Neutral Citation Number: [2024] EWHC 295 (Admin)

Case No: AC-2023-LON-002550

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

In the matter of an application for statutory review under Section 288 of the Town and Country Planning Act 1990

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/02/2024

Before :

HIS HONOUR JUDGE JARMAN KC
Sitting as a judge of the High Court

Between :

LULLINGTON SOLAR PARK LTD	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES **(2) SOUTH DERBYSHIRE DISTRICT COUNCIL**	**Defendants**

Mr Michael Humphries KC and Mr Mark Westmoreland Smith (instructed by **Pinsent Masons LLP**) for the **claimant**
Mr Robert Williams and Mr Riccardo Calzavara (instructed by **Government Legal Department**) for the **first defendant**
The second defendant did not appear and was not represented

Hearing dates: 30 January 2024

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Approved Judgment

This judgment was handed down remotely at 10.30 am Friday 16 February 2024 and sent to the parties and to the National Archives

HHJ JARMAN KC:

Introduction

1. The claimant, with permission of Sir Duncan Ouseley, applies under section 288 of the Town and Country Planning Act 1990 (the 1990 Act) to question the validity of the decision of a planning inspector appointed by the first defendant dismissing its appeal under section 78 of the 1990 Act against the refusal by the second defendant as local planning authority to grant planning permission for a 49.9MW solar farm at a site (the site) near Lullington in South Derbyshire District. The site comprises about 70ha of arable land and the proposed development includes ground mounted solar panels, substations, converters, inverters, access tracks, and security fencing. Nearly half of the site contains what is known as the best and most versatile (BMV) agricultural land. The inspector attached significant weight to the provision of clean electricity to some 17,300 homes and moderate weight to biodiversity gains, long term landscape benefits and job creation which the development would bring. However he found that the harm of losing food production by the loss of BMV land over the 40 year period of the scheme would be of greater significance and would thus conflict with the development plan and the National Planning Policy Framework (NPPF).

2. There are two main grounds of challenge, each relating to the inspector's approach to the assessment of what other BMV land was available in other locations appropriately close to national grid lines and substations in the district, for connection purposes.

3. The first is that the approach was irrational or his reasoning inadequate in concluding that a site selection assessment (the assessment) submitted by the claimant with the application was not sufficiently robust. The second is that his approach to another solar farm proposal at Oaklands Farm was flawed in that he undertook his own research, made a mistake of fact, did not give the claimant or the defendant an opportunity to comment on the research, and failed to consider whether Oaklands Farm was available for a solar farm. Each of the grounds is disputed by the defendant (as I shall refer to the first defendant). The second defendant did not appear and was not represented.

Background

4. Before dealing with those grounds in more detail, I shall summarise some of the background. The claimant's application for planning permission was considered by the defendant's planning officer and was the subject of a report to the planning committee. The officers came to a planning judgment which was the opposite to that eventually arrived at by the inspector, namely that the loss of BMV land and other harms did not outweigh the benefits that would arise from the proposed development. The officers recommended that permission should be granted. However the committee, as Mr Humphries KC for the claimant properly accepts it was entitled to do, did not accept that recommendation and refused the application.

5. The reasons for the refusal were set out in a decision notice dated 8 August 2022 and only the first, namely the loss of BMV agricultural land, is relevant in this challenge. The detailed reasons are as follows:

> "The proposed development would result in the loss of 10.5 hectares of Grade 2 and 23.1 hectares of Grade 3a best and most versatile (BMV) agricultural land, which amounts to 48% of the total site surveyed being taken out of active food production for up to 40 years as a result of this proposal. The loss and impact of losing this extent of BMV agricultural land is not considered to be outweighed by the renewable energy and biodiversity benefits arising from the proposed development. In addition written ministerial statements, national policies, national spatial guidance and policy BNE4 advise that proposals involving BMV agricultural land need to be justified by the most compelling evidence. The supporting information submitted with the application is not considered to amount to such compelling evidence in support of the proposed development at this location such that the loss of BMV agricultural land can be considered acceptable. The proposal is therefore considered to be contrary to NPPF paragraph 174, South Derbyshire District Council Local Plan Part 1 policy S2, BNE4 and Local Plan Part 2 policy BNE5 in that it will give rise to an undue impact on most versatile agricultural land and there are no material planning considerations which would justify taking a decision at variance to such."

6. The claimant lodged its appeal in December 2022. In its statement of case for the appeal, it referred to the assessment which had been submitted with its original application. There had been no update to the assessment in the meantime, despite the fact that the authority's reasons for refusal included a reference to the information in support of the claimant's application not amounting to compelling evidence to justify the loss of BMV land. The assessment related to a search area where appropriate connection to the national grid could be made. It was based upon classification of agricultural land (ALC) carried out by Natural England, which was appended as an appendix to the assessment. However, that classification does not make a distinction between grade 3a agricultural land (which amounts to BMV) and grade 3b (which does not). This led to a difficulty in identifying BMV land in the study area.

7. The assessment referred to the ALC map and dealt with that difficulty in this way:

> "4.4.5 Without undertaking intrusive investigations across the search area, it is not possible to determine the sub-grading make up of Grade 3 land, and the proportions of Grade 3a, 3b and any other grading they comprise. It is established that it is not appropriate for applicants to undertake what would be a logistically difficult and financially unviable exercise.
> 4.4.6 It is considered the Grade 3 land within the search area is likely to have a similar make up to the site (for which intrusive investigations have been undertaken – as described in Paragraph 1.1.4). Referring to the ALC map at Appendix 2, the site is distinct from the areas of higher Grade land. It seems unlikely other potential Grade 3 sites within the search area would have a significantly lower percentage of BMV than the site."

8. The claimant's statement of case also referred briefly to a map which had been commissioned by the claimant from consultants Lanpro, based on methodology set out in a report from Cranfield University commissioned by the Welsh Government. It is a map showing the South Derbyshire District, the grid connection search area at the southern end of the district, and the site boundary within it. It is described as "Predictive ALC map for Lullington Solar Farm." It shows all grades of agricultural land class in different colours, with grade 3a shown in dark green, and grade 3b in light green. It is on small scale of 1:125,000 at A3, and, as far as can be made out, appears to show the site as grade 3b land, apart from a very small corner in the north east which is shown as grade 3a. This map was referred to in the claimant's statement of case as showing the site within the district, but there was also a brief reference to it as showing how few sites there are in the district that are appropriate for solar farm use.

9. Although the claimant's statement of case referred to the Cranfield report, a copy was not put before the inspector or before me. Counsel were unable to assist on what sort of predictive methodology produced the Lanpro map, or why it showed the site as comprising grade 3b land (apart from small slivers of grade 3a and possibly grade 2 land), when the soil investigations carried out by the claimant on the site which informed the assessment showed that nearly half of the site is BMV land.

Policy and guidance framework

10. The policies and guidance applicable to the consideration of the appeal were not in dispute before the inspector, or before me. National Policy Statements (NPSs) deal with the delivery of major energy infrastructure and recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. Draft updates to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) have been published. The draft NSPs recognise that to meet Government targets for net zero carbon emissions by 2050, significant large and small scale energy infrastructure is required, including a dramatic increase in the volume of energy supplied from low carbon sources to ensure a reduction in the reliance on fossil fuels. Draft EN-1 at [3.3.21] recognises that the lowest cost ways of generating electricity and providing secure, reliable, and affordable net zero energy systems are likely to be predominantly by wind and solar power.

11. The update of EN-3 current at the time of the of the appeal before the inspector is dated March 2023, and provides:

> "3.10.14 While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land (avoiding the use of "Best and Most Versatile" agricultural land where possible).

12. At [3.10.15] it is stated that although the development of ground mounted solar arrays is not prohibited on BMV land, the impacts of such are expected to be considered. At [3.10.18] the point is made that the ALC is the only approved system for grading agricultural quality in England and Wales.

13. There are other national policies and guidance relating to the provision of such infrastructure on agricultural land. It was agreed that a written statement by the then minister responsible for planning dated 25 March 2015 relating to the unjustified use of agricultural land remains relevant. That states that any proposal for a solar farm involving BMV land needs to be justified by the most compelling evidence.

14. National Planning Policy Guidance (NPPG) provides that in respect of a proposal for the use of any agricultural land, consideration should be given to whether the proposed use has been shown to be necessary, whether poorer quality land has been used in preference to higher quality land and whether the proposed development would allow for continued agricultural use where applicable and/or where biodiversity improvements around arrays would be provided.

15. NPPF deals with the transition to a low carbon future in a changing climate. At [152] it is stated that the planning system should support this transition, as well as renewable and low carbon energy and associated infrastructure. At [158], it is stated that applicants are not required to demonstrate the overall need for renewable or low carbon energy. It also deals with use of agricultural land, by providing that where significant development of agricultural land is shown to be necessary, areas of poorer quality land should be preferred to those of higher quality. At [174(b)] it is stated that planning decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural and ecosystem services, including the economic and other benefits of BMV land, and of trees and woodland. The glossary defines BMV land as that which falls within grades 1, 2 and 3a of the Agricultural Land Classification.

16. As for local plan polices, policy BNE4 of the South Derbyshire Local Plan states that the local planning authority will seek to protect soils in BMV land and wherever possible direct development to areas with lower quality soils. Policy BNE5 states that otherwise acceptable development outside of settlement boundaries in rural areas will be granted where it will not unduly impact on BMV agricultural land.

The appeal hearing and the decision letter

17. The appeal before the inspector took place in April 2023 by way of hearing rather than inquiry. There was discussion but no cross examination of witnesses. The claimant's witness on BMV land, Daniel Baird, referred to the Cranfield report and to the Lanpro map, which he said shows that there are significant amounts of BMV land within South Derbyshire district and beyond, so that alternative sites of lower grade agricultural land were not available.

18. The inspector in the decision letter referred to the national guidance and policies and local plan polices relating to competing needs for solar power energy on the one hand and for BMV land on the other as summarised above. No criticism is made that any of these references were irrelevant or misstated the policy framework.

19. The inspector then turned to consider the respective arguments as to the loss of BMV land, which the proposed development would entail. He summarised the claimant's assessment in the following terms in [13]-[15] of the decision letter:

> "13. The appellant's Site Selection Assessment (SSA) fixed the study area for the appeal proposal by a requirement to connect to a viable local electricity network that was agreed with the local distribution network operator at the application stage. The agreed point of connection would be into the 132kv network that crosses the western end of the appeal site and which connects into the major substation at Drakelow, some 6km from the connection point. A 2km offset around the 132kv line was therefore drawn at a distance of no more than 8km from the Drakelow facility, which coincides with the maximum cabling connection that would be economically viable.
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> 14. The SSA found that there were no suitable brownfield sites within the study area whilst there are only very few areas of lower grade agricultural land. These areas were grade 4 land but considered unsuitable for the siting of solar arrays due either to their being either too small or had physical or environmental constraints that limited their inclusion. The SSA was also informed by a number of other constraints, including levels of irradiance, sensitive landscape, ecological or heritage designations, sensitive human receptors and access/highway considerations, amongst others. The Council offered no evidence that would contradict these findings. The SSA confirmed that there were no sites of suitable size for a 50MW solar farm within a suitable distance from the grid connection point that lie wholly outside BMV land although on grounds of costs and practical feasibility, no soil survey work was completed other than within the appeal site. This factor is a significant omission.
>
> 15. The appellant provided an assessment of alternative sites to demonstrate why agricultural land is to be used for the appeal development. This included assessing the opportunities that might be available on previously developed land (PDL)/brownfield land, commercial rooftops and lower grade agricultural land (grades 3b, 4 and 5)."

20. In the following paragraphs, the inspector set out his conclusions on the assessment as follows:

> "16. It is clear that a robust assessment has not been made of the grading of agricultural land within the remainder of the study area, which from the data held by Natural England has significant areas of Grade 3 agricultural land. While I accept the argument that it would not be practicable to undertake extensive investigation of the entire study area, I agree with the

> Council who pointed out that the explanatory note to the Agricultural Land Classification maps sets out that Grade B reflects 'areas where 20-60% of the land is likely to be 'best and most versatile' agricultural land'. This to my mind adds to the criticism that the evidence has failed to demonstrate that there is no land available for this development within the study area of a lesser agricultural quality, contrary to national and local policy. It also does not stand up to scrutiny as the 'compelling evidence', which is sought in the WMS."

21. At [17], the Oaklands project was referred to:

> "My attention was also drawn to the Oaklandss Farm Solar Limited (BayWa r.e. UK Ltd) Preliminary Environmental Information Report submission to the National Infrastructure Planning Unit of the Planning Inspectorate for the purposes of a Development Consent Order for a 163MW solar farm and onsite storage facility at a site also within the appellant's study area to the north-west of the present appeal site and within South Derbyshire District. From the appellant's evidence, it is clear that this site would also include extensive areas of Grade 3 land, which has not been assessed. It must be assumed that lower quality grade 3 agricultural land might well be available as an alternative to the appeal site."

22. The overall conclusions on BMV were set out in [20]-[22]:

> "20. While recognising that it may not be reasonable to expect developers to fully investigate every possible location for a solar farm within a wide study area and neither is it incumbent on appellants to demonstrate that there is no possible alternatives to an application site, nevertheless, the wider study area is expansive and sufficiently so that it is being earmarked as a potential national infrastructure project. In acknowledging that the main issues for food security as identified by DEFRA5 are climate change and soil degradation, this only serves to emphasise the importance of maintaining higher quality agricultural land where this is found in food production.
>
> 21. The hearing heard that the land hereabouts is a valued resource with tenant farmers under contract to a national potato crisps manufacturer who demand the highest quality of outputs. It was pointed out that there are only 80 such farms in the country producing the required grade of potato crop. Moreover, no calculation had been made of the existing bioenergy plant that is being generated each year and which contribute to renewable energy targets that may also close should the proposed solar farm goes ahead. The evidence presented at the hearing on this was scant however and has not featured highly in my consideration.

> 22. There is no definition of what might constitute 'compelling evidence' but I accept the Council's arguments that the evidence fails to demonstrate that there are no suitable poorer quality areas of land in the study area that could be used or accommodate the appeal development save for a broad brush map-based review. In this regard, the appeal proposal contravenes relevant provisions of BNE4 of the SDLP, the NPPG and the WMS. The loss of just under 50% of BMV is a significant negative aspect of the appeal proposal which weighs heavily against the development."

23. The inspector then dealt with landscape, landscape character, visual and heritage impacts of the proposed development. He accepted that there would be some adverse effects on these, save that he concluded that there would be no such effects on historic assets. He concluded that the adverse effects which he did find would be within acceptable tolerances.

24. At [46]-[53], under a heading "Planning balance and conclusion" the inspector expressed little doubt that the point is close where climate change is a reality, and that if left unchecked will have very serious consequences for large parts of the planet. He accepted that the development would make a significant contribution to providing energy from a renewable source, and that energy from solar farms will form a critical element of the plan to decarbonise the UK electricity sector. He concluded at [47] that:

> "These factors coupled by the timeliness of delivery and relatively easy connection to the national grid in this instance weighs significantly in favour of the appeal proposal."

25. At [48] he said this:

> "I recognise the time limited nature of the appeal scheme and that agriculture may well continue during the scheme's lifetime although no guarantees were offered at the hearing. Whilst the 40-year period may allow for the restoration of the soil structure and reduce the problems associated with nitrates usage, it appears to me, as it has done to other Inspectors at appeals cited by the Council, that 40 years would indeed constitute a generational change. I accept the appellant's arguments that where sites are made up of a patchwork of agricultural gradings, it is not feasible or practical to separate small areas of BMV land from development, particularly as this would result in that land having little commercial agricultural utility. However, this proposal would harm the BMV resource, which amounts to just under half the total available hectarage and would make an unacceptable indent on the contribution that a large proportion of the site makes towards food security for a significant period of time."

26. He then dealt with biodiversity benefits of the proposed development, including a 270% gain in habitats and a 46% gain in hedgerows. He found that these together with

long term landscape benefits carried positive weight in favour of allowing the development, as did job creation.

27. However, his overall conclusion at [52]-[53] was as follows:

> "51. While collectively the benefits arising from the appeal scheme are significant, the harm that would be caused by allowing the development of just below 50% of the site's hectarage over a period of 40 years would be of greater significance.
>
> 52. Taking all this into account, the appeal proposal would be conflict with the development plan and the Framework and would not constitute sustainable development."

Legal principles

28. Before I deal with the grounds of challenge in more detail, I will set out the legal principles as to how the court should approach decision letters of planning inspectors. These are well established and were not in dispute before me, and so I can summarise them here briefly.

29. The expertise of specialist planning inspectors should be respected: *Hopkins Homes Ltd v Secretary of State* [2017] 1 WLR 1865. At a hearing, the absence of the right to cross-examine imposes an enhanced and inquisitorial duty on the inspector: *Dyason v Secretary of State for the Environment* (1998) 75 P&CR 506.

30. Decision letters should be read benevolently and as a whole, in a reasonably flexible way and without excessive legalism. They need not refer to every material consideration. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal controversial issues, see eg, *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2018] PTSR 746.

31. The meaning of planning policy is a question of law for the court, but its application is a matter of planning judgment which is within the exclusive province of the decision-maker. The courts will not interfere with the decision-maker's planning judgment unless it is irrational or perverse: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759. The same applies to the question of whether something is a material consideration (which is a matter of law) and the weight which should be given to it (which is a matter of planning judgment). There are three categories of material considerations. The first two of these are governed by statute, where statute provides that regard must, or alternatively must not, be had.

32. The third category comprises those considerations to which the decision-maker may have regard, in respect of which the court will only interfere if the decision maker does not refer to the consideration, and it is so obviously material that it must be taken into account. Where it is taken into account it is for the decision maker to decide how to deal with it, subject to irrationality: *R (Friends of the Earth) v Heathrow Airport Ltd* [2020] UKSC 52.

33. Whether the availability of alternative sites is a material consideration within the third category will depend on the circumstances. In *R (Mount Cook Land Limited) v Westminster City Council* [2017] PTSR 116, the Court of Appeal held that in the absence of conflict with planning policy or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant. Where, in exceptional circumstances, alternatives might be relevant, schemes which are vague or have no real possibility of coming about, are irrelevant or should be given little or no weight. In *Stonehenge R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161 (Admin), Holgate J found that the issue of potential effects of development on the Stonehenge World Heritage Site amounted to such an exceptional circumstance so that the availability of alternatives sites for the proposed development was obviously a material consideration.

34. With those principles in mind, I turn to consider the grounds of challenge. Mr Humphries makes the overarching point that the inspector's approach to the adequacy of the claimant's assessment was central to the conclusion that the use of BMV agricultural land for the proposed development was inconsistent with policy BNE4 of the local plan, NPPG and the ministerial statement. As an overarching point, I accept it.

Ground 1

35. Under ground 1, the claimant submits that the inspector's approach was inherently contradictory. On the one hand he accepted in [16] and [20] that it is not practicable or reasonable fully to investigate every possible location for a solar farm within a wide study area or incumbent on appellants to demonstrate that there are no possible alternatives to an application site. On the other hand, he concluded that the assessment was deficient because no soil investigation was completed other than on the appeal site which was a significant omission and as a result he concluded that the assessment was not robust. It is further submitted that by so concluding the inspector was effectively imposing on the claimant the need to show soil surveys outside the appeal site in the absence of power of entry on to the land of others.

36. Reading the decision letter fairly and as a whole, in my judgment there is no such inconsistency. The inspector clearly accepted, twice, that it is not practicable to investigate every possible location for a solar farm within a wide study area. He also clearly accepted that it was not incumbent on the claimant to show that there were no possible alternative sites. It is not then necessarily inconsistent to conclude that an assessment which involves no soil survey outside the appeal site is not sufficiently robust. As Mr Williams submits, this may be achieved by sample surveys on other possible sites with the permission of the owner. It is common ground that it is not only the quality of land which imposes a constraint, but many other factors such as connection to the grid, landscape, ecology, heritage assets, highways, flooding and availability. These also would narrow the area of search.

37. The claimant also submits that the inspector in coming to these conclusions failed to grapple properly or at all with the Lanpro map, which it is agreed was a material consideration. Mr Humphries, during oral submissions, accepted that the inspector's reference in [22] to "save for a broad brush map review" can only sensibly refer to the Lanpro map. In circumstances where this did not form part of the claimant's

assessment, had the limitations referred to in paragraphs 8 and 9 above, and was only briefly referred to in the claimant's statement of case in its appeal, the inspector was entitled to deal with it this way even though it was referred to at the hearing. In such circumstances the inspector's inquisitorial duties did not require any further inquiry.

38. Mr Humphries next submitted that by referring to the ministerial statement of 2015 in the way that he did, the inspector failed to take into account that the amendment to a 'net zero' target and delivery budgets constituted a major development in the approach to climate change which post-dated that statement, which effected the need for more renewable energy and the consequent policy framework for solar to meet that need, including NPPF and the local plan both of which came after the ministerial statement. He also failed to take into account the consequent need for many more solar farms.

39. In my judgment, that is to be unduly critical of the decision letter. It is clear from the opening paragraphs that the inspector had well in mind the net zero targets. The parties agreed that the ministerial statement was still extant, as he put it. He referred to the latest updates of the NPSs. He gave significant weight to the contribution that the development would make to the need to decarbonise the supply of electricity.

40. In my judgment the high threshold of irrationality under ground 1 has not been reached. As for reasons, they are adequately clear. The inspector took the view that the claimant's assessment was not sufficiently robust because it failed to carry out any investigation of soil quality outside the appeal site. It assumed that all grade 3 land in the search area was likely to have a similar BMV as the appeal site (namely nearly half), whereas the authoritative ALC shows that there is likely to be a range of between 20-60% of BMV, suggesting the possibility of sites with far less BMV than the appeal site. In my judgment ground 1 is not made out.

Ground 2

41. As for ground 2, Mr Humphries accepts that there was little material before the inspector on the Oaklands Farm proposal, but criticises him for carrying out his own research by clicking on a hyperlink in the authority's evidence. There is some discrepancy as to whether he did so before or after the hearing, but in my judgment nothing turns on this. By doing so, it was established at the hearing before me, he would have seen reference to a preliminary environmental report submitted for the purpose of obtaining a development control order for a 163 MW solar farm at Oaklands Farm. Mr Humphries submits that this does not mean that attention was drawn to it as set out in the decision letter at [17] as set out above, but in my judgment this is overly critical in circumstances where a party's evidence provides a hyperlink which goes to a webpage where such a reference then appears. There is nothing wrong in this in my judgment.

42. Mr Humphries also submits that the percentage of BMV land for the Oaklands Farm part of the site is higher than the appeal site and the grade 3b land there is dispersed so as not to be suitable for a 50MW station. The inspector misunderstood that by assuming that grade 3b land might well be available, and should have given the parties a chance to deal with that. Moreover, he did not grapple with availability of Oaklands Farm, but drew from it that there were other potential sites on lower grade

land that had not been assessed. The inspector wrongly relied on the Oaklands Farm as a potential alternative to the appeal site.

43. However, as Mr Williams submits, on a fair reading of the decision letter, the inspector referred to Oaklands Farm not as an alternative to the appeal site, but to underline his conclusion that the claimant's assessment was not robust in that it did not involve soil samples outside the site and it assumed that all grade 3 land within the search area is likely to have the same amount of BMV land as the appeal site. As Oaklands Farm includes grade 3 land, the omission to assess the BMV there was used by the inspector as an example of why the claimant's assessment was not robust. This was in the context of the reference in [16] to ALC maps a showing a range of BMV land as between 20-60%.

44. Read in that context, in my judgment the irrationality arguments relied upon by the claimant under ground 2 are not made out.

Conclusion

45. The consequence is that the challenge fails on both grounds. The inspector had to make a planning judgment as to the competing benefits and harms of permitting the proposed development on the one hand and of refusing it on the other. In so doing, he came to a different conclusion to the authority's planning officer, but it was one which he was entitled to come to and one with which this court should not interfere.

46. Mr Williams submitted in the alternative that in any event, insofar as one or more of the errors relied upon by the claimant is made out, it is nevertheless highly unlikely that the outcome would have been any different, so relief should be refused on the basis of the principles in *Simplex (GE) Holdings Ltd v SSE* (1989) 57 P & CR 306. In light of my conclusions it is not necessary for me to deal with that, but if it is helpful for me to express a view briefly, I would accept that submission.

47. I am grateful to all counsel for their focused written and oral submissions. They helpfully indicated that any consequential matters not agreed can be dealt with on the basis of written submissions. Any such submissions, together with a draft order agreed as far as possible, should be filed within 14 days of hand down of this judgment.