Neutral Citation Number: [2025] EWHC 470 (Admin)

Case No: AC-2024-BHM-000077

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

The Birmingham Civil Justice Centre
The Priory Courts, 33, Bull Street, Birmingham B4 6DS

Date: 7 March 2025

Before :

HHJ WORSTER
(sitting as a Judge of the High Court)

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Between :

NG8 2RJ Limited	**Claimant**
- and -	
The Secretary of State for Housing, Communities and Local Government	**Defendant**
-and-	
Broxtowe Borough Council	**Interested Party**

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- -

William Webster (instructed by **Freeths**) for the **Claimant**
Matthew Dale-Harris (instructed by **The Government Legal Department**) for the **Defendant**
The Interested Party did not appear and was not represented

Hearing date: 11 February 2025

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Judgment Approved by the court for handing down (subject to editorial corrections)

This judgment was handed down remotely at 10.30am on Friday 7 March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ WORSTER :

1. The Claimant is the owner of land to the south of 70-72, Sandy Lane, Bramcote, in Nottinghamshire ("the land"). The 1st Defendant is the Secretary of State for Housing, Communities and Local Government, and the 2nd Defendant is the relevant planning authority for the land ("the Council"). I heard the application on 11 February 2025 and reserved judgment. The Claimant and the Secretary of State appeared by Counsel. The Council took no active part in the proceedings and did not appear at the hearing before me.

2. The Claimant challenges the decision of the Secretary of State's Inspector set out in a decision letter dated 19 December 2023 (the "DL"). The Inspector dismissed the Claimant's appeal against the Council's refusal of its application for planning permission for the development of the land. The Claimant's development proposal is described in the planning application form and in the heading of the DL as follows:

> *Erection of two dwellings on land off Sandy Lane, Bramcote to enable the removal and eradication of Japanese Knotweed, to create a publicly accessible woodland nature park (to be known as Bramcote Unity Park) extending across all the remaining land in the ownership of the applicant (ie all land within the blue line ownership area) and to bring about significant improvements in the biodiversity value of this land.*

3. The land is infested with Japanese Knotweed and the essence of the Claimant's case is that the only way to fund the eradication of this highly invasive plant is to develop the land and so generate sufficient profit to do the necessary work. The claim as issued relied upon wide ranging grounds. Permission was refused on the papers, but the Claimant renewed its application for permission and reformulated the grounds. Ground 1 as reformulated was that:

> *The inspector erred in law in that she failed to give sufficient reasons for her decision and the evidential basis upon which it was made.*

4. I heard the renewal application on 31 July 2024, and granted permission to proceed on ground 1 on a limited basis. I refer to the following paragraphs from the judgment I gave on that occasion:

> *33. Given the centrality of the issue … the evidence as to the need to eradicate the Japanese Knotweed and the issues of funding if there were no development, I have come to the conclusion that it is reasonably arguable that the reasons given here do not enable the parties to understand how this conclusion was reached. Is there an acceptance of the claimant's evidence that eradication is the only way forward? The reference to "better management" might suggest not, in which case how is there to be better management and what will that entail?*
>
> *34. The Inspector says that it is not entirely dependent on the development. The claimant says that it is. For what reason does the inspector come to a different or slightly different conclusion.*
>
> *35. I recognise that I may be adopting too rigorous a reading, but this is the only passage in the decision letter which deals with this issue. There would be no*

need to recite or review the evidence as a whole, or to go into great detail. But what there [is] is at least arguably not adequate.

Consequently, permission was given on Ground 1:

> *…so far as it relates to the Inspector's reasons for giving reduced weight to the eradication and management of Japanese Knotweed.*

Permission was refused on all other grounds. The Secretary of State filed detailed grounds of defence on 10 September 2024 and the matter was set down for hearing. Counsel both provided skeleton arguments, and Mr Webster provided a speaking note in which he set out his "Core Submissions". Oral submissions took the best part of the day.

The history

5. The Claimant purchased the land at auction in 2018. Its case is that it was not then aware that the land has a serious problem with Japanese Knotweed. In 2019 there was an application for planning permission for 11 houses on a site which included the land and an adjoining parcel of land. That application was refused, as was an appeal brought by the Bramcote Unity Park Charitable Incorporated Organisation.

6. On 11 October 2022, the Claimant made the application I refer to at paragraph 2 above. That application was supported by a statement from the Claimant's planning consultants, Geoffrey Prince Associates. The statement is a substantial document, and sets out the history of the land and the various planning considerations. The passage to highlight is at paragraph 4 which deals with the alternatives to the Claimant's proposal to use the proceeds from the development of the land to eradicate the Japanese Knotweed. It says this:

> *In reaching a decision on the preferred scheme, the following alternative solutions have been considered to address the fundamental need to remove the Japanese knotweed to protect and enhance this privately owned land. The alternative solutions are: (1) do nothing; (2) market and sell the site; (3) seek alternative sources of funding, eg grants; and (4) fence off the land affected by Japanese knotweed.*

7. The Claimant's statement is to the effect that all that can reasonably be done to market and sell the site has been done. It concludes that the land is not saleable; that grants will not be available - certainly not in the sums needed to eradicate the Japanese knotweed; that fencing off will not work; and that doing nothing presents risks to the land and to the land which surrounds it because the Japanese Knotweed will spread. The Claimant's case is that it has no funds, and paragraph 4.5 of the statement refers to the possibility that it might go into liquidation if the development does not proceed. The Claimant's case is that development is the only realistic means of providing the funds needed to eradicate the Japanese Knotweed.

8. The Council responded to the application. The Officer's Report recommended refusing the planning application. The development would run contrary to planning policy because the land was part of a Green Infrastructure Asset ("GIA"), a Green

Infrastructure Corridor ("GIC"), a Prominent Area for Special Protection (Bramcote Hills and Bramcote Ridge) and the Alexandrina Plantation Local Wildlife Site (a Biodiversity Asset) . There is no issue as to the application or the terms of the relevant policies, but in summary: (i) Policy 16 required that where development had an adverse effect on GIAs and GICs, the need for and benefit of the development would be weighed against the harm caused; and (ii) Policy 28 provided that:

> *… permission will not be granted for development which results in any harm or loss to the Green Infrastructure Asset, unless the benefits of development are clearly shown to outweigh the harm.*

9. The Claimant's case was that the purpose of the development was to "enable" the eradication of the Japanese Knotweed on the land and also to open up other land to public access as a "Community Park". The Officer's Report says this (bundle page 181):

> *Japanese Knotweed is classed as a non-native invasive species, which, if left untreated, can spread and which has the potential to undermine the foundations of buildings. It should be noted that it is the legal responsibility of the landowner to ensure that a non-native invasive species does not "escape" from their land (that is, cause it to be grown outside of land they control). The site and wider area within the ownership of the applicant is infested with JKW and it is acknowledged that the eradication of the JKW would be a benefit to the ecology of the land as well as bringing peace of mind to nearby landowners. However, this could and should be managed outside of the planning system before it affects adjoining land.*

10. On the following page of the report it was again acknowledged that the site was predominantly overrun with Japanese Knotweed and that eradication would present a biodiversity net gain on its own. However, the conclusion was as follows:

> *Notwithstanding the above, whilst it is acknowledged that the eradication of the Japanese knotweed would be a benefit to the biodiversity asset, this can be achieved without the need to construct built development, and additionally, there is no significant identified need for housing of this size and type in the area*

The Officer takes the benefits arising from the eradication of Japanese Knotweed into account when dealing with the planning balance. The matter is accorded limited weight since the proposal or their consequences are vague, and because (in any event) it is the responsibility of the landowner to control the spread of Japanese Knotweed. The Officer's Report concludes that the proposal would fail to accord with adopted local plan policies *…as inadequate justification has been provided to allow the loss of GIA and LWS for the construction of two dwellings*.

11. The application was refused. On 31 May 2023, the Claimant appealed. The parties agreed that the appeal should be by written representations. The Claimant's case was set out in a substantial statement from its architect. This included the statement

prepared by the planning consultants for the October 2021 application. The conclusions at paragraph 8 begin with this:

> *The need to remove the Japanese knotweed on this site has been extensively commented upon during the planning process and it has been agreed by all consultees below that there is a demonstrable need and significant benefit arising as a result of the removal of Japanese knotweed to enable the publicly accessible community woodland park.*

The statement also refers to a variety of other benefits said to flow from the development. Whilst the argument before me focussed on the issue of Japanese Knotweed, it is important to recognise that when the Inspector came to deal with the appeal, she had far more to consider that simply the one issue. The other benefits included dealing with problems in relation to vandalism and trespass, the provision of unrestricted access to a "Community Park", enhancing connectivity links and so forth.

12. The Council filed written representations in response. They were relatively brief (7 pages plus 7 pages of plans and other documents). Paragraph 4 is headed "Justification for refusal". This reiterates the conclusions of the Officer's Report to which I have already referred. Paragraph 4.3 referred to the issues to be balanced, and paragraphs 4.4 and 4.5 dealt with Japanese Knotweed. In paragraph 4.4 it was acknowledged that the site was predominantly overrun with Japanese Knotweed, that the biodiversity value of the site was relatively poor compared with the surrounds, and that (as confirmed by the Nottinghamshire Wildlife Trust) the eradication of the Japanese Knotweed would present a biodiversity net gain on its own. Towards the end of that paragraph, the Council submit as follows:

> *Notwithstanding the above, it is acknowledged that the eradication of Japanese knotweed would be a benefit to the biodiversity asset. It is the local authority's consideration that eradication can be achieved without the need to construct built development within the site and, additionally, there is no significant identified need for housing of this size and type in this area.*

13. In paragraph 4.5 the Council say this:

> *The eradication of the Japanese knotweed is a benefit to the ecology of this and the adjacent site. The LPA afforded this limited weight since the proposals, although consequences are vague and in any event it is the responsibility of the landowner to control the spread of Japanese knotweed. The need for the construction of two large dwellings has not been adequately justified.*

14. The Claimant submitted a reply running to 35 pages. At internal page 16 and following it repeats the points that have been made about the lack of alternative funding solutions to the problem of eradicating the Japanese Knotweed. There is further reference to the evidence about offering the land for sale, and to the "expert

evidence" obtained by the Claimant about how to go about treating the Japanese Knotweed effectively.

15. That expert evidence was set out in two letters from Matthew Day of Environet UK Limited. The first is dated 8 December 2021. The author had been involved in making recommendations in relation to the previous application for planning permission for 11 houses, and had been asked to comment and make recommendations on the planning application for 2 houses. At paragraph 9 he expressed the view that physically removing all knotweed material (i.e. digging it out) was the only way to eradicate the plant from the area. He went on to consider the use of herbicides. This created its own problems for the environment and for people. He noted that the licence period for the use of Glyphosate was currently 5 years. At paragraph 15 he expressed the view that there was so much knotweed on this site that a herbicide treatment of *far longer than 5 years, more likely 10…* would be needed. The context of that advice was what was needed to eradicate the knotweed. That is plain from the words which follow:

> *Any herbicide applied should therefore only be seen as a control approach and not a way to kill off the plant.*

16. In a second letter dated 16 March 2023 Mr Day repeated his view that the only option to eradicate the knotweed was the physical removal of the plant using his "Xtract method", and that there was no chemical approach available which would achieve eradication. In order to control Japanese Knotweed, large amounts of herbicide would be needed over a lengthy period. That presented problems for human interaction and the environment. He also referred in that letter to the "landowner's responsibility".

> *Legally there is no restriction in having knotweed on their land and the plant can spread naturally within the confines of their land. They're not however allowed to let the plant spread into neighbouring land, covered under Criminal Law – Wildlife and Countryside Act 1981 and Civil Law – Civil Nuisance (Encroachment). From our point of view the landowner has taken all reasonable and responsible steps within their financial control to ensure that this doesn't happen …*

I observe that whilst paragraph 4.5 of the Officers Report makes no reference to the specifics of how to enforce the landowner's responsibilities, it is apparent that the Claimant and its advisors were aware of them.

The Decision Letter

17. The Inspector's decision is in a familiar format. The parties agree that the main issue is properly identified by the inspector at paragraph 7. She says this:

> *The main issue in this appeal is whether the benefits associated with the proposal would outweigh the harm or loss of a green infrastructure asset and local wildlife site.*

Indeed, that is what this appeal was about. The Council's case was that the loss of amenity which followed from the loss of a Green Infrastructure Asset and Local Wildlife Site were not outweighed by the benefits which accrued from the development.

18. The Inspector then sets out in a structured way the reasons for the conclusion that she reaches. In describing the site she notes that it was situated between two local nature reserves and that (a) it was within the Bramcote Hills and Bramcote Ridge Prominent Area for Special Protection ("PASP"), a GIA; (b) that there was a green infrastructure corridor ("GIC") running through it; and (c) that it was part of the Alexandrina Plantation Local Wildlife Site ("LWS"). The DL also refers to her site visit at DL/12 and to observing for herself that there was a "significant overgrowth of Japanese Knotweed". At DL/9-11 the Inspector refers to the development plan policies relevant to both GIAs and LWSs and to the policy tests to be applied. At DL/13, she summarised the development proposed.

19. The Inspector was conscious that the proposal she was considering was of a far smaller scale that the proposal for 11 dwellings which had previously been refused. At DL/14 she identified the harm which the current proposal would cause to the GIA and LWS:

> *Nevertheless, the proposed dwellings, together with their gardens and associated residential use of the site would introduce domestic activity, built form, hard landscaping, and associated domestic gardens. This would advance a material change away from the overgrown but fundamentally green, undeveloped, and natural part of the PASP to something characteristically suburban. As the appeal scheme does not propose any replacement provision of the GIA to domestic use, part of the conservation value of the appeal site would still be lost by virtue of the proposed residential development, which would also result in harm to the GIA. There would also be significant harm to the LWS due to the domestic use of the appeal site and overall increased use of the site and wider blue line boundary area.*

20. The DL then considers the benefits which the Claimant contends would outweigh these harms. The eradication of the Japanese Knotweed is dealt with at DL/15-17. There are two important points to make at this stage. Firstly, the DL is to be read in the context of the parties representations, and thus the issues that it was necessary to determine to reach a decision on the appeal. The Council did not dispute that the eradication of the Japanese Knotweed brought benefits, or that eradication would be a difficult and costly exercise. Nor did it directly counter the "expert evidence" the Claimant put forward as to how best to go about the process of eradication. Secondly, there is a distinction to be drawn between the eradication of Japanese Knotweed from the land (and the Claimant's surrounding land which was similarly infested) and the prevention of the spread of Japanese Knotweed from the Claimant's land to land owned by others. The two issues are related, but they are not the same.

21. The Inspector expressly recognises that amongst the benefits of the development would be the removal of Japanese Knotweed within the appeal site and on some of the land within the blue line boundary, as well as to assist neighbouring landowners

regarding Japanese Knotweed. When she visited the site she confirmed that she had observed "*JKW to be evident, as identified in the appellant's evidence"*. She then says this:

> *16. I note that the existence of JKW could hinder the appellant's disposal of the site and that eradication of the plant is challenging and costly. However, the appellant, as landowner, has certain obligations in relation to the JKW in respect of preventing its spread to neighbouring landownership in any case, even if the development did not take place. JKW is a non-native, invasive plant species and therefore its removal from the appeal site and eradication also from parts of the wider locality, would be beneficial in terms of biodiversity and habitat enhancement and preventing its spread. Nevertheless, the removal and better management of JKW on the appeal site moving forward and allaying the concerns of neighbours in relation to JKW, are not entirely dependent on the proposal coming forward.*
>
> *17. Moreover, as demonstrated by the Development Viability Appraisal, there would be added land value as a result of the proposed development. I appreciate that the Nottingham Surveyor's assessment identifies there would be surplus from the costs of the two dwellings, which could be used to eradicate the JKW and undertake restoration, planting, and maintenance of the proposed Woodland Community Park. However, I do not have any substantive details of the costs of such works and the long-term maintenance costs associated with this community park to evidence this could be achieved after landowner profit.*

I return to DL/16 below.

22. The DL then considers habitat enhancement leading to Biodiversity Net Gain ("BNG"). The Inspector explains why she gives this moderate weight at DL/18-20:

> *18. The proposal would also offer habitat enhancements that would improve the local habitat environment and create Biodiversity Net Gain (BNG). The creation of enhancement planting within the blue area, I acknowledge, is a matter appreciated by Nottinghamshire Wildlife Trust's officer and noted to be in line with the Trust's aspirations for a BNG county standard. However, whilst BNG is a nationally encouraged benefit of development proposals and Policy 31 of the BLP requires all development proposals to seek to deliver a net gain in biodiversity, there are currently no specific national or local standards in place to specify how much gain is required.*
>
> *19. The proposed biodiversity unit uplift provided by the scheme would be higher than the mandatory 10% requirement for BNG due to come into force in 2024, under the Environment Act 2021. However, this mandatory requirement would only relate to biodiversity units in relation to the development site itself and not to that of a wider area (blue area) also. Overall, the benefits associated with biodiversity enhancements carry moderate weight in favour of the proposal.*

23. The works on the surrounding land (the blue land) are considered at DL/20. The Inspector gave limited weight to these works, whilst noting that they would support the aspirations of the local community forest and associated heathland restoration and nature recovery.

> *Additionally, I appreciate that the proposed works to land within the blue line boundary would support the aspirations of Greenwood Community Forest, and the restoration of heathland habitats and nature recovery. However, it is not clear from the evidence provided why such aspirations could not be realised without the proposed development, as no substantive evidence has been provided about the specific works that would be carried out and the costs of such works, nor to explain how this would directly relate to the proposed development. I therefore provide limited weight to these benefits.*

24. The Claimant's offer to secure formal public access to a "*newly designated Woodland Community Park*" is then considered. The Inspector gives it limited weight. At DL/21 she notes that the site's function as a designated GIA and "*green wedge landscape function*" did not require public access and that while the formalisation of public access could provide improvements and meet " *broader strategic objective to connect greenspaces*" there were "*no substantive details of existing links to gauge how these might be meaningfully improved*". At DL/22 she noted the issues with trespassing, but took the view that these were "*private matters*" and questioned how making the blue land accessible to the public would make the Claimant less vulnerable to insurance claims given that the land would remain in private ownership. She also noted that in the light of "*currently limited measures in place to restrict public access, … the enhancement to the GIA would be limited*".

25. At DL/23, the Inspector addressed the Claimant's case that "the proposal would help to meet an identified need for more open space in the locality; enhanced green connectivity links, which may contribute towards the policy agendas of the Big Track and the Robin Hood Way." She considered the Broxtowe Borough Council Green Infrastructure Strategy (2015-2030), but took the view that it:

> *… did not offer compelling evidence to show that there is a particular lack of public open space/amenity space provision within the local area, nor that a community park or a public open space is required to support the delivery of the proposed dwellings. Indeed, the Sandy Lane Public LNS is near to the appeal site and provides an area of publicly accessible open space. This causes me to doubt that there is a demonstrable need for the proposed development. Therefore, this reduces the weight to the benefits associated with providing an accessible and privately managed Community Park area adjacent to the appeal site.*

26. At DL/24-25, the Inspector dealt with an offer to transfer an informal football pitch within the Sandy Lane local nature reserve to the Council. She accepted that it was of some wider benefit, but gave it little weight given that it was a relatively small piece of land and had been in public use for some time.

27. At DL/26 she considered the benefits of the development and concluded in these terms:

> *I do not consider that, even cumulatively, the weight of the benefits in favour of the proposal would outweigh the harm and loss to the GIA and LWS. A lack of objection on certain matters that are unrelated to the main issue is a neutral consideration that does not weigh in the scheme's favour. I therefore find the proposal would conflict with Policies 28 and 31 of the BLP (2019) and Policies 16 and 17 of the GNACS (2014), which, amongst other matters require existing GIAs to be protected and enhanced and that development would only be allowed where the benefits clearly outweigh the harm caused to the GIA and BA/LWS.*

There is then a passage dealing with the offer of a unilateral undertaking. I refused permission on the argument which arises from this aspect of the DL.

28. The final conclusions are set out at DL29-31:

> *29. Overall, whilst the proposal would realise some benefits, including the removal of the JKW and BNG, these and any of the other benefits advanced would not outweigh the harm identified.*
>
> *30. For the reasons given above, I conclude that the proposed development would conflict with the development plan taken as a whole and material considerations, including the National Planning Policy Framework, do not indicate that the appeal should be determined other than in accordance with the development plan.*
>
> *31. I accordingly dismiss the appeal.*

The relevant legal principles

29. This is a reasons challenge. The main considerations to have in mind when considering a reasons challenge were summarised by Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No 2)* [2004] UKHL 33 at [36]:

> *The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material*

consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.

30. The key "familiar principles" applicable on a section 288 challenge were restated by Lindblom LJ in *St Modwen Developments Ltd v SSCLG* [2017] EWCA Civ 1643 at [6]. The first two principles are of application in this case:

(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" …

(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) …

Mr Dale-Harris emphasises that the adequacy of reasons given is to be addressed by reference to the "principal important controversial issues" and need only refer to those main issues "not to every material consideration".

31. Mr Webster also referred me to the judgment of Sir Thomas Bingham MR *in Clarke Homes v Secretary of State for the Environment* [2017] PTSR 1081 @ 1089 H:

There are dangers in over-simplifying issues of this kind as also of over-complicating them. I hope that I am not over-simplifying unduly by suggesting that the central issue in this is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved as the parties agree on a straightforward down to earth reading of his decision letter without excessive legalism or exegetical sophistication..

32. Mr Dale-Harris referred to two further authorities. Firstly, the decision of Mrs Justice Thornton in *Vanburgh Court Residents Association v Lambeth LBC and ors* [2022] EWHC 1207 (Admin). The relevant issue in *Vanburgh* was whether an existing roof was capable of safely supporting a proposed extension. The parties agreed that this was primarily a matter for the building control regime rather than the planning regime. Thornton J held that the existence of the building control regime was a

material planning consideration to be weighed in the balance, and that it was open to the Council to place reliance on the effective operation of that regime in determining the planning application, provided that it satisfied itself that the building control regime was capable of regulating the relevant issues; see at [39]. Mr Dale-Harris relies upon this case to support the Inspector's reliance upon the landowner's obligations to control the spread of Japanese Knotweed. Mr Webster would distinguish the certainty and rigour of the enforcement of building control with the less certain process of preventing the spread of Japanese Knotweed by the enforcement of private rights (by claims in nuisance) or the use of Community Protection Notices under the Anti-social Behaviour, Crime and Policing Act 2014.

33. Secondly, the decision of the Court of Appeal in *Secretary of State for Communities and Local Government v Allen and anor* [2016] EWCA Civ 767. The leading judgment was given by Lindblom LJ. The issue in *Allen* was whether the Secretary of State gave adequate reasons for disagreeing with his Inspector's recommendation to allow an appeal against a refusal of planning permission for the continued use of land for the siting of caravans. The case involves the consideration of a different legal process, but the approach taken to the issue of the adequacy of reasons appears to be the same as would apply in this case. Indeed, given that in *Allen*, the Secretary of State was disagreeing with his own Inspector, if there were to be some difference of approach, it might be expected that the approach in *Allen* would be the stricter.

34. Each case will turn on its facts, and the nature of the decision in *Allen* was different to the decision in this case, but key to the decision at first instance was that the Judge (Gilbart J) saw the central issue as being whether or not the Secretary of State had grappled with the findings of fact and conclusions of the Inspector about the contribution of this site to the supply of pitches. He noted that the Secretary of State had failed to identify any finding of fact or planning judgment made by the Inspector on the environmental issues at the site, or its suitability as a place to live, with which he disagreed, and (I summarise) in consequence, had failed to give adequate reasons for his decision; see at [17].

35. Lindblom LJ took a different view as to the "principal important controversial issue", but it is the approach to what amounts to "reasons" which Mr Dale-Harris refers to:

> *18. ... In my view the reasons the Secretary of State gave for dismissing the appeal, including his reasons relating to the Meadow Lane site, are "proper, adequate and intelligible". They express and explain his conclusions on the "principal important controversial issues". They make clear to Mr Allen, and to the other participants in the appeal, why the appeal was lost and the application for planning permission refused. That is what they had to do (see the familiar passage in the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council v Porter (No.2), at paragraph 36).*
>
> *19. Where the Secretary of State disagrees with an inspector, as he did in this case, it will of course be necessary for him to explain why he disagrees, and to do so in sufficiently clear terms. He must explain why he rejects the inspector's view. He must do so fully, and clearly. But there is no heightened standard for "proper, adequate and intelligible" reasons in such a case. Whether the reasons given are "proper, adequate and intelligible" will always depend on the circumstances of the case, and in a case where the Secretary of State*

> *differs from his inspector this will depend on the particular circumstances in which he does so … It is a truism that the Secretary of State does not have to give reasons for his reasons. What he has to do is to make sure that his decision letter shows why the outcome of the appeal was as it was, bearing in mind that the parties to the appeal know well what the issues were. In this case he did that.*

36. It is the reference in the final sentences of paragraph 19 to "no reasons for reasons" that Mr Dale-Harris relies upon particularly. The language of the test being applied in *Allen*, and the reference to *South Bucks*, support his submission that the "no reasons for reasons" approach is of general application in reasons cases. That said, it is no more than an application of the familiar principles, and is not to be elevated beyond that. The extent to which it is necessary to explain the "reason" will depend on what is required in the individual case.

Ground 1 – the Claimant's submissions

37. At paragraph 2 of his Core Submissions, Mr Webster says this:

> *The crux of C's case is that the Inspector failed to explain in an intelligible way why the eradication of the [Japanese Knotweed] within the red and blue parcels, funded by limited enabling development, was not the only way forward.*

The reference to the "only way forward" is to the view of the expert I refer to at paragraph 14 to 16 above. This is, in effect, the same point as the failure of the Inspector to explain what she meant at DL/16 when she said that:

> *… the removal and better management of JKW on the appeal site moving forward and allaying the concerns of neighbours in relation to JKW, are not entirely dependent on the proposal coming forward.*

38. Mr Webster submits that the DL leaves the position unclear. What is meant by better management? The Claimant's expert rejects the use of herbicides as a means of eradicating the Japanese Knotweed, and the local Tree Officer and the Nottinghamshire Wildlife Trust were supportive of the Claimant's plans for digging out the Japanese Knotweed. If the DL is referring to the landowner's obligations to prevent spread, then (i) it does not say so; and (ii) the remedies for preventing the spread of the Japanese Knotweed onto other land are uncertain at best. Mr Webster took me to the requirements of reasonableness (or a lack of it) for the issue of notices pursuant to section 43 of the 2014 Act, and to the requirements for an action in nuisance. He submitted that what the Claimant company could reasonably be required to do was a function of (amongst other things) its ability to finance the work. The Claimant's position was that it had no other assets, and that the land itself was worthless. Hence the reference in the representations to the Inspector of it going into liquidation. Was it (Mr Webster asks rhetorically) the Inspector's view that the Claimant could afford to remove the Japanese Knotweed without the development proceeding? If it was, she did not say so.

39. In dealing with his case that the reasons given for the decision by the Inspector were not intelligible, Mr Webster submitted orally that she had to decide and explain why the benefits which arose from the eradication of the Japanese Knotweed did not trump

or exceed the harm. To do that she had to deal with the expert evidence that eradication was the only way forward, and what would happen if the situation was left as it was. The failure to refer to the Claimant's planning statement or to the evidence of the Claimant's expert on this matter is said to give rise to prejudice, because the Claimant does not understand whether or not this evidence was accepted, why its appeal failed, or how to assess its prospects of obtaining some alternative planning permission.

40. Mr Webster also criticised the Inspector's failure to consider (i) the Claimant's planning consultant's treatment of the alternative solutions to the issue of Japanese Knotweed outside the planning system; (ii) to identify any alternative regime for eradication or control; or (iii) to consider or otherwise satisfy herself that those regimes would be capable of regulating an escape of Japanese Knotweed from the land in practice. He submits that a reasoned decision was required in relation to those matters; see in particular Core submissions paragraphs 10 and 13.

41. Mr Webster also criticised the Inspector's failure to explain why the creation of a community park on the blue land could not be treated as part of the overall development; see paragraph 14 of his Core Submissions. Mr Webster's submission orally was that removing Japanese Knotweed from the blue land must be a relevant consideration to the question of whether or not to grant planning permission.

The Defendant's submissions

42. Mr Dale-Harris formulates the question for the court in this way in his skeleton argument:

> *The essential issue raised by the limited ground permitted … is whether the Inspector was required to explain why it was she thought that there was at least some prospect of the Japanese Knotweed infestation on the appeal site being managed or removed without the Proposal coming forward.*

He makes two basic submissions. Firstly, that there was no need to set out such an analysis in order to meet the standard of reasons required. Secondly that in reality many of the Claimant's criticism are a challenge to the rationality of the decision rather than to the adequacy of the reasons.

43. Mr Dale-Harris submits that the first step is to identify the principal important controversial issue. That was whether the eradication of Japanese Knotweed (on its own or taken with the other benefits the Claimant put forward) was sufficient to outweigh (or clearly outweigh per Policy 28) the harm caused by the development. It was not whether there was an alternative means of managing the Japanese Knotweed. That was an issue within an issue. The Inspector was dealing with a broader question, and the reasons for her decision were adequate and intelligible.

44. Secondly, he accepts that the Inspector did not set out a detailed explanation of why she gave the removal of the Japanese Knotweed less weight that the Claimant had argued for, but she accepted that it would be challenging and costly, and that removing it would have benefits for biodiversity and for the prevention of its spread. These were public benefits of the development which she recognised, and which were to be weighed in the balance. In that context at DL/16 she noted the obligations of the landowner to prevent spread, even if the development did not take place, which meant that there "might" ("not entirely dependent upon") be ways of removing or managing the Japanese Knotweed otherwise than as enabled by the Claimant's development.

Here Mr Dale-Harris emphasises that the Inspector is looking at the issue of spread rather than eradication.

45. Thirdly, whilst the landowner's obligations in relation to spread were not identified, he submits that there is sufficient in the context of the material known to the parties. There are non-planning regimes to enforce those obligations, and whilst those entail a consideration of what is reasonable, the context is the expression of the view that control is "not entirely dependent" upon the development coming forward, and nothing more definite than that. Fourthly, there was a consideration of what would happen if permission was refused for the Claimant's development. The Japanese Knotweed would remain on the land. The concern for the Inspector was whether it would spread to neighbouring land. She had the issue in mind.

Discussion

46. I agree with Mr Dale-Harris that the starting point for a consideration of the question of whether or not reasons are adequate is to identify the principal important issue. Reasons are not required in respect of every controversial matter; nor indeed for every important matter. Nor are reasons for reasons required. I also agree that the principal important issue in this case was whether the benefits of the development (including the eradication of Japanese Knotweed) clearly outweighed the harm caused by the development.

47. The Inspector's approach to the decision is entirely consistent with a focus on determining that issue. Having identified the "main issue" at DL/7, she described the site, reviewed the relevant policies, identified and assessed the harm which arose from the development and then considered the benefits and whether they outweighed the harm. It is, as I have already noted, a structured approach. One of those benefits was the potential for removing the Japanese Knotweed. There was no issue but that this was a benefit. That was the view of a variety of bodies other than the Claimant, and it is clear from a straightforward reading of the DL that the Inspector appreciated that.

48. The challenge arises from what the Inspector says in the final sentence of DL/16. That is to be read in the context of the decision she was making, her structured approach, and what she says in the preceding part of DL/16. Whilst the Courts are discouraged from undertaking an overly legalistic analysis of the language, it is instructive to look at the way that paragraph is built up. The Inspector begins with this:

> *I note that the existence of JKW could hinder the appellant's disposal of the site and that eradication of the plant is challenging and costly. However, the appellant, as landowner, has certain obligations in relation to the JKW in respect of preventing its spread to neighbouring landownership in any case, even if the development did not take place.*

49. The focus here is on assessing the benefit of the development. So, the first sentence acknowledges that eradication is difficult and costly. The context for that being the Claimant's contention that development is the only way to fund eradication. The second sentence is looking at what would happen if the development did not take place, which is another way of assessing the benefit of the development. So, the Inspector notes that the landowner would have certain obligations to prevent spread. That is correct. The parties knew what those obligations were. The criticism is that the Inspector should have spelt out those obligations and assessed their effectiveness. If she had gone on to say that those obligations were a complete answer to the

Claimant's argument, then perhaps. But all she does is conclude that the removal and better management of the Japanese Knotweed is not entirely dependent on the proposal coming forward. I can see no sensible basis for criticising the expressed reasoning or its adequacy.

50. The second half of DL/16 is also in two parts. The first sentence recognises the benefits of the eradication of Japanese Knotweed for biodiversity, habitat enhancement and preventing spread:

> *JKW is a non-native, invasive plant species and therefore its removal from the appeal site and eradication also from parts of the wider locality, would be beneficial in terms of biodiversity and habitat enhancement and preventing its spread.*

There can be no criticism of that. The second sentence looks at the position should the development not proceed. It would have been the danger of the Japanese Knotweed spreading which would have been the focus of the Inspector's consideration of the position were the development not to proceed, and the words are to be read in that context:

> *Nevertheless, the removal and better management of JKW on the appeal site moving forward and allaying the concerns of neighbours in relation to JKW, , are not entirely dependent on the proposal coming forward.*

51. This is a relatively limited conclusion. The words used are "*not entirely dependent on*". In other words, a possibility. That is part of her reasoning for the conclusion she subsequently reaches on the question of whether the harm caused by the development is outweighed by the benefits. To go further, and ask that she provide reasons for that reasoning goes beyond what is required. It is apparent that she considers that in the absence of the development, there is a possibility that the Japanese Knotweed might be removed or better managed, and the concerns of neighbours (as to spread) allayed. That is adequate.

52. Asking for more is, as Mr Dale-Harris characterises it, to ask for reasons for reasons. The issue of Japanese Knotweed was not the only issue the Inspector had to assess. If the Inspector had to give reasons for all the issues in the detail the Claimant contends was necessary for them to be adequate, the decision would become unworkably long. Mr Webster submitted that the Inspector had to decide and explain why the benefits which arose from the eradication of the Japanese Knotweed did not trump or exceed the harm, and to do that she had to deal with the expert evidence that eradication was the only way forward, and what would happen if the situation was left as it was. I do not agree. The submission poses the wrong question. The only way forward for what? The Inspector was considering the harm and benefits of the proposed development. She was not providing an answer to the problem of Japanese Knotweed on this land. The detail the Claimant says was required is not required for the parties to understand the decision reached and the essential reasoning for it.

53. That deals with the real attack on this decision. The criticisms I summarise at paragraphs 38-41 above all assume that the Inspector is to provide the sort of detailed forensic analysis of the arguments and the evidence, which she plainly does not have to provide, and lose sight of the nature of the decision she was giving reasons for. None of those criticisms persuade me that this was anything but a well-structured and adequately reasoned decision. At the permission stage, I regarded the one point as arguable. The scope of that argument has been stretched somewhat in the submissions

before me at the full hearing, hence the lengthy reference to some of the material before the Inspector and the detail of the DL. But having had the benefit of full argument, I am satisfied that the reasons given were adequate and intelligible.

54. Whilst Ground 1 is not an irrationality challenge, I should add that there is nothing irrational about the Inspector's view that there was a possibility of controlling the Japanese Knotweed even if the development did not proceed. The Officer's Report expressed the view that the problem could and should be managed outside the planning process. The Council's written representations referred to the obligations of the landowner to prevent spread, and even the letters from Environet which were relied upon by the Claimant, referred to the use of herbicide in the context of the control of the plant (albeit expressing reservations).

55. It may be that the decision does not answer all the questions the Claimant considers it should answer. But it provides adequate and intelligible reasons for the decision reached on the issue to be determined. The claim is dismissed.