Neutral Citation Number: [2021] EWHC 291 (Admin)

Case No: CO/1720/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 February 2021

Before :

MRS JUSTICE LANG DBE

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Between :

THAME TOWN COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT **(2) ANGLE PROPERTY (PCDF IV THAME) LLP** **(3) SOUTH OXFORDSHIRE DISTRICT COUNCIL**	**Defendants**

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Jack Parker (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Robert Williams (instructed by the **Government Legal Department**) for the **First Defendant**
Paul Brown QC (instructed by **Forsters LLP**) for the **Second Defendant**
The **Third Defendant** did not appear and was not represented

Hearing date: 20 January 2021

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Approved Judgment

Mrs Justice Lang :

1. The Claimant applies for a statutory review, pursuant to section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decision dated 27 March 2020, made by an Inspector appointed on behalf of the First Defendant ("the Secretary of State"), to allow an appeal by the Second Defendant ("Angle") and grant planning permission for the re-development of land at DAF Trucks Ltd, Eastern Bypass, Thame, OX9 3FB ("the Site").

2. The Claimant is the parish authority for the market town of Thame in Oxfordshire. Angle is a property development company which owns the Site. The Third Defendant ("the Council") is the local planning authority for the area in which the Site is situated, which refused Angle's application for planning permission on 27 February 2019.

Planning history

3. The Site, known as Kingsmead Business Park, is 1.4 km to the east of Thame Town Centre. It is approximately 4.2 hectares in size, and comprises a warehouse, with an associated service yard, and a two storey office building with a large car park. The Site is currently vacant. The offices were occupied by DAF Trucks until July 2018. The warehouse was occupied by another business until July 2017.

4. On 10 September 2018, Angle applied for:

   i) outline planning permission (all matters reserved except access) for demolition of existing buildings, and development of 1,511 square metres of offices within Class B1, and up to 129 dwellings within Class C3, and associated works; and

   ii) full planning permission for erection of a 68 bed care home within Class C2 and associated access, vehicular parking, landscaping, ancillary infrastructure and other works.

5. The Site has the status of an existing "employment site" for the purposes of the Council's development plan policies (hereinafter "the Policies"), which seek to resist the loss of such sites.

6. Policy E6 of the South Oxfordshire Core Strategy ("SOCS") provides, so far as is material:

> "Proposals for the redevelopment or change of use of redundant land or buildings in employment … use to non-employment uses will be permitted if:
>
> (i) …..
>
> (ii) the existing use is no longer economically viable and the site has been marketed at a reasonable price for at least a year for that and any other suitable employment or service trade uses."

7. Paragraphs 6.21 to 6.24 of the supporting text clarify the purpose of the policy:

i) The district is an area of economic growth and demand for premises is usually high.

ii) There is net out-commuting from the district and therefore it is important that local job opportunities are retained. The provision and retention of local employment opportunities contributes to the aim of the Structure Plan and Local Plan to reduce the need to travel and thus minimise congestion, pollution and energy use.

iii) It is important to retain the main employment sites in towns like Thame, in order to maintain a reasonable balance of employment and residential uses within them.

iv) Employment in the towns supports their role as local service centres.

v) Service trades and builders, which provide essential services to the residents of the district, often have difficulty in finding suitable premises.

8. Policy WS12 of the Thame Neighbourhood Plan ("TNP") provides, so far as is material:

> "**Retain existing employment land in employment use**
>
> Existing employment sites outside the town centre boundary must remain in employment use (B1, B2 or B8).
>
> 8.11 Proposals for the redevelopment or change of use of redundant land or buildings in employment …. use to non-employment uses will only be permitted if the existing use is no longer economically viable and the site has been marketed at a reasonable price for at least a year for that and any other suitable employment or service trade uses."

9. Prior to applying for planning permission, Angle did not market the Site as a whole as required by the Policies. Instead, Angle excluded the office building from the marketing exercise, acting upon pre-application advice given to it by a planning officer at the Council.

10. The justification put forward for this approach was that approval in principle for a change of use from office use to residential use had already been granted. On 8 September 2017, the Council had granted prior approval for a change of use of the office building and car park at the Site (Class B1) to residential use (Class C3), to comprise 45 flats with ancillary facilities and parking. The informatives confirmed that:

i) development had to be completed within a period of 3 years starting with the prior approval date;

ii) the prior approval decision "relates solely to the proposed change of use of the building and not any proposed external alteration to it. Any changes may require planning permission and/or approval under the Building Regulations".

11. A further grant of prior approval, excluding the car park, was granted in January 2018.

12. Although the Officer Report recommended that planning permission should be granted, the Planning Committee resolved to refuse planning permission. The refusal notice

dated 27 February 2019 gave three reasons for refusal, but two of those reasons are not relevant to this claim. The first reason for refusal was that:

> "1. The proposed development would result in the loss of an existing employment site and it has not been demonstrated that the site is no longer economically viable as the marketing exercise undertaken is considered to be inadequate and fails to cover the whole of the site. As such the proposed development conflicts with Policy E6 of the adopted South Oxfordshire Local Plan 2011 and Policy WS12 of the Thame Neighbourhood Plan."

13. Angle appealed the refusal of planning permission to the Secretary of State, who appointed an Inspector (Mr Chris Baxter BA (Hons) DipTP MRTPI) to determine the appeal. The Inspector held a hearing on 11 February 2020, and made a Site visit on 11 February 2020.

The Inspector's decision

14. The Inspector identified the effect of the proposals on employment land as a main issue in the appeal at paragraph 6 of the decision letter (DL6). He concluded that the proposal was contrary to the Policies because, as the office building part of the appeal site had not been included in the marketing exercise, it had not been demonstrated that the whole of the appeal site was no longer economically viable (DL7 – 10).

15. The Inspector found that the office building benefited from an extant prior approval for its conversion to flats which did not expire until September 2020, which Angle described as a "fall back" position. The Inspector said that, while there was little evidence of a house builder attached to the scheme, the building was empty and "it is a real possibility that building works can commence prior to September 2020 in order to convert the office building into residential flats. On this basis, I attach significant weight to the extant Prior Approval scheme" (DL11).

16. At DL12, the Inspector concluded:

> "Section 38(6) of the Planning and Compulsory Act 2004 requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, I conclude that whilst the proposal would conflict with Policy E6 of the SOCS and Policy WS12 of the TNP, this is outweighed by the fact that the office building part of the appeal site benefits from an extant Prior Approval and the submitted marketing exercise demonstrates that the warehouse part of the site is no longer viable."

Legal framework

17. The parties referred to the summary of relevant principles set out by Lindblom LJ in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, at [6] – [7].

(i) Applications under section 288 TCPA 1990

18. Under section 288 TCPA 1990, a person aggrieved may apply to quash a decision on the grounds that (a) it is not within the powers of the Act; or (b) any of the relevant requirements have not been complied with, and in consequence, the interests of the applicant have been substantially prejudiced.

19. The general principles of judicial review are applicable to a challenge under section 288 TCPA 1990. Thus, the Claimant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

20. The exercise of planning judgment and the weighing of the various issues are matters for the decision-maker and not for the Court: *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26. As Sullivan J. said in *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74, at [6]:

> "An application under section 288 is not an opportunity for a review of the planning merits….."

21. In *Hopkins Homes v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath said, at [26], that claimants should "distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy; and not … elide the two".

22. A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties Ltd v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.

23. The Inspector was under a duty to give reasons for his decision. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the inspector's duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only

> to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

24. Lord Brown's classic statement was held to be applicable in all planning decision-making in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108, per Lord Carnwath, at [35] – [37].

(ii) The development plan and material considerations

25. Section 70(2) TCPA 1990 provides that the decision-maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("PCPA 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."

26. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of this provision, beginning at 1458B:

> "Section 18A [the parallel provision in Scotland] has introduced a priority to be given to the development plan in the determination of planning matters….
>
> By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provisions of the plan should not be followed. If it is thought to be useful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission….. By virtue of section 18A if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted….

Moreover the section has not touched the well-established distinction in principle between those matters which are properly within the jurisdiction of the decision-maker and those matters in which the court can properly intervene. It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker. It is for him to assess the relative weight to be given to all the material considerations. It is for him to decide what weight is to be given to the development plan, recognising the priority to be given to it. As Glidewell L.J. observed in *Loup v. Secretary of State for the Environment (1995) 71 P. & C.R. 175*, 186:

> "What section 54A does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations."

Those matters are left to the decision-maker to determine in the light of the whole material before him both in the factual circumstances and in any guidance in policy which is relevant to the particular issues.

…..

In the practical application of section 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. He will also have to consider whether the development proposed in the application before him does or does not accord with the development plan. There may be some points in the plan which support the proposal but there may be some considerations pointing in the opposite direction. He will require to assess all of these and then decide whether in light of the whole plan the proposal does or does not accord with it. He will also have to identify all the other material considerations which are relevant to the application and to which he should have regard. He will then have to note which of them support the application and which of them do not, and he will have to assess the weight to be given to all of these considerations. He will have to decide whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it. And having weighed these considerations and determined these matters he will require to form his opinion on the disposal of the application.

> If he fails to take account of some material consideration or takes account of some consideration which is irrelevant to the application his decision will be open to challenge. But the assessment of the considerations can only be challenged on the ground that it is irrational or perverse."

27. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [17].

28. The requirement to take into account material considerations was recently reviewed by the Supreme Court in *R (on the application of Friends of the Earth Ltd & Ors) v Heathrow Airport Ltd* [2020] UKSC 52, in the judgment of the Court delivered jointly by Lord Hodge and Lord Sales, at 116 – 121:

> "116. … A useful summation of the law was given by Simon Brown LJ in *R v Somerset County Council, Ex p Fewings* [1995] 1 WLR 1037, 1049, in which he identified three categories of consideration, as follows:
>
> > "… [T]he judge speaks of a 'decision-maker who fails to take account of all and only those considerations material to his task'. It is important to bear in mind, however, … that there are in fact three categories of consideration. First, those clearly (whether expressly or impliedly) identified by the statute as considerations to which regard must be had. Second, those clearly identified by the statute as considerations to which regard must not be had. Third, those to which the decision-maker may have regard if in his judgment and discretion he thinks it right to do so. There is, in short, a margin of appreciation within which the decision-maker may decide just what considerations should play a part in his reasoning process."
>
> 117. The three categories of consideration were identified by Cooke J in the New Zealand Court of Appeal in *CREEDNZ Inc v Governor General* [1981] NZLR 172, 183:
>
> > "What has to be emphasised is that it is only when the statute expressly or impliedly identifies considerations required to be taken into account by the [relevant public authority] as a matter of legal obligation that the court holds a decision invalid on the ground now invoked. It is not enough that a consideration is one that may properly be taken into account, nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision."
>
> Cooke J further explained at p 183 in relation to the third category of consideration that, notwithstanding the silence of the statute,

"there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by [the public authority] … would not be in accordance with the intention of the Act."

118. These passages were approved as a correct statement of principle by the House of Lords in *In re Findlay* [1985] AC 318, 333-334. See also *R (Hurst) v London Northern District Coroner* [2007] UKHL 13; [2007] 2 AC 189, paras 55-59 (Lord Brown of Eaton-under Heywood, with whom a majority of the Appellate Committee agreed); *R (Corner House Research) v Director of the Serious Fraud Office* [2008] UKHL 60; [2009] 1 AC 756, para 40 (Lord Bingham of Cornhill, with whom a majority of the Appellate Committee agreed); and *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3; [2020] PTSR 221, paras 29-32 (Lord Carnwath, with whom the other members of the court agreed). In the *Hurst* case, Lord Brown pointed out that it is usually lawful for a decision-maker to have regard to unincorporated treaty obligations in the exercise of a discretion (para 55), but that it is not unlawful to omit to do so (para 56).

119. As the Court of Appeal correctly held in *Baroness Cumberlege of Newick v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305; [2018] PTSR 2063, paras 20-26, in line with these other authorities, the test whether a consideration falling within the third category is "so obviously material" that it must be taken into account is the familiar *Wednesbury* irrationality test (*Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 410-411 per Lord Diplock).

120. It is possible to subdivide the third category of consideration into two types of case. First, a decision-maker may not advert at all to a particular consideration falling within that category. In such a case, unless the consideration is obviously material according to the *Wednesbury* irrationality test, the decision is not affected by any unlawfulness. Lord Bingham deals with such a case in *Corner House Research* at para 40. There is no obligation on a decision-maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they have to take and positively decide to discount it in the exercise of their discretion.

121. Secondly, a decision-maker may in fact turn their mind to a particular consideration falling within the third category, but decide to give the consideration no weight. As we explain below, this is what happened in the present case. The question again is whether the decision-maker acts rationally in doing so. Lord Brown deals with a case of this sort in *Hurst* (see para 59). This

> shades into a cognate principle of public law, that in normal circumstances the weight to be given to a particular consideration is a matter for the decision-maker, and this includes that a decision-maker might (subject to the test of rationality) lawfully decide to give a consideration no weight: see, in the planning context, *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 (HL), 780 (Lord Hoffmann)."

(iii) Fall-back development

29. In *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, Lindblom LJ gave the following guidance about principles applicable to "fallback" development:

> "27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:
>
> (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.
>
> (2) The relevant law as to a "real prospect" of a fallback development being implemented was applied by this court in the *Samuel Smith Old Brewery* case: …. As Sullivan L.J. said in the Samuel Smith Old Brewery case [2009] JPL 1326, in this context a "real" prospect is the antithesis of one that is "merely theoretical": para 20. The basic principle is that "for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice": para 21. Previous decisions at first instance, including *Ahern and Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasised, "… "fall back" cases tend to be very fact-specific": para 21. The role of planning judgment is vital. And, at …para 22:
>
> > "[it] is important … not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge's response to the facts of the case before the court."
>
> (3) Therefore, when the court is considering whether a decision-maker has properly identified a "real prospect" of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in

> every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand."

Grounds of challenge

30. In the Statement of Facts and Grounds, the Claimant alleged that the Inspector's decision to allow the appeal was unlawful on four grounds:

    i) The Inspector misunderstood/misapplied the Policies in the Development Plan;

    ii) The Inspector failed to take into account material considerations;

    iii) The Inspector's decision was irrational;

    iv) The Inspector failed to provide any or adequate reasons for his decision.

Conclusions

31. I now consider the Grounds in turn, though there is considerable overlap between them.

Ground 1

32. I accept the submissions of the Secretary of State and Angle that it is clear from the decision letter that the Inspector fully understood, and properly applied, the Policies.

33. The Inspector accurately summarised the Policies at DL6. His attention was drawn to the objectives of the Policies by the Council and the Claimant. At DL10, he agreed with the case advanced by the Claimant and the Council that marketing of only part of the Site was insufficient to demonstrate that the whole of the appeal site was no longer economically viable. He rejected Angle's case that the office building did not need to be marketed because of the grant of prior approval. As it had not been demonstrated that the existing employment use of the whole of the site was no longer economically viable, the Inspector concluded that the proposed development would be contrary to the Policies.

34. This reasoning does not disclose any misunderstanding or misapplication of the Policies. On analysis, the Claimant's true ground of challenge under Ground 1 was that the Inspector erred in deciding that the availability of permitted development rights, which allowed Angle to convert the office building to a block of flats, could justify the grant of planning permission for a proposal which was contrary to the Policies, and their underlying objective to retain employment land for employment purposes (see the supporting text to Policy E6 of the SOCS, summarised at paragraph 7 above). The

Claimant submitted that the existence of the prior approval was simply not relevant to the question whether the Site might be viable to an employment use.

35. However, the Claimant's submissions betray a misunderstanding of the Inspector's reasoning. The Inspector did not rely upon the existence of the prior approval when considering whether or not the proposed development was in conflict with the Policies, at DL8 to DL10. It only became relevant to his reasoning at the next stage, when the Inspector was considering whether there were any material considerations which indicated that planning permission should be granted, despite the conflict with the Policies.

36. At DL12 the Inspector directed himself in accordance with section 38(6) PCPA 2004, and concluded that the existence of Angle's fall-back option, namely, conversion of the office building into flats, was a material consideration. In my view, he was entitled to do so. He concluded that there was a real possibility that the conversion would take place if planning permission for the proposed development was refused and he accorded that consideration "significant weight" (DL11). In that event, the only part of the Site which would still be available for employment use would be the warehouse unit which was no longer viable on its own, and would be left vacant. In the exercise of his planning judgment, he concluded that these considerations outweighed the conflict with the Policies.

37. The Inspector's reasoning does not demonstrate any misunderstanding or misapplication of the Policies in the development plan. Therefore, Ground 1 does not succeed.

Ground 2

38. The Claimant submitted that the Inspector erred in failing to take into account material considerations (a) in respect of the potential conversion of the office building to residential use, and (b) in concluding that the two considerations which he referred to in DL12 outweighed the conflict with the Policies in the Development Plan, for the purposes of section 38(6) PCPA 2004.

The conversion of the office building

39. In its written response to the appeal, dated 1 November 2019, the Claimant questioned whether the office building could be used for residential purposes without significant operational development which would have necessitated a full application for planning permission. The outcome of an application for planning permission was uncertain. Further, if the conversion was in any way viable, it would have been effected already.

40. The Claimant submitted that these were material considerations which the Inspector failed to take into account when deciding that there was a real possibility that building works could commence by September 2020.

41. At DL13, the Inspector expressly stated that he had had regard to the comments made by the Claimant and considered them carefully. I consider it is fair to assume that the Inspector considered the entirety of the Claimant's comments, including those relating to the conversion of the office building, and not just those matters which he specifically mentioned.

42. However, there was no evidence to support the Claimant's speculative submission that the conversion could entail significant operational development requiring planning permission. Notably, the Council, which was the local planning authority and which had granted prior approval on two occasions, did not suggest planning permission might be required, or refused if needed. Nor did the Council submit that it would not be possible to complete the conversion before the prior approval expired, or that a further grant of prior approval would be refused. The Inspector can be assumed to have been aware of Angle's permitted development rights, and section 55(2)(a) TCPA 1990, which provides that building works which affect only the interior of the building, or do not materially affect the external appearance of the building do not require planning permission, both of which meant that planning permission would not necessarily be required.

43. Mr Parker, for the Claimant, did not rely on the fact that the informative to the prior approval required completion, not merely commencement, of the works within 3 years of the grant, but even if he had done so, I do not consider it would have made any difference to the Inspector's conclusion. Angle's evidence was that the prior approval scheme was deliverable and would be implemented prior to expiry in September 2020 if the proposed development was not approved. In any event, the Inspector would have been aware that a further application for prior approval can be made at any time, and the Council had accepted the principle of conversion to residential use. Indeed, the Council has included the 45 units which would be delivered by the prior approval scheme in their 5 year housing land supply. I was informed at the hearing by Mr Brown QC for Angle that, because of the delay caused by these proceedings, Angle has successfully obtained a further grant of prior approval for the conversion to enable it to implement its fall-back, should it be necessary.

44. The Claimant's submission that, if the conversion was viable, it would already have been completed, overlooked the fact that Angle considered the conversion to be a fall-back option, if it did not succeed in obtaining planning permission for a re-development of the entire Site, which would entail demolition of the office building. The proposed development was much larger and potentially much more profitable than the conversion. As Angle had not yet exhausted its appeal rights, it was understandable that, as the date of the hearing, it had not commenced the conversion.

45. For these reasons, I consider that the Inspector was entitled not to accept this part of the Claimant's submissions. It is apparent from his findings at DL11 that he did not accept them. Applying the *South Bucks* principles, the Inspector was not required to respond to each point raised by the Claimant and these were not main issues in the appeal.

Other material considerations

46. The Claimant submitted that the Inspector failed to take into account the following material considerations when weighing the material considerations against the conflict with the Policies in the development plan:

    i) The lack of any reason why the office building could not have been marketed as a single unit with the warehouse, notwithstanding the existence of the prior approval;

    ii) The lack of any evidence as to whether there was any market demand for an employment site in this location comprising both a warehouse and office;

iii) The Claimant's contention that the marketing of the appeal site had been manipulated;

iv) That the appeal scheme and the fallback office conversion were mutually exclusive.

47. In my judgment, this submission cannot succeed, since it is plainly contradicted by the Inspector's decision. In its written response to the appeal, dated 1 November 2019, the Claimant made these points to the Inspector. At DL13, the Inspector expressly stated that he had had regard to the comments made by the Claimant "including employment land in the Thame and surrounding area, the viability of the appeal site for employment use, the marketing of the site and loss of jobs". The Inspector went on to say "I have considered these matters carefully". Adopting a fair rather than a forensic reading of the decision, I do not accept the Claimant's submission that the Inspector only took into account the material considerations which he specifically identified in DL12. In my view, those were the considerations which outweighed the conflict with the Policies and persuaded him to decide the application other than in accordance with the development plan, pursuant to section 38(6) PCPA 2004. However, it is apparent from DL13 that the Inspector also took into account, in the weighing exercise, the material considerations referred to in the Claimant's written comments.

48. As to consideration (i), the Inspector must have had it well in mind that Angle had not provided any good reason why the entire Site had not been marketed, as Angle's failure to do so was the reason why he found that the proposed development breached the requirements of the Policies. At the appeal, Angle had submitted to the Inspector that it was entitled to exclude the office building from the marketing exercise, but the Inspector rejected that submission.

49. Similarly, in respect of consideration (ii) - the lack of any evidence as to whether there was any market demand for the entire Site - the Inspector expressly found, at DL10, that it had "not been demonstrated that the whole of the appeal site is no longer economically viable", contrary to the requirements of the Policies.

50. On my reading of the decision, when the Inspector referred at DL12 to the fact that "the proposal would conflict with Policy E6 of the SOCS and Policy S12 of the TNP", he was implicitly referring back to his findings at DL10. I find it inconceivable that he did not take these considerations into account.

51. In my judgment, the Inspector's findings at DL10 – DL12 were sufficient to enable the parties and the Claimant to understand the Inspector's reasons in respect of considerations (i) and (ii). His decision met the required standard for reasons, as set out in the *South Bucks* case.

52. As to consideration (iii), the Claimant submitted in its written comments that the marketing of the warehouse unit was manipulated in that it was "constrained through being adjacent to both family homes and a dementia care unit …. and access to and along the whole eastern flank of the unit was compromised". The Inspector had available to him a detailed description of the marketing exercise and he conducted two Site visits, viewing the Site from a number of locations adjacent to the Site, though the Site itself was locked and boarded up. Neither the Inspector nor the parties considered it was necessary to enter the Site. I infer that at the Site visits, the Inspector would have been able to judge whether the description of the warehouse unit, including its location and

access, was factually correct, as Angle contended, or manipulated, as the Claimant contended.

53. It is clear that the Inspector did not accept the Claimant's submission that the marketing exercise was flawed in respect of the warehouse unit. The Inspector stated, at DL9, that:

> "The Council consider the marketing exercise to be appropriate in scope and nature in terms of its reference to the warehouse element."

Then at DL12 the Inspector found that "the submitted marketing exercise demonstrates that the warehouse part of the site is no longer viable". In reaching that conclusion, it can be inferred that he relied upon the evidence of Angle and the Council that the marketing exercise had been appropriate.

54. I consider that these reasons were sufficient to enable the parties to the appeal (and the Claimant) to understand how and why the matter was decided as it was.

55. As to consideration (iv), the Inspector must have been aware that the proposed development entailed demolition of the buildings on the Site and the construction of new ones, as that was the subject-matter of the appeal. Thus, the proposed development and the office building conversion were mutually exclusive. However, it is an inherent characteristic of most fall back positions, including the fall-back in this case, that they cannot be constructed alongside one another. The point was so obvious that it could not have been overlooked by the Inspector and it did not need to be expressly set out in his reasons.

56. For all these reasons, Ground 2 does not succeed.

Ground 3

57. The Claimant submitted that the Inspector's decision was irrational in the sense that it is "a decision which does not add up - in which, in other words, there is an error in reasoning which robs the decision of logic" (per Sedley J. in *R v Parliamentary Commissioner for Administration, ex parte Morris and Balchin* [1996] EWHC Admin 152, at [27]). It did not make sense for the Inspector to find that the harm caused by the loss of employment use at the whole Site was outweighed by the availability of an alternative and mutually exclusive development on one part of the site, particularly in the absence of evidence that the whole Site was unviable for employment purposes.

58. In my judgment, the Inspector's reasoning was both logical and rational. He concluded that there was a real possibility that the conversion of the office building would take place as a fall-back development if planning permission for the proposed development was refused and he accorded that consideration "significant weight". In that event, the only part of the Site which would still be available for employment use would be the warehouse site. However, the warehouse site had been marketed for over a year and the results of that exercise demonstrated that employment use of the warehouse unit in isolation was no longer viable. Therefore, the consequence of refusing planning permission for the proposed development would have been that the prior approval would be implemented (with the resultant loss of employment use on that part of the Site), leaving only a vacant warehouse on the remainder of the Site. In those circumstances,

refusal by reference to the Policies would have achieved nothing in terms of preserving employment use, but would have prevented a sustainable mixed use development, comprising housing, offices and a care home, from coming forward. The decision to grant permission for the proposed development was, in my view, a legitimate exercise of planning judgment by the Inspector.

59. Therefore Ground 3 does not succeed.

Ground 4

60. The Claimant submitted that the Inspector failed to provide any or adequate reasons in respect of his findings on the material considerations identified by the Claimant under Ground 2. For ease, I addressed the challenges to the adequacy of reasons in the course of my substantive conclusions on the matters raised in Ground 2.

61. Overall, I consider that the Inspector's reasons were intelligible and adequate. As Lord Brown said in the *South Bucks* case, reasons can be briefly stated and they need only refer to the main issues in the dispute, not to every material consideration. The Inspector's reasons, though brief, were sufficient to meet the required standard.

Final conclusion

62. For the reasons I have given, the application for statutory review is dismissed.