



APPEAL AGAINST REFUSAL OF PLANNING PERMISSION

30 BARKER LANE, BLACKBURN

STATEMENT OF CASE ON BEHALF OF THE APPELLANTS

Local Planning Authority Ref: 3/2016/0346

**Erection of two detached houses following the
demolition of the existing house**

November 2016

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1. Introduction

1.1. This Statement of Case is prepared by JWPC Ltd in support of an appeal by Mr Lee Wallbank against the decision of Ribble Valley Borough Council (RVBC) to refuse planning permission for - **'ERECTION OF TWO DETACHED HOUSES FOLLOWING THE DEMOLITION OF THE EXISTING HOUSE'** at 30 Barker Lane, Blackburn, BB2 7ED. The planning application was received by RVBC on the 22nd April 2016 supported by a Planning Support Statement, Tree Survey, Bat Survey and Plans referenced 15.125.03A /04B /05A and 06A. A decision to refuse the application was made under delegated authority on the 16th June 2016.

1.2. The Local Planning Authority refused permission for the following four reasons:

- 1) *The demolition of an existing bungalow to be replaced by two detached (two storey) dwellings within the Green Belt is contrary to the provisions of Key Statement EN1 of the Ribble Valley Core Strategy and Section 9 of the National Planning Policy Framework in that the proposal does not fit within one of the exception categories for development and thus the proposal is considered to represent inappropriate development within the Green Belt. No Very Special Circumstances have been put forward which would outweigh the harm by reason of inappropriateness or any other harm caused to the visual amenity and openness of the Green Belt.*
- 2) *The proposed residential development of this site is contrary to Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy. Approval of this application would lead to the erection of an additional dwelling within the open countryside without sufficient justification which would cause harm to the development strategy of the borough as set out in the Core Strategy, leading to unsustainable development.*
- 3) *The replacement of a bungalow with two detached (two storey) dwellings would have a significantly greater, and adverse, impact on the landscape character of the open countryside, and would not preserve the openness of the Green Belt. The proposal would therefore be contrary to Policy DMH3 of the Ribble Valley Core Strategy and Section 9 of the National Planning Policy Framework.*
- 4) *The proposed development would create a harmful precedent for the acceptance of other similar unjustified proposals for residential developments outside settlement boundaries, and within the Green Belt, without sufficient justification. This would have an adverse impact on the implementation of planning policies within the Council's Core Strategy and*

would be contrary to the interests of the proper planning of the area in accordance with core principles and policies of the NPPF.

- 1.3. This Statement of Case will provide a summary of the appeal proposal and detail the reasoned arguments why planning consent should be approved. Details of the site and surroundings and planning policies that prevailed at the time of submission are set out in the Planning Support Statement submitted with the application. These are repeated below as part of this statement, in response in part to our consideration that the Local Planning Authority failed to consider the site in its local context in making its decision. This Statement of Case will then further consider emerging planning policy and the Council's approach to this application to fully address the reasons for refusal.
- 1.4. This Statement will determine that on balance the appeal should succeed following consideration of the Development Plan and all material considerations.

2. Application History

- 2.1. JWPC has considerable experience in dealing with sites and clients in the Ribble Valley and the neighbouring local authority of Blackburn with Darwen, to which the appeal site lies close to the Borough boundary. In assessing the potential for development of the site, it was clear that the dwelling on the site is small in comparison with the neighbouring properties, and sits within a larger plot and is physically capable of accommodating an additional house on site, which would match the pattern of development on Barker Lane.
- 2.2. Although the house is located within the Green Belt, the house is not remote, but rather sits within an area of many residential dwellings and a commercial car sales garage/storage garages on Barker Lane. This residential area has a direct physical link to the town of Blackburn, but is actually located within the borough of Ribble Valley just inside of the borough boundary. In assessing the physical on-site characteristics of the area and the appeal site, taking into account the Green Belt designation given by the Ribble Valley, we considered that the site could reasonably be determined to be an area where limited infilling would be permitted within the context of Green Belt policy and a sustainable location for development.
- 2.3. Rather than applying for a single house adjacent to the existing one, it was considered appropriate to also replace the existing house to provide better sized accommodation more suited to the neighbouring context, whilst also retaining the building line of the existing form of development along Barker Lane. A proposal to replace a single house with two was therefore submitted.
- 2.4. From our understanding of the Council's existing and emerging planning policy, it appeared that this area of housing at the edge of the borough, had never been considered separately in its local context as part of a settlement, but was simply contained within the wider Green Belt designation at the southern edge of the Borough.
- 2.5. An assessment of the sustainability credentials of the site, being within walking distance of facilities and services in the Lammack area of the neighbouring town of Blackburn and

connected directly to houses within the urban boundary provided further confidence that the site could be considered a suitable location for infill development in the context of the Green Belt designation.

- 2.6. Adopted policy in Blackburn with Darwen district, which allocates a large urban extension in this location (450 houses and a new primary school), was also considered of relevance in determining whether the site was a suitable location for development, and a decision was made to progress with the proposals for a net gain of one dwelling on this site, through an application for demolition of the existing house and erection of two dwellings.
- 2.7. The application was submitted and subsequently refused under delegated authority, with a Delegated Officer's Report providing the Case Officer's consideration in making the decision. The information in this report forms the basis on which we have argued against the refusal in our grounds of appeal.
- 2.8. Both Mellor Parish Council and Ramsgreave Parish Council were consulted on the application. Barker Lane serves as the boundary between the two, with Mellor Parish Council to the west and Ramsgreave Parish Council to the east. No objection to the application was received from either Parish Council.
- 2.9. Blackburn with Darwen Council were also consulted on the planning application as the site is very closely related to the Borough boundary. No objection was made to the application.
- 2.10. A single objection letter was received, from the adjacent neighbour, mainly relating to issues of design, rather than the principle of development.
- 2.11. The Delegated Officers report and reason for refusal are discussed in chapter 5 of this Statement.

3. Site and Surroundings

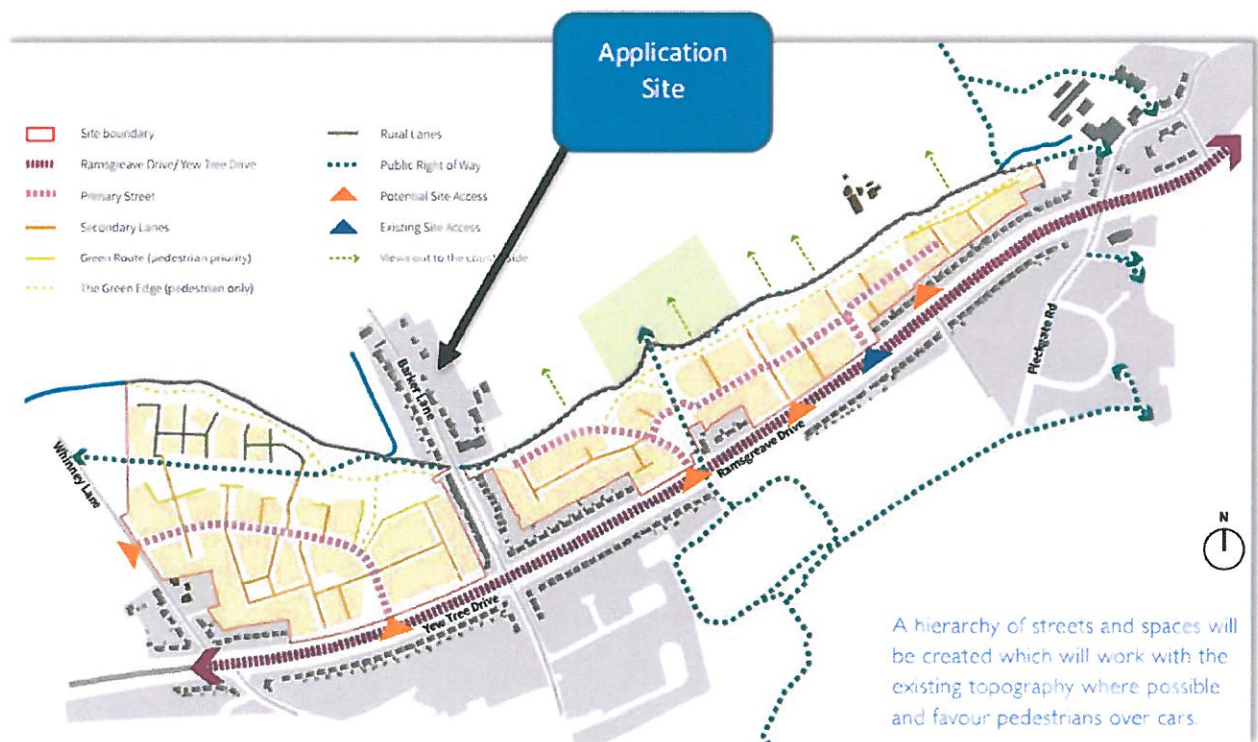
3.1.1. The appeal site is made up of the residential property and curtilage of No. 30 Barker Lane. The house is bordered on three sides by residential dwellings, part of a developed area of Barker Lane/Lammack Road connected to the Lammack area of the town of Blackburn. The Site Location Plan, also shown below, shows the position of these adjacent properties, with the existing dwelling forming a small house on a large plot. Further details of the site and local context is provided in Section 2 of the Planning Support Statement submitted with the planning application and below.



3.2. The site is located within walking distance of schools, shops, a church and public house facilities in the area of Lammack. Although Ramsgreave Drive intersects Lammack Road to the south, there are currently approximately 80 houses located to the north of Ramsgreave Drive that

benefit from this direct connection to the Lammack area of Blackburn, some of these properties lie in the Borough of Blackburn with Darwen and some, including the appeal site, lie within the Borough of Ribble Valley. The arbitrary line of the Borough boundary does not adequately distinguish between the urban and rural areas, despite the land in Blackburn being within the defined urban area and land within Ribble Valley being designated Green Belt.

- 3.3. To further demonstrate that the area is a functional part of Blackburn and sustainable location, additional development in the form of an urban extension is allocated in the Blackburn with Darwen Local Plan to the north of Ramsgreave Drive for 450 new houses and a primary school, very close to the appeal site. Further details are provided in the Planning Support Statement (extract plan below) and section 5 of this statement.



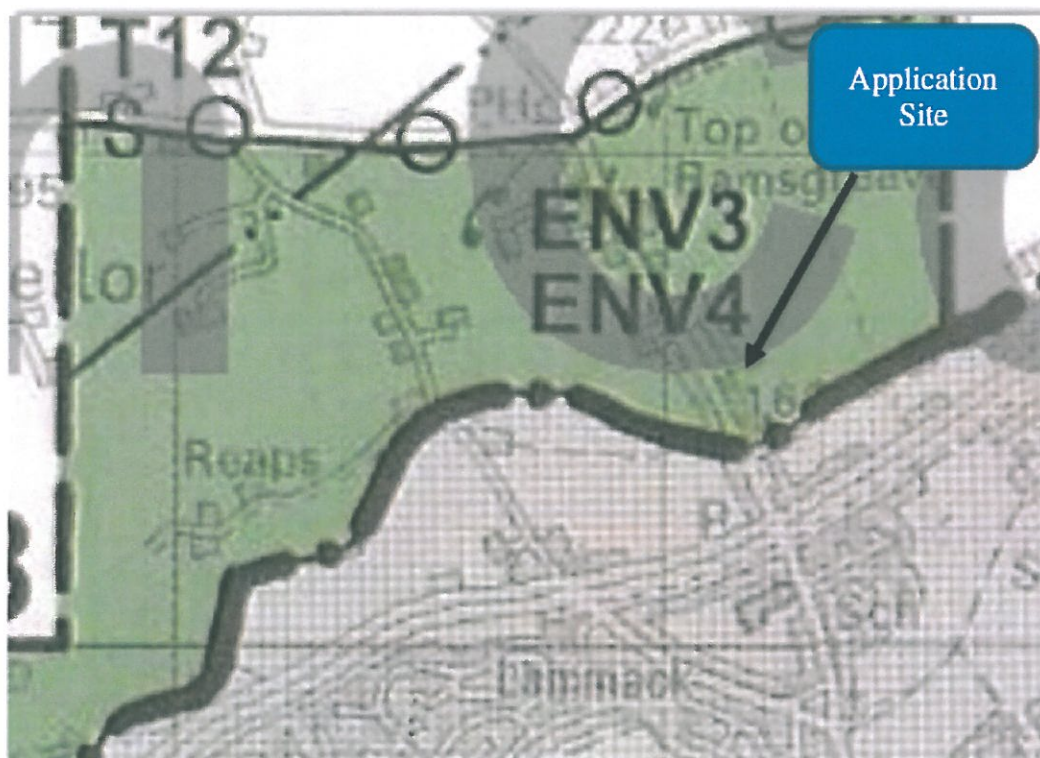
- 3.4. The assessment of the site in the Delegated Officer's report considers that the site is located with similar detached dwellings to the north and a pair of semi-detached dwelling to the south, with open fields to the east. No reference is made to the existing dwellings to the west, i.e. immediately across the road, which places the site within the centre of the residential area on Barker Lane. No reference is made in the report to place the site and immediately neighbouring properties within a wider context, failing to look at the section of Barker Lane itself or any area

beyond that which forms part of the continuous urban area of Blackburn detailed in the application submission. The report only considers the site as being remote from the village of Mellor, which misrepresents the situation on the ground.

- 3.5. It is important to the determination of this appeal that the consideration of the site does not end at the Borough boundary. To this end, we request an informal hearing to allow discussion of the merits of the site within this context whilst on the appeal site visit. Appeal by Written Representation does not allow this process to be undertaken and therefore, based on the Council's failure to properly address these issues in their Delegated Officer's Report, we request an Informal Hearing to understand why such an approach was taken.

4. Planning Policy

- 4.1. The site lies within the Green Belt, as defined by the RVBC Districtwide Local Plan (DLP), adopted in 1998. The Green Belt in the area covers all land between the Borough boundary to the south (bordering Blackburn with Darwen Borough Council) and Ramsgreave Road/Mellor Lane to the north. The appeal site lies approximately 1 mile from the village of Mellor to the west as referenced in the Officer's Delegated Report. The site does however lie closest to the urban boundary of Blackburn in the neighbouring borough, the policies of which are detailed below.



- 4.2. The 1998 DLP Proposals Maps is carried forward to the Core Strategy, with Key Statement EN1 of the Core Strategy stating that the overall extent of the Green Belt will be maintained.
- 4.3. National guidance relating to Green Belt is contained within the National Planning Policy Framework (NPPF), which calls on local planning authorities to regard the construction of new buildings as inappropriate in Green Belt, with limited exceptions. These exceptions include 'limited infilling in villages' and it is on this basis that the application was presented and this appeal is made. A further exception exists for "limited infilling or the partial or complete

redevelopment of previously developed sites (brownfield land)...which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

- 4.4. The appeal site was also designated within the open countryside on the 1998 DLP Proposals Map, but this designation is not technically carried forward into the Core Strategy on this site in the Green Belt, which is explained below.
- 4.5. The planning application was refused based on the policies and key statements of the Core Strategy, which are summarised below, but not all of which we consider relevant to the appeal.
- 4.6. Key Statement DS1 of the Core Strategy provides guidance on the location for the majority of new housing development and lists the villages in the Borough considered suitable for additional development. This is a positive statement that details the development strategy for the Borough and how future allocations will be made. It makes no reference to Green Belt in the context of development management decisions.
- 4.7. Policy DMG2 states that development should be in accordance with the Core Strategy development strategy and should support the spatial vision. It also provides guidance for development in the principal settlements and tier 1 villages, stating that development proposals should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement. Outside of the defined settlement areas, the policy provides six considerations (of which development should meet one) including inter alia, being essential to the local economy or social well-being of the area or for local needs housing. The policy makes no reference to the Green Belt. The policy also states that within the open countryside development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the area by virtue of its size, design, use of materials, landscaping and siting. The policy states for clarity that the term 'settlement' is defined in the glossary and current settlement boundaries will be updated in subsequent DPDs.

4.8. The Core Strategy Glossary definition of 'settlement' redirects to 'defined settlement', which is defined as 'one which contains at least 20 dwellings and a shop or public house or place of worship or school or village hall, i.e. they are a size and form that justifies treatment as a settlement. It continues, stating that settlement boundaries will include all properties physically linked to the main (built) part of the settlement.

4.9. Policy DMH3 concerns dwellings in the open countryside and states that residential development will be limited to identified local needs housing, conversions or replacement dwellings. Reasoned justification to this policy states that "the protection of the open countryside and designated landscape areas from sporadic or visually harmful development is seen as a high priority by the Council and is necessary to deliver both sustainable patterns of development and the overarching core strategy vision."

4.10. The Glossary of the Core Strategy defines Open Countryside as follows:

This is a designation currently defined within the proposals map of the RV Districtwide Plan mainly of land outside Settlement Areas but not designated Green Belt or AONB.

4.11. Although the 1998 proposals map defines the appeal site as Open Countryside and Green Belt under the old 1998 policies, the replacement Core Strategy definition of open countryside is clear that this does not now apply to sites within the Green Belt. As such, the site cannot be classed as being defined by the Open Countryside policy.

4.12. The policy section of the Delegated Officer Report states that the site "is located outside of any of the Draft Settlement Boundaries and is therefore within the open countryside, as well as being within the Green Belt. This statement conflicts with the Core Strategy definition of Open Countryside. Also, the draft settlement boundaries carry no weight in determining the appeal and at the time of the decision of the application had not even been subject to public consultation. The appellant has made formal objection to the draft boundaries and Site Allocation document since determination of the planning application. A copy is provided in the Appendix.

- 4.13. The policies in the neighbouring authority are also of importance in making an assessment of the proposals, due to the proximity of the site to the town. Details were provided in the Planning Support Statement submitted with the planning application. This details the residential allocation of 450 new houses and a primary school up to the borough boundary close to the site and directly related to the area of houses around the appeal site, named the North Blackburn Development Site in the adopted Site Allocations Plan. A Masterplan is also being produced for this site, along with new development in the Ribble Valley being proposed to move the Rugby Club into the Green Belt to the east of the appeal site.

5. Grounds of Appeal

- 5.1. The Decision of the local planning authority cites four reasons for refusal, all of which relate to the principle of development. From this we assume that matters of design and any other issues are considered acceptable, but reserve the right to provide additional information should further objection arise during the appeal process.
- 5.2. In addition to the reasons for refusal we have also reviewed the Delegated Officer's Report to determine our grounds of appeal, and consider that the issues raised result from the planning authority failing to take into account the arguments detailed in the Planning Support Statement regarding the assessment of the on-site evidence of the current built development and a lack of acknowledgement of what exists beyond the Borough boundary.
- 5.3. The first reason for refusal essentially concerns the principle of development in the Green Belt and whether the proposal meet one of the exceptions in paragraph 89 of the NPPF. The planning authority's decision being that it does not and is therefore considered to represent inappropriate development in the green belt.
- 5.4. Our principal ground of appeal is that the proposal meets the criteria of an exception to inappropriate development in Green Belt, being consistent with the fifth bullet in paragraph 89. This bullet concerns 'limited infilling in villages'. Although neither 'infilling' or 'villages' are defined in the NPPF, an understanding of the notion of Green Belt and other listed criteria for exceptions, means that the guidance seeks to permit development where other development is already located and avoid new development in remote locations. Reference is also made in the Planning Support Statement to the sixth bullet in paragraph 89, with support to an argument that the development would have no greater impact on the openness of the Green Belt and purpose of including land within it as both limited infilling and redevelopment of brownfield land. This is a secondary argument to support the principle of the first, but not wholly prevalent on the determination. The presence of these two criteria in national guidance however clearly shows a willingness for new infilling development within the Green Belt, in villages and suitable locations, subject to assessment of the merits of the site and location being made in the first instance.

- 5.5. Although not defined in the NPPF, Villages are defined in the Glossary of the local planning authority's Core Strategy as *"all settlements in the borough excluding Clitheroe, Longridge, Whalley and Wilpshire"*. The definition of a settlement in the glossary, detailed above, is one that we consider the appeal site would comfortably fit with, considered as part of the town of Blackburn.
- 5.6. The Development Strategy in the Core Strategy provides the basis for development of the majority of new dwellings across the Borough, with a focus on the sustainable locations in and around existing towns. As the site subject to this appeal lies so close to the town of Blackburn, in the neighbouring Borough, and no proposals have been made to provide for an expansion of the settlement of Blackburn outside of its current boundary into the Ribble Valley, it is obvious that the Local Planning Authority would not seek to directly define the existing area of Barker Lane as a Principle Settlement or defined village in the Core Strategy. This does not however mean that the site does not form part of a settlement. The fact exists that the site is located within an existing built up area and one that will be expanded considerably through an urban extension up to the borough boundary, improving the sustainable credentials of the site considerably and also impacting on the openness of the Green Belt in the adjacent Ribble Valley.
- 5.7. It is therefore disingenuous for the Local Planning Authority to deal with the proposals on the basis that it is in an isolated location well away from the village of Mellor. The planning application was clearly never presented on the basis that it was well related to the village of Mellor, but this argument has not been addressed in the Council's assessment. The application was presented on the basis of its proximity to the major town of Blackburn, itself larger than all towns in the Ribble Valley, and the Green Belt designation on the site should be considered on the basis of the merits of the site in that local context, which allows for infilling development. In this regard it is clearly a suitable infilling of development and meets the exception in paragraph 89 of the NPPF, both in direct terms as infilling in villages, through the definitions in the Glossary of the Core Strategy, and in the principle and spirit of the NPPF. The designation of Green Belt on the fringe of a large town that contains so much existing development, over 25 houses on Barker Lane in the Ribble Valley side of the borough boundary, is quite a unique situation. To deny infilling on such a site in the Green Belt would clearly be contrary to the purpose of the Green Belt exception in NPPF relating to infilling.

- 5.8. NPPF provides guidance to local planning authorities regarding the defining of Green Belt boundaries, with paragraph 86 stating that “if it is necessary to prevent development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons...the village should be excluded from the Green Belt.
- 5.9. Prior to the NPPF, PPG2: Green Belts provided similar advice, and it is on this guidance that RVBC produced the DWLP. This stated that for areas where infilling was to be allowed, they should be either inset from the Green Belt or be ‘washed over’ by Green Belt and listed in the Development Plan. However, NPPF removed this requirement for infilling to be allowed only in cases where areas were inset from the Green Belt or listed in the Development Plan, expanding the definition of infilling to “limited infilling in villages”, without further clarification. The terms of villages and limited infilling are not further defined in the Framework. What is clear however, is that NPPF guidance now allows for infilling development within the Green Belt beyond the previous definition in PPG2.
- 5.10. Green Belt is almost exclusively defined in rural areas outside of existing built up areas, sometimes including villages washed over. As mentioned above, the appeal site (and developed residential area of Barker Lane) is located in a unique position on the edge of the urban area of a neighbouring authority and extremely close to an allocated residential development area. The expansion of the definition of infilling in the Green Belt to ‘villages’ rather than specific villages listed in the Development Plan, is clearly to allow new small scale development, including single houses, within locations already to some extent built-up, i.e. infilling a gap between existing buildings. As this approach now applies to unlisted villages, it must surely therefore apply to sites that could clearly be defined as being within a town and provide a direct continuous link to the town through a built-up road frontage, including other properties and commercial buildings. Whilst the guidance does not define this to be the case, this is largely because a site so well related to a town would not generally be defined as being within the Green Belt. Indeed, had the area been located within Blackburn with Darwen district, it would almost certainly be defined as within the urban boundary.

- 5.11. We postulate that it is likely that the LPA have not actually considered this particular area of the Borough during production of policy for the DLP or the Core Strategy and emerging Site Allocation Plan, largely because it is an anomalous area related to the mainly urban district of Blackburn with Darwen, rather than the rural focused Ribble Valley. We have found no evidence that the area has previously been considered by the LPA in the context of its built-up areas and whether the Green Belt designation is relevant. This is also borne out in the Delegated Officer Report, which considered the appeal site only in the context of its distance from the village of Mellor, and determining it as therefore a remote open area. The site is clearly not a remote open site and should not therefore be considered on this narrow argument that ignores the on the ground situation.
- 5.12. In relation to this point, we refer to the Court of Appeal Decision in *Julian Wood v Secretary of State for Communities and Local Government and Gravesham Borough Council* 2015. In this the principal issue for the Court was the proper interpretation of paragraph 89 that provides an exception for 'limited infilling in villages'. The Court found that the policy required the decision-maker to consider whether, **as a matter of fact on the ground** (our emphasis), the site appeared to be in the village. The fact that the site lay outside the village boundary as designated in the development plan was not determinative of the point. In limiting himself to considering whether the proposal was within the designated village boundary, the appeal Inspector had misdirected himself as to the proper meaning of paragraph 89 of the NPPF.
- 5.13. RVBC in this instance have not considered the matter of fact on the ground. The local authority's consideration of the principle of development in the Delegated Officer's Report considers the appellants reference to exception to Paragraph 89 in our Planning Support Statement, but disregards them as a) the site is not within a village (being remote from Mellor), and b) the development cannot be defined as infill as it requires the demolition of an existing house and rebuilding of two. We have clearly set out in the application documents and this appeal statement why we consider that the site should not be considered as part of Mellor, but instead as part of the Lammack area of the town of Blackburn. In terms of whether the proposal could be considered infill, such an interpretation misrepresents the proposal. The proposal would replace a single house with two houses, infilling a gap between the existing frontage

along Barker Lane. There could be no clearer indication of the definition of infilling a gap between an existing frontage, which is clear from all the evidence provided and a site visit to understand the site context on the ground.

5.14. The second infill exception criteria is also disregarded in the local authority's decision, which considers that the replacement of one bungalow with two detached two storey dwellings would undoubtedly have a greater impact on the openness of the green belt. This appears to make a generalisation regarding the massing of buildings, rather than consideration of the openness of the site based on an on the ground context. We propose that against the backdrop of the existing houses in the area the proposal would not have a greater impact on the openness of the Green Belt in the area, which itself is due to be impacted by substantial urban extensions in the neighbouring authority.

5.15. The second reason for refusal concerns development in the Open Countryside, with two policies and one Key Statement cited, with the development considered to result in harm to the development strategy, leading to unsustainable development. Irrespective of our argument below in relation to this reason for refusal, we reject the notion that a single dwelling in any location would cause harm to the overall development strategy of the Core Strategy, and this would thus automatically lead to unsustainable development. The development strategy defined in Key Statement DS1 is an approach determined through consideration of alternative options and provides the preferred option of the Council for the location of new development in the Borough. It is simply not the case that a single development contrary to or outwith this strategy is by definition unsustainable, even where it may be contrary to the strategy on a very small scale. Also, in the context of an additional 5,600 new dwellings in the Borough, a single dwelling could simply not cause direct harm to the strategy. The policy is also written to direct development to certain areas rather than to restrict it elsewhere (albeit other parts of the Core Strategy may do this) and therefore a determination using this policy in this way is incorrectly applied.

5.16. In relation to the open countryside to which the reason for refusal states, the Core Strategy is clear that areas of Green Belt are not also considered to be open countryside in policy terms. Policy DMH3 is therefore not a relevant policy to this determination. In terms of Policy DMG2, we would define the area as part of a defined settlement, as it clearly forms part of the Lammack

area of the town of Blackburn providing all services referenced in the Glossary. We welcome discussion on site to this point in general and have presented evidence in the Planning Support Statement and this appeal Statement of Case as to the dwellings in this location being a continuous form of development. The Seven Acre Car Sales garage and storage garages to the rear, along with the proposed urban extension in Blackburn close to the site provides a clear indication that the site and surrounding houses functionally form part of the Lammack area of Blackburn.

- 5.17. In addition, the reason for refusal states that the proposed 'residential development' is contrary to policy, but what such a description fails to consider is that, irrespective of the designation, the site is already residential development, being a single house and residential garden. No part of the application extends beyond the existing residential curtilage and the proposals indeed fits generally within the existing footprint and hardstanding of the current house.
- 5.18. The third reason for refusal concerns a perceived adverse impact on the landscape character of the open countryside, not preserving the openness of the Green Belt. We refer to policy relevance in relation to open countryside above, but with regard to landscape character it is unclear from the reason for refusal to what this refers. There is no specific landscape character designation in the local plan for the area and no reference in the Delegated Officer's Report. In addition, the site is an already developed site infilling between existing houses, and as detailed above forms part of an already built up area, with additional major development proposed as an urban extension to the southeast of the site. Whilst the addition of a single dwelling and general increase in massing across the plot will occur, in the context of neighbouring houses along the build line of Barker Lane, any potential impact on the landscape will be limited. As no protected designation beyond that in landscape terms exists, we do not consider this a relevant reason for refusal. In addition, Policy DMH3 referenced in the reason for refusal provides no mention of landscape character or how potential impact will be assessed. Although the reasoned justification to the policy mentions designated landscape areas, this is clearly not relevant to the appeal site.
- 5.19. The fourth reason for refusal concerns the notion of precedent from approving the application. It is a well-established principle that all planning applications are determined on their own

merits, according to the development plan policies and other material considerations. Our case made in this statement is that the proposed development accords with Green Belt policy and as such no concern could be had in this regard. However, irrespective of this, it is unreasonable to use a general anxiety that other schemes could come forward on similar sites to seek a reason of refusal for precedent. The nature of the site alone, being more related to a town in a neighbouring local authority than a village in the borough, is in itself relatively unique and unlikely to give rise to any notion of precedent for other sites. We have provided a clear justification for the proposal on a site specific basis, this alone removes the anxiety of precedent.

- 5.20. Concern raised in the Delegated Officer's Report regarding whether allowing the development would create a 'dangerous precedent' for similar development in the Green Belt appears to be on consideration that the proposal is for the replacement of a single smaller dwelling with two larger ones, and one of the other exemptions allowing for replacement dwellings only permits this when not materially larger than the one it replaces. This argument only serves to confuse the situation by bringing in another argument on which we have not based our case and is not relevant to the appeal. The exemption described here relates to replacement dwellings on any location within the Green Belt, remote or otherwise, and is clearly not the basis on which our original application was made, or put forward in this appeal. The appeal relates to a distinct site in a unique location that has not been adequately assessed by the Council in making a determination on the planning application.

6. Summary and Conclusion

- 6.1. The planning appeal is submitted on the grounds that the Council has failed to adequately assess the merits of the site as a matter of fact on the ground and has incorrectly considered the site to be contrary to the NPPF in relation to the designation of Green Belt, which does allow for infilling.
- 6.2. The Court of Appeal has ruled that the designation of village boundaries is not the principal determining factor as to whether development can be considered an exception in Green Belt terms and we have presented evidence that the net addition of a single dwelling on this site, as per the proposals, would be wholly consistent with the NPPF and the Development Plan policies, as the site in fact lies with the physically built up area of Blackburn, as a matter of fact on the ground.
- 6.3. The Green Belt designation does not seek to exclude developments such as this, which can very clearly be defined as infilling development. Furthermore, the development would not cause harm to any aspects of the development plan policies or key statements and complies with the definition of being within a settlement in the Core Strategy.
- 6.4. The planning appeal has been requested to be dealt with via the Informal Hearing procedure to allow detailed discussion regarding the situation on the ground and determine the merits of the site as a suitable location for infilling.
- 6.5. We submit that the appeal can be determined in compliance with the NPPF for Green Belt as an infill development and there are no relevant policies in the Development Plan or other material considerations that run contrary to this approach. We maintain that the appeal should be allowed.

Appendix A – Objection to Regulation 18 Consultation for Housing DPD



Representations to Ribble Valley Local Plan:

Housing and Economic Development DPD – October 2016

Regulation 18 Issues and Options Consultation Response

1. This written representation is submitted on behalf of Mr Lee Wallbank in response to the Issues and Options Consultation of the Ribble Valley Housing and Economic Development DPD. The comments concern the proposed designation of land that functions as part of the urban area of Blackburn but forms part of the Ribble Valley District.

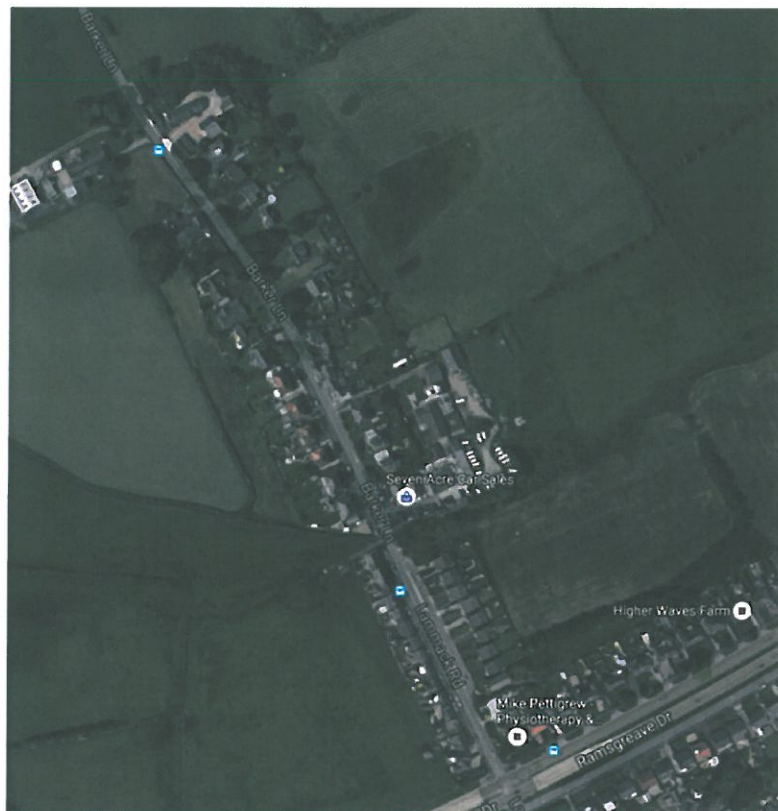


Figure 1 – Aerial view of development on Barker Lane

2. The area in question, which includes my client's property, is currently designated within the Green Belt, a situation which we find incongruous with the physical development existing and more recently proposed within Blackburn with Darwen Borough. Figure 1 shows the existing physical development.
3. It has become clear from recent correspondence with Planning Officer's and a recent planning application that the area at Barker Lane is considered to be rural in nature and remote from the village of Mellor. However, this position ignores the fact that the area would meet the criteria detailed in the Settlement Boundary Definition Topic Paper as the properties are physically linked to the main built part of Blackburn and are well related to the settlement. The 25 or so residential properties and car sales garage at Barker Lane where it meets the District boundary should be recognised as part of an urban area, albeit one in the neighbouring district. The District Boundary itself is not a physical boundary to the urban area and the houses around Barker Lane should therefore be taken out of the Green Belt to reflect their position as dwellings related to the urban settlement of Blackburn.
4. The plan at Figure 2 below is taken from the Blackburn with Darwen Borough Local Plan Part 2 and shows the position of the site in very close proximity to the built up area of Blackburn. The black line represents the borough boundary, with the land on Lammack Road within Blackburn with Darwen district forming part of the urban area within the Urban Boundary. In addition to this, large areas of land either side of Lammack Road are allocated by Policy 16/2 of the Local Plan and also fall within the Urban Boundary of Blackburn. Policy 16/2 is a Site Allocation for New Residential Development termed the 'North Blackburn Development Site'. This proposal allocates the land for 450 new houses to be developed. This specific site allocation also includes proposals for a new primary school on the site to serve the development.
5. The Green Belt designation washing over this section of Barker Lane, which is around 25 houses and the car sales business, provides for an unrealistic policy notation of the development that currently exists and its position on the edge of Blackburn, within walking distance of local facilities.

6. We seek removal of the Green Belt designation for this area to be drawn around the residential curtilage of the existing properties in accordance with the Settlement Boundary Definition Topic Paper.

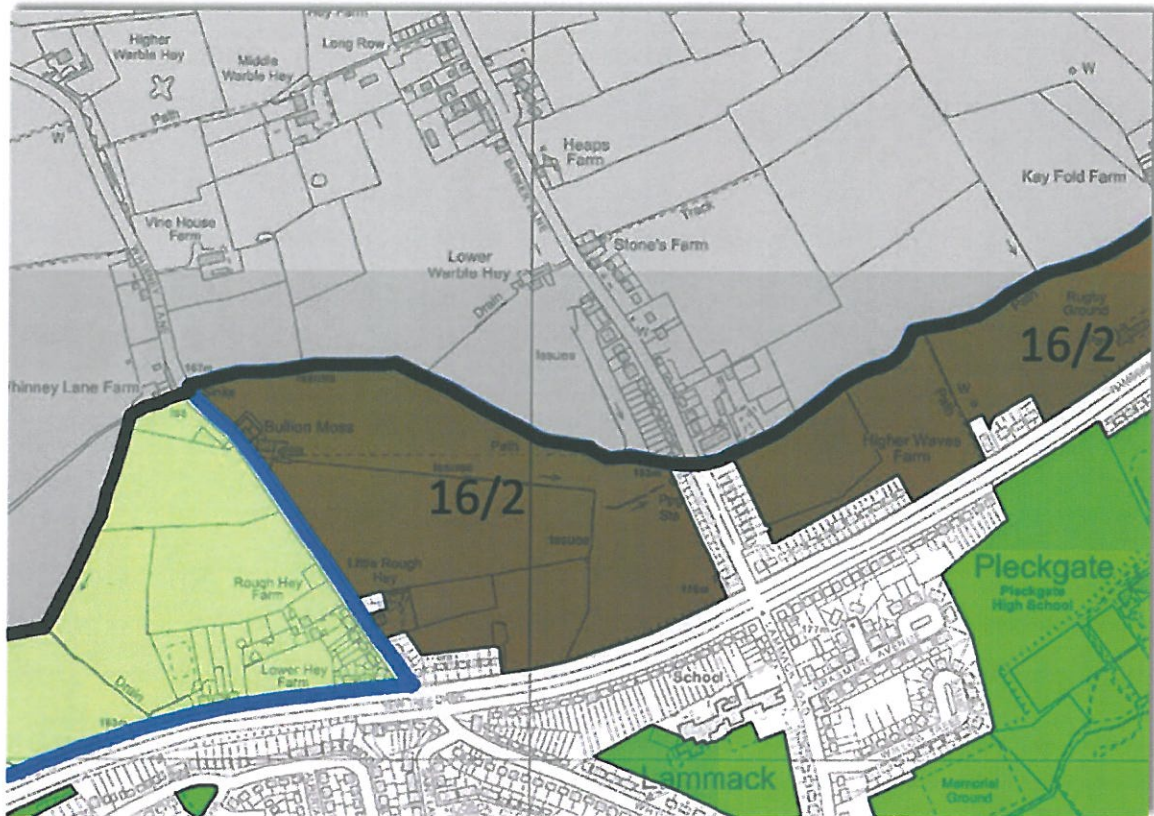


Figure 2 – Extract from Blackburn with Darwen Local Plan Part 2

Appendix B – Court of Appeal Decision Julian Wood v SoS and Gravesham BC 2015

C1/2014/1144

Neutral Citation Number: [2015] EWCA Civ 195
IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(HIS HONOUR JUDGE MACKIE QC
(sitting as a deputy judge of the High Court))

Royal Courts of Justice
Strand
London, WC2A 2LL

Monday, 9 February 2015

B E F O R E:

LORD JUSTICE SULLIVAN

LORD JUSTICE BEAN

LADY JUSTICE KING DBE

JULIAN WOOD

Claimant/Appellant

-v-

THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL
GOVERNMENT

First Defendant

and

GRAVESHAM BOROUGH COUNCIL

Second Defendant/Respondent

(DAR Transcript of
Wordwave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

MR RICHARD TURNEY (instructed by Kingsley Smith Solicitors) appeared on behalf of

the Appellant
MR JUAN LOPEZ (instructed by Sharpe Pritchard) appeared on behalf of the Respondent
(Second Defendant)

J U D G M E N T

LORD JUSTICE SULLIVAN:

Introduction

1. This is an appeal against the order dated 21 February 2014 of HHJ Mackie QC, sitting as a deputy High Court judge, dismissing the appellant's application under section 288 of the Town and Country Planning Act 1990 ("the Act") to quash the decision dated 8 May 2013 of one of the first respondent's planning inspectors to dismiss the appellant's appeal under section 78 of the Act against the second respondent's decision to refuse to grant outline planning permission for the erection of a single dwelling on land adjoining the See-Ho Public House, Pear Tree Lane, Shorne, Gravesend.
2. The application under section 288 was made on two grounds which the judge summarised in paragraph 3 of his judgment ([2014] EWHC 683 (Admin)).
3. In his first ground of appeal the appellant contended that the inspector had failed properly to apply the policy in paragraph 89 of the National Planning Policy Framework ("NPPF") relating to "limited infilling in villages" in the green belt.
4. The appellant's second ground of appeal, which had been conceded by the first respondent, who played no part in the proceedings before the judge or in the appeal to this court, contended that the inspector had failed properly to consider the shortfall in housing land supply.
5. The judge dismissed the first ground of appeal (see paragraphs 66-68 of his judgment). In respect of the second ground of appeal, the judge concluded that the inspector had failed to give adequate reasons because he had failed to deal with the extent of the housing shortfall (see paragraphs 88-90), and granted the appellant a declaration that the inspector had erred in that particular respect.
6. However, the judge declined to squash the inspector's decision on this ground because he was satisfied that, whatever the extent of the shortfall, the inspector would have reached the same decision given the very strong policy objection to inappropriate development in the green belt (see paragraphs 91-94).
7. In this appeal the appellant challenges the judge's conclusion that the inspector correctly applied the policy guidance in respect of infilling in villages in paragraph 89 of the NPPF, and the judge's decision not to quash the inspector's decision on ground 2.

The NPPF

8. Paragraphs 79 to 92 of the NPPF deal with "Protecting green belt land". Inappropriate development in the green belt should not be approved except in "very special circumstances" which will not exist unless the potential harm to the green belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations (see paragraphs 87 and 88).
9. Paragraph 89 is the key paragraph of the NPPF for the purposes of this appeal. So far as relevant, that paragraph provides that:

"A local planning authority should regard the construction of new buildings
as

inappropriate in Green Belt. Exceptions to this are:

- limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan ..."

10. Before the judge it was submitted on behalf of the second respondent that the words "under policies set out in the Local Plan" governed both limited affordable housing for local community needs and limited infilling in villages.
11. In his oral submissions before us Mr Lopez did not pursue that submission, which had been foreshadowed in his written skeleton argument on behalf of the second respondent. In my view, he was right not to do so. The position of the comma in the description of the exception is important. The words at the end of the exception are part of and govern the second limb of the exception -- limited affordable housing for local community needs. It is readily understandable why that should be so. It may not be possible to accommodate such housing within a village that is in the green belt, so any expansion of the village to accommodate such housing must be dealt with by policies in the Local Plan. The same considerations do not apply to limited infilling in villages.
12. Before this court it was common ground that whether or not a proposed development constituted limited infilling in a village for the purpose of paragraph 89 was a question of planning judgment for the inspector and the inspector's answer to that question would depend upon his assessment of the position on the ground. It was also common ground that while a village boundary as defined in a Local Plan would be a relevant consideration, it would not necessarily be determinative, particularly in circumstances where the boundary as defined did not accord with the inspector's assessment of the extent of the village on the ground. Against that agreed background, I turn to the inspector's decision.

The inspector's decision

13. Having referred to paragraphs 79 to 92 of the NPPF, the inspector said in paragraphs 7 and 8:
 - "7. The appeal site is located on the south side of Pear Tree Lane and comprises a plot of open land adjacent to the car park of a public house. It is surrounded on all sides by housing, and is bounded by conifer hedges and timber fencing. To the west and south is a continuously built-up area, while to the east it adjoins a line of detached properties extending out into the countryside. On the opposite side of the road is a row of similar bungalows (Ridgeway Bungalows) on deep plots behind which are open fields.
 8. I have not been advised of the location of the village envelope or the Green Belt boundary, but the Council states that the site lies outside the village boundary and within the countryside and the Metropolitan Green Belt. Ridgeway Bungalows continue the built-up area further to the east on the north side of Pear Tree Lane."

14. In paragraph 9 the inspector referred to an earlier appeal for a development of two houses on the appeal site which had been dismissed in 1991. He continued in paragraphs 10 and 11:

"10. The 1991 appeal indicates that the built-up area boundary ran along the east side of Rose Cottage with the public house and other properties to the east of Bowesden Lane being in the countryside. However, at that time the Council was reviewing the Local Plan and proposed to include within the village envelope the public house, its car park and Ridgeway Bungalows. While the last named are now within the village envelope I have not been advised whether the public house and its car park are now within or without.

11. Whichever is the case the site appears to lie on or very close to the boundary between the village and the Green Belt."

15. The inspector dealt with the appeal under the written representations procedure. That explains why the information before him appears to have been less than complete.
16. We have been shown a copy of the application plan which was before the inspector. The appeal site is immediately to the east of the public house and its car park. If the public house and car park had been included in the village envelope under the review, then the western boundary of the appeal site would have been on the village boundary, as defined in the Local Plan. If on the other hand the public house and its car park had not been included in the village envelope when the Local Plan was reviewed, then the appeal site would still have been very close to the boundary between the village and the green belt as defined in the Local Plan. It would have been separated from the defined boundary by the public house and its car park.
17. I return to the inspector's decision. The inspector concluded in paragraphs 13 and 14 as follows:

"13. Since the 1991 appeal some developments have taken place in the area. Most notable at the time of my visit was work being undertaken on Shornebury, a detached house adjoining the site to the east. Third party evidence indicates that this is in fact two large extensions one on each side of the house. The resulting building is massive and highly prominent in the street scene. It extends the built environment out of the village into the Green Belt. Contrary to the appearance of the area in 1991, the built-up area now appears to start some distance to the east of the appeal site.

14. Paragraph 89 of the NPPF regards the construction of new buildings in the Green Belt as inappropriate, but indicates a number of exceptions. Among these is limited infilling in villages. Although the appeal site has the appearance of being an infill location in view of the existing development all around, it does not lie in a village, but outside the boundary. I therefore consider that the proposed development would be inappropriate and thus by definition harmful to the Green Belt."

18. Under the heading "Effect on village envelope and countryside" the inspector said in paragraphs 17 and 18:

"17. The proposed development would infill an open space on or close to the village envelope. However, the continuing development along Pear Tree Lane gives the appearance of the built-up area extending further to the east. There is already a difference between the defined village boundary and that which appears on the ground to be the logical end of the built-up area.

18. I do not consider that the proposed development would distort further the definition between village envelope and surrounding countryside."

The parties' submissions

19. Mr Turney submitted, on behalf of the appellant, that on a fair reading of the passages in the inspector's decision to which I have just referred the inspector had misdirected himself because he had wrongly treated the boundary of the village as defined in the Local Plan as being determinative of the issue whether the proposed development was in the village. If the appeal site was in the village, there was no suggestion that the proposal for one dwelling was not limited infilling (between the public house to the west and Shornebury to the east).
20. He pointed to paragraph 8 of the decision, in which the inspector referred to the village envelope and the green belt boundary. Although the inspector had said that he had not been advised of their location, he noted the second respondent's statement that the appeal site was outside the village boundary and within the countryside and the green belt. This, submitted Mr Turney, suggested that the inspector was considering a boundary that was defined on a development plan, rather than the boundary on the ground.
21. Mr Turney submitted that this conclusion was reinforced by the discussion in paragraph 10 of the inspector's decision of the review of the village envelope, which was clearly the village envelope as defined in the Local Plan. This was the boundary to which the inspector was referring in paragraph 11 of the decision. Whether the appeal site was on or close to that defined boundary depended on whether the defined boundary had been revised to include the public house and its car park to the west of the site.
22. Mr Turney submitted that in paragraph 13, by contrast, the inspector was there considering the position on the ground and had concluded that the built environment had extended into the green belt, so that the built-up area appeared to start some distance to the east of the site. Although the inspector recognised in paragraph 14 that this meant that the appeal site had the appearance of being an infill site because of the existing development all around it, the inspector's reason for concluding that it did not lie "in a village" was because it lay outside "the boundary", that is to say the boundary as defined in the Local Plan which the inspector had been discussing in the earlier paragraphs of his decision.

23. Mr Turney submitted at this conclusion was confirmed by paragraph 17 of the decision in which the inspector had returned to the concept of the village envelope (to which he had referred in paragraphs 8 and 10) and had noted the difference between the "defined village boundary" and the appearance of the village on the ground.
24. On behalf of the second respondent, Mr Lopez accepted that the inspector would have misdirected himself in paragraph 14 of the decision if he had treated the boundary of the village as defined in the local plan as determinative. However, he submitted that the inspector had not misdirected himself in that way. The inspector had recognised (see paragraph 13 of the decision) that the built-up area of the village had expanded since 1991, and had therefore gone on in paragraph 14 to form his own view of what was the boundary of the village in 2013 and had concluded, as a matter of planning judgment, that the appeal site did not fall within the village, notwithstanding the fact that there were, as Mr Lopez put it, "other pockets" of built-up development to the east of the appeal site.
25. I have to say that looking at the application plan and at the inspector's description of the position on the ground, Mr Lopez's description of the development to the east of the appeal site as "other pockets" of development does not seem to me to do full justice to the extent of the development to the east of the site.
26. Be that as it may, Mr Lopez submitted that the conclusion that the inspector in paragraph 14 had formed his own planning judgment as to where the boundary of the village lay and had not treated the boundary as defined in the Local Plan as being determinative was the only logical conclusion that could be drawn because the inspector had made it clear earlier in the decision (see paragraph 8) that he had not been advised of the village envelope boundary as defined in the Local Plan. Mr Lopez submitted that since the inspector did not know the position of the village boundary as defined in the Local Plan, he could not have relied upon it, much less could he have treated it as being determinative of the question whether the appeal site was in the village for the purpose of paragraph 89 of the NPPF.

Discussion

27. The submission that the inspector could not have treated the village boundary as defined in the Local Plan as determinative and had, of necessity, to form his own view as to what was the boundary of the village because he had not been told what was the position of the defined boundary has an obvious attraction, but it overlooks the fact that the inspector was not left in complete ignorance as to the precise position of the defined boundary in the Local Plan.
28. The 1991 appeal decision, which the inspector referred to in paragraph 10 of the decision letter, had told the inspector what the defined boundary was in 1991. It told him that at that time it excluded the public house and its car park to the west of the appeal site. It also told the inspector that at that time the defined boundary was under review. The inspector knew that as a result of that review the Ridgeway Bungalows, which were on the north side of Pear Tree Lane opposite the appeal site, had been included in the defined village envelope. He did not know whether or not the public house and its car park had also been included, but whether they had been included or

not under the review, that still left the appeal site either on or very close to the boundary between the village and the green belt as defined in the Local Plan (see paragraph 10 of the decision).

29. Once this is appreciated, it is clear that for all of the reasons advanced by Mr Turney in his submissions (see above) "the boundary" to which the inspector was referring in paragraph 14 was not his own assessment of the boundary of the village on the ground, but was the defined village boundary in the Local Plan, to which the inspector had been referring in paragraphs 10 and 11. Whether or not the public house and its car park were within the defined boundary as revised, the appeal site was outside that boundary. That is the sole reason why the inspector concluded in paragraph 14 that the appeal site did "not lie in a village, but outside the boundary", notwithstanding his earlier assessment in paragraph 13 of the extent of the built-up area on the ground. The contrast between the "village envelope" within the "defined village boundary" and the extent of the built-up area of the village on the ground is repeated in paragraph 17 of the decision.

Conclusions

30. For these reasons, I am satisfied that on a fair reading of this decision the inspector did misdirect himself in the manner alleged in ground 1 of this appeal. It follows that the inspector's decision must be quashed and in these circumstances it is unnecessary, in my view, to consider ground 2 of the appeal.
31. LORD JUSTICE BEAN: I agree.
32. LADY JUSTICE KING: I also agree.

ORDER: Appeal allowed; paragraph 4 of Judge Mackie's order set aside and an order is substituted that the second respondent shall pay the appellant's costs from 30 January 2014, to be the subject of a detailed assessment if not otherwise agreed; the second respondent to pay the appellant's costs of the appeal, to be the subject of a detailed assessment if not otherwise agreed; order for an interim payment on account of costs in the sum of £25,000.

(Order not part of approved judgment)