



Neutral Citation Number: [2015] EWHC 2308 (Admin)

Case No: CO/5740/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 July 2015

Before:

Mr Justice Lindblom

Between:

Pertemps Investments Limited

Claimant

- and -

(1) Secretary of State for Communities and Local Government
(2) Solihull Metropolitan Borough Council

Defendants

Ms Thea Osmund-Smith (instructed by **Pinsent Masons**) for the **Claimant**
Mr Richard Kimblin (instructed by **the Treasury Solicitor**) for the **First Defendant**

Hearing date: 22 May 2015

Judgment Approved by the court
for handing down

Mr Justice Lindblom:

Introduction

1. This case is about the Government's current policy for development control in the Green Belt and the corresponding policy in a more recently adopted local plan.
2. By its application under section 288 of the Town and Country Planning Act 1990 the claimant, Pertemps Investments Ltd., seeks an order to quash the decision of the inspector appointed by the first defendant, the Secretary of State for Communities and Local Government, to dismiss its appeal against the refusal by the second defendant, Solihull Metropolitan Borough Council, of planning permission for the erection of an office building with basement car parking on an existing car park in the grounds of Meriden Hall in Meriden, near Coventry. Pertemps is a group of more than 80 companies, which employ about 40,000 people throughout the United Kingdom. It has used Meriden Hall as its headquarters since 1989, has invested a large amount of money in the site, and provides jobs for 150 people there. The site is in the West Midlands Green Belt. Meriden Hall is a grade II* listed building.
3. The council refused planning permission for Pertemps' proposed development on 29 August 2013. The first of the three reasons for refusal was this:

“The proposed development represents inappropriate development as it is located in the Green Belt. The very special circumstances advanced do not clearly outweigh the substantial harm to openness, character and function of the Green Belt. The proposed development is therefore ... contrary to Policy C2 of the Solihull UDP and emerging policy P17 of the draft Solihull Local Plan and advice contained in the National Planning Policy Framework [“the NPPF”, published in March 2012].”

4. Pertemps appealed to the Secretary of State against the Council's decision on 18 February 2014. The inspector held a hearing into the appeal and made his site visit on 2 September 2014. His decision letter is dated 22 October 2014. In paragraph 2 of his decision letter he identified two “main issues” in the appeal. The first was whether the proposed development would “amount to inappropriate development in the Green Belt and, if so, whether very special circumstances exist to clearly outweigh this and any other harm”. The second was whether the development would “preserve the special architectural and historic interest of the listed building or its setting”. These proceedings are concerned only with the inspector's consideration of the first of those two issues.

The issues for the court

5. Pertemps' application raises two main issues for the court:
 - (1) whether in his consideration of the Green Belt issue the inspector misinterpreted and misapplied Policy P17 of the Solihull Local Plan (ground 1); and
 - (2) whether he failed to have regard to the council's decision in March 2014 to grant planning permission for development on Jaguar Land Rover's site at Damson

Parkway, Solihull, and whether he determined Pertemps' appeal inconsistently with that decision (ground 2).

Policy P17

6. The local plan was submitted to the Secretary of State in draft for examination in September 2012 – about six months after the publication of the NPPF. The examination hearings were concluded in October 2013, the inspector's report on the examination was presented to the council in November 2013, and the plan was adopted on 3 December 2013.
7. In section 7 of the local plan, "Sustainable Economic Growth", paragraph 7.1.2 says that "Solihull has the most productive economy in the Midlands". Paragraph 7.1.4 says that "[sustainable] economic growth in Solihull is an important driver of economic recovery and employment in the Greater Birmingham and Solihull Local Enterprise Partnership area and West Midlands". Paragraph 7.1.10 refers to Jaguar Land Rover as "one of the West Midlands' and UK's, most important businesses and a key driver of economic recovery ...", that "[the] Lode Lane plant in Solihull currently provides about 5,000 jobs and is expected to increase its workforce by 25%, demonstrating the company's commitment to Solihull" and that "[it] is critical that [Jaguar Land Rover] is able to continue to secure and develop its activities in the Borough". Policy P1, entitled "Support Economic Success", refers to several of the "key economic assets" in the council's area – the National Exhibition Centre, Birmingham Airport, Birmingham Business Park, Blythe Valley Business Park and Jaguar Land Rover's plant at Lode Lane. It recognizes that Jaguar Land Rover is "important to the national, regional and local economy and is a major employer", and goes on to say this:

"The Council will support and encourage the development of Jaguar Land Rover within its boundary defined in this Local Plan. This will include a broad range of development needed to maintain or enhance the function of Jaguar Land Rover as a major manufacturer of vehicles. The reasonable expansion of the site into the Green Belt will be given positive consideration where economic need can be demonstrated and appropriate mitigation can be secured."

In the text explaining Policy P1, paragraph 7.2.18 states:

"The Council will continue to support the further development and modernisation of the vehicles plant in order to enable its continued success in the competitive global vehicles market. Land Rover is constrained in terms of its ability to expand by its location within the main urban area. To reflect this and having regard to the vital importance of Jaguar Land Rover to the region's economy and to job creation, Policy P1 enables positive consideration to its reasonable expansion into the green belt subject to demonstration of economic needs and appropriate mitigation measures."

Paragraph 7.2.19 acknowledges that "[this] principle is also reflected in Policy P17 that enables the reasonable expansion of established businesses into the green belt where the proposal would make a significant contribution to the local economy or employment, including for example, Whale Tankers at Ravenshaw Lane that has aspirations to further develop its site".

8. Policy P17 is entitled “Countryside and Green Belt”. The first part of the policy, which states the council’s commitment to preserving the “best and most versatile” agricultural land in its area, is not relevant here. The second part of the policy is relevant, and has been the focus of the parties’ submissions on ground 1. It says:

“The Council will not permit inappropriate development in the Green Belt, except in very special circumstances. In addition to the national policy, the following provisions shall apply to development in the Borough’s Green Belt:

- Development involving the replacement, extension or alteration of buildings in the Green Belt will not be permitted if it will harm the need to retain smaller more affordable housing or the purposes of including land within the Green Belt.
- Limited infilling will not be considered to be inappropriate development within the Green Belt settlements, providing this would not have an adverse effect on the character of the settlements. Limited infilling shall be interpreted as the filling of a small gap within an otherwise built-up frontage with not more than two dwellings.
- The reasonable expansion of established businesses into the Green Belt will be allowed where the proposal would make a significant contribution to the local economy or employment, providing that appropriate mitigation can be secured.
- Where the re-use of buildings or land is proposed, the new use, and any associated use of land surrounding the building, should not conflict with, nor have a materially greater impact on, the openness of the Green Belt and the purposes of including land in it, and the form, bulk and general design of the buildings shall be in keeping with their surroundings.
- Where waste management operations involving inappropriate development are proposed in the Green Belt, the contribution of new capacity towards the treatment gap identified in the Borough may amount to very special circumstances, providing the development accords with the waste management policy of this Plan.”

The third part of the policy explains that outside the inset boundaries of the small settlements of Hampton-in-Arden, Hockley Heath, Meriden and Catherine de Barnes, which are “inset” in the Green Belt, “strict Green Belt policies will apply”. The site of Pertemps’ proposed development is outside the inset boundary for Meriden.

9. In the text providing the “Justification” for Policy P17 paragraph 11.6.3 states:

“Green Belt policy is set out in the national policy and will apply across the whole of the rural area of the Borough, other than the inset areas around settlements and other major developments. National policy makes clear that established Green Belt boundaries should be altered only in exceptional circumstances and only when a local plan is being prepared or reviewed. It also describes the circumstances when built and other development should be considered as an exception to inappropriate development.”

Paragraph 11.6.4 refers to the “pressure on the Green Belt in Solihull” and identifies the factors which have “intensified” that pressure, including “local requirements for employment land”. Paragraph 11.6.7 says this:

“The policy is consistent with national Green Belt policy, but provides some further guidance for a limited number of exceptions to inappropriate development that are particularly relevant in Solihull. These include the need to ensure that the replacement, extension and alteration of buildings, does not harm the need to retain smaller more affordable housing. A number of established businesses are located within or adjacent to the Green Belt in Solihull, such as Jaguar Land Rover and Whale Tankers. The reasonable expansion of such businesses into the Green Belt will be allowed where justified by a significant contribution to the local economy or employment.”

The text goes on to explain other elements of Policy P17, including the provision for “[limited] infilling in villages, identified as appropriate development in the Green Belt in the NPPF” (paragraph 11.6.8); the provision for “[the] re-use of permanent and substantial buildings in the Green Belt”, which is said to be “not inappropriate development” (paragraph 11.6.9); and the provision relating to additional waste facilities, which is said to be “consistent with guidance in the NPPF but makes clear that the contribution towards new waste management capacity in the Borough may amount to very special circumstances, provided the development accords with the waste management policy [namely, Policy P12] in this plan” (paragraph 11.6.10).

Green Belt policy in the NPPF

10. The national policy referred to in Policy P17 and its supporting text is now to be found in section 9 of the NPPF, “Protecting Green Belt land”. Paragraphs 87 to 90 set out the Government’s policy for development control decisions on proposals in the Green Belt. They embody an approach which is well established in government planning policy. Paragraph 87 says that “[as] with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. Paragraph 88 states:

“When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”

Paragraph 89 specifies categories of development which local planning authorities should not regard as “inappropriate” in the Green Belt. It states:

“A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

- buildings for agriculture and forestry;
- provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
- the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

- the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”

Paragraph 90 says that “[certain] other forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt”. These are “mineral extraction”, “engineering operations”, “local transport infrastructure which can demonstrate a requirement for a Green Belt location”, “the re-use of buildings provided that the buildings are of permanent and substantial construction”, and “development brought forward under a Community Right to Build Order”.

The Jaguar Land Rover planning permission

11. In March 2014 Jaguar Land Rover submitted to the council an application for planning permission for a substantial development in the Green Belt, next to its plant at Damson Parkway in Solihull. The site was 14 hectares of farmland. The proposal was for a new despatch area, with buildings extending to a total of 3,857 square metres with 91,170 square metres of hardstanding, and a bridge over Damson Parkway. In 11 June 2014 the council’s Planning Committee resolved to grant planning permission for that development, following the recommendation of the Head of Development Management. In his report to the committee, in the section headed “Principle of Development/Green Belt”, the officer acknowledged what is said in Policy P1 of the local plan about the “reasonable expansion of the [Jaguar Land Rover] site into the Green Belt ...” in Policy P1, and that “[this] principle is also reflected in Policy P17 that enables the reasonable expansion of established businesses into the green belt where the proposal would make a significant contribution to the local economy or employment”. He went on to say:

“Despite the policy support within Policies P1 and P17 of the Local Plan, the application proposals nevertheless provide for inappropriate development on Green Belt [land]. ... The applicant has therefore presented its very special circumstances to justify the application proposals and in doing so seek to ensure that in the planning balance the harm to the Green Belt and its openness is outweighed by the economic and public benefits that this proposal seeks to bring.”

The officer then went on to consider the very special circumstances put forward by Jaguar Land Rover. Under the heading “Summary to Very Special Circumstances” he said:

“Policy support for this development is given by Local Plan policies P1 and P17 as well as paragraphs that deal with sustainable economic development within the NPPF at paragraphs 19, 20 and 21.

JLR provides a compelling case when considering its economic importance at local, regional, national and international level. JLR currently employs 6,000 manufacturing people with another 1,700 jobs created throughout 2014 and 2015.”

Concluding his report, the officer said this:

“... There is clear policy support for development outside of the existing plant provided within Policy P1 and P17 of the Solihull Local Plan and the NPPF at paragraphs 19, 20 and 21 makes explicit the Government’s commitment to securing economic growth and to ensuring that the planning system does everything it can to support sustainable economic growth.

...

The development represents inappropriate development and there is harm by definition, harm to the openness of the Green Belt and harm to the purposes of including land in the Green Belt. This represents a substantial level of harm. In favour of the development is the policy support to assisting economic growth and the recognition that JLR has a vital importance to the region’s economy. It is considered that these factors are sufficient to outweigh the harm of the development in the balancing exercise.

...”

The evidence and submissions in Pertemps’ appeal

12. The hearing statement provided to the inspector on behalf of Pertemps, dated April 2014, was prepared by its planning consultant, Mr Gareth Jones of Tyler Parkes.
13. In paragraph 5.7 of the hearing statement – under the heading “Does the proposed development constitute inappropriate development in the green belt, and if so, are there ... any very special circumstances which would outweigh the presumption against development?” – Mr Jones said this:

“It is accepted that the development constitutes inappropriate development in the green belt and that very special circumstances therefore need to be demonstrated.”

In paragraph 5.8 he referred to the provision in Policy P17 which, he said, “clearly states that the expansion of established businesses may be acceptable in the green belt providing the proposal would make a significant contribution to the local economy or employment”. Then he said:

“This, to me, appears to be a very reasonable recognition that in certain circumstances an existing established business which needs to ‘expand’ in the green belt should be allowed to do so if it makes a ‘significant’ contribution to the local economy and employment. I submit that those circumstances clearly apply in this case and that this proposal must benefit from this reflection of national policy which encourages economic growth.”

He went on to say (in paragraph 5.12):

“Whether policy P17 should be considered as a vsc as opposed to simply a demonstration of compliance with green belt policy is a moot point; however, if needs be I submit it as a vsc. I submit the following considerations should also be considered as vsc’s as part of a comprehensive submission”.

These considerations were: (1) the “need for a new building at this site ... detached from the main [Meriden] Hall”, (2) the unsuitability of Meriden Hall for present day working needs and the sustainability of the proposed development, (3) Pertemps’ “clear preference” for this development rather than an extension of Meriden Hall, (4) the assertion that “[no] other locations in the area are suitable” for it, (5) the assertion that the development, being sited on a “presently open surface car park”, would have only a “very limited” impact on the openness of the Green Belt and (6) that it would be an “enhancement of the setting” of Meriden Hall as a listed building, (7) the unlikelihood of any other company buying the site and “providing the same level of care and attention” in maintaining Meriden Hall and its grounds if Pertemps were to leave, (8) the prospect of the Pertemps’ “contribution to the local economy” being lost if it was “required to re-locate from the area”, and (9) the contention that the proposal was not in conflict with any of the five purposes of the Green Belt set out in the NPPF (paragraphs 5.13 to 5.21). Mr Jones said that these “arguments” were “all submitted as very special circumstances which should outweigh the green belt policy objection” (paragraph 5.22). In section 6, “Conclusions”, Mr Jones returned to Policy P17. In paragraph 6.2 he acknowledged that the council regarded the proposed development as “inappropriate development” and that “very special circumstances” must therefore be demonstrated. He went on to say this:

“Our submission is that this scheme complies with [Policy P17] and as such, this overrides the green belt presumption against new building in the green belt and thus should be acceptable in policy terms. The NPPF provides additional support for a scheme of this nature, stating at para.19 that ‘significant weight’ should be placed on the need to support economic growth through the planning system, and that planning should operate to encourage not act as an impediment to sustainable economic growth.”

and in paragraph 6.3:

“However, if this argument is not accepted, then the existence of policy P17 must be counted as one of the very special circumstances which then need to be demonstrated.”

14. In its hearing statement, dated 2 September 2014, the council said the appeal site was located in the area of open countryside separating Coventry from Birmingham known as “the Meriden Gap”, which is “perhaps the most crucially important area of Green Belt in the West Midlands” (paragraph 4.1.3). In answer to the question “Is the development ... inappropriate development in the Green Belt?” the council said this (in paragraph 6.1.4):

“A new stand-alone office building ... does not come within the list of potentially acceptable development set out in Policy P17 of the Solihull Local Plan. It is, therefore, inappropriate development in the Green Belt. ...”.

The proposal did “not accord with the categories of potentially acceptable development in paragraph 89 of the NPPF” (paragraph 6.1.5). This was “inappropriate development in the

Green Belt”, and, in the light of paragraphs 87 and 88 of the NPPF, it was “by definition harmful to the Green Belt” (paragraph 6.1.6). Very special circumstances capable of outweighing “the general presumption against inappropriate development” were therefore required (paragraph 6.1.7). Neither “taken singularly [nor] cumulatively” did the very special circumstances advanced by Pertemps “clearly outweigh the harm caused by inappropriateness and any other harm” (paragraph 6.3.8). “Overall”, the proposal was “clearly contrary to Policy P17 of the adopted Solihull Local Plan, and the NPPF” (paragraph 6.3.9).

15. At the hearing Pertemps accepted that the proposed development was “inappropriate development” in the Green Belt when considered under national policy in the NPPF. But it argued that under Policy P17 of the local plan the position was different. In Policy P17 proposals such as this are expressly supported, and are not to be regarded as “inappropriate development”. Pertemps’ development would clearly be the “reasonable expansion” of an established business in the Green Belt. It would “make a significant contribution to the local economy [and] employment”. Pertemps also relied on the officer’s report to committee on Jaguar Land Rover’s application, in support of its argument that its own proposal, like Jaguar Land Rover’s, was supported by Policy P17 of the local plan, and ought also to be approved.

The inspector’s decision letter

16. The inspector dealt with the Green Belt issue in paragraphs 5 to 10 of his decision letter:

“5. The appeal site lies within the West Midlands Green Belt. Paragraph 88 of the National Planning Policy Framework (NPPF) requires that substantial weight should be given to any harm to the Green Belt which, by definition, includes *inappropriate development*, and states that such development should not be approved except in *very special circumstances*. With a limited number of exceptions (paragraph 89), the NPPF regards the construction of new buildings as *inappropriate development* in the Green Belt. *Very special circumstances* will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

6. At the Hearing, the appellant acknowledged that the proposed house [sic] would be *inappropriate development* in the Green Belt, as defined by the NPPF. However, with regard to the Solihull Local Plan (LP) adopted in December 2013, it invited a different interpretation. Policy P17 mirrors the NPPF with regard to *inappropriate development*, but adds that, in addition to national policy ... *the reasonable expansion of established businesses into the Green Belt will be allowed where the proposal would make a significant contribution to the local economy or employment* Supporting paragraph 11.6.7 states that the policy is consistent with national Green Belt policy but provides some further guidance for a limited number of exceptions including the reasonable expansion of established businesses where justified, as above. While I accept that there is some tension between this wording and the NPPF, given that LP policy P17 must, as it states, be consistent with national policy, I find that it can only refer to the other exceptions in NPPF paragraph 89 rather than new buildings. The proposal would therefore conflict with LP policy P17.

7. In any event, the appellant put forward the particulars of, and need for, the proposed building as *very special circumstances*. These included: the appellant’s operational and

business requirements for a new building at this site; why the Hall is unsuitable and no longer fit for purpose; why no other location would be suitable; how it would create jobs elsewhere; that the appellant[’s] business is the only way to sustain the listed building; that the business would otherwise be likely to move (with implications for the site); and that through hiding the existing car parking with appropriate landscaping and a turfed roof, the scheme would enhance the appearance of the Green Belt.

8. I acknowledge that the appellant company is unusual in that it is a major employer in the UK, has an unusually strong requirement for a high quality corporate image, and has shown considerable commitment for the wellbeing of the listed building and its immediate grounds. I saw for myself that the number of people working in the Hall, while not necessarily unusual for many service businesses, is not compatible with the appellant’s commitment to its staff. While I agree with the Council that it would be possible for the business to operate without the proposed building, I accept that it would be undesirable for the business and so for the local and wider economy. Taken together, I give substantial weight to these factors.

9. On the other hand, businesses frequently need to expand and there was little evidence that another business would not be interested in occupying and maintaining the building and park to a similar standard without the need for inappropriate development in the Green Belt. While mitigation has been put forward that could reduce the impact of the new building, a lack of harm cannot contribute to *very special circumstances*.

10. On this issue, I find that substantial weight should be given to both the harm, by definition, to the Green Belt and to the benefits to the business and the local economy as other considerations. However, for *very special circumstances* to exist, the NPPF requires that the former should be *clearly outweighed*. On the evidence before me, my judgement is that the appellant’s circumstances are not so unusual as to be *very special* or to reach the high hurdle of *clearly* outweighing the substantial harm by definition. I therefore conclude that the scheme would conflict with the NPPF and with LP policy P17.”

17. Having concluded that the harm to the setting of Meriden Hall as a listed building would not be unacceptable, and that the proposed landscaping was suitable, the inspector expressed his final conclusions in paragraph 21:

“... [The] scheme would amount to *inappropriate development* in the Green Belt. The potential benefits of the scheme would not *clearly outweigh* the harm to the Green Belt and so *very special circumstances* do not arise. The scheme would be contrary to the NPPF and would conflict with LP policy P17. The lack of harm, on balance, with regard to the above issues does not weigh in its favour. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.”

Ground 1 – the inspector’s interpretation and application of Policy P17

18. For Pertemps, Ms Thea Osmund-Smith submits that the inspector misconstrued and misapplied Policy P17, thus failing to discharge his duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 to make his decision in accordance with the development plan unless material considerations indicated otherwise (see the judgment of Lord Reed in *Tesco Store Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 17 and 18). As a

policy of the development plan, Policy P17 had statutory priority over government policy for the Green Belt in the NPPF (see paragraphs 2 and 12 of the NPPF). And it had full weight, because the Solihull Local Plan is recently adopted and up to date.

19. The correct understanding of Policy P17, says Ms Osmund-Smith, is that it adds to the categories of development that is not inappropriate in the Green Belt listed in paragraph 89 of the NPPF. The part of it which is relevant in this case does not simply reproduce national policy in the NPPF, but is “[in] addition” to that policy. As its supporting text in paragraph 11.6.7 explains, Policy P17 provides “further guidance for a limited number of exceptions to inappropriate development that are particularly relevant to Solihull”. It puts in place, in Solihull, a further exception to the general principle that the construction of new buildings is inappropriate in the Green Belt. But it does not detract from the general aims of national policy for the Green Belt in the NPPF. The inspector plainly misunderstood the policy. The concept of the “reasonable expansion of established businesses into the Green Belt ...” goes further than “the extension or alteration of a building ...” in paragraph 89 of the NPPF. It includes free-standing new buildings which would increase the operational development on a site, so long as the other requirements of this provision are met. Policy P17 says such development will be “allowed”, which must mean that it is not “inappropriate” in the Green Belt. So, submits Ms Osmund-Smith, the inspector ought to have recognized that under Policy P17 the proposed development was not inappropriate, and did not have to be justified by very special circumstances.
20. But Ms Osmund-Smith also argues in the alternative that even if, under both national and local policy, Pertemps’ proposal was for “inappropriate” development in the Green Belt, the inspector ought to have recognized that Policy P17 supports development such as this. But he did not. He failed to give the proposal the benefit of the support it should have had from Policy P17 even as inappropriate development.
21. For the Secretary of State, Mr Richard Kimblin submits that the inspector understood Policy P17 correctly, and applied it lawfully. He did not fail to discharge his duty under section 38(6) of the 2004 Act. Policy P17 is a policy in a recently adopted local plan. It was produced in the light of national policy for the Green Belt in the NPPF, and is consistent with it – as paragraph 151 of the NPPF says it should be. The provisions in the five bullet points within the policy either add to the restrictive policies for development in the Green Belt in the NPPF or indicate the approach to be taken in judging whether “very special circumstances” have been demonstrated when they need to be – under the policy in paragraph 88 of the NPPF. As the inspector saw, the policy does not increase the scope of development which is not, or may not be, inappropriate in the Green Belt, as defined in paragraphs 89 and 90 of the NPPF. In paragraph 6 of the decision letter, dealing with the rival cases before him at the hearing, he rejected the suggestion made on behalf of Pertemps that in the council’s area a particular proposal could be for “inappropriate” development in the Green Belt under national policy but not under Policy P17. He was right to conclude that the relevant provision in Policy P17 does not add to the exceptions in paragraph 89 of the NPPF, and that Pertemps’ proposal was indeed for “inappropriate” development and “would therefore conflict with [Policy P17]”. He went on, in paragraphs 7 to 10, to consider whether, in the light of the provision relating to the “reasonable expansion of established businesses” in the policy, there were “very special circumstances” to justify planning permission being granted, and found there were not. His approach here was sound, reflected a proper understanding of Policy P17, and – contrary to Ms Osmund-Smith’s submissions on both grounds of the application – was consistent with the council’s decision in the Jaguar Land Rover case.

22. The principles of law applying to the interpretation and application of planning policy are well established and familiar.
23. The proper interpretation of planning policy, whether in the development plan or in the NPPF or in some other policy document published by the Government, is ultimately a matter of law for the court (see the judgment of Lord Reed in *Tesco v Dundee City Council*, at paragraphs 19 to 22). If he misunderstands and therefore misapplies relevant policy the decision-maker either fails to have regard to a material consideration or has regard to a consideration which is immaterial. Statements of planning policy will be interpreted objectively, not as if they were the provisions of a statute or a contract but by looking at the language the authors of the policy have used, in the context to which it belongs (see Lord Reed's judgment in *Tesco v Dundee City Council*, at paragraph 18). The text supporting a policy is relevant to its construction, but is not itself policy and cannot trump it (see the judgment of Richards L.J. in *R. (on the application of Cherkley Campaign Ltd.) v Mole Valley District Council* [2014] EWCA Civ 567, at paragraph 16). The court must avoid a strained interpretation of policies in a development plan in the pursuit of harmony between its constituent parts (see the judgment of Lewison L.J. in *R. (on the application of TW Logistics Ltd.) v Tendring District Council* [2013] EWCA Civ 9, at paragraph 18).
24. The application of planning policy is a matter for the decision-maker, within the constraints of the statutory scheme, and subject to review by the court. Section 38(6) of the 2004 Act embodies a "presumption in favour of the development plan" (see the speech of Lord Hope of Craighead in *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447, at p.1449H). When making a decision on an appeal, the Secretary of State, or his inspector, must "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" (see the speech of Lord Clyde in *City of Edinburgh Council*, at p.1459). Relevant government policy – such as the policies in the NPPF – is a material consideration to which the decision-maker must have regard (under section 70(2) of the 1990 Act). It may indicate a decision that is not "in accordance with the development plan". The weight to be given to material considerations is always for the decision-maker to judge, within the constraints of rationality (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780G-H). But when a presumption in statute or policy is engaged, that presumption must be understood by the decision-maker and properly applied (see, for example, the judgment of Sullivan L.J. in *Barnwell Manor Wind Energy Ltd. v East Northamptonshire District Council* [2014] EWCA Civ 137, at paragraph 22).
25. The meaning and proper application of national policy for development in the Green Belt has been considered by the courts on a number of occasions (see, in particular, *Pehrsson v Secretary of State for the Environment* [1990] W.L. 753177, *Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions* [2002] EWHC 808 (Admin), *R. (on the application of Basildon District Council v First Secretary of State* [2004] EWHC 2759 (Admin), *Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692, and more recently *Europa Oil and Gas Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 825, and *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386). I need not explore that case law here. It is not controversial. As the

parties in this case accept, the court has consistently recognized both the decision-maker's primary task of ascertaining whether or not the proposal in hand is "inappropriate" development in the Green Belt and the rigour required in considering whether the applicant for planning permission has demonstrated "very special circumstances" to justify the approval of development that is inappropriate.

26. In two recent cases the court has had to consider current national policy for the Green Belt in the NPPF. In *Fordent Holdings Ltd. v Secretary of State for Communities and Local Government* [2013] EWHC 2844 (Admin), it was held that development proposed in the Green Belt would be inappropriate unless it fell within one of the exceptions identified in paragraphs 89 and 90 of the NPPF (see paragraph 26 of the judgment of H.H.J. Pelling Q.C., sitting as a deputy judge of the High Court). This understanding of these two paragraphs of the NPPF has been endorsed by the Court of Appeal in *R. (on the application of Timmins) v Gedling Borough Council* [2015] EWCA Civ 10. In paragraph 30 of his judgment in that case Richards L.J. said:

"... Paragraph 89, as its opening sentence makes clear, lays down a general rule that the construction of *new buildings* in the Green Belt is inappropriate development: "building" for this purpose has the wide meaning given by section 336 of the Town and Country Planning Act 1990 The various bullet points are exceptions to that general rule and are therefore likewise concerned only with the construction of new buildings. ...".

Richards L.J. accepted (at paragraph 31) that paragraphs 89 and 90 of the NPPF "are properly to be read as closed lists". Paragraph 89, he said, "states the general rule that the construction of new buildings is inappropriate development and sets out the only exceptions to that general rule". Paragraph 90 "sets out other forms of development ... that are appropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt". Richards L.J. did "not think that the NPPF gives any scope to local planning authorities to treat development as appropriate if it does not fall within paragraph 89 or paragraph 90". Mitting J. differed from Richards L.J. on the interpretation of paragraph 90, but not on the proper construction of paragraph 89 (paragraphs 41 to 43). Tomlinson L.J. preferred to leave the interpretation of paragraph 90 for a case where it had to be decided (paragraph 40). This is not that case.

27. I turn to Policy P17. Neither side suggested that it is as clearly drafted as it might have been. It is not. But I think its meaning is not hard to discern when its provisions are considered in their proper context.

28. As one would expect, the policy demonstrates that the council's basic approach to development control in the Green Belt is orthodox. It will "not permit inappropriate development in the Green Belt, except in very special circumstances". This reflects national policy in paragraph 87 of the NPPF.

29. The sentence introducing the five provisions said to be "[in] addition to the national policy" indicates that the essential principles of national policy for development control in the Green Belt are being amplified here, to assist decision-making in the council's area. It does not suggest that Policy P17 diverges from those principles. On the contrary, Policy P17 is deliberately aligned with national policy in the NPPF. The five provisions "[in] addition to the national policy" are not presented as further exceptions to the general principle in paragraph 89 of the NPPF – that "the construction of new buildings" is "inappropriate in Green Belt" –

or as adding to the list of “other forms of development ... not inappropriate in Green Belt ...” in paragraph 90. Mr Kimblin points out that judgment in *Fordent Holdings Ltd.* was given on 26 September 2013, before the local plan was adopted and, indeed, before the inspector’s report on the examination was presented to the council.

30. Policy P17 could not be consistent with the NPPF if it expanded the “closed lists” in paragraphs 89 and 90 – as Richards L.J. described them in *Timmins*. And I do not read the first sentence of paragraph 11.6.7 in the explanatory text – which refers to Policy P17 providing “... further guidance for a limited number of exceptions to inappropriate development that are particularly relevant in Solihull” – as meaning that the policy creates the possibility of a development being inappropriate development under government policy but not inappropriate under the development plan. Policy P17 does no such thing. If the council had wanted to achieve that, it would have had to do so in clear terms in the policy itself.
31. Each of the five additional provisions in Policy P17 has a specific, locally relevant purpose. The first concerns “[development] involving the replacement, extension or alteration of buildings in the Green Belt” – the types of development mentioned in the third and fourth bullet points in paragraph 89 of the NPPF. It does not say that such development is “inappropriate” in the Green Belt in the borough of Solihull, only that it will be “not be permitted” if it “will harm the need to retain smaller more affordable housing or the purposes of including land within the Green Belt”. The second provision relates to “[limited] infilling”, the kind of development referred to in the fifth bullet point in paragraph 89. It provides a definition of the concept of “[limited] infilling” in the Green Belt in the council’s area, adding that such development in “Green Belt settlements” will not be regarded as inappropriate if it “would not have an adverse effect on the character” of the settlement. The fourth provision relates to the “re-use of buildings or land”, the form of development referred to in the fourth bullet point in paragraph 90. It underlines the requirement in paragraph 90 – “provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt”. The fifth provision does not correspond to any of the categories of development specified in paragraphs 89 and 90, nor does it provide a new one. It relates solely to proposals in the Green Belt for “waste management operations involving inappropriate development”. Paragraph 11.6.10 in the explanatory text acknowledges that the contribution such development can make to “new waste management capacity ... may amount to very special circumstances”. None of this suggests that the council intended to produce a local policy for the Green Belt different from national policy in the NPPF.
32. The third provision, relating to the “reasonable expansion of established businesses into the Green Belt ...”, is also consistent with national Green Belt policy in the NPPF. It lends the support of the development plan, in principle, to proposals which would enable the reasonable expansion of an established business on a site in the Green Belt in the metropolitan borough of Solihull, so long as the qualifying criteria are met. In doing so, it does not distinguish between proposals which are for inappropriate development in the Green Belt and those which are not. It does not exempt development which would serve to expand an established business from the general principle that the construction of new buildings is inappropriate in the Green Belt. It does not, in fact, describe any particular type of development. The expansion of a business can be achieved in various ways: by extending or altering a building, by the erection of new building or new buildings – replacing an existing building, infilling, or redeveloping previously developed land, or by re-using a building. Such proposals may all come within the scope of development that is not, in principle, inappropriate in the Green Belt under paragraphs 89 and 90 of the NPPF, depending on the circumstances. There will, however, be

some development that would enable a business to expand which is outside the categories of exception identified in those two paragraphs, and therefore inappropriate. Under paragraph 87 of the NPPF such development should not be approved “except in very special circumstances”. This provision of Policy P17 does not alter or compromise that principle. But it does prescribe, at local level, a positive approach to any proposal which would make possible the expansion of an established business in the Green Belt, even where the development proposed would be, by definition, inappropriate under both national and local policy.

33. No doubt there will be some cases where it weighs in favour of a proposal for development that is not inappropriate in the Green Belt. But there will be others where it strengthens – perhaps decisively – an applicant’s argument that the proposed development, though in principle inappropriate, is justified by very special circumstances and ought therefore to be approved – or, as the policy puts it, “allowed”. It will add extra force to such an argument – as it evidently did with Jaguar Land Rover’s proposal – if the expansion of the business in question is “reasonable”, if the contribution the development will make to the local economy or to employment is “significant”, and if the mitigation is “appropriate”. All of these questions are, of course, matters of planning judgment for the council as local planning authority, or for the Secretary of State or his inspector on appeal.
34. The last two sentences of paragraph 11.6.7 refer to Jaguar Land Rover and Whale Tankers as established businesses within or adjacent to the Green Belt in the council’s area and the reasonable expansion of such businesses being allowed “where justified”. Those are examples of “established businesses” whose “reasonable expansion” into the Green Belt may be “justified” under this provision in Policy P17, but not the only ones. The encouragement for “reasonable expansion” is available to other companies as well.
35. Is this understanding of Policy P17 reflected in the inspector’s decision letter? In my view it is not.
36. In paragraph 6 of his letter the inspector recorded Pertemps’ concession that the proposed development was “inappropriate development” when considered under government policy in the NPPF. Why he referred to the proposed development as a “house” is a mystery. But nothing turns on that. Pertemps’ concession was, in my view, obviously right. As a proposal for a free-standing new office building, which was not a replacement for any existing building, the scheme did not fall within any of the exceptions in paragraph 89 of the NPPF or any of the other forms of development referred to in paragraph 90. Under the NPPF, therefore, this certainly was “inappropriate development” in the Green Belt. That was not in dispute.
37. The inspector also rejected the suggestion made on behalf of Pertemps at the hearing that Policy P17 provides a further exception to the general principle in paragraph 89 of the NPPF that “the construction of new buildings” is “inappropriate in the Green Belt”. He was right to do so. Pertemps’ proposed development, a free-standing new building in the Green Belt outside the exceptional categories in paragraphs 89 and 90 of the NPPF, clearly was inappropriate development under both national and local Green Belt policy. Mr Kimblin was right to submit that it was.
38. But it does not follow from this that the inspector’s interpretation of Policy P17 was correct. As I shall explain, and despite Mr Kimblin’s submissions, I cannot avoid the conclusion that it was not.

39. The error the inspector made is apparent in the penultimate sentence of paragraph 6 of his letter. In that sentence he said he saw “some tension” between Policy P17 and the NPPF. There is, I believe, no such tension. Properly construed, Policy P17 is consistent with national policy, not in conflict or tension with it. But that is not the main point. The main point is that the inspector misunderstood the contentious provision in the policy. He concluded that it “could only refer to the other exceptions in [paragraph 89 of the NPPF] rather than new buildings”. I can only make sense of this as meaning that he was equating “the reasonable expansion of established businesses” in Policy P17 with “the extension or alteration of a building ...” in paragraph 89. That was wrong. The two concepts are not synonymous. As I have said, the expansion of a business could involve the extension or alteration of a building. But it could also involve the construction of a new building or new buildings, which might or might not be development within one of the exceptions in paragraph 89. The disputed provision in Policy P17 does not, in fact, “refer only” to “the other exceptions” in paragraph 89 “rather than new buildings”. It is not confined to any particular category of exception in that paragraph. And it does not differentiate between “the extension or alteration of a building” and the various kinds of exceptional development in paragraph 89 that are truly “new buildings”.
40. By reading that distinction into the disputed provision the inspector gave it a false meaning: a meaning which its terms and context do not allow. He did not recognize that it can relate both to development which is not inappropriate in the Green Belt and also to development which is, in principle, inappropriate. On his understanding of this provision, it was of no relevance at all to a proposal such as Pertemps’ for a new free-standing building in the Green Belt, even if that building would enable the reasonable expansion of an established business. It was on this basis that in the final sentence of paragraph 6 he found that the development “would ... conflict” with Policy P17.
41. I therefore conclude that the inspector misconstrued Policy P17. That was an error of law.
42. Having failed to interpret the policy correctly, the inspector seems to me to have overlooked its true significance in the appeal before him. Its true significance in Pertemps’ appeal was that it lends the support of development plan policy, in principle, to development which would enable the reasonable expansion of established businesses in the Green Belt, and can thus reinforce an argument that inappropriate development which would do that is justified by very special circumstances. In striking the balance required by national policy in paragraph 88 of the NPPF – the balance here between “the potential harm to the Green Belt by reason of inappropriateness, and any other harm” and the considerations put forward by Pertemps as very special circumstances – the inspector ought to have taken into account and given due weight to the support for proposals of this kind in Policy P17. Again, despite Mr Kimblin’s submissions, I cannot accept that he did that.
43. In paragraph 8 he gave “substantial weight” to the considerations weighing in favour of the proposal which he had mentioned in that and the previous paragraph. In paragraph 9, however, he said that “businesses frequently need to expand” and suggested that “another business” might be able to occupy and maintain the listed building without having to resort to inappropriate development in the Green Belt. He might have been right about that. But under the relevant provision in Policy P17 he had to focus on the question of whether this particular proposal was for development which would enable the reasonable expansion of this particular established business in the borough of Solihull and meet the qualifying criteria in the policy.

44. The fact that the development plan countenances such proposals in principle did not necessarily mean that the requirement for very special circumstances was satisfied here. That, however, was a question the inspector could only properly address if he appreciated that the relevant provision in Policy P17 could itself be a powerful factor in the judgment he had to make on this, the critical issue in Pertemps' appeal. It was potentially a powerful factor in that judgment because it explicitly encourages proposals such as this. As a provision of the development plan, it carries weight of its own. And it adds this further weight to the particular considerations put forward by an applicant as very special circumstances justifying the grant of planning permission for inappropriate development in the Green Belt – provided, of course, that the qualifying criteria in the policy are met. There is nothing in paragraphs 7 to 10 of the inspector's decision letter to suggest that he would have concluded that those qualifying criteria were not satisfied in this case. He does not seem to have doubted that the development's contribution to the local economy and employment would be "significant", or that the mitigation would be "appropriate". And in my view, if he had given due weight to the support for Pertemps' proposal in Policy P17, this could well have made a difference to the balance he struck in paragraph 10 between the "substantial weight" he attached to the considerations on either side of the scales – "the harm, by definition, to the Green Belt" on one side and "the benefits to the business and the local economy" on the other. He might then have concluded that, in this case, development which was inappropriate in the Green Belt was nevertheless justified by very special circumstances, so that the scheme did not "conflict with" the NPPF and Policy P17.
45. This, of course, was a matter of planning judgment for the inspector. But the making of that judgment had to be approached in the right way, with a proper understanding of development plan policy. In my view the inspector did not do that. Having misinterpreted Policy P17 in paragraph 6 of his decision letter, he failed to apply it properly in paragraphs 7 to 10.
46. I therefore accept Ms Osmund-Smith's alternative argument on this ground.
47. Finally here, I should add this. I have said that the error the inspector made in his interpretation of Policy P17 is plain in the penultimate sentence of paragraph 6 of the decision letter, and also that I find it impossible to reconcile his analysis of very special circumstances in paragraphs 7 to 10 with a proper grasp of that policy. At the very least, however, I think his reasoning is such as to leave one in real doubt that he understood what the policy means and how it had to be applied in Pertemps' appeal, with obvious substantial prejudice to Pertemps (see the speech of Lord Bridge of Harwich in *Save Britain's Heritage v Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, at p.166G-H). And that, in my view, would on its own have been an error of law sufficient to justify quashing the decision.
48. Ground 1 of Pertemps' application therefore succeeds.

Ground 2 – inconsistency

49. Ms Osmund-Smith submits that the inspector failed to take into account the way in which the council had approached Jaguar Land Rover's application for planning permission. That decision was a material consideration in the appeal. The inspector ought to have had regard to it when considering whether Pertemps' proposal was supported by Policy P17 or in conflict with it. In approving the Jaguar Land Rover proposal, the council's Planning Committee

accepted, as did the officer in his report, that Policy P17 supports the reasonable expansion of businesses into the Green Belt even when the proposal is for the erection of new buildings. The committee recognized that the application was supported by Policy P17, as well as by the Government's commitment to "economic growth" in paragraphs 19 to 21 of the NPPF. This was obviously relevant to one of the two main issues in Pertemps' appeal. The inspector should not have ignored it. He should have seen that the approach he was taking was at odds with the council's in its decision on the Jaguar Land Rover scheme, and he should have explained this inconsistency. His failure to do so was an error of law (see the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* 65 P. & C.R. 137, at p.145).

50. Mr Kimblin submits that Ms Osmund-Smith's argument is misconceived. This is not, in truth, a case of inconsistent decision-making. The inspector's approach to the assessment of Pertemps' proposal – in the light of Policy P17, as he had interpreted it, and national Green Belt policy – was entirely consistent with the council's consideration of Jaguar Land Rover's on its own planning merits. Both proposals were for inappropriate development in the Green Belt. But there were obvious differences between them. Jaguar Land Rover's was found to be justified by very special circumstances; Pertemps' was not. The inspector did not have to explain why he adopted the same approach to the Green Belt issue in Pertemps' appeal as had the council in determining Jaguar Land Rover's application, though with a different outcome. Nor was he at fault in not mentioning the council's decision on that application. In the circumstances, and in the light of the case law on consistency in planning decision-making, there was no need for him to do so. His summary (in paragraph 10 of his decision letter) of the considerations on either side of the balance required by paragraph 88 of the NPPF and by Policy P17 was sufficient.
51. Once again one must start with basic principles. As Forbes J. said in *Seddon Properties Ltd. v Secretary of State for the Environment* (1981) 42 P. & C.R. 26 (at p.28), an inspector determining a planning appeal does not have to "rehearse every argument relating to each matter in every paragraph". But he must not neglect considerations "which might cause him to reach a different conclusion to that which he would reach if he did not take it into account" (see the judgment of Glidewell L.J. in *Bolton Metropolitan Borough Council v Secretary of State for the Environment* (1991) 61 P. & C.R. 343, at pp.352 and 353). His reasons must be intelligible and adequate, must deal with the "principal important controversial issues", must avoid giving rise to a substantial doubt as to whether he has gone wrong in law, though they need not refer to every material consideration in the case (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No.2)* [2004] 1 W.L.R. 1953, at p.1964B-G).
52. The need for consistency in the making of planning decisions is not strictly a principle of law. It is a principle of good practice in development control which the court has recognized. In national policy it seems inherent in the first of the Government's 12 "core-land use planning principles" in paragraph 17 of the NPPF, which says that development plans "should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency".
53. The classic statement of the relevant law is in the judgment of Mann L.J., with whom Purchas L.J. and Sir Michael Kerr agreed, in *North Wiltshire District Council v Secretary of State* (at p.145). Mann L.J. accepted (at p.145) that a previous decision is capable of being a material consideration. Consistency in decision-making is, he said, self-evidently important to both

developers and local planning authorities, and also “for the purpose of securing public confidence in the operation of the development control system”. Like cases do not have to be decided alike. An inspector determining an appeal is free, in the exercise of his planning judgment, to disagree with a previous decision. But before he does so he ought to have regard to the importance of consistency, and he must give his reasons for departing from the previous decision. Mann L.J. went on to say this:

“To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. ...”.

54. Those general principles have since been applied by the courts in various circumstances where the principle of consistency is said to arise (see, for example, the decisions of the Court of Appeal in *Dunster Properties Ltd. v First Secretary of State* [2007] EWCA Civ 236 and *R. (on the application of Fox Strategic Land and Property Ltd.) v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1198, and, in the context of a licensing decision, *R. (on the application of Thompson) v Oxford City Council* [2014] EWCA Civ 94). In *R. v Secretary of State, ex parte Baber* [1996] the Court of Appeal found the requirement for the two cases be “indistinguishable” too onerous a test of materiality, at least in the particular circumstances of that case, Glidewell L.J. preferring (at p.1041) the formulation “sufficiently closely related”, and Morritt L.J. (at p.1041) “sufficiently related” (see Holgate J.’s illuminating analysis of the relevant case law in his recent judgment in *St Albans District Council Secretary of State for Communities and Local Government* [2015] EWHC 655 (Admin), at paragraphs 66 to 126). In *Fox* the Secretary of State had rejected a proposal for major residential development, giving “no weight” to his own previous decision on development on a similar scale nearby, in which he had taken a materially different view of the “spatial vision” for the area. Pill L.J., with whom Rimer and Black L.J.J. agreed on this point, referred (at paragraph 14 of his judgment) to the observation of George Bartlett Q.C., sitting as a deputy High Court judge, in *J.J. Gallagher Ltd. v Secretary of State for Local Government, Transport and the Regions* [2002] EWHC 1812 (Admin) (at paragraph 58) that where the inconsistency between two decisions is “stark and fundamental” it will usually not be enough to leave the explanation for the inconsistency to be inferred by the reader, because “unless the decision-maker deals expressly with the earlier decision and gives reasons that are directed at explaining the apparent inconsistency, there is likely to be a doubt as to whether he has truly taken the earlier decision into account”. Pill L.J. found a “serious inconsistency” between the two decisions in the approach taken by the Secretary of State to the spatial vision (paragraph 30). The Secretary of State could not properly ignore the first decision when making the second (paragraphs 31 and 34). The “inconsistencies against which the *North Wiltshire* principles guard” were present, and had led to an unlawful decision (paragraph 35).
55. In this case both Jaguar Land Rover’s proposal and Pertemps’ involved the erection of free-standing new buildings on sites in the Green Belt where no building had yet been erected.

Both were proposals for inappropriate development in the Green Belt, not only under national policy in the NPPF but also under Policy P17 of the local plan.

56. The facts and circumstances of these two proposals were obviously different. And the development plan policy relevant to the Jaguar Land Rover proposal had an extra ingredient – the specific support in Policy P1 of the local plan for the “reasonable expansion of the site” occupied by that company as one of the borough’s “key economic assets” (see paragraph 7 above). Nonetheless, the approach required under Policy P17 was the same in either case. In both cases the decision had to be made in the light of the support given by the development plan to proposals for development which would make possible the reasonable expansion of an established business in the Green Belt, even if the proposal was for inappropriate development and the support for it in Policy P17 was relevant only in the assessment of very special circumstances.
57. As is clear from the passages I have quoted from the planning officer’s report on Jaguar Land Rover’s proposal, this was the approach adopted by the council’s Planning Committee when it resolved to grant planning permission for that development. The officer’s reference to the “clear policy support” for the development embraced not only Policy P1 and the Government’s general commitment to the promotion of economic growth in the NPPF, but also, explicitly, Policy P17. The officer went on to include “the policy support to assisting economic growth” as one of the factors in the balancing exercise which led him, and the committee, to conclude that very special circumstances had been demonstrated (see paragraph 11 above).
58. That approach is not criticized by Mr Kimblin in his submissions on this ground. Indeed, the premise for those submissions is that in approving Jaguar Land Rover’s scheme the council both interpreted Policy P17 impeccably and approached the application of that policy correctly. And in my view it did.
59. Although the inspector was made aware of that decision and the basis for it, he said nothing about it in his decision letter. This would not have mattered if his approach had been demonstrably the same as the council’s. Then there would have been no inconsistency to explain. But his approach was different – and indeed, as I have held, based on an erroneous interpretation of Policy P17.
60. As I have said, it was for the inspector to judge how much weight he should give to the support for Pertemps’ proposal in Policy P17, the salient policy in the development plan, when he was considering whether or not there were very special circumstances to justify its approval. In Jaguar Land Rover’s case the weight given to the “policy support” for the development seems to have been considerable. The council’s decision to grant planning permission in that case did not set a precedent which the inspector had to follow when deciding Pertemps’ appeal. Ms Osmund-Smith does not submit that it did. Her submission is far less ambitious than that. The thrust of her argument on this ground is that Pertemps was entitled to expect from the inspector an interpretation of Policy P17, and an approach to the application of that policy, consistent with the council’s own when considering Jaguar Land Rover’s project, or at least a cogent explanation for an interpretation and approach inconsistent with the council’s in that case.
61. I think the council’s decision on Jaguar Land Rover’s proposal was clearly a material consideration in Pertemps’ appeal. This was not merely because Pertemps had drawn the

decision to the inspector's attention and relied upon it. Nor was it because the physical and economic circumstances in the two cases were the same, or even closely similar, which they very obviously were not. And it certainly was not because the council had been able to conclude that there were very special circumstances to justify approval of Jaguar Land Rover's development in the Green Belt, whereas its conclusion in the case of Pertemps' proposal had been different. It was because the decision in the Jaguar Land Rover case manifested the council's own interpretation and application of the contentious provision of Policy P17, as author and custodian of the policy, when considering a proposal for inappropriate development in the Green Belt which engaged that provision. In this particular and important respect the two proposals were, in my view, sufficiently analogous to bring into play the principle of consistency in planning decision-making. The "interpretation of policies" was one of Mann L.J.'s three examples of "the areas for possible agreement or disagreement" in *North Wiltshire District Council*. Had the inspector asked himself a question of the kind suggested by Mann L.J. – if I decide this case on the basis of my interpretation of the disputed provision in Policy P17, am I necessarily disagreeing with the council's own interpretation of that provision and the approach to its application in Jaguar Land Rover's case? – the only answer he could sensibly have given was "Yes".

62. In the circumstances the absence from the inspector's decision letter of any reference to the council's decision on Jaguar Land Rover's proposal in itself represents an error of law. Whether the inspector saw that he was adopting a different interpretation of Policy P17 from the council's in the Jaguar Land Rover case, and was therefore also applying the policy inconsistently, is not clear. If he did see that, he ought to have attempted to explain why he was departing from the council's approach. If he did not see it, he should have done. Either he failed to have regard to the council's decision in the other case as a material consideration, or, in any event, he failed to provide his reasons for disagreeing with the interpretation of the disputed provision in Policy P17 adopted by the council in that case, and with the approach it had taken in applying that provision.
63. The crucial issue in these proceedings is whether the inspector misinterpreted and misapplied a relevant policy of the development plan – as I have held he did. But I also accept that his apparent failure to have regard to the council's decision on the Jaguar Land Rover scheme as a material consideration, or at least his failure to explain why he was differing from the council's interpretation and approach to the application of Policy P17 in that case, offends the principles emphasized by the Court of Appeal in *North Wiltshire District Council* and in subsequent cases where consistency in decision-making has been at issue.
64. Ground 2 of the application therefore also succeeds.

Conclusion

65. For the reasons I have given this application must be allowed and the inspector's decision quashed.