Neutral Citation Number: [2025] EWHC 777 (Admin)

Case No: AC-2024-LON-003475

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 April 2025

Before :

MRS JUSTICE LANG DBE

- -

Between :

STOP PORTLAND WASTE INCINERATOR (an unincorporated association acting through DEBORAH TULETT)	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT **(2) POWERFUEL PORTLAND LIMITED** **(3) DORSET COUNCIL**	**Defendants**

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- -

James Burton and Barney McCay (instructed by **Leigh Day**) for the **Claimant**
Ryan Kohli (instructed by the **Government Legal Department**) for the **First Defendant**
David Elvin KC and Luke Wilcox (instructed by **Ashurst LLP**) for the **Second Defendant**
The Third Defendant did not appear and was not represented

Hearing dates: 12 & 13 March 2025

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Approved Judgment

This judgment was handed down remotely at 10 am on 2 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LANG DBE

Mrs Justice Lang :

1. The Claimant applies for statutory review, pursuant to section 288 of the Town and Country Planning Act 1990 ("TCPA 1990"), of the decision of the First Defendant ("D1"), on 16 September 2024, granting planning permission to the Second Defendant ("PPL") for an energy recovery facility ("ERF"), on the Isle of Portland, Dorset, in accordance with the recommendation of her appointed Inspector, following an Inquiry.

2. The Claimant is a campaign group which opposes the application for planning permission. Ms Tullet is the current co-ordinator of the group. The Claimant was a Rule 6[1] party at the Inquiry.

3. The Third Defendant ("Dorset") is the local planning authority that refused the application for planning permission for the Portland ERF on 24 March 2023 in its capacity as the Waste Planning Authority ("WPA").

4. The Claimant's grounds of challenge may be summarised as follows:

   i) D1's Decision Letter ("DL"), read with the Inspector's Report ("IR"), expressed no conclusion regarding compliance or otherwise of the Portland ERF proposal with the spatial strategy of the Bournemouth, Christchurch, Poole and Dorset Waste Plan (2019) ("the Waste Plan") or its proximity principle, and thus either misinterpreted Policy 4 of the Waste Plan, or failed to give adequate reasons on principal contested issues, or irrationally applied Policy 4.

   ii) The DL, read with the IR, contains a number of material errors of fact, regarding matters on which D1 had evidence before her, establishing the facts, in relation to a proposal for a substantial energy-from-waste recovery facility on an allocated site at Canford ("the Canford ERF proposal"), against which the Inspector and D1 compared the Portland ERF proposal under Policy 4 of the Waste Plan.

   iii) It was, in any event, a misinterpretation of Policy 4(a) to compare the Portland ERF proposal with the Parley permission and Canford ERF proposal, given Policy 4(a) required comparison between the unallocated site and four allocated sites.

5. On 16 December 2024, Eyre J. granted permission to apply for statutory review on Ground 1, but refused permission on Grounds 2 and 3. The Claimant's renewal application on Grounds 2 and 3 was listed as a "rolled up" hearing on the same date as the substantive hearing on Ground 1.

Planning history

6. On 3 September 2020, PPL applied for planning permission for an ERF with ancillary buildings and works including administrative facilities, gatehouse and weighbridge, parking and circulation areas, cable routes to ship berths and existing off site electrical substation, with site access through Portland Port from Castletown.

[1] Rule 6(6) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000

7. The site lies within Portland Port on the Isle of Portland, Dorset. In its entirety it covers 6.29Ha. The area where the proposed development is to be located is 2.14Ha in area.

8. The proposed development comprises a thermal treatment plant for the recovery of energy from waste. The Inspector described the proposal at IR/3.1-3.5:

> "3.1 …It is a conventional, single-line, moving grate combustion plant for the recovery of energy from non-hazardous residual waste, including Refuse Derived Fuel ["RDF"].
>
> 3.2 The proposal would include two main buildings. The larger one would house the ERF plant while the smaller one would contain offices and welfare facilities. There would be ancillary buildings and structures too.
>
> 3.3 The ERF has been designed as a 'merchant plant' which would recover energy from the controlled combustion of up to 202,000 tonnes of non-hazardous residual waste, including RDF, in each year of operation. It is expected that some of the input will be local authority collected waste, and some will be from commercial and industrial sources. Combustible fractions of the construction and demolition waste stream might also be included.
>
> 3.4 RDF could be delivered by sea in the form of wrapped bales, and/or by road using HGVs, in loose or baled form. There would be two main residues resulting from the process – Incinerator Bottom Ash ["IBA"], and air pollution control residue. Both would be taken away from the site by road, or by ship (in the case of IBA) for specialist processing.
>
> 3.5 The ERF is intended to export power to the national grid under conditions imposed by an export agreement. A new 33kV sub-station to be built as part of the proposal would serve as the connection point to the distribution network. Alongside that, facilities would be provided to allow the facility to provide a shore-based power system for ships berthed at the port, including visiting cruise ships, and the Royal Navy's Royal Fleet Auxiliary vessels that are stationed at the port. Moreover, the proposal has been designed in a way that offers potential for the future export of heat to a local heat network and it will be equipped to offer combined heat and power. There is potential for the plant to provide a district heating network that could serve the two prisons on the island. The facility has been designed so that Carbon Capture and Storage could be added to it at a later date should this be a viable option."

9. The Inspector considered that there was "no doubt that the proposal would be an insertion of massive scale – the main building would have a significant bulk and be 47m high and the stack would be 80 metres tall and prominent. The buildings and the process facilitated would take up a large amount of space." (IR/12.18).

10. Dorset refused PPL's application for planning permission on 24 March 2023 for three reasons, namely, (1) compliance with the Waste Plan's spatial strategy and waste management overall; (2) heritage impacts; and (3) landscape and visual impacts.

11. The text of Dorset's first reason for refusal stated:

> "1. The proposed development, being located on a site that is not allocated in the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019, fails to demonstrate that it would provide sufficient advantages as a waste management facility over the allocated sites in the Plan. This is by reason of its distance from the main sources of Dorset's residual waste generation and the site's limited opportunity to offer co-location with other waste management or transfer facilities which, when considered alongside other adverse impacts of the proposal in relation to heritage and landscape, mean that it would be an unsustainable form of waste management. As a consequence, the proposed development would be contrary to Policies 1 and 4 of the Bournemouth, Christchurch, Poole and Dorset Waste Plan 2019 and paragraph 158 of the NPPF."

12. Following refusal of the application, PPL appealed to D1 pursuant to section 78 TCPA 1990. On 30 October 2023, PPL's appeal was recovered for determination by D1, pursuant to section 79 of, and paragraph 3 of Schedule 6 to the TCPA 1990, on the grounds that the Portland ERF proposals would have "an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site".

13. Inspector Paul Griffiths BSc (Hons) BArch IHBC was appointed by D1 and he held a public local inquiry over 11 days between 5 December 2023 and 21 December 2023. On 23 November 2023, PPL and Dorset submitted a Statement of Common Ground, which summarised the areas of agreement (paragraphs 7.6 to 7.14) and the areas of dispute (paragraph 7.55). The Inspector's "Report to the Secretary of State", dated 24 June 2024, recommended that the appeal should be allowed and planning permission granted, subject to conditions.

14. On 16 September 2024, D1 issued her decision (made on her behalf by Rushanara Ali MP, Parliamentary Under Secretary of State for Building Safety and Homelessness), which agreed with the Inspector's recommendations.

Legal framework

Decision making

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

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the

> determination must be made in accordance with the plan unless material considerations indicate otherwise."

16. In *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447, Lord Clyde explained the effect of the equivalent Scottish provision, beginning at 1458B, and went on to say:

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

17. This statement of the law was approved by the Supreme Court in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [17]. Lord Reed clarified the law on the proper interpretation of planning policies at [18] – [19]:

> "18. … The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained…. in this area of public administration as in others (as discussed, for example, in

> *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.
>
> 19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean."

18. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 WLR 1865, Lord Carnwath cited Lord Reed's speech in *Tesco Stores* and made the following "further comment":

> "24. In the first place, it is important that the role of the court is not overstated. Lord Reed's application of the principles in the particular case (para 18) needs to be read in the context of the relatively specific policy there under consideration ….
>
> 25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. ….
>
> 26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the *Tesco* case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy; and not to elide the two."

19. In *R (Cherkley Campaign Limited) v Mole Valley District Council* [2014] EWCA Civ 567, Richards LJ explained the distinction between a policy and its supporting text, as follows:

> "16. ….when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of *descriptive and interpretative matter* in respect of the policies and/or a *reasoned justification* of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy….."

Challenges under section 288 TCPA 1990

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

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

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

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

23. In *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, at [6] – [7], the Court of Appeal set out the principles upon which the Court will act in an application for statutory review under section 288 TCPA 1990. Lindblom LJ held:

> "6. In my judgment at first instance in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) (at paragraph 19) I set out the "seven familiar principles" that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:
>
> > "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning

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

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

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

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted

> objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).
>
> (5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).
>
> (6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).
>
> (7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145)."

7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasised the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraphs 22 to 26, and my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). More broadly, though in the same vein,

> 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)."

24. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath JSC held at [25]:

> "… the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly."

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

26. Two citations from these authorities are relevant in this case.

    i) *South Somerset District Council*, per Hoffmann LJ at 84:

    > "The inspector is not writing an examination paper on current and draft development plans. The letter must be read in good faith and references to policies must be taken in the context of the general thrust of the inspector's reasoning ... Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must look at what the inspector thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood a relevant policy or proposed alteration to policy."

    ii) *Clarke Homes*, per Sir Thomas Bingham MR at 271-2:

    > "I hope I am not over-simplifying unduly by suggesting that the central issue in this case is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved

> as the parties agree on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

Reasons

27. By rule 18 of the Town and Country Planning (Inquiries Procedure)(England) Rules 2000, D1 was under a duty to give reasons for her decision. D1 relied upon the reasons given by the Inspector and so the reasoning in the IR is also subject to scrutiny and must meet the required standard.

28. In *South Buckinghamshire District Council v Porter* (No 2) [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave the following guidance on the nature and extent of the duty to give reasons:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

29. In his review of the authorities, Lord Brown cited, at [30], the passage from the speech of Lord Bridge in *Save Britian's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, at 167, where he considered the circumstances in which a deficiency of reasons would cause substantial prejudice.

30. In *R (CPRE Kent) v Dover DC* [2017] UKSC 79, [2018] 1 WLR 108, the Supreme Court applied Lord Brown's test. Lord Carnwath said, at [25]:

> "25. In *Save Britain's Heritage v Number 1 Poultry Ltd [*1991] 1 WLR 153, Lord Bridge said of the duty imposed by statute on the Secretary of State:
>
> > "That they should be required to state their reasons is a salutary safeguard to enable interested parties to know that the decision has been taken on relevant and rational grounds and that any applicable statutory criteria have been observed. It is the analogue in administrative law of the common law's requirement that justice should not only be done, but also be seen to be done." (p 170)"

The *Simplex* test

31. Even where there has been a legal error, the Court may, in its discretion, decide not to quash a decision, if it concludes that, but for the error, the decision-maker would necessarily have still made the same decision: see *Simplex GE Holdings Ltd v Secretary of State for the Environment Secretary* [2017] PTSR 1041, per Purchas LJ at 1060E.

32. The *Simplex* test is a stringent one: it is not enough for the court to be persuaded that the decision probably would have been the same but for the decision-maker's error, or very likely would have been the same, or almost certainly would have been the same. It must be persuaded that the decision necessarily would have been the same: see *Secretary of State v South Gloucestershire CC* [2016] EWCA Civ 74; at [25], per Lindblom LJ.

Policy framework

33. The Waste Plan forms part of the Council's Development Plan. It makes provision for waste management in two unitary authorities - Dorset Council and Bournemouth, Christchurch and Poole Council - which are both WPAs.

Introduction

34. Paragraph 1.5 provides that the Waste Plan "promotes the sustainable management of waste through a clear vision, set of objectives and spatial strategy for the development of waste management facilities up to 2033…".

Context for waste planning

35. Paragraphs 2.2 – 2.10 set out the "spatial characteristics" of the Waste Plan area.

36. Paragraph 2.29 identifies the need for more strategic and local facilities, following a review of anticipated growth. Strategic facilities are those that will "contribute significant capacity to meet an identified capacity gap, may manage waste arising from the whole Plan area and are fundamental to the delivery of the Waste Plan, such as residual facilities". The proposed ERFs are strategic facilities.

37. Paragraphs 2.34 to 2.40 describe the movement of waste between waste planning authorities.

Guiding principles

38. Paragraph 3.1 describes the Waste Plan's role as identifying sufficient opportunities to meet the waste management needs, including identification of sites, subject to consideration of issues such as environmental and cumulative impacts and sustainable transport. The key principles are:

i) *sustainable development*.

ii) *the waste hierarchy* which sets out the following options for waste management - prevention, re-use, recycling, recovery (including incineration with energy recovery) and disposal – which are to be considered sequentially, giving top priority to prevention and lowest priority to disposal.

iii) *self-sufficiency and the proximity principle*. The Waste Framework Directive, assimilated into UK law, requires the UK to establish a network of waste facilities. The network should enable net self-sufficiency in waste recovery and disposal. This means that the WPA should, so far as practicable, aim to ensure that there is sufficient capacity within the Waste Plan area to deal with its waste. Paragraph 3.16 provides:

> "The principle of proximity means that waste should be recovered or disposed of, as close as possible to where it is produced…The waste infrastructure network must enable waste to be managed in one of the nearest appropriate facilities, through the most appropriate methods and technologies in order to ensure a high level of protection of the environment and public health."

Policy 1 – Sustainable waste management

39. Policy 1 provides that proposals for waste management facilities must "conform with, and demonstrate how they support the delivery of, the key underlying principles of the Waste Plan", namely, the waste hierarchy, self-sufficiency, and proximity ("facilities that adhere to the proximity principle through being appropriately located relative to the source of the waste").

Policy 2 – Integrated waste management facilities

40. Policy 2 provides that proposals which incorporate different types of waste management activities at the same site will be supported unless there would be an unacceptable cumulative impact on the local area.

Vision and objectives

41. Chapter 4 sets out the vision and objectives of the Waste Plan. Paragraph 4.3 explains that the objectives "will help to implement and deliver the spatial vision and are translated into the spatial strategy, site specific locations and detailed policies".

42. *Objective 1* is "[t]o manage waste at the highest feasible level of the waste hierarchy. This will be achieved through waste prevention, increasing re-use, recycling, composting and recovery. Facilities for the use of waste as a resource will also be promoted to maximise economic benefits. Disposal to landfill will be seen as the last resort in the management of waste."

43. *Objective 2* is "[t]o optimise self sufficiency, through the provision of an appropriate number and range of well designed, appropriately sized facilities for the management of waste, recognising that some waste requires specialist management facilities of a strategic nature. Waste management facilities should be located in appropriate locations, as close as practicable to the origin of waste in order to reduce the total mileage waste is transported. Consideration will be given to existing waste production and operational capacity, the implications of growth and new developments likely to generate waste."

44. *Objective 3* is "[t]o provide a flexible approach for the delivery of waste management facilities and to allow for emerging technologies to come forward throughout the Plan period and beyond to create a network of waste management facilities that are fit for purpose."

45. *Objective 4* is "[t]o safeguard and enhance local amenity, landscape and natural resources, environmental, cultural and economic assets, tourism and the health and wellbeing of the people."

46. *Objective 5* is "[t]o assist in reducing greenhouse gas emissions and assist in adaption/mitigation and resilience to climate change through the development of appropriate methods of waste management and promotion of sustainable transport modes."

47. *Objective 6* is "[t]o safeguard existing waste management facilities from incompatible non-waste development".

Spatial strategy

48. Section 5 describes the spatial strategy in the supporting text as follows:

> "**The overall strategy for waste planning in Bournemouth, Christchurch, Poole and Dorset**
>
> 5.1 One of the key features of the planning system is to ensure that the spatial aspects of development are properly considered. The main purpose of the Waste Plan is to plan for an appropriate network of facilities to manage waste arisings in Bournemouth, Christchurch, Poole and Dorset to support economic

> development and meet the needs of society, whilst minimising the impact on environmental assets and amenity.
>
> 5.2 The Waste Plan was prepared using the best available evidence to assess current capacity, future waste arisings and the need for new facilities, whilst building in sufficient flexibility to respond to changing circumstances without the need for policy review. The spatial strategy builds on from the vision and objectives seeking to move waste up the waste hierarchy, support the proximity principle and promote self-sufficiency through making provision for a range of sustainable waste management facilities in appropriate locations.
>
> 5.3 To achieve this, the Waste Plan has identified in general terms what facilities are likely to be required for the management of different waste streams, and where they will be needed, during the Plan period. The spatial strategy underpins the approach taken to ensure the provision of adequate capacity to manage our expected waste arisings. The detail and justification for the spatial strategy is provided in the chapters that follow.
>
> 5.4 The Key Diagram (Appendix 1) illustrates the spatial strategy."

49. The introductory paragraph of the spatial strategy states:

> "The Waste Plan seeks to move waste up the waste hierarchy through making provision for sustainable waste management facilities that optimise waste reduction and reuse, in appropriate locations. This will be achieved by addressing the following identified needs:…."

50. Different types of waste management needs are then considered, including:

> "**Residual waste management** - Landfill capacity in the Plan area is diminishing and existing treatment capacity for residual waste is insufficient to meet our projected needs. At the end of the Plan period it is estimated that there will be a shortfall of approximately 232,000 tpa of capacity for managing non-hazardous waste.
>
> Appropriate facilities are needed to manage this waste, whilst ensuring that value is obtained through the recovery of energy wherever practicable. Provision will be made for residual waste treatment facility(s) to manage waste derived throughout the Plan area. The need for strategic residual waste treatment facilities will primarily be addressed through new capacity in South East Dorset. However, additional capacity may also be appropriate elsewhere to ensure the capacity gap is adequately addressed and when it will result in a good spatial distribution of facilities providing benefits such as a reduction in waste miles.

> Four existing waste management sites are allocated to address this need through the intensification or re-development of existing operations (Inset 7, 8, 9 and 10)."

51. The four allocated sites are:

    i) *Parley*: an existing waste management facility for a range of activities. It has a potential assessed capacity to manage 160,000 tpa of residual waste. Given the site's location within the South East Dorset Green Belt, applications for planning permission for further facilities will be considered against national policy and Waste Plan Policy 21.

    ii) *Canford Magna, Poole ("Canford")*: an existing complex of waste management facilities. The site has been assessed for circa 25,000 tpa of additional capacity for residual waste management. Given the site's location within the South East Dorset Green Belt, applications for planning permission for further facilities will be considered against national policy and Waste Plan Policy 21.

    iii) *Land at Mannings Heath Industrial Estate, Poole.*

    iv) *Binnegar Environmental Park, East Stoke*.

52. Although the Waste Plan put the need for residual waste management at approximately 232,000 tpa, in the course of the Inquiry, PPL and Dorset agreed an upwards adjustment to that figure (see IR/12.8), subject to their wider dispute regarding the total need for residual waste management in the Waste Plan area.

Policy 3 – Sites allocated for waste management development

53. Policy 3 sets out the criteria which must be met by proposals at the allocated sites. These include the requirement that the proposal complies with the relevant policies of the Waste Plan (e.g. Policy 21 – Green Belt).

Policy 4 – Applications for waste management facilities not allocated in the Waste Plan

54. The supporting text provides (so far as material):

> "6.9 Although the Allocated Sites are currently available for waste uses, circumstances may change during the Plan period and sites may not come forward as expected. Private sector businesses and, therefore, commercial considerations will determine whether facilities will actually be built and what types of technology will be brought forward. In other cases, it has not been possible to find sufficient, deliverable sites for allocation in the Waste Plan. The Plan allows for other acceptable sites to come forward for waste uses. Such provision will provide additional flexibility including circumstances where Allocated Sites do not come forward for waste development.

> ….
>
> 6.11 Proposals on unallocated sites will be considered on their merits. They should be in accordance with national policy and the Waste Plan policies and should address the spatial strategy and guiding principles of the Plan, including the waste hierarchy and managing waste in line with the proximity principle. The Waste Planning Authority will need to be satisfied that there are no suitable Allocated Sites capable of meeting the waste management need that would be served by the proposal. Alternatively, applicants would need to demonstrate that the non-allocated site provides advantages over Allocated Sites. This might include co-location with complementary facilities or the provision of a site that can be demonstrated to be in a better strategic and sustainable location and/or that has less impacts than an Allocated Site. The provision of sustainable localised heat and energy sources could also be a positive consideration in appropriate locations.
>
> 6.12 In the event that there are suitably located Allocated Sites but these are not available for the proposal, it will be necessary to ensure that the proposal would not sterilise, or prejudice, their development for other or similar waste management needs, or create a situation where unacceptable cumulative impacts could occur in the future.
>
> 6.13 Proposals for waste management facilities on unallocated sites must be supported by a satisfactory level of evidence and will need to comply with all the relevant policies of the Waste Plan. The policies specific to the range of waste management facilities and the development management policies provide a sound basis for this assessment."

55. The text of Policy 4 provides (so far as is material):

> "Proposals for waste management facilities on unallocated sites will only be permitted where it is demonstrated that they meet all of the following criteria:
>
> a. there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site;
>
> b. the proposal would not sterilise, or prejudice the delivery of, an allocated site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts;
>
> c. the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in this Plan, moving waste up the waste hierarchy and adhering to the proximity principle; and

> d. the proposal complies with the relevant policies of this Plan.
>
> …."

Forecasts and the need for new facilities

56. At paragraphs 7.71 to 7.73, the Waste Plan assesses the permitted capacity of existing recovery facilities and landfill sites dealing with non-hazardous residual waste and the identified shortfall in capacity during the Plan period. The amount of residual waste is predicted to increase by approximately 57,000 tonnes per annum at the end of the Plan period in 2033. A comparison between need and capacity demonstrates that there will be a significant shortfall in capacity throughout the Plan period, with the closure of landfill sites and the end of export contracts. Future management of residual waste is expected to be mainly through recovery, in order to push waste up the hierarchy.

57. At paragraph 7.76, the Waste Plan explains that allocation of sites envisages new facilities at three of the sites, and additional capacity at the existing mechanical biological treatment ("MBT") facility at Canford. However, the Plan "remains flexible in the event that one or more of the allocations does not come forward". Paragraph 7.78 states that if new facilities are not brought forward in the Plan area, facilities outside the Plan area would need to be relied upon, which would go against the guiding principles of proximity and self-sufficiency.

Policy 6 – Recovery facilities

58. Policy 6 provides as follows:

> "Proposals for the recovery of non-hazardous waste, including materials recovery, mechanical biological treatment, thermal treatment, anaerobic digestion and biomass facilities, will be permitted where it is demonstrated that they meet all of the following criteria:
>
> a. the operation of the facility will support the delivery of the Spatial Strategy, contributing to meeting the needs identified in this Plan;
>
> b. …;
>
> c. …;
>
> d. where energy is produced, they provide combined heat and power, or if this is demonstrated to be impracticable they recover energy through electricity production and are designed to have the capability to deliver heat in the future;
>
> e. . …; and
>
> f. possible effects (including those related to proximity, species and displacement of recreation) that might arise from the

> development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects.
>
> Any residues arising from the facility must be managed in accordance with the waste hierarchy and the proximity principle.
>
> Processing facilities for incinerator bottom ash must be located at or close to the source of the waste arising."

Policy 20 - Aviation

59. The Waste Plan provides, at Policy 20, that proposals for waste management facilities near Bournemouth Airport may be the subject of consultation with the aerodrome operator. They will only be permitted where the applicant can demonstrate through an aviation impact assessment that the proposed development and, where relevant, restoration and after use of the site, will not give rise to new or increased hazards to aviation.

Policy 21 - South East Dorset Green Belt

60. Policy 21 provides:

> "Proposals for waste management facilities will only be permitted in the South East Dorset Green Belt where:
>
> a. they do not constitute inappropriate development; or
>
> b. the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations to an extent that can demonstrate very special circumstances, including a need for the development that cannot be met by alternative suitable non-Green Belt sites; and
>
> c. the restoration of the site, where relevant, is appropriate to the inclusion of the land in the Green Belt and enhances the beneficial use of the Green Belt."

61. The supporting text explains the potential relevance of the Green Belt at paragraphs 12.104 to 12.108:

> "12.104 The South East Dorset Green Belt extends over some 168 square kilometres of open land in and around Upton, Wimborne, Ferndown, Poole, Bournemouth and Christchurch and stretching south-west as far as Wareham. The fundamental purpose of the Green Belt is to prevent urban sprawl by keeping land permanently open between developments.
>
> 12.105 National policy protects the Green Belt from 'inappropriate development' which is, by definition, harmful to

> the designation. Inappropriate development should not be approved except in very special circumstances [FN National Planning Policy Framework (2018)]. Generally waste management facilities can be considered as inappropriate development in the Green Belt. The construction of buildings in the Green Belt is inappropriate development, apart from a number of specified exceptions.
>
> 12.106 Limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing uses (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purposes of including the land within it, may be permitted where the openness and the purposes of the Green Belt is not greatly impacted.
>
> …..
>
> 12.108 The National Planning Policy for Waste states that there are particular locational needs for some types of waste management uses that should be recognised, which may lead to the need to locate such facilities in the Green Belt if a suitable site does not exist outside the Green Belt. Any proposal for the development of permanent waste facilities in the Green Belt would need to demonstrate very special circumstances that outweigh the harm to the Green Belt and any other harm and would be judged on the locational needs of the development.
>
> …..”

Heritage and landscape

62. The Waste Plan contains policies of relevance to the heritage and landscape/visual issues raised by the Portland ERF proposal, but which are not the subject of challenge in this claim.

Ground 1

Claimant’s submissions

63. The Claimant submits that the DL, read with the IR, expressed no conclusion regarding the compliance or otherwise of the Portland ERF proposal with the Waste Plan’s spatial strategy or its proximity principle, and thus either misinterpreted Policy 4, or failed to give adequate reasons on principal contested issues, or irrationally applied Policy 4.

64. Policy 4(c) required PPL to demonstrate that the Portland ERF proposal “supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in this Plan, moving waste up the waste hierarchy and adhering to the proximity principle…”.

65. Given the statutory primacy afforded to the development plan, and that Policy 4 was the policy concerned with proposals for unallocated sites, it was imperative that the Inspector and ultimately D1 grappled with the requirements of Policy 4 in any event.

66. A fortiori the Inspector and D1 had to grapple with those requirements because the main parties, and also the Rule 6 parties, had made it a principal contested issue whether the Portland ERF proposal did support the delivery of the spatial strategy, notably by adhering (or not) to the Waste Plan proximity principle by siting it proximate to the need for waste facilities.

67. Dorset's case on the point correctly reflected the Waste Plan's spatial strategy and the proximity principle and the Inspector referred to it at IR/6.132 and IR/6.134 - 6.135. Dorset argued that it was not in dispute that the spatial strategy focused on "directing new ERF capacity to south-east Dorset" and that the Portland ERF "would not align itself with that focus" (IR/6.132). Dorset argued further, that whilst PPL said that "focus" needed to change, based on current movements to Bridgewater, the spatial strategy was long-term and Dorset's waste miles assessment had concluded that "there would be over 4 million additional waste miles travelled to reach the appeal site as opposed to a facility on one of the allocated sites in the Waste Plan" (comparing the appeal site to the Waste Plan's spatial strategy, not what was currently happening in practice at Bridgewater (IR/6.135)).

68. The spatial strategy focused on the South East of the Waste Plan area, proximate to the main conurbation and so the principal source of need for waste management facilities**.** It was no part of the spatial strategy that there be a residual waste management facility on the Isle of Portland, or even near it, and the Portland ERF proposal was contrary to the Waste Plan's spatial strategy and its proximity principle.

69. At the Inquiry, PPL argued that the spatial strategy did not restrict waste facilities to South East Dorset (IR/8.25 and IR/8.29). That was correct, but it was a non sequitur to therefore interpret the spatial strategy as including waste facilities on the Isle of Portland, as it did not.

70. The dispute between the parties over Waste Plan policy concerning the spatial strategy and the proximity principle made it of particular importance that the Inspector and D1 addressed the issue of compliance with Policy 4(c).

71. However, the IR and the DL contain no conclusion, or even analysis, regarding Portland ERF proposal's support, or otherwise, for the spatial strategy or the proximity principle, whether for the purposes of Policy 4(c), or at all.

72. The most that the IR, and the DL contain by way of comment regarding support or otherwise for the spatial strategy is a comment at IR/12.108, repeated at DL/17, regarding the Canford ERF proposal's relatively superior performance as against the spatial strategy. This does not demonstrate compliance of the Portland ERF proposal with Policy 4(c).

73. Either D1 has misunderstood Policy 4, wrongly believing it not to contain a requirement for proposals for non-allocated sites regarding the Waste Plan's spatial strategy and its proximity principle. Or D1 has failed to provide any or any adequate reasoning on principal contested issues.

74. In the alternative, if the Court concludes that D1 found the Portland ERF proposal did comply with Policy 4(c), such a finding would have been irrational. Residual waste management on the Isle of Portland was plainly contrary to the Waste Plan's spatial strategy, and contrary to its proximity principle, which related to the area covered by the Waste Plan.

Conclusions

75. The Waste Plan is part of Dorset's Development Plan. In construing the policy, I have applied the guidance in *Tesco Stores*, per Lord Reed at [18]-[19], that "policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context". Whilst policies are intended to "secure consistency and direction", they also allow "a measure of flexibility to be retained". In this case, I consider it is particularly important to bear in mind that policy statements should not be construed as if they were statutory or contractual provisions. As Lord Reed said, "development plans are full of broad statements of policy …. so that in a particular case one must give way to another". Many policies are framed in language which require an exercise of judgment by decision-makers, which can only be challenged on irrationality grounds.

76. In my view, the Inspector was well aware of the relevant provisions of the Waste Plan and their application to the issues in the appeal. He correctly directed himself on the relevant policies, in particular at IR/5.4 to 5.11:

> "5.4 Policy 1 of the Waste Plan 2019 refers to sustainable waste management and sets out that in considering development proposals, the Waste Planning Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework, and work proactively with applicants to promote the circular economy and find solutions which mean that proposals can be approved where appropriate to secure development that improves the economic, social and environmental conditions in the area.
>
> 5.5 Under Policy 1, proposals for the development of waste management facilities must conform with, and demonstrate how they support the delivery of, the key underlying principles of the Waste Plan 2019. These relate to firstly the Waste Hierarchy – facilities that contribute to moving waste up the waste hierarchy and demonstrate that waste is being managed at the highest appropriate level; secondly Self-Sufficiency – facilities that enable the Bournemouth, Christchurch, Poole and Dorset area to move towards net self-sufficiency; and thirdly Proximity – facilities that adhere to the proximity principle through being appropriately located relative to the source of the waste.
>
> 5.6 Policy 3 of the Waste Plan 2019 identifies allocated sites for waste management facilities to address the shortfall in waste management capacity and identified needs for new and improved

waste management facilities. The appeal site is not allocated in the Waste Plan 2019 but, amongst a range of allocated sites, it is correct to identify Inset 8 – Land at Canford Magna, Magna Road, Poole as being of particular relevance. The reasons for that will become clear later in this report.

5.7 Waste Plan 2019 Policy 4 deals with applications for waste management facilities on sites, like the appeal site, that are not allocated. These will only be permitted where it is demonstrated that: (a) there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site; (b) the proposal would not sterilise, or prejudice the delivery of, an allocated site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts; (c) the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in the Waste Plan 2019, moving waste up the waste hierarchy and adhering to the proximity principle; and (d) the proposal complies with the (other) relevant policies of the Waste Plan 2019.

5.8 On top of all that, proposals should be located (e) within allocated or permitted employment land which allows for Class B1, B2 and/or B8 uses; or (f) within or adjacent to other waste management and/or complementary facilities where the proposed use is compatible with existing and planned development in the locality; or (g) on previously-developed land suitable for employment or industrial purposes.

5.9 Waste Plan 2019 Policy 4 goes on to say that waste management facilities may be suitable within an agricultural setting where the proposed use and scale is compatible with the setting, provides opportunities to utilise outputs from the process in the locality, and provides advantages over the locations specified in (e) to (g). Of direct bearing on the proposal at issue, other locations will only be permitted if no suitable site meeting those criteria is available. Finally, sites will only be permitted where it has been demonstrated that possible effects (including those related to proximity, species, and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone, or in combination with other plans or projects.

5.10 Waste Plan 2019 Policy 6 deals with recovery facilities. Proposals for the recovery of non-hazardous waste, including materials recovery, mechanical biological treatment, thermal treatment, anaerobic digestion, and biomass facilities, will be permitted where it is demonstrated that they meet all of a series of criteria: (a) the operation of the facility will support the delivery of the spatial strategy, contributing to meeting the needs

> identified in the Waste Plan 2019; (b) they will not displace the management of waste which is already managed, or likely to be managed, by a process that is further up the waste hierarchy than that being proposed, unless the Waste Planning Authority is satisfied that the proposal would result in benefits sufficient to outweigh the displacement; (c) proposals will provide for all operations including the reception, handling, processing and storage of waste to take place within an enclosed building unless there would be no proven benefit from such enclosure and demonstrate that the proposed operations will be compatible with existing or proposed neighbouring uses; (d) where energy is produced, they provide combined heat and power, or if this is demonstrated to be impracticable they recover energy through electricity production and are designed to have the capacity to deliver heat in the future; (e)where gas is produced, it is injected into the grid, used for fuel or is refined for use in industrial processes, unless this would not be practicable; and (f) possible effects (including those related to proximity, species, and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone, or in combination with other plans or projects.
>
> 5.11 Moreover, any residues arising from the facility must be manged in accordance with the waste hierarchy and the proximity principle. Processing facilities for IBA must be located at or close to the source of the waste arising."

77. As Lord Carnwath said in *Hopkins Homes Ltd*, at [25], "the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly".

78. In *St Modwen*, Lindblom LJ said at [6(5)], when it is suggested that an inspector has failed to grasp a relevant policy, one must look at what he thought the important planning issues were, and decide from the way he dealt with them that he must have misunderstood the policy in question.

79. At IR/12.2 the Inspector identified as the first main issue "whether the proposal would comply with the relevant policies of the Waste Plan 2019 and represent a sustainable form of waste management in relation to 'need', amongst other things (the waste issue)". In my view, he correctly identified the issue in broader terms than Dorset's first reason for refusal of the application for planning permission, because in responding to the appeal, Dorset relied upon a new primary submission on waste, namely, that the need for residual waste management was considerably lower than the need upon which the Waste Plan had been predicated. In consequence, Dorset argued that the Portland ERF proposal did not support the spatial strategy, referenced in Policy 4, because insofar as there was any gap in capacity, it could be met by one or more of the allocated sites, which were appropriately located in South East Dorset. Much time was spent on this issue at the Inquiry, as reflected in the Inspector's Report.

80. The Inspector addressed Dorset's submission on need at IR/12.5 to 12.10 and rejected it for the following reasons:

> "12.5 The Council advances an argument that the Waste Plan 2019 can be treated as being up-to-date while at the same time, the need for residual waste management capacity set out therein can be treated as having been overtaken by events. To a large extent, the Council's case on 'the waste issue' rests on this point and the suggestion that the need for residual waste management capacity is now significantly lower than the need the Waste Plan 2019 was predicated upon, and that this need will continue to fall. In that way, it is said, that at an early point during its operating lifetime, the capacity of the appeal proposal will significantly outstrip the predicted needs of the Plan area.
>
> I have significant doubts about whether that position is defensible. The 'Vision and Objectives', the 'Spatial Strategy' and the approach to allocated sites in the Waste Plan 2019 are all born of that identified need. If that identified need is much lower than what the Waste Plan 2019 proceeded upon, and likely to fall further, year on year, then it seems to me plain that the whole approach must be questioned. In particular, if the forecasts in Chapter 7, and Table 7 in particular, are not to be relied upon, then how can the approach to allocated sites (Policy 3), and facilities on non-allocated sites (Policy 4) remain tenable? If the Waste Plan 2019 is to be taken as being up-to-date, then one has to treat the assessment of need therein as reliable.
>
> Notwithstanding that, a good deal of time was spent at the Inquiry dealing with the competing forecasts of need for residual waste management capacity. Having heard evidence from the Council and the appellant, it is clear to me that predictive assessments of need of this type are more of an art than a science, and the main parties' respective assessments, and the many different sources and assumptions that underpin them, ably demonstrate that.
>
> Unsurprisingly perhaps, the Council suggests that the actual 'need' is much lower than that set out in the Waste Plan 2019, decreasing over time, while the appellant produces figures that are higher. Testing sources, and each and every assumption, and ending up with a figure of my own, seems to me to be an arid exercise. It would not result in figures necessarily more reliable than those put forward by the main parties. Having analysed the various assessments and their sources, and heard the evidence relating to them, it seems to me that subject to the agreed adjustment to Table 7 [6.106 – 6.107, 6.117 and 8.20 and 8.35] which pushes the identified shortfall upwards, there is no convincing justification for setting aside the figures in Table 7 of the Waste Plan 2019.

> I intend to proceed on the basis that the Waste Plan 2019, and the figures on 'need' therein, are 'up-to-date', subject to the agreed adjustment, and this has formed the basis of my approach.
>
> This is a point fundamental to the determination of the appeal. Should the SoS disagree on that point and prefer the Council's evidence on 'need', then a different approach to the Waste Plan 2019 would have to be taken. My view is that the Waste Plan 2019, and the policies therein that are most important for determining the application, would have to be treated as being 'out-of-date' with the consequence that the tilted balance in paragraph 11d) of the Framework, subject to points i and ii, would be engaged. Into that tilted balance, amongst other things, would be fed the question of whether the proposal is necessary, in the light of the Council's figures on 'need'."

81. Neither Dorset nor the Claimant have challenged the Inspector's conclusion on Dorset's primary submission on need. The Claimant's challenge under Ground 1 is directed towards the Inspector's interpretation and application of Policy 4(c), in particular whether it supports the delivery of the spatial strategy and adheres to the proximity principle, and the adequacy of the Inspector's reasoning.

82. I agree with the submissions made by D1 and the PPL that the Claimant has interpreted the spatial strategy in the Waste Plan too narrowly, by focussing on the location of sites, without sufficient regard to its other elements. Contrary to the Claimant's case, supporting the spatial strategy is not limited to mandating or directing development to a specific location. It is about providing sustainable waste management facilities to address the need for 232,000 tpa of capacity on sites which provide benefits in the context of the overall Waste Plan and other elements of the spatial strategy.

83. Paragraph 1.5 of the Waste Plan explains that it "promotes the sustainable management of waste through a clear vision, set of objectives and spatial strategy for the development of waste management facilities up to 2033. There needs to be enough sites and waste management facilities …" *(emphasis added)*.

84. Paragraph 4.3 of the Waste Plan explains that the objectives "will help to implement and deliver the spatial vision and are translated into the spatial strategy, site specific locations and detailed policies" *(emphasis added)*. Of the six objectives, only objective 2 relates to location – consideration of the proximity principle – which is "not to the exclusion of other considerations". Objective 1 refers to the waste hierarchy and use of waste as an economic benefit; Objective 3 refers to flexibility and emerging technologies; Objective 4 refers to safeguarding local landscape and other assets; Objective 5 refers to mitigation of climate change; Objective 6 refers to safeguarding existing facilities. The spatial strategy follows these objectives.

85. At paragraph 2.29 of the Waste Plan, "strategic facilities" (such as Portland ERF) are intended to "contribute significant capacity to meet an identified capacity gap, may manage waste arising from the whole Plan area and are fundamental to the delivery of the Waste Plan, such as residual facilities". They are intended to serve the whole Plan area and are clearly distinguished from "local facilities".

86. At Policy 1 and chapter 3 of the Waste Plan, the "guiding principles" include the proximity principle but also include the principles of sustainable development, the waste hierarchy, and self-sufficiency.

87. The supporting text to the spatial strategy, at paragraphs 5.1 to 5.3, encapsulates the various elements of the strategy which are clearly not limited to identifying specific locations within the Waste Plan area:

> "**The overall strategy for waste planning in Bournemouth, Christchurch, Poole and Dorset**
>
> 5.1 One of the key features of the planning system is to ensure that the spatial aspects of development are properly considered. The main purpose of the Waste Plan is to plan for an appropriate network of facilities to manage waste arisings in Bournemouth, Christchurch, Poole and Dorset to support economic development and meet the needs of society, whilst minimising the impact on environmental assets and amenity.
>
> 5.2 The Waste Plan was prepared using the best available evidence to assess current capacity, future waste arisings and the need for new facilities, whilst building in sufficient flexibility to respond to changing circumstances without the need for policy review. The spatial strategy builds on from the vision and objectives seeking to move waste up the waste hierarchy, support the proximity principle and promote self-sufficiency through making provision for a range of sustainable waste management facilities in appropriate locations.
>
> 5.3 To achieve this, the Waste Plan has identified in general terms what facilities are likely to be required for the management of different waste streams, and where they will be needed, during the Plan period. The spatial strategy underpins the approach taken to ensure the provision of adequate capacity to manage our expected waste arisings. The detail and justification for the spatial strategy is provided in the chapters that follow."

88. The overarching purpose of the spatial strategy is reflected in the first sentence of the policy text which provides:

> "The Waste Plan seeks to move waste up the waste hierarchy through making provision for sustainable waste management facilities that optimise waste reduction and reuse, in appropriate locations. This will be achieved by addressing the following identified needs: …."

89. The relevant "identified need" in this case here is residual waste management, described below:

> "**Residual waste management** - Landfill capacity in the Plan area is diminishing and existing treatment capacity for residual

> waste is insufficient to meet our projected needs. At the end of the Plan period it is estimated that there will be a shortfall of approximately 232,000 tpa of capacity for managing non-hazardous waste.
>
> Appropriate facilities are needed to manage this waste, whilst ensuring that value is obtained through the recovery of energy wherever practicable. Provision will be made for residual waste treatment facility(s) to manage waste derived throughout the Plan area. The need for strategic residual waste treatment facilities will primarily be addressed through new capacity in south east Dorset. However, additional capacity may also be appropriate elsewhere to ensure the capacity gap is adequately addressed and when it will result in a good spatial distribution of facilities providing benefits such as a reduction in waste miles.
>
> Four existing waste management sites are allocated to address this need through the intensification or re-development of existing operations (Inset 7, 8, 9 and 10)."

90. Therefore, in summary, the spatial strategy seeks to (i) move waste up the waste hierarchy; (ii) promote self-sufficiency by planning for an appropriate network of facilities to manage the waste arisings in the Plan area; (iii) minimise the impact on environmental assets and amenity; (iv) be sufficiently flexible to respond to changing circumstances without the need for formal policy review; (v) support the proximity principle; (vi) address the need for 232,000 tpa of capacity for managing non-hazardous waste; and (vii) address that need through new capacity primarily in South East Dorset but recognising capacity might be required elsewhere to ensure the capacity gap is adequately addressed.

91. The Inspector's findings, adopted by D1, make it clear that he properly considered and applied the spatial strategy, the proximity principle and Policy 4.

92. The Inspector found that the need figure within the Waste Plan, as adjusted, was up to date.

93. The Inspector received submissions on the status of the allocated sites. He found that, although they had "been around for some time", none of them had come forward (IR/12.11), but there was a live planning application at Canford which could process 260,000 tpa of residual waste (IR/12.12).

94. The Inspector stated, at IR/12.13:

> "12.13 The workings of Policy 4 require the decision-maker to make a qualitative comparison between the proposal at issue here, and the allocated sites. If it can be concluded that the proposal provides advantages over the allocated site, then, subject to other relevant policies, it could be found to comply with the Waste Plan 2019."

95. The Inspector addressed disposal of the waste at IR/12.92 – 12.95, as follows:

> "12.92 There is IBA to consider too. The location of the facility in a port would allow IBA to be removed by sea which would mean that the proposal would generate less traffic overall than a similar facility, like that proposed at Canford Magna, that was not able to do that. This is an advantage of the proposal in that sense, but also environmentally in that were it not for the ability to remove IBA by sea, it would have to leave by road, resulting in additional traffic movements. [6.162, and 7.66]
>
> 12.93 The obligation in the Agreement under s.106 which refer to the use of 'reasonable endeavours' to remove IBA by sea and use it for other (construction related) purposes is necessary to make the proposal acceptable in planning terms, with reference to Policy 6 of the Waste Plan 2019, as is the relevant condition.
>
> 12.94 The final matter I need to deal with under this heading relates to carbon emissions and the potential climate impacts of the proposal. Burning residual waste would of course result in carbon emissions but the approach to those emissions cannot consider them in isolation. Residual waste has to be disposed of somehow and, as a result, the analysis must be comparative.
>
> 12.95 The evidence is clear that burning residual waste in this location would result in lower carbon emissions than the present situation where the Waste Authority disposes of its residual waste partly through landfill, and partly through incineration outside the Waste Plan area, with the consequent waste miles. The proposal would represent a clear improvement on the existing situation, therefore. I would observe too that while the process is in its infancy, the proposal has the potential, and importantly the space, to provide for carbon capture and for its transport to storage facilities, by sea. [6.163-6.167, and 8.156-8.167]"

96. Thus, the Inspector found that the Portland ERF proposal would result in a clear improvement on the existing situation where residual waste was being incinerated outside the Waste Plan area, with the consequent "waste miles" incurred by road delivery.

97. As required by Policy 4(a), the Inspector undertook a comparative exercise with the allocated sites at Canford and Parley. The other allocated sites were not relied upon by Dorset. In regard to Parley, the Inspector found, at IR/12.101, that the site was relatively small and the approved proposal for an ERF was very unlikely to come forward. It could not cope alone with the residual waste needs. Furthermore, it is in the Green Belt. He concluded that the Portland site had obvious advantages over Parley.

98. The Inspector considered the Canford site at IR/12.102 to 12.109. The Inspector identified the capacity and took into account Dorset's submission on the benefits of co-location with other waste management facilities and the reduction in waste miles by reason of its location in South East Dorset. He found that the size of the site was too small, and that there were aviation concerns about the height of the stack.

99. Most importantly, the Inspector found that the level of Green Belt harm would be "very high indeed" and the "very special circumstances" required to justify the harm to the Green Belt would have to be very weighty indeed. As he correctly directed himself (in accordance with Policy 21), a decision-maker has to ask whether the provision can be made outside the Green Belt. He concluded that the "scheme at issue here shows that it can be, and in that situation, it is difficult to see how the necessary very special circumstances could be shown" (IR/12.107).

100. I am satisfied that the Inspector was well aware of the locational elements of the spatial strategy and the proximity principle as they applied in this case. The strategy envisages that residual waste facilities would be primarily addressed through new capacity in South East Dorset. This was referred to by PPL in its closing submissions (paragraph 19), and by Dorset in its closing submissions (paragraph 121). The Inspector was also well aware that the Canford site is in South East Dorset, near the major waste-producing urban conurbations in Dorset, whereas Portland is located some distance away to the west of Dorset, near Weymouth. However, as the Inspector was well aware, the spatial strategy allows for additional capacity on unallocated sites "elsewhere" to meet the capacity gap, when it will result in "a good spatial distribution of facilities providing benefits such as a reduction in waste miles". A reduction in waste miles is given as an example, not a mandatory requirement. Furthermore, the Portland proposal would result in a reduction in waste miles and an improvement in self-sufficiency levels in comparison with the current position where residual waste is being taken to landfill and to incinerators in other counties.

101. The Inspector considered the locational elements of the spatial strategy, together with the proximity principle, at IR/12.108 and concluded:

> "12.108 I do not doubt that the proposal at Canford Magna might well perform better in terms of the spatial strategy in the Waste Plan 2019 but that would have to be balanced against the Green Belt harm to which substantial weight would have to be attached, and any other harm. To complicate matters further in terms of the spatial strategy, the locational benefits of the Canford Magna site might well be offset by its inability to accommodate carbon capture technology, and of course IBA would need to be removed by road.
>
> 12.109 I have to say that the approach the Waste Plan 2019 requires is an unusual one, but it has been found sound and adopted. For the reasons set out, I find that the proposal at issue here would have very clear advantages over the allocated sites (and the proposals for them) and as such, it complies with Policy 4. On the basis that it complies with Policy 4, I also find that it accords with Policy 1. [8.60-8.71]
>
> 12.110 As a result, I am satisfied that the proposal complies with the development plan taken as a whole and in my view, there are no material considerations that would justify a decision contrary to the provisions of the development plan. [6.137-6.140, 6.172-6.177, 7.93, and 8.198-8.204]."

102. On a proper application of the spatial strategy, the locational elements which favoured Canford were not necessarily conclusive. The Inspector and D1 were also required to consider the other elements of the spatial strategy, which they plainly did. They were entitled to prioritise those other elements, such as promoting self-sufficiency to manage the waste within the Plan area and thus reducing waste miles, and addressing the need for 232,000 tpa of capacity for managing non-hazardous waste. In my judgment, the Claimant's irrationality challenge does not come close to overcoming the high threshold required.

103. The Claimant contends that the Inspector failed to give adequate reasons for his recommendations which were adopted by D1. In particular, the Claimant criticises the Inspector for failing to deal separately with sub-paragraphs (a) to (c) of Policy 4 and submits that it was not clear to his client how the Inspector had addressed sub-paragraph (c). I bear in mind the guidance in *St Modwen* per Lindblom LJ, at [6(1)], that planning decisions are to be construed in a flexible way; decisions letters are written principally for the parties who know what the issues are, and what evidence and argument has been deployed; and an inspector does not need to rehearse every point made.

104. I do not accept that the IR and the DL fell below the standard of reasons required, as set out by Lord Brown in *South Bucks*. Policy 4 was one of several aspects of the first main issue. Assuming in the Claimant's favour that it was a principal important controversial issue, I consider that the reasons given were intelligible and adequate. The Inspector was entitled to summarise his conclusions in the way that he did, without separating sub-paragraphs Policy 4(a) and (c). The Inspector and D1 clearly stated that they were satisfied that the Portland ERF proposal complied with Policy 4, which could only mean the entirety of Policy 4 (IR/109 and DL/17). Any doubt as to the reasons in the mind of the Claimant is forensic, rather than genuine (*Clarke Homes*, per Sir Thomas Bingham MR at 271-2), given the Claimant's knowledge of the issues and evidence, and its attendance at the Inquiry, where it was represented by counsel.

105. For these reasons, Ground 1 does not succeed.

Ground 2

106. Ground 2 was divided into three sub-grounds, all of which related to the Canford site and proposal: (1) the size of the Canford site; (2) aviation concerns; and (3) carbon capture and incinerator bottom ash ("IBA").

Claimant's submissions

Sub-ground 1

107. The Inspector and D1 found that the red line delineating the Canford ERF proposal site was "well beyond" the boundary of the allocation, shown at Inset 8, which suggested the Inset 8 allocation was too small to cope with the residual waste needs in the Waste Plan (IR/12.104; DL/17). The Claimant submitted that this finding was based on an error of fact and/or was irrational, because only the grid connection and the combined heat and power ("CHP") were outside the Inset 8 allocation boundary. They are

ancillary or associated buildings and works, not part of the main waste treatment facilities.

Sub-ground 2

108. The Claimant submitted that the Inspector erred in fact at IR/12.105 when he stated in respect of Canford:

> "…. In relation to 'any other harm' I understand that there are aviation concerns about the proposed stack, amongst other things."

109. The Inspector's comparative analysis was accepted by D1, at DL/17.

110. PPL's planning consultant, Mr Roberts, gave evidence that a "degree of harm to the operation of Bournemouth Airport also weighs against the scheme" (proof of evidence paragraph 4.2.21(x)). The Claimant infers that this was based upon objections made by Bournemouth Airport to the application for planning permission. However, those objections had subsequently been withdrawn, according to the planning officer's report ("the Canford OR"), which was sent to D1 just before the DL was issued. D1 failed to refer to this new information, or take it into account. It was obviously a relevant consideration as the Inspector had taken the harm into account when assessing the Canford proposal against the Portland proposal.

Sub-ground 3

111. The Claimant submitted that the Inspector's criticisms of the Canford site, at IR/12.108 and IR/12.92, regarding lack of space for carbon capture technology and disposal arrangements for IBA were factually incorrect and his conclusions were irrational.

112. MVV Environment Limited ("MVV"), the applicant for planning permission at Canford, had already placed substantial material on these points before the Inspector. The Canford OR referred to:

i) Retention of land within the allocation where a carbon capture plant could be built in the future, if planning permission was granted (Canford OR paragraphs 1.1.8, 9.7.10 (2nd bullet), 18.1.9 and 26.3.2 (15th bullet));

ii) The potential for an IBA processing plant at the allocated site for the Canford Resource Park, with minimal transportation (Canford OR paragraphs 1.1.9, 9.7.10 (1st bullet), 9.11.3 and 26.3.2 (15th bullet)).

113. If what was already before the Inspector did not render it irrational to reach the conclusions he did on these points at IR/2.108, then what was in the Canford OR certainly made it irrational for D1 to adopt the Inspector's conclusions.

Conclusions

114. In *E v Secretary of State for the Home Department* [2004] EWCA Civ 49, [2004] QB 1044, Carnwath LJ, at [66], identified the requirements of a material mistake of fact leading to unfairness as follows: (1) there must have been a mistake as to existing fact; (2) the fact must have been "established", in the sense that it was uncontentious and objectively verifiable; (3) the appellant must not be responsible for the mistake; and (4) the mistake must have played a material, though not necessarily decisive, part in the tribunal's reasoning.

Sub-ground 1

115. In its closing submissions at the Inquiry, PPL submitted:

> "70. The allocated Canford site amounts to a small-scale intensification of the existing waste use at the site and is for 25,000 tpa, and the red line of the allocation boundary is fairly tightly drawn and lies in the GB.
>
> 71. The extant application at Canford significantly exceeds the allocation both in terms of quantity and site boundaries as noted above. The Applicant proposes an ERF for 260,000 tpa throughput and the red line boundary extends far beyond the allocation boundary (see AD.07 and contrast with the plan for WP Inset 9 p. 177) and includes some development elements at a significant scale. The DNC compound for instance includes built form that is around 20m high, and the grid connection compound includes significant infrastructure elements as well.
>
> 72. There is thus no meaningful sense in which the Canford application delivers the Canford allocation in accordance with the WP. If that is the scale required to deliver ERF at Canford it strongly suggests that the allocation is wholly inappropriate and inadequate for that purpose."

116. In his Conclusions, the Inspector agreed with PPL's submission, at IR/12.104:

> "12.104 As far as the allocated site is concerned, which is what Policy 4 actually refers to, I take the appellant's point that it is not big enough to accommodate the facility that has been proposed – the 'red line' of the application is well beyond the confines of the allocation which suggests that the allocated site is too small to cope with the residual waste needs in the Waste Plan 2019, that I have found to be reasonable." *(emphasis added)*

117. I agree with D1's submission that the Inspector agreed with PPL's case that there are "development elements" of significant scale which are beyond the allocation boundary. Both PPL and the Inspector were referring to the entirety of the proposed development. This was not an error of fact. Rather, it was an exercise of judgment by the Inspector

which cannot be characterised as even arguably irrational. It was plainly relevant and the Inspector was entitled to find as he did, on the evidence before him.

118. For these reasons, I confirm the decision of Eyre J. that, as sub-ground 2(1) is unarguable with no real prospect of success, permission to apply for statutory review should be refused.

Sub-ground 2

119. In my judgment, on the evidence before him, the Inspector was entitled to find that there were "aviation concerns about the proposed stack, amongst other things", and to take that matter into account.

120. The IR was sent to D1 on or about 24 June 2024, and D1's Decision Letter was issued on 16 September 2024.

121. In September 2024, the Canford OR was issued for the Planning Committee meeting. Officers recommended approval of the application for planning permission. The Canford OR provided an update on aviation concerns as follows:

> "24 AVIATION SAFEGUARDING
>
> 24.1.1 The proposal is located within an Airfield Safeguarding Area for Bournemouth Airport and consultation with the airport operator is therefore required by Policy 20 of the BCPDWP. Further, the policy only supports proposals which can demonstrate that there would be no increased hazards to aviation through an aviation impact assessment.
>
> 24.1.2 Officers have been in direct discussion with Bournemouth Airport throughout the course of the application. The Airport originally made a holding objection on the application; however, removed this, and are supportive of the application subject to a condition requiring details to ensure there is no unacceptable impact. The wording of the condition has been agreed with the Airport and has been included in the recommended conditions to members. Subject to the details required by this condition, the proposal would have an acceptable impact on aviation safety and complies with BCPDWP Policy 20."

122. Draft Condition 9 to the proposed permission provides:

> "9. Aviation Safeguarding
>
> No part of the development hereby permitted shall commence until the information specified below has been submitted to and approved in writing by the Local Planning Authority:
>
> a. The British National Grid Coordinate reference for the centre of the EfW CHP Facility

> i. building; and
>
> ii. chimney;
>
> b. date of proposed commencement of construction;
>
> c. anticipated date of completion of construction of the EfW CHP Facility buildings and chimney;
>
> d. height above ground level of the EfW CHP Facility building and chimney;
>
> e. a construction equipment notification procedure by which subsequent notification of maximum heights and duration of any temporary cranes that penetrate the Bournemouth Airport Outer Horizontal Surface of 159.45m Above Mean Sea Level (AMSL) may occur; and
>
> f. details of aviation warning red lighting to be fitted at the highest practicable point of the chimney together with proposed on going maintenance requirements ("Aviation Information").
>
> The aviation warning lighting details approved as part of the approved Aviation Information must be provided in full before whichever is the earlier of the completion of construction of the chimney or the first use of the chimney unless otherwise agreed by the Local Planning Authority and thereafter the aviation warning lighting shall at all times be retained and also maintained in accordance with the approved Aviation Information.
>
> At the earliest opportunity prior to the date of completion of the construction of the chimney and in any event at least 30 calendar days prior to construction of the top 5 metres of the chimney, the anticipated date of construction to the chimney's full height must be submitted to the Local Planning Authority and provided to Bournemouth Airport.
>
> The approved Aviation Information shall at all times be accorded with unless otherwise agreed in writing by the local planning authority in consultation with the Bournemouth Airport.
>
> Reason: in the interests of aviation safeguarding, in accordance with Policy 20 of Bournemouth, Christchurch and Poole (BCP) and Dorset Waste Plan (2019)."

123. At DL/17, D1 agreed with the Inspector's comparative analysis between the Canford and Portland sites, without specifically referring to aviation harm.

124. At DL/17, D1 referred to the representations received from the parties between 13 and 16 September 2024, including the Canford OR and a legal opinion. She was informed that the Canford OR recommended approval of the application, but that the Planning

Committee meeting had been deferred from 12 September 2024. D1 did not consider that the new information "changes her conclusions on the compliance of the proposal which is the subject of this decision letter with Policy 4 or Policy 1 of the WP, and does not change her decision overall". She did not consider it necessary to refer the matter back to the parties.

125. D1 did not identify the new information regarding aviation harm in the DL, but nor did she refer to the Inspector's finding, presumably because it was a minor consideration. She was not obliged to address it in the DL as aviation harm was not a principal important controversial issue that required reasons.

126. However, I am satisfied on the basis of the express references to the new material in DL/17, and her assessments of it, that she did read the Canford OR and therefore it is reasonable to infer that she read the passages relating to aviation harm within it. Therefore, I do not consider that the Claimant has discharged the burden of proof upon it to establish that it is arguable that D1 failed to take a relevant consideration into account.

127. The Inspector's finding on aviation harm was not incorrect, so far as it went. It was apparent from the Canford OR that there were still ongoing concerns about aviation harm at nearby Bournemouth Airport, in particular, relating to the height of the stack and warning lights, which were made the subject of a stringent draft condition. No work can commence until Bournemouth, Christchurch and Poole Council, in consultation with Bournemouth Airport, approves the proposals in regard to the height of the chimney and the CHP facility, and aviation warning lighting. Thus, decisions about aviation safeguarding will have to be made prior to commencement of the development. It was only on that basis that the objection from Bournemouth Airport was withdrawn. The Canford OR is, of course, only the recommendation of the planning officers. It remains to be seen whether the Planning Committee grants planning permission, and if so, on what conditions.

128. Alternatively, even assuming in the Claimant's favour that D1 did err in failing to take account of the updated information, applying the *Simplex* test, the decision would necessarily have been the same, absent the legal error, as it was a minor matter which would not have altered the outcome. The decisive factor was the planning restriction imposed by Canford's location in the Green Belt.

129. For these reasons, I confirm the decision of Eyre J. that, as sub-ground 2(2) is unarguable with no real prospect of success, permission to apply for statutory review should be refused.

Sub-ground 3

130. The Inspector's findings were as follows:

> "12.92 There is IBA to consider too. The location of the facility in a port would allow IBA to be removed by sea which would mean that the proposal would generate less traffic overall than a similar facility, like that proposed at Canford Magna, that was not able to do that. This is an advantage of the proposal in that

> sense, but also environmentally in that were it not for the ability to remove IBA by sea, it would have to leave by road, resulting in additional traffic movements. [6.162, and 7.66]
>
> 12.108 I do not doubt that the proposal at Canford Magna might well perform better in terms of the spatial strategy in the Waste Plan 2019 but that would have to be balanced against the Green Belt harm to which substantial weight would have to be attached, and any other harm. To complicate matters further in terms of the spatial strategy, the locational benefits of the Canford Magna site might well be offset by its inability to accommodate carbon capture technology, and of course IBA would need to be removed by road."

131. The Inspector heard evidence and competing submissions on these issues. In addition to the parties, MVV made written representations in response to PPL which were placed before the Inspector. In the exercise of his planning judgment, the Inspector was entitled to agree with PPL's case, in preference to the case presented by Dorset and the Claimant. His view was not even arguably irrational.

132. The OR does not change that position. The Inspector and D1 are entitled to agree with PPL's case on these aspects of the Canford scheme. Furthermore, the Inspector's findings are correct as at the present time. The facilities relied upon by the Claimant are described in the Canford OR as "Potential future improvements" which are not currently available (see Canford OR paragraphs 1.1.8 and 1.1.9).

133. I am satisfied on the basis of the express references to the new material in DL/17, and D1's assessments of it, that she did read the Canford OR and therefore it is reasonable to infer that she read the passages relating to carbon capture and IBA within it. They were not matters upon which she was required to give reasons. Therefore, I do not consider that the Claimant has discharged the burden of proof upon it to establish that D1 arguably failed to take a relevant consideration into account, nor that her decision was irrational.

134. Alternatively, even assuming in the Claimant's favour that D1 did err in failing to take account of the updated information, applying the *Simplex* test, the decision would necessarily have been the same, absent the legal error, as it was a secondary matter which would not have altered the overall outcome. The decisive factor was the planning restriction imposed by Canford's location in the Green Belt.

135. For these reasons, I confirm the decision of Eyre J. that, as sub-ground 2(3) is unarguable with no real prospect of success, permission to apply for statutory review should be refused.

136. At the Claimant's request, I have considered these alleged errors cumulatively and I am satisfied that the *Simplex* test has been appropriately applied.

137. In conclusion, permission to apply for statutory review is refused on Ground 2.

Ground 3

Claimant's submissions

138. The Claimant submitted that the Inspector and D1 misinterpreted and/or misapplied Policy 4(a) by comparing the proposals instead of confining the comparison to the sites themselves.

139. The Inspector also erred in only considering the Parley and Canford sites, instead of all four allocated sites. The Inspector should also have considered whether the residual waste management need could be met on the basis of all four allocations taken together.

Conclusions

140. I agree with the reasons given by Eyre J. when refusing permission to apply for statutory review on Ground 3:

> "The Claimant's case on this ground faces a number of related difficulties each of which is fatal to its prospects of success.
>
> First, on a proper interpretation policy WP 4(a) does not even arguably require a comparison between the proposal site and all four allocated sites in the abstract and still less with their cumulative effect in the abstract. Instead what was required was a comparison with a different site or sites serving the need the proposed site is designed to address.
>
> It is not arguable with a real prospect of success that the interpretation adopted by the Inspector and then by the Defendant was incorrect.
>
> The Claimant is right to say that the comparison is to be of sites and not proposals but it is to be a comparison of available sites. No rational comparison can be made as to availability and ability to serve the relevant waste management need without reference to actual proposals or use in respect of an allocated site.
>
> The Third Defendant's argument at the inquiry addressed the capacity of the allocated sites taken together but was expressed in general terms which did not advance matters. The reality was that the arguments at the inquiry focussed on Parley and Canford. It was apparent all proceeded on the basis that if the Second Defendant's proposal had advantages over those sufficient to justify the grant of permission consideration of the other allocated sites would not alter the balance of advantage."

141. The Inspector correctly directed himself as to the terms of Policy 4 at IR/5.7 – 5.9. As I have already stated, in my view, the Inspector was well aware of the provisions of the Waste Plan, and their application to the issues in the appeal.

142. Policy 4(a) provides:

> "Proposals for waste management facilities on unallocated sites will only be permitted where it is demonstrated that they meet all of the following criteria:
>
> a. there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site;
>
> ….."

143. Policy 4(a) requires the Inspector to determine (i) the waste management need that the proposal is designed to address; (ii) whether an allocated site is available that can serve that need; and only if the answer to (ii) is "yes" then the Inspector has to consider whether the non-allocated site provides advantages over the allocated site. That is precisely the task undertaken by the Inspector and which was adopted by D1. Notably, Policy 4(a) refers to a comparison between a single allocated site with a single non-allocated site, not a comparison with the cumulative effect of all the allocated sites combined.

144. Neither the Claimant nor Dorset referred in their closing submissions to evidence concerning the two other allocations, namely, Land at Mannings Heath Industrial Estate or Binnegar Environmental Park. No evidence was presented at the Inquiry to suggest that these sites were "available" allocated sites under Policy 4(a) which were suitable for meeting the residual waste need under the Waste Plan. The "principal controversial issue" which fell for determination was, the extent of the need and whether that need could be better met by the Parley and/or the Canford allocations. That was the correct approach.

145. In accordance with Policy 4(a), the Inspector undertook a comparative exercise with the allocated sites at Canford and Parley. In regard to Parley, the Inspector found, at IR/12.101, that the Portland proposal site had obvious advantages over Parley.

146. The Inspector considered the Canford site at IR/12.102 to 12.109: see paragraphs 98 – 99 above. In my judgment, he was entitled, as an exercise of discretionary judgment, to consider both the site itself and the proposal currently before the local planning authority, despite the fact that Policy 4(a) only refers to the site (which he expressly recognised, at IR/12.100 and 12.104). A planning policy should not be construed with the same precision as a statute. The proposal was plainly relevant to a proper understanding of the capacity of the site. I agree with the observations of Eyre J. that no rational comparison can be made as to availability and ability to serve the relevant waste management need without reference to actual proposals or use in respect of an allocated site.

147. For these reasons, I confirm the decision of Eyre J. that, as Ground 3 is unarguable with no real prospect of success, permission to apply for statutory review should be refused.

Final conclusions

148. Permission to apply for statutory review is refused on Grounds 2 and 3. The claim for statutory review on Ground 1 is dismissed.