Case No: C1/2015/1205

Neutral Citation Number: [2016] EWCA Civ 42
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION – ADMINISTRATIVE COURT
THE HONOURABLE MRS JUSTICE PATTERSON
[2015] EWHC 823 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3rd February 2016

Before :

LORD JUSTICE TOMLINSON
LORD JUSTICE BRIGGS
and
LORD JUSTICE SALES

- -

Between :

Smech Properties Limited	**Appellant**
- and -	
Runnymede Borough Council	**1st Respondent**
- and -	
(1) Crest Nicholson Operations Limited &	**2nd**
(2) CGNU Life Assurance Limited	**Respondents**

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Mr James Maurici QC & Mr Alistair Mills (instructed by **Allen Overy LLP**) for the **Appellant**
Mr David Forsdick QC & Ms Heather Sargent (instructed by **Runnymede Borough Council**) for the **1st Respondent**
Mr Reuben Taylor QC (instructed by **Charles Russell Speechlys LLP**) for the **2nd Respondents**

Hearing dates : 14 January 2016

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Judgment

Lord Justice Sales:

1. This is an appeal against the judgment of Patterson J by which she dismissed a claim by the appellant for judicial review of a planning permission RU.13/0856 granted by the first respondent ("the Council") on 12 August 2014 for mixed use development on part of the former Defence Evaluation and Research Agency (DERA) site north of the M3 at Chobham Lane, Chertsey, Surrey ("the Site"). The appellant is the owner of land close to the Site. The second respondents are joint venture partners who own and wish to develop the Site.

2. At first instance, there were three grounds of challenge to the grant of permission. The judge rejected two of these but found that the remaining one was made out: the Council had been given and followed some incorrect advice in the Officer Report regarding the impact of the grant of permission on its ability to meet its requirements for additional housing provision in its area. However, by reference to the relevant principle in *Simplex G.E. (Holdings) v Secretary of State for the Environment* (1989) 57 P & CR 306, CA, she assessed that had the correct advice been given the Council would inevitably still have decided to grant planning permission for the development and therefore in exercise of her discretion she dismissed the appellant's claim to quash the permission.

3. The appellant sought permission to appeal on a number of grounds. Permission was refused by Sullivan LJ on the papers on all grounds. Upon oral renewal of the application, permission to appeal was granted by Lewison LJ limited to one ground, namely that the judge had erred in exercising her discretion to dismiss the claim.

Factual and policy background

4. The full factual background is set out in the judgment below. For the purposes of this appeal, the following background is sufficient.

5. The area of the Site to which the planning application relates is 33.6 hectares which is currently substantially occupied by around 77 industrial buildings, many in a dilapidated condition. The Site is adjacent to a railway line and is served by its own railway station.

6. The Site lies within the Metropolitan Green Belt and hence attracts the special protection accorded to the Green Belt by section 9 of the National Planning Policy Framework ("NPPF"). Development which is inappropriate in the Green Belt "is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances" (para. 87 of the NPPF). The presumption in favour of sustainable development set out in para. 14 of the NPPF does not apply in relation to land in the Green Belt.

7. Section 6 of the NPPF is entitled, "Delivering a wide choice of high quality homes". Paragraph 47 in that section provides in relevant part as follows:

> "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;
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> - Identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements …"

8. Paragraph 49 of the NPPF provides:

> "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."

9. As Mr Maurici QC, for the appellant, pointed out, this provision underlines the importance for a local planning authority of being able to demonstrate that it has identified a five-year supply of deliverable housing sites at the appropriate level, since if it fails to do so its policies to supervise and channel residential development as it thinks desirable will be given less weight and the authority will be at risk of losing a degree of practical control over residential development in its area.

10. Planning permission was previously granted in June 2011 for commercial development of the Site. This permission remains extant.

11. In December 2013 the Council published the submission draft of the Local Plan Core Strategy ("the LPCS"). This identified the Site as suitable for mixed use development, to include both residential and commercial development. Under the draft LPCS the Council proposed to re-draw the boundary of the Green Belt in its area so as to take the Site outside the Green Belt. This would make it easier for the Council to grant planning permission in relation to the Site with a view to providing a substantial element of future housing to meet need in the Council's area.

12. The LPCS set out policies in relation to meeting future demand for housing in the Council's area, to make provision for a five year supply of new housing. The LPCS identified that the Council was constrained by the amount of Green Belt land in its area, amounting to about 79% of that area. As a result, although the relevant evidence base indicated that there was a need for an average of 595 new homes per annum in the five year period, in the LPCS the Council proposed that only 220 net new dwellings were to be provided in its area between 2013 and 2018. A housing technical paper prepared by the Council for the purposes of supporting the LPCS identified sites falling outside the Green Belt which would be sufficient to provide a supply of housing at this low figure of 220 dwellings a year without needing to include any new housing on the Site to achieve that. Of course, it could not be assumed that a figure as low as 220 dwellings a year would be found to be acceptable upon examination of the LPCS.

13. The draft LPCS was the subject of examination by an Inspector. He held a hearing on 9 April 2014 and issued a report after the grant of the planning permission in issue in these proceedings, on 29 April 2014. The Inspector found that the Council had failed to comply with its duty to co-operate with other authorities in drawing up its LPCS and the LPCS has now been withdrawn.

14. The planning permission granted by the Council on 12 August 2014 which is in issue in these proceedings is for mixed development of the Site, comprising 79,025 square metres of B1 employment uses, 36,000 square metres of sui generis use as a data centre, two hundred dwellings and 6,300 square metres of ancillary use.

15. The Council granted the permission on the basis of a detailed Officer Report. The Report correctly identified that at the time for consideration of the planning application the Site lay within the Green Belt. The Report included an assessment that the proposed development of the Site would be inappropriate development in the Green Belt, notwithstanding that it would be to replace existing buildings already on the Site. However, the Report also gave reasons why the proposed development could be regarded as meriting the grant of planning permission according to the "very special circumstances" test in the NPPF. The inference is that the Council's reasons for granting planning permission reflected the reasoning set out in the Officer Report.

16. Unfortunately, the Officer Report contained some misleading advice. In the discussion in the Report regarding application of the "very special circumstances" test, the Report said this at para. 29.11.5:

> "… the Council is only able to demonstrate a 5 year housing land supply with the inclusion of the residential provision on this application site. Without the proposed housing provision, the Council will not be able to demonstrate a 5 year housing land supply."

The same point was also made at paras. 9.6, 29.11.8 and 31.2 of the Officer Report.

17. This was not correct. Although not stated in terms in the Officer Report, it appears from other material in the case that the five year housing land supply referred to in the Officer Report was that set out in the Council's technical paper and the LPCS, set at an average of 220 new homes per year in the period 2013-2018. However, the technical paper made it clear that there was an adequate housing land supply to meet that low figure without any need for the grant of planning permission for additional housing on the Site.

18. Alternatively, if instead one took the higher, objectively assessed figure of actual housing need in the Council's area at an average of 595 new homes per year in that five year period, it was clear that although the building of 200 new homes on the Site would be a significant contribution to meeting that need it would not be anywhere near sufficient in itself, when added to the other sources of housing land supply identified by the Council, to meet the whole of that five year need.

19. Thus, either on the basis of the lower 220 figure or the higher 595 figure for new dwellings per year for the relevant five year period, the advice in the Officer Report that the grant of permission for the proposed mixed development of the Site would

make the difference between the Council being able to demonstrate that it had an adequate five year housing land supply or not was incorrect and misleading.

20. This error directly affected the advice in the Officer Report that the development proposal for the Site could be regarded as satisfying the "very special circumstances" test for development in the Green Belt, which depended upon this point in combination with other features of the Site. This advice was summarised in para. 29.11.8 of the Report, as follows:

> "The contribution this site will make to housing delivery to meet the housing need and ensure a 5 year housing land supply, the fact that this site is a previously developed site with no prejudice to open land outside of the site and the fact that this site is served by an existing main line railway station and to which improvements will be made to the station and service are, in combination, considered to comprise very special circumstances which outweigh the substantial weight to be given to the harm to the Green Belt by reason of the inappropriateness of the development and the other harm resulting to openness. In terms of Green Belt policy it is therefore considered that very special circumstances exist which justify the granting of planning permission for the development proposed."

21. Although the solicitors acting for the appellant had written to point out the error in the Officer Report which arose on the assumption that the 220 figure was the correct figure (they did this while at the same time maintaining an argument that in fact an annual figure lower than 220 should be adopted for the purposes of consideration of the planning application by the Council, the Officer Report was not corrected for the relevant meeting of the Council's planning committee. Accordingly, the Council's decision to grant planning permission was affected by the misleading advice given in that Report.

The judgment

22. The judge correctly identified the error in the Officer Report and, applying the relevant test drawn from the judgment of Judge LJ in *Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council*, unrep. 18 April 1997, as set out in *R (Zurich Assurance Limited) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) at [15], she found that the Report significantly misled the Council's planning committee about material matters. She therefore found this ground of challenge to the grant of planning permission to be made out.

23. However, at the end of her judgment the judge considered the exercise of discretion in relation to this ground of challenge and concluded that, notwithstanding the error made by the Council in its analysis of the position, the appellant's claim to quash the planning permission should be dismissed on the ground that if the Officer Report had given the advice which it should have done the Council would inevitably still have decided to grant the planning permission. In assessing the advice which should have been given in the Report, the judge directed herself by reference to the decision of this court in *St Albans CC and DC v Hunston Properties Ltd* [2013] EWCA Civ 1610;

[2014] JPL 519, in which it was held that prior to adoption of a local plan the assessment of housing needs for the purposes of paras. 47 and 49 of the NPPF should be by reference to the objectively assessed figures of actual need (that is, in the present case, need assessed at the average rate of 595 new homes per year for the period 2013-2018) rather than to any proposed lower figures set out in any unadopted local plan which might be sought to be justified by reference to local constraints such as the difficulties of finding suitable sites outwith the Green Belt in a planning authority's area (such as the 220 figure per year proposed by the Council in its draft LPCS).

24. On the issue of the exercise of discretion, the judge said this at [117]-[123]:

> "117. The defendant submits that the planning permission should not be quashed if the error on its part would have made no difference to the ultimate decision made. The defendant relies on the case of *Simplex GE Holdings Ltd v Secretary of State for the Environment* [1988] 3 PLR 25.
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> 118. The claimant submits that it is impossible here to say that members would have reached the same conclusion. The reality is that in any redetermination the planning application would be considered against the judgment in *Hunston* (supra). Not only is there the issue of objectively assessed need there are issues as to the scale of the housing shortfall, the amount that the residential part of the DERA North site would contribute towards any shortfall, the harm to the greenbelt, and the fact that the contribution of the application site would be a drop in the ocean. They were all matters for members to grapple with.
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> Discussion and Conclusions
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> 119. The only error that I have found on the part of the defendant is in relation to its approach to the five year housing supply. I have found that the advice that was given to members, namely, that the inclusion of the DERA North site was the only way that the defendant could have a five year housing land supply was a material misdirection. Properly advised, the members would have been told that there was a significant housing shortfall based on full objectively assessed housing need to which the application site could make a contribution but so could others. In housing terms alone other sites could be preferable as they would cause no harm to the greenbelt. The application site would not, in itself, make the difference as to whether the defendant was able to have a five year supply of housing land.
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> 120. However, it is highly material that in the officer report, in section 29.11 dealing with very special circumstances, the housing circumstance is that the proposal would provide an achievable and deliverable phased supply of dwellings so that it was the contribution the site would make to housing need and

ensuring the five year housing land supply that together contributed to making the very special circumstances that outweighed the harm to the greenbelt. In other words the housing consideration was wider than just the five year housing supply.

121. Had the full objectively assessed housing need figure of 595 dwellings been taken as the starting point the housing supply situation which the defendant had understood to be finely balanced would have been considerably more dire. Even allowing for the fluid nature of housing supply and making some allowance for the constrained nature of the district on any view there would have been a considerably greater housing need and a more significant housing shortfall than the members were advised and considered.

122. The likely scale of the housing shortfall together with the fact that the DERA North site was an achievable and deliverable housing site would remain. The officer report was clear that without a five year supply the default position should be to approve the application unless there were other material considerations that dictated otherwise (paragraph 9.6). It was also clear that there was a lack of any other significant or demonstrable harm resulting from the proposed development (paragraph 31.5). The other identified very special circumstances, namely, the unique nature of the site within Runnymede with its proximity to the railway, and the fact that the site was previously developed land would remain as before. The fact that there was a greater shortfall against the five year housing supply and, overall, a greater housing need than was thought at the time of reporting the application to committee makes it inevitable, in my judgment, that the defendant would have reached the same decision.

123. For those reasons I exercise my discretion and refuse to quash the planning permission."

Legal analysis

25. On this appeal, Mr Maurici makes a number of criticisms of the judge's reasoning. He also made submissions about the correct approach which this court should adopt in relation to the exercise of discretion by the judge in a case of this kind. He emphasised that this is not a case in which the judge heard oral evidence. The evidence before her was all in the form of written witness statements and other documents which are equally available to this court to read. He also emphasised that the discretion available to the judge is a highly constrained one, since in principle, in line with the approach laid down in *Simplex,* it was only if it could be said that the Council's decision would inevitably be the same if the correct advice had been given in the Officer Report that it would be appropriate for relief to be refused by exercise of discretion by the court in a judicial review claim of this sort where a valid ground

of challenge had been made out. I address first the question of the correct approach to be adopted by this court.

26. CPR Part 52.11 provides in relevant part as follows:

> "(1) Every appeal will be limited to a review of the decision of the lower court unless –
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> (a) a practice direction makes different provision for a particular category of appeal; or
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> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
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> …
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> (3) The appeal court will allow an appeal where the decision of the lower court was –
>
> (a) wrong;
>
> …
>
> (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
>
> …"

27. Mr Maurici correctly accepted that the general rule in Part 52.11(1) is not displaced. Therefore, this appeal is limited to a review of the decision of the lower court and does not take the form of a re-hearing. This is significant. It means that the task for this court in looking to see whether the judge was "wrong" so that the appeal should be allowed is to ask whether the judge had legitimate and proper grounds for reaching the decision she did, rather than simply for this court to approach the matter completely afresh and make up its own mind without regard to what the judge decided.

28. Mr Maurici recognised that there are types of case where this court will be slow to find that a judge has made a decision which is "wrong", in particular where the judge has made findings of fact based on oral evidence which she heard (where, therefore, the judge was better placed than this court to assess the relevant evidence) or where the judge has to exercise a discretion turning on a range of disparate factors (where it is not possible to say there is any single right answer, in which case it is well settled that the appeal court will only find a decision to be "wrong" if the judge at first instance has misdirected herself or has reached a conclusion which is manifestly incorrect or unjust: see e.g. *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647, HL). However, he submits that the present case falls outside these categories. There was no oral evidence at trial. The *Simplex* case makes it clear that the relevant discretion to refuse relief in a case like this is highly constrained: relief can only be refused if the court finds that the decision would inevitably have been the same had there been no unlawfulness. Therefore, Mr Maurici says, this court is as well placed

as the judge to assess the evidence for itself and should find that her decision is "wrong" because on that evidence we should be persuaded that it was not inevitable that the Council would have made the same decision if the planning committee had been properly advised in accordance with the law. The effect of Mr Maurici's argument is that this court should not give weight to the assessment of the facts made by the judge in her judgment.

29. I do not consider that this is correct. Where an appeal is to proceed, like this one, by way of a review of the judgment below rather than a re-hearing, it will often be appropriate for this court to give weight to the assessment of the facts made by the judge below, even where that assessment has been made on the basis of written evidence which is also available to this court. The weight to be given to the judge's own assessment will vary depending on the circumstances of each particular case, the nature of the finding or factual assessment which has been made and the nature and range of evidential materials bearing upon it. Often a judge will make a factual assessment by taking into account expressly or implicitly a range of written evidence and making an overall evaluation of what it shows. Even if this court might disagree if it approached the matter afresh for itself on a re-hearing, it does not follow that the judge lacked legitimate and proper grounds for making her own assessment and hence it does not follow that it can be said that her decision was "wrong".

30. The weight to be accorded to the considered view of a judge at first instance may also be enhanced where the judge has a particular expertise in the area in question or where the judge has had a fuller opportunity at the hearing before her to go into the case and understand it in the round than this court might be able to achieve at the hearing of an appeal. Both factors apply here. Patterson J is a judge of the Planning Court with expertise in planning matters, who can be expected to have a particularly good understanding of the planning context in a case of this kind. The hearing before her lasted two days, by contrast with the half day spent in argument before us, and involved consideration of other grounds of challenge and deeper consideration of the case as a whole needed to understand and deal with those grounds as well as the issue which concerned us.

31. Turning to the criticisms of the judgment itself, in my view they cannot be sustained and do not show that the decision is "wrong".

32. The judge directed herself by reference to the relevant test as laid down in *Simplex*: see in particular [117] and the last sentence of [122]. She plainly understood the nature of the case presented by the appellant, in particular that since the additional housing from the development would only be "a drop in the ocean", i.e. insignificant, it could not be assumed that the Council would have thought that very special circumstances applied to satisfy the test for development on the Green Belt and rejected it. Her implicit assessment, by rejecting the appellant's "drop in the ocean" argument, that the creation of 200 new homes on "an achievable and deliverable housing site" was a significant contribution to meeting the pressing housing need in the Council's area was an assessment which she was fully entitled to make.

33. The judge correctly assessed the advice regarding housing need which should have been included in the Officer Report by reference to the *Hunston* case. At the relevant time the Council's own low preferred figure of 220 new homes per year as the relevant five year housing supply figure to be included in the LPCS was untested and

had not been approved upon examination, still less had the LPCS actually reached the stage of being adopted with that figure in it. Therefore the Council remained obliged under relevant national policy in para. 47 of the NPPF to seek to meet its full objectively assessed housing needs, which it had assessed at 595 new homes a year. It was an open question whether it would ever be able to persuade the inspector examining the LPCS that it should be allowed to include a lower figure in the LPCS. In such a situation, *Hunston* establishes that the question whether there are "very special circumstances" such as to justify permission for development on the Green Belt in accordance with para. 87 of the NPPF has to be addressed by reference to the full, objectively assessed needs of an area: see [25]-[27] per Sir David Keene. In *Hunston* this court quashed a decision of a planning inspector (the relevant decision-maker there, just as the Council is the relevant decision-maker here) to refuse to grant planning permission for residential development in the Green Belt where the inspector took her decision by reference to a low housing requirement figure in an unapproved and inapplicable plan rather than by reference to the full, objectively assessed needs of the area.

34. In a passage which Mr Maurici emphasised, having identified the error of approach by the inspector in using the wrong housing requirement figures Sir David Keene went on to say this:

> "28. However, that is not the end of the matter. The crucial question for an inspector in such a case is not: is there a shortfall in housing land supply? It is: have very special circumstances been demonstrated to outweigh the Green Belt objection? As Mr Stinchcombe recognised in the course of the hearing, such circumstances are not automatically demonstrated simply because there is a less than a five year supply of housing land. The judge in the court below acknowledged as much at paragraph 30 of his judgment. Self-evidently, one of the considerations to be reflected in the decision on "very special circumstances" is likely to be the scale of the shortfall.
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> 29. But there may be other factors as well. One of those is the planning context in which that shortfall is to be seen. The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development except in exceptional or very special circumstances, whether because such land is an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable. That may well affect the weight to be attached to the shortfall.
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> 30. I therefore reject Mr Stinchcombe's submission that it is impossible for an inspector to take into account the fact that

such broader, district-wide constraints exist. The Green Belt may come into play both in that broader context and in the site specific context where it is the trigger for the requirement that very special circumstances be shown. This is not circular, nor is it double-counting, but rather a reflection of the fact that in a case like the present it is not only the appeal site which has a Green Belt designation but the great bulk of the undeveloped land in the district outside the built-up areas. This is an approach which takes proper account of the need to read the Framework as a whole and indeed to read paragraph 47 as a whole. It would, in my judgment, be irrational to say that one took account of the constraints embodied in the polices in the Framework, such as Green Belt, when preparing the local plan, as paragraph 47(1) clearly intends, and yet to require a decision-maker to close his or her eyes to the existence of those constraints when making a development control decision. They are clearly relevant planning considerations in both exercises.

31. There seemed to be some suggestion by Hunston in the course of argument that a local planning authority, which did not produce a local plan as rapidly as it should, would only have itself to blame if the objectively-assessed housing need figures produced a shortfall and led to permission being granted on protected land, such as Green Belt, when that would not have happened if there had been a new-style local plan in existence. That is not a proper approach. Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers.

32. Where this inspector went wrong was to use a quantified figure for the five year housing requirement which departed from the approach in the Framework, especially paragraph 47. On the figures before her, she was obliged (in the absence of a local plan figure) to find that there was a shortfall in housing land supply. However, decision-makers in her position, faced with their difficult task, have to determine whether very special circumstances have been shown which outweigh the contribution of the site in question to the purposes of the Green Belt. The ultimate decision may well turn on a number of factors, as I have indicated, including the scale of the shortfall but also the context in which that shortfall is to be seen, a context which may include the extent of important planning constraints in the district as a whole. There may be nothing special, and certainly nothing "very special" about a shortfall in a district which has very little undeveloped land outside the Green Belt. But ultimately that is a matter of planning judgment for the decision-maker."

35. Although the judge had this passage well in mind and quoted most of it, Mr Maurici submitted that on a proper understanding this passage meant that she could not properly make the assessment that the Council's planning committee would inevitably have made the same decision had it been properly advised in the Officer Report in the light of *Hunston*, because a wider evaluative judgment would have been required by that committee of the scale of the shortfall and whether the contribution the development might make to meet it constituted "very special circumstances" for the purposes of para. 87 of the NPPF and it was uncertain what decision they would have made.

36. I do not accept this submission. I have already observed that the judge was entitled to reject the appellant's "drop in the ocean" argument. The contribution which the development would make to meeting the Council's full, objectively assessed housing need was significant. The scale of that need meant that it was very pressing in nature; using the judge's language, the position was "dire". The question arose as to how the Council's planning committee would have assessed the situation in the light of the guidance given in *Hunston* against that background. As the judge noted, the Council's area was highly constrained in development terms as 79% was in the Green Belt: [16]. There was thus great pressure of need for new housing and very limited options for meeting that need; indeed, this latter point was part of the justification being used by the Council in trying to persuade the inspector examining its LPCS to accept the low annual housing figure of 220 new homes which was proposed in the LPCS. Also in the draft LPCS, the Council proposed removing the Site from the Green Belt precisely because of its suitability for development: [16]. The Site was already developed, being extensively covered by dilapidated buildings, and the impact upon the openness of the Green Belt from development there would be limited: the already extant permission for development had been granted with reference to these points (see [14]) and although the new proposed development was assessed to be inappropriate development in Green Belt terms, the overall impact on the openness of the Green Belt would clearly be limited in nature as the Officer Report emphasised, in particular at para. 29.11.8. Moreover, as the Officer Report also emphasised, the Site was especially well suited for the proposed development because of the existing main line railway station which served it. Accordingly, in my view it was well open to the judge to assess that the proposed development of the Site would have been judged by the planning committee to be an obvious and obviously justified way in planning terms to make a significant contribution to meeting the dire housing needs of its area, at minimal cost to the Green Belt and on a particularly well-placed location in infrastructure terms.

37. Mr Maurici criticised the second sentence of para. [122] and the judge's reference to paragraph 9.6 of the Officer Report, since by reason of the Site being in the Green Belt the default position would *not* have been to approve the application: the presumption in favour of sustainable development set out in para. 14 of the NPPF is disapplied in relation to the Green Belt, as a footnote to para. 14 makes clear. At points in his argument he appeared to suggest that this indicated that in applying the *Simplex* principle the judge did not appreciate that the planning committee would have had to ask itself whether very special circumstances existed so as to justify what was assessed to be inappropriate development in the Green Belt according to the test in para. 87 of the NPPF.

38. However, on reading the judgment as a whole it is abundantly clear that the judge had very well in mind the stringent test in para. 87 of the NPPF. At para. [78] she expressly noted the disapplication of para. 14 of the NPPF in relation to the Green Belt. The paragraph in the Officer Report she referred to (para. 9.6) is immediately followed by para. 9.7 which expressly referred to the fact that the Site is located in the Green Belt and pointed out that Green Belt policy constituted material circumstances which disapplied the usual default position referred to in para. 9.6, and it is not remotely plausible to suggest that the judge had overlooked this. She had in fact reviewed the whole Officer Report in detail earlier in the judgment, at [30]-[39], including setting out the principal extended passages which dealt with Green Belt considerations and the "very special circumstances" test. In my view, on a fair reading of the judgment, the second sentence of para. [122] was a slightly infelicitous way of emphasising the importance in planning policy terms of the Council trying to meet its full, objectively assessed housing needs as best it could.

39. Against the background I have set out above, the judge was entitled to make the assessment she did that it was inevitable that if the planning committee had been properly advised about the position in relation to housing need in the Council's area it would have made the same decision to grant planning permission for this development on the Green Belt. I would not have considered that her decision based on that assessment could be said to be "wrong", even if I might have made a different overall assessment of the position had I been deciding the matter afresh.

40. As it happens, however, I agree with the judge's assessment. On the facts of this case, in light of the obligation of the Council to comply with applicable national planning policy, the pressing nature of the objectively assessed housing need in its area and the especial suitability of the Site for development to make a significant contribution to meeting that need, I think that it was indeed inevitable that if the Council's planning committee had been properly advised in accordance with the *Hunston* decision it would still have decided to grant planning permission for this development.

41. For the reasons given above, I would dismiss this appeal.

Lord Justice Briggs:

42. I agree.

Lord Justice Tomlinson:

43. I also agree.