Neutral Citation Number: [2020] EWHC 2294 (Admin)

Case No: CO/234/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/08/2020

Before :

MR JUSTICE DOVE

- -

Between :

WAINHOMES (NORTH-WEST) LIMITED	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT	**1st Defendant**
-and-	
SOUTH RIBBLE BOROUGH COUNCIL	**2nd Defendant**

- -
- -

Mr Vincent Fraser QC (instructed by **Eversheds Sutherland**) for the **Claimant**
No appearance and no representation for the **1st Defendant**
Mr Giles Cannock QC and Mr Alan Evans (instructed by David Whelan South Ribble Borough Council) for the 2nd Defendant
Hearing date: 17th June 2020

- -

Approved Judgment

Mr Justice Dove :

Introduction

1. On 4 December 2018 the claimant applied for outline planning permission for up to 100 dwellings with access and associated works on land to the south of Chain House Lane, Whitestake, Preston. That application was refused by the second defendant on 27 June 2019 and the claimant appealed under section 78 of the Town and Country Planning Act 1990 to the first defendant. The first defendant's duly appointed Inspector, following a public inquiry in November 2019, decided to dismiss the appeal for reasons set out in a decision letter dated 13 December 2019. This is the application pursuant to section 288 of the 1990 Act in relation to that decision.

2. The application is pursued on a number of grounds which are set out below. However, at this stage it is pertinent to note that in relation to ground 5 the first defendant conceded that the Inspector's decision should be quashed. In particular, the concession is set out in the following terms in a letter from the Government Legal Department dated 17 February 2020:

> "This is on the basis that the Secretary of State agrees that the Inspector did not expressly consider the specific point put by the Claimant at paragraphs 80 – 81 Statement of Facts and Grounds. That is, the Inspector did not expressly consider whether the distribution of the housing requirement that would result from the application of the Standard Methodology within the Housing Market Area would render policy G3 out of date irrespective of whether the Council could demonstrate a five year supply of housing land. Accordingly, the Secretary of State accepts that the decision should be quashed but only for the reasons set out in paragraphs 80– 81, paragraph 82 (failure to give adequate reasons) and paragraph 83 (in so far as that paragraph relates to a failure to take into account a material consideration) of the Claimant's Statement of Facts and Grounds."

3. The second defendant supported the decision which was made by the Inspector, and contends that on all grounds the claim should be dismissed.

The facts

4. It is important, in order to understand the issues which arose in the appeal, to set out the policy background and the history of issues relating to planning policy prior to the consideration of the appeal. There were two important issues bearing upon the merits of the appeal. Firstly, the question of whether or not the second defendant could demonstrate a five year housing land supply. The materiality of the requirement to be able to demonstrate a five year housing land supply pursuant to paragraph 11(d) and footnote 7 of the National Planning Policy Framework ("the Framework") is well known. If a five year housing land supply cannot be demonstrated, then the tilted balance contained in paragraph 11(d) should be applied when determining whether planning permission should be granted. There were no footnote 6 policies engaged in

the present case, and therefore if the tilted balance applied, it would mean granting planning permission unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

5. The policy relating to maintaining a deliverable supply of housing land is contained in paragraph 73 of the Framework and those that follow. Of particular relevance in the present case is paragraph 73 and its related footnote 37 which provide as follows:

> "73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old[37].The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:
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> a) 5% to ensure choice and competition in the market for land; or
>
> b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
>
> c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.
>
> [Footnote] 37. Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance."

6. Against the background of this policy material much turned in relation to the merits of the appeal on the question of whether or not a review of the strategic policy for housing had been undertaken pursuant to footnote 37. If a review had been undertaken, and the policies had not been found to require updating, then those strategic policies would have been the basis for the calculation of the five year housing land supply. If a review had not been undertaken then, since the strategic policies for housing were more than five years old, the five year housing land supply would be assessed by reference to local housing need calculated using the standard method prescribed by national Planning Practice Guidance ("the PPG"). These calculations, as set out below, produced very different outcomes.

7. It was common ground at the inquiry that the strategic policy providing the housing requirement within the adopted development plan was Policy 4 of the Core Strategy for Central Lancashire. This Core Strategy was prepared and adopted by three adjacent authorities: the second defendant, Preston City Council and Chorley Council, who are all part of a single housing marking area identified as Central Lancashire. Policy 4 provides as follows:

> "Policy 4: Housing Delivery
>
> Provide for and manage the delivery of new housing by:
>
> (a) Setting and applying minimum requirements as follows:
>
> - Preston 507 dwellings pa
>
> - South Ribble 417 dwellings pa
>
> - Chorley 417 dwellings pa
>
> With prior under-provision of 702 dwellings also being made up over the remainder of the plan period equating to a total of 22,158 dwellings over the 2010-2016 period.
>
> (b) Keeping under review housing delivery performance on the basis of rolling 3 year construction levels. If, over the latest 3 year review period, any targets relating to housing completions or the use of brownfield are missed by more than minus 20%, the phasing of uncommitted sites will be adjusted as appropriate to achieve a better match and/or other appropriate management actions taken; provided this would not adversely impact on existing housing or markets within or outside the Plan area.
>
> (c) Ensuring there is enough deliverable land suitable for house building capable of providing a continuous forward looking 5 year supply in each district from the start of each annual monitoring period and in locations that are in line with the Policy 1, the brownfield target (of 70% of all new housing) and suitable for developments that will provide the range and mix of house types necessary to meet the requirements of the Plan area.
>
> (d) Ensuring that sufficient housing land is identified for the medium term by identifying in Site Allocations Documents a further supply of specific, developable sites for housing and in the longer term by identifying specific developable sites or broad locations for future growth."

8. In light of the fact that the Core Strategy had been adopted in 2012, on 27 June 2016 the Central Lancashire Strategic Planning Joint Advisory Committee received a report to advise members of that committee of the appointment of consultants to carry out an assessment of the Full Objectively Assessed Housing Need ("FOAN") and prepare a Strategic Housing Market Assessment ("SHMA") for Central Lancashire. The report

noted that there was a duty under section 13 of the Planning and Compulsory Purchase Act 2004 for the local planning authorities to keep matters under review which might affect the development of their area or its planning. The object of the exercise which members were being advised about was described in the following terms:

> "7. The three Central Lancashire authorities have up to date and National Framework compliant development plans consisting of the Joint Central Lancashire Core Strategy, adopted July 2012, and the three respective site allocations plans, adopted by the respective authorities on varying dates but all in July 2015. The Core Strategy is, therefore, reaching the point where, government guidance suggests that there should be some review as to whether policies need updating.
>
> 8. The housing requirement figures in the plan, set out in Policy 4 of the Core Strategy, derive from the now revoked Regional Spatial Strategy figures, which in turn are based upon population and household projection figures dating from 2003. This is becoming an issue in determining planning applications and, particularly, in defending appeals where applicants/appellants are arguing that these figures, even in a recently adopted plan, do not constitute the full, objectively assessed need for market and affordable housing in each of the three Council areas. The further argument is that this is in breach of the requirement of paragraph 47 of the NPPF, which is that local planning authorities use their evidence base to ensure that the Local Plan meets the full objectively assessed need. In such circumstances elsewhere planning inspectors have weighed in favour of the appellant. In addition the High Court has supported the view that the starting point in determining housing requirements is the full, objectively assessed need.
> …
> 13. For the reasons set out above this work is necessary and timely. In particular, taking into account the fifth anniversary of the adoption of the Central Lancashire Core Strategy in 2017, the revocation of RSS on which the Core Strategy figures are based and the latest population and household projection figures all point to the need to review this part of the local plan evidence base."

9. Members were updated in relation to this exercise on 2 March 2017. By this time the consultants had calculated a new FOAN figure, and this required finalisation so that the SHMA could be completed. The report summarised the findings in relation to the FOAN calculation, and the relationship between the FOAN figure that had been calculated and planned housing provision, in the following paragraphs, along with the recommendation that there be a retention of the housing requirement set out in Core Strategy Policy 4(a):

> "19. In summary the relationship between the Full Objectively Assessed Need for housing and the planned housing provision, therefore is:

> • The FOAN is the minimum that needs to be provided. Local Planning Authorities can plan for more housing in their area, for example, to meet economic growth aspirations.
>
> • The FOAN is an evidence figure, not policy.
>
> • The FOAN should be assessed at the Housing Market Area level; Central Lancashire has a level of containment that exceeds the threshold set out in national guidance.
>
> • Apportionment of the FOAN by agreement between local planning authorities within a Housing Market Area, which differs from the figure for each authority, is possible as long as the FOAN for the Housing Market Area is met.
>
> Moving forward pragmatically
>
> 20. As indicated above, the FOAN for Central Lancashire is only marginally lower (2%) than the housing requirement figure set out in the Core Strategy. It is, therefore, recommended that the Core Strategy requirements should be retained rather than proceed to a partial review of the Core Strategy at this time."

10. Also in September 2017 a document was signed by all three of the Central Lancashire authorities, described as the "Joint Memorandum of Understanding and Statement of Cooperation relating to the Provision of Housing Land" ("MOU"). The purpose of the MOU is described in paragraph 3.1 in the following terms:

> "3.1 The purpose of this document is to confirm and demonstrate an approach agreed by the Councils concerning the distribution of housing in the Housing Market Area referred to at paragraph 1.3 above. This agreement is informed by the Strategic Housing Market Assessment, August 2017. The Statement sets out the agreed approach to the distribution of housing prior to adoption of a new plan."

11. At paragraph 4.6 of the MOU the Central Lancashire authorities agreed that it was appropriate to retain the figures set out in Core Strategy Policy 4(a) and continue with the monitoring arrangements under the policy. The substance of the agreement contained in the MOU is set out in the following terms:

> "1. Chorley Borough Council, Preston City Council and South Ribble Borough Council agree:
>
> a) To continue until the adoption of a replacement local plan to apply the housing requirements set out in the Joint Central Lancashire Core Strategy Policy 4, i.e.

> Chorley: 417 dwellings per annum
>
> Preston: 507 dwellings per annum
>
> South Ribble: 417 dwellings per annum.
>
> b) That there is no requirement for each local planning authority to meet its identified individual Objectively Assessed Need for housing where higher in view of this agreement and the longstanding and continuing joint working between the Councils.
>
> c) To continue the existing monitoring arrangements for the Central Lancashire Core Strategy and individual local plans to confirm that the MOU is delivering as intended.
>
> 7. Review
>
> 7.1 The document will be reviewed no less than every three years and will be reviewed when new evidence that renders this MOU out of date emerges."

12. It was the claimant's contention at the public inquiry in relation to the appeal that the events of 2016 and 2017 set out above, taken as a whole, were a review of the adopted strategic policies containing the second defendant's housing requirement for the purposes of footnote 37, such that the housing land supply should continue to be calculated against the figure contained in Core Strategy Policy 4(a). In support of this contention the claimant also drew attention to a number of additional features in the evidence. Firstly, it was pointed out that the other authorities within the Central Lancashire housing market area accepted that these events amounted to a footnote 37 review, and continued to use the housing requirement contained in Core Strategy Policy 4(a) for the purposes of calculating their five year housing land supply. Secondly, reference was made to the second defendant's own publication in relation to the housing land position as at 31 March 2019, in which, in the section addressing the strategic requirement, the document noted that the events of 2016 and 2017 "could be considered to have been a review of the policy in terms of footnote 37 of the NPPF". These features, the claimant contended, supported the view that what had occurred was a footnote 37 review of the housing requirement which had endorsed the continuing validity of the requirement contained in Core Strategy Policy 4(a), and its continued use for the purposes of calculating the five year housing land supply.

13. By contrast, at the outset of the inquiry, the second defendant's position was that there had not been a footnote 37 review, and that the commissioning of the SHMA was simply, as referred to in the committee documentation, a piece of evidence in relation to housing issues. As in the publication in relation to the housing land supply as of 31 March 2019, reference was made to an appeal decision at Brindle Road, Bamber Bridge, in which the Inspector had stated that he was not convinced that the events of 2016 and 2017 represented a review of the policies. Whilst this was the position at the outset of the inquiry, during the course of cross-examination, the second defendant's planning witness conceded that, when the material was properly analysed, there had been a review of the policies for the purposes of footnote 37, and therefore the housing land supply calculation should be undertaken on the basis of the housing requirement in Core

Strategy Policy 4(a). That this was the case is reflected in the closing submissions made on behalf of the second defendant at the conclusion of the inquiry, in which it was accepted on behalf of the second defendant that there were in reality only three points that could be taken in support of the case that the MOU was not a review in the light of the concessions that had been made. These were, firstly, that there had been no public consultation in the process culminating in the MOU, secondly, there was not a review of the whole of the policy and, thirdly, reliance was placed on the Brindle Road decision.

14. A subsidiary argument made by the second defendant at the inquiry arose as a fall back if it were successfully contended that the MOU and its associated processes did amount to a review. The argument was based on the PPG. The provisions which were particularly relied upon by the second defendant were those concerning how often a plan or its policies should be reviewed. The relevant provision is as follows:

> "How often should a plan or policies be reviewed?
>
> To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.
>
> Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.
>
> There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.
>
> Paragraph: 062 Reference ID: 61-062-20190315"

15. It was contended on behalf of the second defendant that the change between the strategic housing requirement contained in Core Strategy Policy 4(a) and the figure provided by using the standard method for calculating local housing need was a significant change for the purposes of the PPG. On the basis of this contention the second defendant provided a second justification for using the local housing need figure for calculating their five year housing land supply. As has been alluded to above, a very different outcome resulted from the figures available at the inquiry in relation to the five year housing land supply calculation, depending upon whether the housing requirement from Core Strategy Policy 4(a) or the local housing need figure derived using the standard method was used. The claimant and the second defendant's calculations based on the housing requirement from Core Strategy Policy 4(a) for the five year housing land supply were 3.24 years or 5.96 years respectively, whereas the second defendant's calculation using the standard method was a five year housing land supply at the start of the inquiry of 17.8 years. This latter figure resulted from the outcome of the use of the standard method which led to the calculation of a housing requirement of 206 dwellings per annum (or 216 with a 5% buffer), as opposed to 417 from Core Strategy Policy 4(a).

16. The second key issue in respect of the application of the tilted balance was the claimant's contention that Local Plan Policy G3 (the other development plan policy which was most important for determining the appeal) was out of date. Local Plan Policy G3 is contained in the South Ribble Local Plan, which was adopted in July 2015. Local Plan Policy G3 identified five areas of safeguarded land for the purposes of future development. The appeal site was site S3. Safeguarded land, whilst not designated for any specific purpose and not currently required for development, is safeguarded in order to ensure that Green Belt boundaries will not need altering at the end of the plan period to meet longer term development needs, and is a well-recognised planning policy tool. The claimant's contention was that if the second defendant were to use the standard methodology rather than the housing requirement contained in Core Strategy Policy 4(a), this would lead to a very different distribution of housing requirements between the three Central Lancashire authorities, and would clearly undermine the safeguarded land provisions contained in Local Plan Policy G3 which were predicated upon the housing distribution contained within Core Strategy Policy 4(a) as between each of the three authorities. A redistribution of the housing requirements in accordance with the local housing need figures to be derived for the three Central Lancashire authorities would have significant implications for the Green Belt across Central Lancashire, alongside the availability of safeguarded land and the need for safeguarded land to be released across the housing market area to meet development requirements. In short, therefore, the settled consensus in relation to the distribution of housing requirements contained in Core Strategy Policy 4(a) would be completely fractured by the adoption of the standard method for determining local housing need, such that conclusions reached as to the extent of the need to safeguard land in South Ribble on the basis of the housing requirement in Core Strategy Policy 4(a) could no longer hold, and Local Plan Policy G3 would be out of date.

17. By the time of the close of the inquiry, and following cross examination of the second defendant's planning witness, it was conceded by the second defendant that for the reasons which have just been rehearsed, if the local housing need figure derived from the standard methodology were to be used that would render Local Plan Policy G3 out of date and trigger the application of the tilted balance. The point was conceded by the

second defendant in its closing submissions albeit that it continued to be contended that significant weight should be attributed to any harm to the policy which it was argued must be found as a consequence of the conflict of the development proposals with that policy.

18. The key issue in relation to whether or not there had been a footnote 37 review and, if there had, there had been a significant change so as to nonetheless indicate that the standard method figure for local housing need should be applied were addressed by the Inspector in the following paragraphs:

> "14. In 2016-17 a joint Strategic Housing Market Assessment (SHMA) was produced which identified an Objectively Assessed Need (OAN) for the three Central Lancashire authorities in the HMA. This totals of 1,184 dwellings pa, with 440 dwellings pa for South Ribble. The three authorities subsequently published a Memorandum of Understanding (MOU) which set out that the CS housing requirement figures in Policy 4 should be retained for a number of reasons. The dispute between the parties in relation to the housing requirement principally revolves around whether the publication of the MOU in 2017 constituted a review for the purposes of footnote 37 to paragraph 73 of the Framework.
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> 15. Mrs Harding suggested that this could not constitute a review because there was no public consultation on the 2017 MOU. The MOU is not a development plan policy document, and I am not aware of any guidelines for its production, consultation and adoption. Even so, I would agree that consultation would be a proportionate ingredient of a review, and that it would assist in ensuring that such a document is fit for purpose.
>
> 16. There is limited evidence before me to support this and Mrs Harding's further contention that the whole of Policy 4 was not reviewed; i.e. the SHMA only relates to part (a) in relation to the figures. Nonetheless, it does provide me with further doubt about whether the MOU and SHMA process leading up to it constituted a full review.
>
> 17. I acknowledge the Appellant's reference to page 21 of the 2019 HLPS which, when referring to the MOU, states '*This could be considered to have been a review of the policy in terms of footnote 37 of the NPPF'*. To my mind the word 'could' also raises an element of doubt, and highlights that the situation is by no means clear cut. Mr Pycroft asserted that whilst the MOU alone may not have been a review of CS Policy 4 it was the outcome of the production of the SHMA, and the entire process constituted a review. I do not agree for the following reasons.
>
> 18. The SHMA is not a review of policy but part of the evidence base for a future review of the plan. I have regard to paragraph 1.2 of the SHMA which states: '*The SHMA does not set housing targets. It provides an assessment of the need for housing across the functional Housing Market Area (HMA), making no judgements regarding future policy decisions which the Councils may take'*.

19. Mr Pycroft's evidence also refers to a 2016 report to the Central Lancashire Strategic Planning Joint Advisory Committee (JAC). To my mind the paragraphs he refers to simply inform members of the JAC that the fifth anniversary of the CS is approaching, and that Government guidance requires plans and policies to be reviewed. On reading the report as a whole, it also informs members that the main purpose of the SHMA is to ensure the Councils had a full objectively assessed need (FOAN) in accordance with paragraph 47 of the former 2012 Framework. This is also evident in a subsequent report to the JAC in March 2017 which sets out that the FOAN is an evidence figure, not policy. Indeed, I note that CS Policy 4 is not specifically mentioned in either of these reports and references to 'review' are in the context of a future review of the CS.

20. I have also had regard to the Brindle Road decision where the Inspector was not convinced that the MOU was a review, although I note the basis on which these comments were made as highlighted by the Appellant. In view of the above, and the inconclusive evidence supplied by the Council regarding lack of consultation and review of the whole policy, I do not consider that the SHMA process constituted a review of Policy 4.

21. I acknowledge that both Preston and Chorley currently use the CS housing requirement in decision making and in their most recent Housing Land Position statements. Whilst I do not have the benefit of direct evidence from Preston and Chorley Councils, I have had regard to the evidence produced by Mr Pycroft and it seems to me that there are various other reasons, not solely relating to the MOU, that they continue to use the CS figures and consider that a review of Policy 4 has taken place.

22. The Preston City Council press release does not specifically refer to the MOU, instead it refers to the costs associated with defending two recent appeal decisions in their area which concluded that Preston did not have a five year supply of housing. I cannot make any conclusions on this as those decisions are not in the evidence before me. Preston's latest housing land position statement (HLPS) also refers to those appeal decisions (at paragraph 1.6), and draws attention to the Preston Local Plan examination where it was agreed that that there was no requirement to reconsider the Objectively Assessed Need. Mr Pycroft pointed out paragraph 1.9 of the HLPS in relation to the MOU. However, to my mind this suggests uncertainty given the punctuation of 'review' (in single quotation marks).

23. Preston's HLPS goes on to explain at paragraph 1.10 that its' OAN resulting from the SHMA is *lower* than the CS requirement, and it seems to me that this was a factor in the aforementioned appeal decisions. This contrasts to the situation in South Ribble, where the OAN was calculated to be very similar (and slightly higher) to the existing CS requirement.

24. Chorley's 2019 housing supply statement also applies the CS requirement figure but does not refer to the MOU in doing so. Mr Pycroft's evidence in relation to a recent appeal (Carrington Road) gives further explanation; their reasoning for continuing to apply the CS requirement

was that it was reviewed as part of the examination of the Chorley Local Plan in 2015. I also have regard to a very recent Chorley planning committee report in relation to a resubmission of a previously dismissed appeal at Pear Tree Lane, where Chorley set out their reasons as to why they consider CS Policy 4 is not out-of-date.

25. It seems to me that the reasoning taken by Chorley and Preston for their use of the CS figure is specific to those Councils and does not necessarily directly apply to the South Ribble situation. In view of this, I am not satisfied that the evidence demonstrates that they are applying the CS figure for the reason that the MOU (and SHMA process) constituted a review.

26. It has also been put to me by the Council that the 2017 MOU has been overtaken by events, i.e. a 'significant change' has taken place. Paragraph 33 of the Framework requires local authorities to update relevant strategic policies at least once every five years if their applicable local housing need figure has changed significantly. 'Significantly' is open to interpretation; and moreover the Framework does not specify whether such a change in the figure is positive or negative.

27. Paragraph 062 of the Planning Practice Guidance (PPG) on plan making gives guidance on review of policies, stating that where a review was undertaken prior to publication of the Framework in 2018 but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes in circumstances. There is a difference in interpretation of the guidance between the main parties.

28. The 2017 MOU was produced prior to the publication of the 2018 Framework. The PPG is not explicit in that it only refers to a significant change as being an existing figure that is significantly below the number generated using the standard method. I agree with the Council that the wording of paragraph 062 does not necessarily discount a situation where the existing plan figure is significantly *above* the number generated using the standard method, as is the case in South Ribble. This therefore adds little to the Appellants argument that a review of the CS has taken place.

29. The 2017 MOU itself sets out review arrangements at section 7; no less than every three years and when new evidence that renders the MOU out-of-date has emerged. Such a review of the MOU is currently taking place. A 2019 Draft MOU relating to the provision and distribution of housing land has been recently produced by the Central Lancashire authorities. This follows a Housing Study which has informed a proposed interim position in advance of the adoption of the new Local Plan for Central Lancashire.

…

33. I am mindful that if Preston and Chorley applied the standard method (not the draft re-distributed figure) to their housing requirement now, Preston would be able to demonstrate a five year supply and Chorley would not.

> This inconsistency in the way the three Central Lancashire Authorities are currently making decisions relating to housing (together with the age of the CS, current consultation on Issues and Options for a new Central Lancashire Local Plan, and the introduction of the standard method) have plainly contributed to current events where the three authorities are consulting on a revised MOU to provide more clarity in decision making.
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> 34. I am also conscious that my conclusions in respect of the housing supply requirement for South Ribble may have consequences for decision making by the neighbouring authorities. Convincing arguments have been made by the Appellants for retaining the current CS housing requirement in view of the redistribution which may potentially result from this, but undue reliance seems to be placed on what the two other authorities are currently doing and how the use of the Standard Method will affect them. This is a matter for their own decision making and for the emerging Central Lancashire Local Plan in carrying out a full review of housing policies.
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> …
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> 36. The Housing Study, albeit not a final report, acknowledges in its introduction that the previously agreed MOU needs to be revisited, and that a robust basis for working to agree an updated level of housing need and its distribution across the HMA is required through an updated MOU. I do not make any attempt to predicate the outcome of the final Housing Study and the current consultation on the draft 2019 MOU. However it is clear to me that the direction of travel by all three authorities is towards the standard method and a re-distribution of the housing requirement based on a range of factors including population, workforce and jobs distribution and constraints (including Green Belt).
>
> 37. Having regard to paragraphs 33, 73 (and footnote 37) and 212-213 of the NPPF, and the PPG paragraph 062, I conclude that the figure within Policy 4 of 417 dwellings per annum is out-of-date on several counts : i) the strategic policies are over 5 years old; ii) my conclusions that the 2017 MOU (and SHMA leading up to it) did not properly constitute a review; and iii) the 'significant change' resulting from the introduction of the standard method in the 2018 Framework and the Council's significantly lower figure arising from the standard method calculation. Additionally, the MOU itself requires review by September 2020; indeed a new version is currently undergoing consultation."

19. The Inspector addressed the issues in relation to whether or not Local Plan Policy G3 was out of date as follows:

> "Planning Balance and Conclusion
>
> 84. I have identified conflict with Policy G3 of SRLP. Together with Policy 4 of the CLCS, these two policies within the development plan are the most important for determining the appeal. I now assess whether they should be considered to be out-of-date for the purposes of paragraph 11(d) of the Framework.

85. Policy 4 is contained within a plan which is more than five years old, but this strategic policy is not out-of-date simply because of its age. I conclude that it is out-of-date due to the significant change identified above; the publication of the Framework in 2018 which introduced at the standard method, and the significant difference in the housing requirement generated by that calculation for local housing need.

86. It is common ground between the parties that the appeal proposals are contrary to Policy G3 and that it is compliant with paragraph 139 of the Framework, however evidence differs as to whether it is out-of-date for the purposes of paragraph 11(d) of the Framework. I have concluded that the Council can demonstrate a five year supply of deliverable housing sites by virtue of use of the standard method for the housing requirement, therefore Policy G3 is not rendered out-of-date for that reason.

87. There was some discussion at the inquiry as to whether Policy G3 would be out-of-date for other reasons. I do not agree with the premise that Policy G3 becomes out-of-date purely because of the distributional consequences that would arise across the Central Lancashire HMA as a whole if all three authorities were to apply the standard method. Such a situation is not one which is referred to in the Framework or PPG as rendering this type of policy out-of-date.

88. Moreover, whilst I have given limited weight to the Housing Study and the 2019 draft MOU, the re-distribution which is suggested within the documents is not 'radical' as suggested by Mr Fraser. I note that the re-distribution recommended in the Housing Study is based on a reasonable set of criteria including jobs, population, and affordability as well as Green Belt constraints. The recommended share of the housing requirement of 27.5% for Chorley, 40% for Preston and 32.5% for South Ribble is not significantly different from the current CS distribution of 31.1 %, 37.8% and 31.1% respectively. Distributional consequences do not weigh heavily in giving me reason to conclude that the policy is out-of-date.

89. This is a small basket of policies for determination of the appeal, nonetheless Policy G3 prevails as the most important, indeed it is the only policy specified in the reasons for refusal relating to the main issues. Taken as a whole, there is conflict with the development plan.

90. Consequently, this is a case in which the tilted balance is not engaged. The most important development plan policy is not out-of-date and the Council is able to demonstrate a five year supply of deliverable housing land."

20. In the light of these conclusions the Inspector undertook what she described as a standard planning balance, starting with the provisions of section 38(6) of the 2004 Act and she concluded that the appeal should be dismissed.

The law

21. The principles which are relevant to the determination of this challenge are both common place and uncontroversial. The decision to grant planning permission is governed by section 70 of the 1990 Act and section 38(6) of the 2004 Act. The decision is to be made in accordance with the development plan unless material considerations indicate otherwise. Amongst the material considerations which may very well be operative in a decision, and were operative in the present case, are the provisions of national government policy contained in the Framework. If planning permission is refused, and the disappointed developer appeals under section 78 of the 1990 Act to the first defendant, the first defendant enjoys all of the same powers, in essence, that were enjoyed by the local planning authority. Frequently, as here, the first defendant's powers in relation to an appeal under section 78 of the 1990 Act will be delegated to a planning inspector.

22. In *St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 Lindblom LJ set out the familiar principles which are to be applied in determining an application for statutory review of an appeal decision under section 288 of the 1990 Act in the following terms in paragraphs 6 and 7 of his judgment:

> "6. In my judgment at first instance in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) (at paragraph 19) I set out the "seven familiar principles" that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:
>
> "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).
>
> (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on

relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

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

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, in *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J in *Sea & Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

> (7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145)."
>
> 7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasized the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraphs 22 to 26, and my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell*, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63)."

23. In relation to contentions as to illegality arising in a decision as a result of a mistake in fact, the leading case is *E v Secretary of State for the Home Department* [2004] EWCA Civ 49. At paragraph 66 of his judgment, Carnwath LJ (as he then was) concluded when giving the judgment of the court that it was appropriate to identify a species of error of law arising from a mistake of fact, and that the jurisdiction arose when the criteria which he identified were fulfilled as follows:

> "66. In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of *CICB*. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence

> must have been "established" in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

The claimant's grounds and the parties' submissions

24. The claimant's ground 1 is the contention that the Inspector fell into error in concluding on the basis of the material before her, and which has been set out above, that the MOU and the processes which proceeded it did not amount to a review under footnote 37 of the framework. Mr Vincent Fraser QC, who appears on behalf of the claimant, submits that the Inspector, firstly, relied upon a matter which was plainly an error of fact when she relied in her reasons in paragraph 19 of the decision letter on the suggestion that Core Strategy Policy 4 was not specifically mentioned in either of the committee reports from June 2016 and March 2017. Policy 4 is directly referred to in paragraph 8 of the June 2016 report. Furthermore, it was plain from that report, the subsequent report of March 2017 and the MOU (which again specifically referred to Core Strategy Policy 4), that the entire exercise was referenced to Core Strategy Policy 4.

25. Mr Fraser also submits that the Inspector's reasoning was unintelligible and inadequate. He relies upon the contention that the Inspector's cross-reference to the mention of the FOAN figure being an evidence figure, rather than policy, in the 2017 report, relied upon in paragraph 19 of the decision letter, was a point of no consequence, since any review would have to be supported by evidence in any event. In the light of the consensus amongst the other Central Lancashire authorities, and indeed the consensus at the inquiry, that what had happened was a review pursuant to footnote 37, Mr Fraser submits that it was simply not open to the Inspector to reach any other conclusion but that it was such a review.

26. On behalf of the second defendant, Mr Giles Cannock QC submits that the terms of footnote 37 do not explain what might amount to a review, nor is it a matter touched upon by the PPG other than to say that a review should be proportionate to the issues that it is considering. Thus, he submits that the Inspector had a very broad area of discretionary judgment in order to reach her conclusions as to whether or not a review had in fact occurred. Mr Cannock submits that, read consistently with the established principles for considering decisions of this kind, the Inspector's decision as a matter of planning judgment was founded upon five reasons which justified her conclusion that a review had not occurred which are set out below. He accepted that there had been a factual error in relation to the suggestion that there was no specific mention in the committee report of Core Strategy Policy 4. His response to Mr Fraser's submission was that this was not a point of any material significance and this reference was simply relied upon as supportive of other points raised in paragraph 19.

27. The five reasons identified by Mr Cannock are as follows. Firstly, he submits that the Inspector's report was clear, when in paragraph 20 it referred to "review of the whole policy", that the Inspector was reaching a finding that Core Strategy Policy 4 had not been reviewed across the board or in its entirety, and therefore this included no review of Core Strategy Policy 4(a). When the Inspector referred to "in view of the above" in paragraph 20 of the decision letter, this was a reference back to all of the preceding reasoning in paragraphs 15-19. In response to this contention Mr Fraser draws attention

to the reference in paragraph 16 of the decision letter to the second defendant's witness's contention that "the whole of policy 4 was not reviewed", and further in paragraph 16 to whether or not the MOU and SHMA process "constituted a full review". He submits that the Inspector's distinction between a full review of Core Strategy Policy 4 and a partial review of Core Strategy Policy 4(a) was clearly a misapplication of the Framework's policy in paragraph 73, which was purely concerned with housing requirements, and not the other elements of Policy 4 related to monitoring housing delivery or site allocations. On this basis, firstly, the second defendant's witness had been correct to concede that there had been a review of Core Strategy Policy 4(a) and, secondly, the Inspector failed to reach any conclusion as to whether or not Core Strategy Policy 4(a) had been reviewed, or provide any reasons for any finding that it had not.

28. The second matter that Mr Cannock relies upon in support of the conclusion that the Inspector provided appropriate reasoning for her decision that there had not been a review pursuant to footnote 37 was her reference to the SHMA being a document for a future review of the Core Strategy. There is, therefore, no reason for suggesting that the SHMA itself supported the conclusion that there had been a review. In response to this contention Mr Fraser observes that the documentation contained in the committee reports made clear that the SHMA was commissioned to address the question of whether or not the housing requirement in Core Strategy Policy 4(a) might remain reliable, and not for some future unspecified review of the plan. The quote from the SHMA set out in paragraph 18 of the decision is incapable of supporting the Inspector's conclusion, since it simply referred to the fact that the SHMA did not make any judgment in relation to future policy.

29. The third matter relied upon by Mr Cannock is the absence of mention in the 2016 or 2017 committee reports of Core Strategy Policy 4(a). That was something which the Inspector was entitled to rely upon in passing as supporting her conclusions. As set out above, Mr Fraser's response to this is to draw attention to this reasoning as in fact an operative error of fact which amounts in and of itself to an error of law. Fourthly, Mr Cannock relies upon the Brindle Road Inspector and the conclusions that he reached. In response to this, Mr Fraser replies firstly, that the reasoning does not make clear at all why the Brindle Road Inspector's decision supported the Inspector's view, particularly bearing in mind secondly, the Brindle Road Inspector only addressed the MOU and not the process leading up to it.

30. Finally, Mr Cannock points out that the Inspector relied upon absence of consultation in relation to her conclusion that there had not been a footnote 37 review. He submits that the Inspector was entitled to take account of the fact that consultation would have been a proportionate ingredient of a review and assist in judging whether it was fit for purpose (see paragraph 15 of the decision letter). Mr Fraser responds by noting that there is no requirement for consultation in either law or policy and that this ingredient of the Inspector's reasoning is therefore quite unsustainable.

31. Ground 2 is focused on the sentence within paragraph 21 of the decision letter where the Inspector, having acknowledged that the other two authorities within the Central Lancashire area, Preston City Council and Chorley Council, were using the Core Strategy housing requirement from its Policy 4(a), concluded that "it seems to me that there are various other reasons, not solely related to the MOU, that they continue to use the CS figures and consider that a review of Policy 4 has taken place". Mr Fraser

submits that the Inspector's reasoning in this connection is quite unclear. This clause from paragraph 21 of the decision letter suggests that the MOU was in fact a review, and the fact that there may be other reasons to apply the Core Strategy figures in the other authority areas of Central Lancashire is neither here nor there. Furthermore, consistently both with the fact that Core Strategy Policy 4(a) applied to all three authorities, and consistent with the clear policy in paragraph 73 of the Framework, the policy and the joint committee process and MOU cannot properly be regarded as a review in two authorities but not a review in the third. Logically, this is a matter which ought to have been considered prior to the Inspector forming her conclusions in relation to whether there had been a review in paragraphs 16-20.

32. In response, Mr Cannock submits that whilst paragraph 21 of the decision letter may be infelicitously phrased, it has to be read together with the balance of the paragraphs to which it relates, and in particular paragraph 25 of the decision letter where, having rehearsed the evidence in relation to Preston and Chorley, the Inspector clearly concluded that she was not satisfied that they were applying the Core Strategy figure on the basis that the MOU and SHMA process constituted a footnote 37 review.

33. Ground 3 relates to the Inspector's conclusions in paragraphs 26-28 in relation to whether or not a significant change had occurred in the context of the paragraph of the PPG as set out above. Mr Fraser contends that the Inspector was guilty of a clear misinterpretation of the PPG when she concluded that it covered a situation where an existing plan figure was found to be significantly above the housing requirement generated using the standard method to identify local housing need. Mr Fraser submits that this reading renders the PPG pointless, on the basis that if a significant change is to be said to have occurred when the development plan figure is significantly above or below the standard method figure, then the development plan figure would only be used if there was no material difference between it and the standard method figure, and therefore the PPG would be purposeless. Moreover, Mr Fraser submits that the PPG is clear and consistent with the Framework in its approach to only regarding there having been a significant change when the development plan figure is significantly below that generated using the standard method, bearing in mind that the Framework seeks to boost significantly the availability of housing land, and ensure that all housing need is planned for as quickly as reasonably possible. In response, Mr Cannock submits that the Inspector's interpretation is consistent with a sensible approach to the PPG reflecting that the judgment of whether or not there has been a significant change in particular circumstances is one regularly undertaken in the application of planning policy. The Inspector's interpretation was a sensible and reasonable interpretation of the PPG's guidance.

34. Ground 4 focuses upon the Inspector's conclusions in paragraph 34 of the decision letter, in which she accepted that "convincing arguments" had been made by the claimant for retaining the Core Strategy requirement in view of the redistribution which might potentially result from the use of the standard method, and her conclusion that these consequences were a matter for the other authorities' decision making and the emerging Central Lancashire Local Plan. Mr Fraser complains that the Inspector, having found the arguments convincing, failed to follow them and, further, failed to appreciate that any redistribution of housing within the housing market area required a collective decision of all three authorities, and could not be done by individual decisions of the authorities acting alone. Mr Cannock submits in reply that the claimant's

submission focuses illegitimately on a single phrase in a single sentence within the decision letter. Further it fails to place that phrase in context and have regard to the surrounding reasoning. The Inspector clearly explained that whilst she may have found the Claimant's case convincing there were other arguments and considerations which were explained in the decision letter, in particular at paragraph 36, as to why the claimant's arguments could not prevail.

35. Ground 5 relates to the claimant's contentions, ultimately accepted by the second defendant's planning witness at the public inquiry, that as a consequence of the use of the standard method the distributional consequences which would arise across the Central Lancashire housing market areas would render Local Plan Policy G3 out of date. Mr Fraser submits that the Inspector's reasons in relation to her conclusion that Local Plan Policy G3 was not out of date are unclear and incoherent. Firstly, he notes the Inspector's finding that Local Plan Policy G3 of the South Ribble Local Plan and Core Strategy Policy 4 were the two most important policies for determining the appeal, and those which paragraph 11(d) of the Framework required the Inspector to assess as to whether or not they were out of date. Secondly, he notes that the Inspector's reasons for concluding that Local Plan Policy G3 was not out of date were, firstly, that the distributional consequences relied upon were not a situation referred to in the framework or PPG as rendering this type of policy out of date. This he submits is illegitimate and unclear: the Framework deliberately does not seek to identify particular circumstances when a policy may be out of date (save for the circumstances specified in footnote 7 related to the five year housing land supply).

36. Thirdly, the Inspector's second reason for rejecting this contention was articulated in paragraph 88 of the decision letter. As set out above, the claimant's argument was based upon the application of the standard method to each of the authorities and the distribution of housing that created. The split in relation to local housing need between the authorities was Preston 23.3%, Chorley 56.1% and South Ribble 20.6%, which Mr Fraser submits was radically different from the Core Strategy Policy 4(a) distribution of Preston 37.8%, Chorley 31.1%, and South Ribble 31.1%. Mr Fraser submits that the Inspector's response to this argument did not engage with its substance, and her reasons did not begin to explain how she dealt with this key point. She responded to it by referring to the redistribution recommended in the Housing Study, and in doing so compared apples with oranges, and failed to engage at all in the claimant's argument, based as it was upon the factual outcome of the application of the standard method to these individual authorities. Thus, he submits that the Inspector's reasons failed to grapple with the claimant's argument and provide an answer to it. In response to these contentions Mr Cannock submits that the claimant's submissions are an attack on the Inspector's planning judgment, and that she was entitled to look at the standard method figures as proposed to be redistributed in the housing study. She was not obliged to consider the distributional consequences of un-redistributed standard method figures, bearing in mind that work was in progress to produce answers to the distributional consequences.

Submissions and conclusions

37. It is convenient to start with the ground of challenge which is conceded by the first defendant. This is ground 5, related to the conclusion that Local Plan Policy G3 was not out of date. In my view there is conspicuous merit in this ground, on the basis that the Inspector's reasoning failed to deal with the claimant's argument or explain her

conclusions in relation to it. The argument which was made by the claimant was related to the consequences of deploying the standard method's measurement of local housing need as a result of the earlier conclusions which the Inspector had reached. The figures set out above identify a stark difference in the housing distribution using the local housing need housing requirement, as compared to the distribution contained within Core Strategy Policy 4(a). The Inspector simply failed to provide an answer to the point raised in relation to the adoption of the standard method and its consequences for the distribution of housing contained within that policy which, in turn, underpinned the quantity and distribution of safeguarded land reflected in Local Plan Policy G3. It was not an answer to Mr Fraser's point at the inquiry (namely, that the use of the local housing need requirement figures derived from the standard method presented a radically different housing distribution to that in the Core Strategy) to compare the distribution using the standard method with a Housing Study which contained housing figures which had been adjusted by an as yet inchoate emerging policy. As Mr Fraser submits, her approach involved a comparison which was not apt and failed to engage with the direct consequences for Local Plan Policy G3 of her earlier conclusion that the standard method for deriving the housing requirement should be used for the purposes of her decision. Indeed, the Inspector's reliance in her reasoning on a future exercise of policy making, involving review and a fresh exercise of redistribution, reinforced the point that Local Plan Policy G3 was in fact out of date and requiring review at the time of making the present decision if the housing requirement derived from the standard method was to be deployed. Further, her reference to this situation as not being one referred to in the Framework or PPG as rendering this type of policy out of date does nothing to explain either why the claimant's detailed point in relation to the impact on the current distribution of housing of use of the standard method did not render Local Plan Policy G3 out of date.

38. I am, therefore, satisfied that the Inspector's reasons were inadequate in that they failed to grapple with and explain adequately her answer to the point raised in relation to the consequences for the distribution of housing set out in the Core Strategy for each of the Central Lancashire authorities, upon which Local Plan Policy G3 depended, arising from her adoption of the housing requirement derived from the standard method for the purpose of taking her decision. The concession made by the first defendant was appropriate, and the claimant must succeed on ground 5.

39. I turn then to grounds 1, 2 and 3, noting Mr Cannock's undisputed proposition that the claimant must win on either grounds 1 and/or 2 as well as ground 3 in order to succeed, bearing in mind that the points raised under ground 3 are in the alternative or a fallback, and on the basis that a footnote 37 review had in fact taken place as the claimant contends. Dealing firstly with ground 1, in my judgment there is substance in the claimant's complaint that the Inspector fell into error in suggesting that Core Strategy Policy 4(a) was not mentioned in either of the committee reports. It is conceded that this was an error. The concession is rightly made, since to my mind it is plain that on any reading of the committee reports in June 2016 and March 2017 the central focus of the discussions taking place, and the exercise underway, was an examination of whether or not the housing requirement in Core Strategy Policy 4(a) remained valid. The point which she made is an error and, as a consequence, incapable of supporting her conclusions, thereby rendering her reasoning unclear and unlawful. In so far as this is relied upon as an actionable error of fact, it satisfies in my judgment the requirements set out in the case of *E*, since it was an error in relation to an established and verified

fact which was not caused by either party at the inquiry. I note that in identifying the reasons it is said that the Inspector had for forming the conclusion that there had not been a review, the second defendant relies upon her reference to Core Strategy Policy 4 being absent from the committee reports, and it is clear to me that this reference was a part of the reasoning she relied upon in reaching her conclusions in relation to the review. I am unable to accept the second defendant's suggestion that this is merely a matter raised in passing: it was part of her reasoning.

40. It follows from this that one of the strands of reasoning said by the second defendant to support the Inspector's conclusions has been found to be legally flawed. Whilst I am prepared to accept the contentions made by the second defendant in relation to the Inspector's reliance upon the absence of consultation, the reference to the Brindle Road Inspector and the fact that the SHMA was not itself a review of the policy as all being matters potentially relevant to her consideration of whether or not there had been a footnote 37 review, I have found her reasons in paragraph 20 (flowing from paragraph 16 of the decision letter) in relation to reliance on the conclusion that there was not a review of the whole of Core Strategy Policy 4 problematic. It is clear that footnote 37, related as it is to paragraph 73 of the Framework, relates to strategic polices containing a housing requirement. In this case the strategic policy containing the housing requirement is Core Strategy Policy 4(a), and not the other elements of the policy which relate to additional ancillary matters. The apparent reliance on Core Strategy Policy 4 not having been reviewed as a whole is further complicated by Mr Fraser's pertinent submission that in fact the MOU contained agreement not simply in relation to policy 4(a), but also in relation to those other ancillary matters. In short, it is difficult to understand, and the Inspector failed to explain, firstly, why the whole of Core Strategy Policy 4 had to be reviewed for the exercise to constitute a review for the purposes of footnote 37 and, secondly, why the MOU did not constitute that review of the whole policy bearing in mind the contents of the MOU. For all of these reasons, and whilst I have not concluded that all of the claimant's submissions have substance, I have concluded that on the basis of the claimant's arguments which I have accepted, they must succeed in respect of ground 1.

41. Turning to ground 2, in my view Mr Cannock is correct when he suggests that ground 2 depends upon a highly forensic examination of only a part of the Inspector's overall reasoning in relation to the position of the other neighbouring authorities within the Central Lancashire housing market area. Paragraph 21 of the decision letter could undoubtedly have been more precisely worded. However, the reference to "not solely related to the MOU", and any lack of clarity which that gives rise to, has to be put in the context of the balance of the reasoning on this issue in paragraphs 22-25 which are, in my judgment, clear as to why the Inspector formed a conclusion that she was not satisfied that the evidence demonstrated the other authorities were applying the Core Strategy Policy 4(a) figure on the basis that the MOU, and that which proceeded it, constituted a footnote 37 review. I am not satisfied, therefore, that there is substance in ground 2.

42. Turning to ground 3, it needs to be borne in mind that the passage from the PPG in relation to the need to review plans when there has been a significant change arose in the context of the arguments about whether or not Core Strategy Policy 4(a) was out of date and, in particular, was relied upon in paragraph 37 of the decision as one of the reasons for the Inspector's conclusion that Core Strategy Policy 4(a) was out of date.

Whilst it is fair to observe that the only significant change specifically instanced in the PPG is where a housing requirement is found to be significantly below the number generated using the standard method, in my view this passage of the PPG needs to be read purposefully and as a whole. The third paragraph of the passage of guidance makes clear that a plan will continue to be treated as up to date "unless there have been significant changes as outlined below". The following paragraph provides some examples where there may have been significant change but, as Mr Cannock points out, the question of whether or not there has been a significant change warranting a review of the plan on the basis that it is not up to date is not curtailed or circumscribed by the contents of the final paragraph.

43. There may be many material changes in the planning circumstances of a local authority's area which would properly render their existing plan policies out of date and in need of whole or partial review. I am unable to accept Mr Fraser's submission that it is impermissible to regard the emergence of a local housing need figure which is greatly reduced from that in an extant development plan policy as having the potential to amount to a significant change. Whilst he is entitled to point to the wider national planning policy context of boosting significantly the supply of housing land, as Mr Cannock points out in his submissions, the use of the standard method to derive local housing need is part and parcel of the Framework's policies to achieve that objective. Moreover, the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved. In short, in my view, the language of the PPG and its proper interpretation did not constrain the Inspector and preclude her from reaching the conclusion that she did, namely that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date. That was a planning judgment which she was entitled to reach and was properly reasoned in her conclusions.

44. Finally, ground 4 is the claimant's contention in relation to the Inspector's observation that the claimant made "convincing arguments" for retaining the current Core Strategy housing requirements in view of the potential consequences in respect of redistribution arising from deploying the standard method. This point arises in the context of the Inspector's consideration of whether or not Core Strategy Policy 4(a) is out of date or should be retained as the basis of the housing requirement for the purposes of calculating the five year housing land supply. I am unimpressed by the argument that simply because the Inspector described the claimant's arguments as convincing she was then obliged to accept them as a sound and proper reason for continuing to use Core Strategy Policy 4(a)'s housing requirements. Once again, the Inspector's conclusions need to be read as a whole in relation to this point. It is to my mind clear that the use of the phrase "convincing arguments" was perhaps an infelicitous use of language, and what the Inspector was describing was her view that the arguments were persuasive or not without force. It is, however, clear, in particular in her conclusions in paragraph 36 of the decision letter, that those arguments are not dispositive of the question of whether or not the housing requirement in Core Strategy Policy 4(a) should continue to be used, and whether or not it remains up to date. I do not consider, therefore, that there is any substance in the claimant's ground 4.

45. Drawing the threads together it is clear to me that this claim must be allowed, and the decision quashed, in relation to the claimant's contentions in ground 5 for the reasons I have given. I am satisfied that in ground 1, the Inspector's reasons for concluding that the MOU and the SHMA process leading up to it did not properly constitute a footnote 37 review are not legally adequate, and that her conclusions are affected by illegality in the form of an error of fact. I am satisfied that the conclusion the Inspector reached in paragraph 37(iii), that there had been a significant change pursuant to the PPG arising from the introduction of the standard method, was a planning judgment reasonably open to her based upon a correct interpretation of the PPG (albeit other conclusions might reasonably be reached by other Inspectors), and therefore she was entitled to conclude that Core Strategy Policy 4(a) was out of date. I do not consider that there is any substance in grounds 2 and 4 of the claimant's case for the reasons I have set out above. Ultimately, therefore, the decision has to be quashed in relation to ground 5, and will need to be redetermined in the light of the conclusions set out above and a re-examination of the planning merits pertaining at the time of redeterminationn.