



Neutral Citation Number: [2016] EWHC 3329 (QB)

Case No: CO/3241/2016

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/12/2016

**Before :**

**MR JUSTICE DOVE**

**Between :**

**CHELMSFORD CITY COUNCIL**

**- and -**

**SECRETARY OF STATE FOR COMMUNITIES  
AND LOCAL GOVERNMENT**

**- and -**

**GLADMAN DEVELOPMENTS LTS**

**Claimant**

**Defendant**

**Interested  
Party**

**Josef Cannon (instructed by Sharpe Pritchard) for the Claimant**  
**The Defendant did not appear and was not represented**  
**Paul Tucker QC and Giles Cannock for the Interested Party**

Hearing date: 3<sup>rd</sup> November

**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MR JUSTICE DOVE

**Mr Justice Dove :**

Introduction

1. On 16<sup>th</sup> September 2014 the interested party applied to the claimant for outline planning permission (with all matters save access reserved) for development described as “demolition of existing buildings (10 and 12 Plantation Road) and the residential development of up to 145 residential dwellings, open space, landscaping, associated infrastructure including means of access”. That application was refused by the claimant on 15<sup>th</sup> May 2015 and the interested party appealed to the first defendant. The first defendant’s duly appointed Inspector gave his decision on 25<sup>th</sup> May 2016 and the appeal was allowed and planning permission granted subject to conditions. This application is the claimant’s application under 288 of the Town and Country Planning Act 1990 for a statutory review of that appeal decision and its quashing. The first defendant indicated that he did not intend to defend these proceedings and conceded the claimant’s Ground two which is set out below. Following that indication on 11<sup>th</sup> August 2016 Ouseley J granted permission for this statutory review to be brought.
2. The claimant raises four Grounds in this application which all relate to the Inspector’s conclusions in relation to the appropriate figure to be taken as the claimant’s objectively assessed need (“OAN”) for housing from which the adequacy of the claimant’s five year housing land fell to be assessed. Whilst the detail of the evidence, the Inspector’s conclusions and the claimant’s criticisms are set out below the case presented by the claimant is in essence as follows. Part and parcel of the modelling of the OAN for the Council’s housing requirement involved, firstly, an examination of the additional jobs which would be predicted per annum and secondly, the relevant economic activity rates (that is to say the proportion of people within the population who would be working and therefore taking up jobs). The need for this analysis, along with other inputs into the derivation of OAN, was to seek to assess whether or not the number of jobs and the number of those economically active might in broad terms be in balance. The claimant’s contention is there was a methodological inconsistency in the evidence of the interested party which was accepted by the Inspector on these issues. It is contended that in identifying a figure for job demand based on the East of England Forecasting Model output (“EEFM”) the interested party ought also to have used the same underlying inputs and forecasts from that modelling when identifying an appropriate economic activity rate (“EAR”). It is submitted that when the Inspector accepted the interested party’s evidence he adopted the methodological inconsistency of which the interested party is said to have been guilty, namely using job demand based upon the EEFM forecast and then applying alternative EAR assumptions (said to be more realistic) in order to derive the housing requirement.
3. The claimant frames its argument in terms of classic principles of judicial review, namely in Ground one, failure to have regard to a material consideration, in this instance the methodological inconsistency; Ground two, failure to provide reasons for why adopting the methodological inconsistency might be appropriate and Ground four, irrationality in accepting evidence infected by the methodological inconsistency. The claimant’s Ground three relates to the Inspector’s conclusions in respect of the EAR assumptions that the interested party’s evidence used. The Inspector accepted that the interested party’s EAR assumptions were more realistic than those used by

EEFM and adopted by the claimant and in doing so it is said that his conclusion was irrational.

4. In order to understand the claimant's contentions and assess their validity it is necessary to examine firstly the nature of the evidence and the issues at the inquiry, and, secondly, the Inspector's conclusions before reaching a concluded view as to whether or not the claimant's case is legitimate.

#### The Nature of the Issue and the Dispute at the Inquiry

5. Paragraph 47 of the National Planning Policy Framework ("The Framework") provides as follows:

"47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable<sup>12</sup> sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances."

6. Paragraph 49 of The Framework provides as follows:

“49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

7. Following the decision in Hunston Properties v Secretary of State [2013] EWCA Civ 1610 the Court of Appeal determined that in circumstances where there was not a figure for the housing requirement in an extant local plan from which a five year housing land supply could be calculated it would be necessary for an Inspector in an appeal under section 78 of the 1990 Act to form a conclusion as to the housing requirement at the time of decision making, and from that to derive a further conclusion as to whether or not the local planning authority could demonstrate that they had a five year supply of housing.
8. To assist in that task (and also the task for local planning authorities when preparing their local plan) the first defendant publishes Planning Practice Guidance (“The PPG”). The PPG (reference 2a-014-20140306) notes that establishing a future need for housing is not an exact science and that no single approach will provide a definitive answer. The PPG notes that the starting point for the exercise will be to examine household projections published by the Office for National Statistics. The PPG then goes on to look at econometric factors which will need to be brought into the assessment and, in particular for present purposes, addresses the issue of how employment trends should be taken into account in the following terms at paragraph 2a-018-20140306:

“How should employment trends be taken into account?

Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area. Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate. Failure to do so will mean that there would be an increase in unmet housing need.

Where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, this could result in unsustainable commuting patterns (depending on public transport accessibility or other sustainable options such as walking or cycling) and could reduce the resilience of local businesses. In such circumstances, plan makers will need to consider how the location of new housing or infrastructure development could help address these problems.”

9. In order to provide further assistance to local planning authorities and those advising on these issues the Planning Advisory Service publishes a Technical Advice Note on

“Objectively Assessed Need and Housing Targets”. Within section 8 of that document advice is provided in relation to the approach to be taken to future employment. The following advice is provided in relation to economic forecasting:

“8.4 To predict future job change, many housing needs studies rely on econometric forecasts commissioned from specialist forecasters. Sometimes they use standard forecasts, which represent forecasters’ preferred scenarios. Other times they use bespoke scenarios to reflect alternative views about the economy or policy aspirations.

8.5 Either way, the economic forecast shows future numbers of workspace jobs (jobs based in the area). The housing needs study translates these numbers into future resident population (people living in the area), based on assumptions about the factors that link workspace jobs to resident population – comprising commuting, double-jobbing, economic activity rates and unemployment. Finally, this population is translated into households and dwellings, using HRRs and the usual vacant dwelling adjustment. The result is a job-led housing need figure.

8.6 This approach will often produce invalid results, because most economic forecasts already include a view of future population.

a) Some models assume that population will change in line with the official forecasts (SNPP), so if the forecast demand for labour exceeds that population future employment growth is held to a supply-constrained level.

b) In other models population growth is an output rather than an input, being derived partly from that demand for labour, as more job opportunities attract more in-migration.

8.7 Either way, the models used by economic forecasters already incorporate a view of the factors that link workplace jobs to resident population. As well as the supply-side factors listed earlier - commuting, double-jobbing, economic activity rates and unemployment – they include a demand-side link, where additional population in an area creates additional demand for labour in retail, leisure, education, health and other local services.

...

8.14 In planning for the economy and employment, some authorities use highly ambitious job numbers, based on policy aspiration rather than economic forecasting or business-as-

usual expectation. This may be the right approach to economic planning, but only on two conditions:

- On the demand side there should be a realistic prospect that the growth aimed for is achievable. Inspectors are rightly unconvinced by purely aspirational job numbers, including in some cases those taken from the LEPs' Strategic Economic Plans.
- On the supply side the local planning authorities should face up to the housing implications of that growth.

8.15 In relation to the second point, it is important to avoid unrealistic assumptions on the relationship between housing, population and jobs. A number of housing assessments have been criticised by Inspectors for expecting very fast increases in economic activity rates. Such increases reduce the population growth, and hence number of homes, that is required to support a given number of new jobs. But unrealistic figures put the emerging plan at risk."

10. The Inspector had the benefit of hearing evidence from extremely experienced witnesses who are expert in the area of assessing OAN. Firstly, on behalf of the claimant he heard from Ms Cristina Howick a partner in Peter Brett Associates LLP (PBA), who amongst other accomplishments was the author of the Technical Advisory Note for the PAS. She had been commissioned to produce a study for the housing market area comprised by the administrative areas of Chelmsford, Braintree, Colchester and Tendring Councils. This report had been commissioned in order to facilitate the preparation of their local plans and had been published in 2015 in order to address the requirement under paragraph 159 of the Framework that local planning authorities should prepare a Strategic Housing Market Assessment. Having noted that the work comprised within the study demonstrated that the demographic projection gave rise to a requirement in Chelmsford of 657 dwellings per annum ("DPA") Ms Howick went on to describe how the study addressed the potential influence of employment related issues. Her evidence provided as follows:

"3.35 Firstly, the OAN study looked to the EEFM economic forecast. This model, like the Experian one, begins by forecasting the future demand for labour. But unlike Experian it then calculates the population that will be required to meet that demand. In other words, EEFM provides a job-led population forecast, showing how many people need to live in the area if it is to fulfil its economic potential. The result for the plan period is population growth fractionally below the SNPP 2012 projection. This means that, if the EEFM forecast is robust and housing is provided in line with the demographic starting point, Chelmsford will have slightly more than enough workers to match the expected growth in jobs. There would be no '*unsustainable commuting*' and no reduction in '*the resilience of local businesses*' (PPG 2a-018). Hence there is no

justification for a ‘future jobs’ uplift to the demographic starting point of 657 dpa.

3.36 The second economic forecast we considered was from Experian. The Experian forecast uses as a starting point the official 2012-based Sub-National Population Projection (SNPP 2012). Experian produced a forecast of the demand for labour – showing how many jobs there would be in the borough if job growth was not constrained by labour supply. It then modelled the balance of the labour market, to see if the population shown in the official Sub-National Population Projections (SNNP) would produce enough workers to meet this demand. The result was that labour supply would be virtually equal to demand, with an insignificant shortfall of 60 jobs in 2031. This suggests that an uplift to the demographic projections could be justified, but the scale would be insignificant.

3.37 Thirdly, Edge Analytics in the EPOA report modelled a job-led demographic scenario that started from the EEFM job forecast, but produced a different result to EEFM. Rather than the EEFM approach, which integrates economic and demographic forecasting in one consistent whole, Edge’s translation of jobs into population used the demographic projection model PopGroup. Edge concluded that to meet the forecast labour demand would require greater population, and hence more dwellings, than shown in the official projections. For Chelmsford the uplift was 18%, bringing the objectively assessed need from 657 to 775 dpa. For the HMA as a whole the uplift was 8%.

3.38 We cannot explain this discrepancy between the EEFM and Edge, because we cannot compare the two calculations in detail. But our general view, explained in this PAS advice note, is that economic forecasting models such as EEFM should not be combined with demographic projection models such as PopGroup – unless all relevant assumptions are consistent across the two models.

3.39 That is because the economic forecasts already incorporate views on the future population and /or the ‘link factors’ that connect population to jobs – which as mentioned earlier include economic activity rates, unemployment, and commuting. If the demographers’ assumptions are not consistent with those views, the calculation of labour market balance is logically inconsistent and hence invalid.

3.40 The problem applies most obviously to economic activity rates, which are a critical factor in calculating labour market balance:

- The EEFM, like all economic forecasting models, incorporates a view about future trends in national activity rates.
- It applies these same trends to forecast local activity rates, because rates everywhere are largely driven by national factors – including the rising State Pension Age and increasing life expectancy.

3.41 If Edge uses the same future activity rates, the two models can be combined without logical inconsistency. But if, for example, Edge expects activity rates to grow more slowly than EEFM does, the PopGroup calculation will no longer make sense:

- If Edge's expectations were correct, this slower growth would apply at national level as well as locally.
- National output and employment would be less than EEFM currently forecasts; and hence local job demand would also be less than EEFM forecasts, because in economic models, as in real life, local economic growth is largely driven by national trends.
- To repair the modelling, the EEFM should be re-run assuming slower-growing activity rates both nationally and locally. The result for Chelmsford would be that both labour demand and labour supply would be lower than in the original EEFM forecast.

3.42 In the case of Chelmsford and its HMA partners, we do not know if and how Edge reconciled any potential inconsistencies. Therefore, the OAN report treated the three labour market scenarios as a range of uncertainty. From the three scenarios taken together, it concluded that:

- To match future job opportunities might need housing growth slightly above the official 2012 projection.
- The size of any uplift was uncertain, and the EOPA estimate of 775 dpa was very much a maximum.”

11. In essence, therefore, her evidence was that the study had examined three economic forecasts from suitably qualified experts. The first was from Oxford Economics which deployed economic forecasts from EEFM. The second was from Experian. Neither of these studies substantiated any uplift in the demographic projections as a consequence of employment influences. The third study was from Edge Analytics which started from an EEFM job forecast but which, following the use of the PopGroup demographic model, justified an uplift for Chelmsford of 18% increasing the

objectively assessed need for housing from 657 to 775 DPA. It was not possible to definitively conclude on the discrepancy between the Oxford Economics model and the Edge Analytics model, but since the three labour market scenarios showed a range of uncertainty the course taken was to adopt the uplift to 775 DPA as very much a maximum figure.

12. The interested party's evidence came from Mr James Donagh who is a director at Barton Willmore. In order to inform his evidence he commissioned a report from Mr Stephen Lucas, the owner and director of Development Economics Limited, addressing employment related issues. The first issue which Mr Donagh addressed in respect of the influence of employment on the OAN was to consider the appropriate figure for additional jobs per annum as the starting point of the assessment. In essence, he agreed the Council's target of 887 jobs per annum. His reasons for doing so were expressed in the following terms:

"6.32 To provide an informed analysis of past and future employment trends in Chelmsford and wider HMA, workforce job forecasts have been obtained from three sources; Experian Economics (December 2015), Oxford Economics (October 2015), and Cambridge Econometrics (November 2015). Each of these sources provide a 'policy-off' forecast.

6.33 It is argued that economic forecasts produced by the three forecasting houses, already include a view on the future population and therefore it is logically inconsistent to then use these economic forecasts against a different population projection. However, both Cambridge Econometrics and Oxford Econometrics have confirmed that their forecasts are demand based and not constrained by population (see Appendix 7 of JD1). Furthermore, the Experian projections outlined above are Experian *unconstrained* baseline job demand forecasts. In light of this, the logically inconsistent argument is not applicable.

6.34 The average past trends in employment growth from each of the three sources are set out in Table 6.4. Projected growth is set out in Table 6.5.

**Table 6.4: Historic job growth – 1997-2013 (per annum)**

	<b>Chelmsford</b>	<b>Colchester HMA</b>
Cambridge Econometrics	923	2,712
Oxford Econometrics	994	2,806
Experian Econometrics	1,411	3,542
<b>Average of three forecasts</b>	<b>1,109</b>	<b>3,020</b>

**Table 6.5: Projected growth – 2013-2037 (per annum)**

	<b>Chelmsford</b>	<b>Colchester HMA</b>

Cambridge Econometrics	680	2,529
Oxford Econometrics	449	1,834
Experian Econometrics	927	2,932
<b>Average of three forecasts</b>	<b>685</b>	<b>2,432</b>

- 6.35 Given the differences in job growth forecast by each source, I have calculated an average figure for each authority. Past trends record average growth of 1,109 jobs per annum in Chelmsford (3,020 jobs per annum for the HMA), with future growth projected to be 685 jobs per annum in Chelmsford (2,432 per annum for the HMA) over the period 2013-2037.
- 6.36 Chelmsford Borough Council is making provision for 887 additional jobs per annum which in the context of past trends and projections is approximately a mid-point between the two. Further analysis of past trends has been carried out by Mr Lucas and reported in ‘Employment and Activity Rates in Chelmsford’ (**JD2**). Through analysis of published historic data (ONS) Mr Lucas concludes that employment growth has averaged 977 jobs per annum over the period 1998 to 2016 (JD2, page 5, paragraph 2.11).
- 6.37 In light of the evidence of Mr Lucas, the Council’s target of 887 jobs per annum is considered reasonable (albeit conservative) and for this reason my assessment of economic-led housing need is based on the creation of 887 jobs per annum per annum (sic).
- 6.38 To ensure consistency with the HMA assessment it has been decided to assume future job growth taken from the same source as which the 887 jobs for Chelmsford originated from – the employed scenario from the EPOA Phase 7 (May 2015) report. This assumes the creation of 2,344 jobs per annum (2013-2037) across the HMA as a whole.”
13. Mr Donagh then went on to reach an assessment of the jobs-led level of housing need by applying three different approaches to projecting economic activity. The first of these was derived from Kent County Council (“KCC”), Mr Donagh’s preferred EAR. Secondly, and as sensitivity tests, he applied EARs which were derived from the Office for Budget Responsibility (“OBR”) and EARs used by the EU. Having applied those various EAR assumptions he reached, in table 6.9 of his proof, a range of requirements for jobs-led housing need ranging from 1,095 DPA to 1,129 DPA. Mr Donagh’s conclusion was that it was appropriate to use the KCC rates as they did not rely upon persons working past the age of 74 as part of the working population and adopting the KCC EAR he concluded that the appropriate figure derived from the

analysis was 1,129 DPA. He produced a summary table which set out the differences between his analysis and that of Ms Howick. This described the job forecast used in both cases as being “employed scenario (EEFM 2014) from EPOA phase 7 (May 2015): 887 jobs per annum.”

14. Mr Donagh also produced a Rebuttal Proof to the inquiry which addressed a variety of differences which had emerged in the evidence between himself and Ms Howick. Mr Donagh reiterates the framework of the methodology which has been described above in paragraphs 3.1 and 3.2 of his Rebuttal Proof in the following terms:

“ 3.1 For the purpose of assessing future housing need, future jobs (as an issue) relates to the need to house enough workers to meet job demand. If more houses are required to house workers than implied by the ‘demographic OAN’ (step 1 PPG methodology), the ‘demographic OAN’ will not capture need, cannot be considered full housing need and will need to be increased. PPG provides guidance (ID2a 018) on how job growth should be taken into account and advocates a two-step process.

- First make an assessment of the likely change in future job numbers using past trends and/or forecasts (noting that in this case, the forecast number of jobs is significantly lower than observed past trends)
- Then compare future job numbers with growth in the working age population.

3.2 PPG does not prescribe the way in which future job growth and labour force growth should be compared. However, the comparison is typically made after estimating the number of employed residents that might be expected to take up jobs in the district as follows:

- Working age population x Economic Activity (EA) rate = Economically active population.
- Economically active population x Employment rate = Total number of employed residents.
- Total number of employed residents x Commuting ratio = Total number of employed residents who work in the district (the ‘labour force’ for the purposes of assessing housing need). ”

15. Mr Donagh then went on to describe his views in relation to appropriate choice of EAR as follows:

“3.4 The ‘choice’ of economic activity rates has a significant bearing on the overall assessment of housing need. The evidence of Mr Steve Lucas (JD2)

reveals that the economic activity rates used by Edge Analytics to arrive at a need for 775 dwellings per annum are unrealistic and implausible (JD2, page 9, paragraph 3.19). For that reason, I have not adopted them in order to assess the number of homes needed to accommodate the demand for 887 jobs per annum, which, as Mr Lucas's evidence shows, is a conservative estimate of future job growth compared to the past rate of 977 jobs per annum (JD2, page 5, paragraph 2.11).

- 3.5 Instead, as I explain in my Proof of Evidence (GDL1 chapter 8, pages 48 to 50, paragraph 8.13 to 8.19) I defer to what is (to my knowledge, having discussed the issue with a range of practitioners) the only publically available independent research by impartial experts on the subject. This is the OBR, EU and the KCC Research (see JD1 page 57 to 59 and Chapter 6, page 37 of GDL2). It should be noted that the OBR and EU activity rate projections are supplied by Edge Analytics, for use with PopGroup, the demographic modelling software I have used to reconcile future jobs and housing need.
- 3.6 The OBR and EU rates are the only activity rates made available by Edge Analytics for use with Popgroup. Edge Analytics are the authors of the EPOA Phase 7 Report (CD10.6) relied upon by Ms Howick as the source of Chelmsford's OAN for 775 dwellings per annum (see page 12, paragraph 3.37 of Ms Howick's proof). The development by Edge of the OBR and EU activity rate projections for the purposes of reconciling future jobs and housing need post-dates the publication of the EPOA Phase 7 Report.
- 3.7 The OBE, EU and KCC research includes trends based projections of activity rate change by age and gender that can be used: (i) to model local labour force (the population that is economically active) growth and (ii) establish whether labour force growth derived from local demographic projections will be sufficient to meet job demand (forecast job growth). The OBR and KCC rates also take account of planned changes to the State Pension Age in the UK.
- 3.8 In circumstances where labour supply is not projected to be sufficient (as is the case here), the rates are used to calculate by how much migration into the area will need to rise, having regard to unemployment rate change and commuting patterns, in order for labour

supply to increase to the point where it will meet job demand in full.”

16. Having then criticised Ms Howick for failing to undertake any assessment of her own as to whether or not the EAR assumptions which she has used to arrive at 775 dwellings are realistic, Mr Donagh then returns to the assumptions of job growth at 887 jobs per annum and observes as follows:

“3.14 ID2a 018 make it clear that it is perfectly legitimate to assess future need on the basis of past employment trends. In the context of guidance that legitimises the use of past trends, it should be noted that 887 jobs per annum – the number tested by Edge Analytics, the number I have tested and the number that Chelmsford Council plans to accommodate – is lower than the past trend observed through historic ONS data, from which a past trend of 977 jobs per annum can be observed over the period 1998 to 2016 (GDL2-JD2, pages 2 to 9). 887 jobs per annum is also lower than the historic job growth change (1997 to 2013) recorded by Experian Economics (1,411 jobs per annum), Oxford Economics (994 jobs per annum) and Cambridge Economics (923 jobs per annum) (GDL2-JD1, page 56, table 6.2).

3.15 In light of past job growth, 887 jobs per annum is a conservative assessment of future job change based on past trends. Accordingly, it is not necessary to tie it to any future job growth projection published by the originators of the economic and labour market scenarios examined by Ms Howick. Nevertheless, it is important to examine their economic activity rate assumptions in order to determine whether they can reasonably be expected to occur and in turn, whether they are suitable assumptions to use for the purposes of assessing the number of homes needed to accommodate future job change.”

17. In summary, at paragraph 3.21 of the rebuttal proof, he reaches the following conclusion in relation to the future jobs number and the need to reflect assumptions used by the forecasters in arriving at it in terms of EAR assumptions as follows:

“3.21 As discussed above, it is my case that future jobs number (887 per annum) can be derived from past trends and that it is not necessary to defer to the assumptions used by forecasters, however it is absolutely necessary to be realistic and to make plausible assumptions that link future jobs to the need for homes.”

18. Finally by way of commentary upon the analysis provided by Edge Analytics Mr Donagh observes in his rebuttal proof as follows:

“3.26 The third and final scenario considered by Ms Howick (at page 12, paragraph 3.37 of her proof) is, as discussed above, the 775 dwelling per annum ‘Employed People’ scenario from

the Edge Analytics EOPA Phase 7 Report (CD10.6 page 55). Despite being signalled in the PBA OAN Report (CD10.13, page 39, table 6.4 and 6.5) Ms Howick fails to acknowledge that Edge arrived at 775 dwellings per annum after applying the economic activity rate (and other linking assumptions) used by the EEFM economic forecast, thereby avoiding Ms Howick's internal inconsistency 'trap'. According to Ms Howick:

**"If Edge uses the same future activity rates, the two models can be combined without logical inconsistency"** (Page 13, paragraph 3.41 of Ms Howick's proof).

3.26 Edge avoids Ms Howick's logical inconsistency, but they fail to present a future jobs led housing need projection that is based on realistic and reasonable economic activity rate assumptions. The way in which consistency, realism and plausibility can all be sustained is a straightforward step change in population growth..."

19. Thus, in summary, Mr Donagh's evidence on the employment-related matters to be factored into the OAN assessment were that it was reasonable to take a future jobs figure of 887 additional jobs per annum and that such a figure could be justified on a number of bases, albeit it had been adopted from the work undertaken by EEFM. He did not consider it necessary to be tied to the economic forecasting assumptions which underpinned the generation of that future jobs figure. Instead in moving the analysis forward he adopted alternative EAR assumptions from those used by EEFM on the basis that the EEFM EAR assumptions were unreasonable and unrealistic. In particular, Edge Analytics' most recent report on economic activity rates relied upon an increase in economic activity rates of 6.1% from 70% to 80.1% of the population being in work which Mr Donagh, supported by Mr Lucas, considered unreasonable and unrealistic. Adopting other EAR rates derived from the EU, the OBR and in particular KCC led to a higher figure for the OAN.
20. In addition to the evidence from the experts the interested party relied upon an Inspector's decision dated 9 March 2016 in respect of a site at Ormesby, Middlesbrough. In the context of that inquiry there was a dispute about the appropriate figure for the OAN and part of that dispute depended upon an argument as to EAR assumptions. Ms Howick appeared at that inquiry and in her evidence to the Inspector preferred EAR assumptions from Experian. The appellant's witness, Mr Wisher, relied upon EAR projections from the OBR. The Inspector's conclusions in relation to that debate were expressed at paragraphs 20 to 23 of the decision in the following terms:

"20. I do not doubt that Experian is an authoritative source. Ms Howick points out that Bobby Shojai's forecasts were clearly based on data from the Labour Force Survey (LFS) for the second quarter of 2014. However, whilst the OBR's FSR refers in general terms to the LFS on pages 144 and 145, Ms Howick says it is not clear which particular quarter's LFS data has been relied upon. I noted Ms Howick's evidence that OBR

projections do not have the status of “official statistics” confirmed by the UK Statistics Authority. Nevertheless, Mr Wisher explained that the OBR was set up in 2010 to provide independent economic forecasts to central government. It has a duty to report on the sustainability of public finances under the National Audit Act 2011. It updates its economic activity forecasts roughly annually, but nevertheless looks at the longer term. In arriving at his OAN figure of 355 dpa, Mr Wisher has used the latest set of OBR economic activity forecasts issued in November 2015. Those forecasts are very recent and I accept, in the words of Mr Williamson’s closing submissions for the appellant, that the “OBR figures are used by the Government in the most important activities of the State.”

21. In these circumstances, I attach greater weight to the OBR projections. They give me cause to seriously doubt the markedly higher activity rates assumed by Experian, in the absence of a more cogent and robust explanation for those markedly higher rates. Furthermore, I note Mr Wisher’s point that higher activity rates among older people may not provide the same variety of skills, for example to serve the construction or leisure industries. Whilst I acknowledge Ms Howick’s evidence that Experian’s approach has not been challenged or discredited to date, Bobby Shojai’s paper was only published in May 2015 and it could take some time for decisions to emerge which address this point. In terms of the PAS guidance then, I consider on the evidence before me, that the fast increases in economic activity rates assumed by Experian are unrealistic.

22. Ms Howick also contends that there is a “logical inconsistency” in Mr Wisher’s approach. The Oxford Economics model, which produced a jobs growth figure of 106 p.a., averaged from 2013 and 2014 forecasts, is an internally consistent model; it includes a jobs led element based on a view of future population. The argument is that “Mr Wisher’s translation of forecast jobs into population is logically flawed, because the forecasts already incorporate a view of future population”. Ms Howick says Mr Wisher was wrong to take one element out of that model and use it in the POPGROUP demographic model, as the jobs figure is inconsistent with other inputs used in the POPGROUP modelling; the economic assumptions are different. Furthermore, Ms Howick contends that using the 109 jobs p.a. figure projected from past trends over the past 13 years is invalid because key factors implicit within it will change; most notably there will be a reduction in the working age population.

23. However, the PPG advocates an “assessment of the likely change in job numbers based on past trends and/or economic forecasts”. Furthermore, the Inspector in another recent appeal

(the Saltburn appeal) described Mr Wisher's 109 jobs p.a. figure as "relatively conservative". Mr Wisher commented that the majority of OAN experts use POPGROUP in exactly the same way as him. Furthermore, the Inspector in a recent appeal concerning a site at Marske Road, Saltburn said his approach offered a "realistic and robust indication of the Borough's full OAN". Mr Wisher nevertheless accepted the principle of the PAS guidance. However, Mr Wisher firmly rejected the contention that it would have a significant bearing on the outcome, especially given that job growth is not solely the function of the level of population in an area. Indeed, under cross examination, Ms Howick said that nearly all of the difference between the parties on OAN is down to the use of different economic activity rates, rather than the logical inconsistency point. I have heard no evidence which causes me to doubt that."

21. The claimant relied upon another Inspector's decision dated 10 March 2016 in respect of a site at Muxton Lane in Telford at which both Ms Howick and Mr Donagh had given evidence. Again, a dispute existed in respect of the proper calculation of the OAN in which one of the questions which arose was which EAR assumptions were appropriate for use. At that inquiry Mr Donagh had again preferred EARs derived from KCC. The Inspector's conclusions at paragraphs 27 and 28 of his decision were as follows:

"27. The employment trends and forecasts argument turned mainly on the use differing activity rates. If activity rates are lower then for a given number of jobs more workers are required and so there is a greater housing need. BW used activity rates derived from Kent County Council, which were often used in OAN calculations around the country, and were more pessimistic than those used in the PBA model, although there is no evidence to suggest that one should be preferred over the other. One effect of the PBA figures was to assume a high level of activity rates amongst older people which BW considered to be excessive. However, when PBA put the Kent CC activity rates through its own model, the outcomes were little different because with lower activity rates there is also lower economic activity as a whole and so less demand. PBA suggested BW had used lower activity rates but kept job predictions the same, hence the increase in workers and houses, whereas in fact job creation would fall, offsetting most of the upward pressure on housing caused by lower activity rates.

28. I am not a housing statistician and it is not the purpose of this appeal to provide a definitive criticism of the Council's OAN. Much of the argument seemed to turn on the exact nature of the model that was used and the inputs that were fed into it. However, if the appellant had been able to demonstrate obvious shortcomings that would have affected my assessment of the

reliability of the OAN. No doubt the figures will come under renewed scrutiny during the eLP process and I do not wish in any way to prejudice that, but on the basis of the evidence I heard, I do not consider that the appellant's criticisms were sufficiently well founded to suggest the Council's OAN was unreliable and I shall treat the OAN as the best indicator of housing need that is available."

22. Both the claimant and the interested party made closing submissions supporting the evidence that they had called. The claimant contended that the evidence of Ms Howick should be preferred and that the OAN derived from her study was robust. In respect of Mr Donagh's evidence, and Ms Howick's criticism of it at the inquiry, the claimant submitted as follows:

"57. CH's [Ms Howick] first point is straightforward and one of the simple methodological logic. If a key input into the *national* job forecast is the predicted increase in economic activity rates at the national level, that necessarily involves 'taking a view' of how such rates will change in the future. Any application of economic activity rates later in the process – to derive the total population needed to support the forecast job demand – must follow the same assumptions, unless there is some local justification for a different approach.

58. But local trends in EARs follow national ones – JD [Mr Donagh] suggests no *local* justification for applying different EARs in Chelmsford and indeed his use of alternative EARs (from KCC) make no reference to local aspects of difference – he simply applies a different set of national-level assumptions about EARs to that which fed into the prediction of job demand.

59. This is the essential point: if local job demand is taken from a forecast which proceeds on particular assumptions about national-level job growth; and the translation from national to local depends on sector performance, it cannot be methodologically sound to the discard those assumptions when comparing job demand to likely labour supply needed and choose an entirely different set of assumptions."

23. The interested party made submissions supporting the validity of Mr Donagh's evidence. In addition to providing a detailed commentary on the substance of his evidence the submissions addressed the point of methodological inconsistency (which had become referred to during the inquiry it seems as the "logic trap"). The interested party's submissions were in the following terms:

"65. In desperation (perhaps), CH [Ms Howick] has conceived a "logic trap". CH's essential point is that using different economic activity rates in the OAN, to those used by EEFM, is internally inconsistent and must, as a matter of logic, give rise

to a different level (and annual rate) of job growth. This proposition is hopelessly flawed for (at least) 7 reasons.

66. Firstly, JD [Mr Donagh] simply does not rely on the EEFM forecasts at all, in any part of his assessment. The flaw in the EEFM EA rate does not “infect” his assessment at all.

67. Secondly, this is precisely the argument CH raised at the Ormesby Appeal, where it was comprehensively rejected for reasons which the Appellant adopts (CD 11.45 at DL 22 and 23).

68. Thirdly, the LPA’s assessment of OAN is flawed. It doesn’t matter if BW’s [Barton Willmore] analysis is also flawed. The LPA still cannot demonstrate a housing requirement and thereby a 5 year supply against it.

69. Fourthly, CH has provided (literally) no evidence on this point. It was raised to the first time in EiC. The Inquiry simply does not know what (if anything) the outcome of the logic trap would be on job growth. We do not know if the impact is material because the analysis has simply not been undertaken. Oddly, it was suggested (XX of JD) that he had not undertaken the assessment either. However, JD has his own assessment, he has no reason to re-work PBA’s analysis.

70. Fifthly, the labour forces supply (working age population that is economically active) calculated by JD as using OBR, KCC and EU rates gives rise to 887 employed persons per annum (JD page 40, table 6.9), which is 100% consistent with the 887 j/pa calculated by EEFM for Chelmsford. There is no internal inconsistency, as alleged.

71. Sixthly, there is no internal inconsistency because JD’s assessment provides for more inward migration to Chelmsford (and in turn population growth) than assumed by EEFM, creating a greater supply of working age people that are economically active (labour supply). That is how consistency is maintained between the OAN for Chelmsford and the EEFM predictions for Chelmsford.

72. Seventhly, in keeping with the way EEFM works (population moves to jobs, in contrast to Experian’s fixed population model), all that is required is a marginal change in the way national population growth is distributed locally to address any logical inconsistency (JD in EiC). And even if the EA rates did not give rise to lower job growth nationally, EEFM significantly underestimate projected national population growth (by over 50,000 persons per annum amounting to over 900,00 persons short of the latest published projections (2014-based) by 2031). That is sufficient to support

a material reduction in economic activity rate growth, without reducing the EEFM employment growth projection. It also more than enough to provide the additional 640 persons per annum in Chelmsford required as a result of using realistic and plausible economic activity growth rates there, in place of the implausible EEFM rates.”

### The Inspector's Decision

24. It should be emphasised, of course, that the material which has been set out above was only a part of the extensive range of evidence which was placed before the inquiry in order to assist the Inspector in resolving the five main issues which he identified at paragraph 5 of the decision. The first of those main issues was:

“Whether or not the Council is able to demonstrate a five-year supply of housing land for the area.”

It follows that the material which has been set out above was in truth but an element of that main issue, which in terms of the matters which were in dispute comprised a number of issues including household formation or headship rates, as well as lapse rates in extant elements of the housing supply. The Inspector set out the effect of the disagreements between the parties and his conclusions in relation to the employment-related issues in respect of OAN in the following paragraphs of his decision:

“26. The difference between the parties’ preferred FOANs is 354 dpa, which by the end of the Inquiry was essentially due to two areas of disagreement. Firstly, headship rates, which account for 109 dpa, with the remaining 245 dpa due to differing approaches to economic activity rates (EAR). When these two figures are added separately to the Council’s preferred FOAN it results in totals of 884 dpa and 1020 dpa respectively, which fall either side of the ‘tipping point’. I deal firstly with economic activity rates as the additional 245 dpa promoted by the appellant would alone cause the housing land supply to fall below the five years required by the Framework.

27. Regarding EAR the Planning Practice Guidance (the PPG) requires an *assessment of the likely changes in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area*. Both parties used job growth projection of 887 jobs per annum.

28. My attention has been drawn to other appeal decisions and, in respect to this aspect of the evidence, notably to those concerning residential development at Muxton, Telford and Ormesby, Middlesbrough<sup>6</sup>. These appeals were considered and determined at a similar point in time, such that it is very likely that each would have been considered/made without knowledge of the other. The respective Inspectors have taken a somewhat different approach to EAR, which is unsurprising in the

circumstances. At the Muxton appeal the FOAN witnesses were the same as those for this appeal, Ms Howick and Mr Donagh, whereas of these witnesses only Ms Howick gave evidence at the Ormesby appeal.

29. In the context of EAR, the Muxton appeal Inspector set out that *if the appellant had been able to demonstrate obvious shortcomings that would have affected my assessment of the reliability of the OAN ... but on the basis of the evidence I heard, I do not consider that the appellant's criticisms were sufficiently well founded to suggest the Council's OAN was unreliable and I shall treat the OAN as the best indicator of housing need that is available.*

30. There are, nonetheless, clear parallels between the Ormesby appeal and the appeal that is before me regarding EAR, particularly in respect to labour supply and migration. These matters are considered in some detail at paragraphs 14 to 21 of the Ormesby appeal decision letter. In broad terms in the Ormesby case the appellant's FOAN witness preferred the Office for Budget Responsibility (OBR) projections in favour of those of Experian as used by Ms Howick in that case.

31. The circumstances of the current appeal are similar in that Ms Howick prefers EEFM's rates to the OBR rates and, like the Experian rates in the Ormesby case, they are markedly above those of the OBR. I note that the evidence indicates that OBR figures are used by the Government in the most important activities of the State. In this case the appellant has also submitted rates of EU and KCC. As these are broadly consistent with the OBR rates, they too are significantly exceeded by the EEFM rates. I also note that the 'current' EEFM EAR is markedly above that of EEFM's previous EAR.

32. In my view, as in the Ormesby case, the OBR projections give good reason to doubt the EAR rates assumed by the Council; a conclusion which is supported in this case by the EU and KCC projections as well as by past EEFM projections. I have not found anything within what I have read and heard during the appeal process that gives me good reason to justify reliance on the Council's significantly higher rates in the face of this evidence. Consequently, I consider that the EEFM predictions are likely to be unrealistic and that greater weight should be attached to the EU, KCC and OBR evidence.

33. For these reasons, therefore, on the evidence before me it is appropriate to include in the FOAN the additional 245 dpa identified by the appellant arising from its EAR evidence. When added to the Council's preferred rate of 775 dpa this results in an annual FOAN of 1020 or 5100 over five years. Applying the Council's preferred current shortfall figure of 254 dwellings and the 20% buffer following the Sedgefield

approach results in a five-year requirement of some 6425 homes. Setting this figure against the projected housing delivery of 6095 dwellings results in a shortfall of some 330 homes for the period 2015/16 to 2019/20 and a supply of some 4.74 years.”

25. It was agreed at the hearing of this case that the figure of 245 dpa in paragraph 33 of the Inspector’s decision was in fact an error and ought to have been 744 dpa leading to a consequential change of the shortfall of 330 homes to a shortfall of 918 homes. The Inspector went on to consider other matters identified as main issues including the impact on the claimant’s spatial strategy; the effect on the character and appearance of the area; a dispute in relation to the impact on education infrastructure; and finally the planning balance. Having found that there was not a five-year supply of land, pursuant to paragraph 49 of the Framework, the Inspector accepted that policies for the supply of housing must be treated as being out-of-date and therefore that the adjusted balance provided for by paragraph 14 of the Framework in circumstances where relevant policies are out-of-date applied. The Inspector’s overall conclusion was expressed in paragraph 71 of the decision in the following terms:

“71. In summary, the appeal scheme would conflict with the Borough-wide Spatial Strategy and harm the character and appearance of the area contrary to Policies CP2, CP5 and DC2 of the Core Strategy. It would also be likely to result in a significant number of primary school aged children having to be transported to schools away from Boreham. However, in the current circumstances these important considerations, along with the other factors identified that weigh against the appeal scheme, do not significantly and demonstrably outweigh the matters that are in favour of the proposals, particularly the delivery of housing. The appeal development would, therefore, represent sustainable development in the terms of the Core Strategy Policy CP1 and the Framework.”

26. The Inspector went on to consider other matters but his conclusions were undisturbed as they were finally articulated in paragraph 87 of the decision as follows:

“87. Overall, therefore, notwithstanding the identified policy conflict and its effect on the Borough-wide Spatial Strategy, on the character and appearance of the area and on primary school children, given the absence of a five-year housing land supply and the status of relevant policies of the development plan for the supply of housing, I find that the considerations that weigh against the development collectively do not significantly and demonstrably outweigh those matters that are in its favour, particularly the delivery of housing. On this basis the proposals would be sustainable development and, consequently, the appeal is allowed subject to the identified conditions.”

## The Law

27. The applicable law in relation to this case is uncontroversial. A decision on an application for planning permission is to be made in accordance with the development plan unless material considerations indicate otherwise: section 38(6) of the Planning and Compulsory Purchase Act 2004 read alongside section 70(2) of the Town and Country Planning Act 1990. If an application is refused by the local planning authority the applicant is entitled to appeal to the defendant by virtue of section 78 of the 1990 Act. In most cases, as here, the defendant's jurisdiction will be exercised by an Inspector who will consider and determine whether or not planning permission should be granted. A challenge to a decision reached on appeal under section 288 of the 1990 Act is a statutory review of whether or not there has been an error of law in the decision-making process. An application under section 288 is not a full merits appeal, and the decision will only be vulnerable to being quashed if an error of law is demonstrated (see, for example, Newsmith Stainless Steel LTD v Secretary of State [2001] EWHC 74). This is because matters of planning judgment and the weight to be attached to the various material considerations within the balance of matters underpinning the decision are exclusively the province of the local planning authority, or the first defendant on appeal (see Tesco Stores v Secretary of State [1995] 1 WLR 759).
28. Under rule 18 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 the defendant is obliged to notify his decision on an appeal together with "his reasons for it in writing". There is therefore a duty to give reasons. The content of the duty to give reasons and the appropriate approach to examining whether or not the reasons are legally adequate was summarised by Lord Brown of Eaton-under-Heywood in the case of South Bucks District Council and another v Porter (No2) [2004] UKHL 33 in the following terms:

"35. It may perhaps help at this point to attempt some broad summary of the authorities governing the proper approach to a reasons challenge in the planning context. Clearly what follows cannot be regarded as definitive or exhaustive nor, I fear, will it avoid all need for future citation of authority. It should, however, serve to focus the reader's attention on the main considerations to have in mind when contemplating a reasons challenge and if generally its tendency is to discourage such challenges I for one would count that a benefit.

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.”

29. Lord Brown’s distillation of the law was derived from a well established sequence of authority including In Re Poyser and Mills’ Arbitration [1964] 2 QB 467 and MJT Securities LTD v Secretary of State for the Environment [1997] 3 PLR 43. The arguments in MJT Securities LTD bore both upon the adequacy of the reasons which had been provided and also whether or not, in the absence of the mention in the reasons in respect of a particular issue, it could be concluded that a consideration had been left out of account in the decision-making process. In respect of the adequacy of reasons Evans LJ stated as follows at page 197:

“What should be noted, however, is that the Inspector is not obliged to decide all the issues which are raised before him. It may not be necessary for him to decide all the issues in order to decide whether planning permission should be granted. An obvious example is provided in the present case: if he had decided the question of need against the applicants, the issue as to planning merits would not longer be relevant to his decision. No-one suggests that the statutory duty to give reasons extends to issues which in the event are not relevant in this sense to the result of the appeal. The duty established by the House of Lords in Bolton No. 2, in my judgment, is to set out the major steps in the Inspector’s reasoning which have led to his overall decision on the appeal, and this makes it necessary for him to state his conclusions on the principle issues which were raised for decision by him (“controversial”) and which in the result it was necessary for him to decide. Moreover, he need not refer to “every material consideration, however insignificant”, but only to the “main issues”.”

30. In respect of the question of whether or not it could be concluded from the absence of mentioning a consideration that it had been left out of account, Evans LJ observed at page 198 as follows:

“The respondent contends that the judge also decided that the Inspector failed in his duty to have regard to what was admittedly a material consideration – “I simply do not know if the Inspector had regard to it or not”. Logically, this conclusion would seem to follow from the fact that no reference is made to

it. But it is implicit in the House of Lords’ ruling in Bolton No. 2, that only the “main issues” need be referred to, that the failure to refer to other issues does not mean that they have been ignored. This was recognised in Lord Lloyd’s speech in Bolton No. 2. He quoted from Lord Keith’s speech in R. v. Secretary of State for Trade and Industry, ex p. Lonhro PLC as follows –

The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of the different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational research for his decision.

Lord Lloyd held in Bolton No. 2 that the same principle applies to a failure to refer in a decision to a material consideration. The material consideration which the applicants say the Inspector failed to take into account was not a “main issue” and there are no grounds for inferring that he overlooked it when he reached his decision.”

### Conclusions

31. Mr Cannon commenced his submissions with the argument in respect of Ground 2, namely the failure of the Inspector to provide adequate reasons in relation to the methodological inconsistency. He submitted that this was a feature of the claimant’s evidence which it was necessary for the Inspector to address and to explain why he had rejected it. He made extensive reference to the evidence which has been set out at length above in order to seek to demonstrate that the methodological inconsistency was a “principal important controversial issue” about which the Inspector needed to provide reasons to explain his decision. He submitted that there was nothing in the Inspector’s decision which touched upon this particular issue.
32. These submissions were further developed under the heading of Ground 1 so as to amount to the contention that as the Inspector had failed to provide any reasons in respect of this particular issue it could properly be concluded that there was at least a substantial doubt as to whether or not the Inspector had in fact taken this material consideration into account at all. Mr Cannon submitted that in the absence of any explanation in respect of this issue, there was no evidence that the Inspector had taken account of this material consideration. In respect of Ground 4, which is a further iteration of the claimant’s arguments, it is contended that as the Inspector provided no basis for dismissing the claimant’s point in relation to the methodological inconsistency an irrational basis for him having done so could not be ruled out.
33. In response to these submissions, Mr Paul Tucker QC on behalf of the interested party places reliance in relation to the Inspector’s reasons on the phrase contained in paragraph 32 of the decision letter when the Inspector states:

“I have not found anything within what I have read and heard during the appeal process that gives me good reason to justify

reliance on the Council's significantly higher rates in the face of this evidence."

34. He submits that this observation is, taken with the Inspector's clear endorsement for the reasons given in the decision of the higher EAR assumptions, a clear indication both that the Inspector had taken account of the points raised in relation to the methodological inconsistency but did not regard them as being of any substance, and certainly of insufficient substance to outweigh the conclusions which he had reached in respect of the higher rate relied on by the interested party. Moreover, Mr Tucker submitted that the methodological inconsistency was not a "principal important controversial issue" which required specific reasoning to be provided in respect of it. The main issue in the case was, he submitted, whether the EAR used by the LPA was one which was reasonable and realistic or whether a higher rate should be used. The Inspector provided full reasons for accepting that the claimant's rates were unrealistic and therefore that the lower rates adopted by the interested party were to be preferred. Moreover, he relied upon the submissions made in closing by the interested party on this point, and in particular the submission that the suggested methodological inconsistency did not in fact infect the evidence of the interested party and thus it was in truth a non-point. He therefore submitted in relation to Ground 2 that adequate reasons had been provided in the circumstances set out above and that it was clear that the Inspector did have regard to the methodological inconsistency but disregarded it as being a legitimate basis for rejecting the interested party's evidence and focused on what was the principal controversial issue namely whether the EAR relied upon by the claimant was realistic.
35. Having considered the submissions made, and notwithstanding the care with which Mr Cannon fashioned his attractive submissions, I am not satisfied that the Inspector fell into error in any of the respects suggested by Grounds 1, 2 and 4 for the following reasons.
36. Firstly, having reviewed the evidence which is set out above, it is clear that the Inspector focused in respect of this particular aspect of determining the OAN upon the reliability and realism of the EAR assumptions adopted by the claimant. He formed clear and cogent reasons in paragraphs 30-32 for accepting the interested party's evidence that higher rates of EAR than those used by the claimant were appropriate. In paragraph 31, in particular, he noted the parallels in relation to the Ormesby appeal and the consistency of the EAR rates which were referenced by the interested parties with those produced by the OBR. He also observed the marked difference in the EAR assumptions deployed by Edge Analytics (or the EEFM rates as referred to by the Inspector) from those they had used previously. Thus, in paragraph 32, he doubted the rates which had been assumed for EAR by the claimant. These provided his reasons for concluding that the interested party's EAR assumptions should be accepted. Having reached that conclusion, founded on another Inspector's decision and based upon his own analysis of the available alternative rates, he had in my view addressed the principal important controversial issue as to whether the claimant's rate was realistic and if not which rates were.
37. I am unpersuaded that the methodological inconsistency was a principal important controversial issue about which the Inspector was required to produce separate reasons beyond that which he observed in paragraph 32 of the decision, namely that

there was nothing within the evidence which provided him with good reason to justify reliance on the Council's EAR assumptions.

38. Having set out extensive passages of the evidence in order to understand the submissions which are raised in relation to this point, it is in my view important to emphasise the context of the conclusions which the Inspector was reaching in this case. There was considerable force in the submission made on behalf of the interested party in closing at the inquiry that the methodological inconsistency point was one without substance. As set out above, the point is predicated upon the inappropriateness of taking a starting point of 887 jobs from the EEFM forecasting model as the starting point for the exercise in terms of additional jobs per annum and then using different forecasting assumptions in terms of alternative EAR rates not used within that modelling to subsequently derive the number of dwellings per annum as the OAN. This argument is however predicated on the assumption that Mr Donagh's evidence relies upon 887 additional jobs per annum as derived from the EEFM modelling. True it is that in his summary table 8.1 that is how the figure is described. However, when that entry is read fairly alongside the totality of his evidence offered to the public inquiry it is clear that that figure of 887 additional jobs per annum was taken not simply because it emerged from that modelling but also because it was a figure which "can be derived from past trends and...it is not necessary to defer to the assumptions used by forecasters". This point is reinforced in paragraphs 3.14 and 3.15 of the supplementary proof of evidence which he provided. In those paragraphs he notes that the figure of 887 jobs per annum used by Edge Analytics derived from EEFM is the number that he has tested but is a number lower than past trends and historic job growth change as recorded by other economic forecasting houses. It is thus taken by him as "a conservative estimate of future job change based on past trends". Thus the methodological inconsistency point did not in substance arise on the basis on Mr Donagh's evidence which deployed a figure of 887 additional jobs per annum based on a number of evidential sources as a conservative figure to be put into the assessment. He did not in doing so adopt or endorse the forecasting assumptions within the EEFM model which had led to that figure.
39. In the course of his reply Mr Cannon submitted that nonetheless once the 887 figure was adopted by Mr Donagh he was fixed with the underlying assumptions in respect of the generation of that figure and that those underlying assumptions had to be used in any calculations for future effects if the methodological inconsistency was to be avoided. He submitted that those underlying assumptions could not be disentangled from the analysis and Mr Donagh was caught by it. In my view that submission does no justice to the evidence of Mr Donagh and the evidence which was before the Inspector. It is clear in my judgment that as the interested party observed, the methodological inconsistency simply did not arise on Mr Donagh's approach since he took the 887 additional jobs per annum on the basis of it being a conservative figure justified from a number of sources, including in particular evidence of past trends and historic employment growth, both of which were empirical rather than theoretical. On the basis of his evidence neither he, nor the Inspector in accepting his evidence, was bound to endorse, adopt and redeploy any underlying assumptions in the EEFM modelling work. He was entitled to take the 887 additional jobs per annum figure as a conservative starting point and then roll the analysis forward taking, in accordance with the advice and guidance available, what he considered to be a realistic future EAR assumption.

40. On the basis of matters which I have set out above it follows that I am not satisfied that the methodological inconsistency was a principal important controversial issue about which the Inspector was obliged to provide reasons. In my view his reasons were clear in relation to the issue of the EAR rates to be deployed and his reasons for accepting the interested party's evidence that those used by the claimant were unrealistic and the rate that the interested party had used derived from a number of sources were to be preferred leading to a higher OAN. Since it was not a principal important controversial issue the Inspector's observation in paragraph 32 of his decision in my view suffices to deal with the matter. This point was within the range of matters within the evidence which he had concluded did not dissuade him for the reasons which he had given from accepting the interested party's approach through the evidence of Mr Donagh. As has been regularly observed in the authorities a very wide range of points in relation to material considerations will be raised within the appeal process but it is not necessary for the Inspector to deal with each one of them. He has to provide reasons which satisfy the principles set out in paragraph 36 of South Bucks. The Inspector did that here in explaining why he concluded that the claimant's EAR assumptions were unrealistic and those of the interested party to be preferred. It was not necessary for him to deal with each and every aspect of the case raised by the parties on the EAR rate issue and in my judgment his reasons more than adequately explained to the claimant as the disappointed party the reasons why the interested party's has been preferred.
41. In the light of these conclusions I am also unwilling to accept that it is open to question whether the Inspector took into account the material consideration of the methodological inconsistency. As was emphasised by the court in MJT Securities, since this issue was not one of the principal important controversial issues the fact that there is not any specific reference to it does not justify the conclusion that it was left out of account altogether. I accept the submission of Mr Tucker that it was, in effect, incorporated within the Inspector's observation quoted above in paragraph 32 of the decision.
42. Furthermore, in the light of my conclusions, I do no accept the submission that the way in which the Inspector expressed his reasons gives rise to the suggestion that his decision was irrational. The approach which the Inspector took to resolving the issue between the parties as to which EAR rate assumptions were appropriate was one which was not only adequately explained in his decision but one which was open to him bearing in mind the evidence and submissions which he had. For all of these reasons I am satisfied that there is no substance in Grounds 1,2 and 4 of the claimant's case and that they have failed to demonstrate any legal error in the decision which was reached in this appeal in those respects.
43. Ground 3 of the claimant's case is the contention that it was irrational for the Inspector to conclude that the EAR assumptions used by the Council were "likely to be unrealistic". It is contended that the Inspector failed to provide any adequate explanation as to why the claimant's EAR rates were to be doubted as realistic assumptions, and in the absence of coherent explanation irrationality in his conclusions could not be ruled out. Furthermore, the Inspector relied upon the decision from Ormesby but his reasons for doing so, expressed as being "particularly in respect to labour supply and migration", are not as he indicated in fact addressed in paragraphs 14-21 of that decision. Furthermore, there was another decision from

Muxton Lane where the Inspector in that decision formed a different conclusion and the reasons given by the present Inspector for rejecting those conclusions are opaque betraying again irrationality on the part of the Inspector.

44. I am unable to accept the claimant's submissions in relation to Ground 3. The Inspector had before him, as is clear from the evidence which has been set out extensively above, considerable evidence as to the consistency of EAR assumptions published by the EU, KCC and OBR, all of which were significantly exceeded by the Edge Analytics rates (or the EEFM rates as they were referred to by the Inspector). He notes in paragraph 28 of the decision that the two appeals from which he had been provided with Inspector's decisions were likely "to have been considered/made without knowledge of the other". He sets out in paragraph 29 the conclusions of the Muxton Lane appeal but identifies in paragraph 30 the reliance placed by the Ormesby Inspector upon OBR projections. He thereafter notes the point which I have just observed in relation to OBR rates and the others which were debated at the inquiry. It was not irrational for the Inspector to conclude, bearing in mind the consistency of the OBR, EU and KCC rates as being significantly above those used by EEFM (albeit markedly above those previously used by EEFM), that the interested party's rates were more plausible and more realistic.
45. Taking the conclusions at Ormesby in relation to reliance upon the OBR projections alongside those other pieces of evidence the Inspector's conclusions were open to him. Those conclusions in relation to OBR feature in paragraphs 20-21 of the Inspector's decision in that case and his observations "that OBR figures are used by the Government in the most important activities of the State" has obvious synergy with the conclusions reached in the present appeal. Thus I am unable to accept that there is any incoherence in the conclusions reached in respect of the realism of the EAR assumptions adopted by the interested party. The Inspector clearly explains in my view the role of the Ormesby appeal and its endorsement of OBR projections in his decision-making process, alongside the other evidence as to consistency with other rates from authoritative sources, as leading to his conclusion that the EEFM predictions relied upon by the claimant are "likely to be unrealistic". The Inspector had in mind what had been said at the Muxton Lane appeal, albeit likely without knowledge of the Ormesby appeal, and his reasons explain why the approach in the Ormesby appeal had greater weight in his decision-making process than that of the Muxton appeal. It follows that I am not satisfied that there is any substance in the claimant's Ground 3.
46. For all of these reasons in my view the claimant's case must be dismissed. I am not satisfied that there is any error of law in this decision of the kinds contended for in any of the Grounds put forward by the claimant.