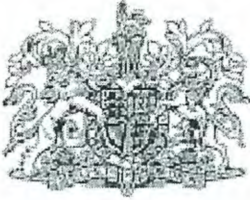

Claim Form
(CPR Part 8)

In the High Court of Justice Queen's Bench Division Leeds Administrative Court Planning Court	
Claim No.	CO/3069/2015

Claimant

Eshton Gregory (Hebden Bridge) Limited
2 The Embankment
Sovereign Street
Leeds
West Yorkshire
LS1 5GP
Company No: 05914742

Defendant(s)

(1) The Secretary of State for Communities and Local Government (First Defendant)

(2) Calderdale Metropolitan Borough Council (Second Defendant)

Does your claim include any issues under the Human Rights Act 1998? [ ] Yes [X] No

Details of claim

This claim is made pursuant to Section 288 of the Town and Country Planning Act 1990 (as amended). It is issued under Part 8 of the Civil Procedure Rules, and Paragraph 22 of Practice Direction 8A.

The Claimant seeks an Order:

(1) To quash the First Defendant's Decision by letter dated 21 May 2015 (reference: APP/A4710/W/15/3007712) and to remit the decision back to the First Defendant for re-determination.

(2) That the First Defendant pay the Claimant's costs of this Claim.

The details of this claim are set out in the attached Detailed Statement of Facts and Grounds.

Defendant's name and address

(1) The Secretary of State for Communities and Local Government, The Treasury Solicitor's Department, Planning Section (D3) , One Kemble Street London, WC2B 4TS

(2) Calderdale Metropolitan Borough Council, 19 Horton Street, Halifax, HX1 1QE

	£
Court fee	480
Solicitor's costs	To be assessed
Issue date	30/6/15

The court office at

is open between 10am and 4pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the case number.

N208 Claim form (CPR Part 8) (10.00)

This form is reproduced from *http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do* and is subject to Crown copyright protection. Contains public sector information licensed under the Open Government Licence v1.0

Claim No.	

Details of claim *(continued)*

Statement of Truth

*~~(I believe)~~(The Claimant believes~~)~~ that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement

Full name ____________________ Josh Kitson ____________________

Name of claimant's solicitor's firm ____________ Walker Morris LLP ____________________

signed ____________________ position or office held __________ Solicitor ________

~~*(Claimant)(Litigation friend)~~(Claimant's solicitor~~)~~ (if signing on behalf of firm or company)

delete as appropriate

Walker Morris LLP
Kings Court
12 King Street
Leeds
LS1 2HL
DX: 12051 Leeds 24
Email: josh.kitson@walkermorris.co.uk

Claimant's or claimant's solicitor's address to which documents should be sent if different from overleaf. If you are prepared to accept service by DX, fax or e-mail, please add details.

IN THE HIGH COURT OF JUSTICE   CLAIM NO:

QUEEN'S BENCH DIVISION

PLANNING COURT

SECTION 288 TOWN AND COUNTRY PLANNING ACT 1990

B E T W E E N:

ESHTON GREGORY (HEBDEN BRIDGE) LIMITED

Claimant

-And-

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

First Defendant

-And-

CALDERDALE METROPOLITAN BOROUGH COUNCIL

Second Defendant

CLAIMANT'S DETAILED STATEMENT OF FACTS AND GROUNDS

SUMMARY AND OVERVIEW

1. The Claimant seeks an Order quashing a decision made by the First Defendant's Inspector dated 21st May 2015 ("the Decision").

2. The Decision dismissed the Claimant's appeal in relation to the following development on land formerly used as Hebden Bridge Fire Station, Valley Road, Hebden Bridge HX7 7BX ("the Site"):

"the redevelopment of land to provide a mixed use development comprising: A) Ground Floor A1 unit[1] *with additional ancillary space at first floor, with three apartments; and B) Five townhouses."* ("the Development")

3. The sole issue identified by the Inspector was the effect of the Development on highway safety, including car parking. No other concerns or objections were raised by the Second Defendant or the Inspector. Further, the highway safety issue related only to the A1 (retail) use of the ground floor. No issue arose in relation to the residential elements of the Development.

4. The Claimant maintains that the Inspector failed to take into account (properly or at all) a number of key aspects of national planning policy and guidance, such that the Decision should be quashed. It is clear that the Decision was finely balanced and, as such, it was not inevitable (or even likely) that the proper consideration of national policy would have led to the same outcome.

THE DECISION CHALLENGED

5. The Claimant seeks an Order quashing the First Defendant's Decision made through his Inspector on 21st May 2015. By the Decision, the First Defendant dismissed an appeal brought by the Claimant against the Second Defendant's refusal of planning permission for the Development ("the Appeal").

6. The Appeal was considered under the written representations procedure.

[1] This retail unit was to be operated as Sainsbury's Local store.

THE SITE

7. The Development is proposed to be carried out on the Site, which is within Hebden Bridge town centre and within a Conservation Area. Hebden Bridge Fire Station formerly occupied the Site, the fire station buildings having been demolished in 2009[2]. The Site is self-evidently a sustainable location for development, a point accepted by the First Defendant's Inspector: see Decision §12 (Exhibit GHC16 to the First Witness Statement of Graham Hugh Connell).

PLANNING HISTORY

8. By planning permission Ref: 08/2012/FUL, a temporary permission for use of the Site as a car park was granted. This planning permission expired on 26th January 2014.

9. By a decision notice dated 24th December 2010, the Second Defendant granted planning permission for the following development on the Site:

   "*Two commercial units comprising 318 sq m with nine apartments above and five town houses (use classes A1, A2, A3 and A5) (Application to replace an extant planning permission in order to extend time limit for implementation of 07/01868)*" ("the 2010 Permission")

10. The 2010 Permission was a renewal of an identical planning permission that was granted on 5th November 2007 (see p16 of GHC2). The 2010 Permission expired on 23rd December 2013. The only differences between the 2010 Permission and the Development were that (i) the Development proposed 3 apartments rather than 9; and (ii) the Development sought permission for a total of 460 sq m of retail floorspace rather than a broad range of commercial uses.

[2] The demolition was carried out pursuant to a Conservation Area Consent (Ref: 08/2011/CAC) dated 5th February 2009.

THE APPEAL APPLICATION

11. A planning application for the Development was submitted jointly by the Claimant and Sainsbury Supermarket Limited to the Second Defendant on 10th December 2013 and was validated by the Second Defendant on 16th January 2014. The application was supported, amongst other matters, by a Planning Report and a Design and Access Statement prepared by Colliers International (see GHC3) and a Transport Statement produced by Bryan G Hall (Consulting Civil and Transportation Planning Engineers) (see GHC4). The Transport Statement addressed in particular (i) the existing conditions on the local highway network; (ii) the likely level of traffic generated by the Development; and (iii) the consequent impact on highway safety. The Transport Statement concluded (*inter alia*) that "*the site is in a very sustainable location*" and "*the transport impact of the development will therefore not be significant and will not be dissimilar to that of the consented scheme*[3]" (p74 of GHC4).

THE OFFICER'S REPORT ("OR")

12. The Appeal Application was reported to Members of the Second Defendant on or around 17th September 2014. It is noteworthy that the OR recommended that planning permission be granted, subject to the imposition of a number of conditions (see GHC8).

13. Although the OR should be read as a whole, it is important to note the following salient aspects of it:

    a. The OR recorded the relevant planning history of the Site, including the 2010 Permission: see pps.95, 105 and 108 of GHC8;
    b. The Officer reported the representations made by various third parties, the Ward Councillor and Parish Council, which included concerns about "traffic, parking and highways issues": see *e.g.* p97 of GHC8;

[3] The "consented scheme" was the 2010 Permission, which had not expired when the Appeal Application was submitted.

c. The Officer concluded that the Site is located within the designated town centre and, as such, was a sequentially acceptable location for retail development: p102 of GHC8;
d. The retail element of the Development was acceptable in principle: p103 of GHC8;
e. The residential element of the Development was acceptable in principle: see p104 of GHC8:
f. The presumption in favour of sustainable development should apply to the Development since it accorded with the Development Plan: see p104 of GHC8;
g. The OR reported that the Second Defendant's Highway Network Manager considered the Appeal Application and reached a number of conclusions (see p105 of GHC8):

   i. The Site is in a very sustainable location;
   ii. The retail element of the Development would reduce car trips since visitors to the retail store would most likely already be within the town centre;
   iii. The level of servicing (namely 2 large commercial vehicles per day along with smaller delivery vehicles) would be comparable to other retail units or commercial businesses in the town centre;
   iv. The only "highway concern" related to the ability to accommodate larger delivery vehicles in the town centre, which has a "high demand for on-street parking";
   v. Notwithstanding the potential loss of 4 parking spaces and their replacement with a loading bay to allow deliveries to the retail store, observations by the Highway Network Manager suggested that "*early morning is relatively clear of parking and that deliveries could take place first thing leaving the parking spaces available for the remaining time*";
   vi. Overall the Highway Network Manager concluded that "*it is considered that overall the application can be supported as not creating any undue highway safety issues but subject to the*

satisfactory outcome of an amended Traffic Regulation Order to allow safe passage of the commercial vehicles."

h. Consequently, the Highway Network Manager did not raise any objection to the Development;

i. Overall, the OR concluded that the Development was acceptable subject to the imposition of conditions. It was further concluded that the Development was in accordance with the policies and proposals in the Replacement Calderdale UDP and that there were no material considerations to outweigh the presumption in favour of such development: see p111 of GHC8.

THE REFUSAL OF PLANNING PERMISSION

14. Notwithstanding the clear recommendation by its Officers to grant planning permission, Members of the Second Defendant refused planning permission on 17th September 2014 for the following reason:

"*The proposal fails to provide adequate facilities for service delivery vehicles leading to an increased likelihood of such vehicles obstructing the free and safe flow of traffic on Valley Road which will be detrimental to highway safety. The proposal is therefore contrary to Policy BE5 (The Design and Layout of Highways and Accesses) and Policy S2 (Criteria for Assessing Retail Developments) of the Replacement Calderdale Unitary Development Plan, which seek to ensure the free and safe flow of traffic in the interests of highway safety; and seek to ensure that developments do not create unacceptable traffic problems.* (see GHC9)"

15. The following points are worthy of note:

a. The reason for refusal did not allege any conflict with the NPPF; and

b. The reason for refusal did not mention the issue of on street parking, notwithstanding that it was a matter raised by third parties, the Parish Council and the Ward Councillor.

THE APPEAL AND DECISION

16. The Claimant lodged an appeal against this refusal of planning permission, which appeal was determined by Anne Jordan (BA (Hons), MRTPI), an Inspector appointed by the First Defendant. The Appeal was determined by written representations, with the Inspector carrying out a site visit on 30th April 2015.

17. The Claimant's Appeal was supported by detailed statements prepared by Colliers International (on planning) (GHC12) and by Bryan G Hall (on highways matters) (GHC13).

18. Whilst the Decision should be read as a whole, the following pertinent points should be underlined:

    a. At §2 of the Decision, the Inspector acknowledged that the Second Defendant's reason for refusal did not raise the issue of parking, but she noted that it was a concern raised by third parties (see p242 of GHC16);
    b. The Inspector expressed the sole issue in the Appeal as follows: "*the effect of the proposal on highway safety, including the loss of parking*": see §3;
    c. The Inspector recorded that she visited the Site and the town centre on a market day during mid-morning and observed that the "area around the site was "*experiencing significant parking pressure, and this was leading to congestion on the surrounding streets, which impeded the free flow of traffic*": see §5;
    d. The Inspector also found that a number of amendments to the existing traffic regulation would need to be made in order to accommodate the servicing requirements of the retail element of the Development, which would result in the loss of 3 parking spaces along Regent Street and the restriction during delivery times of a further 4 spaces along Valley Road: see §6;

e. Notwithstanding the data provided by the Claimant to the effect that the local highway network was already used by HGVs, "*the reduction in available on-street parking as proposed, would further exacerbate existing parking pressure*": see §7 and 8;

f. At §9, the Inspector found as follows: "*I therefore conclude that the proposal would fail to provide adequate servicing arrangements. It would also lead to a small but nonetheless significant loss of on street parking. This would exacerbate existing parking and congestion problems and would impede the free flow of traffic, causing inconvenience to road users. It follows that the proposal would conflict with policies BE5 and S2 of the Replacement Calderdale Unitary Development Plan as it would fail to provide for the safe and free flow of traffic. It would also conflict with guidance within the National Planning Policy Framework (the Framework) which seeks developments which accommodate the efficient delivery of goods and supplies.*"

g. At §10, the Inspector noted that "*an A1 use in this location would comply with local and national planning policy*".

h. Having considered the retail impact of the proposals and the potential effect of the Development on the Conservation Area, the Inspector reached the following overall conclusion at §12: "*The proposal would bring a vacant site back into use and it would provide additional consumer choice. It would also provide 8 new homes and provide 20 local jobs, in a sustainable location. Having regard to the impetus in the Framework for growth, these are matters to which I attribute significant weight. However, the effect of the proposal on the local highways network would also be significant and harmful. I therefore conclude that on balance, the harmful effects of the proposal on the local highway network outweigh the potential benefits of the scheme.*"

19. The Inspector dismissed the Appeal.

PROPOSITIONS OF LAW

20. By virtue of s.38(6) Planning and Compulsory Purchase Act 2004, planning decisions should be taken in accordance with the development plan unless material considerations indicate otherwise. A material consideration that may be given considerable weight is the National Planning Policy Framework ("NPPF").

21. The Inspector (who was acting on behalf of the First Defendant) was obliged to have regard to the NPPF as a material consideration in the determination of the planning appeal: ***Tewkesbury Borough Council v Secretary of State for Communities & Local Government*** [2013] EWHC 286 (Admin) at §14.

22. The interpretation of policy is a matter of law for the Courts: ***Tesco v Dundee CC*** [2012] UKSC 13 Lord Reed at [19]-[23].

23. In order to have proper regard to the NPPF, the Inspector had to properly understand the policies within it: ***Gransden & Co Ltd v SoSE*** (1987) 54 P&CR 86 at 94; ***Tesco Stores Ltd v Dundee City Council*** [2012] UKSC 13 at §17.

24. The proper meaning of the policies of the NPPF is a matter of law but once properly understood, their application to particular facts is a matter of planning judgment for the decision maker (subject to the test of irrationality): ***Tesco Stores Ltd v Dundee City Council*** at §20-21.

25. The Government's statements of planning policy are material considerations which should be taken into account, where relevant, in decisions on planning applications (or appeals). Where such statements indicate the weight that should be given to relevant considerations, decision-makers must have proper regard to them: ***Gransden & Co Ltd v SoSE*** (1987) 54 P&CR 86 at 94.

26. The existence of a planning permission may even be a material consideration in the determination of an application, although with less force, if it is time-expired: ***South Oxfordshire District Council v Secretary of State for the Environment*** [1981] 1 W.L.R. 1092.

NATIONAL POLICY

27. The following aspects of the NPPF are of particular relevance:

    a. §7 and 8 provide that any development proposal should seek economic, social and environmental gains (see p252 – 253 of GHC17);
    b. §14 establishes a presumption in favour of sustainable development: *i.e.* development which is sustainable overall and supports the three aspects of sustainable development (see p254 of GHC17). Although there is no prescribed stage in the decision taking process when an assessment of sustainability should be carried out, such an assessment should nonetheless be undertaken: see ***Wenman v SSCLG*** [2015] EWHC 925 (Admin) §73-79; ***Dartford LBC v. SSCLG*** [2015] 1 P. & C.R. 2 at §54.
    c. §32 provides that "*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are* <u>*severe.*</u>" (emphasis added) (see p259 – 260 of GHC17)
    d. §215 provides that *"due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)".* (see p298 of GHC17)

DETAILED GROUNDS

Ground 1: The First Defendant failed to consider adequately or at all national policy in relation to highway safety.

28. §32 of the NPPF provides that planning permission should only be withheld on transport grounds where the residual cumulative impacts of the relevant development are <u>severe</u>.

29. At no point in the Decision did the Inspector consider or even mention this critical piece of national policy. More particularly, the Inspector made no finding as to whether the Development would have a severe transport impact.

30. The Inspector did, however, make the following findings:

    a. That the Development would lead to a "*small but nonetheless significant loss of on street parking. This would exacerbate existing parking and congestion problems and would impede the free flow of traffic, causing inconvenience to road users. It follows that the proposal would conflict with policies BE5 and S2 of the Replacement Calderdale Unitary Development Plan as it would fail to provide for the safe and free flow of traffic.*" – see §9 (p243 of GHC16);
    b. That the Development would fail to provide adequate servicing arrangements for the retail use and as such would fail to accord with guidance within the NPPF which seeks developments that accommodate the efficient delivery of goods and supplies: see §9. It is noteworthy that the Inspector considered the NPPF policy in relation to servicing of goods and supplies (contained at §35 NPPF) but made no mention of §32 NPPF;
    c. The effect of the proposal on the local highways network would be significant and harmful: see §12.

31. Although the Inspector considered that the effect of the proposal would be significant and harmful, it is clear from §9 of the Decision, set out above, that this effect would be to cause "*inconvenience to road users*". It cannot be the case that an inconvenience can be regarded as a severe highways impact.

32. It is further evident that the Inspector did not take into account the Claimant's statement of case, which specifically drew §32 of the NPPF to the Inspector's attention (see §3.13 and §4.4 of the Claimant's statement of case (see p142 and 144 of GHC12)). Instead the Inspector identified, what she considered to be, a "*small but nonetheless significant loss of on street parking*" and did not then

test whether this could be regarded as a severe impact, in the context of §32 of the NPPF.

33. Consequently, there was a complete failure to consider the part of the NPPF most relevant to the single issue in the Appeal: that of highway safety. In the circumstances, the First Defendant failed to have regard to a key material consideration and the Decision should be quashed.

34. Given that the Inspector considered that the overall decision was "on balance", it is impossible to conclude that the correct application of national planning policy would inevitably (or even probably) have led to the same outcome.

Ground 2: The First Defendant failed to consider the extent to which the policies in the Replacement Calderdale Unitary Development Plan ("CUDP") were consistent with the NPPF.

35. §215 NPPF requires a decision maker to consider whether relevant local policies are consistent with the NPPF. The closer the policies in the development plan (in this case, the CUDP) are to those in the NPPF, the greater weight can be afforded to them.

36. At §9 of the Decision, the Inspector concluded that the Development was in conflict with policies BE5 and S2 of the CUDP. Neither of these policies reflects the up to date national policy as set out at §32 NPPF:

    a. Criterion (i) of policy BE5 provides that "*the design and layout of highways and accesses should ensure the safe and free flow of traffic (including provision for cyclists) in the interest of highway safety*" (see GHC10);
    b. Policy S2 lists a set of criteria applicable to retail proposals, including that "*the development creates no unacceptable environmental, amenity, traffic, safety, or other problems*". The Inspector did not explain in what respect the Development failed to accord with policy

S2, but it is presumed that she considered that it created an unacceptable traffic problem (see GHC10).

37. Neither of these CUDP policies contains any reference to the requirement that planning permission should be withheld only where the transport impact is severe. It is abundantly clear that the Inspector read these policies in a similar way: at §9 Decision, she concluded that the small loss of parking *"would exacerbate existing parking and congestion problems and would impede the free flow of traffic, causing inconvenience to road users. It follows that the proposal would conflict with policies BE5 and S2 of the Replacement Calderdale Unitary Development Plan as it would fail to provide for the safe and free flow of traffic."* (emphasis added). It is clear from the highlighted sections of §9 Decision that the Inspector considered that an adverse impact on the safe and free flow of traffic, giving rise to inconvenience to road users, would be sufficient to establish a breach of the relevant CUDP policies. As a matter of plain English, "inconvenience" or an effect on the free flow of traffic cannot and does not amount to a severe residual transport impact. A test of inconvenience is a substantially lower threshold than that of severity.

38. Neither of these CUDP policies reflects the policies in the NPPF and, in accordance with §215 NPPF, should have been given less weight by the Inspector, but that question was not even addressed by the Inspector.

39. Accordingly, this Ground reveals another failure properly to consider and apply national planning policy and constitutes another reason for quashing the Decision.

Ground 3: The First Defendant failed to consider whether the Development was sustainable within the meaning of the NPPF.

40. A presumption in favour of sustainable development lies at the heart of the NPPF. This presumption can only apply to development that is sustainable: see *Dartford LBC v SSCLG* [2015] 1 P. & C.R. 2 at §54. Accordingly, it is necessary for a decision taker to reach an overall judgment as to whether (i)

the proposed development is sustainable; and (ii) whether the presumption in favour of sustainable development applies. It is accepted by the Claimant that the way in which this judgment is reached is not prescribed by the NPPF, nor does it have to be made at any specific point in the decision taking process. However, the judgment must be made. Otherwise, one cannot know how or whether the presumption in favour of sustainable development has been applied.

41. In the instant case, the Decision singularly fails to reach any finding as to the overall sustainability of the Development:

   a. Nowhere in the Decision is there any mention of the presumption in favour of sustainable development;
   b. The Inspector did not make any specific findings in relation to the social, economic or environmental sustainability of the Development;
   c. Although §12 of the Decision mentions "*the impetus in the Framework for growth*" and the "*sustainable location*" of the development, these findings do not represent an overall judgment as to sustainability, but individual findings that may go into an overall judgment. It is the overall judgment, which is lacking in the Decision.

42. In the circumstances, the First Defendant's Inspector failed to follow a key aspect of the NPPF. This is a significant failing in the Decision given that a finding that the Development did represent sustainable development would have engaged the presumption in favour of such development. Since the Inspector concluded that her overall conclusions were "on balance" (see Decision §12 at GHC16), a finding of overall sustainability may have altered the overall planning balance.

Ground 4: The First Defendant failed to take into account a material consideration; namely the 2010 Permission.

43. The planning history of the Site was plainly capable of representing a material consideration in relation to the acceptability of the Development. It is

particularly relevant to note that the Second Defendant granted planning permission for a mixed use development comprising commercial and residential elements on the Site: once in 2007 and again in 2010 (see GHC2). In both cases, the Second Defendant must have been satisfied that the impact on the local highway network and on parking particularly was acceptable, albeit in a national planning policy context that did not include the "severity test".

44. It is accepted that the 2010 Permission expired in December 2013 and, as such, does not represent a fallback planning permission on which the Claimant could rely. However, following the *ratio* in ***South Oxfordshire District Council v Secretary of State for the Environment*** [1981] 1 W.L.R. 1092 at 1096, the 2010 Permission was plainly a relevant aspect of the Site's planning history. In the *Oxfordshire* decision, Woolf J held that:

> "*... it is not unreasonable for a planning authority to want to be consistent in its consideration of planning applications, and taking into account a planning permission which has expired and considering whether there has been any change of circumstances on a fresh application may assist in achieving consistency.*" (*Oxfordshire* at 1096)

45. Although it is accepted that there were differences between the 2010 Permission and the Development, both schemes represented mixed use commercial and residential schemes in an identical location. It must follow that the First and Second Defendant should have had regard to this aspect of the planning history of the Site. Indeed, the OR for the Development stated that "*this application is very similar to planning approval 10/01268/REN although it is proposed that there will be one commercial unit with 3 flats above, as opposed to 2 commercial units with 9 flats above*" (p105 of GHC8). See also p.108 of the OR (at GHC8) at which the Second Defendant's Highway Network Manager observed that "*an earlier proposal of a similar layout but slightly larger scheme has been approved on the same site*". Thus, in recommending approval of the Development, the Second Defendant's officers were aware of and took into account the 2010 Permission.

46. Further, the Claimant expressly raised the question of the 2010 Permission and its relevance in its planning Statement of Case for the instant appeal: see §2.6 – 2.13 and 2.15 (p135 to 137 of GHC12). At §4.1 of the Statement of Case, the Claimant's agent submitted as follows:

"*While the original 2007 permission as extended in 2010 has expired, the decisions made and the bases for them are material to the appeal proposals. The development plan remains unchanged and no evidence has been presented that circumstances relating to traffic and highway considerations have changed to any material degree.*" (see p143 of GHC12)

47. At §4.2 of the planning Statement of Case, it was maintained that "*the planning history of the site remains a material consideration*" and that "*significant weight should, therefore, be given to the previous planning permissions for the site in the determination of this appeal*".

48. The Inspector, on the other hand, made no reference whatsoever to the planning history of the Site nor did she make any attempt to discern whether there had been any material changes in circumstance since the 2010 Permission had been granted. This failure is particularly relevant in the present case, given that the national planning policy on the acceptability of transport impacts is now one of severe residual impact.

49. It is accepted that the question of weight to be given to the planning history of the Site would have been a matter of planning judgment for the Inspector, but the Decision did not even mention the planning history notwithstanding the fact that it had been raised very clearly as an issue by the Second Defendant and the Claimant.

Ground 5: The First Defendant failed to consider whether there was an alternative means of addressing the alleged harm that would arise from the grant of planning permission.

50. In its prosecution of the Appeal, the Claimant rejected any notion that there would be an unacceptable highway safety impact arising out of the servicing arrangements for the retail element of the Development: see Planning Statement of Case at §4.4 and 4.5 (see p144 of GHC12). However, in the event that the Inspector found difficulties with the proposed arrangements, the Claimant put forward a Delivery Management Plan that could be secured through a planning condition, as well as conditions regulating delivery times: see Planning Statement of Case at §4.6 (p144 of GHC8) and Appendix SCW3 to the Transport Statement of Case (p183 of GHC13). The Delivery Management Plan was intended to mitigate any adverse effects on the flow of traffic associated with deliveries to the retail unit.

51. §49 of the online Planning Practice Guidance advises that local planning authorities will be at risk of an adverse award of costs in a number of different situations, including:

"refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead."

52. Consequently, it behoves any decision taker (including the Secretary of State) actively to consider whether the imposition of planning conditions would remove any or all planning objections to a particular proposal.

53. Notwithstanding this clear guidance and the fact that the Claimant put forward the Delivery Management Plan as a means of regulating the servicing of the retail unit, the Inspector did not even mention the Delivery Management Plan; still less did she consider whether it would have mitigated to an acceptable degree the adverse highways impact that she had found.

54. Again, given that the Decision was "on balance", it is impossible to conclude that the Inspector would have come to the same judgment if she had properly

considered the Delivery Management Plan and the possibility of imposing conditions on delivery times.

Ground 6: The First Defendant failed to give adequate reasons for the Decision.

55. This Ground can be expressed briefly. At §3 Decision the Inspector recorded the main issue in the Appeal to be as follows: "*the effect of the proposal on highway* <u>*safety*</u>*, including the loss of parking.*" (emphasis added)

56. Nonetheless, the Inspector made no specific findings in relation to whether the Development would have an adverse effect on highway <u>safety</u>. She concluded that:

   a. There would be "*a* <u>*risk*</u> *that deliveries to the site would impede the flow of traffic on the highway, at times when traffic along Valley Road would be at its highest*" (emphasis added)(§7);
   b. That the net loss of on-street car parking would "*further exacerbate existing parking pressure*": see §8;
   c. The Development "*would exacerbate existing parking and congestion problems and would impede the free flow of traffic, causing inconvenience to road users*" (§9); and
   d. "*The effect of the proposal on the local highways network would also be significant and harmful*": §12.

57. Notwithstanding these findings, the Inspector did not reach any concluded view on whether the <u>safety</u> of road users would be severely affected, which she was required to do by virtue of the way in which she expressed the main issue in the Appeal. Without knowing how road safety would be compromised by the Development, the Claimant cannot know how to amend its proposals to increase its opportunity to obtain planning permission.

58. For all of the above reasons, the Decision was legally flawed and should be quashed and the Claimant seeks an Order in the following terms:

a. That the Decision is quashed; and
b. That the First Defendant pays the Claimant's costs.

JONATHAN EASTON