Neutral Citation Number: [2020] EWHC 2112 (Admin)

Case No: CO/3284/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2020

Before:

MR JUSTICE ROBIN KNOWLES CBE

- -

In the Matter of an Application under section 288 Town and Country Planning Act 1990

OLD SARUM AIRFIELD LIMITED
Claimant

- and -

SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT **Defendant**

-and-

WILTSHIRE COUNCIL
Interested Party

- -
- -

Mr John Steel QC (instructed by **Wilsons Solicitors LLP**) for the **Claimant**
Mr Robert Williams (instructed by the **Government Legal Department**) for the **Defendant**
Mr Hashi Mohamed (instructed by **Wiltshire Council Legal Department**) for the **Interested Party**

Hearing dates: 6 and 7 May 2020

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Approved Judgment

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic

MR JUSTICE ROBIN KNOWLES CBE

Robin Knowles J:

Introduction

1. Old Sarum Airfield ("the Airfield") is close to the city of Salisbury in Wiltshire. Continuous flying activity from its grass airstrip has been maintained since the First World War. The Airfield has been authoritatively identified as one of the best-preserved flying fields of the period. Only three First World War airfields with a grass airstrip survive in England & Wales.

2. Technical buildings (each listed Grade II) and three hangars (each listed Grade II*) still have a functional relationship with the airstrip and comprise one of the most complete suites of technical and hangar buildings of the period. In the Second World War the hangars were used to support the work of the Air Observation Unit, the Special Operations Executive and the Royal Canadian Air Force. One of the hangars is in poor condition. Associated historic buildings have been subsumed into a more modern industrial estate made up of large late 20th century industrial sheds.

3. In 2007 the Airfield was designated a Conservation Area. Another Conservation Area, the Stratford sub Castle Conservation Area, is nearby. There is a Roman road, known as the Portway, in the area.

4. The choice of location for the Airfield came in the footsteps of a remarkable earlier history of defence and engagement in the area dating back to the Iron Age with fortifications over the Roman, Norman and Saxon periods. The Airfield is within the setting of a Scheduled Ancient Monument which includes a large motte and bailey hillfort ("the Hillfort"). When viewed from the ramparts of the Hillfort or in landscape views, the Airfield is a foreground feature.

5. Today the Airfield is operated as a commercial and civilian airfield, including for leisure and training flights. Over time there have been issues relating to aircraft noise in the vicinity, including over Salisbury.

6. The relevant local planning authority, Wiltshire Council ("the Council") recognises the possibility of new development at the Airfield but only where (in particular) this is part of a long-term strategy and is of high quality, enhancing the historic environment and the Conservation Area, protecting the amenity of existing residents and safeguarding flying activity from the Airfield. The Council's Development Plan includes a Core Strategy ("CS") with a site-specific policy ("CS Core Policy 25") relating to development on the Airfield.

7. Old Sarum Airfield Limited ("the Claimant") has a proposal for mixed-use development ("the Proposed Development"). The Council opposes this proposal on a good number of grounds. After an inquiry ("the Inquiry") an Inspector ("the Inspector") appointed by the Secretary of State for Housing Communities and Local Government ("the Secretary of State") refused planning permission to the Claimant for the Proposed Development ("the Decision").

8. The Inspector was also to describe the position of the Claimant and the Council as at a "point of impasse … in respect of negotiations", with "the partnership between the Council and [the Claimant] … degenerated". The Inspector observed:

> "This is a disappointing position to be in on a site where there is a commitment to the development of the Airfield, subject to policy criteria, through an adopted Development Plan policy and where there is a clear public benefit centred on improving residential amenity in the immediate and wider community."

9. The Inspector however emphasised:

> "The historic importance of the Airfield and its long-term future as a flying hub along with the need to enhance its historic character must be at the forefront for those involved in the development of a suitable masterplan …".

10. The Claimant challenges the decision of the Inspector to refuse planning permission for the Proposed Development ("the Decision"), under section 288 of the Town and Country Planning Act 1990 ("the 1990 Act"). This is my judgment on the substantive hearing of that challenge.

The grounds of challenge

11. There are, ultimately, three grounds of challenge or proposed challenge to the Decision. The three grounds are in summary (renumbering them from the original):

    (1) The Claimant contends that the Inspector failed to determine and then take into account and weigh a number of significant public benefits of the Proposed Development, and in this failed properly to apply paragraph 196 of the National Planning Policy Framework.

    (2) The Claimant contends that the reasons given by the Inspector do not meet the standard of reasons required, and that the Claimant has suffered substantial prejudice as a result.

    (3) The Claimant argues that the Inspector's decision making was irrational and unfair.

Paragraph 196 National Planning Policy Framework

12. Paragraph 196 of the National Planning Policy Framework (the "NPPF") is in these terms:

> 'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

13. Planning Practice Guidance issued by the Ministry of Housing, Communities and Local Government states, at paragraph 020 under the heading "What is meant by the term public benefits?":

> "… Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.
>
> Examples of heritage benefits may include:
> - sustaining or enhancing the significance of a heritage asset and the contribution of its setting;
> - reducing or removing risks to a heritage asset;
> - securing the optimum viable use of a heritage asset in support of its long-term conservation."

CS Core Policy 25

14. The site-specific policy in the Council's Development Plan is in these terms:

> "New development will only be permitted on Old Sarum Airfield if it delivers:
>
> i. a long-term proactive strategy for the enhancement of the Conservation Area, including management plan and public access and visitor/interpretive material on its historic relevance;
> ii. a high quality strategic landscape improvement to mitigate impacts of existing intrusive buildings, to soften impacts when viewed both out and into the Conservation Area and from Old Sarum Scheduled Ancient Monument;
> iii. the completion of a legal agreement (section 106) to agree reasonable controls over flying activity in the interests of the amenity of local residents;
> iv. submission, agreement and implementation of a development masterplan, which delivers a high quality development that takes opportunities to enhance the historic environment and protects the amenity of existing residents;
> v. retains and safeguards flying activity from the airfield;
> vi. community benefit for the Old Sarum residents."

9. CS Core Policy 25 is accompanied by explanatory text including:

> "5.133 Old Sarum Airfield dates from the First World War and is one of the best preserved in the country as it has remaining technical buildings and three listed hangars, which still have a functional relationship to the grass airstrip. The facility is highly valued locally for the historical and recreational opportunities it provides. However, there are a number of issues relating to the site that this Core Strategy seeks to resolve.

> 5.134 The heritage value of the airfield has been damaged by the intrusion of functional late 20th century industrial sheds, which compromise its historic character. There are no controls over the level and intensity of flying activity from the airfield, and there has been a long history of complaints from local residents about the noise, which has been caused largely by aeroplanes flying over the city, in training circuits, especially during the summer months. While there is no local wish to prevent flying altogether, there is a desire to seek some control and strike an appropriate balance between the flying activity and amenity of Salisbury's residents.
>
> 5.135 This strategy will allow sympathetic new development on the airfield perimeter, including high quality residential use, where it can be fully demonstrated that it will deliver the outcomes identified in the following policy. The Masterplan will be developed in partnership with the local community, local planning authority and the developer prior to any application being considered."

15. Figure 5.16 delineates the areas for potential development subject to meeting the criteria in CS Core Policy 25.

16. The Inspector was to say of CS Core Policy 25, at [64] in the Decision:

> "CS Core Policy 25 is an up to date policy seeking to facilitate a strategy allowing sympathetic new development on the airfield perimeter. Its aim is ensuring that any development over the airfield area is closely controlled, of a high quality, able to enhance the historic environments and will deliver the benefits required by policy."

The Proposed Development

17. The proposal by the Claimant ("the Proposal") was for demolition, modification and renovation of existing buildings and structures, and site development to provide residential land accommodating approximately 462 residential dwellings. There would be a mixture of employment, commercial/leisure and office use and aviation uses. The aviation use would include a flying hub comprising a new control tower, heritage centre, visitor centre, café/restaurant, parachute centre, aviation archives and aircraft hangars.

18. The Proposal provided for associated access, including the construction of new points of vehicular access to the surrounding highways network, car parking and connections to the surrounding footpath and cycle networks. Green infrastructure provision would include open space, play space, recreational footpaths and landscape enhancement areas. There would be provision of above and below ground utilities, including a sustainable urban drainage system. Associated vegetation removal, ground modification and engineering works were also proposed.

19. The Proposal was in outline, with all matters reserved apart from access. The Inspector noted that it had been agreed between the Claimant and the Council that an outline application was appropriate so as to maintain flexibility of design and layout for the stage when reserved matters would be considered and that there was no requirement for a full planning application.

The Inquiry

20. The Inquiry was commenced on 9 October 2018. In form it was an appeal under section 78 of the 1990 Act by the Claimant.

21. The Inquiry sat for nine days between October 2018 and February 2019. The Inspector conducted an initial site visit on 10 October 2018 and an accompanied site visit on 14 February 2019.

22. The Decision was made by the Inspector on 11 July 2019 in a decision letter of that date ("the Decision Letter").

Authority

23. In a passage that is well-known, in South Bucks District Council v Porter (No 2) [2004] UKHL 33; [2004] 1 WLR 1953 Lord Brown of Eaton-under-Heywood explained, at [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. Lindblom LJ later "stated … and reinforced" the principles that "will guide the court in handling a challenge under section 288" in St Modwen Developments Ltd v SSCLG [2017] EWCA Civ 1643 at [6]-[7]

> "…
> (1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those

issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).
(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks* ... at p.1964B-G).
(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 741, at paragraph 6).

… this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell*, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63).”

The Decision Letter

25. At [18] in the Decision Letter the Inspector said that “based on all [she had] heard, seen and read” she considered “the overriding main issue” to be:

> “… whether the proposed development would preserve or enhance the character or appearance of Old Sarum Conservation Area, the Stratford sub Castle Conservation Area, and whether it would preserve the setting and architectural and historic interest of the listed buildings on the Airfield, and in particular the hangars in terms of significance of the buildings and Airfield as a whole, along with the impact on the Old Sarum Scheduled Ancient Monument ….”

26. After considering the effects of the Proposed Development on the heritage assets involved the Inspector explained (at [47]) that she had reached the view:

> "… the appeal proposals would represent change in the significance and setting of these designated and non-designated heritage assets. The proposed development would represent an erosion of the open character and appearance of the Airfield Conservation Area, the setting of the listed hangars and that of the Old Sarum [Scheduled Ancient Monument]. In all of these cases, openness is a fundamental element of their significance. However there would not be a total loss of significance and so the appeal proposal, as a totality, would lead to less than substantial harm to the significance of designated heritage assets."

27. Having reached that view, the Inspector said (at [49]), by reference to paragraph 196 of the NPPF that "the less than substantial harm to the significance of the designated heritage assets should be weighed against the public benefits of the proposal, including securing its optimum viable use."

28. From [50] to [61] the Inspector addressed public benefits in turn, noting that she did not do so in order of importance. The benefits she addressed were as follows.

29. First, the Inspector referred to "[s]ecuring the restoration of the listed Hangar 3", saying (at [50]):

> "As I saw at my site visit the hangar is still in limited use, but its roof and internal roof structure are in need of considerable works. … The timely restoration of the hangar would be to halt the current deterioration of the condition of the building, preserving it as a building of national importance. Even in the context of the possibility that the building would be repaired outside of the proposed scheme I ascribe considerable weight to the early reversal of the hangar's current decline."

30. Second, the Inspector referred to "[t]he removal of unsympathetic more recent buildings and structures". The Inspector noted that these had no historic value. Their removal from the area in the foreground of the hangars and on the edge of the flying field, would in her assessment (at [51]):

> "… certainly improve the immediate setting of the hangars and enhance the character and appearance of the Airfield Conservation Area. By returning this central area of aviation activity to something more akin to its WW1 origins would amount to a public benefit creating a further insight into the development of the Airfield."

31. Third, the Inspector referred to "[i]mprovements to the flying field, including the re-orientation of the grass runway" (at [52]-[53]). The Inspector noted that these "would allow rare historic aircraft such as Spitfires to land". She concluded that "this would be an important enhancement of the Airfield and consequently to the character of the Conservation Area as not only would flying be maintained" (referring to CS Core Policy 25 at v.) but it "would facilitate the reintroduction of historic aircraft with a close association with the military past of the site". The Inspector also observed (at [53]):

> "The re-alignment of the airstrip would also serve to reduce the overflying of the Old Sarum [Scheduled Ancient Monument], This would reduce noise in the

immediacy of the [Scheduled Ancient Monument] itself which would enhance its character."

32. Fourth, at [54] the Inspector referred to "[e]xtension and improvement of the existing flying hub" which would "provide services to facilitate public access, including a resource centre, aviation archive and café/restaurant for visitors and those actively using the site" (see CS Core Policy 25 at vi.). The Inspector continued:

> "Such facilities would enhance the character of the Conservation Area, improving public access in terms of movement around the site to appreciate flying activities via cycleways and circular pathways."

It would also "increase connectivity across the site and from Ford Village over to the Portway" (see CS Core Policy 25 i. and vi.).

33. Fifth, the Inspector referred to "[p]rovision of landscaped and amenity areas to encourage public access and enhance the appearance of the flying field and an appreciate and access to heritage assets" (see [55]).

34. Sixth, the Inspector referred to "[c]ontrol of flying movements" which are currently unrestricted (see [56]). The Inspector took the view that the provision of an appropriate mechanism to secure the restriction of hours of use for flying purposes and type of aircraft using the Airfield would be a significant public benefit. Footnote 44 to the Decision Letter noted an offer of the removal of helicopter flying or training from the Airfield to improve residential amenity for those living in Ford in respect of noise. Reference was also made to control of the number of aircraft movements. The Inspector noted that proffered monitoring and reporting of aircraft noise would serve to oversee the reasonable controls sought, although adding (at footnote 45) that "[t]he mechanism to secure the proffered restrictions of current unfettered usage and consequent noise levels, in my view, needed to reflect the requirement set out in CS Core Policy 25 iii there being rights over private land involved". Resultant improvements to the amenities of local residents should be given considerable weight in any balancing exercise in the Inspector's view.

35. Seventh, the Inspector referred at [57] to "[r]e-establishment of the line of the Roman road" to enhance the experience of the Scheduled Ancient Monument, along with resource and interpretive material. The resource "would also be provided around the Airfield to enhance understanding and appreciation of its history and development".

36. Eighth, even though it was accepted there was already a 5 year Housing Land Supply, the Inspector noted at [58] that the proposed new homes would nonetheless serve to contribute to the Government's objective of significantly boosting the supply of homes.

37. Ninth, the Inspector referred to the position should planning permission not be granted (see [59]-[60]). In that situation the Inspector found that most of the benefits outlined would not happen, particularly in relation to the more controlled movements of aircraft of all types. Therefore, the Inspector recorded, one of the policy aims would not be delivered. The business park would also remain as "an obvious hard urban, unsympathetic feature within the setting of heritage assets". The condition of Hangar 3

would likely further deteriorate. The Inspector regarded all of these as "weighty matters which do need to be added to the balance" of the decision the Inspector had to make.

38. Tenth, at footnote 51 to the Decision Letter the Inspector recorded that she took into account implied economic benefits of the scheme "both during construction as well as into the future".

39. The Inspector was to describe (at [65] in the Decision Letter) these public benefits cumulatively as "a goodly number", and as including a number of the criteria in CS Core Policy 25.

40. The Inspector described the heritage balance that she struck under NPPF paragraph 196, saying (at [61]-[63] in the Decision Letter; I omit footnotes):

> "The identified public benefits … do present cumulatively considerable weight to be added in the heritage balance set out in [NPPF] paragraph 196, along with the presumption that preservation is desirable.
>
> However, the resultant erosion of the open character and appearance of the Airfield Conservation Area and the setting of the Old Sarum [Scheduled Ancient Monument] and the listed hangars and other associated buildings, whilst constituting less than substantial harm in [NPPF] terms, would not preserve the setting of the listed buildings/[Scheduled Ancient Monument], nor would it preserve or enhance the character or appearance of the Old Sarum Conservation Area in the circumstances of the overall scheme as currently proposed. This would result in an inordinate amount of harm to heritage assets. The considerable importance and great weight which I ascribe to this identified heritage harm would outweigh the public benefits which would ensue from the development.
>
> On the face of it then the heritage harm would be enough the reject the proposal at this stage."

41. The Inspector nonetheless (at [64]-[68]) addressed the planning balance. She explained that she did so because she was "conscious that the Development Plan supports the principle of new development at the Airfield under the terms of CS Core Policy 25".

42. The Inspector here referred in particular to CS Core Policy 25 criteria iv ("the submission, agreement and implementation of a development masterplan which delivers a high quality development that takes opportunities to enhance the historic environment and protects the amenity of existing residents").

43. The Inspector's assessment was that the Claimant's Illustrative Master Plan and associated material had shortcomings and that the historic environment would not be enhanced. She said (I omit the footnote):

> "The required high quality development would not be delivered on current showing, nor would a strong sense of place be created, drawing on context, in this instance being the heritage assets and being complimentary to the locality."

She added at footnote 54 that:

> "The proposal as presented in illustrative form does not convince me of the quality of the development nor its compatibility with the sensitive historic environment of which the appeal site forms a characterising component part."

44. The Inspector concluded at [69]:

> "I am conscious that there may or may not be other harms to put into the balance of this decision. The heritage harm I have identified, along with the specified harm resulting from the conflict with the Development Plan, are sufficiently weighty [by footnote 58 she added "great and over-riding weight"] to clearly out-weigh the benefits of the proposal. They are also material considerations leading to a conclusion that the presumption in favour of sustainable development is not engaged. On this basis, it would not be productive in the context of this appeal to examine matters further."

Ground (1): Public Benefits

45. As has been seen, the Inspector found that the Proposed Development would lead to harm to the significance of a designated heritage asset, but that the harm would be "less than substantial".

46. As the Inspector recognised, in those circumstances paragraph 196 of the NPPF requires the harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The Inspector properly ascribed "great weight" to the heritage harm. She identified ten public benefits or categories of public benefit against which the harm was to be weighed.

47. The Claimant contends that there were four more public benefits that were significant but were not taken into account and weighed against the harm by the Inspector. These were (1) highway capacity, road safety and health, (2) biodiversity and ecology, (3) sustainability; and (4) landscape. They were each, contends the Claimant, material considerations which the Inspector was required to take into account.

48. Mr John Steel QC, appearing for the Claimant, argued that each of these additional claimed public benefits was capable of being given significant weight and, either singly or together with the other benefits of 'considerable' weight that the Inspector did acknowledge and did take into account, was capable of outweighing the heritage harm found by the Inspector to be caused by the Proposed Development.

49. Mr Steel QC argued that additional claimed public benefits (1) to (3) were not mentioned by the Inspector in the Decision. That, he argued, is a clear indication that they were not taken into account and weighed against the harm. The argument that additional claimed public benefits (1) to (3) were not mentioned does require some refinement, as shown below.

Additional claimed public benefits (1) and (2)

50. Health benefits were associated with the opening up to public use of a network of open spaces, public footpaths and cycleways around the Airfield. Mr Steel QC acknowledged that cycleways and pathways were considered by the Inspector in the Decision Letter. He argued that the context for that consideration was limited but I am not persuaded by that narrow textual argument.

51. It is nonetheless correct that highway capacity and road safety (further parts of additional claimed public benefit (1)) were not identified as public benefits by the Inspector in the Decision Letter. The same is correct for additional claimed public benefit (2) (biodiversity and ecology).

52. Mr Steel QC highlighted that the highways consequences of the proposals had been claimed as benefits by the Claimant throughout the development process. As well as cycleways and pathways, traffic congestion would be relieved (through improvements to Castle Roundabout) and road safety would be enhanced (including in Ford through traffic management and other improvements to the highway network).

53. In response Mr Robert Williams for the Secretary of State brought out the point that in their evidence to the Inquiry, the parties' primary focus in relation to these areas was on whether the Proposed Development would cause harm rather than on whether it would give rise to public benefits. The Council had advanced concerns that the Proposed Development would give rise to highway safety issues (in particular in what was described as Area C) and, as regards biodiversity and ecology, that the Proposed Development would have an adverse impact on corridors used or potentially used by bats for foraging and commuting (along what was known as the Green Lane boundary).

54. The Inspector began paragraph [69] of the Decision Letter with the sentence "I am conscious that there may or may not be other harms to put into the balance of this decision".

55. It is in my judgment plain that what the Inspector had concluded was that (cycleways and pathways apart, which were considered, and as benefits), additional claimed public benefits (1) and (2) were not material public benefits that could add weight in the balance. Indeed, there might (in line with the Council's concerns) in fact be positive harms in these respects, but she did not need to go on to reach a conclusion on that.

56. Mr Steel QC argued that the sentence that begins paragraph [69] of the Decision Letter "amounts to an admission by the inspector that she did not consider whether other harms existed". But ground (1) of the Claimant's challenge is concerned with benefits not harms. In the final analysis what matters, on the Claimant's own contention on this challenge, is whether public benefits that are significant or material were not taken into account by the Inspector and weighed against the heritage harm.

57. Mr Steel QC argued that the Inspector did not consider whether additional public benefits claimed by the Claimant were harms or benefits, but in my judgment, she did just that in explaining what she concluded were the material public benefits, ten in number, of the Proposed Development. It was for her to make that assessment. What the Claimant saw as additional public benefits in the areas of highway capacity, road safety, ecology and diversity, did not in the present case result in overall material public benefit in those areas, and there might even have been harm.

58. Mr Steel QC added that mitigation measures to overcome a harm may result in public benefits. In my judgment the Inspector's decision must be understood to be saying that, even if it might be the case that mitigation measures overcame harm, the measures did not go beyond that.

Additional claimed public benefit (3)

59. The Inspector did in fact address sustainability (additional claimed public benefit (3)), at [69] in the Decision Letter, quoted in full above. However, the Claimant goes on to contend that the Inspector came to no conclusion on whether the proposed development was sustainable.

60. At [69] in the Decision Letter the Inspector said that the heritage harm and the specified harm resulting from the conflict with the Development Plan were "material considerations leading to a conclusion that the presumption in favour of sustainable development is not engaged". In my view that is to be understood to convey that if the proposed development was (as the Claimant argued) sustainable, then the harm outweighed it.

61. That is an acceptable approach. It takes the Claimant's case on sustainability at its highest. It reveals that even if that is done the balance is against the Proposed Development. Thus, it was not necessary for the purposes of the Decision to reach a conclusion on whether the Proposed Development was in fact sustainable in the ways the Claimant considered it to be.

Additional claimed public benefit (4)

62. This leaves landscape benefits (additional claimed public benefit (4)). Mr Steel QC described as significant the landscape benefits claimed by the Claimant in its final submissions to the Inspector. He highlighted that they included improvements to the landscape of the area to the benefit of residents, users of the airfield, visitors and tourists, including by obscuring nearby modern development around the site, and overall would bring about positive enhancement to the countryside. He pointed out that the Local Planning Authority's landscape officer found the proposals to be acceptable.

63. Mr Steel QC accepts that this additional claimed public benefit was considered in the Decision Letter in the context of heritage. His argument is that the Inspector did not go on to take into account and weigh the claimed landscape benefits against the harm.

64. This is an argument that cannot succeed. Paragraphs [61]-[63] of the Decision Letter referred to "identified public benefits". Landscape was the fifth of the ten benefits identified and addressed in turn by the Inspector. The Inspector took all "identified benefits" and gave them "cumulative[ly]" "considerable" weight. In the Inspector's judgment it was not enough however to outweigh the harm.

65. More specifically, the Inspector took account (at [55]) of "[p]rovision of landscaped and amenity areas to encourage public access and enhance the appearance of the flying field and an appreciate and access to heritage assets". And at [59] the Inspector treated the fact that without the Proposed Development the existing business park would remain

"as an obvious hard urban, unsympathetic feature within the setting of heritage assets" and said this was "a weighty matter". The Claimant has, with respect, no ground at all for complaint about the Decision here.

Ground (2): Reasons

66. The Inspector was of course under a duty to give reasons for her decision. Rule 19 of the Town and Country Planning Appeals (Determination by Inspectors) (Inquiry Procedure) (England) Rules 2000 makes this duty express.

67. The Claimant argued that the following were four "main issues", invoking the terminology of Lord Brown in South Bucks District Council v Porter (No 2) (above), and that the Inspector was required to give reasons on each: (1) highways and road safety; (2) noise impacts; (3) biodiversity and ecology; (4) viability and deliverability of the scheme. Mr Steel QC added that the Inspector should also have dealt more fully with landscape benefits and reached a decision with reasons on each of the "other harms" (cf. benefits) the possible existence of which was acknowledged at [69] in the Decision Letter.

68. Mr Steel QC reviewed the history of the progress in the present matter of the four "main issues" as the Claimant identifies and defines them. He brought out that they had been the subject of extensive discussions and negotiations between the Claimant's experts and planning officers before and during the Inquiry, and he highlighted the following. They were the subject of reasons for refusal on the part of the Council and the subject of the Council's Statement of Case. They had previously been identified by the Inspector as 'preliminary' main issues in a Pre-Inquiry Note, as 'matters to be addressed at the inquiry' 'which the inquiry should focus principally on'. They were stated by the Inspector and agreed by the parties at the opening of the Inquiry to be main issues to be considered at the Inquiry. They were the subject of expert evidence and cross examination during the Inquiry as appropriate (with noise and ecology considered through round table discussions). They were identified as main issues within, and were the subject of, closing submissions of the Council and Claimant.

69. Mr Williams brought out a counterbalance to a number of these points. He showed that the Claimant's evidence included evidence to suggest lack of harm to ecology and that highway issues did not give reasons warranting refusal. This was to be contrasted with positive evidence of material benefit.

The extent of the duty to give reasons

70. Mr Steel QC's argument specifically included the proposition that the duty to give reasons extends to issues that are "main issues" even where not determinative. For the Secretary of State Mr Williams described the proposition as novel, not supported by authority and misconceived.

71. Mr Steel QC founded the proposition on Lord Brown's reference in South Bucks DC v Porter (No 2) that reasons referring to "main issues":

> "… 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."

72. The planning context was, argued Mr Steel QC, not the same as for judgments in much civil litigation in the courts. The purpose of pursuing the Inquiry before the Inspector was, argued Mr Steel QC, to obtain a determination with reasons on all "main issues". In the planning context, reasons on all "main issues" would, he argued, give guidance to persons who have interests in respect of property in order to settle disputes including over the application of facts to policy within a statutory framework. He added that both Parliament and HM Government have made it clear that there is a general requirement for planning decision makers to support the planning application process by developers so that sustainable development comes forward to create economic, social and environmental benefit through the planning system. Mr Steel QC referred to the requirement of a positive and proactive approach to seek solutions to problems arising when planning authorities are dealing with planning applications. The duty on inspectors to give reasons in their Decision Letters which assist unsuccessful developers is part of this positive approach of the planning system, he argued.

73. A material part of the reason why a decision maker at a planning inquiry must give reasons on each of the "main issues" was, argued Mr Steel QC because substantial prejudice might otherwise be caused to a developer. Substantial prejudice caused to the Claimant by what he suggested was the Inspector's failure to deal with the "main issues" "other than heritage" lay at the heart of the present case, said Mr Steel QC. He highlighted the presence of CS Core Policy 25 as a site-specific policy supportive of development, subject to meeting stated criteria, and the presence of significant amenity concerns as the result of the fact that flying activity was presently unlimited by any planning restriction.

74. The Claimant's evidence was that negotiations with the Council as the local planning authority had reached their full extent. On the Claimant's case there was no indication as to how the Claimant can move forward in seeking to develop. Another refusal, appeal and public inquiry would likely follow. The staff resources used (by all sides), and the cost and delay would be substantial.

75. The above is particularly significant, argued Mr Steel QC, in the context of the Decision and what the Inspector added when later dealing with costs:

> "I hope that both sides will work together to find an acceptable way forward for this site in the context of the spirit of the Development Plan policy, delivering the identified benefits for residents and preserving and enhancing this nationally important heritage asset, whilst fulfilling its potential of revitalising the flying field, paying respectful homage to its past and embracing its future firmly based in a continuation of flying from the Airfield."

76. In my judgment the proposition that the duty to give reasons extends to issues that are "main issues" even where not determinative is not sound. In the reference relied upon in my view Lord Brown was explaining an aspect of the value of reasons. He was not

requiring reasons on issues that did not in the event affect the determination. In paragraph [36] itself Lord Brown made clear he was dealing with reasons "for a decision", and citations in earlier paragraphs make this quite clear. Lindblom LJ is to the same effect, referring to "the reasons for an appeal decision".

77. Sometimes in litigation the term "issue" or "main issue" may be used when what is being referred to is simply a topic or subject (or "matter", to use a term used by the Inspector). That is the sense on which the words were used in some of the early stages in the present Inquiry highlighted by Mr Steel QC, and indeed at times by the Claimant on this appeal (eg "highways and road safety" is a topic).

78. Used more precisely, an "issue" or "main issue" is a question. To be relevant, the question is one the answer to which bears on the outcome. A case may begin with a number of issues, in the sense that they are questions to which the answer is not common ground and on which the outcome may turn. By the time of a decision an issue may no longer be relevant. An obvious example is an issue on quantum or interest when the decision is that there is no liability.

79. For an issue to be a "main issue" for the purpose of the duty to give reasons it has to contribute materially to the outcome of the case. This is clear from what Lord Brown said in the fuller passage from which Mr Steel QC extracts the reference on which he relies. Lord Brown spoke of reasons "enabl[ing] the reader to understand why the matter was decided as it was" and of "conclusions … reached on the principal important controversial issues" and of "the issues falling for decision". Only then does he continue with the reference on which Mr Steel QC relies.

80. This is why Mr Steel's review of the history of "issues", before and during the Inquiry, to support of the proposition that these were "main issues" is, with respect, of limited assistance. The stage that matters is the stage of the decision.

The present case

81. Two of four "main issues" were among the four additional claimed public benefits that under Ground (1) the Claimant contends were not taken into account or weighed: highways and road safety, and biodiversity and ecology. So too were landscape benefits, which whilst not among the four suggested "main issues" nonetheless attracted the criticism from Mr Steel QC that they should have been dealt with more fully. Two of the four "main issues" (noise impacts and viability and deliverability) were not among those four additional claimed public benefits, at least in terms.

82. Of course where a public benefit is claimed there may be an issue whether there is a public benefit. If there is a public benefit then, given NPPF paragraph 196, the issue may be whether harm to the significance of a designated heritage asset to which a development proposal will lead is outweighed by that public benefit and other public benefits of the proposal.

83. In the present case the Inspector's assessment was that the "overall scheme as currently proposed" would result in "erosion of the open character and appearance of the Airfield Conservation Area and the setting of the Old Sarum [Scheduled Ancient Monument] and the listed hangars and other associated buildings". A "main issue" or "principal

important controversial issue" was whether that harm outweighed the public benefits which would ensue from the Proposed Development. There is no question that the Inspector gave reasons for her answer to that issue. And in order to answer the issue she identified which claimed public benefits she accepted were public benefits or by showing that even were there the claimed public benefit the harm outweighed it.

84. I should say a little more on noise impacts, and on viability and deliverability, as they were not, at least in terms, among the four additional claimed public benefits discussed under Ground (1).

Noise controls

85. In dealing with the third and sixth identified public benefits the Inspector noted that the Development Proposal "would allow rare historic aircraft such as Spitfires to land" and this was something that would enhance the character of the Conservation Area. The re-alignment of the airstrip would also serve to reduce the overflying of the Old Sarum Scheduled Ancient Monument, reducing noise in the immediacy of the Scheduled Ancient Monument itself, and enhance its character. The Inspector referred to "[c]ontrol of flying movements" which are currently unrestricted. She took the view that the provision of an appropriate mechanism to secure the restriction of hours of use for flying purposes and type of aircraft using the Airfield would be a significant public benefit.

86. Footnote 44 to the Decision Letter noted an offer of the removal of helicopter flying or training from the Airfield to improve residential amenity for those living in Ford in respect of noise. The Inspector noted that proffered monitoring and reporting of aircraft noise would serve to oversee the reasonable controls sought, although adding that "[t]he mechanism to secure the proffered restrictions of current unfettered usage and consequent noise levels, in my view, needed to reflect the requirement set out in CS Core Policy 25 iii there being rights over private land involved". Resultant improvements to the amenities of local residents should be given considerable weight in any balancing exercise in the Inspector's view.

87. In these circumstances it is impossible to accept the Claimant's contention that the Inspector gave inadequate treatment to the subject of noise controls. Moreover, subject to qualification on the point of monitoring and reporting, she treated it as a public benefit, in favour of the Claimant.

Viability and deliverability

88. Of viability and deliverability, the Amended Statement of Facts said (omitting footnotes):

> "… The Council called expert witness District Valuer Service evidence and argued that the Appeal Scheme was not viable, could not therefore deliver the associated infrastructure required by [CS Core Policy 25] and should be refused on that basis in any event. This was not accepted by [the Claimant] and was challenged and rebutted in its expert valuer evidence and submissions. The Claimant's and Council's evidence on this issue was extensive and took up much time at the public inquiry. Viability and consequently deliverability of associated

> infrastructure and mitigation was during the public inquiry argued by the Council to be fundamental, go to the root of the case and delivery of Development Plan policy. It was complicated, contentious evidence and highly relevant as recognised by Main Issue (f) identified by the inspector, namely whether deliverability of site specific [CS Core Policy 25] criteria and a range of identified planning benefits could be effected. A substantial part of [the Claimant's] closing submissions were dedicated to the issue of viability due to the relevance, complicated nature and importance of this issue at the public inquiry …".

89. This shows viability and deliverability in context. The Claimant was defending the idea that the Development Proposal was not viable. The Inspector did not conclude that it was not viable. But that could not help Claimant where, assuming viability and deliverability, the heritage harm (and the conflict with the Development Plan and specifically CS Core Policy 25) outweighed the benefits. The Inspector explained this well enough within [69] of the Decision Letter.

Overall conclusion on Ground (2)

90. Overall, the Inspector explained why the Inquiry was decided as it was and what conclusions were reached on the "principal important controversial issues".

91. But more than that, the Decision does not fail to inform the Claimant as developer in relation to future proposals. Far from it. The Decision reveals that the crucial focus is less on the public benefits (important as they may be, including their quality) and more on avoiding "erosion of the open character and appearance of the Airfield Conservation Area and the setting of the Old Sarum [Scheduled Ancient Monument] and the listed hangars and other associated buildings", together with the quality of development and its compatibility with the sensitive historic environment.

Ground (3): Rationality

92. This proposed ground requires the court's permission before it may be pursued as it was not raised originally.

93. The Claimant contends that it was irrational for the Inspector to conclude that the Proposal's impact on the historic environment together with its compliance or otherwise with CS Core Policy 25 were the sole main issues which remained for consideration by the Inspector at the close of the inquiry. Further, given the extensive time and resources expended by the Claimant on the process, the Claimant contends it was unfair that the Inspector did not consider and deal with each of what the Claimant contends are "main issues" and give proper and adequate reasons in relation to each of them.

94. I consider that this proposed Ground is met by the answers to and treatment of Grounds (1) and (2). It is not arguable that there was irrationality or unfairness. I refuse permission for Ground (3).

Conclusion

95. The Claimant's challenge fails.

96. In preparation for and at the hearing before me the parties engaged in a way that was highly adversarial. In my view the encouragement of the Inspector to the Claimant and the Council to work together was well placed.

97. Mr Steel QC referred in reply to the public interest involved. To my mind that underlines the responsibility that all the parties have to address constructively and with care what Mr Hashi Mohamed for the Council rightly described in oral argument as "a highly sensitive matter, at national and local level".

98. Subject always to the, centrally important, statutory protections and requirements where national and local heritage is concerned, CS Core Policy 25 provides a framework of reference. The current position with the Airfield has some negative consequences for all. With care, rigour, respect for the - quite remarkable - heritage involved, a commitment to quality and a constructive approach I cannot see that an outcome involving appropriate development need elude the parties. A statement of common ground, absent in the present case as Mr Mohamed highlighted, would be crucial in any future dialogue, as something on which the parties could build, quite apart from its value should there really need to be any future proceedings.

99. To that end there is a great deal in the Decision, for which this judgment is no substitute, that repays constructive reading by the parties.