Neutral Citation Number: [2026] EWHC 261 (Admin)

Case No: AC-2025-MAN-000378

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

Manchester Civil Justice Centre
Bridge Street
M60 9DJ

Date: 20th February 2026

Before:

MR JUSTICE KIMBLIN

- -

Between :

TRAFFORD METROPOLITAN BOROUGH COUNCIL	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Defendants**
- and -	
(2) PEEL NRE LIMITED	

- -
- -

David Forsdick KC (instructed by **Solicitor, Trafford Metropolitan Borough Council**) for the **Claimant**
Jonathan Welch (instructed by **GLD**) for the **First Defendant**
Ian Ponter (instructed by **Town Legal)** for the **Second Defendant**

Hearing dates: 20th January 2026

- -

Approved Judgment

This judgment was handed down remotely at 10:30am on Friday 20th February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Mr Justice Kimblin:

Introduction

1. In March 2022, the Second Defendant, Peel NRE Limited ('Peel'), applied to the Claimant local planning authority, Trafford Metropolitan Borough Council ('the Council'), for outline planning permission for development within Use Class B2 (General Industry) and B8 (Storage and Distribution) on its site west of Manchester Road, Carrington. The site is within the allocation for a major strategic development in the Places for Everyone Joint Development Plan Document (2024) ('PfE'). The application was refused by the Council on the basis that it failed to comply with the development plan in that Peel declined to make the contribution to infrastructure which the Council sought.

2. Peel appealed to the First Defendant Secretary of State who appointed an Inspector to determine the appeal. He held a public inquiry during May 2025. By a decision letter dated 22nd July 2025, the Inspector allowed the appeal and granted planning permission subject to conditions and a planning obligation pursuant to s106 Town and Country Planning Act 1990 ('the 1990 Act'). That obligation did not provide for the payment which the Council contended for in respect of a contribution to infrastructure.

3. A fundamental reason for the Inspector's decision was that the Masterplan which PfE anticipated to be adopted for the proper planning and delivery of the New Carrington allocation remained a work in progress. Those were the circumstances which faced the Inspector. He therefore decided the appeal on the balance of considerations which related to the site alone, finding that the contribution sought by the Council would not be fairly and reasonably related to the scale and kind of the development, i.e. the development assessed alone. The result was that there would be no contribution to the infrastructure costs associated with the development of the allocation as a whole.

4. Paraphrasing Lord Hoffman in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 at [771], development often causes off-site effects with consequences including loss or harm to others, or the community at large. Under the *laissez-faire* system which existed before the introduction of modern planning control by the Town and Country Planning Act 1947, the public purse paid. The legal and policy mechanisms to address such off-site effects resulted in s106 of the 1990 Act and Regulation 122 Community Infrastructure Regulations 2010, as amended, and its mirror in national planning policy. This case is about the interaction of those provisions with the policies in the PfE, absent an adopted Masterplan for New Carrington.

5. The Council issued a claim form on 20th August 2025 by which it sought the quashing of the decision letter. On 29th October 2025 Swift J granted permission to proceed with the claim on all grounds, and gave case management directions.

The Issues

6. The parties agreed that the issues overlapped and were founded in the proper understanding of the development plan policies in PfE.

Issue 1

7. The overarching issue between the parties is whether the Inspector correctly understood the development plan policies in PfE in the particular context of there being no Masterplan for the development of the allocation [Ground 1], and the consequences of his approach [Ground 3]. If he did not, did that lead to the logical flaw of only asking what the contribution should be rather than whether there should be one? [Ground 6].

Issues 2-4

8. The issues which are subsidiary to that overarching issue are:

[2] Did the Inspector apply a different and incorrect test or approach by asking himself whether the highways impacts of the proposal alone would be severe in the terms set out in paragraph 116 of the National Planning Policy Framework ('NPPF')? [Ground 2]
[3] Did the Inspector fail to identify the weight to attach to the breach of the Policy? [Ground 4]
[4] Did the Inspector fail to take account of the Council's proposal for a provision to repay monies from the contribution sought? [Ground 5]

Legal Framework and Principles
Section 106 of the 1990 Act and the Community Infrastructure Regulations 2010

9. The law and policy in this area have interacted and been re-stated since Department of the Environment Circular *Planning Gain* (22/83): *Tesco* at [774H-779H]. The end point for present purposes is Section 106(1) 1990 Act, as amended, which provides:

"Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (… "planning obligation") enforceable to the extent mentioned in subsection (3) -
a) restricting the development or use of the land in any specified way;
b) requiring specified operations or activities to be carried out in, on, under or over the land;
c) requiring the land to be used in any specified way; or
d) requiring a sum or sums to be paid to the authority … on a specified date or dates or periodically."

10. Regulation 122 of the Community Infrastructure Regulations 2010 ('the 2010 Regulations), as amended, provides as follows:

"**122. Limitation on use of planning obligations**
(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.
(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
(a) necessary to make the development acceptable in planning terms;
(b) directly related to the development; and
(c) fairly and reasonably related in scale and kind to the development.
(3) In this regulation—

"planning obligation" means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation; and
"relevant determination" means a determination made on or after 6th April 2010—
(a) under section 70, 73, 76A or 77 of TCPA 1990 of an application for planning permission; or
(b) under section 79 of TCPA 1990 of an appeal."

11. Regulation 122(2) of the 2010 Regulations and the policy in paragraph 58 of the National Planning Policy Framework ('NPPF') deliberately mirror each other so far as the three relevant tests are concerned, as footnote 25 to paragraph 58 records. The policy is:

"Planning obligations must only be sought where they meet all of the following tests:
a) necessary to make the development acceptable in planning terms;
b) directly related to the development; and
c) fairly and reasonably related in scale and kind to the development."

12. As Bean J (as he then was) observed in *R (Welcome Break Group Limited) v Stroud District Council* [2012] EWHC 140 (Admin) at [48], there is nothing novel in Regulation 122 except the fact that it is contained in a statutory instrument. Its wording derives from Departmental Circular 05/05, which in turn was the successor to previous circulars such as 16/91. Circular 16/91 required that the obligation to be imposed as a condition should be "necessary to the grant of permission" or that it "should be relevant to planning and should resolve the planning objections to the development proposal concerned."

13. However, the effect of Regulation 122(2) and the policy are different in that Regulation 122(2) has materiality as its target. It does not make an obligation which goes beyond the three tests an unlawful obligation, but it does make it irrelevant to the planning decision, if it fails those tests. The approach of national policy is slightly different in that it guides local planning authorities not to seek an obligation which does not meet all three of the paragraph 58 NPPF tests. Taken together, the law and policy make sense: an obligation which fails the tests is irrelevant to the planning decision, so the local planning authority should not seek it.

14. Regulation 122(2) and paragraph 58 NPPF both address planning obligations which are offered or agreed. Neither the Regulation nor the policy directly address the alternative scenario of a contribution which is sought but not then offered. What neither Regulation 122(2) nor the national policy address are the consequences of an identified need for a contribution which is not agreed or met through the application and an associated deed.

15. As originally made, the 2010 Regulations included a restriction on 'pooling' of contributions, per Regulation 123. It had the effect of rendering a contribution irrelevant to the reasons for granting planning permission if five or more separate planning obligations had been entered into for the same project or type of infrastructure. Regulation 123 was repealed in 2019, removing the restriction on pooling of contributions, bringing the position into line with *Aberdeen City and Shire Strategic Development Planning Authority v. Elsick Development Company Limited* [2017] UKSC 66 [2018]; 1 P&CR 14 at [41].

Case Law

16. *Elsick* affirmed the position established in *Tesco Stores Ltd* at [764 and 770]. For a planning obligation to be a material consideration in the decision whether to grant planning permission, it must have some connection with the proposed development which is more than trivial. The inclusion of a policy in the development plan as to requirements for some contribution would not make relevant what otherwise would be irrelevant (see *Elsick* at [51]).

17. The parties sensibly limited their citation of first instance authorities. Chronologically, they referred in particular to: *R (South Northamptonshire DC) v Crest Homes* [1994] 3 PLR 47; *Persimmon Homes North Midlands Ltd v. Secretary of State for Communities and Local Government* [2011] EWHC 3931; *Telford and Wrekin Borough Council v SSCLG* [2013] 1638 (Admin), and [2014] EWCA Civ 507; *R (Hampton Bishop PC) v Herefordshire Council* [2013] EWHC 3947.

18. *South Northamptonshire* was a challenge to the lawfulness of development plan policy for the purpose of funding a relief road from the A5, at Towcester. It was relied upon for the proposition that the application of the policy tests for a contribution is not one of certainty. Rather, the obligation will meet the tests and a permission which takes it into account will be valid if the amount in the obligation is a genuine pre-estimate. That conclusion was arrived at having regard to the facts that: (i) the policy giving rise to the contribution is lawful; (ii) the importance rightly attached to plan-led development; (iii) the value in making development acceptable via such contributions; (iv) the difficulty in foreseeing the future, and; (v) the desirability of speed and predictability in challenges to s106 contributions.

19. *Persimmon* is a case about pooled contributions for infrastructure required by a large urban extension of 2,500 dwellings which was allocated in the Core Strategy with policy requirements to: (i) avoid piecemeal development, and; (ii) accord with an area action plan, which was to be produced after adoption of the Core Strategy. The local planning authority refused permission and the Inspector dismissed an appeal. On the appellant's application under s288 of the Town and Country Planning Act 1990, it was contended that the contribution related to the development and was properly not intended to address the impacts of the wider allocation. The court held that the Inspector was entitled to conclude that the deficit would be likely to result in a greater burden on later development, conflicting with the integration concept of the urban extension and raising the prospect of a shortfall in the funding of necessary infrastructure or reduced commercial viability. The court considered it to be self-evident that a failure to require a contribution from one developer may impose an increased burden on other parts of the wider urban extension. It was legitimate to require such contributions because the development plan required it.

20. *Telford & Wrekin* follows *Persimmon*: pooled costs can, in appropriate cases, satisfy the requirements of Regulation 122. However, it does not follow that such costs are, in any given case, bound so to do. In *Telford & Wrekin*, the Inspector, Christina Downes, correctly concluded that the calculation of the contribution was based on the false premise that both of the two competing sites and developments would come forward, whereas that scenario was unrealistic, a conclusion which was approved by the Court of Appeal: Sullivan LJ at [69], with whom Kitchen LJ, as he then was, and Floyd LJ agreed.

21. *Hampton Bishop* also followed *Persimmon*. Whether a contribution is 'necessary' is not assessed by a 'but for' test but is a judgment which is based on a range of relevant policies and material considerations: followed by Lang J in *Oxfordshire County Council v Secretary of State for Communities and Local Government* [2015] EWHC 186 (Admin). That assessment is for the Inspector, not the court which has a role which is limited to review on public law grounds: *Smyth v Secretary of State for Communities and Local Government* [2013] EWHC 3844 (Admin) at [192] per Patterson J, affirmed [2015] EWCA Civ 174 at [117], per Richards, Kitchen and Sales LLJ, as they then were.

Planning policy and planning inspectors

22. Planning Inspectors are an expert tribunal. Whether an appeal is decided by an Inspector on behalf of the Secretary of State in a transferred appeal, as almost all are, or whether the decision is taken by the Secretary of State, the starting point is that an expert tribunal will have properly understood the relevant legal and policy context and taken it into account: *Suffolk Coastal DC v Hopkins Homes Ltd* [2017] 1 WLR 1865 at [25] per Lord Carnwath, applied for example in *Bennett v Secretary of State* [2023] EWHC 2542 (Admin), per Jay J at [33].

23. With deference to that starting point, it is the law that misunderstanding of a policy or legal provision may vitiate a decision. Given its importance in this case, I set out the well-known paragraph from Lord Reed's judgment in *Tesco v Dundee City Council* [2012] PTSR 983 at [17]:

> "It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment (1991) 63 P & CR 219* , 225–226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25 , namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland 1998 SC (HL) 33, [1997] 1 WLR 1447* . It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:
>
> "In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.""

24. Lord Reed refers to 'misunderstanding' of planning policy. Lord Clyde, in the citation from *City of Edinburgh*, refers to 'interpretation' of planning policy. In a given case, misunderstanding and interpretation may be, or amount to, one and the same thing. In other cases they may not. In the Administrative Court, there are commonly cases from

a variety of contexts where no issue of policy interpretation arises in the sense that the policy is neither ambiguous nor opaque. Rather, the case turns on whether the decision maker has grasped the policy and engaged with its effects on the decision in that case. The public law error which is relied upon in such a case is a failure to have a proper understanding of the policy, i.e. misunderstanding rather than question of interpretation where the meaning is contestable. As Woolf J (as he then was) put it in *Gransden,* it is essential that the policy is properly understood by the determining body so that effect can be given to the policy, or if there is a departure from it, clear reasons are given for not doing so that the recipient of the decision will know why the exception has been made.

25. For a period after *Tesco v Dundee* was decided, and with the attendant opportunity to litigate the meaning of policy in the Planning Court, the difference between a point of interpretation and one of application was not always recognised by the parties. Some five years later, it was then emphasised by Lord Carnwath in *Suffolk Coastal* at [26] that there is a clear distinction between issues of interpretation and issues of judgement in the application of policy. In the same year, Holgate J (as he then was) gave further guidance to like effect in which he emphasised that distinction: *Barker Mill Estates Trustees v Test Valley Borough Council* [2017] PTSR 408 at [84].

26. Similarly, parties in cases which focus on misunderstanding of either national or development plan policy (or indeed guidance) must take particular care not to elide issues of misunderstanding with the planning judgement which is required to apply a policy. Nevertheless, per Lord Reed in *Tesco v Dundee*, there will be cases of misunderstanding of policy which are distinct from issues of interpretation.

27. In summary therefore, the meaning of policy may be contestable and require interpretation. An alleged failure to understand a policy properly may be preceded by an issue of interpretation. If the court finds that the decision-maker's interpretation was correct, then there will have been no misunderstanding. In other cases, issues of proper understanding of policy may be distinct and different from interpretation. There remains that species of case in which the decision maker, perhaps through haste or distraction by other issues in the case, does not grasp and grapple with a clearly expressed policy, and so introduces a legal error into the decision.

The Development Plan and related documents

The key policies

28. Given that the issues in this case flow from the strategic policy for the allocation, I start with the PfE, adopted on 21st March 2024. It is explained in its *Foreword* that the joint development plan *"of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford, and Wigan Councils sits at the foundations of our proposals to improve employment opportunities for our communities, build the right homes in the right places, rejuvenate green spaces and reshape town centres. As a long-term plan for jobs, new homes, and sustainable growth it will enable us to tackle the inequalities experienced by so many of our communities."*

29. PfE sets out how the nine boroughs should develop for the years 2022 – 2039. PfE is a strategic spatial plan. It forms a part of the development plan for each of the nine boroughs, within which framework their future local plans will sit.

30. Policy JP-Strat11 relates to New Carrington. Around 5,000 new dwellings and 350,000m^2 of employment floorspace will be delivered together with a new local centre. This is significantly larger than a predecessor allocation (Policy SL5) in the Trafford Local Plan: Core Strategy, adopted in 2012.

31. This strategic policy (JP-Strat 11) explains that: *"Major investment in active travel, public transport and highway infrastructure, such as the Carrington Relief Road, improvements to Junction 8 of the M60 and public transport corridors will be delivered to support the development of New Carrington, ensuring it is well-connected to the rest of Greater Manchester."*

32. JP-Strat11 is followed by a schematic plan which provides the local context. To the west of New Carrington is the Manchester Ship Canal and further west is the M62 motorway. It is therefore no coincidence that it is Peel who were the applicants for planning permission, the Peel Group being owners and operators of the Canal.

33. To the northeast is the M60 motorway. The schematic plan shows a Carrington Spur to junction 8 of the M60, leading to what has for some time been intended to be the Carrington Relief Road.

34. Altrincham lies to the southeast. It is one of eight main town centres in the plan area, and which benefits from an existing Metrolink connection towards Manchester city centre. The schematic plan shows an intended sustainable transport corridor from Altrincham, through New Carrington towards the northwest and across the Canal.

35. In respect of delivering and implementing the vision, policies and proposals in the plan, 'Policy JP-D1: Infrastructure Implementation' has a broad scope and includes utility infrastructure such as water and wastewater, health care and electronic communications as well as transport. In respect of funding the delivery of such infrastructure, the supporting text [12.16] explains that *"There is a significant gap between the public-sector funding required to deliver and support our growth, and the amount currently committed to fund it."* Policy JP-D2 requires contributions to the provision of mitigation measures to make the development acceptable in planning terms, subject to viability.

36. Policy JP-Strat11 cross refers to Policy JPA30 which allocates the Site. This policy is central to the case. It sets out 38 criteria. The first criterion is particularly in issue, which provides:

> *"Development of this site will be required to:*
> *1. Be in accordance with a masterplan that has been developed in consultation with the local community and approved by the local planning authority. The masterplan must include a phasing and delivery strategy, as required by policy JP-D1. Central to the masterplan shall be the consideration of opportunities to restore habitats, strengthen ecological networks, and manage the carbon and hydrological implications of development, having regard to the presence of peat on parts of the site. It should also have regard to the anticipated Hynet North West Hydrogen pipeline (as relevant). The masterplan will be prepared in partnership with key stakeholders to ensure the whole allocation is planned and delivered in a coordinated and comprehensive manner with proportionate contributions to fund necessary infrastructure"*

37. The reference to *'necessary infrastructure'* at the end of the last sentence includes reference to means of providing for transport, integration and accessibility. Indicative transport interventions are set out in an annex and Policy JP-C8. The list of 'necessary' and 'supporting' transport interventions is extensive and includes the major strategic improvement in the form of the Carrington Relief Road. It also includes major strategic junction improvements to junction 8 of the M60, namely the Carrington Spur. There are a further eleven such necessary improvements to the strategic and local road network, public transport measures and improvements to facilities to promote active travel.

38. JPA30 includes express reference to Policy JP-C8 within a series of six criteria on the topic of 'Transport, Integration and Accessibility':

> *"Transport, Integration and Accessibility*
> *8. Make provision for new and improved sustainable transport and highways infrastructure having regard to the indicative transport interventions set out in Appendix D in accordance with policy JP-C8;*
>
> *9. Deliver a network of safe cycling and walking routes through the allocation and linking to surrounding areas, including utilising the Carrington rides, improving the Trans Pennine Trail and creating new/enhancing existing Public Rights of Way and bridleways;*
>
> *10. Deliver connected neighbourhoods which successfully link with existing communities at Carrington, Partington and Sale West, overcoming barriers such as the Red Brook and the disused railway line between Timperley and Irlam, to successfully integrate development;*
>
> *11. Provide an east / west strategic sustainable transport corridor across the site from the Manchester Ship Canal to Sale to link with the wider Carrington Greenway scheme;*
>
> *12. Contribute to new / enhanced bus services and deliver bus priority infrastructure within the site and, where appropriate, on bus routes linking to the site;*
>
> *13. Facilitate delivery of the Carrington Relief Road to provide an alternative route to the A6144, incorporating provision for pedestrians, cyclists and bus priority measures;"*

The Examination

39. In their written and oral arguments, each of the parties relied upon the report of the Inspectors who examined the PfE, some of the evidence before them and the modifications which were made to PfE before it was adopted. It was submitted that such materials provide a cross-check as to the purpose and intention of the policies in the adopted plan. Mr Welch correctly cautioned that the decision-maker's duty lies in giving effect to the development plan, not its supporting text nor underlying evidence: *R (Cherkley Campaign) Ltd v Mole Valley DC* [2014] EWCA Civ 567 at [16]; *R (TW Logistics Ltd) v Tendring DC* [2013] EWCA Civ 9; P&CR 13 per Lewison LJ at [14].

40. In respect of 'Masterplan, phasing and comprehensive development', the Inspectors concluded:

"640. Any development would be subject to an agreed masterplan covering the whole site. The Council contends that delivery of the site should be considered in a comprehensive manner. There are several individual parcels of development, spread over a wide area. Nevertheless, the scale of delivery and the scope of mitigation measures needed within the policy, including infrastructure provision, justify this type of comprehensive and co-ordinated approach.
641. It was put to us that the policy should allow for masterplans for individual parcels, but we feel that this would undermine the overall intentions of the allocation. For the same reason, it is not appropriate for the policy to allow for certain parts of the site to come forward in advance of any masterplan. It is also appropriate for the policy to expect infrastructure and other contributions to be considered at an allocation-wide scale, rather than a piecemeal approach which might affect overall viability and delivery. Even in this policy context, statutory protections exist which will ensure developers would not be required to make unjustified infrastructure contributions.
642. Modifications to part 1 are however necessary to ensure consistency and effectiveness in terms of the masterplanning and the phasing and delivery of the site. To ensure a comprehensive approach to development, the policy should also be modified to make it clear that developers will need to provide proportionate contributions to fund necessary infrastructure."

41. It is apparent that there was debate at the examination as to the need for proportionate contributions to the allocation-wide infrastructure, on which the Inspectors concluded that developers would need to make such contributions and indeed that it was inappropriate for certain parts of the allocation to come forward in advance of the Masterplan.

42. The Main Modifications which were made to the draft plan were extensive. They reflected these conclusions.

43. In respect of 'Transport and accessibility', the Inspectors concluded:

"654. Part 14 to 20 deal with different aspects of the transport network and accessibility. Development of the scale envisaged will bring significant additional trips into the area and mitigation will be needed. Neither the highway authority or National Highways have objected to the allocation based on its impact on the local or wider road network. We are therefore content that appropriate and adequate mitigation measures have been identified for the site, or can be through the masterplanning process, and development need not lead to severe cumulative impacts on the road network.

655. For reasons set out under issue 6, modifications are necessary to parts 14, with consequential changes to 19 and 20. This will place specific measures into Appendix D to be considered through the masterplanning and planning application process. This provides adequate safeguards to ensure development does not lead to unacceptable impacts."

44. This material records the positions of the highway authority and National Highways, which have duties in respect of the local and strategic networks, respectively. Their lack of objection to the allocation was premised on the delivery of adequate measures to avoid severe cumulative impacts on the network. The reference to *'severe cumulative impacts'* is a reference to national planning policy which sets the threshold for acceptability of effects in those terms (then paragraph 111, presently paragraph 116).

45. More specifically, the Inspectors addressed Appendix D to the PfE and its reference to the Carrington Relief Road. They modified the draft in that regard to make it clear that the Relief Road was not to be wholly dependent on either public funding or development contributions.

Interim Planning Strategy

46. The Council contends that Policy JPA30, read with the policies which address transport requirements and infrastructure implementation, requires planning applications for development in the New Carrington area to be in accordance with the masterplan, with proportionate contributions to fund necessary infrastructure. But there was no masterplan in existence for the Inspector, or anybody else, to consider.

47. Instead, there was an Interim New Carrington Developer Contributions Formula ("NCCF") which the Council adopted to fill the gap. Prior to the final recommendation by the inspectors in relation to the PFE, in January and February 2024 the Council devised and endorsed via its committees an Interim Planning Strategy for developer contributions at New Carrington ("the IPS"). The IPS was contained in a committee report and appended the New Carrington NCCF. The main purpose of the IPS and NCCF was an attempt to 'plug the gap' between adoption of the PFE and finalisation of the masterplan that would set out the infrastructure requirements. These documents were endorsed by committee, but not subject to consultation nor proposed to be adopted as development plan documents or supplementary planning documents. They provided no more detail as to the items of infrastructure, their specifications, locations or costs than the "indicative" list at Appendix D of the PFE. The Council applied the NCCF to Peel's proposal and sought £5,375,400.

The Appeal and the Decision Letter

48. At the heart of the Council's case before the Inspector was Peel's desire to proceed in advance of the New Carrington masterplan and without contributing, proportionately, to the provision of new infrastructure for the strategic allocation including to provide for new and improved highways and transport links. However, this was not a case in which Peel was seeking an advantage by reason of the lack of the Masterplan, as is demonstrated by the history of the application. The application was made on 8th March 2022, following pre-application advice which was sought in November 2020 whereas PfE was adopted on 21st March 2025. There can be no proper criticism of the timing of the application or appeal.

49. The Council disputed Peel's viability evidence. The Council relied on the IPS, but recognised that it had neither been consulted upon nor been subject to viability testing. Peel agreed with those shortcomings and added that such a contribution would render the scheme unviable, but even if that were not the case, the IPS should attract limited weight and so the contribution would not be justified.

50. Peel also contended that the proposal would be an acceptable form of development in the absence of the financial contributions which the Council sought. It conceded that the scheme did not comply with Policy JPA30, but in the absence of a Masterplan, it was impossible for it do so. That, it contended, should not be determinative of the appeal, and the breach should be given limited weight.

51. At the appeal, Peel offered nothing on the basis that the Masterplan did not exist and the NCCF was seriously flawed.

52. The Inspector characterised the Main Issue in the appeal as whether the monetary contribution sought under the NCCF was justified. He heard expert evidence on highway impacts and concluded that it was inevitable that the proposal would exacerbate traffic congestion on the network through adding to queues [DL25], but there would be no unacceptable impact on highway safety nor would the residual cumulative impacts on the road network be severe [DL26], and thus national policy in paragraph 116 of the NPPF indicated that planning permission should not be refused on highways grounds.

53. The Inspector accurately rehearsed the key policies in the development plan [DL32-36]. He found that [DL33] *"There would be conflict with both policies* [JP-Strat 11 and JPA30] *given the proposal does not contribute to the Carrington Relief Road and other supporting infrastructure although the proposal can also not accord with a non-existent masterplan."*

54. The Inspector set out his planning balance:

"46. There would be conflict with policies JP-Strat11, JP Allocation 30, JP-C8 and JPStrat 14 of the PFE along with Policy L4 of the CS along with the NCCF and its supporting reports. The proposal would therefore conflict with the development plan as a whole.
47. However, the proposal cannot accord with a masterplan that has not been produced or which does not appear to be imminent. Further, the suggested remedy to the policy conflict with regard to this proposal would be a payment of £5,375,400 towards infrastructure within New Carrington.
48. The monetary contribution sought under the NCCF is not justified as the planning obligation which would need to be used to secure it would not meet tests a) and c) within Paragraph 58 of the Framework and the planning obligation to secure such is not necessary to make the development acceptable in planning terms.
49. This is because whilst I note that the area would not support travel to the site via active modes of travel, there would be no unacceptable impact on highway safety nor would the residual cumulative impacts on the road network be severe.
50. Further, the planning obligation which would secure the contribution would not be fairly and reasonably related in scale and kind to the development. This is due to the uncertainties in the absence of the masterplan given the lack of evidence on the design and infrastructure specifications and costings, viability testing, the significant 30% buffer as well as the lack of public consultation which restrict the weight I can afford to the NCCF."

55. He then turned to the benefits of the proposal. He found that material considerations outweighed the conflict with the development plan and allowed the appeal, subject to conditions. He then said:

"54. Despite evidence provided, given my conclusions above, it has not been necessary to consider the effect of the contribution required under the NCCF on the viability of the proposal."

56. Evidence had been called on viability and it was a feature of the parties' closing submissions, but in the light of his earlier conclusions, it was unnecessary to the Inspector's decision, he said. The Decision contains no findings on viability.

The Arguments

57. The Council draws particular attention to JPA30 Criterion 1 which requires accordance with a Masterplan. The Masterplan will include a delivery strategy which requires proportionate contributions towards the infrastructure necessitated by the Allocation as a whole.

58. Without a Masterplan, the policy imperative remains. Decision makers still have to decide what the proportionate contribution should be, not whether there must be one. It is not open to a decision maker to conclude that the IPS formulation results in too high a figure, accept that the applicant has put forward no other figure and then conclude that the development is acceptable without any proportionate contribution.

59. Firstly, the Inspector misunderstood the Policy and its basic purpose, then failed to test the Council's proposed contribution against that starting point. Instead, and secondly, he applied a different and incorrect test or approach by asking himself whether the highways impacts of the proposal would be severe in the terms set out in paragraph 116 of the National Planning Policy Framework ('NPPF'). Thirdly, this incorrect approach missed out the consequences of consenting the application in advance of the Masterplan, without a proportionate contribution. Fourthly, the weight to attach to the breach of the Policy was not identified. Fifthly, there was no account taken of the material provision for any excess payment to either not be paid or to be refunded. Sixthly, the decision was irrational because the decision misses the central point in the Policy, revealing a logical flaw in the decision making. The Inspector only asked himself what the contribution should be, not whether there should be one.

60. The Secretary of State contends that it was a legitimate planning judgement to give the IPS and the NCCF little weight. In the absence of justification for the contribution there was no obstacle to the grant of permission. The Inspector was correct to treat the absence of certainty as to the proportionate contribution as a reason for not requiring one. It was not for the Inspector to cast around for a lower figure than that contended for by the Council. The Council's case is about application of policy, not interpretation of policy. Absent a Masterplan, the policy has no free-standing requirement for proportionate contributions.

61. The Council's argument is that the development plan policies usurp the national policy in respect of highways effects. That is incorrect. The Inspector balanced the planning considerations, including the breach of Policy JPA30 and to other factors at DL48-54. So far as the repayment provision in the obligations was concerned, the Inspector was not obliged to refer to every point. Rather, he addressed the principal controversial issues in the appeal. Given his finding on the IPS and NCCF, it followed logically that the overpayment provision did not remedy those deficiencies. The contrary conclusion would undermine national policy and the purpose of the 2010 Regulations in avoiding disproportionate payments and obligations.

62. Peel adopted and supported the Secretary of State's arguments. Peel particularly emphasised its submission that Policy JPA30, Criterion 1 contains no free-standing

requirement for proportionate contributions. Peel took issue with the Council's reliance on *Persimmon.*

Discussion

The Development Plan & the Overarching Issue

63. The Inspector was presented with circumstances which did not align with the first criterion in Policy JPA30 in that a Masterplan was still in preparation, and therefore not yet adopted. However, he found that the appeal proposal did not accord with the development plan as a whole by reference to the key policies in PfE which were concerned with the allocation, its infrastructure requirements and how they would be funded.

64. The route via which the Inspector addressed the issue of the proportionate contribution to mitigate the effects of the allocation was to find: (1) that the contribution which the Council contended for was not justified by the IPS; (2) the contribution should not be sought as a matter of national policy, and; (3) the scheme, when assessed alone, would not prompt national policy to indicate refusal by reason of effect on highways.

65. In my judgment, Mr Welch and Mr Ponter are correct to submit that it was a legitimate planning judgement to conclude that the IPS should be given little weight. As they submitted, the range of material matters which go to that assessment of weight may be broad and are for the Inspector to judge: *Hampton Bishop.* There were good reasons for that conclusion, including the concession by the Council as to the importance of consultation. That undermined the justification for the quantum of the contribution which the Council sought, in addition to which Peel provided evidence and made submissions which further undermined the detail of the calculation of the contribution and thus the Council's case in that regard. Per *South Northamptonshire*, the Inspector was not looking for certainty, but he did conclude that the sum sought was not justified on the evidence. That was a matter for him.

66. The Inspector was then well placed to conclude that the three tests in national policy were not met and this part of his decision is unimpeachable, as Mr Welch submits.

67. I also accept Mr Welch's submission that when there is uncertainty about the detail and justification for works which are to be funded by a contribution from a developer, it may lawfully be concluded that the policy tests in national policy and the tests in Regulation 122(2) are not met: *Telford and Wrekin*. Such a conclusion does not oblige a decision maker to refuse permission.

68. However, the Inspector addressed the amount contended for by the Council without then addressing the contingent issue of whether there should be a contribution at all. In my judgment, the Inspector was bound to address that further issue by reason of the development plan policies.

69. The relevant development plan policies are to be read together and as a whole in the normal way, though JPA30 is evidently central to that exercise, as the parties and the Inspector correctly recognised. The policy is not ambiguous or internally contradictory. I consider that it is clear. The parties do not advance rival interpretations of meaning of the text. Rather, the Council contends that the development plan requires proportionate

contributions to infrastructure, absent a masterplan, whereas the Defendants contend that it does not.

70. JPA30 is a long and detailed policy in which the authors and the examining Inspectors of PfE have gone to some trouble to emphasise the importance of transport, integration and accessibility issues via six criteria which address measures to promote those objectives for the allocation as a whole (Criteria 8-13, at paragraph 38 above). Albeit that they are indicative, these are not on any view minor measures. They include works to a motorway junction and facilitation of a relief road, for example. Criterion 1 ensures that "… *the whole allocation is planned and delivered in a coordinated and comprehensive manner with proportionate contributions to fund necessary infrastructure."*

71. JPA30 sets out requirements, including a requirement to produce a Masterplan. The policy is directive in that regard, but it also goes further than to require a Masterplan in that it expressly refers to other policies on the funding of necessary infrastructure: JP-D1. The last sentence of Criterion 1, which I recite in the previous paragraph, is a policy requirement for proportionate contributions which relate to the whole of the allocation. The policy is one of seeking to distribute the costs of necessary infrastructure amongst the component sites and landowners.

72. I have reached this conclusion without the assistance of the materials which are extrinsic to the development plan. As Mr Forsdick submitted, those materials confirm the conclusions which I have reached above. However, it is the plan, not its drafting history nor the reasons which support its soundness, which is the statutory policy basis for all who rely on it to assess the planning merits of a proposal. In this case, the development plan is clear and extrinsic materials would add nothing even if it were appropriate to consider them: see the authorities at paragraph 39 above.

73. In my judgment, the policy of proportionate contribution had to be grappled with in the decision. It was not straightforward for either of the parties nor for the Inspector in the absence of the Masterplan, but proportionate contribution is nevertheless a plain, prominent and clear aspect of the development plan, and it is fundamental to its purpose. The policy in JPA30, and its related policies elsewhere in PfE, tell the reader that the allocation as a whole is not deliverable in an acceptable form without infrastructure funding. That position does not and could not change by reason of the absence of the Masterplan. The approach is stepwise, as is commonplace: strategic allocation and policies first, masterplan second. The nature of the identified infrastructure is to cross the whole of the strategic allocation in both spatial and policy terms. The broad spatial scope of that linear infrastructure is clear in the schematic plan (paragraphs 31 to 35 above). In other words, it will be as clear on the ground as it is evident from the policy text. This is a feature of the development plan which the decision maker is required to both understand and to address: *Gransden*.

74. If the development plan is understood in respect of the need to provide infrastructure which crosses the whole allocation, enables its delivery and mitigates its effects, then, in the absence of an adopted Masterplan, the issue arises as to whether to permit a site to come forward with no proportionate contribution. The Inspector made no findings on viability because he rejected the Council's calculation and justification for the sum it contended for. However, the fact that he stopped at that point in his reasoning indicates that he did not understand the development plan properly, He did not examine

the effect of the grant of permission without a proportionate contribution to infrastructure which the whole allocation, as the development plan required. That was a misunderstanding of the development plan.

75. That legal error may be put another way in that it is not rational in the sense that it omits a consideration which is evidently material, absence of which leaves a critical gap: *R (KP) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWHC 370 (Admin), per Chamberlain J at [56].

Issue 2 – Highways Effects

76. Issue 2 flows from the overarching issue in that the off-site effects of development included highways impacts which had been addressed in the development plan by reference to the allocation as a whole. The Inspector's assessment of highways impacts was by reference to the proposal alone and by reference to national policy, and there it stopped.

77. The Inspector's conclusions in respect of highways effects omit consideration of: (1) the role of the appeal scheme as a contributor to the effects of the allocation as whole and, and; (2) a contributor to enabling the delivery of new infrastructure and its associated benefits. These are both elements in the development plan policies, as is the fact of the allocation of the Site. To divorce the policy support for the appeal scheme from the overarching policy framework for the large strategic allocation is a separation with potential consequences which a decision maker has to seek to identify and to engage with. When that is done, the balance of considerations may indicate refusal of planning permission and dismissal of the appeal, or it may not. The result in this case, either way, is a matter for the decision maker, but in my judgment it is a part of the decision making which is necessary to give effect to the duty under s38(6) of the 1990 Act.

78. This is not to say that the Inspector should not have addressed the national policy threshold. Rather, the problem lies in using the result of that assessment alone, in place of a central part of the strategic policy which is designed to ensure that this large allocation has a reasonable prospect of being delivered, and without unacceptable impacts. He needed to do both. In addressing the highways impacts of the proposal alone, the Inspector omits to address the problem which the development plan seeks to mitigate and to solve via new and improved infrastructure. It is another illustration of the Inspector's misunderstanding of the development plan.

79. Absent the Masterplan, quantification of contributions was difficult, as the result in this case showed. However, decision making of all kinds frequently includes factors which are difficult to measure or where it would be desirable to have more precise information, but if the factor is material, it may not be omitted from consideration. The importance of the factor in the decision may have to be gauged on the basis of the context, experience or by reference to other and overriding factors. In such circumstances, the need to consider the ill-defined factor does not fall away, and the decision maker may find that the circumstances require there to be delay in order to address the information requirement. In a planning decision, that may, or may not, amount to refusal of permission or dismissal of an appeal.

80. This is a case in which the development plan required proportionate contributions. Consistent with the reasoning in *Persimmon*, there is a question to be answered as to whether permission should be refused by reason of the burden which would evidently be placed on other developments in the allocation if the appeal scheme made no contribution. However, *Persimmon* does not compel refusal and dismissal of the appeal. Mr Welch was correct to submit that *Persimmon* does not establish any principle of that sort. The fact that an impugned decision has been found to be lawful says nothing about whether the impugned decision should be followed.

81. The same point applies to this case. I have found only that there was an omission: (1) to consider whether the appeal scheme should or should not make some contribution to the infrastructure of the allocation as a whole, having regard to the highways effects of the allocation as a whole, and; (2) with the conclusion at (1) in mind, whether the planning balance indicates grant or refusal.

Conclusions on Issues 1 and 2

82. Returning to the issues as identified in paragraphs 7 and 8 above, the overarching issue resolves in the Claimant's favour for the reasons I have set out. Therefore, Grounds 1, 2, 3 and 6 succeed.

Issue 3 - Weight

83. This short point is that the Inspector did not specifically state the weight which he attached to the breach of development plan policies. It is said that the planning balance is flawed as a result.

84. Both Mr Welch and Mr Ponter submitted that the planning balance as articulated in the Decision at paragraphs 46-54 is not a mathematical exercise of listing exact weight to be given to each factor. They submit that the planning balance is adequate and free of legal error.

85. I would decline to find any legal error in this regard. The Decision is clear about the fact of non-compliance with the development plan. The Inspector is also clear about the factors which he took into account to balance against that lack of compliance. Read fairly and as a whole, the Decision explains why the balance has been struck as it has. The essential question for the Inspector was whether the lack of compliance with the development plan was outweighed and he addressed that question adequately, albeit that I have found that for other reasons there was legal error which vitiated his conclusion.

86. On this issue, the Secretary of State's and Peel's arguments succeed. Ground 4 fails.

Issue 4 – Repayment provision

87. The Council submitted that the drafting of a legal agreement would include a provision for the repayment of sums of money which were in excess of that which was ultimately found to be necessary and otherwise justified. If a fair assessment is to be made of the justification for the contribution sought, that assessment must take account of the mechanism to adjust payments in the light changing circumstances, in the future.

88. I accept Mr Welch's submission, supported by Mr Ponter, that the Inspector was required to address the principal controversial issues, and no more. The Inspector can be taken to know and understand that legal agreements of the type at issue routinely contain repayment provisions, but the Inspector was not under any obligation to state that, on the facts of this case. In this case, the Inspector found that the sum was not justified and was entitled to reach that conclusion for the reasons which he gave and was not under any duty to say more.

89. On this issue, the Secretary of State's and Peel's arguments succeed. Ground 5 fails.

Conclusion

90. The claim for statutory review succeeds on Grounds 1, 2, 3 and 6. Grounds 4 and 5 fail. The Decision will be quashed.

91. I am grateful to all Counsel for their written and oral submissions, and for the precision and economy of their delivery.