

Case No: CO/4792/2014

Neutral Citation Number: [2015] EWHC 827 (Admin)

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26 March 2015

**Before:**

**Mr Justice Lindblom**

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**Between:**

**Phides Estates (Overseas) Limited**

**Claimant**

- and -

**Secretary of State for Communities and  
Local Government**

**First Defendant**

- and -

**Shepway District Council**

**Second Defendant**

- and -

**David Plumstead**

**Third Defendant**

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**Mr Douglas Edwards Q.C.** (instructed by **Wedlake Bell**) for the **Claimant**  
**Mr Richard Moules** (instructed by **the Treasury Solicitor**) for the **First Defendant**  
**Mr Paul Brown Q.C.** (instructed by **Richard Buxton**) for the **Third Defendant**

Hearing date: 17 February 2015  
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**Judgment**

## **Mr Justice Lindblom:**

### *Introduction*

1. Proposals for housing development are sometimes rejected even when there is not, at the time of the decision, the five-year supply of housing land required by government policy. That is what happened in this case. Whether the decision was right or wrong is not for the court to say. The question for the court is whether it was lawfully made.
2. By an application under section 288 of the Town and Country Planning Act 1990 the claimant, Phides Estates (Overseas) Ltd., seeks an order to quash the decision of the inspector, Ms Christina Downes, appointed by the first defendant, the Secretary of State for Communities and Local Government, in which she dismissed its appeal against the refusal by the second defendant, Shepway District Council, of its application for outline planning permission for a development of housing on land at the former Lympne Airfield in Kent. The inspector's decision letter is dated 8 September 2014. Phides' application is opposed both by the Secretary of State and by the third defendant, Mr David Plumstead, a local resident and a member of the Friends of Lympne Airfield Association, which objected to the proposed development.

### *The issues for the court*

3. The application raises two main issues for the court:
  - (1) whether the inspector misunderstood and misapplied Policy SS2 of the Shepway Core Strategy, adopted by the council in 2013, and thus failed to identify the relevant "housing requirements" under paragraph 47 of the National Planning Policy Framework ("the NPPF"), or at least failed to provide intelligible and adequate reasons for her conclusions (ground 1); and
  - (2) whether the inspector failed to identify the "relevant policies for the supply of housing" within paragraph 49 of the NPPF, or reached inconsistent conclusions on that matter, or in any event failed to provide lawful reasons for those conclusions (ground 2).

### *Background*

4. The appeal site is owned by Phides. It extends to about 18 hectares within the former airfield, whose total area is about 82 hectares. On its eastern side it adjoins the village of Lympne. To its west is the Lympne Industrial Estate, to its north a large area of land, Link Park, which will be developed for industrial and business uses. Much of the former airfield is still open land, though some of its structures and hardstandings remain. In Phides' appeal it was agreed that the site was not "previously developed land".
5. The proposal was for a development of 250 dwellings, a village green, a local centre, public open space and playing fields. The application for outline planning permission was submitted on 16 April 2013. It was refused by the council on 25 November 2013. The council's first reason for refusal was this:

"The proposed development, being located outside the village confines of the Lympne settlement boundary, and being of such a size, scale and impact, which is disproportionate

with the settlement hierarchy, status and identified strategic role and needs of Lypne and which fails to promote the good design and distinctiveness of Lypne, is contrary to policies DSD, SS1, SS2, SS3, CSD1, CSD2 and CSD3 of the adopted Shepway Core Strategy Local Plan 2013, saved policies CO1 and HO1 of the Shepway District Local Plan Review 2006 and [the NPPF], principally paragraphs 12, 17, 49 and 70, all of which require plan-making and decision-taking to be plan-led with development proportionate and consistent with the settlement's status and identified strategic role, which deliver the social, recreational and cultural facilities and services the community needs.”

There were two further reasons for refusal, but they were later abandoned.

6. On 18 December 2013 Phides appealed against the council's decision. The inspector held an inquiry into the appeal over four days, from 22 to 25 July 2014, and made her site visit on 29 July 2014. At the inquiry Phides argued that Policy SS2 of the core strategy required the delivery of 400 dwellings a year in the period to 2025/2026, not 350 as the council contended; that the council could not demonstrate a five-year supply of housing land to meet that requirement, with a buffer of 20%; that, in the light of government policy in paragraph 49 of the NPPF, the “relevant policies for the supply of housing”, including saved Policy CO1 of the local plan, and several policies of the core strategy – Policy SS1, Policy SS2, Policy SS3, Policy CSD1, Policy CSD2 and Policy CSD3 – could not be considered “up-to-date”; that the presumption in favour of sustainable development in paragraph 14 was therefore engaged; that there were no “adverse effects” arising from the development which would “significantly and demonstrably outweigh the benefits, assessed against the policies of [the NPPF], taken as a whole”; and that there was therefore no reason why planning permission for it should be withheld.

#### *Development plan policy*

7. When the inspector made her decision on Phides' appeal the development plan comprised the core strategy and the saved policies of the Shepway District Local Plan Review.
8. The local plan review was adopted in 2006. In Chapter 12, “Countryside”, saved Policy CO1 states that the council “will protect the countryside for its own sake”. The policy defines the “countryside” as “the area outside of the settlement boundaries identified on the proposals map”. It describes the circumstances in which, subject to other plan policies, development in the “countryside” will be permitted.
9. The council began the preparation of the core strategy in 2011. On 13 April 2011 its Cabinet considered a report in which officers advised on “key decisions” to be taken in that process. The officers recommended “a housing target” for inclusion in the core strategy, which was “400 dwellings per annum over the period to 2026, to allow modest long-term growth in the population of the district”. They reminded the members (in paragraph 3.1 of their report) that the “Shepway LDF Core Strategy Preferred Options” document had referred to a required delivery “of between [6,000] and [8,000] new homes over the period 2006 to 2026 ...”. They advised (at paragraph 3.11) that “an average delivery rate of 400 dwellings per annum be supported over the 20 year period, a figure that is consistent with the annual rate of delivery over the past 20 years ...”; and (at paragraph 3.16) that “an appropriate requirement (not necessarily at 400 p.a.) be developed for a period beyond 2026/2027 for inclusion within the proposed submission document”. The Cabinet accepted the officers' recommendation. Attached to the officers' report, as Appendix 1, was a paper entitled “Strategic Requirement April 2011”. In section 12, “Conclusion”, this document put forward as its “Core recommendation”, that “a proposed

average housing target in the Shepway LDF Core Strategy (subject to final examination of sources of capacity and strategic sites, and Sustainability Appraisal process) features, for the period 2006 to 2026, in the order of 400 new dwellings per annum; this being the upper end level consulted on as a preferred option”. One of the further recommendations was that “consideration be given to a policy requirement for housing delivery extending beyond 2026”.

10. The draft core strategy was submitted for examination in January 2012. The examination was carried out by an inspector, Mr Michael Hetherington, who held hearings in May 2012 and March 2013.
11. In September 2012 the council produced its “Shepway Core Strategy Local Plan Modifications 2012 Technical Note: Windfalls, Housing Supply & Policy Update”. This document introduced itself (at paragraph 1.1) as “evidence supporting modifications” to the draft core strategy which the council considered necessary “to ensure the ‘soundness’ of the Core Strategy in light of both recent changes to national policy, and the Planning Inspector’s ‘Interim Conclusions’ dated 18<sup>th</sup> May 2012 ...”. Section 2 of the document referred to the NPPF – published six months previously in March 2012 – and in particular to paragraph 47, which, it said, “requires local plans to be based on evidence to fully meet needs for market/affordable housing ...” (paragraph 2.2). Section 4 dealt with “Housing Delivery and ‘Windfalls’ – Effects”. Paragraph 4.2 said that “[the] central requirement remains for the provision of at least 350 dwellings per year in the period 2006/7 – 2030/31 (inclusive)”. Paragraph 4.10 said that the “net implication on the housing trajectory” of the remodelling of the core strategy “housing supply” was that “the 8,750 requirement as a minimum (25 years x 350) is met some two years earlier in the plan period than before”. In its “Final Conclusions” the document said that the opportunity had been taken “to update all relevant information with regard to housing land supply to demonstrate consistency with the NPPF”. The first of the seven conclusions set out was this:

“The delivery of a minimum of 350 dwellings per annum under policy SS2 remains achievable and meets the provisions contained within paragraph 47 of the NPPF.”

12. The core strategy inspector’s report was published on 10 June 2013. He noted, in paragraph 48, that the core strategy had been prepared “in the context of an extant South East Plan (SEP)”. The evidence base had been “taken forward” in the council’s “Strategic Requirement April 2011” paper. In paragraph 49 he recorded the fact that “[growth] alternatives” had been tested in the “Preferred Options and Issues and Options stages” of the core strategy process. He went on to say that “[the] preferred option ... aims to balance the CS’s over-arching strategic needs in order to give a positive framework for delivery”, and that “[it] proposes a rate of housing development (a minimum of 350 dwellings per year to 2030/31) that markedly exceeds that set out in the SEP (290 dwellings per year to 2026)”. He was satisfied that the evidence base “represents an objective assessment of housing needs as required by [the NPPF’s] paragraph 47” (paragraph 50). In his view, “[given] the various environmental factors discussed elsewhere in this report ..., the higher growth options that have been discarded by the Council would conflict unacceptably with the Plan’s over-arching strategic need B (relating to the District’s rich natural and historic assets) and with other relevant policies of [the NPPF]” (paragraph 51). In paragraph 52 he said this:

“Indeed, a significantly higher rate of housing development would be at odds with the evidence that is available about development deliverability. The annual housing target set by policy SS2 is greater than recent building rates – a minimum requirement of 350 dwellings per year compared to a six year average completion rate of some 270 dwellings per year

(2006/7 to 2011/12). However, it is in line with delivery rates over a longer term period and does not appear to be unduly constrained by housing land supply ...”;

and in paragraph 53 this:

“In the longer term, the evidence suggests that land is available to meet the CS’s stated housing requirement. As described elsewhere, the Council’s modifications include the deletion of the Folkestone Racecourse allocation ..., reducing planned housing supply by some 820 dwellings. However, the updated (2012) Housing Evidence paper shows that supply remains in excess of the long term minimum target to 2030/31.”

13. In paragraph 63 of his report the core strategy inspector concluded that, subject to his suggested “main modifications”, the core strategy’s “proposals for the provision of new housing and economic development are deliverable, clear, sufficiently justified and consistent with the local evidence base and national policy ...”.
14. The core strategy was adopted on 18 September 2013. In section 1, its “Introduction”, paragraph 1.10 says it has “been confirmed as consistent with new national policy” in the NPPF. Paragraph 1.15 says its “general plan period” runs “from 2006 up to the end of March 2031, to ensure a long-term framework is in place”.
15. Policy SS1 of the core strategy sets out the “District Spatial Strategy”. It says that “[major] new development will be delivered with priority given to previously developed land in the Urban Area”; that “... the majority of the Urban Area’s housing development will take place in Folkestone, to enhance its role as a sub-regional centre”; that “[development] to meet strategic needs will be led through strategically allocated developments at Folkestone Seafront and Shorncliffe Garrison, Folkestone, and the delivery of strategic mixed-use development at Hythe”; that “[additional] development should be focused on the most sustainable towns and villages as set out in policy SS3”; and that “[development] in the open countryside and on the coast (defined as anywhere outside of settlements within Table 4.3 Shepway Settlement Hierarchy) will only be allowed exceptionally, where a rural/coastal location is essential (policy CSD3) ...”.
16. Policy SS2 of the core strategy deals with “Housing and the Economy Growth Strategy”. It states:

“The core long-term objective is to ensure the delivery of a minimum of 350 dwellings (Class C3) per annum on average until 2030/31 (inclusive from 2006/7). This is an achievable rate and can address strategic needs. To promote sustainable development and prioritise urban regeneration, a target is set for at least 65% of dwellings to be provided on previously developed (‘brownfield’) land by the end of 2030/31.

To support housing delivery, a target is set to provide for approximately 8,000 dwellings by the end of 2025/26. This equates to an initial target average delivery of 400 dwellings per annum. This trajectory is set out to provide impetus to the transformation of the district’s economy sought in the district spatial strategy, and to promote a good rate of delivery of new employment land and infrastructure.

Allied to this rate of housing delivery, business activity and the provision of jobs will be facilitated through supporting town centres, the protection of sufficient employment land across the district, allocations and concerted efforts to deliver rural regeneration (especially in south and west Shepway).

A balance of development will be secured, as follows ...”.

The policy continues with Table 4.1. This is divided into three columns, headed “Use”, “Target amount of additional development 2006/7 to 2025/26 (inclusive)” and “Delivery over plan period”. The column headed “Use” specifies the relevant use as “Housing (Class C3)”. The column headed “Target amount of additional development 2006/7 to 2025/26 (inclusive)” contains this reference to a target:

“Target approximately 8,000 (minimum 7,000) dwellings”.

The column headed “Delivery over plan period” indicates the council’s approach:

“How/when: In accordance with provisions set out in this policy, a rolling requirement is set that deliverable land for 1,750 dwellings and a sufficient buffer be continuously identified for the forthcoming five-year period. Completions total 1,621 dwellings in the first six years of plan period.”

17. In the text explaining Policy SS2, paragraph 4.42 says that the policy “primarily addresses Core Strategy aims under the following Strategic Need: A”. That strategic need is described in section 2.2, “Strategic Needs for Sustainable Development”, as “[the] challenge to improve employment, educational attainment and economic performance in Shepway”. Paragraph 4.43 refers to Figure 6.2 in Appendix 1 to the core strategy, which “shows the make-up of the housing requirement to 2030/31 in terms of current status of land”. It says that “[due] to the scale of strategic allocations (see policies SS6-7) and need for phasing with infrastructure, they will play a long-term role in maintaining housing supply (Table 4.2 below, row 2)”. Table 4.2, “How the housing minimum requirement will be delivered through the plan period”, shows the expected “Contribution (net dwellings)”, rounded to the nearest hundred, for each “Source”. It is based on the information in the “SDC (2012) Modifications Technical Note”. The four sources are housing development in the “first years of [the] plan period (2006/07 to 2011/12)” – a net contribution of 1,600 dwellings; housing development on “allocated development sites ...” – a net contribution of 3,300 dwellings; ““Windfall” sites” – a net contribution of 1,000 dwellings; and “[delivery] (minimum) through further Local Plan provisions and planning permissions” – a net contribution of 2,900 dwellings. The “Total 2006/07-2030/31 (minimum)” is therefore “>8,800”. Paragraph 4.45 indicates that “of the 8,750+ dwellings to 2030/31”, there will be “[at] least 7,500 ... on previously developed (“brownfield”) land”. Paragraph 4.47 says that “[the] aim of delivering 8,000 dwellings between 2006 and 2026 would result in a rate of house building in line with trends of recent decades albeit resulting in a lesser population growth (7%, averaging 0.4% p.a. to 2026)”, and that “[it] is expected to lead to a more manageable change in the social balance and labour supply and only limited decrease in the size of the labour force (-3%) with a more moderate decline in average household size to 2.03”.
18. Under the heading “Strategy for Housing Implementation” paragraph 5.174 of the core strategy says that “[the] primary housing land policy (SS2) is expressed as a minimum – and at the realistic average level of 350 [p.a.] ...”. Paragraph 5.177 says that “[subject] to sufficient infrastructure and suitable site capacity, the achievement of approximately 400 dwellings per year on average to 2030/31 ... would accord SS1 and SS2 and key plan aims”. In Appendix 1, “Housing Trajectories”, Figure 6.1, “Core Strategy Housing Trajectory 2006-2031”, shows a “minimum requirement” of 350 dwellings a year for the whole core strategy period. Figure 6.3, “Cumulative Housing Trajectory 2006-2031”, refers to that number of dwellings a year being a “policy requirement” under Policy SS2.

19. In section 4.3 of the core strategy, “Place Shaping and Sustainable Settlements Strategy”, Table 4.3, “Shepway Settlement Hierarchy”, shows Lymyne as one of the “Primary Villages”. The “Strategic Role” of “Primary Villages” is “[to] contribute to strategic aims and local needs; and as settlements with the potential to grow and serve residents, visitors and neighbourhoods in the locality with rural business and community facilities”. Policy SS3, “Place-Shaping and Sustainable Settlements Strategy”, says that “[development] within Shepway is directed towards existing sustainable settlements to protect the open countryside and the coastline, in accordance with policy SS1”; that “[change] in settlements will be managed to occur in a form that contributes to their role within the Settlement Hierarchy (Table 4.3) and local place-shaping objectives, to promote the creation of sustainable, vibrant and distinct communities”; and that “[the] principle of development is likely to be acceptable on previously developed land, within defined settlements, provided it is not of high environmental value”. The policy then sets out a series of requirements, which all development must meet.
20. Policy CSD1, “Balanced Neighbourhoods for Shepway”, says that “[development] resulting in new housing ... will be allowed in line with policy SS3 (optimising distinctiveness, appeal, sustainability and accessibility of places in Shepway) where it contributes to the creation of balanced and popular neighbourhoods through high-quality design proposals which address identified affordable housing needs ...”. It also says that “[affordable] housing developments will be allowed at sustainable rural settlements as an exception to policies of rural development restraint (policy SS1) where it has been demonstrated that there is a requirement in terms of local need”. Policy CSD2, “District Residential Needs”, says that “[residential] development and new accommodation should be designed and located in line with the Spatial Strategy’s approach to managing demographic and labour market changes in Shepway and meeting the specific requirements of vulnerable or excluded groups existing within the district”; and that “[housing] supply will also be managed with an objective that at least half of new homes by 2026 will be three bedroom (or larger) dwellings ...”. Policy CSD3, “Rural and Tourism Development of Shepway”, says that “[proposals] for new development in locations outside of the Settlement Hierarchy may only be allowed if a rural or coastal location is essential, and to meet green infrastructure requirements”; and that development in these locations “will only be acceptable in principle if forming a site for” one of eight specified forms of development, including “affordable housing (rural exceptions as per CSD1, or allocated sites)”.

### *The NPPF*

21. The NPPF was published as the Government’s planning policy for England on 27 March 2012.
22. It says in paragraph 2 that it is “a material consideration in planning decisions”, and in paragraph 212 that its “policies” are “material considerations”. Having acknowledged in paragraph 11 that, under section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the 1990 Act that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, it goes on to state in paragraph 17, as one of the Government’s “core land-use planning principles” that planning should be “genuinely plan-led ...”.
23. The policies for housing development are also familiar. Paragraph 47 of the NPPF says this:

“To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

That policy is amplified in paragraphs 17 and 157 to 159. Paragraph 49 states:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

Paragraph 14 explains the “presumption in favour of sustainable development”. In the context of “plan-making” it says that local plans “should meet objectively assessed needs ...”. For “decision-taking”, it says that the presumption means:

“

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.”

*The inspector’s decision letter*

24. In paragraphs 6 and 7 of her decision letter the inspector described the local policy context.
25. In paragraph 6 she referred to saved Policy CO1 of the local plan review. This policy, she said, “prevents development outside settlement boundaries save for countryside purposes”. She then turned to the core strategy. In finding it sound the core strategy inspector had been “satisfied that its policies and provisions were compliant with [the NPPF]”. Policy DSD set out “the presumption in favour of sustainable development and how it will be applied in Shepway District”. Policy SS1 set out the “spatial strategy”. It gave “priority ... to the use of previously developed land in the Urban Areas of Folkestone and Hythe”. There were “strategic allocations at Folkestone Seafront, Shorncliffe Garrison and Nickolls Quarry and also broad strategic locations at Sellindge and New Romney”. Additional development was to be “focused on the most sustainable towns and villages”. Development in the countryside was “only to be allowed exceptionally”.
26. In paragraph 7 the inspector said this:
- “In terms of the North Downs area where the appeal site is located, Policy SS1 seeks to steer development outside the Area of Outstanding Natural Beauty (the AONB) to places that would not materially impact on its setting. It also seeks to consolidate the growth of the service centre of Hawkinge and to sensitively meet the needs of communities in the AONB at better served settlements. Policy SS3 sets out a sustainable development strategy with the scale and impact of development to be proportionate and consistent with the status and strategic role of the settlement in question. Table 4.3 shows Lympne as a Primary Village which will be expected to contribute to strategic aims and local needs. The Primary Villages are said to have potential to grow. Elsewhere in the CS reference is made to “one other developable potential site” within Lympne Parish. This appears to be a reference to the former airfield land insofar as it was identified in the 2011 Strategic Housing Land Availability Assessment (the SHLAA).”
27. There were, in the inspector’s view, three main issues in the appeal, which she dealt with in turn. These were “Issue One: Whether the proposal is needed to meet the need for market and affordable housing” (paragraphs 8 to 29 of the decision letter), “Issue Two: Effect on the character of the rural settlement and its role in the settlement hierarchy” (paragraphs 30 to 40), and “Issue Three: Whether the proposal would be in a sustainable location” (paragraphs 41 to 44). There were several “Other Matters” (paragraphs 45 to 56). Finally, the inspector brought her conclusions together in seven paragraphs headed “Overall Conclusions and Planning Balance” (paragraphs 57 to 63).
28. The inspector began her consideration of the first main issue by acknowledging that the core strategy was “very recently adopted”. The core strategy inspector had concluded that “the requirement reflected objectively assessed housing needs; that the housing trajectory showed a supply over the CS period in excess of the long term target; and that the 5 year housing land supply would exceed the requirement on the basis of applying a 5% buffer and taking account of recent under-delivery”. However, the inspector acknowledged that she had to undertake her own assessment in the light of the evidence she had heard at the inquiry. Phides had contended that, far from having a supply of deliverable sites to meet housing needs over the next five years the council had “a substantial deficit” (paragraph 8 of the decision letter).
29. The inspector considered the “Housing requirement” in paragraphs 9 to 18. Her conclusions on the “baseline requirement” were these:

“9. The first matter to consider is how many houses the Council actually requires to meet its objectively assessed needs. The starting point is Policy SS2 in the recently adopted CS. The first two paragraphs indicate that whilst a minimum of 350 dwellings a year would be required over the plan period to 2031, there should be an accelerated delivery of about 8,000 dwellings by 2026. This would equate to an initial target average of 400 dwellings a year. The supporting text explains that this would address demographic evidence such as the ageing population, decline in local labour supply and increasing formation of smaller households. Indeed the provision of housing to address long term economic development is one of the aims arising out of Strategic Need A, which Policy SS2 seeks to address.

10. Table 4.1, which is also part of the policy, sets out a target of approximately 8,000 dwellings to 2026, with a minimum of 7,000 dwellings during this period. The third column of the table refers to delivery “over the plan period”, which presumably means to 2031. However it also refers to a rolling requirement of 1,750 dwellings to be continuously identified “for the forthcoming five-year period”. It seems to me that the policy is not set out in the clearest terms and there was considerable debate at the Inquiry about whether the 5 year requirement should be 350 or 400 dwellings a year. I have carefully considered the matter, taking account of the evidence base and the CS Inspector’s Report. My conclusion, on a straightforward reading of the policy as a whole, is that the requirement is for at least 1,750 dwellings over the next 5 years but that every effort should be made to achieve a higher target of around 400 dwellings a year in the first 20 years of the plan.”

30. In paragraphs 11 to 14 the inspector discussed the appropriate “buffer”. It was, she said, “difficult to reach any other conclusion on the current evidence that [sic] the record of under-delivery has been persistent and that a buffer of 20% should be added” (paragraph 14). In paragraphs 15 to 18 she considered the “shortfall”, concluding that “[on] the basis of applying a 20% buffer and spreading the shortfall over the remaining CS period, the total 5 year requirement would be about 2,390 dwellings” (paragraph 18). She dealt with “Housing supply” in paragraphs 19 to 26. The 2013 Annual Monitoring Review (“the AMR”) showed a five year supply of 2,400 dwellings. If this was correct the council “would be able to meet its short term housing requirement”. But Phides had “questioned the supply figures and contended that they were overly optimistic, mainly in respect of timing” (paragraph 19). Her own assessment was, she said, based on the information provided in the 2013 AMR and accorded with paragraph 47 of the NPPF (paragraph 25). It led her to this conclusion (in paragraph 26):

“The Council will be aware that it needs to be pro-active in encouraging expeditious delivery of its strategic sites. From the evidence I consider that there is a good prospect that the programme anticipated in the AMR is generally realistic although I am less optimistic about the future of some of the SHLAA sites in the short term. In my opinion the Council has sufficient deliverable sites for about 2,192 dwellings, including one year’s windfall allowance. This would equate to a supply of about 4.6 years.”

31. The inspector’s conclusions on the need for the proposed housing and affordable housing are in paragraphs 28 and 29 of her decision letter. In paragraph 28 she said this:

“Where a local planning authority is unable to demonstrate a five-year supply of deliverable sites, Paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date. Housing applications should be considered in the context of the presumption in favour of sustainable development, bearing in mind the imperative in Paragraph 47 to boost significantly the supply of housing. The provision of 250

homes, of which 30% would be affordable dwellings, would therefore be a substantial benefit that weighs in favour of the appeal development.”

In paragraph 29 the inspector acknowledged that her conclusions on housing land supply would be “disappointing” for the council, especially as it had only recently adopted its core strategy. But she emphasized that her concern was to do with “short term delivery rather than ... the longer term housing trajectory where the large strategic sites will increasingly play a part”. The “main area of contention” had been the buffer. Her own conclusions were based on more evidence than the core strategy inspector’s.

32. On the second of her three main issues – the effect the development would have on the “rural settlement” and on its “role in the settlement hierarchy” – the inspector said in paragraph 30 that Policy SS3 of the core strategy “directs development towards sustainable settlements in accordance with their role therein in order to promote sustainable, vibrant and distinct communities”; and that, as a Primary Village, Lympne was in the “second lowest category” in the “settlement hierarchy”, and was “not seen as being suitable for strategic level development”. In paragraph 31 she noted that the core strategy inspector had “specifically rejected Lympne as either a strategic allocation or a broad location for growth ...”. In paragraph 32 she accepted that “Policy SS1 does not rule out development in AONB settlements, albeit that this needs to be sensitively undertaken”. But she went on to say that “[whilst] there is little doubt that some growth will happen in Lympne, there is no policy support for the quantum or scale of development that is currently being proposed”. In paragraph 34 she said that there was no dispute that the appeal site was outside the boundaries of the village and “within the countryside”; that “settlement boundaries inevitably constrain the supply of housing”, and that, in view of her conclusion in paragraph 28, “saved Policy CO1 in the LP can be considered out-of-date”; that “[the] fact that the appeal development would be within the countryside would not therefore be unacceptable as a matter of principle”; and that the core strategy “envisages the growth of settlements such as Lympne and it seems unlikely that this would be able to take place within its tightly drawn settlement boundary”. In paragraph 35 she said that Lympne is “a relatively small rural community which has rightly been placed towards the bottom of the settlement hierarchy”. In paragraph 36 she described the proposed development as “substantial in size”, and said it would be “clearly apparent as a major built expansion of the village”. In paragraph 39 she said “the open land that would remain between the western edge of the development and the employment area would be insufficient to prevent unacceptable visual coalescence”. In paragraph 40 she concluded that the proposed development would have a “harmful impact on the character and distinctiveness of the rural settlement and its role in the settlement hierarchy”. This, she said, “would be contrary to development plan policy, including Policies SS1, SS3 and CSD1 in the CS”.
33. On the third main issue – whether the development would be in a “sustainable location” – the inspector concluded in paragraph 44 that “[whilst] Lympne is not at the top of the accessibility spectrum ... the appeal site is in a reasonably sustainable location”.
34. None of the various “Other Matters” considered by the inspector in paragraphs 45 to 56, including the likely effects of the development on highway safety, on water resources, on the historic interest of the site, and on nature conservation, weighed against the grant of planning permission.
35. In her “Overall Conclusions and Planning Balance” the inspector said Phides had relied on the inclusion of the former airfield land as “a preferred option for 400 dwellings in the pre-submission version of the CS”. But in the submission draft of the core strategy this land had not

been put forward as a “strategic site”. The SHLAA published in 2010 had assumed that 450 dwellings would come forward on it, and the SHLAA published in 2011 had assumed 240. Although these documents considered “deliverability”, they did not “apply any policy filters, including whether that number of dwellings would be appropriate in a Primary Village such as Lympne” (paragraph 57).

36. In paragraph 58 the inspector said this:

“The Council cannot demonstrate a 5 year supply of deliverable sites. In such circumstances its housing supply policies should be considered out-of-date. Saved Policy CO1 seems to me to constrain the supply of housing and is thus not current. Whilst the Appellant contends that many of the CS policies also fall within this category, I do not agree. The policies are written in such a way that it is only Policy SS1 which refers directly to settlement boundaries. However as the Appellant comments, Lympne and other Primary Villages are envisaged in the CS to accept some growth and this is unlikely to all occur within the confines of the settlement. The primary purpose of the other relevant policies is not specifically directed to housing supply. For example Policy SS3 concerns place shaping and sustainability; Policy CSD1 relates to balanced neighbourhoods and affordable housing; Policy CSD2 addresses housing mix and need; and Policy CSD3 includes criteria applicable to development outside the settlement hierarchy but its main objective in this respect is countryside protection. In the circumstances it seems to me a moot point as to whether any of the above policies can be considered as “housing supply policies” as referred to in Paragraph 49 of the Framework.”

37. The inspector then applied the “presumption in favour of sustainable development”, weighing the “adverse impacts” against the “benefits”:

“59. The Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social and environmental dimensions and the interrelated roles that they perform. In this case the contribution of the site to the market and affordable housing requirements of the district is a matter of considerable importance. The scheme offers other advantages, including two new shop units and a doctor’s surgery. There would be an enhanced bus service and the works to the A20/A261/Stone Street junction would bring forward a much needed improvement to this part of the highway network. These would all mitigate adverse impacts of the development but also convey benefits to the wider population. There is no reason why the development should not be well designed and energy efficient. There would also be large areas of open space, which again would be of benefit to the existing community and comply with the CS objective of expanding such facilities in the North Downs area.

60. However the proposal would not comply with the place shaping and sustainable settlements strategy in the newly adopted development plan. This directs development in accordance with a settlement hierarchy and Lympne has been placed near the bottom in recognition of its limited facilities, relatively modest size and compact character within the rural landscape. The CS envisages change within the North Downs area but there [is] no specific apportionment in terms of housing numbers. Villages such as Lympne clearly have to play their part to accommodate growth. However the 250 dwellings proposed is of a scale that is more redolent of development envisaged for the broad strategic locations in Sellindge or New Romney, both places being higher in the settlement hierarchy than Lympne. There is no convincing evidence that the spatial strategy in itself constrains the supply of housing or that the additional development needed to make up the 5 year deficit has to all be sited in this particular location.

61. In this case the shortfall in terms of providing a 5 year supply of deliverable sites is relatively small. Whilst the Framework does not indicate that the size of the deficit should be treated differently in terms of how development management decisions are taken, it can nonetheless be a material consideration in the overall balance.

62. Paragraph 14 of the Framework is engaged, although I note that Policy DSD in the CS include the same sustainability test. Drawing together all of the above points, I consider that there is no overriding requirement for a development of this size within this location. The appeal proposal would have serious and harmful consequences, especially in terms of the environmental dimension of sustainability. Notwithstanding the substantial benefits, my overall conclusion is that they would be significantly and demonstrably outweighed by the adverse impacts, when assessed against the policies in the Framework as a whole. In the circumstances I conclude that the appeal scheme would not be a sustainable form of development.

63. I have had regard to all other matters raised, both in the oral and written representations, but have found nothing to change my conclusion that this appeal should not succeed.”

*Ground 1 – Policy SS2 of the core strategy*

38. For Phides, Mr Douglas Edwards Q.C. submits that the inspector misconstrued and misapplied Policy SS2 of the core strategy. She failed to understand the true extent of the council’s “housing requirements” under paragraph 47 of the NPPF, failed to grasp the true extent of the shortfall in the supply of housing land against the required five-year supply, and thus failed to give due weight to the benefit of the proposed development in increasing the supply. These errors vitiate her decision.
39. Mr Edwards says the meaning of Policy SS2 is plain. The policy distinguishes the whole period of the core strategy, which runs until 2031, from the 20 years to 2025/2026. Its “core objective” is to ensure the delivery of a minimum of 350 dwellings each year from 2006/2007 until 2030/2031. But it goes further than that. It also sets the target of providing 8,000 dwellings by the end of 2025/2026, an average delivery of 400 dwellings a year. On a straightforward reading of the policy this enhanced rate of delivery is not merely an aspiration; it is a requirement. It reflects the council’s evaluation of the “full, objectively assessed needs for market and affordable housing” in its area, under paragraph 47 of the NPPF.
40. But, says Mr Edwards, if that is not clear on the face of the policy, the court can and should look at the evidence base which underlies it. The inspector’s interpretation of Policy SS2 is “flatly contrary” to the evidence base. The assessment of long-term requirements for housing development to meet strategic needs set out in the “Strategic Requirement April 2011” paper, appended to the report submitted to the council’s Cabinet for its meeting on 13 April 2011, made the case for an average annual target of about 400 dwellings in the period from 2006 to 2026. The Cabinet accepted this. The appropriate requirement for the last five years of the core strategy period, beyond 2026, was also considered. The officers said this would “not necessarily” be 400 dwellings a year (paragraph 3.16 of their report). Again, the Cabinet agreed. This was an objective assessment of the need for new housing, such as paragraph 47 of the NPPF was later to require, which the council had to plan to meet in full. The soundness of the core strategy was considered in the light of it. The core strategy inspector seems to have found it a reliable

assessment of the “housing requirements” the council should be planning to meet (see paragraphs 48 to 55 of his report).

41. Anyway, submits Mr Edwards, the inspector’s reasons in paragraphs 9 and 10 of her decision letter fall short of the standard required. She found that Policy SS2 was “not set out in the clearest terms”. But she did not explain how, in view of the council’s evidence base, she was able to conclude that the housing requirement for the years until 2025/2026 was anything less than for 400 dwellings each year; how her understanding of the policy could be reconciled with the council’s objective assessment of need under paragraph 47 of the NPPF; or what she imagined the status of the target of 400 dwellings a year actually was if it was not the annual requirement for the delivery of new housing in the first 20 years of the core strategy period.
42. As Mr Edwards acknowledges, there is, and can be, no challenge in these proceedings to the validity of Policy SS2 as a statement of policy for the delivery of new housing in the council’s area. Phides’ application does not impugn the policy itself. It impugns a decision taken under the policy. Mr Edwards does not suggest that in preparing and formulating Policy SS2 the council fell into the kind of error which led to the partial quashing of plans in *Hunston Properties Ltd. v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610, and *Solihull Metropolitan Borough Council v Gallagher Estates Ltd.* [2014] EWCA Civ 1610. He does not say – indeed, he could not say – that in preparing the core strategy the council had failed to do what paragraph 47 of the NPPF requires, using its evidence base to ensure that the core strategy met “the full objectively assessed needs” for housing in its area, as far as was consistent with the policies in the NPPF. What I have to consider is not whether the council performed that exercise in the core strategy process, but how the conclusion it reached when it did so is reflected in Policy SS2.
43. I cannot accept Mr Edwards’ submissions. In my view the inspector understood Policy SS2 correctly, and applied it lawfully. She was right to interpret it as imposing a requirement for an additional 350 dwellings to be delivered each year throughout the core strategy period. This is both the literal interpretation of the policy and the one that accords with its obvious intent. The interpretation Mr Edwards urges me to accept is untenable. It cannot be reconciled with the several references in the policy to a requirement for new housing which in my view can only be understood as a requirement for not less than 350 new dwellings a year. It forces one to read the word “target” as if it meant “requirement”, which is not only contrary to the plain meaning of the word in its context but would also create an obvious and wholly unnecessary inconsistency within the policy. To adopt that construction one would have to conclude that the policy does not mean what it says.
44. The approach the court must take to the interpretation of planning policy was explained by Lord Reed in his judgment in *Tesco Stores Ltd. v Dundee City Council* [2012] 2 P. & C.R. 9, with which Lord Hope, Lord Brown, Lord Kerr and Lord Dyson agreed. It is of course familiar. In paragraph 17 of his judgment Lord Reed said it had “long been established that a planning authority must proceed upon a proper understanding of the development plan”, not only because the authority is “required by statute to have regard to the provisions of the development plan” and “cannot have regard to the provisions of the plan if it fails to understand them”, but also because statute requires it to consider whether the proposed development is in accordance with the plan, and, if not, whether material considerations justify departing from the plan (see the speech of Lord Clyde in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447, at p.1459D-H). In paragraph 18 of his judgment Lord Reed emphasized that “in principle, ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context”. In paragraph 19 he warned against construing

statements of policy “as if they were statutory or contractual provisions”. A development plan is “not analogous in its nature or purpose to a statute or a contract”. Lord Hope said in paragraph 35 of his judgment that the interpretation of policy was not “primarily a matter for the decision maker”. On the contrary, this was a matter of law, which requires “reading the words used objectively in their proper context”. In *R. (on the application of Cherkley Campaign Ltd.) v Mole Valley District Council* [2014] EWCA Civ 567 Richards L.J., with whom Underhill and Floyd L.JJ. agreed, stressed the difference between the policies of a plan and their supporting text. The text, he said (in paragraph 16 of his judgment), 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” (see also paragraph 21).

45. With those well known principles in mind, I am satisfied that the inspector’s interpretation of Policy SS2 was accurate.
46. In my view the meaning of the policy is absolutely clear. There are two distinct concepts in it: the “requirement” and the “target”. The policy is entirely consistent in differentiating between those two concepts. The distinction is not hard to understand. It is the difference between a need and an aspiration. A “requirement” in this context is something which is needed, which must be provided. A “target” is more ambitious; it is a goal that is set, which may or may not be attained. The “requirement” is the requisite minimum, which must be met whether or not the “target” is achieved. This is a normal use of those words, which gives them a natural meaning.
47. As Mr Paul Brown Q.C. submits on behalf of Mr Plumstead, government policy in paragraph 49 of the NPPF makes the ability of the local planning authority to demonstrate a “five-year supply of deliverable housing sites” the test by which the decision-maker ascertains whether or not “[relevant] policies for the supply of housing” are “up-to-date”. It is the corollary of the policy in paragraph 47 that authorities must be able at all times to identify a supply of “specific deliverable sites sufficient to provide five years worth of housing against their housing requirements”, with the appropriate buffer. So the critical concept in identifying the requisite five-year supply of housing land, and thus the critical concept in judging whether relevant policies for the supply of housing are up to date, is the requirement for additional housing.
48. The column headed “Delivery over plan period” in Table 4.1, which is part of Policy SS2, is clearly concerned with the five-year supply of housing land required under the NPPF. In language similar to that of paragraphs 47 and 49 of the NPPF, it identifies a rolling “requirement” for “deliverable” land, sufficient for the specified number of dwellings – namely 1,750 – to be “continuously” identified for “the forthcoming five-year period”. This is plainly the basis on which Policy SS2 intends the five-year supply of housing land to be calculated under the policy in paragraphs 47 and 49 of the NPPF, and the status of the relevant policies for the supply of housing determined under the policy in paragraph 49. All of the references in Policy SS2 and its text to the “requirement” and the “minimum” fit with that understanding.
49. I accept the submission of Mr Richard Moules for the Secretary of State that it is neither necessary nor possible to read Policy SS2 as creating different annual and five-year requirements for the first 20 years of the core strategy period from its requirements for the final five years, or two different requirements which apply simultaneously for the first 20 years. If the council had meant there to be a higher requirement in the first 20 years of the core strategy period it should and would have said so.
50. Both the policy and its accompanying text use the words “requirement” and “minimum” synonymously. Nowhere in the policy or in the text is that concept confused with the “target”.

The first paragraph of the policy, which identifies its “core long-term objective”, refers to the delivery of “a minimum of 350 dwellings ... per annum on average until 2030/31 (inclusive from 2006/7)” – that is from the beginning of the core strategy period to its end. This initial reference to a “minimum” of 350 dwellings a year corresponds to the “minimum of 7,000” dwellings for the 20 years between 2006/2007 and 2025/2026 specified in Table 4.1. It also corresponds to the “rolling requirement” of 1,750 dwellings for “the forthcoming five-year period” referred to in the column of the same table headed “Delivery over plan period”. This means each continuous period of five years, not just in the 20 years from 2006 to 2026 but for the whole life of the core strategy. There is no scope for arguing that the heading “Delivery over plan period” should be taken to mean “Delivery over the last five years of the plan period”. If any further confirmation were needed that 350 dwellings a year is the “requirement”, one finds it in Table 4.2, which explains how the “housing minimum requirement” is going to be delivered “through the plan period”. That table refers to a “minimum” total of at least 8,800 (“>8,800”) dwellings in the core strategy period, 2006/2007 to 2030/2031, which again, rounded to the nearest hundred, equates to 350 dwellings a year for those 25 years. Without rounding, the minimum total would be 8,750 (350 x 25). Paragraph 4.45 refers to “the 8,750+ dwellings to 2030/31”, of which “[at] least 7,500” will be built on “previously developed (“brownfield”) land” – corresponding to the proportion of “at least 65%” referred to in the first paragraph of the policy. And in other parts of the core strategy where the “requirement” or “minimum” is mentioned – including paragraphs 5.174 and 5.177, and Figure 6.1 and Figure 6.3 in Appendix 1 – the required level of delivery is also referred to as 350 dwellings a year (see paragraph 18 above).

51. Mr Moules submits that if the “target” of “approximately 8,000 dwellings” in the first 20 years of the core strategy period, at a rate of delivery of 400 each year, was truly the “requirement” in Policy SS2, the provisions of the policy for a “minimum” of 350 dwellings a year would be meaningless. I think that is right. What would have been the point of specifying a “minimum” of 7,000 for the same period, and an annual “minimum” of “350 dwellings ... per annum on average until 2030/31 (inclusive from 2006/7)”? As Mr Moules says, an acceptable “minimum” level of delivery of new housing could not rationally be pitched below the planned “requirement”. To do that would be to defy government policy in paragraph 47 of the NPPF, which enjoins authorities to meet “the full, objectively assessed needs” for housing, so far as this can be done without offending the policies of the NPPF. Nor could the “minimum” rationally be set above the “requirement”, for that would be to generate a false imperative beyond the need for which paragraph 47 tells authorities to plan. In this case it would mean that the core strategy had failed to identify a clear “requirement” in terms of the number of dwellings to be delivered each year, in each five-year period, and in the course of its life of 25 years. That cannot be right. The delivery of “a minimum of 350 dwellings” each year is, and must be, the annual requirement for the supply of new housing under Policy SS2 – no more and no less. It is the policy’s essential ingredient.
52. What then should one make of the “target” for a rate of housing development higher than the “requirement” in the first 20 years of the core strategy period? Again, the answer is quite clear in the policy itself and in its text. The “target” of “approximately 8,000” for those 20 years is set at about 1,000 dwellings – some 14 per cent – above the “minimum” of 7,000. The policy explains why this “target” was set. Its purpose is “[to] support housing delivery”. The “trajectory” it implies has two objectives: first, “to provide impetus to the transformation of the district’s economy sought in the district spatial strategy”, and second, “to promote a good rate of delivery of new employment land and infrastructure”. The thinking here, plainly, is that if a higher rate of housing delivery is set as a “target” it is more likely that the “requirement” will actually be met. The inspector grasped this. She recognized that the “target” for the first 20 years of the core strategy period can co-exist with the lower “requirement” current in the same 20 years and

continuing into the final five. The two are wholly compatible. Policy SS2 is not concerned merely with the supply of housing. It is about “Housing and the Economy Growth Strategy”. What the inspector referred to as the “accelerated delivery of about 8,000 dwellings by 2026”, with “an initial target average of 400 dwellings a year”, is, as she said, explained in the “supporting text”. Paragraph 4.47 mentions the “demographic evidence such as the ageing population, decline in local labour supply, and increasing formation of smaller households” to which the inspector referred. She also had in mind Strategic Need A, the strategic need that Policy SS2 seeks to address, and in particular the aim of providing housing “to address long term economic development” (paragraph 9 of the decision letter). As she saw it, this is why the policy calls for “every effort” to be made “to achieve a higher target of around 400 dwellings a year in the first 20 years of the plan” (paragraph 10 of the decision letter). I think this is clearly right.

53. Mr Moules and Mr Brown also submit, correctly, that the calculation of the five-year requirement has to be a definite exercise. There must be no uncertainty about it, nor any lack of precision. In Policy SS2 the “target” of 8,000 dwellings for the 20 years up to 2026 is not a precise figure. It is approximate, and deliberately so. The word “approximately” is used in both references to it – in the second paragraph of the policy and in Table 4.1. On the other hand, the references in that table to the “minimum” number of dwellings in the period from 2006 to 2026, and to the rate of delivery entailed in the “rolling requirement” for each five-year period are, as one would expect, exact.
54. The inspector’s interpretation of Policy SS2, as she said in paragraph 10 of the decision letter, came from a “straightforward reading of the policy as a whole”. It has the merit of giving effect to every word of the policy, without inconsistency that is simply not there. One cannot say that of the interpretation suggested by Mr Edwards.
55. The inspector thought the policy was “not set out in the clearest terms”. She said she had taken account of the evidence base and the core strategy inspector’s report. In the end, however, she came back to an uncomplicated construction of the policy as it is written. Had she found anything in the evidence base or in the core strategy inspector’s report to cast doubt on that literal construction she would surely have mentioned it.
56. I do not think it is necessary, or appropriate, to resort to other documents to help with the interpretation of Policy SS2. In the first place, the policy is neither obscure nor ambiguous. Secondly, the material on which Mr Edwards seeks to rely is not part of the core strategy. It is all extrinsic – though at least some of the documents constituting the evidence base for the core strategy are mentioned in its policies, text and appendices, and are listed in a table in Appendix 6. Thirdly, as Mr Moules and Mr Brown submit, when the court is faced with having to construe a policy in an adopted plan it cannot be expected to rove through the background documents to the plan’s preparation, delving into such of their content as might seem relevant. One would not expect a landowner or a developer or a member of the public to have to do that to gain an understanding of what the local planning authority had had in mind when it framed a particular policy in the way that it did. Unless there is a particular difficulty in construing a provision in the plan, which can only be resolved by going to another document either incorporated into the plan or explicitly referred to in it, I think one must look only to the contents of the plan itself, read fairly as a whole. To do otherwise would be to neglect what Lord Reed said in paragraph 18 of his judgment in *Tesco Stores Ltd. v Dundee City Council*: that “[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”, that the plan is “intended to guide the behaviour of developers and planning authorities”, and that “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 my view, to enlarge the task of construing a policy by requiring a multitude of other documents to be explored in the pursuit of its meaning would be inimical to the interests of clarity, certainty and consistency in the “plan-led system”. As Lewison L.J. said in paragraph 14 of his judgment in *R. (on the application of TW Logistics Ltd.) v Tendring District Council* [2013] EWCA Civ 9, with which Mummery and Aikens L.JJ. agreed, “this kind of forensic archaeology is inappropriate to the interpretation of a document like a local plan ...”. The “public nature” of such a document is, as he said (at paragraph 15), “of critical importance”. The public are, in principle, entitled to rely on it “as it stands, without having to investigate its provenance and evolution”.

57. But even if it was right to use the documents on which Mr Edwards relies as aids to the interpretation of Policy SS2, I do not think they support the interpretation for which he contends. The core strategy inspector had the “Strategic Requirement April 2011” paper and the council’s Technical Note of September 2012 before him when he concluded that the proposed “rate of housing development (a minimum of 350 dwellings per year to 2030/31)” (paragraph 49 of his report) or “a minimum requirement of 350 dwellings per year” (paragraph 52) was the appropriate level of requirement to include in Policy SS2 (see paragraph 12 above). The 2012 Technical Note was prepared in the light of government policy in paragraph 47 of the NPPF. It explains and supports the annual requirement of 350 dwellings for the whole core strategy period (see paragraph 11 above). There is nothing in the core strategy inspector’s report to suggest that he thought this “requirement” incompatible with the policy in paragraph 47 of the NPPF. Indeed, he referred to that policy in the analysis on which he based his conclusion in paragraph 63 of his report that the core strategy’s proposals for the provision of new housing were, among other things, “consistent with the local evidence base and national policy” (see paragraphs 12 and 13 above). Nowhere in that analysis did he refer to the annual target of 400 dwellings for the years 2006 to 2026.
58. Finally, I reject Mr Edwards’ criticism of the inspector’s reasons. Her conclusions on the interpretation of Policy SS2, and how it should be applied to Phides’ proposal, comfortably meet the standard of intelligible and adequate reasons, showing how she had dealt with the “principal important controversial issues” between the parties (see the speech of Lord Brown in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33, at paragraphs 24 to 36). Paragraphs 9 and 10 of the decision letter show very clearly what she believed Policy SS2 means, and why. Her interpretation of the policy was not only right; it was also amply explained. It is not undermined by her comment, perhaps a concession to the skill with which Phides’ case was presented at the inquiry, that the policy was “not set out in the clearest terms”. She may not have found Policy SS2 as easy to construe as it might have been. But she came to a firm conclusion on what the policy means. She did not have to revisit the core strategy inspector’s analysis under the policy in paragraph 47 of the NPPF. Policy SS2 as she construed it was not in conflict with that policy. She did not have to spell out why. In paragraphs 11 to 29 of her decision letter she explained how she applied the policy to the facts, and the conclusions she had reached on the first of her three main issues, and, specifically, on the extent of the shortfall against the required five-year supply. Mr Edwards does not criticize her reasons in those 18 paragraphs, nor could he. They are as full and as clear as one could wish.
59. In summary, the inspector both interpreted Policy SS2 correctly and applied it lawfully, and her reasons are unimpeachable.
60. It is therefore unnecessary for me to deal with Mr Brown’s submission that if the inspector did misconstrue the policy this was not an error that affected her decision. Mr Brown says it made no

difference that she had found a shortfall in the five-year supply of housing land on the basis of an annual requirement of 350 dwellings, as opposed to 400. She applied the “presumption in favour of sustainable development” in paragraph 14 of the NPPF anyway, and when she did so she recognized that the 250 dwellings in Phides’ development would be a “substantial benefit” (paragraph 28 of the decision letter) and “a matter of considerable importance” (paragraph 59). In coming to those conclusions she must have had in mind the “target” of 400 dwellings a year as well as the “requirement” of 350 on which her calculation was based. That may be so. But the fallacy in this submission of Mr Brown, in my view, is that it leaves out the question of weight. Paragraph 14 of the NPPF prescribes an approach to decision-making when relevant policies, including “[relevant] policies for the supply of housing”, are “out-of-date”. It does not, however, prescribe the weight to be given to the ability of a particular proposal to reduce a shortfall in housing land supply as a benefit to be put in the balance against “any adverse effects”. This is a matter for the decision-maker to judge, and the court will not interfere with that judgment except on *Wednesbury* grounds. Naturally, the weight given to a proposal’s benefit in increasing the supply of housing will vary from case to case. It will depend, for example, on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. So the decision-maker must establish not only whether there is a shortfall but also how big it is, and how significant. This will not be possible unless the relevant policies are correctly understood. In this case they were.

61. Ground 1 of the application therefore fails.

*Ground 2 – “Relevant policies for the supply of housing”*

62. Mr Edwards submits that the inspector’s conclusions on the “[relevant] policies for the supply of housing” in the development plan, in paragraph 58 of her decision letter, are inconsistent and the reasons she gave for them flawed. Either she wrongly identified the policies that were for the supply of housing and were therefore out of date or she failed to identify those policies clearly. When judging whether the “presumption in favour of sustainable development” in paragraph 14 of the NPPF is engaged, the decision-maker must consider not only whether the plan’s policies for the supply of housing are out of date, but also, specifically, which policies are out of date. In this case the parties disagreed on both questions. The inspector’s attempt to resolve the matter in paragraph 58 leaves real doubt about the conclusions she reached. It is true that she had already recognized Policy SS2 of the core strategy was not up to date. And in paragraph 58 she seems to have accepted that saved Policy CO1 of the local plan review and Policy SS1 of the core strategy were also out of date. But her conclusions on the other policies are unclear. Her view that it was a “moot point” whether they were policies “for the supply of housing” is opaque. It is also unsatisfactory, because in paragraph 60 she seems to have applied some of those policies, including Policy SS3 and Policy CSD1, in her discussion of the planning balance. At the very least, her reasons are defective. The prejudice to Phides here is substantial, because the status of these policies is bound to affect the decision on any future proposals for the site.

63. I cannot accept that argument.

64. As Lord Reed said in paragraph 19 of his judgment in *Tesco Stores Ltd. v Dundee City Council*, “... 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”, and “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, said Lord Reed, “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 W.L.R. 759, 780 per Lord Hoffmann)".

65. The court has on several occasions considered what paragraph 49 of the NPPF means when it refers to "policies for the supply of housing" (see, for example, the judgment of Lang J. in *William Davis Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin), at paragraph 47; the judgment of Lewis J. in *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), at paragraph 30; the judgment of Ouseley J. in *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2014] EWHC 573 (Admin), at paragraphs 44 to 47; and the judgment of Supperstone J. in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 132 (Admin), at paragraph 38). Both a narrow view and a broader view have been favoured. I prefer the broader. As Ouseley J. said in paragraph 46 of his judgment in *South Northamptonshire Council*, the concept is "either very narrow and specific, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires a broader approach which examines the degree to which the particular policy generally affects housing numbers, distribution and location in a significant manner". Ouseley J. went on to say, at paragraph 47, that in his view the language of paragraph 49 of the NPPF "cannot sensibly be given a very narrow meaning". Otherwise, policies for the provision of housing which were not up to date might have their weight restored by "counterpart provisions in policies restrictive of where development should go". But Ouseley J. accepted, at paragraph 48, that once the decision-maker had properly directed himself on the scope of paragraph 49 of the NPPF, the question of whether a particular policy fell within it was "very much a matter for his planning judgment". I agree.
66. It seems to me that in this case what the inspector was doing in paragraph 58 of her decision letter was precisely what Ouseley J. said a decision-maker would have to do when considering whether a particular policy in a development plan was, or was not, within the ambit of paragraph 49 of the NPPF. She did not avoid that question. She dealt with it fully. She did so having properly directed herself on the scope of the policy in paragraph 49 of the NPPF, and having properly construed all six of the development plan policies she had to consider, in the light of the content and purpose of each. On every one of those six policies she exercised her own planning judgment in the way that Ouseley J. envisaged.
67. As she said at the beginning of paragraph 58, the council could not demonstrate a five-year supply of deliverable sites for housing development, and in such circumstances "its housing supply policies should be considered out-of-date". This was to say, in effect, that "the presumption in favour of sustainable development" in paragraph 14 of the NPPF was engaged. It echoed her conclusion in paragraph 28.
68. In my view it cannot sensibly be suggested that the inspector's conclusions in paragraph 58, or elsewhere in her decision letter, betray any misunderstanding of the policies to which she referred in that paragraph. Nor can it be suggested that she overlooked any policy she ought to have considered under paragraph 49 of the NPPF.
69. She clearly divided the policies to which she referred in paragraph 58 into two categories: those that were for the supply of housing, and those that were not. She accepted that saved Policy CO1 of the local plan review was a policy for the supply of housing. That policy constrained the supply of housing and was therefore, as she put it, "not current", which obviously means that in her view it was not up to date. But she did not accept Phides' assertion that "many" of the

relevant policies of the core strategy were also out of date. She made this very clear too. The only policy which referred directly to settlement boundaries was Policy SS1, but it did not preclude development beyond those boundaries. As Phides had itself pointed out, Lymgne and other Primary Villages were expected to take some growth, not all of which was likely to be accommodated within the settlement. The inspector then turned to Policy SS3, Policy CSD1, Policy CSD2 and Policy CSD3 of the core strategy, considering them one by one in the light of the policy in paragraph 49 of the NPPF. She found that the “primary purpose” of each of those four policies was “not specifically directed to housing supply”. She was right. These policies are not concerned, or mainly concerned, with the restraint of housing development as such, but largely with the promotion of sustainable development in the district of Shepway and with the considerations on which proposals for development should be judged. The inspector did not see them as counterparts to Policy SS2. Neither Policy SS3 nor Policy CSD1 prevents development outside the particular areas in which land has been allocated for housing. Both promote sustainable development. Policy SS3 is intended to reinforce the settlement hierarchy. Its purpose, as the inspector said in paragraph 7 of the decision letter, is to protect “the status and strategic role of the settlement in question”. Policy CSD1, as she said in paragraph 58, is concerned with the creation of “balanced neighbourhoods” and the provision of affordable housing. As Mr Brown points out, she found no conflict with either Policy CSD2 or Policy CSD3, and in this sense the status of those two policies under paragraph 49 of the NPPF did not matter. But in any event her understanding of them was in my view correct. Overall, her reasons for disagreeing with Phides’ contention that Policy SS3, Policy CSD1, Policy CSD2 and Policy CSD3 were policies for the supply of housing were not only entirely clear; they were also demonstrably right.

70. Did the inspector err in the way Mr Edwards submits?

71. I do not think so. She very clearly accepted – in paragraphs 28, 58 and 59 – that this was a case in which the policy presumption in paragraph 14 of the NPPF applied. She did so, as I have said, on the basis of entirely reasonable conclusions about the status of all the relevant policies of the development plan – not merely core strategy Policy SS2. Having expressed the firm conclusion at the beginning of paragraph 58 that the council’s “housing supply policies should be considered out-of-date”, she could properly take the view that “[in] the circumstances” it was a “moot point” whether the policies whose “primary purpose” was “not specifically directed to housing supply” should also be regarded as policies for the supply of housing within the meaning of paragraph 49 of the NPPF. This truly was a “moot point” in the sense that it was of no practical significance to her conclusion that the paragraph 14 presumption was engaged in any event. The decision on Phides’ appeal had to be made as statute requires in section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. And the presumption in paragraph 14 of the NPPF had to be applied. The inspector plainly understood this. Indeed, that is why she took care to consider the status under paragraph 49 of the NPPF of all six of the policies to which she referred in paragraph 58. To take her comment about the “moot point” as if she meant it to undo any of the conclusions she had just set out on each of those six policies makes no sense at all.

72. It is important, as always, not to isolate the passage of the decision letter which is criticized from the context to which it belongs. Here, in my view, one must keep in mind what the inspector had already said about the relevant policies, and what she went on to say in the paragraphs following paragraph 58 (see paragraphs 32 to 35 and 37 above). She had referred to saved Policy CO1 of the local plan review in paragraph 34, where she said that this policy “can be considered out-of-date”. That conclusion is consistent with what she said about this policy in the second sentence of paragraph 58. She had also concluded, in paragraph 40, that the proposal was contrary to three policies of the core strategy – Policy SS1, Policy SS3 and Policy CSD1 – because the

development would harm “the character and distinctiveness of the rural settlement and its role in the settlement hierarchy”. As she went on to acknowledge in paragraph 58, Lympne was one of those settlements in the district which the core strategy accepted was likely to grow beyond its existing “confines”. This reflected what she had already said in paragraph 32 – that “Policy SS1 does not rule out development in AONB settlements ...”, though there was “no policy support” for the amount of development Phides proposed. Nowhere did she say that the proposal was unacceptable in principle because the appeal site lay beyond the settlement boundary. She had already considered Policy SS3 in paragraph 30. She said there that this policy “directs development towards sustainable settlements in accordance with their role ... to promote sustainable, vibrant and distinct communities”. In paragraph 58 she said that the policy “concerns place shaping and sustainability”. In paragraph 60 she went on to say that the proposed development “would not comply with the place shaping and sustainable settlements strategy in the newly adopted development plan”. But in the same paragraph she concluded that there was “no convincing evidence that the spatial strategy in itself constrains the supply of housing ...”. The planning judgments involved in those conclusions were, in my view, planning judgments she was perfectly entitled to make.

73. The same may be said of all the planning judgments which informed her conclusions in paragraphs 59 to 62. To suggest that in striking the planning balance in the appeal she ought to have to put to one side Policy SS3 and Policy CSD1, or any of the other policies to which she referred in this part of her decision letter, would be misconceived. She plainly regarded those policies as relevant and necessary to her assessment of the proposal on its planning merits as she performed the decision-maker’s statutory duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. I see no error of law in that.
74. The NPPF is not a statute. It ought not to be treated as if it had the force of statute. It does not displace the statutory “presumption in favour of the development plan”, as Lord Hope described it in *City of Edinburgh* (at p.1450F-G). The inspector was well aware of that. There is nothing wrong with the way she applied the statutory presumption in section 38(6), and nothing wrong with the way she applied the policy presumption in paragraph 14 of the NPPF. Neither her conclusion that the council could not demonstrate a five-year supply of housing land to meet the requirement in Policy SS2 nor her conclusion that the “[relevant] policies for the supply of housing” she had identified in paragraph 58 were out of date compelled her to disregard the policies against which she tested the proposal in paragraphs 59 to 62. The policies on which she relied were relevant and necessary to her consideration of the sustainability and acceptability of the proposed development. The NPPF did not make them irrelevant, or dictate how much weight she should give them. She took into account the fact that Lympne was close to the bottom of the settlement hierarchy, and the conclusion she had already reached that this development would harm the character of the settlement. In applying the presumption in paragraph 14 of the NPPF she had to weigh the likely “adverse impacts” of the proposed development against its “benefits”. This is what she did in paragraph 62 – unmistakably in the language of paragraph 14 of the NPPF. She concluded, crucially, that the “substantial benefits” of the proposal were “significantly and demonstrably outweighed by the adverse impacts, when assessed against the policies in [the NPPF] as a whole”. All in all, the proposed development was not “sustainable”. The planning judgments fatal to it were twofold: that there was “no overriding requirement” for it, and that it would have “serious and harmful consequences” for the environment.
75. Mr Edwards cannot submit that those were unreasonable conclusions, or that in reaching them the inspector had regard to any consideration arising from development plan policy which was not germane to the decision she had to make, or gave unlawful weight to any of the policies she took into account, or departed from government policy in the NPPF. Such submissions would

have been hopeless. The inspector did not misinterpret or misapply any of the relevant policies of the development plan. She did not lapse into irrationality in giving them, or any other material considerations, the weight she did. She applied the presumption in paragraph 14 of the NPPF impeccably. The planning judgments upon which she based her decision are legally sound.

76. As I have said, I cannot accept the argument that the inspector's conclusions in paragraph 58 are in any way confusing, unclear or contradictory. They were not. Her reasoning in that paragraph, and in the other parts of her decision letter to which I have referred, is neither unintelligible nor inadequate. It leaves no room for doubt or dispute.

77. Ground 2 of the application therefore also fails.

### *Conclusion*

78. For the reasons I have given this application must be dismissed.