



Neutral Citation Number: [2017] EWHC 3217 (Admin)

Case No: CO/1890/2017

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

PLANNING COURT

IN THE MATTER OF AN APPLICATION UNDER s.288

OF THE TOWN & COUNTRY PLANNING ACT 1990

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2017

Before :

NATHALIE LIEVEN QC
(Sitting as a Deputy High Court Judge)

Between :

DOROTHY BOHM AND OTHERS
- and -
SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT
- and -
(1) LONDON BOROUGH OF CAMDEN
(2) JEZ SAN

Claimants

Defendant

Interested
Parties

John Litton QC (instructed by **Foot Anstey**) for the **Claimants**
Jack Parker (instructed by **GLD**) for the **Defendant**
The First Interested Party did not attend and was not represented
Rupert Warren QC (instructed **Brechers**) for the **Second Interested Party**

Hearing date: 28 November 2017

Approved Judgment

Nathalie Lieven QC :

1. This is an application under s.288 of the Town and Country Planning Act 1990 to quash the decision of the Defendant, taken through an Inspector, dated 9 March 2017. The decision was to allow an appeal brought by Mr San, the Interested Party, against the refusal of planning permission by the London Borough of Camden (“the Council”). The planning application was for the demolition of an existing dwelling at 22 Frognal Way, Hampstead, London (“the site”) and its redevelopment to provide a new dwelling house.
2. The Claimants are authorised representatives of the Church Row Association, an unincorporated association whose objects include the preservation and restoration of the 18th century character and amenities of Church Row and its immediate surroundings. At the start of the hearing I made an order substituting the Claimants for the Church Row Association.
3. 22 Frognal Way (“the site”) lies just down the hill from Church Row at the bottom of a path which runs along the side of the Churchyard of St John’s Church, a Grade One listed building.
4. The grounds of application raise three issues:
 - i) the Inspector misdirected herself as to the national policy to be applied when considering a planning application/appeal which involves effects upon a non-designated heritage asset (“NDHA”). Incorporated within this ground was an argument that she erred in her application of s.72 Planning (Listed Buildings and Conservation Areas) Act 1990 (“LBCAA 1990”) and failed properly to discharge her duty under that section;
 - ii) the Inspector’s findings as to the significance of the NDHA were flawed by reason of (a) her approach to a material previous appeal decision concerning the Appeal Site and consequent application of national policy in relation to deliberate neglect or damage to a heritage asset; and/or (b) by taking into account and setting up as a test of significance an immaterial consideration, namely whether or not the NDHA performed a “*landmark*” role.
 - iii) The Inspector erred by not imposing a condition linking the demolition of the existing building to the construction of the new building. Alternatively she erred by not giving reasons for not imposing such a condition.
5. The site lies in the Hampstead Conservation Area (“the CA”). The existing building was designed by Philip Pank, a modernist architect who designed a number of other houses in Camden, at least one of which is listed. The house was built for Harold Cooper, founder of the Lee Cooper clothing business.
6. The Hampstead Conservation Area Statement 2001 identifies the impact of the existing building as being neutral in the Conservation Area. The building was considered for statutory listing by English Heritage in 2007. English Heritage (as it then was) determined it did not meet the listing standards, but indicated that it was of local importance and that it made a positive contribution to the Conservation Area.

7. In 2008 an application was made for the demolition of the existing building and the erection of two new dwellings. The Inspector at that appeal said that the “building is of an interesting and distinctive design and appearance”. He said that he agreed with English Heritage that the building made a positive contribution to the CA.
8. In 2009 planning permission was granted for extensive works to the existing building. Then in 2012 the flat roofs of the three wings of the house were removed, which exposed parts of the internal areas and threatened the building’s integrity through water penetration. In December 2012 an Untidy Land Notice was issued under s.215 of the 1990 Act requiring the owner to remedy the poor condition of the land. A temporary roof was then fitted to the building and door and window openings closed.
9. Mr San bought the site in 2014. Therefore whatever actions took place before that date in respect of the existing building, he had no responsibility for them.
10. In May 2015 the Council issued an enforcement notice requiring the removal of the original roof and original fascia boards from the building. This Notice was appealed and the Inspector allowed the appeal on Ground (c) (of s.174 of the TCPA 1990), on the ground that the works had formed part of the 2009 planning permission, which had by the date of the works been implemented.
11. The planning application the subject of this case was made in 2015. It was refused in March 2016 by the Council on three grounds. The second and third related to the absence of a legal agreement and were subsequently withdrawn after agreement with the Interested Party. There was therefore one reason for refusal outstanding at the time of the planning appeal, namely the impact of the loss of the existing building on the CA.

The decision letter

12. The Inspector correctly stated that heritage assets can include non-designated heritage assets (“NDHA”). As the existing building makes a positive contribution to the CA, and had some architectural interest there is no issue that it is a NDHA, within the terminology of the NPPF.
13. The decision letter at paragraph 4 identified the main issue as being whether the proposal would preserve or enhance the CA, taking into account the loss of the existing building. At paragraphs 6 and 7 the Inspector considered the architectural merit of the building and its significance.
14. At paragraph 8 she referred to the 2009 decision and said that “there is no evidence that the former owner’s intention to run the building into a state of irretrievable disrepair [sic]”.
15. She reached her conclusion on the significance of the building at paragraph 10;

“I appreciate that the building is of some architectural interest. Nevertheless No 22 is a low rise building that is mainly glimpsed within the street scene. As such it cannot reasonably be described as a ‘landmark’ building or having a significant impact in the immediate area. Overall, based on the evidence

in this case, the significance of the building, whilst of some limited local heritage interest, does not weigh significantly in favour of retention.”

16. At paragraph 11 she referred to the test in the NPPF for non-designated heritage assets;

“Paragraph 135 of the Framework requires a balanced judgement which seeks in weighing applications that affect directly non designated heritage assets assessing the scale of any harm or loss and having regard to the significance of the heritage asset. The proposal result in the total loss of the building. The design of the replacement building would be acceptable and promote and reinforce local distinctiveness. Therefore, considering the reasons given above, there would not be an adverse impact from the total loss of the NDHA. I have taken this in account and with this in mind I consider the issue of the site location within the HCA.”

17. The Inspector then turned to the statutory duty under s.72 LBCAA;

“12. The statutory duty under section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out that special attention shall be paid to the desirability of preserving or enhancing the character and appearance of the conservation area.”

18. At paragraph 13 she considered the role of Frogna Way in the context of the Conservation Area. At paragraph 14 she referred to local residents’ concern about the loss of local views of the building.

19. Paragraphs 15 to 17 state;

“15. The new dwelling proposed would also be a single detached property. It would be a low profile, accessible home. The design approach would respond to the site constraints. It would create a building that would read as single storey from ground level and be a high quality one off house. The appellant submits that it would be constructed to a high standard and have high sustainability credentials. The scale, massing and detailed design of the new dwelling would be appropriate within the context of its conservation area setting.

16. The existing building would be lost entirely. Whilst it is a large dwelling in the HCA in its own right I have identified in consideration of it as a NDHA that its positive contribution is limited. In this regard the net effect of the provision of the new dwelling and thereby its removal would at worst be neutral as what is special about the HCA would not be harmed. In this regard should it be constructed the appeal scheme would reflect

the character of the HCA and preserve the part of the HCA it would be located in.

17. Therefore the scheme would not be in conflict with policy CS14 of the London Borough of Camden Local Development Framework and policy DP25 of the London Borough of Camden Local Development Framework Development Policies which amongst other things seek to preserve and enhance Camden's rich and diverse heritage assets, including conservation areas and paragraph 17 indicates that planning should conserve heritage assets in a manner appropriate to their significance."

20. At paragraph 18 she said there was no evidence of deliberate neglect or damage.

21. The approach the High Court should take in a challenge under s.288 has been rehearsed in many cases. In ***Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government*** [2014] EWHC 754 (Admin), Lindblom J (as he then was) at paragraph 19 summarised the relevant legal principles applying to statutory challenges under the Town and Country Planning regime as follows:-

"The relevant law is not controversial. It comprises seven familiar principles:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to 'rehearse every argument relating to each matter in every paragraph' (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(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'. An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court.

A local planning authority determining an application for planning permission is free, 'provided that it does not lapse into Wednesbury irrationality' to give material considerations 'whatever weight [it] thinks fit or no weight at all' (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for* [2001] EWHC Admin 74, at paragraph 6).

(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 in 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 (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an 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 (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(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. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the

judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145).”

22. As is set out above the site falls within the Hampstead Conservation Area and therefore the statutory duty in s.72 of the LBCAA applies. This provides:

“(1) In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

(2) The provisions referred to in subsection (1) are the Planning Acts and Part I of the Historic Buildings and Ancient Monuments Act 1983 and sections 70 and 73 of the Leasehold Reform, Housing and Urban Development Act 1993.”

23. Applying this provision, where designated heritage assets are in issue, here the impact on the Conservation Area, then the decision maker should give considerable importance and weight to the preservation or enhancement of the heritage asset; *East Northamptonshire DC v Secretary of State for Communities and Local Government and Barnwell Manor Wind Energy Limited* 2015 1 WLR 45.

24. In *Mordue v Secretary of State for Communities and Local Government* (2016) 1 WLR 2682 Sales LJ said at paragraph 28:

“Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the [s.66(1)] duty. When an expert planning inspector refers to a paragraph within that grouping of provisions ... then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned.”

25. The importance of respecting the planning judgement of specialist planning inspectors was emphasised by Lord Carnwath in *Hopkins Homes v Secretary of State for Communities and Local Government* (2017) 1 WLR 1865.

26. The national policy approach to heritage assets is set out in Section 12 of the NPPF. In respect of designated heritage assets this puts into policy terms the statutory tests referred to above. The existing building is itself a non-designated heritage asset and therefore falls within paragraph 135 of the NPPF, which states;

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that

affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

27. The relevant Development Plan policy for the purposes of s.38(6) of the TCPA is the Camden Local Plan. None of the parties suggested that there were any policies in that Plan that were directly relevant to the legal issues that I have to decide.

Ground One

28. The Claimant argues that the Inspector misapplied paragraph 135 of the NPPF because she considered the overall impact of the new building against the loss of the existing building. Mr Litton QC, for the Claimant, argues that the Inspector should have considered the impact of the loss of the existing building, and in doing so she should have attached special importance to the preservation and enhancement of the Conservation Area. He says that she should have then gone on separately to identify what public benefits there were which might outweigh the harm to the Conservation Area from the demolition of the NDHA.
29. His argument was that the loss of a building which makes a positive contribution to the Conservation Area must cause harm to the CA, and that harm must be given considerable importance and weight. He argues that the Inspector therefore failed to carry out the correct legal exercise in the decision letter.
30. Mr Litton’s Skeleton Argument focused on paragraph 135 of the NPPF, but his oral submissions placed more weight on s.72 LBCAA. He submitted that the Inspector had made a similar error to the Council’s officer’s report in *Forge Field v Sevenoaks DC* 2014 EWHC 1895, at para 45. Lindblom J in that case said:

“43. Mr Strachan submitted that in determining the second application the Council failed—as it had in determining the first—to comply with its duties under [Listed Buildings Act ss.66 and 72](#). Its error was similar to the one made by the inspector in [East Northamptonshire DC](#). Having "special regard" to the desirability of preserving the setting of a listed building under [s.66](#), and paying "special attention" to the desirability of preserving or enhancing the character and appearance of a conservation area under [s.72](#), involves more than merely giving weight to those matters in the planning balance. "Preserving" in both contexts means doing no harm (see the speech of Lord Bridge of Harwich in [South Lakeland DC v Secretary of State for the Environment](#) [1992] 2 A.C. 141 at 150A–G). There is a statutory presumption, and a strong one, against granting planning permission for any development which would fail to preserve the setting of a listed building or the character or appearance of a conservation area. The officer acknowledged in his report, and the members clearly accepted, that the proposed development would harm both the setting of Forge Garage as a listed building and the Penshurst Conservation Area. Even if this was only "limited" or "less than substantial harm"—harm of the kind referred to in NPPF

para.134—the Council should have given it considerable importance and weight. It did not do that. It applied the presumption in favour of granting planning permission in Policy SP4(c) of the core strategy, balancing the harm to the heritage assets against the benefit of providing affordable housing and concluding that the harm was not "overriding". This was a false approach. Its effect was to reverse the statutory presumption against approval”

31. At paragraph 45 Lindblom J accepted Mr Strachan’s submission as set out in the paragraph quoted above.
32. In my view the Inspector made no error of law. In considering the application she had to consider two relevant tests. Firstly, by s.72 LBCAA she had to pay special attention to the desirability of preserving or enhancing the CA. As is set out in *Forge Field* there is a strong statutory presumption against granting planning permission which does not so preserve or enhance.
33. However, when considering the impact of the proposal on the CA under s.72 it is the impact of the entire proposal which is in issue. In other words the decision maker must consider not merely the removal of the building which made a positive contribution, but also the impact on the CA of the building which replaced it. She must then make a judgement on the overall impact on the CA of the entire proposal before her.
34. Secondly, the Inspector also had to apply the policy test in para 135 of the NPPF. Unsurprisingly, given that an NDHA does not itself have statutory protection, the test in para 135 is different from that in paras 132-4, which concern designated heritage assets. Paragraph 135 calls for weighing “applications” that affect an NDHA, in other words the consideration under that paragraph must be of the application as a whole, not merely the demolition but also the construction of the new building. It then requires a balanced judgement to be made by the decision maker. The NPPF does not seek to prescribe how that balance should be undertaken, or what weight should be given to any particular matter.
35. This is the analysis that the Inspector undertook in the decision letter. She considered the significance of the NDHA in its own right in paras 3-11. Her conclusion in para 10 was that the building had some limited local heritage interest, but that did not weigh significantly in favour of retention. At para 11 she weighed up the loss of the building with the construction of the new building, which she said would be acceptable and would promote and reinforce local distinctiveness. She concluded that there would not be an adverse impact from the loss. This was precisely the “balanced judgement” that she was required to do under para 135.
36. In respect of s.72, she considered this issue in paras 12-17. She said at para 16 that the existing building made a limited positive contribution to the CA, and the net effect of the new building would at worst be neutral and that the CA would not be harmed. Again in my view this was an entirely correct approach. Section 72 requires the overall effect on the CA of the proposal to be considered. There is no requirement for a two stage process by which the demolition part of an application has to be considered separately from the proposed new development.

37. The position in *Forge Field* was analytically different. There it was accepted that the proposal would harm both the setting of the listed building and the CA, see para 45. The Council simply put this harm into an overall planning balance, and failed to properly apply the statutory duty in s.66 and 72, and therefore did not apply the strong presumption in favour of no harm to the heritage assets. In contrast in the present case, the clear finding of the Inspector in para 16 was that the CA would not be harmed. Therefore the test in s.72 was considered and properly applied.
38. An issue arose at the hearing, largely raised by myself, as to the relationship between para 138 of the NPPF and para 134. Paragraph 138 states:

“Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Loss of a building (or other element)” which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.
39. This paragraph read on its own would seem to suggest that where, as here, a building makes a positive contribution to a CA, then its loss should be treated as falling within paragraphs 133 or 134 of the NPPF. In this case there could be no doubt that the planning judgement of the Inspector was that there would be “less than substantial harm” within the meaning of para 134, because in fact she found no harm to the designated heritage asset. Therefore even if this was an additional analytical step which the NPPF requires, it could make no possible difference to the outcome in this case.
40. In any event, the NPPF and in particular the heritage section, must itself be read as a whole and in a sensible and purposive manner. It cannot have been the intention of those drafting the NPPF that the loss of an NDHA which made a positive contribution to a CA, would itself be treated in the same way as the impact on a designated heritage asset. Such a reading would undermine the distinction in the NPPF paras 132 to 135 between designated and undesignated heritage assets. The proper approach is that where an NDHA makes a positive contribution to a CA then the decision maker has to consider the development proposal, including the loss of the NDHA, and in doing so any harm to the CA should be weighed against the public benefits.
41. I should emphasise, as is set out in para 38 above, however the paragraphs are read it cannot make any difference to the outcome of this case, because the Inspector applied para 134 of the NPPF and found the impact on the CA was at worst neutral.
42. For these reasons I dismiss Ground One.

Ground Two

43. Mr Litton refers to para 130 of the NPPF, that where there is evidence of deliberate neglect or harm to a heritage asset then its deteriorated state should not be taken into account.
44. The Inspector referred at para 8 and 18 to the 2016 enforcement Inspector's view on deliberate harm.
45. Mr Litton argued that the Inspector erred in law because she should have looked at the entire period up to the present in determining whether there had been deliberate neglect and therefore he argued that para 130 applied. He said that she was wrong to simply rely on the earlier finding that the 2009 planning permission had been implemented to conclude that there had been no deliberate harm.
46. The first and principal difficulty with this argument is that the Inspector did not rely on the state of the existing building in deciding that its removal would be acceptable. Para 130 arises where a developer argues that s/he should be granted permission to remove a building, or permission for enabling development, because of the poor state of repair of that building. The point of para 130 is to prevent a developer in those circumstances relying on his/her own default. But that situation does not arise here, because the Inspector placed no reliance on the poor state of repair of the existing building.
47. Mr Litton relies on the fact that the Inspector did refer to the internal works to the building, at DL7. However these comments do not place reliance on any disrepair in her conclusions.
48. In the Grounds and Claimant's Skeleton Argument there was an additional argument under this ground, that the Inspector had applied the wrong test to significance by referring in DL8 to the building not being a "landmark building". This point was not pursued orally. It was not in any event a good argument as the Inspector in DL8 was not saying that only landmark buildings would have any significance, but merely expressing a view on the role of the building.
49. In my view this Ground fails at this first initial point.

Ground Three

50. At the appeal hearing before the Inspector Mr Hilton Nathanson, the Ninth Claimant, was represented by Richard Harwood QC who suggested to the Inspector that a condition should be attached ensuring that construction of the new building should proceed following demolition of the existing building.
51. Paragraph 136 of the NPPF states;

"Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred."

52. The Inspector in the decision letter makes no reference to this proposed condition or any reasons for not including a condition which would have this effect. Mr Litton submits that the Inspector erred in law in not including such a condition, or by failing to give reasons for not imposing such a condition.
53. Conditions (or in some cases provisions in a s.106 agreement to similar effect) are common in cases of demolition in a CA. This is made clear by Historic England Good Practice Advice, which lists the type of condition sought as being one of the common types of conditions. It is on the face of it slightly surprising that the Inspector did not in these circumstances explain why in her view such a condition was not required.
54. However, there were a number of factors in this case which were plainly relevant to the issue. Firstly, Camden as the local planning authority did not propose any such condition. They therefore must have believed it was not necessary in this case. Secondly, there was no issue that Mr San had the means to carry out the development. Therefore the viability of the development was not in issue. Thirdly, there was evidence that Mr San was very keen to go ahead with the development. He had purchased the site in 2014 and there was evidence at the hearing that he had made considerable efforts to progress the development in order to provide a family home. The fairly long standing disuse of the site was not therefore as a result of any reluctance by Mr San to carry out a redevelopment of the site. Fourthly, and related to the third, Mr San had offered to accept a personal condition on the permission. It is clear from Mr Warren's closing at the hearing that this was offered in order to show Mr San's commitment to building the proposed home. Fifthly, the s.106 agreement does provide for a Construction Management Plan to be agreed with Camden. This could provide some control over the sequencing of the demolition and the building works. I am not convinced that it would have the same efficacy as a condition but it does have some relevance to the issue.
55. It is important to keep in mind that the policy in paragraph 136 of the NPPF is only to take all reasonable steps to ensure that the development will proceed. There is no suggestion of any duty to impose a condition, or take any particular steps, and the ultimate judgement is one of reasonableness for the Inspector. The factors in paragraph 54 above show why it was entirely open to the Inspector not to impose a condition as sought by Mr Nathanson and there was no error of law in not requiring such a condition. On reasons, Mr Parker argued that the proposed condition was not a principal important controversial issue, and therefore did not need to be dealt with in the reasons. The principal important controversial issues test set out by Lord Brown in South Bucks v Porter (no2) concerns substantive issues rather than proposed conditions and I am not sure it can simply be read across into the question of whether proposed conditions have to be expressly dealt with in the decision letter. However, on the facts of this case where the local planning authority were not proposing or supporting the condition, and on the facts it did not appear to be necessary, I do not think the Inspector erred in law by not giving reasons for rejecting the condition.
56. I therefore dismiss the third ground.
57. For these reasons I dismiss the application.