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

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday, 26 November 2009

B e f o r e:

ROBERT JAY QC
(SITTING AS A DEPUTY HIGH COURT JUDGE)

Between:

**THE QUEEN ON THE APPLICATION OF SAMUEL SMITH OLD BREWERY
(TADCASTER)_**

Claimant

v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT_
Defendant

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MR P VILLAGE QC and MR A TABACHNIK (instructed by PINSENT MASONS)
appeared on behalf of the **Claimant**

MR J MAURICI (instructed by THE TREASURY SOLICITOR) appeared on behalf of the
Defendant

J U D G M E N T
(Approved)

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THE DEPUTY JUDGE:

Introduction

- 1.1. On 23 April 2009, the defendant's inspector quashed enforcement notices issued against Mr and Mrs Hutchinson by the relevant local planning authority, Selby District Council, and granted planning permission for the retention of a building in the Green Belt, on land at the Hazlewood Equestrian Centre, Stutton. The inspector concluded that the building was 'appropriate development' for the purposes of relevant governmental green belt policy, namely, PPG2.
- 1.2. The parties agree that the inspector's decision cannot stand, that the planning permissions must be quashed, the enforcement notices reinstated, and the case, namely Mr and Mrs Hutchinson's section 174 appeal, remitted for reconsideration by another inspector appointed by the defendant. However, the parties are not in agreement as to the basis for such a remittal.
- 1.3. The defendant's position is that the inspector's decision is flawed for procedural reasons, and that it is unnecessary and inappropriate for this court to go further than this. The claimant says the court should examine both the inspector's reasons for concluding that the building was 'inappropriate development', and his conclusion on that issue. It contends that the only reasonable conclusion on the facts of this case is that the building was 'inappropriate development' as explained in PPG2. I am invited to give a narrative judgment to that effect and, if necessary, order declaratory relief.

The parties, the site and the building.

- 1.4. For the purposes of this judgment I will identify the Hazlewood Equestrian Centre as "the site", and the building the subject of the enforcement notices and application for planning permission as "the building". Selby District Council I will describe as "the Local Planning Authority".
- 1.5. The claimant is a well known brewery which occupies a substantial presence, particularly in the North of England. It, and other members of the Sam Smith Group, owns farmlands in the district of Selby. The site is within 5 kilometres of one public house owned and operated by the claimant, and a separate farm. The site and the claimant's properties are all within the Green Belt. There can be no doubt but that the claimant has standing, at the very least, to pursue its application for judicial review, and Harrison J so ruled on 17 July 2000. I will need to re-examine this question in relation to the claimant's statutory appeals.
- 1.6. Mr and Mrs Hutchinson started a business on the site in 1992. The plan, at bundle 2, tab 23, page 392, submitted in support of a planning application to which I will come in due course, shows the existing stables on the site. These could accommodate eight to nine horses. The Hutchinsons' planning expert retained for the purposes of the 1999 appeal refers to nine stables. The building, namely what was then described in the plan as 'a proposed equestrian centre' is also shown on the plan. The building is significantly larger than the existing stables and is not contiguous with them. The

evidence before Mr Michael Supperstone QC, sitting as a deputy judge in 2008, was that the building is 'substantial' with a total floor space of 416.5 square meters; and is 3.7 meters to eaves, and 6.35 meters to ridge. The building is internally divided to provide some 17 stables, and also houses a horse-walking machine.

- 1.7. The Hutchinsons' business, at all material times, has involved, in short, the foaling; rearing; sale; preparation; and breaking of thoroughbred horses ready to go into full training. Outdoor sport and recreation is not the primary purpose of the building (see DL9 and 21 of the current inspector's decision letter).

The planning history of the site

- 1.8. This is lengthy, extraordinary, and, in many ways, troubling. In my opinion, the perseverance of the claimant has been matched only by the vacillation of the Local Planning Authority. It is necessary to explain the lengthy planning history because it sets the context for the inspector's decision currently under challenge.
- 1.9. It is common ground between the parties that for the past 10 years, everyone has proceeded on the basis that the building constituted 'inappropriate development' within the meaning of PPG2. In 1992, the Hutchinsons twice applied for planning permission for a new building for equestrian purposes. These applications were refused solely on highway grounds. The then current iteration of PPG2 (the 1988 version) would otherwise have been more sympathetic to the application.
- 1.10. In December 1998 the Hutchinsons made a new planning application for, "erection of building for use as an Equestrian Centre". I have referred to the plans submitted in support of the application. The planning statement, also submitted in support, explained that the building was required for the "expansion of the existing equestrian business".
- 1.11. The Local Planning Authority purported to grant planning permission on 24 May 1999. The claimant brought a timeous claim for judicial review, and the building was completed by the end of 1999 in full knowledge of that. On 17 July 2000, Harrison J, sitting in this court, on judicial review proceedings brought by the claimant, quashed the application. The point on which Mr Village for the claimant succeeded was that the planning officer of the Local Planning Authority had given erroneous advice to the planning committee as to whether this development could be regarded as related to agricultural use within the meaning of paragraph 1.6 of PPG2. At an earlier stage in the decision making process, the planning officer had given written advice to the committee which did not make it clear that this was 'inappropriate development' within the meaning of paragraph 3.4 of PPG2. The claimant's agent pointed out this error, and the Local Planning Authority accepted it (see paragraph 10 of Harrison J's judgment). However, paragraphs 16 to 19 in Harrison J's judgment are also relevant to the present case (volume 2, tab 7, page 168).
- 1.12. "16) The report [that was the report from the planning officer to the committee] then stated that the issue of the acceptability of the proposal came down to a view about the

particular site circumstances and the visual impact of the development. Having assessed those matters, the planning officer advised that, in his view, the proposal could be supported in a planning context. There being no highways objection, due to recent highway improvements in the area, the report concluded:

Despite the presumption against inappropriate development as expressed in PPG2, there is wide support within Government Guidance and the Deposit District Wide Local Plan, for horse based uses in open countryside. In terms of the criteria in RT9 of the Deposit District Wide Local Plan, I believe that this policy can be supported. It is however considered that the proposal is a departure in the context of PPG2, and that the proposal should be referred to the Secretary of State.

17) Whilst it is not entirely clear from the report, it would appear that the application was referred to the Secretary of State as being in effect a departure from paragraph 3.4 of PPG2, because the size of the structure was such that it did not strictly fall within the criteria contained within that paragraph.

18) Mr Village rightly criticised that conclusion, because the development did not come within paragraph 3.4 of PPG2 due to the proposed use of the building, not due to its size. Paragraph 3.4 of PPG2 states that the construction of new buildings inside the green belt is inappropriate, unless it is for any of the purposes stated in that paragraph, which include agriculture and forestry, and essential facilities for outdoor sport and outdoor recreation. It is accepted that the proposed indoor Equestrian Centre does not fall within any of the stated purposes in that paragraph. That is the reason why it is inappropriate development within the meaning of paragraph 3.4 of PPG2, it has nothing to do with the size of the building.

19) Mr village also rightly criticised the phrase in the paragraph of the report which I have quoted, when reference was made to the green belt presumption against the development 'if a literal interpretation of PPG2 is adopted'. It is not a question of a literal interpretation of PPG2, it is an important and obvious fact that this development does not come within paragraph 3.4 of PPG2 and is therefore inappropriate development within the meaning of that paragraph. Paragraph 3.1 of PPG2 provides that there is a general presumption against inappropriate development in the green belt and that such development should not be approved except in very special circumstances."

1.13. The way I read these paragraphs in Harrison J's judgment is that the Local Planning Authority was conceding that, subject to its point about paragraph 1.6 of PPG2, this would be 'inappropriate development' within the meaning of government policy. But the gravamen of Harrison J's criticism of the Local Planning Authority was that the foregoing conclusion depended on the use to which the building would be put, not its

size. Further, the planning officer should have made it clear how and why it was that this was inappropriate development.

- 1.14. The irresistible inference, in my judgment, is that Mr and Mrs Hutchinson accepted in 1999 that the building would constitute an inappropriate development and sought to justify the application for planning permission on other grounds. This was also the conclusion reached by the Local Planning Authority, not without some prompting by the claimant, and I accept Mr Village's submission that at no stage between 1999 and the spring of 2009, did anyone seek to maintain a different case.
- 1.15. The Local Planning Authority purported to grant planning permission for the second time on 19 December 2001. This decision was quashed by consent on the grounds that the Local Planning Authority had "erred having been misdirected by the planning officer that the absence of harm was capable of counting as very special circumstances within the meaning of PPG2": see the order of Stanley Burnton J, as he then was, at volume 2, tab 8, pages 163-164.
- 1.16. The Local Planning Authority purported to grant planning permission for the third time on 17 September 2002. This consent too was quashed by order of Mr Roger Henderson QC, sitting as a Deputy High Court Judge, made on 16 April 2003. The principal basis on which the third quashing order was made is contained at paragraphs 26-28 of the judgment (volume 2, tab 9, page 170) and is in the following terms:

"26) It is the submission of the claimant that 'an assessment of their present circumstances could not begin to found a case' of very special circumstances. The disclosed accounts indicate a healthy net profit in excess of £20,000 in the year ending May 1998, and in excess of £18,000 in the year ending May 1999, prior to the construction of the development. There was no suggestion in the Weatherall, Green and Smith report, that such levels of the profitability were unsustainable. It was submitted that 'the expansion of a business cannot in itself amount to a very special circumstance. It might be the case that evidence of an unrequited need for a particular product/business, coupled with evidence of a lack of available locations elsewhere, may amount to a very special circumstance. In this case, however, there was no evidence of a particular unrequited need for the business, still less was there any evidence that a search of available locations outside of the green belt had been undertaken'.

27) In my judgment, there is very considerable force in these submissions which proceed to a submission that the council's decision was irrational in the sense that no reasonable council could have reached the conclusion that it did. If a desire to expand a modestly profitable business was able to constitute a very special circumstance sufficient to permit approval of the development of the green belt, the policy could and would be grossly undermined. Being very conscious that it is not for the court to substitute its judgment for that of the Planning Committee, except where there must have been a defective process of reasoning, I conclude that the committee

were misdirected by the officer's report that the circumstances which obtained in this case were capable of constituting very special circumstances sufficient to justify the relevant development.

28) No doubt the officer had considerable sympathy for the Hutchinsons, but he could not rationally conclude that very special circumstances existed because of their personal circumstances, nor because of the 1991/1992 planning history and the Committee's decision was vitiated, but because nobody could have concluded that the circumstances were very special by a proper process of reasoning. Such a process would have carefully considered whether a desire to expand a modestly profitable equestrian business could, without evidence of personal hardship, evidence of unrequited need, or other special circumstances, have sufficed. The answer would have had to have been no. For the officer to 'consider that it would be very harsh in the circumstance that arise to refuse the applicants planning permission for development which would allow them to expand their business', there would have to have been persuasive evidence of a type which was wholly lacking, and the planning history of 1991/1992 did not, as a matter of fact, lie 'at the heart' of the matter".

- 1.17. I read these paragraphs as dealing solely with the issue of 'very special circumstances', not that of inappropriate development. At paragraph 30, Mr Roger Henderson QC reviewed the application of PPG2 to the case before him. He explained that paragraph 3.4 of PPG2 provides that construction of new buildings in the green belt is 'inappropriate development' unless one of five stated exceptions is applicable. He concluded, "none of [these] apply in the present case" (volume 2, tab 9, page 170). No one, after all, had sought to argue to the contrary.
- 1.18. The Local Planning Authority made a further purported grant of planning permission on 7 October 2003. In addition, by letters dated 7 November 2003, the Local Planning Authority withdrew enforcement notices dated 29 July 2003. Both these decisions (the fourth purported grant of planning permission and the withdrawal of the enforcement notices) were quashed by order of this court, made on 30 March 2004 (see volume 2, tab 10, pages 173-174). The parties consented to these decisions being quashed on the basis that the Local Planning Authority had failed to refer the application to the Secretary of State as it was required to do. Plainly, those proceedings were conducted on the unspoken premise that the building was inappropriate development, because otherwise no requirement to refer the application to the Secretary of State would have arisen.
- 1.19. By judgment, handed down on 14 March 2008, Mr Michael Supperstone QC, sitting as a Deputy High Court Judge, quashed a) the Local Planning Authority's fifth purported grant of planning permission, dated 18 July 2005; and, b) the Local Planning Authority's revocation of enforcement notices dated 21 April 2004. His judgment is at volume 2, tab 11, page 175 and following.

- 1.20. The claimant's fifth judicial review succeeded on a large number of grounds. In essence, Mr Michael Supperstone QC supported Mr Roger Henderson QC's reasoning and conclusions, and ruled that a desire to expand one's business does not amount to 'very special circumstances'.
- 1.21. Notwithstanding the five quashing orders, and in particular that issued by Mr Michael Supperstone QC, the Local Planning Authority resolved, on 2 April 2008, "to simply note the present position and take no further action". The claimant challenged this resolution for inaction. The challenge once again succeeded.
- 1.22. On 14 April, HHJ Mackie QC, sitting in this court, quashed the Local Planning Authority's resolution and required it to consider, according to law, whether fresh enforcement notices should be issued: see his judgment at volume 2, tab 13, page 211 and following, and order at tab 2, page 14, pages 218-219.
- 1.23. The Local Planning Authority then served enforcement notices on Mr and Mrs Hutchinson, dated 17 April 2008. The enforcement notices identify the breach of planning control as, "without planning permission, erection of an Equestrian Centre building". The Local Planning Authority's identified reasons for issue of the notices, included the "erection of the equestrian building" was considered to represent inappropriate development, and no 'very special circumstances' had been demonstrated.
- 1.24. Mr and Mrs Hutchinson appealed on grounds a) and g) as set out in section 174, subsection 2, of the 1990 Act (an appeal on ground d) having been withdrawn). The defendant convened an inquiry to determine the appeals. In advance of this inquiry, a statement of common ground was agreed between the claimant, the Local Planning Authority, and the Hutchinsons. At paragraph 4.2 it stated:

"It is common ground between the parties that the appeal building constitutes inappropriate development within the meaning of PPG2".

This is also confirmed in the proof of evidence of the Hutchinsons' planning expert, as well as the proof of Mr Ryan, the planning consultant engaged by the claimant, and the proof of Mr Edwards, the Local Planning Authority's former Acting Head of Development Control.

- 1.25. On 24 February 2009, the inspector therefore proceeded on the basis that the building was 'inappropriate development'. The inspector opened the inquiry on the basis that the main issue to be grappled with was whether Mr and Mrs Hutchinson were able to demonstrate 'very special circumstances' clearly outweighing the harm arising from inappropriateness and any other harm. At no point during the inquiry did the inspector, or anyone else, raise any query as to whether or why the building failed to be treated as inappropriate development in Green Belt terms. The evidence and cross-examination focussed on the main issue which had been identified at the outset by the inspector; the question of very special circumstances. But, in the events which happened, the inspector made no ruling on that issue.

- 1.26. Nearly 3 weeks after the inquiry closed, by email dated 13 March 2009, the Planning Inspectorate emailed the parties at the request of the inspector: see volume 1, tab 8, page 290. In material part, the email invited, "views on the following matter":

"It is common ground between the parties that the erection of the building enforced against represents inappropriate development in the green belt. Nevertheless, an inspector is under no obligation to go along with the views expressed by the parties, even if unchallenged, as he can rely on his experience, expertise and common sense. The inspector is concerned that the parties may not have felt it necessary to explain in any great detail their reasons for concluding that the development is inappropriate. He has indicated to me that he will be carrying out his own analysis with reference to the differences between the 1988 version of PPG2 and the current 1995 version. He will have particular regard to the guidance contained in the second indent to paragraph 3.4 of PPG2, and to the further guidance contained in paragraph 3.5. As this was not a matter the inspector sought your views on at the inquiry, in the interests of natural justice, you are invited to submit further representations on this specific matter for the inspector to take into account should you wish to do so".

- 1.27. The claimant's solicitors responded by letter, dated 19 March 2009 (see volume 1, tab 8, page 292). The letter sought to point out, first, that the claimant did not understand what the inspector meant by the reference to the 1988 version of PPG2, the latter was irrelevant to the appeal before him; secondly, that the courts had previously considered and determined whether the building was 'inappropriate development'; thirdly, that, unlike any other issue in this case, the question of whether the building was 'inappropriate development' had been common ground for the entire decade of this dispute, with none of the many experts representing or advising either Mr and Mrs Hutchinson or the Local Planning Authority, or anyone else, expressing any different view; and fourthly, that on a proper assessment, none of the exceptions set out in paragraphs 3.4 and 3.5 of PPG2 applied in this case.

- 1.28. The claimant's solicitor's letter of 19 March 2009 requested an opportunity to comment on the representations of other parties, and also included the following request:

"Were the inspector, however, not minded to accept the analysis set out above, we consider it essential as a matter of fairness that the inquiry should be reopened so that our clients are afforded the full opportunity to explain the matter orally and to understand precisely the basis of any provisional contrary view, notwithstanding the submissions advanced in this letter".

- 1.29. Mr Stewart submitted a letter, dated 23 March 2009, on behalf of Mr and Mrs Hutchinson (see volume 1, tab 8, page 299). This letter asserted that, "in retrospect", Mr Stewart felt that the building could be considered "appropriate". It was asserted that, "this represents essential facilities for which there is both demand and need as outlined by Mr Hutchinson at the inquiry, as they are currently turning work away even

in these recessionary times". Mr Stewart ended his letter by stating that he was, "happy to accede to the inspector's experience, expertise and common sense".

1.30. I accept that the Hutchinsons were placed in a somewhat difficult position by the inspector's indication, which must have been seen by them as an uncovenanted gain, or possibly a form of 'Greek gift'. Mr Stewart did not attempt vigorously to support the inspector's preliminary view, but was prepared to go with the flow. The Local Planning Authority, for its part, wrote, by email dated 23 March 2009 (volume 1, tab 8, page 301) maintaining their long-standing position that the building was inappropriate development, and drawing to the inspector's attention that the use of the word "essential" suggests more than simply desirable.

1.31. The claimant's solicitors wrote again on 8 April 2009 (volume 1, tab 8, page 307). This letter made a number of observations on Mr Stewart's letter. The final sentence of the letter repeated the request initially made in the 19 March 2009 letter that:

"If the inspectorate were not minded to accept the analysis set out above and in our 19 March 2009 letter, we consider it essential as a matter of fairness that the inquiry should be reopened so that our clients are afforded a full opportunity to explain the matter orally, and to understand precisely the basis of any provisional contrary view, notwithstanding our written submissions".

1.32. By email, dated 15 April 2009 (volume 1, tab 8, page 316) the Planning Inspectorate informed the claimant's solicitors that the inspector had refused to reopen the inquiry on the purported basis that:

"He has given the parties ample opportunity to express their views on the matter of whether or not the development represents inappropriate development in the green belt, and to comment on each other's representations to that effect".

The inspector's decision

1.33. The inspector's decision was issued on 23 April 2009, following the inquiry which took place on 24 February, and a site visit made on the following day. The inspector allowed the appeal, directed that the enforcement notices be quashed, and granted planning permission on the application deemed to have been made under section 177, subsection 5, of the 1990 Act as amended.

1.34. The relevant sections of the inspector's decision are to be found between DL13 and 33. In short, the inspector, first, did not find that the Harrison J judgment constituted a judicial determination of the issue (DL16); secondly, stated that this appeal, "represents the first opportunity for independent examination of the issue of whether or not the building should be regarded as inappropriate development for the purposes of green belt policy" (DL18); thirdly, stated that the building can only rationally be regarded as an integral part of one planning unit (DL20); fourthly, stated that the primary use of the Equestrian Centre was neither for outdoor sport nor outdoor recreation (DL21); fifthly,

that the tests in paragraph 3.4 and 3.5 of PPG2 do not expressly refer to the size of the building under consideration (DL25); sixthly, in answer to the first essential question which arose, concluded that the use is one which preserves the openness of the green belt, and does not conflict with the purposes of including land in it (DL30); seventhly, in answer to the second essential question, concluded as a matter of fact and degree that the building provides an essential facility for the use to which the land is put (DL31); and eighthly, in answer to the third essential question, concluded as a matter of fact and degree that the building is genuinely required for the equestrian use of the planning unit (DL32). The inspector went on to consider the planning merits of the application viewed more widely, and found in the Hutchinson's favour on those matters.

- 1.35. Paragraph 40 of the decision letter contains the inspector's conclusion (volume 1, tab 4, page 8):

"The appeal building does not represent inappropriate development for green belt purposes. It causes slight harm to the open character and appearance of the green belt, contrary to policy GB4 of the local plan; it causes slight harm to the appearance of the countryside generally, but this harm can be mitigated by painting the building and by additional screen planting. The building is essential to the Equestrian Centre business, is genuinely required, and has been sited so that its impact is minimised. It makes a significant contribution to the local economy, particularly through the provision of two full time jobs. I conclude that the conflicts with policies that seek to protect the character and appearance of the green belt and of the countryside generally, is outweighed by these other considerations, and that the development is therefore acceptable".

The launch of proceedings

- 1.36. On 20 May 2009, the claimant launched three sets of proceedings and intended proceedings. First (although by this I am not intending to imply that the proceedings were launched in any particular order) the claimant issued a claim form seeking judicial review of the inspector's decision of 23 April 2009.
- 1.37. There are three grounds of challenge, namely, first, that the inspector erroneously concluded that the building is 'essential' and 'genuinely required' for the use of land which preserves the openness of the green belt and which does not conflict with the purposes of including land in it; secondly, the inspector unfairly refused to reopen the inquiry; and thirdly, the inspector erroneously failed to attach weight to earlier judicial determinations as to the inappropriateness of the building.
- 1.38. Secondly, by a part 8 claim form, the claimant applied under section 288 of the Town and Country Planning Act 1990, to quash the inspector's decision. Thirdly, by an appellant's notice, the claimant applied under section 289 of the same Act for a similar quashing order.
- 1.39. On 8 July 2009, Collins J granted permission in relation to the judicial review and section 289 applications. Permission is not required, as he pointed out, for the section

288 application. The claimant proceeded under both of sections 288 and 289 of the 1990 Act in the light of the advice given by Sullivan J, as he then was, in R (on the application of Wandsworth Borough Council) v SSSLGR [2004] P&CR 32, and the lack of clarity as to whether the correct avenue is section 288 or section 289.

Procedural matters

- 1.40. As I have already stated, the parties are agreed that the claimant's second judicial review ground is well founded and that the matter must go back to the defendant for reconsideration. The claimant presses its first judicial review ground, and furthermore, now seeks, by late amendment, declaratory relief that the inspector erroneously concluded that the building is 'essential' and 'genuinely required' for a use of land which preserves the openness of the green belt and which does not conflict with the purposes of including land in it.
- 1.41. I gave the claimant permission to amend its judicial review application grounds at the start of the hearing. For what it is worth, in my judgment paragraph 70(2) of the claimant's original grounds of challenge did advance the submission that the inspector's conclusion on these matters was Wednesbury unreasonable. If the court agreed with that submission, it would give a narrative judgment to that effect on the basis of the claim as originally constituted. To my mind, the addition of a claim for declaratory relief adds little to the original claim, and causes no prejudice to the defendant; it merely encapsulates, in the form of an order of the court, the court's reasons as set forth in its narrative judgment. Whether the claim in paragraph 70(2) is well founded is, of course, a separate issue, as indeed the merits of the claim for declaratory relief.
- 1.42. In granting leave to amend on this basis, I have not lost sight of the fact that the remedy of judicial review cannot be used to assail the defendant's grant of planning permission under section 177 of the 1990 Act (see section 284(1)(f)). However, judicial review can be used to challenge the quashing of the enforcement notices, and the defendant's concession on ground 2 means that the grant of planning permission will have to be quashed in any event.
- 1.43. In my judgment, the position is somewhat different under section 288 and section 289 of the Town and Country Planning Act 1990, at least as regards the claim of declaratory relief. I agree with Mr Marici's submission that the court has no power to grant declaratory relief under these provisions. The court's jurisdiction is confined to quashing the planning permission concerned. Accordingly, I refuse the claimant's application under these provisions.
- 1.44. The question naturally arises as to whether there is any remaining life in the sections 288 and 289 application and appeals. In my judgment, the appeal under section 289, subsection 1, is, in any event, misconceived. The claimant does not have 'an interest in the land to which the notice relates'.
- 1.45. The position under section 288 is more complex. The effect of this provision, in my judgment, is that the claimant, as a person aggrieved, may bring a statutory challenge on traditional public law grounds against the defendant's decision to grant planning

permission (see section 288, subsection 4, read in conjunction with section 284, subsection 3). Indeed, this is the very provision which precludes judicial review. The court's powers are confined to quashing the grant of planning permission for error of law in Anisminic terms. The court cannot grant declaratory relief. However, the court can, and usually will, give a narrative judgment explaining why, in its view, there is an error of law in effecting a relevant section 288 order or decision.

- 1.46. Ordinarily, the court will not go to these lengths where the parties are agreed that an order under section 288(1)(a), is void in the Anisminic sense. However, there is nothing to prevent it doing so in the appropriate case. If, for example, the parties are agreed that a decision is flawed on ground A, but the claimant says that the decision is also flawed on ground B and that there is some clear advantage in continuing to litigate that issue, it seems to me that, in the appropriate, no doubt the exceptional case, the court will address ground B. But the claimant has to demonstrate some real advantage to him in troubling the court to that extent. I will address this question once I have tackled the defendant's contention that ground 1 now academic.

Is the application for judicial review academic in the events which have happened?

- 1.47. I agree with two general propositions of principle advanced by Mr Marici on behalf of the defendant. The first is that a quashing order on ground 2 would effectively wipe the slate clean on ground 1. The issues raised on ground 1 would and could be advanced before the defendant's newly pointed inspector, and he or she would be untroubled by anything this inspector had opined on the matter. The second is that this court is in no position to express judgments on planning matters; these are axiomatically within the province of the inspector as decision maker. However, the claimant submits, perhaps boldly, that this is an altogether exceptional case. It invites me to look at the history and at earlier judicial determinations, and to conclude that the only decision lawfully open to any inspector properly directing himself or herself is that the building is 'inappropriate development' within the meaning of PPG2.
- 1.48. In my judgment, the bar must be placed that high. To quote from paragraph 34 of Mr Marici's skeleton argument:
- 1.49. "The claimant, to obtain its declaration must persuade the court that these questions of planning judgment admit of one answer, and one answer only, such that the court should usurp the role of the future decision maker who will consider the remitted appeal, by declaring that the proposed development is inappropriate development. The court would have to be persuaded that the questions of the interpretation of planning policy that arise, and their application in this case, have only one answer (see for example R v Swansea City and County ex party Grenada Hospitality Limited [1999] P&CR 273)".
- 1.50. If, for example, I were to conclude that the claimant succeeds on ground 1 only to the extent that the inspector's assessment of what is 'essential' or 'genuinely required' is inadequately reasoned, then it would follow that the declaration sought should not be made. Ex hypothesi, it would be open to another inspector properly directing himself

or herself to conclude that this was not inappropriate development within PPG2. Equally, on this hypothesis, the defendant would have been right in adopting the stance it did, and the claimant would have been wrong in pressing the matter further after the concession had been made on ground 2. A narrative judgment of this court that an inspector's determination is flawed for want of reasons, avails not at all the next inspector coming to the case. But if, on the other hand, I were to conclude that the inspector's decision was Wednesbury unreasonable and that the only reasonable decision in this case is that the building constitutes 'inappropriate development' within the meaning of PPG2, it seems to me that there is absolutely no reason why I should not say so in express terms, and every good reason why I should. True, any subsequent inspector would be bound by my ruling and my declaration, but that is their value; and it must flow if there is only one Wednesbury reasonable answer to the case.

- 1.51. As I put to Mr Marici in argument, I was not in a position when the case was opened to me this morning to determine the issue as a threshold question: in other words, to decide that the Secretary of State's position was so obviously correct that I had to prevent Mr Village developing submissions on the point. At that stage I had an open mind and could not decide, effectively on a summary judgment basis, or perhaps a strike out basis, that Mr Marici's submissions were so obviously right that the case had to be stopped dead in its tracks. The upshot, in my judgment, is that I had to hear Mr Village on his amended JR application on ground 1, and I so ruled at the outset of the case.

The section 288 application

- 1.52. This leaves the question of whether the section 288 application should also proceed. If ground 1 is not academic as regards the judicial review proceedings, or at the very least is not demonstrably academic until I have ruled on the claimant's Wednesbury challenge under ground 1, ground 1 is not academic as regards the section 288 appeal, save to the extent that the court should, if possible, avoid duplicity of proceedings. However, the section 288 appeal does not encumber this case to any extent; it raises the same issues as the judicial review and has generated just one further tab in the bundle. There is one practical advantage in retaining the section 288 proceeding, and that is to protect the claimant's position should my ruling subsequently be found to be incorrect as regards the consequences flowing from the non-availability of judicial review to challenge the grant of planning permission. The fact that declaratory relief is not available in the section 288 proceedings is, in my judgment, of little or no relevance. As I have already said in the context of the judicial review proceedings, a declaration does no more than encapsulate the court's finding as expressed in this judgment. A future inspector would have to follow those findings whether formally declared or not.

Statutory and planning framework

- 1.53. Section 38, subsection 6, of the Planning and Compulsory Purchase Act 2004, read in conjunction with section 70 of the 1990 Act, provides that the determination of planning applications must be in accordance with the development plan, unless there are material considerations which indicate otherwise. Section 38, subsection 6, expressly provides:

"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan, unless material considerations indicate otherwise".

1.54. The development plan, in respect of the site, consists of the Regional Spatial Strategy for Yorkshire and the Humber, May 2008 ("the RSS"), and the safe policies from the Selby District Local Plan, adopted on 8 February 2005 ("the Local Plan"). The RSS defines the Green Belt in the North Yorkshire area. This includes land which falls within the Selby District Local Plan area, and includes the site as part of the South and West Yorkshire Green Belt. The saved local plan policies, in particular GB2 and GB4, against which this proposal fell to be assessed, incorporate advice and policy in respect of the Green Belt based on that contained in Planning Policy Guidance Note 2 - Green Belt, that is PPG2.

1.55. Policy GB2 (volume 2, tab 6, pages 108-109) is, so far as is material, in the following terms:

"Within the green belt, development will not be permitted except for the purposes listed below. Proposals that are acceptable in principle must also comply with policies intended to control development in the countryside, and with all other relevant policies.

...

(7) Proposals for ... the provision of essential facilities associated with the use of land, including essential facilities ... for other uses of land which preserve the openness of the green belt and do not conflict with the purposes of including land in it".

1.56. Policy GB4 (that is volume 2, tab 6, page 110) is in the following terms:

"Proposals for development in the green belt, or which are conspicuous from an area of green belt, will only be permitted where the scale, location, materials, and design of any building or structure, or the laying out and use of land, would not detract from the open character and visual amenity of the green belt".

1.57. The reasoned justification for policy GB4 observes (paragraph 3.40) that:

"Proposals may be made for types of development which are acceptable in principle in the green belt, but whose scale, location, or design, may impair the open character or visual amenity of the green belt ... in such circumstances, PPG2 indicates that it would be appropriate to resist development".

1.58. PPG2 was issued in January 1995 (volume 1, tab 9, page 322 and following) and represents current government policy on Green Belts. It was a material consideration in the determination of the appeal before the Secretary of State for the purposes of section

38, subsection 6, of the 2004 Act. The "Foreward" to PPG2 states that it replaces the 1988 version of PPG2, and that, amongst other things, it "maintains the presumption against inappropriate development within green belts and refines the categories of appropriate development".

1.59. The cancellation of the 1988 version is formally stated in paragraph 4.1. Now, the material parts of PPG2 for present purposes are as follows (volume 1, tab 9, starting at page 326):

"Intentions of policy

1.4 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development (see paragraph 2.10).

Purposes of including land in Green Belts

1.5 There are five purposes of including land in Green Belts:

- * to check the unrestricted sprawl of large built-up areas;
- * to prevent neighbouring towns from merging into one another;
- * to assist in safeguarding the countryside from encroachment;
- * to preserve the setting and special character of historic towns; and
- * to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

The use of land in Green Belts

1.6 Once Green Belts have been defined, the use of land in them has a positive role to play in fulfilling the following objectives:

- * to provide opportunities for access to the open countryside for the urban population;
- * to provide opportunities for outdoor sport and outdoor recreation near urban areas;
- * to retain attractive landscapes, and enhance landscapes, near to where people live;
- * to improve damaged and derelict land around towns;

* to secure nature conservation interest; and.

* to retain land in agricultural, forestry and related uses.

1.7 The extent to which the use of land fulfils these objectives is however not itself a material factor in the inclusion of land within a Green Belt, or in its continued protection. For example although Green Belts often contain areas of attractive landscape, the quality of the landscape is not relevant to the inclusion of land within a Green Belt or to its continued protection. The purposes of including land in Green Belts are of paramount importance to their continued protection, and should take precedence over the land use objectives.

...

2.1 The essential characteristic of Green Belts is their permanence. Their protection must be

Maintained as far as can be seen ahead.

...

3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances. See paragraphs 3.4, 3.8, 3.11 and 3.12 below as to development which is inappropriate.

3.2 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development.

3.3 Green Belt policies in development plans should ensure that any planning applications for inappropriate development would not be in accord with the plan. These exceptional cases would thus be treated as departures from the development plan, to be referred to the Secretary of State under the Town and Country Planning (Development Plans and Consultation) Directions 1992 (see DOE Circular 19/92).

New buildings

3.4 The construction of new buildings inside a Green Belt is inappropriate unless it is for the following purposes:

* agriculture and forestry (unless permitted development rights have been withdrawn - see paragraph D2 of Annex D);

* essential facilities for outdoor sport and outdoor recreation, for cemeteries, and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it (see paragraph 3.5 below);

* limited extension, alteration or replacement of existing dwellings (subject to paragraph 3.6 below);

* limited infilling in existing villages (under the circumstances described in the box following paragraph 2.11), and limited affordable housing for local community needs under development plan policies according with PPG3 (see Annex E, and the box following paragraph 2.11); or

* limited infilling or redevelopment of major existing developed sites identified in adopted local plans, which meets the criteria in paragraph C3 or C4 of Annex C1.

3.5 Essential facilities (see second indent of paragraph 3.4) should be genuinely required for uses of land which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. Possible examples of such facilities include small changing rooms or unobtrusive spectator accommodation for outdoor sport, or small stables for outdoor sport and outdoor recreation".

1.60. Horse related development is also specifically addressed in the Local Plan Policy, RT9 (volume 2, tab 6, page 127) which sets out five criteria which must be satisfied if planning permission is to be granted. The first criterion is contained in RT9 as follows:

"Development proposals involving the erection of stables and other facilities for keeping horses in the countryside will be permitted, provided: (1) the buildings would not detract from the character and appearance of the rural environment, and, in the interests of residential amenity, would be sited at a reasonable distance from the nearest dwelling".

1.61. Paragraph 8.59 of the reasoned justification dealing with RT9 explains the rationale behind this policy, but also contains an express recognition:

"The pressure for the erection of stables and associated rural buildings and other facilities, can have a significant impact on the countryside, particularly when the development is linked to an Equestrian Centre".

1.62. Paragraph 8.60 emphasises that care will be taken to safeguard the character and appearance of countryside when dealing with such proposals. The paragraphs provide, so far as is material (volume 2, tab 6, page 127):

"Paragraph 8.59 - horse riding is an increasingly popular activity in the plan area, leading to pressure for the erection of stables and associated buildings and other facilities. This can have a significant impact on the countryside, particularly when linked to large scale commercial enterprises or Equestrian Centres.

8.60 - in considering proposals for horse related development, care will be taken to protect residential amenity as well as to safeguard the character and appearance of the countryside".

PPG7 sets out further government guidance on planning policy for the countryside. Annex F deals expressly with development involving horses. Within the framework of PPG7 the government sets out a positive approach for horse based development which respects the rural environment (see annex F5). But this guidance relating to the countryside generally is subject to the control over green belt set out in PPG2.

Analysis of ground 1

- 1.63. In my judgment four essential questions need to be addressed in relation to the claimant's first ground. These are, first, the impact, if any, of previous judicial determinations on the inspector's decision; secondly, the impact, if any, of the lengthy planning history on the inspector's decision; thirdly, the quality of the inspector's reasons on the core issue; and fourthly, whether the inspector's conclusion on the core issue was Wednesbury unreasonable.
- 1.64. As for (1), the inspector considered that neither Harrison J, nor Mr Roger Henderson QC, gave what can properly be described as a 'judicial determination' that the building in question is 'inappropriate development' (see DL15). In my judgment, the inspector was right so to conclude. The high water mark of the claimant's case in this regard is paragraphs 18 to 19 of Harrison J's judgment given in July 2000, but in that case the planning officer gave advice to the committee following the claimant's intervention that this was 'inappropriate development' within PPG2. Accordingly, the issue did not, strictly speaking, arise for the determination by the court, and Harrison J's admittedly strong statements to the effect that this development did not come within paragraph 3.4 of PPG2 and was therefore inappropriate were reflecting an agreed state of affairs rather than any affirmative judicial conclusion on a matter in issue. If that assessment of Harrison J's decision is correct, which in my judgment it is, the claimant's case is not advanced by invoking anything Mr Roger Henderson QC or Mr Michael Supperstone QC had to say. These judges were again proceeding on the basis of an agreed state of affairs.
- 1.65. As for my second essential question; the lengthy planning history, this is a strong forensic point in the claimant's favour, but it is not decisive. I must proceed on the footing that, until this inspector raised the issue of his own motion in March 2009, everyone involved in this case had proceeded on the basis that this was 'inappropriate development', including those advising the Hutchinsons. But none of this is a trump card in my judgment. Subject to my conclusion on the third and fourth essential questions I have identified, this inspector was entitled to reach a different view based

on his own planning judgment. But to travel off piste in this way was likely, if not bound, to create difficulties for the inspector. In entering these somewhat un-chartered waters, if I am not here mixing my metaphors, in ignoring the views of many experts, the inspector had to be extremely wary. Moreover, and subject to my rulings on the remainder of these ground 1 issues, on any further appeal to another inspector, both the Local Planning Authority and the Hutchinsons will have to tread very carefully indeed. Perhaps it does not need me to point out that for 10 years now the Local Planning Authority has been firmly wedded to the proposition that the building constitutes 'inappropriate development' for the purposes of PPG2, and a change of mind at this stage would be surprising. From the Hutchinsons' perspective, a *volte face* by their expert would need punctilious justification, failing which, or perhaps in any event, blistering cross-examination would be expected.

- 1.66. I turn to address the third essential question which arises under ground 1; namely, the quality of the inspector's reasons. I should emphasise that a finding of this court that this inspector's reasons are flawed would not by itself avail the parties or a forthcoming inspector. However, Mr Village asked me to consider the issue on the basis that the inspector's conclusion is flawed as is evident from his reasoning, and for that reason alone I am compelled to do so.
- 1.67. Mr Village made, I think, four core submissions in support of ground 1. These were; first, the inspector did not address the question of why this development was essential on green belt land as opposed to anywhere else; secondly, in construing the second indent in paragraph 3.4 of PPG2, the issue for the decision maker is whether the essential facility or facilities preserves the openness of the green belt etc, and not the use of the land: the inspector therefore erred in looking at the whole planning unit; thirdly, in order to ascertain whether this was an 'essential facility', the inspector had to consider the available facilities before the development commenced; and fourthly, flowing on from the third key submission, given that the business was moderately profitable before this application for planning permission was first made in 1999, the Hutchinsons simply could not demonstrate as a matter of logic and principle that this was an 'essential facility'.
- 1.68. In my judgment, Mr Village's first core submission is not well founded. The requirement under paragraph 3.5 of PPG2 is to demonstrate that this new building is an 'essential facility for the use of the land as an Equestrian Centre which preserves the openness of the green belt etc'. There is no additional requirement in PPG2 to show that the development could not take place elsewhere. As for Mr Village's second core submission, I was initially attracted by it but have been persuaded by Mr Marici for the defendant that it is incorrect. Outdoor sport and recreation and cemeteries are deemed to preserve the openness of the green belt. The issue in those cases is whether the facilities, as adjunct to such uses, are 'essential' and 'genuinely required'. We are concerned with the residual category of case - "other uses of land which preserve" etc. The 'other use' here is the Equestrian Centre use, and is a use which involves the entirety of this planning unit, in other words, the whole of the Hutchinsons' 10.5 hectares of land. That said, in my judgment, the inspector erred at DL28 in his approach to the relevant question, namely, does the building in question preserve the openness of the green belt, etc? He answered this question solely by reference to the

relative proportion of built land to the area of land as a whole. In my judgment, he should have considered whether this building, having regard to its size, relative location, building blocks, and appearance, and everything else, preserves the openness of the green belt.

- 1.69. Now, Mr Village accepts that it is not for this court to answer that question as a matter of planning judgment. Subject to his other core submissions, the inspector must do so in due course.
- 1.70. Mr Village's third core submission is that regard should have been paid to the then current use of the site in 1999. This inspector did not do that and I would agree that it was capable of being a relevant consideration for the purposes of identifying whether these were indeed essential facilities. Instead, at DL31, the inspector concluded, as a matter of fact and degree, that these facilities were essential for the use to which the Hutchinsons wished to put the site. Thus, on the inspector's reasoning, given that the Hutchinsons wanted to provide 17 further stables and space for a horse-walking machine, this building was an essential facility for that use. I regard this reasoning as circular and flawed; it would equally apply to 170 stables. However, it does not follow from this that the inspector made a Wednesbury unreasonable conclusion on the merits.
- 1.71. Finally, I need to address Mr Village's fourth core submission, which is that there is, in effect, only one answer to this case, namely, that on these facts the Hutchinsons could not demonstrate that this new building was 'essential facilities' for an already moderately profitable business. At this point, however, I need to return to *my* fourth essential question, namely, whether the inspector's conclusion was Wednesbury unreasonable in the sense that the only Wednesbury reasonable conclusion could be that these are not 'essential facilities'. In addressing this last question I am warned by Mr Marici to be wary. First of all, it is inherent in the claimant's second ground, which has been conceded, that the inspector acted unfairly in failing to give the parties an opportunity to call evidence and advance submission on the inappropriate development issue. I have to guard against equivalent unfairness to the Local Planning Authority and the Hutchinsons. Secondly, the interpretation of planning policy is usually for the decision maker and not for the court, subject to Wednesbury (see the decision of Richards J, as he then was, in R v City and County of Swansea ex parte Granada Hospitality Limited [1999] P&CR page 273). Thirdly, as a matter of principle, this court should be extremely slow in substituting its own planning judgment for that of the decision maker (see for example Sullivan J, as he then was, in R (on the application of Newsmith Stainless Limited) V SSETR [2001] EWHC Admin 74, paragraphs 7 to 8).
- 1.72. Mr Village's submission is that a business expansion type of case is different in principle from a start-up business case. If so, the argument runs that the existing business was viable and moderately profitable. The application for planning permission cannot demonstrate that the proposed expansion was 'essential', still less 'genuinely required'. The meaning of 'essential' after all is, "indispensable to the attainment of".
- 1.73. In my judgment, this submission proves too much and is not well founded. Taken to its logical extreme, it would equally cover the new business case as much as the expansion

case. Furthermore, this is not what paragraph 3.4 of PPG2 requires in my judgment. First, the Hutchinsons need to demonstrate that the use of the land as an Equestrian Centre, which use includes the building, preserves the openness of the green belt. Secondly, if that hurdle is surmounted, the Hutchinsons need to establish that this building, as a matter of fact and degree, amounts to essential facilities. Here the ambit of inquiry includes whether the 17 stables are essential in the sense of being 'genuinely required', and likewise the horse-walking machine and everything else. Analysed in this way, in my judgment, this court is not in a position to reach conclusions on matters of planning judgment. Mr Marici accepted that the Hutchinsons do not appear to have a particularly strong case, and I would entirely endorse that. The fact remains that in order not to constitute 'inappropriate development' it would need to be established that the building (which is simultaneously part of the use of the land and 'essential facilities' for that use) preserves the openness of the Green Belt. At DL40 this inspector came close to concluding that it did not. The Hutchinsons may at the end of the day decide not to call any evidence on these issues. That is a matter for them.

1.74. However one defines the issue, in my judgment, on the available evidence and having regard to the possibility of additional evidence being adduced, the present case does not fall into the category of the most exceptional case where the court can pronounce that there is only one Wednesbury reasonable conclusion. It follows that I do not propose to grant any relief on Mr Village's first ground.

1.75. I accept, as was inevitable, that his clients do have the benefit of receiving a judgment from me on aspects of their reasons challenge.

1.76. I leave this case by endorsing Mr Marici's submission on behalf of the defendant that parties should be encouraged not to argue their corner once the Treasury Solicitor on behalf of the defendant is minded to consent to judgment on a particular ground. This, of course, occupies court time and acts as a disincentive to the Treasury Solicitor to concede cases which might be arguable. Moreover, this, at the end of the day, has turned out to be another example of a case where the court has abstained from ruling on matters of planning judgment. That said, I fully accept and understand the position of Mr Village's client, this being the seventh visit to the High Court in relation to this site. Equally, I make no criticism of Mr Village in running a difficult argument before me against a background of a quite exceptional planning history.

1.77. MR VILLAGE: My Lord, just one matter; I think you said the sixth visit, I think it is the seventh. Just as an amendment to make to the transcript.

1.78. THE DEPUTY JUDGE: Thank you. Also, I said earlier on -- it is a technical point -- that under section 177, subsection 5, the inspector gives a direction to the Local Planning Authority to grant planning permission, is that right, as opposed to the inspector granting it?

1.79. MR MARICI: I think the inspector grants it himself.

1.80. THE DEPUTY JUDGE: Yes, I thought it was wrong.

- 1.81. MR VILLAGE:** My Lord, so far as costs are concerned, clearly -- and this will not be in issue -- the claimant seeks an order that the Secretary of State pays the costs of the claim up to 16 October.
- 1.82. THE DEPUTY JUDGE:** Yes.
- 1.83. MR VILLAGE:** 2009. To be assessed if not agreed.
- 1.84. THE DEPUTY JUDGE:** Yes.
- 1.85. MR VILLAGE:** And I apprehend there is going to be an argument about the costs thereafter, so perhaps I will sit down and answer that in a moment.
- 1.86. THE DEPUTY JUDGE:** I think you will have to answer that straight away Mr Village.
- 1.87. MR VILLAGE:** The answer to that, my Lord, is that my Lord has found two key flaws, which we said were key flaws, in ground 1. When one walks out of this court and says who has really succeeded in this case, even today, I am going to be saying that and my clients are going to be of that view. We have not succeeded on the very high hurdle, but, in my submission, as I said earlier -- obviously I do not want to go through all of my submissions earlier, but I did say earlier that we did not need to achieve that high hurdle. It would have been very nice if we had done, it would have saved a lot of time in due course, but, as to ground 1, my Lord has, if I may say so, made very wise and pertinent observations about the approach of the inspector which will not now see the light of day again, thank heavens. So, we are very content. I say that, when one looks at this in the round, we have won today.
- 1.88. THE DEPUTY JUDGE:** I am afraid I am going to order that from the date you gave me, 16 October, that the claimant is going to have to pay the defendant's costs. As I explained in my judgment, the claimant had to succeed on its full blown Wednesbury point, in my judgment, to make these proceedings worthwhile. Merely to secure from me some observations in relation to paucity or inadequacy of the inspector's reasons, which were part and parcel of my approach to the Wednesbury challenge, was not, in my judgment, a sufficient reason for maintaining these proceedings. The claimant had to win everything, in my view, otherwise the better course would have been, should have been, to consent on the basis advanced by the Treasury Solicitor. So, the claimant will pay the defendant's costs from 16 October. Before then, the defendant will pay the claimant's costs. There will no doubt be some kind of set off.
- 1.89. MR VILLAGE:** We will certainly ask for that set off. There is costs schedule, I think the figure is £6,700. We would agree a figure of £6,000.
- 1.90. THE DEPUTY JUDGE:** In terms of your costs, Mr Village, those will surely have to go to detailed assessment?
- 1.91. MR VILLAGE:** They will, yes.

- 1.92. THE DEPUTY JUDGE:** You are saying, as for the defendant's costs from 16 October, have you agreed those?
- 1.93. MR VILLAGE:** We would agree a figure of £6,000.
- 1.94. MR MARICI:** Well the figure is £6,760, I am not sure why my learned friend says we should only have £6,000.
- 1.95. MR VILLAGE:** On the basis you are not making an indemnity award of costs against us.
- 1.96. THE DEPUTY JUDGE:** You are haggling now. Mr Marici is going to ask for £6,760 so I had better have a look at his schedule.
- 1.97. MR VILLAGE:** Well, my Lord, lets not spend time on that. We agree the figure of £6,700 if it makes Mr Marici happy.
- 1.98. MR MARICI:** £6,760.
- 1.99. MR VILLAGE:** My Lord, in those circumstances we ask for a set off of those costs.
- 1.100. THE DEPUTY JUDGE:** That would flow under the rules.
- 1.101. MR VILLAGE:** And finally, my Lord, in light of the extremely unusual circumstances of this case, and the fact that, as Mr Marici himself points out, it is a matter of great public importance as to the approach of the court in the circumstances that have arisen in this case, I ask for permission to appeal my Lord's judgment. Particularly with respect to the costs order.
- 1.102. THE DEPUTY JUDGE:** Costs order? Permission is refused.
- 1.103. MR VILLAGE:** And the refusal to order a declaration.
- 1.104. THE DEPUTY JUDGE:** I am refusing it on the basis that I do not think there is an arguable point or a reasonable prospect of success at the court of appeal.
- 1.105. MR VILLAGE:** My Lord, I have not explained --
- 1.106. THE DEPUTY JUDGE:** You do not have to Mr Village.
- 1.107. MR VILLAGE:** I am not going to in that case, my Lord.
- 1.108. THE DEPUTY JUDGE:** It is up to you whether you appeal, but there is a school of thought which says it is in everyone's interest that this matter get back as quickly as possible to another inspector. I did note paragraph 40 of the decision letter is also questioning, or comes close to a finding, that on the right approach to assessment of the green belt question, that the building would constitute some harm but that a different inspector could form another view.

1.109. MR VILLAGE: My Lord, yes we picked that up and it was a very well made point, if I may say so, my Lord.

1.110. THE DEPUTY JUDGE: Yes. I think the sooner this gets back to another inspector on the evidence and this matter is resolved without an 8th or 18th appeal to this court. Any other errors?

1.111. MR VILLAGE: There was a reference to Hutchinson J.

1.112. THE DEPUTY JUDGE: Not Harrison?

1.113. MR VILLAGE: When you meant Harrison I think, my Lord.

1.114. THE DEPUTY JUDGE: Okay. Yes, I will rise.