

that a type of development only shall be permitted if certain conditions are satisfied and they are not satisfied, the subject matter of those conditions cannot amount to a "material consideration" under s.54A. Jack J. held (at para.53):

"In my view, an approach on the following lines is permissible in a case such as the present. The authority must consider the terms of the relevant policies and apply them to the circumstances of the case. That might lead to the view that the application of the policies requires permission to be refused. Here, that might be on the ground, among others, that no national need has been shown as required by GE4. On the facts here, that would mean that the economic case was considered insufficient under the terms of the policy because it was not a national need. But the local economic case would remain 'a material consideration'. So here the authority was entitled to, and bound to, consider whether the economic advantages of the development, in particular by way of employment for those within the Park and outside, nonetheless justified the grant of permission in the circumstances. To hold otherwise results in an authority being bound to follow the policy unless there is a material consideration which is irrelevant to the application of the policy itself, or, putting it another way, which stands outside the policy, and which suggests that the policy should not be followed in the circumstances. That is not what section 54A says, and I do not consider that it is to be construed as having that effect . . .".

The Court of Appeal [2005] EWCA Civ 888, affirming the decision of Jack J., held that the authority had been entitled to conclude that, despite the clear words of the development plan, material considerations "indicated otherwise".

In *North Wiltshire DC v Secretary of State for Communities and Local Government* [2007] EWHC 886, despite the fact that a proposed redevelopment of a petrol filling site for affordable housing was in the open countryside and thus contrary to a number of policies, an Inspector was entitled to permit it on the basis of material considerations indicating otherwise - it was supported by a housing association and the council had no alternative provision.

*Accordance with the plan as a whole*

In *R. (Cummins) v Camden LBC* [2001] E.W.H.C. Admin.1116 (Ouseley J.; December 21, 2001) the court observed that the "accordance" of a determination had to be in accordance with the plan, not with each relevant policy of the plan. It might be necessary in a case where policies pull in different directions to decide which is the dominant policy. Some policies will be formulated in a way which requires a purposive approach. Where an exception to a policy is expressly permitted in certain circumstances, reliance on those circumstances might be seen as not according with the plan. A different conclusion might be reached where the exceptions are specified and have their own clear planning objective. Where a policy "welcomes" one type of development, one which elicits a more frosty greeting might be seen as not according with the plan, even though no express breach is involved. It was therefore not appropriate to examine each individual relevant policy against the planning application. The implication that a breach of one necessarily showed that a proposal was out of accord with the development plan would impose a legalistic straitjacket upon the appraisal process. It was very much a matter for planning judgement, and it was sufficient that a purposive view had been taken by the local planning authority of the group of policies overall.