intervention on public law grounds (see the speech of Lord Hoffmann in Tesco Stores Ltd. v Secretary of State for the Environment [1995] 2 All ER 636, at p.657e-j).

39. Relevant factors in assessing weight may include the respective terms of the policy and guidance and whether they sit easily together; the timing of their publication, including, for example, whether the policy emerged before the guidance or vice versa, and how recently each was issued; and the nature of the process by which they were produced, including, for example, the fact that the guidance in the PPG is generally not subject to any external consultation before being issued, whereas the policies in the NPPF are”.

81. As will be evident from those paragraphs of the Senior President’s judgment, *Mead* concerned the relative status and role in planning decision making of policy documents issued by the Secretary of State, including the National Planning Policy Framework and relevant Planning Practice Guidance. The factors which the Senior President identified as being relevant to the assessment of weight were not intended by him to be an exhaustive list. They were merely illustrative of factors which may typically weigh with a planning decision maker, in the overall evaluation of sources of planning policy and guidance which he or she finds to be material considerations in relation to the decision to be made.
82. In order to make a fair assessment of the legal adequacy of the inspector’s rationale for limiting the weight that he gave to the Masterplan, it is necessary to be clear as to why he found it necessary to consider that issue. In DL10, he had reached the conclusion that the proposed access arrangement to serve the development was in accordance with policy CP19. That policy of the statutory development plan was of direct relevance to the determination of the planning application on appeal before him. In DL11 he had reached the conclusion that the proposed access arrangement was in conflict with the Masterplan. As he said in the final sentence of DL11, that conflict arose because the proposed access and egress are dependent on Old Rydon Lane; and the stated position in the Masterplan was that Old Rydon Lane should be managed to avoid additional traffic using it to access the Newcourt area.
83. Both policy CP19 of the Core Strategy and the Masterplan were material considerations in relation to the question which lay at the heart of the first main issue in the appeal, which was whether the proposed access arrangements for the development were acceptable in principle. In the light of the inspector’s conclusions in DL10 and DL11, those two material considerations each gave a different answer to that question. The inspector, therefore, needed to find a way of resolving that difference, in order to reach his overall conclusion on the first main issue. In DL12, the inspector explained how he had done so. He had given limited weight to the Masterplan, which in turn led to his overall conclusion on the first main issue. In DL13 he based that conclusion primarily upon his finding that the proposed development would accord with the requirements of CP19 of the Core Strategy.
84. The inspector said that he gave limited weight to the Masterplan because it did not form part of the development plan; nor was it a supplementary planning document. The Claimant says that is no more than a statement of fact and does not explain why, in consequence, the Masterplan should carry less weight.

85. I do not think that is a fair criticism. It is of course correct to say that the mere fact that the Masterplan lacks the status of the development plan or a supplementary planning document is not determinative of the weight to be given to its provisions. Under the statutory scheme enacted by sections 70 and 79 of the 1990 Act and section 38(6) of the 2004 Act, it is for the decision maker to assess the relative weight to be given to all material considerations: see City of Edinburgh Council v Scottish Secretary [1997] 1 WLR 1447, 1458G-H.
86. It does not follow, however, that in assessing the relative weight to be given to the Core Strategy and the Masterplan in the present case, it was either irrational or lacking in explanation for the inspector to give greater weight to development plan policy and lesser weight to informal guidance. In so doing, he was recognising the priority to be given to the development plan: see *City of Edinburgh Council* at page 1458H. He will have had in mind the fact that the Core Strategy had been prepared as a development plan document in accordance with the statutory procedures under Part 2 of the 2004 Act and the Town and Country Planning (Local Development) (England) Regulations 2004. That was not the case for the Masterplan, which is a non-statutory guidance document. He will have had in mind the policy stated in [15] of the National Planning Policy Framework that the planning system should be “*genuinely plan-led*”. It was both reasonable and understandable for the inspector to diminish the weight that he gave to the Masterplan because it lacked the status of a development plan or supplementary planning document.
87. Those familiar features of the planning system and national planning policy are reflected in paragraph 12.13 of the Core Strategy, which identifies the Masterplan as guidance to which a decision maker should have general regard, in determining development proposals in the Newcourt area. It was both reasonable and understandable for the inspector to take account of paragraph 12.13 of the Core Strategy in his evaluation of the relative weight that he should give to the Masterplan.
88. The Claimant did not question the factual accuracy of the inspector’s finding that there had been deviations from the Masterplan in previous development control decision making in the Newcourt area. I do not accept the Claimant’s contention that it was either irrational or inexplicable for the inspector to rely on that fact, in evaluating the relative weight to be given to the Masterplan in determining the planning application in the present case. That approach was consistent with the role ascribed to the Masterplan in paragraph 12.13 of the Core Strategy. It was a further indication that in seeking to reconcile his conclusions in DL10 and DL11, he should give limited weight to the Masterplan.
89. It was reasonable for the inspector to say that the Masterplan contains no requirement that development of the appeal site must take its access from the northeast. There is no such explicit requirement in the Masterplan. To characterise the Masterplan as “*promoting*” that access arrangement was a fair and accurate statement of the position. The Claimant contended that Plan 1 in the Core Strategy and the Masterplan Figure were “*materially the same*”. It was submitted that the inspector had failed to explain how there could be conflict with the Masterplan yet also accordance with policy CP19. The contention, however, that Plan 1 and the Masterplan Figure are materially the same is wrong. In a most material respect, they clearly differ. The Masterplan Figure shows, diagrammatically, a spur road leading from the new spine

road westwards on to the appeal site. There is no such route shown on Plan 1 of the Core Strategy.

90. In DL11, the inspector had concluded that the development was at odds with the Masterplan's aim of avoiding additional traffic using Old Rydon Lane to access the Newcourt area. I am satisfied that in DL12 the inspector gave proper and adequate reasons for according limited weight to the Masterplan; and that the explanation which he gave for so doing cannot fairly be criticised as being flawed in its logic. My conclusion is consistent with Lang J's reasoning at [66]-[67] in *Pratt*. The issue before the court in *Pratt* was whether the Masterplan was a material consideration to which regard must be had in determining whether the proposed access arrangements for development of the appeal site were acceptable in principle. That issue does not arise in the present claim.
91. For these reasons, I reject ground (2).

Ground (3) – Protected species

Factual background – the ecological impact assessment

92. The planning application for the development was accompanied by an ecological impact assessment [“EIA”] dated 8 February 2022. The EIA reported the findings of a preliminary appraisal of the appeal site's ecology based on both a desk study and a field survey, the latter being conducted in mid-April 2020. The field survey had included a preliminary assessment of potential bat roosts and bat activity at the appeal site. As part of that assessment, consideration was given to bat activity within existing buildings on the appeal site. Twenty-two such buildings were found to have the potential presence of roosting bats. A preliminary roost assessment of each building was undertaken during May and June 2020, in accordance with guidance issued by the Bat Conservation Trust [“BCT”]. The field assessment included a detailed external and internal inspection of each building, in order to compile information on actual and potential bat entry points, roost locations and other evidence indicating the presence of bats.
93. The EIA contains a plan which identifies the 22 buildings on the appeal site which were identified as accommodating actual or potential bat roosts. The buildings are located across much of the appeal site.
94. Between September 2020 and June 2021, roost characterisation assessment surveys were undertaken at the appeal site, again in accordance with BCT guidance. The EIA reports that between two and three experienced surveyors observed the buildings at the appeal site from about fifteen minutes prior to sunset and for up to one and a half hours after sunset. Bat activity at the appeal site was reported to include six species: common pipistrelle, soprano pipistrelle, noctule, lesser horseshoe, long-eared and Myotis. The EIA tabulated the numbers of each species detected on the surveys and the locations across the appeal site in which bats were found to be active.
95. The EIA provided a preliminary roost assessment for each of the 22 buildings on the appeal site which had been identified as the location of actual or potential bat roosts. The EIA reported that the appeal site supports roosting, commuting and foraging bats. It included the following assessment in relation to buildings on the appeal site –

“There were 22 buildings within the site of which eight were found to contain bat roosts. The majority were roosts of single or very low numbers of brown long-eared bats with occasional common pipistrelle bats and one lesser horseshoe bat also noted. These are classified as feeding perches/day roosts for individual or low numbers of bats. Such roosts, individually, are of low conservation value, however the number of roosts present increases the overall status to moderate conservation value. Building 17 contained a possible brown long-eared maternity roost. Such roosts are of moderate conservation value. All of the buildings will be lost to the proposed development. The loss of roosts within the site would represent a direct, permanent, negative impact of moderate magnitude on bats. The impact before mitigation and enhancement compensation would be significant”.

96. The EIA recommended that mitigation would be required to protect retained habitat features and to comply with wildlife legislation relating to protected species, including bats. The recommended mitigation measures included the requirement for a construction environmental management plan (CEMP) with measures to minimise the environmental impact of constructing the development. In relation to bats, the EIA recommended a lighting scheme for the development to minimise light spillage onto retained vegetation. In respect of the demolition of buildings, the EIA stated –

“The demolition of the buildings that were found to harbour roosting bats will be conducted under a European Protected Species Licence (EPSL). Given the number of roosts to be impacted registration under the bat ‘low impact’ licence is not applicable. The EPSL will detail the methods of building demolition, timing of works, and compensation requirements. Depending on when the demolition works are to be conducted update bat surveys may be required. This also applies to any mature trees to be felled or lopped”.

97. The EIA reported that species-specific measures for bats would be included within the design of the development. Those measures would include the provision of bat boxes and a bat roost building –

“A bat roost building will be constructed within the retained habitat to the southern part of the site and adjacent to the green corridor that links the site to the golf course. The building will provide suitable roosting for brown long-eared, pipistrelle and horseshoe bats. The details of the building will be included within the EPSL application. An example of a bat house is provided below (a photograph was inserted).

One integrated bat roost per house will be incorporated into the houses to the south and east site boundaries. ... The bat blocks will be positioned at least 4 m above ground level, away from artificial light sources and in proximity to vegetation and linear features such as a hedgerow. The bat blocks will not require maintenance”.

Legal framework

98. Article 12 of the Directive requires member states to take the requisite measures to establish a system of protection for the animal species listed in annex 2 to the Directive. That system is to prohibit the killing, capture or disturbance of animals of protected species in their natural habitats, or destruction of their breeding sites or resting places. Those protected species include bats. Article 16 of the Directive allows

member states to derogate from the provisions of article 12 in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social and economic nature, commonly referred to as [“IROPI”]. That power of derogation is subject to the provisos that firstly, there is no satisfactory alternative; and secondly, that the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

99. In order to give effect to article 12 of the Directive, regulation 43 of the 2017 Regulations makes it an offence for any person deliberately to capture, injure or kill any wild animal of a European protected species; to disturb any such animal; or to damage or destroy a breeding site or resting place of any such animal. Schedule 2 to the 2017 Regulations provides a table of European protected species. Those species include all species of horseshoe and typical bats.

100. Part 5 of the 2017 Regulations enacts a licensing regime. By virtue of regulation 55(1) the relevant licensing body may grant a licence for the various purposes specified in regulation 55(2). The purpose specified in regulation 55(2)(e) of the 2017 Regulations, read together with regulation 55(9), gives effect to article 16 of the Directive and the IROPI concept –

“55(2) The purposes are –

...

(e) preserving public health or public safety or other imperative reasons of overriding public interest, including those of a social or economic nature...

...

(9) The relevant licensing body must not grant a licence under this regulation unless it is satisfied –

(a) that there is no satisfactory alternative; and

(b) that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range”.

101. Responsibility for determining applications for licences made pursuant to regulation 55 of the 2017 Regulations lies with the relevant licensing body, identified in accordance with the provisions of regulation 58. The inspector was not required to discharge that function in determining the planning appeal. However, in fulfilling that function he was a competent authority within the meaning of regulation 7 of the 2017 Regulations and subject to the duty imposed by regulation 9(3) –

“Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.

102. In the light of the findings of the EIA the development, if permitted to proceed, would be likely to result in significant disturbance to several European protected species of

bat. The inspector's statutory duty under regulation 9(3) of the 2017 Regulations was engaged in the determination of the planning appeal.

103. What is required of the inspector as competent authority in order to discharge his duty under regulation 9(3) was stated by Lord Brown at [29] in R (Morge) v Hampshire County Council [2011] 1 WLR 268 at [29] –

“I cannot see why a planning permission (and, indeed, a full planning permission save only as to conditions necessary to secure any required mitigating measures) should not ordinarily be granted save only in cases where the Planning Committee conclude that the proposed development would both (a) be likely to offend article 12(1) and (b) be unlikely to be licensed pursuant to the derogation powers. After all, even if development permission is given, the criminal sanction against any offending (and unlicensed) activity remains available and it seems to me wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty”.

104. In R (Prideaux) v Buckinghamshire County Council [2013] Env LR 734 at [96], Lindblom J summarised that approach as follows –

“As the final decision in Morge makes clear, regulation [9(3)] does not require a planning authority to carry out the assessment that Natural England has to make when deciding whether there would be a breach of article 12 of the Habitats Directive or whether a derogation from that provision should be permitted and a licence granted. If a proposed development is found acceptable when judged on its planning merits, planning permission for it should normally be given unless in the planning authority's view the proposed development would be likely to offend article 12(1) and unlikely to be licensed under the derogation powers (see paragraph 29 of Lord Brown's judgment in Morge)”.

The inspector's analysis

105. The inspector sought to discharge his duty as competent authority under regulation 9(3) of the 2017 Regulations in DL49-DL51, as follows –

“49. The Habitats Regulations are also relevant insofar as the proposal would involve the demolition of buildings within the site that are currently used by bat for roosting, in addition to the development of land which is currently used for travel and foraging. Bat species identified are horseshoe, common pipistrelle, Soprano pipistrelle, Noctule, Myotis, Lesser horseshoe and Long-eared. All bat are listed as protected species by the Habitats Regulations. I have therefore considered the three derogation tests and the licencing regime.

50. Firstly, there are clear imperative reasons of overriding public interest to warrant granting planning permission. The site is allocated for significant development with considerable associated public benefits. Secondly, given that the site is allocated, and the buildings housing bats are spread across the site, derelict and not obvious candidates for any form of conversion, their retention is not a clear option. Lastly, given the proposed mitigation, granting the licence would not cause long-term impacts on the bat species concerned.

51. As the competent authority, I have considered the three tests in the context of the mitigation measures required and have no reason to doubt that a license would be issued. Adequate mitigation for the loss of habitat for other species found on site, including Badger, can be addressed through a Construction Environment Management Plan, a Landscape and Ecological Management Plan, and a tree and root protection plan, all of which can be secured with conditions”.

106. It is also relevant to note the requirements of condition (9) subject to which the inspector granted the planning permission –

“(9) Prior to or as part of the first reserved matters an Ecological Mitigation and Enhancement Strategy (EMES) shall be submitted to and approved in writing by the Local Planning Authority. The EMES shall be prepared in accordance with BS 42020:2013 (‘Biodiversity – Code of practice for planning and development’), or any superseding British Standard, and shall be informed by the submitted Ecological Impact Assessment SWE 209 version 2, dated 8 February 2022. The development shall be carried out in accordance with the approved EMES”.

107. In order to consider the Claimant’s argument under ground (3), it is also necessary to set out DL73-DL74, where the inspector drew the overall planning balance –

“An alternative, viable proposal could come forward on the site which could instead have its principal access from the northeast. In theory this could result in a development with equivalent or enhanced benefits and perhaps a greater housing provision. Such a proposal could provide quicker and better access and would also likely be less disruptive for residents who rely on Old Rydon Lane.

That all said, the proposal which is before me in the here and the now would itself deliver significant socio-economic benefits and accords with the development plan when read as a whole. Given such, whilst a material consideration, the theoretical alternative scheme attracts limited weight. Given the limited weight I ascribe to the Newcourt Masterplan, it is also not a compelling consideration in favour of dismissing this appeal. The other considerations before me do not therefore indicate that I should make a decision other than in accordance with the development plan”.

The Claimant’s submissions in summary

108. Mr James Corbet Burcher advanced two principal submissions under ground (3). Firstly, he submitted that the inspector failed to give proper, adequate or intelligible reasons for his conclusion that he had no reason to doubt that a licence would be granted, on an application made pursuant to section 55 of the 2017 Regulations. Counsel’s second principal submission was that the inspector had failed to take proper account of and to evaluate the harm to the protected species of bat which, on the evidence before the inquiry, would be the inevitable consequence of the grant of the planning permission and subsequent delivery of the development at the appeal site.
109. In support of his first submission, Mr Corbet Burcher emphasised the strength of the test under regulation 55(2)(e) of the 2017 Regulations and article 16 of the Directive. He drew attention to the propositions stated by Hickinbottom J at [35] in R (Wilkinson) v South Hams District Council [2016] EWHC 1860 (Admin); in particular, the proposition that generally, article 16 derogations on the basis of IROPI

must be construed restrictively. That was consonant with guidance published by the Department for Environment, Food and Rural Affairs which also emphasised the strict nature of the IROPI tests under regulation 55(2)(e) and 55(9) of the 2017 Regulations. It was submitted that the allocation of the appeal site as part of the strategic allocation in the Core Strategy was not in itself a proper and adequate basis upon which to make a finding of IROPI. Otherwise, the mere fact of allocation in the development plan, often with very limited understanding of the allocated site's ecology, would in any case be sufficient to justify a finding of IROPI. That approach was simply not consistent with the strict approach required under both the Directive and the 2017 Regulations.

110. Mr Corbet Burcher submitted that the inspector's reliance on mitigation measures in DL51 was ill-founded. The EIA required the bat building to be provided as essential mitigation for the disturbance of the species of bats roosting in the existing buildings on the appeal site. No condition had been imposed on the planning permission requiring the provision of the bat building. Counsel further submitted that the inspector had failed properly to consider the potential to retain existing buildings, at least in part, as an alternative to their wholesale demolition.
111. It was submitted that the survey evidence before the inspector upon which the EIA was founded had been shown to be out of date, applying the Chartered Institute of Ecology and Environmental Management (CIEEM)'s Advice Note (2019) [**“the advice note”**] on the lifespan of ecological reports and surveys. In those circumstances, applying the Tameside principle the inspector was under a duty of further inquiry as to the continuing reliability of the EIA. He failed to discharge that duty of further inquiry.
112. In support of his second principal submission, Mr Corbet Burcher argued that in drawing the planning balance in DL73-DL74, the inspector had made no mention of the adverse impact of the development on protected species of bats. That adverse impact was clearly evidenced by the findings of the EIA. Given the strict system of protection in place under article 12 of the Directive and regulation 43 of the 2017 Regulations, it was incumbent upon the inspector to weigh that harm in the overall planning balance. He appeared to have assumed that the prospect of a licence subsequently being granted under regulation 55 of the 2017 Regulations absolved him of the need, as planning decision maker, to give appropriate weight that adverse impact of the development. That was legally erroneous: he had failed to have proper regard to an obviously material consideration.

Discussion and conclusions

113. It is clear from the inspector's reasoning in DL49-DL51 that he sought to discharge his duty under regulation 9(3) of the 2017 Regulations in accordance with the approach approved at [29] in Morge and [96] in Prideaux. In DL49 he summarised the findings of the EIA that various protected species of bat travel and forage across the appeal site and roost in existing buildings on the site. He anticipated the likely need for the Second Defendant to apply subsequently to the relevant licensing body for a licence pursuant to regulation 55 of the 2017 Regulations. As competent authority determining a planning application, he directed himself correctly in DL51 that the relevant question for him was whether the development, if granted planning permission, would be unlikely to be licensed under the derogation powers given by

regulation 55(2)(e) and (9) of the 2017 Regulations. The inspector clearly proceeded on the basis that, in the absence of a licence, the development would involve activities which contravene regulation 43. The question was whether the development was unlikely to be licensed under regulation 55(2)(e), having regard the three “tests” which would need to be satisfied for that purpose: the existence of IROPI; the absence of a satisfactory alternative; and the absence of detriment to maintaining the population of the affected protected species of bats at a favourable conservation status in their natural range.

114. The inspector considered each of those three matters on the basis of the evidence before him. In my view, none of the criticisms of his reasoning advanced by the Claimant is justified.
115. It is important to emphasise the perspective from which the inspector was required to address the three tests. It was not for him to decide positively that there were imperative reasons of overriding public interest which justified the subsequent grant of a licence. As Hickinbottom J said at [35] in Wilkinson, in forming a judgment as to the likely outcome of a future licensing application, a competent authority is entitled to balance what they judge to be the degree of public benefit flowing from the planning application with the degree of adverse impact on protected species. Here, the inspector took the view that the planning application would deliver a significant degree of public benefit, since it would bring forward a substantial supply of new housing on a development site within a strategic allocation in the Core Strategy of the development plan. It was undoubtedly open to him, acting reasonably, to find that the allocation of the appeal site for significant development, with considerable associated public benefits, was a factor which tended to make it unlikely that the relevant licensing body would refuse to grant a licence applied for under regulation 55(2)(e) of the 2017 Regulations.
116. There is no force in the Claimant’s criticism of the inspector’s conclusion in DL50, that retention within the development of the existing buildings which accommodate bat roosts is not a clear alternative option. He gave proper and adequate reasons for that conclusion. Again, in expressing his conclusion on that question in the way that he did, the inspector approached the option of retention correctly from the perspective of a competent authority deciding a planning application. It was sufficient for his judgment that retention of those buildings was not a clear option. That conclusion did not rule out the possibility that some form of retention may subsequently be found to be achievable at the reserved matters or licensing stage. It is important to bear in mind that this was an outline planning application, with all matters of layout, scale, appearance and landscaping all reserved by condition (1) of the planning permission.
117. The inspector did not fall into error in attaching weight to the mitigation recommended in the EIA, when forming his judgment as to the likelihood of a licence application failing on account of risks to the maintenance of the populations of the affected species of bats at a favourable conservation status. The EIA had made a series of recommendations for mitigation that would need to be provided in order to avoid any long-term impact on the species of bats present at the appeal site. Central to those recommendations was the provision of a bat roost building and bat roosts to be integrated into the design of dwellings on the south and east boundaries of the appeal site.

118. The Third Defendant will be in a position to secure the delivery of those recommended mitigation measures through the requirements imposed by the reserved matters condition and condition (9) of the planning permission. Condition (9) requires the submission and approval of an ecological mitigation and enhancement strategy prior to or as part of the submission of the first reserved matters. That strategy must be prepared in accordance with the relevant British Standard and be informed by the findings and recommendations of the EIA. Condition (9) requires that the development be carried out in accordance with that approved strategy.
119. In the light of the evidence before the inspector, the Third Defendant will expect the ecological mitigation and enhancement strategy submitted in accordance with condition (9) to include provision of a bat building and for the integration of bat roosts into the relevant dwellings. The expectation will be that those elements of the detailed layout and design of the development will be incorporated into reserved matters submissions pursuant to condition (1) of the planning permission. It was reasonable for the inspector to proceed on the basis that the future discharge of conditions (1) and (9) of the planning permission will secure delivery of the mitigation measures recommended in the EIA. I note that condition (6) is also relevant, since it requires the submission to the Third Defendant for approval and subsequent implementation of a lighting design strategy, for the purpose of minimising light spill onto retained trees and hedgerows.
120. Given these conditions imposed on the planning permission, the inspector's finding as competent authority in DL 50 that, given the proposed mitigation, the future grant of a licence under regulation 55 of the 2017 Regulations would not cause long-term impacts on the bat species identified in the EIA, was both rational and adequately explained.
121. The last point raised by Counsel in support of his first principal submission was that the inspector failed to fulfil his duty of reasonable inquiry under the Tameside principle in relation to the age of the ecological surveys which provided the basis for the EIA.
122. The advice note states the importance of planning decisions being based on up-to-date ecological reports and survey data. Whilst it is difficult to set a specific timeframe over which reports or survey data should be considered to remain valid, given the varied circumstances in individual cases, the advice note says that in a case where the survey date is more than 3 years old –
- “The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist...)”.*
123. In this case, the EIA was based upon survey data derived from ecological surveys of the appeal site carried out between April 2020 and June 2021. The EIA was signed off in early February 2022. The inspector determined the planning appeal on 30 January 2025.
124. The Tameside principle places an obligation upon an administrative decision-maker to take such steps to inform himself as are reasonable. Subject to a rationality challenge, it is for that decision-maker, not the court, to decide upon the manner and intensity of

inquiry to be undertaken: see R (Plantagenet Alliance Limited) v Secretary of State for Justice [2015] 3 All ER 261 at [100].

125. It was, therefore, for the inspector to decide whether the EIA provided a sufficiently informed and reliable basis for his discharge of his duty as competent authority in accordance with regulation 9(3) of the 2017 Regulations. It is clear from DL49-DL51 that the inspector considered the EIA to be sufficiently reliable for that purpose, notwithstanding the advice note.
126. I am quite unpersuaded by the Claimant's submission that the inspector acted irrationally in taking that view. It was plainly open to the inspector to proceed on the basis that, in the light of the EIA, he had sufficient information upon which to discharge his duty as competent authority in this case. It was clear that there was significant bat activity on and across the appeal site. A substantial number of the existing buildings dispersed across the appeal site had been found upon survey to accommodate actual or potential roosting sites. The expectation was that those buildings would need to be demolished to enable the development to be delivered. A series of mitigation measures had been identified which if integrated into the development, were expected to avoid any long-term impact on the protected species of bats active at or across the appeal site. It was reasonable for the inspector to find the information provided by the EIA to provide a sufficient basis for his finding in DL51, that there was no reason to doubt that a licence would be granted under regulation 55 of the 2017 Regulations.
127. I note that in its consultation response dated 3 January 2024, Natural England raised no objection to the planning application. Natural England drew attention to its general advice on the consideration of protected species. The general advice given to planning decision-makers was that they are able to refuse planning permission if site surveys are not up to date. I see no good reason to doubt that the inspector will have reminded himself of that advice in reaching his decision. Natural England's consultation response raised nothing to call into question the inspector's judgment, in the discharge of his duty as competent authority, that this was not a case where the development was unlikely to be licensed under regulation 55(2)(e) and (9) of the 2017 Regulations.
128. I can address the Claimant's second main submission under ground (3) quite shortly. At [34] in South Bucks District Council v Porter (No 2), Lord Brown quoted the well-known principle stated by the House of Lords in Bolton Metropolitan District Council v Secretary of State for the Environment (1995) 71 P&CR 309, 314-315 (per Lord Lloyd) –
- “Since there is no obligation to refer to every material consideration, but only the main issues in dispute, the scope for drawing any inference [the inference suggested being 'that the decision-maker has not fully understood the materiality of the matter to the decision'] will necessarily be limited to the main issues, and then only, as Lord Keith pointed out [in R v Secretary of State for Trade and Industry, Ex p Lonhrople [1989] 1 WLR 525, 540], when 'all other known facts and circumstances appear to point overwhelmingly' to a different decision”.*
129. The impact of the development on protected species of bats active on and across the appeal site was not a main issue in dispute in the planning appeal before the inspector. It is beyond argument that the inspector had regard to the fact that implementation of

the planning permission would disturb the current pattern of that activity, in terms of bats travelling, foraging and roosting on and across the appeal site. In DL50 he stated his conclusion that the mitigation proposed in the EIA, which was to be secured by condition, would avoid long-term impacts to protected species of bats which had been shown to be active on and across the appeal site. I can see no arguable basis for the adverse inference which the Claimant seeks to draw, that the inspector lost sight of that conclusion, and of any temporary disturbance to bats which was likely to result from implementation of the planning permission, when he drew the overall planning balance in DL73-DL74.

130. For these reasons, ground (3) does not succeed.

Disposal

131. The claim is dismissed. I record my thanks to Counsel for all parties for their succinct and cogent written and oral submissions and to those assisting them for the clear and helpful presentation of the case materials.

Annex – St. Bridget’s Nursery, Newcourt Highway Proposals Plan

