framptons

TOWN AND COUNTRY PLANNING ACT 1990

SUBMISSION IN RESPONSE TO THE EXAMINATION OF THE VALE OF WHITE HORSE LOCAL PLAN 2031

STAGE 2- INSPECTOR'S MATTERS AND QUESTIONS

ON BEHALF OF CATESBY ESTATES LTD
LAND TO THE EAST OF WOOTTON

STATEMENT - MATTER 5 – PROPOSED REVISION OF GREEN BELT BOUNDARIES (INCLUDING CP13) LAND EAST OF WOOTTON

JANUARY 2016

BY FRAMPTONS TOWN PLANNING
CHARTERED TOWN PLANNING CONSULTANTS

REF:PJF/LS/9547

Chartered Town Planning Consultants

CONTENTS

Appendices

1.0 INTRODUCTION

1.1 This statement has been prepared by Frampton's in response to the Inspector's Questions in relation to the following hearing session: Matter 5 Proposed Revisions of Green Belt Boundaries (including CP13).

1.2 The statement is submitted on behalf of Catesby Estates Ltd who have land interests at the Land East of Wootton (Red Line Plan, **APP 1**).

1.3 Submissions have been made at previous consultations on the draft Local Plan and these representations should be viewed in the context of these previous comments.

2.0 MATTER 5 – PROPOSED REVISION OF GREEN BELT BOUNDARIES (INCLUDING CP13)

2.1 The Inspector's question is as follows:

Matter 5 – PROPOSED REVISION OF GREEN BELT BOUNDARIES (INCLUDING CP13)

5.1 Do the exceptional circumstances, as required by the NPPF (paragraphs 79-86), exist to justify the plan's proposed revision of the boundaries of the Green Belt, having particular regard to:

(a) Housing Allocation sites 1, 2, 3 and 4?

(b) The land between sites 1 and 2, to the east of the A34?

(c) The land to be removed from the Green Belt but not allocated for any particular use?

5.2 Is it soundly based for Housing Allocation site 2 to include an area of land designated as Green Belt?

5.3 Does the plan adequately identify the revisions to the Green Belt boundary that it proposes?

5.4 Is policy CP13 soundly based?

5.1 Do the exceptional circumstances, as required by the NPPF (paragraphs 79-86), exist to justify the plan's proposed revision of the boundaries of the Green Belt, having particular regard to:

(c) The land to be removed from the Green Belt but not allocated for any particular use?

2.2 There is a significant amount of case law on the meaning of exceptional circumstances including Carpets of Worth Ltd v Wyre Forest District Council (1991), Lang Homes Ltd v Avon County Council (1993), COPAS v Royal Borough of Windsor and Maidenhead (2001) and R (Hague) v Warwick District Council (2008). The case law demonstrates that exceptional circumstances are required for any revision of a Green Belt boundary and that what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if they fail to adopt a lawful approach to exceptional circumstances.

2.3 Case law shows that there can be no exceptional circumstances to justify changing a Green Belt boundary unless it is necessary to change it; and it cannot be necessary to change it unless something has fundamentally changed since the boundary was drawn demonstrating that whilst a site did fulfil a Green Belt function when the matter was last reviewed, it does not now.

2.4 One issue is whether meeting the full Objectively Assessed Housing Need (OAN) is itself an exceptional circumstance which would justify a revision to GB boundaries.

2.5 Whilst cases are fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law; once a Green Belt has been

established, it requires more than general planning concepts to justify an alteration: Gallagher Estates paragraph 125(iv) (**APP 2**).

2.6 However, "sustainable development" is a concept which is an archetypal example of planning judgment (IM Properties v Lichfield DC [2014] EWHC 2440 (Admin) para 92) (**APP 3**).

2.7 The duty to contribute to sustainable development imports a concept which embraces strategic consideration and how best to shape development in a district to ensure that proper provision is made for the needs of the 21st century in terms of housing and economic growth and for mitigating the effects of climate change; travel patterns are important, as are SEA and SA: IM Properties, paragraph 93.

2.8 The only statutory obligation in relation to national policy and guidance is to have regard to them: s.19 (2) (a) Planning and Compulsory Purchase Act 2004 ("PACPA").

2.9 The Local Planning Authority and Inspector are under a statutory duty to exercise any function in relation to the Local Plan *"with the objective of contributing to the achievement of sustainable development"*. The National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG) must be considered in this context.

2.10 The NPPF adopts the UN's definition of 'sustainable development' as "*meeting the needs of the present without compromising the ability of future generations to meet their own needs".* The NPPF points to paragraphs 18 to 219 as setting out the practical meaning of sustainable development and paragraph 7 stresses that there are economic, social and environmental dimensions to it.

2.11 Case law establishes that OAN means what is says and that the extent and nature of needs are to be established without reference to planning constraints; Hunston Properties v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 especially at paragraph 25, commenting on NPPF paragraph 47 –

a. *"to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the market area, as far as is consistent with the policies set out in this Framework,"*

2.12 Sir David Keene said: *"that qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs".* [Although this was a s.228 appeal the interpretation of OAN is relevant to plan making: Gallagher Estates v Solihull MBC [2014] EWHC 1283 (Admin) para 91.]

2.13 "Sustainability" inherently requires a balance to be made of the factors that favour any proposed development and those that favour refusing it, but *"policy may give a factor particular weight … where it does so, that weighting or approach is itself a material consideration that must be taken into account":* Gallagher Estates paragraph 25.

2.14 The NPPF put *"considerable new emphasis on the policy imperative of increasing the supply of housing"* and contains "a policy objective to achieve a significant increase in supply. Paragraph 47 makes full objectively assessed housing needs (OAN), not just a material consideration, but a consideration of particular standing.

2.15 Where OAN are to be assessed then a distinct assessment made as to whether (and, if so, to what extent) other policies dictate or justify constraint. Here, numbers matter,

because the larger the need, the more pressure will or might be applied to infringe on other inconsistent policies": Gallagher Estates paragraphs 31 and 94.

2.16 The policy test for Green Belt boundary revision remains that circumstances will not be exceptional unless they necessitate revision: Gallagher Estates paragraph 125(ii)(b).

2.17 The NPPF and NPPG recognise the policy weighting in favour of meeting OAN. This policy objective may be outweighed by other policies of the NPPF. A planning judgment must be made on this question. The presence of policy constraints **may** restrain the LPA's ability to meet its needs, but this is, again a question of planning judgment.

2.18 The NPPF and NPPG recognise that NPPF policy on altering Green Belt boundaries remains the same: only in exceptional circumstances and only through the Local Plan.

2.19 The NPPF and NPPG do not suggest that the meeting of OAN cannot constitute or contribute to the existence of exceptional circumstances. It is a question of planning judgment for the LPA and the Inspector, in the context of the s.39 (2) PACPA duty which is, itself, reflected in the highly pertinent spatial guidance set out in NPPF paragraph 84 i.e. "*when drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to* ***promote sustainable patterns of development. they should consider the consequences for sustainable development of channelling development towards urban areas inside the Green belt boundary, towards towns and villages inset within the Green Belt*** *or towards locations beyond the outer Green Belt boundary*"

2.20 On this basis and having regard to the particular facts of the scale of VOWH's housing requirement and an inability to meet this on non-Green Belt land within the district it is

entirely appropriate that Green Belt boundaries should be subject to a review and revision.

2.21 The land in question is presently undeveloped and forms part of the Oxford Green Belt. The Council undertook a comprehensive Green Belt review in 2014 by external consultants, to identify land which does not contribute fully to the five purposes of the green belt, detailed in para 80 of the Framework. The land in question at Wootton was considered at this stage as suitable for release from the Green Belt and further assessments were undertaken.

2.22 The Green Belt Review Phase 3 Report 'Amendments to Boundaries of the Green Belt Around inset Villages and new Inset Village at Farmoor' (Document ref. **NAT03)** proposes alterations to the boundaries of edge of settlement and removal of site from the Green Belt. The subject site is Area 10 (page 9) and proposes removal of the site apart from the northern 'dog leg' portion of the site. This de-allocation of the site from the Green Belt has been followed through onto the draft proposals plan for the new local Plan

2.23 The housing target for the Vale of White Horse District is for at least 20,560 homes to be delivered in the plan period between 2011 and 2031. 13,960 dwellings will be delivered through strategic allocations. 1,900 dwellings remain to be identified, these will either be allocated through the Local Plan 2031 Part 2 or Neighbourhood Development Plan, or come forward as small site windfalls through the Development Management Process.

2.24 The Council recognises that Oxford City may not be able to accommodate the whole of its housing need for the 2011-2031 period within its administrative boundary. It also recognises that whilst the extent to which Oxford City can meet its own needs is robustly

tested and agrees, the Council will seek to meet its own housing needs in full. To help ensure the needs of both the District and the housing market area as a whole are met as quickly as possible and draft Core Policy 2 states:

"in tandem, the Council will continue to work jointly with all of the other Oxfordshire local authorities to address any unmet housing need. This will include assessing all reasonable spatial options, including the release of brown field land, the potential for new settlements and a full strategic review of the whole of the Oxford Green Belt. These issues are not for the Council to consider in isolation. These options will need to be undertaken in accordance with national policy, national guidance, the Environmental Assessment of Plans and Programmes Regulations, and the Habitats Regulations Assessment to establish how and where any unmet need might best be accommodated within the Oxfordshire Housing Market Area. If, following this joint work, it is identified and agreed, either through the Oxfordshire Growth Board or through an adjoining local plan examination, that any unmet housing need is required to be accommodated within this district, the Council will either:

• undertake a full or focused partial review of the Local Plan 2031, or

• allocate appropriate housing sites through a subsequent development plan document in conformity with the Spatial Strategy set out in the Local Plan 2031.

The appropriate approach will depend on the scale of the unmet need to be accommodated."

2.25 The supporting test for draft policy CS13 states that the Local Green Belt Review does not preclude and would include a further Green Belt review, should this be needed, to contribute to meeting any identified unmet housing needs within the Oxfordshire Housing Market Area, as set out above this is addressed in draft Core Policy 2: Cooperation on unmet housing needs for Oxfordshire (Chapter 1).

2.26 Therefore the supporting text and the proposals for a part 2 Local Plan acknowledges that sites such as at the east Wootton, may come forward in the future as a housing site suitable to meet housing need. With regards to Wootton:

• The village is in a sustainable location, being close to Abingdon and the A420 and therefore;

• It is within a short 23 minute bus journey to Oxford city or a 20 minute car journey;

• Such journeys cross the A34, part of the national strategic network allow for ready access to large local employment locations such as Harwell and the "Science Vale UK".

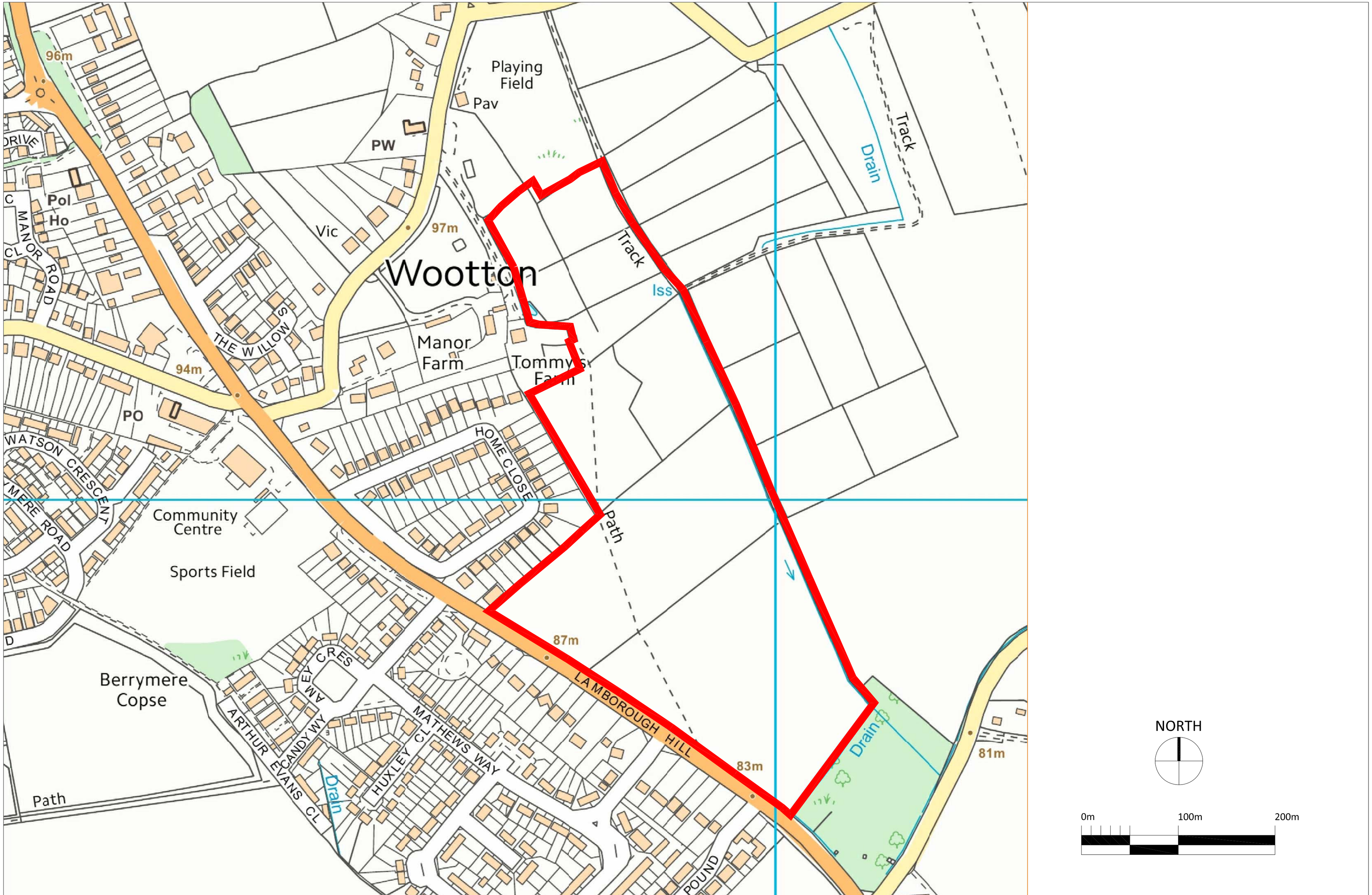
2.27 A comprehensive Delivery Document has been compiled for the site and submitted as part of our previous representations to the Local Plan. The purpose of the document was to draw on the strong sustainability merits of the scheme. In summary the site is capable of creating a sustainable form of development, which can respond to its constraints and deliver new housing for Oxford. The findings of the Council's own Green Belt review support our view that development of the site will not bring coalescence issues with/between Wootton, Abingdon or Whitecross. Such matters are explored in more detail by EDP consultants in their Position Paper also submitted in previous representations.

2.28 It is considered that the entire site no longer meets the five purposes of the Green Belt therefore to be fully sound, it is requested that the removal of the whole site from the Green Belt be accepted (as shown on the attached red line plan – **APP 1**).

Summary

2.29 In summary, we consider the proposals to remove land from the Green Belt but not allocate for any particular use is positively prepared, effective, justified and consistent with National Policy. To this end we support the decision to remove this, and other sites from the Green Belt. Paragraphs 156 and 157 of the NPPF lend further weight to the balance of planning considerations in supporting the continued allocation of the land for housing to enable a comprehensive planned development to be achieved and to deliver new housing. The combination of complimentary factors such as Oxford city's unmet housing need, the recent Green Belt review conclusions and the pressing need for housing in the district are considered to constitute the exceptional circumstances to warrant the site being removed

2.30 The core land-use planning principles require the planning system to 'proactively' drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local communities the country needs. As stated in the NPPF (paragraph 17): *"every effort should be made objectively to identify and meet the housing business and other development needs to the area, and respond positively to wider opportunities for growth."* Plans therefore should take account of market signals and set out a clear strategy for allocating sufficient land which is suitable for development in their area (NPPF paragraph 17). It is clear to Catesby that the Vale have taken this obligation seriously. Indeed in commissioning Kirkham Landscape Planning to undertake a full Green Belt review during 2013/2014, the Council have clearly identified the need for a comprehensive review. Catesby Estates Ltd fully endorse this rational and holistic approach.



CATESBY ESTATES LTD

Project Name:	LAND OFF LAMBOROUGH HILL WOOTTON, OXFORDSHIRE
Drawing Title:	SITE LOCATION PLAN

Revisions:

Suffix:	Date:	Description:	Drawn:	Checked:
-	-	-	-	-

O:\Current Sites\All Viability Sites Only\Wootton\Design\Wootton LC_001 Site Location Plan

Scale:	Media/Orientation:	Drawn:	Checked:	Day/Month/Year:
1/2500	A2L	LA	-	08/12/2014

Project No.:	Drawing No.:
-	LC/001

Neutral Citation Number: [2014] EWHC 1283 (Admin)

Case No: CO/17668/2013

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

Birmingham Civil Justice Centre
Priory Courts, 33 Bull Street,
Birmingham

Date: 30/04/2014

Before:

MR JUSTICE HICKINBOTTOM

- -

Between:

(1) GALLAGHER HOMES LIMITED
(2) LIONCOURT HOMES LIMITED

Claimants

- and -

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Defendant

- -
- -

Christopher Lockhart-Mummery QC and Zack Simons (instructed by **Pinsent Masons LLP**) for the **Claimants**
Ian Dove QC and Nadia Sharif (instructed by **Solihull Metropolitan District Council**) for the **Defendant**

Hearing dates: 14-15 April 2014

- -

Approved Judgment

Mr Justice Hickinbottom:

Introduction

1. The Claimants have interests in two sites in the Tidbury Green area of Solihull, namely Lowbrook Farm and Tidbury Green Farm ("the Sites"), which they wish to develop with housing. Their difficulty is this. On 3 December 2013, the Defendant local planning authority ("the Council") adopted the Solihull Local Plan ("the SLP") which placed both sites within the Green Belt. Neither had previously been in the Green Belt. Any application for planning permission for housing will almost inevitably now be refused, on the ground that the proposed development would be inappropriate in the Green Belt and there are no "very special circumstances" that warrant such development there.

2. In this application, made under section 113(3) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), the Claimants claim that the Council acted unlawfully in adopting the SLP, with its allocation of the Sites to the Green Belt, on three grounds:

   Ground 1: The Council adopted a plan that was not supported by a figure for objectively assessed housing need, contrary to the requirements to (i) have regard to national policies issued by the Secretary of State (section 19(2)(a) of the 2004 Act), and (ii) adopt a sound plan (sections 20 and 23 of the 2004 Act).

   Ground 2: The Council adopted a plan without cooperating with other local planning authorities, contrary to the duty to cooperate (section 33A of the 2004 Act).

   Ground 3: The Council adopted a plan without regard to the proper test for revising Green Belt boundaries set out in the national policy, again contrary to the requirements to have regard to national policies and adopt a sound plan.

3. The Claimants seek a declaration that adoption of the SLP was unlawful, and for an order quashing various parts of the Plan. In practice, they wish ultimately to have the Sites removed from the Green Belt, which they believe will improve their chances of obtaining planning permission to develop them with housing.

4. Before adoption, in accordance with required procedure, the SLP had been submitted to the Secretary of State for examination on 14 September 2012. He appointed Mr Stephen J Pratt BA (Hons) MRTPI ("the Inspector") to conduct the examination in public and report. Examination hearings were held between 10 January and 11 October 2013; and, on 14 November 2013, the Inspector published a report ("the Inspector's Report"), which concluded that the SLP could not be approved as submitted, but it provided an appropriate basis for the planning of the district for the period to 2028 providing a number of modifications (all proposed by the Council itself) were made to it. The Council duly adopted the SLP with those modifications. It is the SLP thus adopted which is the subject of challenge in these proceedings; but, as the Council can only adopt a development plan document which has been approved after an examination in public in accordance with the statutory scheme, the focus of this application is on the Inspector's Examination and Report.

5. With regard to the Sites, the current position with regard to planning applications is as follows. The First Claimant lodged an application for outline planning permission for the Lowbrook Farm site on 18 October 2012, before the Inspector had reported and before the site had been allocated to the Green Belt. The proposed development was for 200 dwellings and associated works. That application was refused by the Council on 31 January 2013. The First Claimant has appealed, and an inspector's inquiry is on-going. The inquiry was concluded in September 2013, and the report is due. On 11 October 2013, the Second Claimant applied for outline planning permission for the Tidbury Green Farm site, for 190 dwellings and associated works. The Council refused that application on 30 January 2014, after the allocation of the site to the Green Belt and on the ground that the proposal was for inappropriate development in the Green Belt. The Second Claimant intends to appeal. For obvious reasons, the outcome of this application is highly significant for both appeals; and, of course, the Council continues to determine planning applications on the basis of the SLP now under challenge. This application has consequently been expedited since its issue on 23 December 2013.

6. At the hearing before me, Christopher Lockhart-Mummery QC and Zack Simons appeared for the Claimants, and Ian Dove QC and Nadia Sharif for the Council. At the outset, I thank them all for their invaluable contributions.

The Sites

7. Solihull lies to the south-east of Birmingham. In the north of the borough, there is a built-up area comprising Castle Bromwich, Chelmsley Wood, Birmingham Airport and the NEC. In the west, there is another, including Elmdon and Shirley. However, most of the district – about two-thirds – is Green Belt land. That includes the Meriden Gap, an important Green Belt separating the conurbations of Birmingham and Coventry.

8. Tidbury Green is in the south-west of the borough. As a settlement, it is Green Belt "washed". Tidbury Green Farm is immediately to the east of the settlement. To the west of Tidbury Green, there is greenfield land running to the boundary with Bromsgrove District, and then a railway line. Lowbrook Farm is situated between the settlement of Tidbury Green and that district boundary line.

9. On the other side of that line, there is the settlement of Grimes Hill. Between Grimes Hill and the boundary, on the Bromsgrove side, there are two sites that feature in this application, known as land at Selsdon Close (to the west of the railway line) and land at Norton Lane (to the east of that line).

The Statutory Framework

10. The 2004 Act introduced a scheme of strategic planning with two tiers: regional and local. Part 1 of the Act established "regional planning bodies" that were each required to draw up a "regional spatial strategy" (renamed simply "regional strategies" by the Local Democracy, Economic and Construction Act 2009) which, in replacement of earlier regional planning guidance, set out the Secretary of State's policies in relation to the development and use of land within the region. At a local level, section 15 of the 2004 Act required each local planning authority to prepare and maintain a "local development scheme" which set out the authority's policies in

relation to the development and use of land within its area, and which had to specify (amongst other things) documents which were to be "development plan documents". Local plans were effectively required to comply with the relevant regional strategy, because the local development scheme had to be submitted to both the relevant regional planning body and the Secretary of State – and the latter had wide powers to direct amendments. The "development plan" for an area comprised the "development plan documents" and relevant regional strategy for that area.

11. Under those provisions, strategic decisions as to future housing supply thus ultimately lay with central and regional government, and, after appropriate liaison, housing targets were effectively imposed upon local planning authorities from above.

12. Solihull fell within the West Midlands region, and, from 2004, the relevant regional document was the West Midlands Regional Spatial Strategy ("the WM RSS"). At the time of its adoption, it was proposed to undertake further work on the regional strategy, which was divided into three phases. Phase 1 concerned the strategy for the Black County area, and the WM RSS with Phase 1 Revisions was adopted in January 2008. Phase 2 included housing. A review of the WM RSS including housing strategy was undertaken from 2007, including an examination in public in 2009.

13. However, the WM RSS with Phase 2 Revisions was never adopted. In a statement to Parliament on 6 July 2010, the Coalition Government announced an intention to revoke regional strategies, and return decisions relating to strategic housing supply to local planning authorities. This was a substantial change of direction, at national level. Section 109(3) of the Localism Act 2011 authorised the Secretary of State to revoke regional strategies; and, before any Phase 2 Revisions were adopted, the WM RSS was duly revoked on 20 May 2013, leaving housing supply strategy in the hands of local authorities, such as the Council, to be dealt with in their respective development plans.

14. That does not, of course, mean that a local authority now has a free hand. It is constrained by various national policies and procedural requirements, as follows.

15. Section 19(2) of the 2004 Act provides that, in preparing a development plan document, an authority must have regard to "national policies and advice contained in guidance issued by the Secretary of State", i.e. now the National Planning Policy Framework ("the NPPF") to which I return below (see paragraphs 23 and following). Sustainability of development is the NPPF's core concept, and, by section 19(5) the local authority is required to carry out an appraisal of the sustainability of the proposals in each development plan document and prepare a report on the findings of the appraisal.

16. Furthermore, section 20 of the Act provides for independent examination of development plans by an inspector appointed by the Secretary of State, in the following terms:

> "(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless—

(a) they have complied with any relevant requirements contained in regulations under this Part, and

(b) they think the document is ready for independent examination.

(3) …

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document—

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound; and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

(6) Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.

(7) Where the person appointed to carry out the examination—

(a) has carried it out, and

(b) considers that, in all the circumstances, it would be reasonable to conclude—

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation,

the person must recommend that the document is adopted and give reasons for the recommendation.

> (7A) Where the person appointed to carry out the examination—
>
> > (a) has carried it out, and
> >
> > (b) is not required by subsection (7) to recommend that the document is adopted,
>
> the person must recommend non-adoption of the document and give reasons for the recommendation.
>
> (7B) Subsection (7C) applies where the person appointed to carry out the examination—
>
> > (a) does not consider that, in all the circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but
> >
> > (b) does consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.
>
> (7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that—
>
> > (a) satisfies the requirements mentioned in subsection (5)(a), and
> >
> > (b) is sound …".

17. Although, unlike section 20(7) and (7A), section 20(7C) does not expressly refer to an obligation to give reasons, where the recommendation is for modifications to be made, an inspector is nevertheless required to give reasons (University of Bristol v North Somerset Council [2013] EWHC 231 (Admin) at [72]-[73]).

18. Section 33A (to which reference is made in section 20(7)(b)(ii) and (7B)(b)) imposes upon a local planning authority a duty to cooperate, in the following terms:

> "(1) Each person who is—
>
> > (a) a local planning authority,
> >
> > (b) a county council in England that is not a local planning authority, or
> >
> > (c) a body, or other person, that is prescribed or of a prescribed description,

must co-operate with every other person who is within paragraph (a), (b) or (c)… in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

> (a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken...
>
> …

(3) The activities within this subsection are—

> (a) the preparation of development plan documents
>
> …
>
> (d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and
>
> (e) activities that support activities within any of paragraphs (a) to (c),

so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a "strategic matter"—

> (a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas…

(5) In subsection (4)… "planning area" means—

> (a) the area of—
>
> > (i) a district council (including a metropolitan district council)…

(6) The engagement required of a person by subsection (2)(a) includes, in particular—

> (a) considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3), and

> (b) if the person is a local planning authority, considering whether to agree under section 28 to prepare joint local development documents.
>
> (7) A person subject to the duty under subsection (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with.
>
> …".

19. Once the section 20 examination is complete, section 23 of the 2004 Act provides, so far as relevant to this application:

> "(2) If the person appointed to carry out the independent examination of a development plan document recommends that it is adopted, the authority may adopt the document—
>
> (a) as it is, or
>
> (b) with modifications that (taken together) do not materially affect the policies set out in it.
>
> (2A) Subsection (3) applies if the person appointed to carry out the independent examination of a development plan document—
>
> (a) recommends non-adoption, and
>
> (b) under section 20(7C) recommends modifications ("the main modifications").
>
> (3) The authority may adopt the document—
>
> (a) with the main modifications, or
>
> (b) with the main modifications and additional modifications if the additional modifications (taken together) do not materially affect the policies that would be set out in the document if it was adopted with the main modifications but no other modifications.
>
> (4) The authority must not adopt a development plan document unless they do so in accordance with subsection (2) or (3).
>
> (5) A document is adopted for the purposes of this section if it is adopted by resolution of the authority."

20. In summary, these provisions mean that each development plan document is subject to an examination in public by an independent inspector appointed by the Secretary of State, who determines (i) whether the plan complies with various procedural requirements, (ii) whether the plan is "sound" (a concept to which I shall return: see

paragraphs 33 and following below), and (iii) whether it is reasonable to conclude that the local planning authority has complied with any duty to cooperate. Having done so, there are three courses open to the inspector:

i) If he is satisfied that the plan meets the procedural and "soundness" requirements, he must recommend adoption of the plan and the authority may adopt the plan.

ii) If he is not satisfied as to these two matters, and is not satisfied that the authority has complied with its duty to cooperate, he must recommend non-adoption and the authority must not adopt the plan.

iii) If he is not satisfied as to these two matters, but is satisfied that the authority has complied with its duty to cooperate, he must recommend non-adoption; but, on the authority's request, he must also recommend modifications to the plan that would make it satisfy those two requirements. The authority may then adopt the plan with those modifications.

21. Where a development plan is adopted or revised, section 113 of the 2004 Act makes provision for it to be challenged in this court, on the basis of conventional public law principles (Blyth Valley Borough Coucnil v Persimmon Homes (North East) Limited [2008] EWCA Civ 861 at [8] per Keene LJ).

22. So far as relevant to this application, section 113 provides:

> "(3) A person aggrieved by a relevant document may make an application to the High Court on the ground that—
>
> (a) the document is not within the appropriate power;
>
> (b) a procedural requirement has not been complied with.
>
> …
>
> (6) Subsection (7) applies if the High Court is satisfied–
>
> (a) that a relevant document is to any extent outside the appropriate power;
>
> (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement.
>
> (7) The High Court may—
>
> (a) quash the relevant document;
>
> (b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.

> (7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.
>
> (7B) Directions under subsection (7A) may in particular—
>
> (a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;
>
> (b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;
>
> (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);
>
> (d) require action to be taken by one person or body to depend on what action has been taken by another person or body.
>
> (7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—
>
> (a) wholly or in part;
>
> (b) generally or as it affects the property of the applicant.
>
> …
>
> (10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document…".

The Relevant National Policies

23. Section 19(2) of the 2004 Act requires a local authority to have regard to national policy and guidance when preparing development plan documents (see paragraph 15 above). It is now well-settled that those involved in plan-making and decision-taking in a planning context must interpret relevant policy documents properly, the true interpretation of such documents being a matter of law for the court (see, e.g., Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 at [17]-[23] per Lord Reed).

24. It is rightly common ground that the only extant national policy guidance and advice relevant to this application is found in the NPPF, which replaced much earlier guidance in March 2012.

25. As I have indicated (paragraph 15 above), sustainable development is at the heart of the NPPF. There is no specific definition of "sustainable development" in the NPPF, but it is to be defined in terms of development which meets the needs of the present without compromising the ability of future generations to meet their own needs. That is reflected in the very first words of the Ministerial Foreword to the NPPF, which state:

> "The purpose of planning is sustainable growth.
>
> *Sustainable* means ensuring that better lives for ourselves don't mean worse lives for future generations.
>
> *Development* means growth. We must accommodate the new ways in which we will earn our living in a competitive world. We must house a rising population…".

It is said in paragraph 6 of the NPPF that the policies set out in paragraphs 18-219, taken as a whole, constitute the Government's view of what sustainable development means in practice for the planning system. "Sustainability" therefore inherently requires a balance to be made of the factors that favour any proposed development, and those that favour refusing it, in accordance with the relevant national and local policies. However, policy may give a factor particular weight, or may require a particular approach to be adopted towards a specific factor; and, where is does so, that weighting or approach is itself a material consideration that must be taken into account.

26. Paragraph 14 provides:

> "At the heart of the [NPPF] is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> For **plan-making** this means that:
>
> - local planning authorities should positively seek opportunities to meet the development needs of their area;
>
> - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
>
> — any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> — specific policies in this Framework indicate development should be restricted…".

27. Part 6 of the NPPF deals with, "Delivering a wide choice of high quality homes". It replaced Planning Policy Statement 3: Housing ("PPS3") which, in 2006, itself replaced Planning Policy Guidance 3: Housing ("PPG3").

28. In PPS3, under the heading, "Assessing an appropriate level of housing", the advice (written, of course, at a time when planning strategy was considered at a regional, as well as local, level) was as follows:

> "32. The level of housing provision should be determined taking a strategic, evidence-based approach that takes into account relevant local, sub-regional, regional and national policies and strategies achieved through widespread collaboration with stakeholders.
>
> 33. In determining the local, sub-regional and regional level of housing provision, Local Planning Authorities and Regional Planning Bodies, working together, should take into account:
>
> - Evidence of current and future levels of need and demand for housing and affordability levels based upon:
>
> - Local and sub-regional evidence of need and demand, set out in Strategic Housing Market Assessments ["SHMAs"] and other relevant market information such as long term house prices.
>
> - Advice from the National Housing and Planning Advice Unit on the impact of the proposals for affordability in the region.
>
> - The Government's latest published household projections and the needs of the regional economy, having regard to economic growth forecasts.
>
> - Local and sub-regional evidence of the availability of suitable land for housing using Strategic Housing Land Availability Assessments ["SHLAAs"] and drawing on other relevant information….
>
> - The Government's overall ambitions for affordability across the housing market, including the need to improve affordability and increase housing supply.
>
> - A Sustainability Appraisal of the environmental, social and economic implications, including costs, benefits and risks of development. This will include considering the most sustainable pattern of housing, including in urban and rural areas.

> - An assessment of the impact of development upon existing or planned infrastructure and of any new infrastructure required.
>
> 34. Regional Spatial Strategies should set out the level of overall housing provision for the region [expressed as net additional dwellings (and gross if appropriate)], broadly illustrated in a housing delivery trajectory, for a sufficient period to enable Local Planning Authorities to plan for housing over a period of at least 15 years. This should be distributed amongst constituent housing market and Local Planning Authority areas.
>
> 35. Regional Spatial Strategies should also set out the approach to coordinating housing provisions across the region…."

29. Therefore, under PPS3, in a classic planning exercise of balancing all material factors, the regional authority had to arrive at a housing provision figure for each area, taking into account evidence of need and demand (including household projections, SHMAs, SHLAAs and other relevant market information) and policy matters such as the most sustainable pattern of housing.

30. Paragraph 47 of the NPPF – the opening paragraph of Part 6 – now provides:

> "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…".

31. Thus, the NPPF departed from the previous national guidance in two important ways.

    i) In line with the Localism Act 2011, the NPPF abandoned the regional, top down, approach to housing strategy in favour of localism with a duty to cooperate with neighbouring authorities. The burden of developing housing strategy now falls on local planning authorities.

ii) Whilst clearly subject to a requirement that both plan-making and decision-taking must be consistent with other NPPF policies – including those designed to protect the environment – the NPPF put considerable new emphasis on the policy imperative of increasing the supply of housing. As reflected in the first words of the Ministerial Foreword quoted above (paragraph 25), in relation to dwellings, there was a policy objective to achieve a significant increase in supply. Therefore, the NPPF imposed the policy goal on a local authority of meeting its full, objectively assessed needs for market and affordable housing, unless and only to the extent that other policies were inconsistent with that goal. Thus, paragraph 47 makes full objectively assessed housing needs, not just a material consideration, but a consideration of particular standing.

32. "Plan-making" is specifically dealt with in the NPPF in paragraphs 150 and following. Under the heading, "Using a proportionate evidence base", and sub-heading "Housing", paragraph 159 states:

> "Local planning authorities should have a clear understanding of housing needs in their area. They should:
>
> - prepare a [SMHA] to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The [SMHA] should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
>
> - meets household and population projections, taking account of migration and demographic change;
>
> - addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to) families with children, older people, people with disabilities, service families (and people wishing to build their own homes); and
>
> - caters for housing demand and the scale of housing supply necessary to meet this demand..."
>
> - prepare a [SHLAA] to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period."

Therefore, the NPPF supposes that full, objective assessment of housing needs referred to in paragraph 14 will be informed by a SHMA.

33. Paragraph 182 of the NPPF gives advice as to what is meant, in section 20 of the 2004 Act, by a local plan being "sound":

> "The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
>
> - **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
>
> - **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
>
> - **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
>
> - **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

34. In Barratt Developments Plc v City of Wakefield Metropolitan Borough Council [2010] EWCA Civ 897, Carnwath LJ (as he then was) considered "soundness", then found in a similar context in the pre-NPPF Planning Policy Statements. His guidance remains apposite (see Zurich Assurance Limited v Winchester City Council [2014] EWHC 758 (Admin) at [114] per Sales J). Carnwath LJ said:

> "11. I would emphasise that this guidance, useful though it may be, is advisory only. Generally it appears to indicate the Department's view of what is required to make a strategy 'sound', as required by the statute. Authorities and inspectors must have regard to it, but it is not prescriptive. Ultimately it is they, not the Department, who are the judges of 'soundness'. Provided that they reach a conclusion which is not 'irrational' (meaning 'perverse'), their decision cannot be questioned in the courts. The mere fact that they may not have followed the policy guidance in every respect does not make the conclusion unlawful.
>
> ….
>
> 33. … As I have said, 'soundness' was a matter to be judged by the inspector and the Council, and raises no issue of law, unless their decision is shown to have been 'irrational', or they are shown to have ignored the relevant guidance or other considerations which were necessarily material in law."

In other words, whether a plan is "sound" for the purposes of Section 20(5) of the 2004 Act is a matter of planning judgment for the inspector, and is subject to challenge only on normal public law grounds. This court is not concerned with the merits, which are a matter entirely for the inspector. However, in accordance with those principles, an inspector errs in law if he fails to take relevant guidance into account, or fails to deal with a "material controversy" (see Barratt at [45]).

Ground 1

Introduction

35. The SLP submitted for examination proposed a housing provision of 11,000 new dwellings in the period 2006-28, and the Inspector agreed that that was an appropriate provision.

36. As his first ground of challenge, Mr Lockhart-Mummery submits that that provision was not supported by any figure for objectively assessed housing need – as the NPPF required it to be – and, as such, in adopting the SLP, the Council acted ultra vires, and contrary to the statutory procedural and statutory soundness requirements.

37. As a preliminary point, it will be helpful to deal briefly with the different concepts and terms in play.

    i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. They provide useful long-term trajectories, in terms of growth averages throughout the projection period. However, they are not reliable as household growth estimates for particular years: they are subject to the uncertainties inherent in demographic behaviour, and sensitive to factors (such as changing economic and social circumstances) that may affect that behaviour. Those limitations on household projections are made clear in the projections published by the Department of Communities and Local Government ("DCLG") from time-to-time (notably, in the section headed "Accuracy").

    ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics if, e.g., the assessor considers that the household projection fails properly to take into account the effects of a major downturn (or upturn) in the economy that will affect future housing needs in an area. Nevertheless, where there are no such factors, objective assessment of need may be – and sometimes is – taken as being the same as the relevant household projection.

    iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas

> of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a "policy on" figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured.

Housing Provision: Background

38. The WM RSS, adopted in 2004, was based on a number of principles, identified to guide development plans within the region, including (in Chapter 4) the need to counter outward movement of people and jobs from the urban areas which had been facilitated by earlier strategies, but which by 2004 was regarded as unsustainable. The policy of "urban renaissance" therefore broadly sought to discourage migration from the urban areas to the rural areas. Parts of Solihull fell within a major urban area but, as I have indicated, most of the borough comprised greenfield land. Because of the policy effect on restraining population movement out of Birmingham, the net effect of the policy was to reduce the number of new dwellings in Solihull that would otherwise have been required.

39. The WM RSS did not specifically identify objectively assessed housing need. Policy CF2 dealt with housing beyond the major urban areas, by providing that, outside identified towns, housing development should generally be restricted to meeting local needs only, i.e. it should not accommodate migration. Policy CF3, having taken into account relevant policies (including urban renaissance), simply provided that development plans should make provision for additional dwellings at annual rates set out in Table 1. Notably, the regional figures showed a significant movement of housing to major urban areas from other (i.e. non-major) urban areas, the ratio shifting from 1:1.6 to 1:0.7 over the period. The rate for Solihull was 400 dwellings per annum ("dpa") to 2011, and 470 dpa in the ten year period 2011-21 as a contribution to a post-2011 annual regional target of 14,650 dpa.

40. These figures were reviewed as part of the WM RSS Phase 2 Review. By this time, in March 2009, the DCLG had published 2006-based housing projections for 2006-26, which, on the basis of purely demographic trends, projected a growth for Solihull of 16,000 dwellings at 800 dpa. At the examination in public held as part of the review, the Council argued that Solihull should not be meeting all of its DCLG projection figure on policy grounds, notably because of the implications this would have for the quality of the environment in the borough and for the strategically important Meriden Gap. On the basis of the DCLG projection and these factors, the Council submitted that provision for new housing in the borough for that period should be restricted, on policy grounds, to 10,000. The WM RSS Phase 2 Revision Panel Draft Report in the event recommended a housing requirement figure for Solihull of 10,500 for the 20 year period 2006-26 (i.e. a net figure of 525 dpa). As I have explained, that Revision was never adopted because it was overtaken by the move towards localism.

41. The preparation of the SLP began in 2007, still in the era of regional planning strategy and thus on the basis that the SLP would have to be in conformity with the WM RSS (which, as I have described, was itself then the subject of the Phase 2 Review, which

particularly focused on housing). Policy 4 of the Emerging Core Strategy of the Council, published for consultation in September 2010, adopted the WM RSS Revision Panel Draft figure of 10,500 at 525 dpa.

42. By the time the SLP Pre-Submission Draft was published in January 2012 – still pre-NPPF – the DCLG had published 2008-based household projections. These showed a projected increase in dwellings for Solihull for the period 2006-2028 of 14,000 at 636 dpa, a significant reduction compared with the earlier projections on the basis of 2006 figures. The SLP Pre-Submission Draft noted that new projection (paragraph 8.1.4), but went on as follows (at paragraph 8.4.1):

> "The Council has assessed housing land supply taking a 'bottom-up' approach through detailed site assessment and the [SHLAA]. It is considered that 11,000 (net) additional homes can be delivered towards meeting projected household growth of 14,000 households (2006-2028). This is the level of housing provision that the Council considers can be provided without adverse impact on the Meriden Gap, without an unsustainable short-term urban extension south of Shirley and without risking any more generalised threat to Solihull's high quality environment. This level of growth supports the West Midlands Urban Renaissance Strategy to develop urban areas in such a way that they can increasingly meet their own economic and social needs in order to counter the unsustainable movement of people and jobs facilitated by previous strategies, including the need to direct development to those parts of the West Midlands Region needing housing."

43. As I understand it, the 10,500 figure from the WM RSS Revision was amended to 11,000 as a result of two factors:

i) a reduction to 10,000 (500 dpa) because town centre capacity had fallen due to the recession and sufficient town centre housing capacity could not be found; and

ii) because the SLP period was not the 20-year period 2006-26 but rather the 22-year period 2006-28 (to ensure the development plan covered at least 15 years from the date of its adoption), an extra two-years at 500 dpa (i.e. 1,000) was added.

Thus, an aggregate figure of 11,000 was proposed, at 500 dpa.

44. There were two further sources of housing data available to the Inspector by the time of his November 2013 report. First, in addition to the 2006-based and 2008-based DCLG household projection figures, in April 2013 the DCLG interim 2011-based housing projection figures were published. These covered only a ten-year period, 2011-21. The projection for Solihull was a dwelling increase of 6,326 in that period, at a rate of 633 dpa. That was not significantly different from the earlier 2008-based figure of 636 dpa.

45. Second, there were SHMAs. A joint SHMA covering Birmingham, Lichfield and Tamworth as well as Solihull was prepared in 2007-8. That was updated for Solihull in 2009 ("the 2009 SHMA"). The 2009 SHMA notes that the draft WM RSS Phase 2 Revision Draft called for a 10,500 increase in dwellings up to 2006 (page (iii)); and then it continues (at page 4):

> "The (draft) West Midlands Phase 2 Revision, containing housing provision targets per authority, concluded its Examination in Public stage at the end of June [2009] with the Panel report published on 28 September. This [SHMA] and the housing needs analysis it includes will therefore not have a bearing on the allocation of new build housing target numbers for the Authority. Instead, its primary function is to inform those parts of the housing policy framework which are to be determined through local policy setting, most notably the determination of housing need, the type and tenure of new build, the requirement for affordable housing to meet that need and inform decisions on the spatial aspect of new development."

The 2009 SHMA therefore provided considerable data on housing market trends and by reference to various characteristics including (in section 5) affordable housing. However, the data on future housing need were deliberately limited: on pages (iii) and (iv) there were figures for "total demand" for housing, and estimated social rented housing need and intermediate need for 2006-11. Other than the references to the WM RSS Revision figures, there do not appear to any longer-range estimates of housing needs.

A Technical Issue

46. There was an issue before the Inspector as to the correct application of the DCLG projections to Solihull.

47. The Council said that it was appropriate to use the figures taken from the various tables in those projections, which had been rounded to the nearest thousand – which (the projection notes themselves said) had been used "to facilitate onward processing". Objectors contended that a more informed decision could be made using unrounded figures, which could be extrapolated from the tables themselves. It seems uncontentious that such extrapolation can be done, and the figures extrapolated by the objectors were not (and are not) in issue. The issue concerned the appropriate approach.

48. As a matter of mathematics, the difference between the two methods seems to have resulted primarily from the interim 2011-based aggregate projection figure for 2021 being 92,424 rounded to 92,000. There were also some differences in the assumptions made by the two parties, but these appear to have been relatively minor. These differences as a whole resulted in the Council calculating the projection for the borough for the period 2011-21 at 533 dpa (or, when that rate is projected through to 2028, an aggregate number of new dwellings of 11,731 which the Council rounded to 11,700), and the objectors calculating it to be 633 dpa for that period and 605 dpa for the period through to 2028 (an aggregate of 13,311 new dwellings to 2028).

49. On the basis of these figures, the Council contended before the Inspector that the 2011-based figures were similar to the figures derived from the WM RSS Phase 2 Revision Panel Draft target (525 dpa amended down to 500 dpa); whilst the objectors submitted that, far from suggesting that the rate of growth was declining to the point where it was converging with the figure of 500 dpa in the draft SLP, the 2011-based projection was consistent with the 2008-based projection of 636 dpa.

The Abandoned Justifications

50. Before turning to how the Inspector dealt with the housing provision issue, it would be helpful to clear the decks. The Council's case on housing need – and its justification for the figure of 11,000 as the provision for housing – has not been consistent. In addition to the manner in which the Inspector dealt with the issue – which, the Council contends before me, was appropriate and lawful – the Council has sought to justify the SLP figure on at least two other bases, no longer pursued.

51. First, the Council sought to justify its housing provision figure of 11,000 in what it described as a "bottom up" approach, i.e. it began with available housing supply.

52. As I have indicated (paragraph 42 above), in the January 2012 Pre-Submission Draft (paragraph 8.1.4), there is reference to the 14,000 increase in households projected by the DCLG on the basis of the 2008 data; then, as justification for the provision of housing target, it said that, on the basis of a detailed assessment of land availability, it considered that 11,000 net additional homes could be delivered towards that projected figure. It went on to say that the Council considered that this was the level – presumably the maximum level – of housing that could be delivered without risk to the Meriden Gap, without unsustainable urban extension to the south of Shirley and "without risking any more generalised threat to Solihull's high quality environment". It was also considered that this level of growth supported the urban renaissance policy.

53. Insofar as that was intended to justify the housing requirement, it clearly falls very far short of the approach advocated and required by the NPPF, which involves starting with housing need and requiring justification for any requirement falling short of full and objectively assessed need. This "bottom-up" approach appears to start with the number of homes that, in the light of relevant policies, can be delivered during the period. That is the wrong way round.

54. That justification was removed as part of the modifications to the SLP. It is, as I have said, no longer pursued by the Council as justifying the figure.

55. Second, the Council contended that, in determining the full objectively assessed housing need, it was necessary to take into account inconsistency with other policies, i.e. it was a policy on assessment.

56. The Council's approach evolved from the first justification to which I have referred, the focus turning to the WM RSS Phase 2 Revision which, although never adopted for the reasons I have given, was examined by a panel which recommended a housing allocation to Solihull of 10,500 for the period 2006-2026 (or the amended figure of 11,000 for the plan period 2006-2028 at 500 dpa: see paragraph 43 above). The Council contended before the Inspector that, in determining the full objectively

assessed housing need, it was necessary to take into account inconsistency with other policies; and this policy on figure was in itself the figure for full, objectively assessed need for housing which the Council adopted. For example, in the Council's Supplementary Statement for the Examination dated 18 January 2013, the Council said (at paragraph 1):

> "The level of housing need in Solihull has been objectively assessed (considering all evidence and consistency with other policy) through the [WM RSS] Phase II Revision and was examined by the Panel. The Panel examined household and population projections, taking account of migration and demographic change and made recommendations to cater for housing demand and the scale of housing supply necessary to meet this demand. Sub-regional and local Strategic Housing Market Assessments address the need by type and tenure. Evidence of housing land availability was also considered by the Panel to establish realistic assumptions about availability, suitability and the likely economic viability of land in the region and each sub-region. This meets with the requirements of NPPF paragraph 159."

Then, after referring to various housing projection models, it continued (at paragraph 15):

> "Such predictions are nothing more than a theoretical, mathematical calculation providing an indication of how housing need could change in the future. *Objectively assessing need involves a more sophisticated policy analysis of both needs and what level of growth an area can realistically sustain. In Solihull, the [WM] RSS Phase II Panel Report is the latest assessment of housing need.*" (emphasis added).

57. The Council's response of 7 March 2013 to further representations on behalf of the Claimants similarly relied upon the approach of another inspector in respect of another site on a section 78 appeal, which, of the WM RSS Phase 2 Revision Draft figure for Stafford, said (at paragraph 10): "These are the most recent objectively assessed figures available". The Council's response went on (at paragraph 17) to say, explicitly:

> "… [I]t is asserted that the Council has decided 'that it is not going to meet its own objectively assessed need'. That is again at best a misconception. *The figure of 11,000 which informs the housing requirement is the objectively assessed need for the borough for which it is planning.* Paragraph 8.4.1 of the [SLP] quotes projected household growth and thus the objectors have confused that with the objectively assessed need which the plan seeks to meet. The objectively assessed need is one which has been derived through the Phase 2 RSS process on a 'policy on' basis…". (emphasis added).

It contended, in terms, that the WM RSS Phase 2 Revision "engaged with and discharged the functions of a SHMA set out in paragraph 159 of the [NPPF]" (paragraph 8).

58. On this basis, full, objective assessment of housing need would involve taking into account policy constraints on housing, and the assessment of the WM RSS Revision Draft performed that assessment, coming up with the figure of 10,500, from which the figure of 11,000 for the plan period is derived. But that, too, is clearly wrong: for the reasons I have given, full, objective assessment of housing need is a "policy off" figure, in respect of which constraining policies might give a lower "policy on" housing requirement figure.

59. However – rightly – the Council no longer rely on this second justification, either.

60. Although the Council no longer seek to justify the housing provision in either of these ways, it is noteworthy that the Council appeared to arrive at – and sought to justify – its housing provision figure of 11,000 for the period 2006-28 in a manner clearly inconsistent with the NPPF. Of course, that was not surprising at the Pre-submission Draft stage in January 2012 – two months before the NPPF was published in March 2012 – but it is more surprising that such justifications continued in the document submitted for examination in September 2012, and indeed during the course of the examination.

61. However, if that figure of 11,000 for housing provision was in fact justifiable and justified by the Inspector as in accordance with the NPPF and sound, any earlier defective thinking by the Council would be irrelevant. It was open to the Inspector to cure such defects.

The Approach of the Inspector

62. It is therefore to the Inspector's Examination and Report I now turn. It is trite law that such a report must be read fairly as a whole, it being inappropriate to subject it to the close textual analysis that might be required when construing statutory provisions.

63. The Inspector, of course, had to consider a number of issues in respect of the SLP. His report is over 150 paragraphs long: the focus of this ground, housing provision, occupies only 15 paragraphs (i.e. paragraphs 50-64). However, he fully understood that the housing provision issues, including "the basis for the overall number of houses to be provided in terms of housing requirements", were "the most contentious" (paragraph 50). The Council and those objecting to the proposed housing provision repeatedly submitted voluminous responses to representations made to the Inspector by the other. There was no doubt that this was a material and main issue with which the Inspector had to deal.

64. The Inspector set out the Council's approach in paragraph 10 (which closely followed paragraph 8 of his interim conclusions) and paragraph 24 of his report:

> "10. … [The Council has adopted a consistent approach, basing the SLP on the most recent independent objective assessment of housing requirements undertaken for the WM RSS Phase 2 Revision, including policy elements relating to the

> urban renaissance strategy and its associated distribution of development; the level of housing provision proposed in the SLP fully accords with this assessment. [The Council] has also considered the implications of more recent 2008 & 2011 household projections and undertaken further work to ensure that the proposed housing provision figure remains sound and robust. There is insufficient evidence to demonstrate that Solihull does not intend to full meet its objectively assessed housing requirements and has thus failed to meet the requirements of the Duty to Cooperate. [In paragraph 8 of the interim conclusions, he put that point thus: 'It cannot therefore be assumed that Solihull does not intend to fully meet its objectively assessed housing requirements and has thus failed to meet the requirements of the Duty to Cooperate.'] Detailed concerns about the overall housing provision level, including the [SHMA], are dealt with under the housing issues, later in this report."
>
> "24. The Spatial Strategy is based on two main elements: firstly, the former WM RSS Phase 2 Revision, which established the overall scale and pattern of development in the Borough; and, secondly, the needs and opportunities identified in more recent studies through the process of preparing the SLP…."

In other words, in respect of the housing provision figure of 11,000, the Council relied upon the WM RSS Phase 2 Revision Draft figure as amended, together with the more recent DCLG projections and the 2009 SHMA.

65. The general approach taken by the Inspector is apparent from paragraph 51 of his report (the first substantive paragraph of his report specifically devoted to this issue):

> "51. Dealing first with the overall level of housing provision, the NPPF (¶ 14/47) indicates that local plans should meet the full, objectively assessed needs for market and affordable housing in the housing market area, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF, including development constraint policies such as the Green Belt. Although household projections are the starting point in assessing overall housing needs, they are only one element; they are a snapshot in time and, being based on demographic trends, do not model other aspects of housing need or the effective demand for homes. In establishing the appropriate level of housing provision for the area, the key drivers of housing need and demand related to demographic, economic and social factors have to be balanced alongside supply-side factors and wider national/local objectives and strategic priorities relating to sustainability, deliverability, infrastructure, viability, land availability and environmental capacity.

> Evidence should be relevant, robust, proportionate and up-to-date."

66. He then proceeded to take the Council's justification for the figure, and test it, as follows:

i) He noted that paragraph 218 of the NPPF allows authorities to continue to draw on evidence that informed the preparation of regional strategies in support of local strategies, supplemented as needed by up-to-date, robust local evidence (paragraph 52). That is correct. Paragraph 218 provides:

> "Where it would be appropriate and assist the process of preparing or amending Local Plans, regional strategy policies can be reflected in Local Plans by undertaking a partial review focusing on the specific issues involved. Local planning authorities may also continue to draw on evidence that informed the preparation of regional strategies to support Local Plan policies, supplemented as needed by up-to-date, robust local evidence."

ii) He noted that the SLP proposal of 11,000 dwellings in the period 2006-28 reflected the figure recommended in the WM RSS Phase 2 Revision Panel Draft. Although that had never been approved by the Secretary of State and the regional strategy had now been revoked, "the Panel's assessment represents the most recent independently examined assessment of housing requirements in the West Midlands, taking account of cross-boundary housing issues and market areas, environmental capacity and the strategic housing distribution policy elements related to the urban renaissance strategy" (paragraph 52).

iii) He noted that, in addition to the WM RSS Phase 2 Revision Draft recommendation, the SLP relied upon further work and evidence, including the household projections from the more recent 2008-based and 2011-based household projections, and the 2009 SHMA (paragraph 52). With regard to the CLG household projections, he noted that the 2006-based projections were for 16,000 new households in Solihull in the period 2006-26; and the 2008-based projections were for 14,000 in the period 2006-28 (paragraph 53). He noted (in paragraph 55) that some had argued that the plan should make minimum provision of 14,000 new dwellings on the basis of this projection: but this was only one projection and did not represent the objectively assessed need for housing in the borough. Finally, he noted that the latest 2011-based projections were for 6,000 households in the period 2006-21 at 533 dpa (paragraph 52), an apparent reference to the Council's calculation, based on the 2011-based DCLG projection (see paragraphs 42-44 above). He concluded:

> "52. … This work confirms that the underlying housing requirement proposed in the SLP remains valid, robust and sound…

> 53. … Even though the former WMRSS EiP Panel report figure did not fully meet all the housing needs of Solihull at that time, more recent projections confirm that the number of new households anticipated in Solihull between 2006-28 has significantly reduced since then, and that the annual need may only be slightly above that planned for the submitted SLP."

The last reference appears to be to the Council's calculation, based on the 2011-based DCLG projection, that the projected need for Solihull was 533 dpa, compared with the 500 dpa in the SLP.

iv) With regard to the SHMA, the Inspector said this:

> "57. There is also some concern about the adequacy of the SHMA. However, a joint SHMA, covering Birmingham, Solihull, Lichfield and Tamworth was undertaken and was updated specifically for Solihull in 2009, using 2006-based projections, in line with the emerging former WMRSS Phase 2 Revision and national guidance at the time, which supports the proposed level of housing provision. It assessed the likely need for market and affordable housing over the plan period and, taken together with the more recent work on housing need produced for the examination of the SLP and that of the former WMRSS Phase 2 Revision and EiP Panel, this meets the requirements of the NPPF (¶ 159; 178-181)
>
> 58. [The Council] recognises that the existing SHMA will need to be reviewed and updated in 2014, to take account of more recent and forthcoming household projections and the needs of the wider housing market. This review will also need to update the original assessment of housing requirements undertaken for the former WMRSS Phase 2 Revision insofar as it relates to the relevant housing market area, and may necessitate a review of the SLP. The firm commitment to undertake this review is to be confirmed in the SLP, to ensure that the plan remains up-to-date and soundly based, as required by the NPPF (¶ 158)."

v) He noted that some had questioned the continuing relevance of the urban renaissance strategy; but he found it "continues to be relevant and significant in the planning of the sub-region", as illustrated by the adopted Black Country Core Strategy (paragraph 58).

vi) He noted (at paragraph 8) that:

> "… [T]here are no specific or agreed requirements for Solihull to meet the housing or other needs of adjoining

> authorities, or for any neighbouring authorities to meet any of Solihull's housing or other needs";
>
> and it would be unreasonable to delay its work on the SLP to await the results of further work on the housing needs of Birmingham (which might result in unmet need there, which Solihull might be asked to meet), particularly as Solihull currently lacked a 5 year housing supply (paragraphs 9, and 59-61)

67. The Inspector summed up the issue, and his conclusions on it, as follows:

> "62. [The Council] maintains that the SLP is fully meeting the identified housing needs of the Borough, but has considered higher levels of housing at the option stage. In considering the possibility of higher housing figures, it is important to bear in mind the significant policy constraints in Solihull, particularly the Green belt, including the strategically important Meriden Gap, and the implications of higher levels of development on the recognised environmental quality of the Borough. [The Council] proposes to amend the SLP to explain the adverse implications of higher levels of housing provision on the quality of the environment and the Green belt, particularly the Meriden Gap. This is supported by evidence, including the SHLAA and site assessments.
>
> 63. In terms of the overall housing requirement, [the Council] has taken a consistent and pragmatic approach, having produced a positively prepared and effective plan, of cross-boundary housing requirements undertaken for the former WMRSS Phase 2 Revision, and backed up with more up-to-date, robust and reliable evidence, projections and studies. The commitment to review the SLP if it becomes necessary to address the issue of Birmingham's shortfall in future housing provision will ensure that cross-boundary housing issues are addressed when the results of these studies are finalised, reflecting the guidance of the NPPF (¶ 179). The commitment to early review of the SHMA will ensure that Solihull's housing needs are kept up-to-date, including reviewing the SLP, if necessary.
>
> 64. Taking account of all the evidence and having examined all the elements that go into making an objective assessment of housing requirements, a total level of 11,000 dwellings or 500 dwellings/year represents an effective, justified and soundly based figure which would meet the current identified housing needs of the district over the plan period and, with the agreed amendments, is consistent with the overall requirements of national policy in the NPPF."

68. Thus, Policy P5 of the adopted SLP (which assumed all of the modifications recommended by the Inspector) provides that the Council will allocate land to

sufficient housing supply to deliver 11,000 additional homes in the period 2006-28, with an annual housing land provision target of 500 net additional homes per year.

69. The justification for this policy – and the linked policies concerning housing supply – was given in the accompanying notes as follows:

> "8.4.1 The housing land provision target of 11,000 net additional dwellings (2006-2028) reflects the requirement recommended by the [WM RSS] Phase II Revision Panel Report which objectively assessed housing need. Around 65% of growth is projected to emerge from net immigration into Solihull on the basis of past trends. The projected level of growth may reduce with the successful continued implementation of the West Midlands Urban Renaissance Strategy which seek to develop urban areas in such a way that they can increasingly meet their own economic and social needs in order to counter the unsustainable movement of people and jobs facilitated by previous strategies, including the need to direct development to those parts of the West Midlands Region needing housing. The Panel's assessment of housing need took the 2006-based household projections into account. Subsequent 2008-based and interim 2011-based household projections project a lower level of household growth for Solihull, providing further confidence that the provision target mill meet need
>
> 8.4.2. Solihull is recognised for its high quality environment which attracts residents and investors to the Region. The key Regional objective of stemming out migration can be best served by preserving and enhancing Solihull's environment. The Council is assessing housing land supply throughout the development of the West Midlands Regional Spatial Strategy taking a 'bottom-up' approach through detailed assessment and the [SHLAA]. It is considered that 11,000 (net) additional homes can be delivered towards meeting projected household growth of 14,000 households (2006-28). This is the level of housing provision that the Council considers can be provided without adverse impact on the Meriden gap, without an unsustainable short-term urban extension south of Shirley and without risking any more generalised threat to Solihull's high quality environment…".

Housing Provision: The Parties' Respective Cases

70. Mr Dove for the Council accepted that neither the SLP nor the Inspector's Report identified, in terms, a specific figure for objectively assessed housing need over the period; but, he submitted, it was not necessary for a plan to identify such a figure and, on a proper analysis of the Inspector's Report, the substantive requirements of the NPPF (including those of paragraphs 47 and 159) were satisfied in this case.

71. He relied upon the guidance from the Secretary of State when, in July 2010, he announced the revocation of the regional strategies. The advice was in question and answer form. Mr Dove particularly relied upon the following (italicised emphasis added):

> "**9. Will data and research currently held by Regional Authority Leaders' Boards still be available?**
>
> Yes. The regional planning function of Regional LA Leaders' Boards – the previous Regional Assemblies – is being wound up and their central government funding will end after September of this year. *The planning and research they currently hold will still be available to local authorities for the preparation of their local plans whilst they put their own alternative arrangements in place for the collection and analysis of evidence….*
>
> **10. Who will determine housing numbers in the absence of Regional Strategy targets?**
>
> Local planning authorities will be responsible for establishing the right level of local housing provision in their area, and identifying long term supply of housing land without the burden of regional housing targets. *Some authorities may decide to retain their existing housing targets that were set out in the revoked Regional Strategies*. Others may decide to review their housing targets. We would expect that those authorities should quickly signal their intention to undertake an early review so that communities and land owners know where they stand.
>
> **11. Will we still need to justify the housing numbers in our plans?**
>
> Yes – it is important for the planning process to be transparent, and for people to be able to understand why decisions have been taken. Local authorities should continue to collect and use reliable information to justify their housing supply policies and defend them during the LDF examination process. They should do this in line with the current policy in PPS3.
>
> **12. Can I replace Regional Strategy targets with "option 1 numbers" [i.e. the policy on figures submitted by local authorities to the regional authorities as part of the regional process of fixing housing provision]?**
>
> Yes, if that is the right thing to do for your area. *Authorities may base revised housing targets on the level of provision submitted to the original Regional Spatial Strategy Examination (Option 1 targets), supplemented by more recent information as appropriate.* These figures are based on

> assessments undertaken by local authorities. However, any target selected may be tested during the examination process especially if challenged and authorities will need to be ready to defend them."

Mr Dove also relied upon paragraph 218 of the NPPF (quoted at paragraph 66(i) above).

72. He submitted that the 11,000 figure reflected the WM RSS Phase 2 Revision Panel Draft target, which had taken into account the evidence of housing need (including the DCLG projections and the 2009 SHMA) as well as constraining policy factors (including, in particular, policies relating to urban renaissance policy, the Green Belt and the wish to maintain the high quality environment in Solihull which was important for the maintenance of the infrastructure which sustains the area). That Revision Draft housing provision figure was set only after a full review including an examination in public. Since then, there had been no significant change in demographic trends or other factors that went to housing need (as evidenced by the 2008-based and the interim 2011-based DCLG projections, and the 2009 SHMA). Nor had there been any significant change in policy; notably, the urban renaissance policy was still extant, as were the other policies which led to the constraint to the WM RSS Revision Panel Draft target, namely the Green Belt policy and the policy of protecting the quality of the living environment in Solihull. In those circumstances, the SLP was justified in using the housing requirement figure of 11,000 which directly reflected the WM RSS Phase 2 Revision Draft target.

73. Mr Lockhart-Mummery's primary submission was that the Council and the Inspector had simply failed to understand and apply the stepped approach to housing strategy in a local development plan required by the NPPF. The vital first step in the process is to assess, fully and objectively, the need for market and affordable housing in a SHMA, in accordance with the requirements of paragraph 159 of the NPPF. Only once that assessment has been made can the other steps be taken, namely:

    i) considering whether there are policies in the NPPF which are consistent/inconsistent with those full needs;

    ii) constraining the figure which represents the full objectively assessed needs where any adverse impacts of meeting those needs "would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole or specific policies in [the NPPF] indicate development should be restricted" (paragraph 14 of the NPPF); and

    iii) where the result is a constrained figure (i.e. a figure which, on policy grounds, is less than the full objectively assessed figure for housing need in that area), cooperating with adjoining or other near-by local planning authorities on the strategic matter of meeting that otherwise unmet need (section 33A of the 2004 Act).

74. That first, mandatory step of assessing housing need, fully and objectively, was not performed in this case, with the result that the SLP was ultra vires the Council and in breach of the procedural and soundness requirements for such a plan. That view was consistently taken by the Claimants in their representations to the Inspector during the

Examination in Public (see, e.g., paragraph 11 of their response to the Inspector's Interim Conclusions). He erred in law in rejecting it.

75. As a separate but linked issue, Mr Lockhart-Mummery submitted that the NPPF requires the specific assessment of affordable housing needs. The evidence (recorded in the Inspector's Report, at paragraph 105) was that there was a need for 1,652 dpa affordable housing; but the SLP only provides for 2,457 affordable homes throughout the period of the plan. He accepts that quantified need for affordable housing does not simply translate into an equivalent need for new homes – and that affordable housing can only sensibly be expressed as a percentage of aggregate housing development – but he criticises the SLP and the Inspector for nowhere assessing the full objective need for affordable housing, as required by the NPPF.

Discussion

76. Mr Dove's submissions were, as ever, coherent, forceful and enticing. However, I am unpersuaded by them: in my firm view, with regard to his approach to the housing provision, the Inspector did err in law. Mr Lockhart-Mummery put the matter in a variety of ways, including that the Inspector failed to have regard to the key requirements of the NPPF, particularly the requirement to base housing provision targets on an objective assessment of full housing needs as identified through a SHMA; he misdirected himself as to the requirements of the NPPF; he misunderstood documents such as the 2009 SHMA; and he failed to give adequate reasons for the housing provision he approved as compliant with the statutory requirements. Each of those reflects, to some extent, the substantive error which was, in my judgment, made by the Inspector, namely a failure to grapple with the issue of full objectively assessed housing need, with which the NPPF required him, in some way, to deal.

77. In coming to that conclusion, I have had particular regard to the following.

78. There was no doubt that the full objectively assessed housing need was in issue: the parties to the examination made voluminous representations to the Inspector on that issue, including submissions in relation to how projections informed that issue. The technical issue to which I have referred (paragraphs 46-49 above) was simply one aspect of those submissions.

79. Although the NPPF is mere policy – and a plan-maker, including an inspector, may therefore depart from it, if there is good reason to do so – the Inspector in this case purportedly dealt with the issue of housing provision by applying the policies of the NPPF, not going outside them.

80. As Barratt emphasises, whether a plan is "sound" is essentially a matter of planning judgement for the Inspector (see paragraph 34 above). However, "soundness" requires a plan to be "positively prepared" (i.e. based on a strategy which seeks to meet objectively assessed development requirements) and consistent with national policy (paragraph 182 of the NPPF, quoted at paragraph 33 above). Relevant national policy here includes paragraphs 14 and 47 of the NPPF. For a plan to be sound, it therefore needs to address and seek to meet full, objectively assessed housing needs for market and affordable housing in the housing market area, unless (and only to the extent that) any adverse impacts of doing so would significantly and

demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

81. Although in paragraph 51 of his report (quoted at paragraph 65 above), the Inspector adequately summarised those requirements of paragraph 14 and 47 – more or less in the terms I have set out – looking at the report as a whole, and following similar confusion which appeared at times in the Council's submissions to him (see paragraphs 50-61 above), the Inspector appears to have confused policy off "housing needs" with policy on housing requirement targets. I make that comment well aware of the need to avoid exegetical analysis of Inspector's reports, and the requirement to consider such reports fairly and as a whole.

82. However, for example, the Inspector says (in paragraph 62):

> "[The Council] maintains that the SLP is fully meeting the identified housing needs of the Borough, but has considered higher levels of housing at the option stage."

That can only be explained by "housing needs" being used in a policy on sense. Leaving aside any obligation to meet unmet need from an adjacent authority (not in play here, because the Inspector throughout worked on the basis that there was no such need), the Council of course need not – and would not – consider meeting levels of housing higher than the full objectively assessed need.

83. Further, the Inspector found that 11,000 new dwellings over the period of the plan (i.e. 500 dpa) "represents an effective, justified and soundly based figure which would meet the current identified housing needs of the district over the plan period…" (paragraph 64 of his report, quoted at paragraph 67 above). Mr Dove submitted that "the current identified housing needs" was a tacit reference to the interim 2011-based projection of 533 dpa; but, reading the report as a whole (as I must), I cannot accept that proposition, because (i) the interim 2011-based projection of 533 dpa was only for the period to 2021, not for the plan period (to 2028); (ii) the Inspector (rightly) made clear that a single household projection does not represent objectively assessed need for housing (paragraph 55); and (iii) as Mr Dove properly conceded, nowhere in either the Inspector's Report or the WM RSS Phase 2 Revision Panel Report, by reference to the interim 2011-based projection or otherwise, is any full, objectively assessed need for housing in Solihull "identified". The reference in paragraph 53 of the report to "the annual need may only be slightly above that planned for in the submitted SLP" cannot be stretched to amount to an identification of housing need of 11,700 in aggregate or 533 dpa. Again, the Inspector appears to use the term "housing need" here to mean a policy on figure for housing requirement.

84. In any event, whether or not the Inspector confused policy off housing need with policy on housing requirement, nowhere in the report does he objectively assess full housing need, a matter to which I shall shortly return.

85. The importance of the difference between full objectively assessed housing need and any policy on figure was recently emphasised in City and District Council of St Albans v Hunston Properties Limited and the Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 ("Hunston"), upon which Mr Lockhart-

Mummery relied for his proposition that, in plan-making, an authority must, as a first step, fully and objectively assess housing need.

86. The case itself concerned, not the preparation of a development plan, but a development control application for planning permission for housing within the Metropolitan Green Belt, in circumstances in which no local plan existed so that there was a "policy vacuum" in terms of the housing delivery target. Planning permission was refused by the local planning authority, and by an inspector on appeal. However, this court (His Honour Judge Pelling QC) quashed that decision ([2013] EWHC 2678 (Admin)), a determination upheld by Sir David Keene giving the only substantive judgment in the Court of Appeal ([2013] EWCA Civ 1610).

87. An issue in the case was the proper interpretation of paragraph 47 of the NPPF: indeed, in granting permission to appeal, Sullivan LJ considered that the local authority did not have a real prospect of success of overturning Judge Pelling, but in his view there was a compelling reason for the appeal to be heard namely to enable the Court of Appeal to give a "definitive answer to the proper interpretation of paragraph 47" and, in particular the interrelationship between the first and second bullet points in that paragraph, quoted at paragraph 27 above (see Hunston at [3]).

88. I respectfully agree with Sir David Keene (at [4] of Hunston): the drafting of paragraph 47 is less than clear to me, and the interpretative task is therefore far from easy. However, a number of points are now, following Hunston, clear. Two relate to development control decision-taking.

    i) Although the first bullet point of paragraph 47 directly concerns plan-making, it is implicit that a local planning authority must ensure that it meets the full, objectively assessed needs for market and affordable housing in the housing market, as far as consistent with the policies set out in the NPPF, even when considering development control decisions.

    ii) Where there is no Local Plan, then the housing requirement for a local authority for the purposes of paragraph 47 is the full, objectively assessed need.

89. As I have said, those matters – the ratio of the decision of the Court of Appeal – go to development control decision-taking. To that extent, Mr Dove was correct in pointing out that both Judge Pelling (at [11]) and Sir David Keene (at [21]) emphasised that the case before them did not concern plan-making, but decision-taking where there was no plan.

90. However, reflecting comments made by Judge Pelling at first instance, Sir David Keene also made some important observations about the construction of paragraph 47 in the context of plan-making. Consequently, the Inspector's Report in this case (published on 14 November 2013, between the judgments of Judge Pelling and the Court of Appeal in Hunston) was not in the event entirely correct when it said (at paragraph 55) that Hunston was not relevant to his inquiry because "this case relates to the process of determining planning applications rather than plan-making"; nor was the submission of Mr Dove that "[Hunston] is solely concerned with the development control process where there is a policy vacuum in relation to housing requirement" (skeleton argument, footnote 10).

91. Sir David Keene, at [25]-[26], drew the very clear distinction between the full objectively assessed needs figure; and the policy on, housing requirement figure fixed by the Local Plan. In considering the first bullet point in paragraph 47 of the NPPF, which of course expressly concerns plan-making, he said:

> "… The words in [the first bullet point of paragraph 47], 'as far as consistent with the policies set out in the Framework' remind one that the Framework is to be read as a whole, but their specific role in that sub-paragraph seems to me to be related to the approach to be adopted in producing the Local Plan. If one looks at what is said in that sub-paragraph, it is advising local planning authorities:
>
> > '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.'
>
> That qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure."

That makes clear that, in the context of the first bullet point in paragraph 47, policy matters and other constraining factors qualify, not the full objectively assessed housing needs, but rather the extent to which the authority should meet those needs on the basis of other NPPF policies that may, significantly and demonstrably, outweigh the benefits of such housing provision. It confirms that, in plan-making, full objectively assessed housing needs are not only a material consideration, but a consideration of particular standing with a particular role to play.

92. I was also referred to the recent case of South Northamptonshire Council v Secretary of State for Communities and Local Government [2014] EWHC 573 (Admin), in which Hunston was considered. Mr Dove particularly relied upon the emphasis Ouseley J gave in that case to the fact that Hunston "did not decide that [a] revoked RSS was expunged". However, that case was very different from this. It was a section 288 challenge to two refusals of planning permission for housing development, on the basis that the approach the planning authority adopted to the calculation of the 5 year housing supply was unlawful in the light of the NPPF. In addition to the revoked regional strategy, there was a new core strategy, but that had not been adopted and was still subject to examination. There was no issue as to the housing requirement over the relevant plan period (see [8]), the issue being how the shortfall of 626 homes by 2012 was to be dealt with for the purposes of assessing whether there was a 5 year supply. The case is of little consequence to this application because, it appears, the regional strategy figure for housing provision was (unlike in the case of Hunston and here) not constrained (see [29]), nor inflated over objectively assessed need because of a regional growth strategy for the area (see [36]). The regional strategy figures were very similar to the figures from the emerging core strategy. In those circumstances, Ouseley J held, unsurprisingly, that, in considering

how the shortfall should be made up (i.e. whether the future supply should be front- or end-loaded), it was relevant to see how supply had fared against the regional strategy requirement when it was in force, as the inspector in that case had done (see [37]). Importantly, the judge emphasised the need for caution in using figures from revoked regional strategies: he considered that, by treating the regional strategy figure as relevant, "there [was] potential for an error of law", but he was satisfied that there was no error in that case on its specific facts. This case does not give Mr Dove any assistance. Indeed, in my view, it gives Mr Lockhart-Mummery some support.

93. As I have said, neither the SLP nor the Inspector made any objective assessment of full housing need, in terms of numbers of dwellings. Mr Lockhart-Mummery submitted that, if the plan-makers have to assess whether the full objectively assessed housing need is outweighed by other policy factors and cooperate with adjacent authorities with regard to any shortfall between full objectively assessed housing need and any constrained housing requirement target (as they do), they must, first, determine a figure for the full objectively assessed need by preparing a SHMA in accordance with paragraph 159 of the NPPF. Paragraph 159 requires local planning authorities to have a clear understanding of housing needs in their area and, specifically, to prepare a SHMA to assess their full housing needs.

94. Those submissions have considerable force. Whilst I do not need to endorse Mr Lockhart-Mummery's precise propositions for the determination of this application – for example, I see that, in practice, full housing needs might be objectively assessed using data other than a SHMA – it is clear that paragraph 47 of the NPPF requires full housing needs to be assessed in some way. It is insufficient, for NPPF purposes, for all material considerations (including need, demand and other relevant policies) simply to be weighed together. Nor is it sufficient simply to determine the maximum housing supply available, and constrain housing provision targets to that figure. Paragraph 47 requires full housing needs to be objectively assessed, and then a distinct assessment made as to whether (and, if so, to what extent) other policies dictate or justify constraint. Here, numbers matter; because the larger the need, the more pressure will or might be applied to infringe on other inconsistent policies. The balancing exercise required by paragraph 47 cannot be performed without being informed by the actual full housing need.

95. Nor can an assessment of whether a planning authority has complied with its duty to cooperate under section 33A of the 2004 Act, which may be triggered by an unmet housing need in one area resulting from a shortfall between full housing need and a housing target based on policy on requirements.

96. Mr Dove submitted that paragraph 218 of the NPPF encouraged – or at least allowed – the use of regional strategy policies and evidence that informed the preparation of regional strategy in the preparation of Local Plans. It was therefore open to the Inspector to take the policy on figure derived from the WM RSS Phase 2 Revision process, into which relevant demographic and other housing need evidence had gone, together with the relevant policy considerations, and which had been tested at an examination in public; and then see whether any more recent housing need evidence (e.g. later projections and SHMAs), or change in policy, undermined the Panel's figure. That there had been no material alteration in circumstances was a matter for the planning judgment of the Inspector. The conclusion he reached had a clear evidential foundation, and was unimpeachable in law.

97. However, that fails to acknowledge the major policy changes in relation to housing supply brought into play by the NPPF. As I have emphasised, in terms of housing strategy, unlike its predecessor (which required a balancing exercise involving all material considerations, including need, demand and relevant policy factors), the NPPF requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the NPPF dictate otherwise. That, too, requires a balancing exercise – to see whether other policy factors significantly and demonstrably outweigh the benefits of such housing provision – but that is a very different exercise from that required pre-NPPF. The change of emphasis in the NPPF clearly intended that paragraph 47 should, on occasions, yield different results from earlier policy scheme; and it is clear that it may do so.

98. Where housing data survive from an earlier regional strategy exercise, they can of course be used in the exercise of making a local plan now – paragraph 218 of the NPPF makes that clear – but where, as in this case, the plan-maker uses a policy on figure from an earlier regional strategy, even as a starting point, he can only do so with extreme caution – because of the radical policy change in respect of housing provision effected by the NPPF. In this case, I accept that it was open to the Inspector to decide that the urban renaissance policy continued to be potent, and even (possibly) that the evidence of housing need had not significantly changed since the WM RSS Phase 2 Revision Draft target was set – those were matters of planning judgment, for him. However, in my judgment, in his approach, he failed to acknowledge the new, NPPF world, with its greater policy emphasis on housing provision; and its approach to start with full objectively assessed housing need and then proceed to determine whether other NPPF policies require that, in a particular area, less than the housing needed be provided. The WM RSS Phase 2 Revision Panel did not, of course, adopt that approach. Nor did the guidance provided by the Secretary of State on the revocation of regional strategies in 2010 (see paragraph 71 above) take the new policy into account. Both were pre-March 2012, when the NPPF was published.

99. The Inspector did not acknowledge, or take into account, that change. I accept that the Inspector might have taken that change into account in a number of ways. However, in one way or another, he was required to assess, fully and objectively, the housing need in the area. In the event, he made no attempt to do so. Mr Dove conceded – as he had to do – that neither the SLP nor the Inspector provided any full and objective assessment of housing need. Nor is there any evidence that the WM RSS Phase 2 Revision Panel made such an assessment, either: they had evidence of need before them, but there is no evidence that, as required by the NPPF, they assessed the full and objective housing need before considering constraints on meeting that need. Indeed, the evidence is that they went straight to policy on figures for the region in a conventional planning balancing exercise, with all material factors in play – as they were entitled to do under the pre-NPPF regime – and then proceeded to carve up that policy on requirement between the various areas within the region. Even as a surrogate, that did not comply with the NPPF requirements, properly construed. The further projections and 2009 SHMA did nothing to assist in this regard.

100. This is not a reasons case, because the approach adopted by the Inspector is in my view clear from his report: indeed, the fact that the Inspector unfortunately failed to

grapple with this important issue of housing need is, in my view, betrayed in the report. When the report is read as a whole, far from full objectively assessed housing need being a driver in terms of the housing requirement target – as the NPPF requires – it is at best a back-seat passenger. Nowhere is the full housing need in fact objectively assessed. As I have said, the reference to the work done by the WM RSS Phase 2 Revision Panel does not assist, because there is no evidence that they assessed such need either. In any event, the Inspector appears to accept that the WM RSS Phase 2 Revision Panel target did not fully meet all housing needs (paragraph 53). Further, in paragraph 10 (quoted at paragraph 64 above), he says:

> "There is insufficient evidence to demonstrate that Solihull does not intend to full meet its objectively assessed housing requirements …".

All of this makes clear, in my view, that the Inspector erred in his approach to this issue: he failed to have proper regard to the policy requirements of the NPPF.

101. For those reasons, I do not consider that the Inspector's approach to the policy requirements of the NPPF in relation to housing provision was correct or lawful. As a result, he failed to comply with the relevant procedural requirements; and the SLP with modifications, which he endorsed and the Council adopted, is not sound because it is not based on a strategy which seeks to meet objectively assessed development requirements nor is it consistent with the NPPF.

102. Therefore, on this ground, the Claimants succeed.

Ground 2

103. I have already set out the relevant provisions of section 33A, which provides for a duty to cooperate between local planning authorities (paragraph 18 above). Section 33A(7) provides that any person subject to that duty must have regard to any national guidance. Paragraph 179 of the NPPF states:

> "… Joint working should enable local planning authorities to work together to meet requirements which cannot wholly be met within their own areas – for instance, because of lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework…".

104. Before me, Mr Lockhart-Mummery restricted his second ground. He simply submitted that, for reasons explored in Ground 1, with a provision of 11,000, the Council will not meet it own objectively assessed housing needs; but it failed to cooperate with neighbouring authorities to devise a strategy whereby its unmet need would be met by adjoining authorities. He relied particularly upon the sentence in paragraph 8.4.2 of the adopted SLP:

> "It is considered that 11,000 (net) additional homes can be delivered towards meeting projected household growth of 14,000 (2006-2028)."

That (he submitted) accepts that there is a shortfall of 3,000 between housing needs and housing requirement; and there is no evidence of any attempts to cooperate between the Council and its neighbours to work out how and where this unmet need will in fact be met.

105. As Mr Dove submitted – and Sales J recently emphasised in Zurich Assurance (cited at paragraph 34 above) at [110]-[120] – section 33A imposes a duty to make efforts to address issues in a cooperative way, and the question of whether there has been compliance with the section 33A duty is a matter of planning judgment for the inspector.

106. Mr Lockhart-Mummery's submission is dependent upon the proposition that the Inspector found a shortfall of housing provision compared with full objectively assessed need of 3,000, i.e. 11,000 in the SLP compared with 14,000. However, the Inspector found no such shortfall. For the reasons I have given, the 14,000 figure is not a figure which represents full objectively assessed housing need: indeed, the Inspector makes clear that he did not take it as such (paragraph 55 of his report). As I have explained, he simply failed to grapple with the issue of what that need was, and there is no figure for it given or derivable from his report and/or the SLP. On the basis of the Inspector's Report, although it may be likely that, had the Inspector addressed his mind to full objectively assessed housing need, he would have found a shortfall between it and 11,000 dwellings in the plan period, he did not in the event address his mind to that issue.

107. As the Inspector did not apply himself to the prior questions of whether there is any shortfall between that need and the provision made and, if there is, the amount of that shortfall, it is impossible to say whether or not there was any breach of the duty to cooperate. Certainly, if and insofar as there is a shortfall, there does not appear to be any evidence of any attempts to cooperate with adjacent authorities, as might be required by section 33A – unsurprising, given that the Council at the time apparently considered the amended WM RSS Phase 2 Revision Draft policy on target to be the relevant need figure. Whether there was a breach of section 33A, would be a matter of planning judgment. In any event, as things stand, I cannot say that there was such a breach.

108. For those reasons, the adoption of the SLP fails to survive Ground 1; and I need not, and cannot appropriately, make any findings in relation to Ground 2.

Ground 3

Introduction

109. Mr Lockhart-Mummery submitted that the Inspector adopted the incorrect legal test for revising Green Belt boundaries as set out the national policy, namely paragraph 83 of the NPPF which provides:

> "Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. *Once established, Green Belt boundaries should only be altered in exceptional circumstances,* through the preparation

> or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period." (emphasis added)

Policy and Factual Background

110. Green belts are designed to provide a reserve supply of public open space and recreational areas, by establishing "a girdle of open space" around built up areas. They are established through development plans. The Green Belt policy outside London was codified in a number of Ministerial guidance documents, the first being in 1955. The guidance is now of course found in the NPPF. Its immediate predecessor was Planning Policy Guidance 2: Green Belts ("PPG2").

111. PPG2 emphasised that "the essential characteristic of Green Belts is their permanence" (paragraph 2.1). It set out the consequences of that characteristic as follows:

> "2.4 Many detailed Green Belt boundaries have been set in local plans and in old development plans, but in some areas detailed boundaries have not yet been defined. Up-to-date approved boundaries are essential, to provide certainty as to where Green Belt policies do and do not apply and to enable the proper consideration of future development options. The mandatory requirement for district-wide local plans, introduced by the Planning and Compensation Act 1991, will ensure that the definition of detailed boundaries is completed.
>
> …
>
> 2.6 Once the extent of a Green Belt has been approved it should only be altered in exceptional circumstances. If such an alteration is proposed the Secretary of State will wish to be satisfied that the authority has considered opportunities for development within the urban areas contained by and beyond the Green Belt. Similarly, detailed Green Belt boundaries defined in adopted local plans or earlier approved development plans should be altered only exceptionally….
>
> 2.7 Where existing local plans are being revised and updated, existing Green Belt boundaries should not be changed unless alterations to the structure plan have been approved, or other exceptional circumstances exist, which necessitate such revision.
>
> 2.8 Where detailed Green Belt boundaries have not yet been defined, it is necessary to establish boundaries that will endure…".

112. The long-term nature of Green Belts was also reflected in provisions for "safeguarded land". Paragraph 2.12 provided:

> "When local authorities prepare new or revised structure and local plans, any proposals affecting Green Belts should be related to a time-scale which is longer than that normally adopted for other aspects of the plan. They should satisfy themselves that Green Belt boundaries will not need to be altered at the end of the plan period. In order to ensure protection of Green Belts within this timescale, this will in some cases mean safeguarding land between the urban area and the Green Belt which may be required to meet longer-term development needs…. In preparing and reviewing their development plans authorities should address the possible need to provide safeguarded land. They should consider the broad location of anticipated development beyond the plan period, its effects on urban areas contained by the Green Belt and on areas beyond it, and its implication for sustainable development…"

113. Annex B gave further advice on safeguarded or "white" land:

> "B2. Safeguarded land comprises areas and sites which may be required to serve development needs in the longer term, i.e. well beyond the plan period. It should be genuinely capable of development when needed.
>
> B3. Safeguarded land should be located where future development would be an efficient use of land, well integrated with existing development, and well related to public transport and other existing and planned infrastructure, so promoting sustainable development.
>
> B4. In identifying safeguarded land local planning authorities should take account of the advice on housing in PPG3 and on transport in PPG13….
>
> B5. Development plans should clearly state the policies applying to safeguarded land over the period covered by the plan. They should make clear that the land is not allocated for development at the present time, and keep it free to fulfil its purpose of meeting possible longer-term development needs….
>
> B6. Development plan policies should provide that planning permission for the permanent development of safeguarded land should only be granted following a local plan or UDP review which proposes the development of particular areas of safeguarded land. Making safeguarded land available for permanent development in other circumstances would thus be a departure from the plan."

114. In line with that guidance, following inquiries in 1991 and 1995, in the 1997 Solihull Unitary Development Plan ("the UDP"), the Council took 12 sites totalling 77 hectares, including the Sites at Lowbrook Farm and Tidbury Green Farm, out of the interim Green Belt, and reserved them as safeguarded land.

115. In 2004-5, the UDP was the subject of a review inquiry, also conducted by the Inspector, Mr Pratt. The review period was until 2011. In his 2005 UDP Review Report, the Inspector (at paragraphs 3.124-3.128) noted that (i) none of the safeguarded sites had been developed; (ii) the concept of sustainability had developed since the sites were identified as safeguarded; (iii) the Council considered the allocation of some of the sites would conflict with PPG3 and the latest regional strategy, which represented a fundamental change to policy especially in moving away from development around smaller Green Belt settlements; and (iv) the Council confirmed that, in the absence of exceptional circumstances, none of these sites could be brought forward for development without a change in regional strategy. He consequently recommended as follows (at paragraph 3.128):

> "Bearing in mind the apparent conflict between the possible allocation of these sites for housing in the future and the latest regional strategy, I consider an urgent review of their suitability as long-term housing sites should be undertaken. This should not delay the adoption of the [UDP Revision], but should inform its next review under the new… regime…".

116. His overall conclusion was as follows (at paragraph 3.130):

> "Given the current adequacy of housing land supply, both within the Plan period and beyond, and bearing in mind the permanent nature of the established Green Belt boundaries, I cannot see any general justification for identifying further safeguarded land. This would require amendments to existing Green Belt boundaries which, in the absence of any exceptional circumstances, could not be justified in terms of current national policy or the latest regional strategy. Similarly, since these sites have been removed from the Green Belt relatively recently, after a thorough debate at two UDP inquiries, there would have to be some very special circumstances to justify their re-inclusion in the Green Belt. In the absence of exceptional circumstances, ad hoc amendments to the Green belt boundary to either allocate additional or alternative long-term housing sites, to remove existing safeguarded sites, would undermine the integrity and enduring nature of the existing Green Belt boundary established in the adopted UDP. Furthermore, any loss of the Green Belt land without directly supporting urban regeneration would be contrary to the latest regional spatial strategy. Consequently, I can see no general justification for any changes to existing Green Belt boundaries, and these matters are best addressed on a site-by-site basis."

117. He went on say (paragraph 3.132):

> "If further housing land is needed, during or beyond the current Plan period, safeguarded greenfield land may not necessarily be the first choice, particularly since most identified sites lie outside the [Major Urban Areas] where new housing development is to be focused, and both PPG3 and RPG11 give

> priority to *previously developed land*. Such a policy could also prejudice the release of other more suitable sites that may come forward in the future…".

118. His recommendations included modifications to the UDP as follows (paragraph 3.140):

> "… amending the text accompanying Policy H2 to confirm that, although these sites have been removed from the Green Belt and safeguarded to meet longer term housing needs, no decision has yet been taken on the positive allocation of any of these sites for housing, and that they are not intended as 'reserve' housing sites in the event of shortfalls in housing land supply;"

and

> … subject to the Council's priorities in undertaking a review of this UDP Review…, priority be given to assessing the suitability of safeguarded land for housing against current national policy and the latest regional strategy, along with an assessment of longer term housing land supply, housing strategies and potential housing sites, to inform the next review of this UDP."

119. In the event, Policy H2 of the 2005 UDP provided as follows:

> "The Council will identify sites to help to meet long-term (i.e. post-2011) housing needs. In areas excluded from the Green Belt for this purpose, strong development control measures will apply limiting any development on the land only to uses which would:
>
> (i) Be allowed in the Green Belt under Policy C2;
>
> (ii) Not prejudice the long-term use of the site for housing.
>
> The possible future designation of the land for housing will be determined through subsequent reviews of the [UDP]."

The Sites – with the other 15 sites previously identified – were again identified as safeguarded land.

<u>The Inspector's Report</u>

120. The SLP allocated the Sites to the Green Belt, whilst removing other sites (particularly in the north of the borough) as the most appropriate means of providing land sufficient to meet the housing requirement which it of course set at 11,000 new dwellings by 2028. There were strong objections to the reallocation of the Sites, on the basis that a reallocation could only be made in exceptional circumstances – and no such circumstances existed in this case.

121. The Inspector dealt with the issue in paragraph 137 of his Report:

> "There is also serious concern about the proposed return to the Green belt of some Safeguarded land previously identified in the [UPD]. However, when the [UDP] was examined, it was made clear that the status of this land should be reviewed in the context of the approved and emerging WM RSS strategy for urban renaissance. [The Council] undertook this review, and rejected the future development of sites at Tidbury Green because this settlement lacks the range of facilities necessary for further strategic housing growth, the scale of development envisaged would also be far too large to meet local housing needs and would threaten the coalescence with other settlements, including Grimes Hill. National policy enables reviews of the Green Belt to be undertaken (NPPF ¶ 84), including considering the need to promote sustainable development, and it is clear from [the Council's] evidence that these sites would not meet this objective. These factors constitute legitimate reasons and represent the exceptional circumstances necessary to justify returning these sites to the Green Belt."

122. The evidence the Council relied upon, and to which the Inspector referred, is largely set out in paragraphs 31 and following of the Statement of David Simpson dated 15 January 2014, prepared for this application. At the relevant time, Mr Simpson managed the Council's planning team. The preparation of the SLP was one of the team's main responsibilities.

123. The Council's decision to return the Sites to the Green Belt was based on the following:

i) The risk of coalescence between Tidbury Green and Grimes Hill, in a gap already narrowed since 2005 by the grant of planning permission by the adjacent authority for housing on land at Selsdon Close in Grimes Hill (see paragraph 9 above), which would undermine the integrity and function of this part of the Green Belt.

ii) Planning permission had been refused for the land at Norton Lane in the adjacent Bromsgrove District (again, see paragraph 9 above), on Green Belt grounds.

iii) Planning permission had been refused for the Lowbrook Farm site in January 2013, before it had been allocated to the Green Belt, as it conflicted with the SLP spatial strategy, the land not being within a village identified for strategic housing growth.

iv) The development of the Sites was out of proportion with the existing settlement, and would completely dominate it.

v) As envisaged in the 2005 review, the suitability of the Sites for housing was assessed through the SHLAA, which concluded that they did not meet the

> minimum criteria for access to key services and were unsuitable to meet identified local housing needs. The Tidbury Green Farm was also considered to have "unacceptable impact on green belt functions and openness".

Those reasons were reflected in the Council's written submissions to the Inspector dated 20 December 2012, to which I was also referred.

The Legal Background

124. There is a considerable amount of case law on the meaning of "exceptional circumstances" in this context. I was particularly referred to Carpets of Worth Limited v Wyre Forest District Council (1991) 62 P & CR 334 ("Carpets of Worth"), Laing Homes Limited v Avon County Council (1993) 67 P & CR 34 ("Laing Homes"), COPAS v Royal Borough of Windsor and Maidenhead [2001] EWCA Civ 180; [2002] P & CR 16 ("COPAS"), and R (Hague) v Warwick District Council [2008] EWHC 3252 (Admin) ("Hague").

125. From these authorities, a number of propositions are clear and uncontroversial.

i) Planning guidance is a material consideration for planning plan-making and decision-taking. However, it does not have statutory force: the only statutory obligation is to have regard to relevant policies.

ii) The test for redefining a Green Belt boundary has not been changed by the NPPF (nor did Mr Dove suggest otherwise).

a) In Hunston, Sir David Keene said (at [6]) that the NPPF "seems to envisage some review in detail of Green Belt boundaries through the new Local Plan process, but states that 'the general extent of Green belts across the country is already established'". That appears to be a reference to paragraphs 83 and 84 of the NPPF. Paragraph 83 is quoted above (paragraph 109). Paragraph 84 provides:

> "When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development…".

However, it is not arguable that the mere process of preparing a new local plan could itself be regarded as an exceptional circumstance justifying an alteration to a Green Belt boundary. National guidance has always dealt with revisions of the Green Belt in the context of reviews of local plans (e.g. paragraph 2.7 of PPG2: paragraph 83 above), and has always required "exceptional circumstances" to justify a revision. The NPPF makes no change to this.

b) For redefinition of a Green Belt, paragraph 2.7 of PPG2 required exceptional circumstances which "necessitated" a revision of the existing boundary. However, this is a single composite test; because, for these purposes, circumstances are not exceptional unless they do necessitate a revision of the boundary (COPAS at [23] per Simon

> Brown LJ). Therefore, although the words requiring necessity for a boundary revision have been omitted from paragraph 83 of the NPPF, the test remains the same. Mr Dove expressly accepted that interpretation. He was right to do so.

iii) Exceptional circumstances are required for any revision of the boundary, whether the proposal is to extend or diminish the Green Belt. That is the ratio of Carpets of Worth.

iv) Whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if he fails to adopt a lawful approach to exceptional circumstances. Once a Green Belt has been established and approved, it requires more than general planning concepts to justify an alteration.

The Parties' Contentions

126. The parties agreed the above propositions: but there they diverged.

127. Mr Dove submitted that whether there were exceptional circumstances was a matter of planning judgment for the Inspector, who was entitled to conclude, as he did, that in this case exceptional circumstances existed that warranted the reallocation of the Sites into the Green Belt. He clearly had the exceptional circumstances test in mind – he expressly referred to it – and there was an evidential basis, provided by the Council, upon which he could conclude that the test had been met in this case.

128. Mr Dove relied upon Laing Homes – a relatively early case, but one which was decided after and in the light of Carpets of Worth – in which Brooke J considered the alteration of a Green Belt boundary to include white land previously unallocated. Having considered two authorities which had been cited to him, he continued (at page 54):

> "I do not find in either of these decisions any clearcut ruling that if a council making a new green belt local plan is concerned with white unallocated land on the edge of the green belt in an earlier plan it must find that exceptional circumstances exist before it can alter the green belt boundary at this point. The decision of the Court of Appeal in the Carpets of Worth case shows that a local authority must have regard to Government green belt policies in… PPG2, but if it concerned with white unallocated land I can see no reason why in the exercise of its discretion it should not make a very clear finding, on green belt policy grounds, why the uncertainties which had existed when the previous plan was made have now been resolved, and why it should not in those circumstances determine to bring the land into green belt now without being out into the strait jacket of having to decide whether circumstances which can properly be described as exceptional exist. The duty of a council pursuant to section 36 of the 1990

> Act is to have regard to Government policy. Provided that it has regard to it it is entitled to depart from it so long as it gives adequate reasons for doing so: see Carpets of Worth."

Mr Dove submits that that covers this case.

129. Mr Lockhart-Mummery submitted that the Inspector's approach was wrong in law; and there was nothing here that could amount to exceptional circumstances properly considered.

Discussion

130. Mr Lockhart-Mummery particularly relied on COPAS, in which Simon Brown LJ, after confirming (at [20]) that, "Certainly the test is a very stringent one", said this (at [40]):

> "I would hold that the requisite necessity in a PPG 2 paragraph 2.7 case like the present – where the revision proposed is to *increase* the Green Belt – cannot be adjudged to arise unless some fundamental assumption which caused the land initially to be excluded from the Green Belt is thereafter clearly and permanently falsified by a later event. Only then could the continuing exclusion of the land from the Green Belt properly be described as 'an incongruous anomaly'".

In other words, something must have occurred subsequent to the definition of the Green Belt boundary that justifies a change. The fact that, after the definition of the Green Belt boundary, the local authority or an inspector may form a different view on where the boundary should lie, however cogent that view on planning grounds, that cannot of itself constitute an exceptional circumstance which necessitates and therefore justifies a change and so the inclusion of the land in the Green Belt (see Hague at [32] per Collins J. Collins J in Hague held that, in addition to the undoing of an assumption on which the original decision was made, a clear error in excluding land from the Green Belt is sufficient, no such error is suggested here; and I need not consider that aspect of Hague further.)

131. COPAS is, of course, binding upon me. Mr Dove said that these cases are fact-sensitive, and the facts of that case were very different from this. That is true; but, in the passage I have just quoted from Simon Brown LJ's judgment, he was clearly and deliberately determining, as a matter of principle, what "exceptional circumstances" required, as a matter of law, in a case such as this. It is expressly a holding, with which the whole court agreed. I am consequently bound by it. In any event, it seems to have been consistently applied for over ten years; and, in my respectful view, is right.

132. In this case, following two inquiries, the 1997 UDP defined the Green Belt to exclude the Sites. Although there were uncertainties as to when and even if either site would be brought forward for housing development, the Green Belt boundary then determined and approved through the statutory machinery was not in any way provisional or uncertain. Mr Dove was wrong to describe the Green Belt boundary – as opposed to development of the sites – as "contingent". As the Inspector found in

2005, despite the change in policy that meant that it was unlikely that these sites would be brought forward unless and until there was a change in (then) regional strategic policy, there was no justification for any change to the Green Belt boundary. That reflected the fact that Green Belt boundaries are intended to be enduring, and not to be altered simply because the current policy means that development of those sites is unlikely or even impossible. Indeed, where the current policy is to that effect, the amenity interests identified in the sites will be protected by those very policies as part of the general planning balance exercise. A prime character of Green Belts is their ability to endure through changes of such policies. For the reasons set out in Carpets of Worth (at page 346 per Purchas LJ) it is important that a proposal to extend a Green Belt is subject to the same, stringent regime as a proposal to diminish it, because whichever way the boundary is altered "there must be serious prejudice one way or the other to the parties involved".

133. Those are the principles. Applying them to this case, what (if anything has occurred since the Green Belt boundary was set in 1997 that necessitates and therefore justifies a change to that boundary now, to include the Sites?

134. Dealing with the reasons relied on by the Council (and effectively adopted by the Inspector), set out in paragraph 123 above, in turn:

i) I have referred to two sites beyond the Bromsgrove district boundary, namely land at Selsdon Close and land at Norton Lane (paragraph 9 above). In 2005, the former was allocated, not to the Green Belt, but as an Area of Development Restraint. Since 2005, planning permission for housing development has been granted. In the SLP examination, the Council submitted to the Inspector that there was the risk of coalescence between Tidbury Green and Grimes Hill, in a gap already narrowed since 2005 by the grant of planning permission for housing on the Selsdon Close site. However:

a) In paragraph 3.149 of his 2005 report, the Inspector found that:

> "… Both sites are well-contained and the Green Belt boundary remains firm and well-defined. There is no erosion of the gap between Solihull and Redditch and, given the retention of Green Belt around Grimes Hill in Bromsgrove DC, no risk of coalescence with this settlement…".

b) Selsdon Close was not in the Green Belt, and possible future development must have been contemplated in 2005.

c) The grant of planning permission for Selsdon Close was not referred to by the Inspector in his SLP report as a change in circumstances sufficient to support the justification of a change in Green Belt boundary (or, indeed, referred to at all).

In short, there has been no change in circumstances since 2005: the Inspector – the same inspector – appears simply to have taken a different planning view of the adverse impact of coalescence between Tidbury Hill and Grimes Hill.

ii) The land at Norton Lane was in the Green Belt in 2005, and, since then, housing development on that site has been refused on Green Belt grounds. That is unsurprising. That development control decision was presumably made in the knowledge that the Sites are white unallocated land. Again, no reference to the Norton Lane site is made by the Inspector in his SLP Report; but, in any event, it is difficult to see how the refusal of planning permission for that Green Belt site could support justification for a change in the Green Belt boundary. The reasons for the refusal of permission merely stressed the importance of the Green Belt in this area. That does not support a contention that the allocation of further land into the Green Belt is justified on grounds of exceptional circumstances.

iii) Planning permission had been refused for the Lowbrook Farm site in January 2013, as it conflicted with the SLP spatial strategy, the land not being within a village identified for strategic housing growth. I do not see how this can possibly justify a change in the Green Belt boundary. Planning permission was refused on the basis of a conventional planning balance, the land being white unallocated land with the policy restrictions in Policy HS5 I have described (see paragraph 119 above), and the policy factors from the spatial strategy being sufficient to outweigh the factors in favour of development. This simply shows the planning system functioning as it should.

iv) The development of the Sites would be out of proportion to the existing settlement, and would completely dominate it. This is the only point relied upon by the Council that concerns Green Belt factors. However, the position with regard to the sites and the settlement of Tidbury simply has not materially changed since 1997.

v) The Council also rely on the fact that, as envisaged in the 2005 review, the suitability of the Sites for housing was assessed through the SHLAA, which concluded that they did not meet the minimum criteria for access to key services and were unsuitable to meet identified local housing needs. The Tidbury Green Farm was also considered to have "unacceptable impact on green belt functions and openness". However, these conclusions were drawn on the basis of the conventional planning balanced exercise, and on the basis that the Sites were unallocated land. The SHLAA conclusions merely emphasise that, as policy currently stands, it may be unlikely that either of the Sites will be developed even if they remain as unallocated land.

135. I am persuaded by Mr Lockhart-Mummery that the Inspector, unfortunately, did not adopt the correct approach to the proposed revision of the Green Belt boundary to include the Sites, which had previously been white, unallocated land. He performed an exercise of simply balancing the various current policy factors, and, using his planning judgement, concluding that it was unlikely that either of these two sites would, under current policies, likely to be found suitable for development. That, in his judgment, may now be so: but that falls very far short of the stringent test for exceptional circumstances that any revision of the Green Belt boundary must satisfy. There is nothing in this case that suggests that any of the assumptions upon which the Green Belt boundary was set has proved unfounded, nor has anything occurred since the Green Belt boundary was set that might justify the redefinition of the boundary.

136. In my view, the Inspector's substantive error is reflected in the adopted SLP, paragraph 11.6.6 of which states, simply:

> "… Following assessment in the [SHLAA], this land is no longer considered suitable for development and is proposed to be returned to the Green Belt."

137. For those reasons, Ground 3 also succeeds.

Conclusion

138. For the reasons I have given, the application succeeds.

139. Given the breadth of available powers I have in that result (see paragraph 22 above), it was agreed that, if I found the application successful, I would give the parties an opportunity to attempt to agree an order or, failing agreement, to make written representations of the appropriate order. In the circumstances, I shall give the parties 7 days from the hand down of this judgment to lodge a consent order on the basis of this judgment or, alternatively, submissions on any outstanding consequential matters.

Neutral Citation Number: [2014] EWHC 2440 (Admin)

Case No: CO/1049/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT
BIRMINGHAM DISTRICT REGISTRY

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2014

Before :

MRS JUSTICE PATTERSON

- -

Between :

I.M. PROPERTIES DEVELOPMENT LIMITED	**Claimant**
- and -	
LICHFIELD DISTRICT COUNCIL	**Defendant**
(1) TAYLOR WIMPEY (UK) LIMITED	**Interested**
(2) PERSIMMON HOMES LIMITED	**Parties**

- -
- -

Anthony Crean QC (instructed by **Shoosmiths LLP**) for the **Claimant**
Gary Grant (instructed by **Democratic, Development and Legal Services**) for the **Defendant**
Morag Ellis QC and Hereward Phillpot (instructed by **Berwin Leighton Paisner LLP**) for the **First Interested Party**
Jeremy Cahill QC, Satnam Choongh and James Corbet Butcher (instructed by **Squire Patton Boggs (UK) LLP**) for the **Second Interested Party**

Hearing dates: 1st and 2nd July 2014

- -

Approved Judgment

Mrs Justice Patterson :

Introduction

1. This is an application by the claimant for judicial review of a decision by the defendant dated 28th January 2014 to endorse the main modifications to the draft Lichfield Local Plan Strategy. The claimant seeks a quashing order of the decision.

2. The main modifications endorsed by the defendant include proposals to release areas of land known as Deans Slade Farm and Cricket Lane from the Green Belt. The former site is subject to an interest by Taylor Wimpey UK Limited, the first interested party, and the latter site is subject to an interest by Persimmon Homes Limited, the second interested party. Both Deans Slade Farm and Cricket Lane lie to the south of Lichfield and are close to the urban area.

3. Throughout the local plan process the claimant has been interested in, and has promoted, a new village concept on land to the North East of Lichfield known as land to the north east of Watery Lane, Curborough. In January 2014 the claimant submitted a planning application for up to 750 dwellings, primary school, care village, local neighbourhood facilities to facilitate retail development, community building, parking, comprehensive green infrastructure and landscaping, new access points to Watery Lane and Netherstone lane and improvements to Netherstone Lane. That was refused by the defendant, the Local Planning Authority on the 20th May 2014 for seven reasons (including one that referred to the site being outside the settlement boundaries and not being allocated in the emerging local plan strategy). The Watery Lane site is not within the green belt.

4. The examination into the Lichfield Local Plan currently stands suspended whilst the Local Authority carry out further work to prepare main modifications to the Local Plan to seek to remedy the defects identified by the Local Plan Inspector at his interim examination. The defects meant that the Inspector was unable to find the submitted Local Plan sound.

5. Counsel for the claimant contends that his challenge raises the following issues. They are,

    i) Whether the defendant has persistently misunderstood the approach to revisions of the green belt as a matter of law?

    ii) Whether the defendant has adopted an unfair process in dealing with the claimant's land?

    iii) Whether the actions of the Leader of the Council amount to pre-determination in the local plan context.

6. The defendant and the interested parties raise a fundamental and prior issue which is whether the court has jurisdiction to determine the claim at all by reason of the wording of Section 113(2) of the Planning and Compulsory Purchase Act 2004.

7. I propose to structure this judgment to deal with matters in the following order;

    i) Jurisdiction;

ii) Predetermination;

iii) The approach to green belt boundaries;

iv) The fairness of the process adopted by the defendant.

8. To address those matters it is first necessary to set out the not entirely straightforward factual background of the emerging Local Plan. To that I now turn.

Factual background

9. In 2007 the Core Strategy Issues and Options document was published for consultation. Four alternative draft spatial options for how the district could develop up to 2026 were set out. They included a town focused development option which acknowledged that Green Belt release was likely to be required and a new settlement option. An advantage of the new settlement option was that it would not require any alteration to Green Belt boundaries.

10. In 2008 the Core Strategy Preferred Options was published for consultation. That included option 4 which was for a new settlement. It had one realistic location for development only that would be deliverable to meet identified housing needs: that was the claimant's land. The new settlement option was said also to require totally new infrastructure investment rather than making the best use of existing infrastructure.

11. In April 2009 a Policy Directions document was published. The strategy proposed was for town focused development. It was said to be a balanced form of growth across the district focused primarily on Lichfield and, to a lesser extent, Burntwood and the key rural settlements. Although growth was to take place where possible within settlements the document recognised that there would be a need for new sustainable communities and extensions to Lichfield. In the reasons for the preferred spatial strategy the document said,

> "Lichfield city is considered to be by far the most sustainable community within the context of the district and should play the most significant role in the development strategy. In terms of creating sustainable communities this justifies the exceptional circumstances for removing land from the green belt to the south of Lichfield that would be required to follow the strategy.

In dealing with the alternative options the document said,

> "1.17 Alternatively, the strategy could be amended to one that promotes a new settlement as a means of meeting the majority of housing requirements, but taking into account that the only identified proposal for a new settlement is the proposal at Curborough. Many consider that this strategy is not the most appropriate to meet the needs across the district, including those who exist in communities and that in light of the scale of

> the new settlement proposals and its proximity to the city, there is a risk of harm to the character of Lichfield."

12. In 2010 the defendant published "Shaping the District". That recognised that about 41% of the district's housing growth to 2026 would take place in and around Lichfield city. 59% of that was to be within the urban area with the remaining 41% to be delivered through the development of sustainable urban extensions to the south of the city.

13. The important role of the Green Belt was recognised,

> "With the majority of new development being channelled towards the most sustainable urban areas of Lichfield and Burntwood which are excepted from the Green Belt."

The document continued,

> "Detailed changes to the green belt boundary around the edge of Lichfield city urban area to meet the longer term development needs beyond 2028 will be considered through the local plan allocations document."

14. In November 2010 the defendant published a draft Core Strategy. That was subject to consultation until February 2011.

15. In November 2011 the claimant submitted a strategy report to promote a new village opportunity. That was followed up with a transportation study in January 2012.

16. In March 2012 the National Planning Policy Framework (NPPF) was published. The claimant updated its submissions to take into account the contents of the NPPF in May 2012.

17. A pre-submission Lichfield district Local Plan Strategy was published for consultation between July and September 2012.

18. In November 2012 a revised sustainability appraisal of the proposed Local Plan strategy was published. That included an appraisal of updated information for the proposed new village to the north east of Lichfield for 2,000 dwellings.

19. On the 22nd March 2013 the draft Lichfield Local Plan Strategy was submitted to the Secretary of State. No Green Belt sites were included for development as part of that strategy because of the volume and strength of earlier objections to Green Belt releases.

20. In May 2013 the defendant published, as part of the examination into the soundness of the Lichfield Local Plan Strategy, a paper on the Green Belt. As part of that study it was noted that a strategic review of Green Belt boundaries had been undertaken in arriving at the preferred spatial strategy for Lichfield city and Burntwood. The earlier study had considered whether there were sustainable development needs within the plan period which required amendment to existing Green Belt boundaries and provided suggestions as to where they may be. It suggested that detailed changes as a result of housing growth in the longer term which required review of the Green Belt

boundaries were deferred to the allocations stage of the plan. The council considered that its approach of deferring a full review of the detailed Green Belt boundary was justified as the changes would be non-strategic and may involve community participation. It was satisfied that its housing needs could be met without Green Belt release.

21. Examination hearings into the draft local plan took place between 24th June and 10th July 2013. One of those hearings was on the Green Belt. During that session the issue of whether there needed to be further release of land to meet future needs within the plan period was raised.

22. On the 3rd September 2013 the Inspector, Mr R Yuille, wrote to the defendant with his preliminary views. He was satisfied that the defendant had discharged its duty to co-operate, that the submitted sustainability appraisal was a reliable piece of evidence, that the strategic development areas, the adopted strategy and the broad development locations identified were soundly based. However, he was concerned that the submitted plan was unsound as it did not make adequate provision for the objective assessment of housing need contained in its own evidence base.

23. The Inspector considered that finding a site or sites for an additional 900 houses was a strategic matter that should be dealt with through the plan itself. The Inspector continued,

> "The council indicated at the hearings that it would be willing to identify a further site or sites to address such a shortfall, carry out the necessary sustainability appraisal, make any resulting main modifications to the plan and consult on these - and that this process would not take more than 6 months or so. The Inspector sought confirmation that was the case and invited a revised timetable to be submitted to him."

24. In the Annex attached to the Inspector's letter he considered the appropriateness of the spatial strategy which the defendant was pursuing. He considered that it was sustainable as it made use of existing facilities and infrastructure in the urban area and provided opportunities to travel by means other than private car and reduced the need to travel.

25. He considered as an alternative the proposed new village promoted by the claimant. The Inspector said that a scheme for 750 dwellings had been subject to pre-application discussions and would form the first phase of a new village. There was nothing to suggest such a scheme would not be viable. It was common ground that such a proposal would be developable and it may well be that 750 dwellings was deliverable. He noted that there was disagreement as to whether the site was more sustainable than the strategy proposed by the council. There was a divergence of view between the claimant and the defendant. The Inspector remarked that there was no substantial evidence to suggest that the judgments in the defendant's sustainability appraisal were awry or that they were based on inaccurate information.

26. The Inspector concluded that a strategy which proposed to focus housing development in one location rather than in a variety of locations as proposed by the defendant would have difficulty in meeting the planned strategic priorities of

consolidating the sustainability of, and supporting regeneration initiatives, in Lichfield, Burntwood and key rural settlements. The promoters of the new village were noted to "have an eye" on a scheme for 2000 houses. There was relatively little information about the master planning of the new village. That had an effect on the depth to which the proposal could be assessed. He concluded,

> "On the information available there is no clear indication that the proposed new village at north east Lichfield would be a more suitable or sustainable alternative than the strategy selected by the council in the plan."

27. On the 1st August 2013 the defendant had written to the Inspector making a formal request that if the submitted Local Plan Strategy required modifications to make it sound the Inspector make recommendations on those modifications. It was a specific request under section 20(7C) of the Planning and Compulsory Purchase Act 2004.

28. That was followed by an email of the 22nd August 2013 in which the defendant said that it was aware that any main modifications may require further sustainability appraisal work to be undertaken and consulted upon.

29. The defendant whilst being aware of the need to progress additional work foresaw a potential issue with regard to the submission of further technical information by the development industry. The defendant had accepted a considerable amount of further information during the examination and sought some indication from the Inspector as to whether that additional information needed to be considered through further sustainability appraisal work and whether any subsequent technical submissions should also be considered. As a result, it was minded to apply a cut off date of the 10th July, being the end of the hearing sessions, for the submission of additional information by third parties but wanted an indication as to how the Inspector would respond.

30. On the 4th September 2013 the defendant wrote to the Inspector thanking him for his interim findings and confirmed that it was willing to identify a further site or sites to address the identified current housing shortfall. That required further sustainability appraisal work which had been commissioned. That was to be undertaken on the basis of the information supplied and available to the council by the close of the hearings sessions on the 10th July. No further information was to be accepted.

31. In December 2013 the defendant published a Supplementary Green Belt Review. That recorded that the defendant had carried out initial work on options for meeting the additional housing requirement and taking into account the potential for additional housing requirements as a result of extending the plan period by one year. The scale of the housing requirements had the potential to impact on Green Belt within the district.

32. The Review continued that its scope was to examine specific parts of the Green Belt with the Lichfield district rather than to examine the Green Belt as a whole. It was a necessary exercise to enable difficult decisions that may need to be taken to meet the scale of the future housing needs identified up to 2029. The Review then set out its methodology which was to identify parcels of land around individual settlements where housing growth could be considered at a scale where it may make a

contribution or impact on the overall development strategy for the district. Those areas were then judged against the purposes of the green belt as set out in the NPPF. In relation to each of the purposes a judgment of important, moderate or minor was ascribed in relation to that purpose. There was then an overall assessment. Principles to be applied were recommended if changes to the Green Belt were required to meet development needs.

33. On the 7th January 2014 the Environment and Development (Overview and Scrutiny) Committee met.

34. Members had before them a report of the planning officer and recommendations in relation to the main modifications.

35. They had also a letter from a Gary Cadin of Deloitte LLP dated 6th January 2014. In the Deloitte letter significant concern was raised as to how the claimant's proposals, as Deloitte were acting for the claimant, had been considered in the officer report. The letter continued to inform members of the pending planning application for 750 dwellings on the Curborough site, told them that a full environmental impact assessment had been finalised and that there was a master plan which was attached to the letter. Deloitte's were concerned that their proposal had been almost entirely excluded from the assessment of potential key strategic sites. They set out the positive attributes which, in their judgment, attached to the claimant's site and pointed out that their proposal would not result in the loss of Green Belt land. That was a significant comparative advantage to the strategy being promoted by the defendant which required release of large amounts of Green Belt land at Deans Slade Farm and Cricket Lane. The letter concluded,

> "National planning policy only permits the release of green belt land in exceptional circumstances. Whilst the local plan is the most appropriate process to consider such changes, in this case land to the north east of Lichfield city offers a sustainable and deliverable alternative. As such, there is no exceptional justification to support the release of green belt land."

36. The main modifications were set out in the report to the committee. The relevant parts of MM19 read as follows,

> "The important role of the Green Belt will be recognised and protected, the majority of new development being channelled towards the most sustainable urban areas of Lichfield and Burntwood, parts of which are bounded by the green belt. Changes to the green belt boundary will be made around the southern edge of Lichfield city urban area to meet strategic development needs. The Cricket Lane SDA and the built element of the Deans Slade Farm SDA will be removed from the Green Belt… the important role of the Green Belt is recognised, whilst the spatial strategy seeks to minimise impact upon the Green Belt, this has to be considered in the light of the range of options including the need to locate development in the most suitable settlements where there is easy access to a range of existing services and facilities and supporting

> infrastructure… a strategic Green Belt review and a more detailed second stage review forms part of the evidence base which will underpin policy options identified in the preparation of the Local Plan Allocations Document as well as forming limited release to the green belt to the south of Lichfield city to accommodate essential growth in line with the evidence base."

37. Annexed to the report was appendix D which considered the allocation of additional dwellings where options were tested against the NPPF. Under option 3 which was consideration of the new settlement option either by a new village (the claimant's proposal) or Brookhay Villages and Twin Rivers Park it was noted that neither new settlement option required the use of Green Belt land. Option 4 considered the allocation of all additional dwellings in/around Lichfield city (including Deans Slade Farm and Cricket Lane and urban capacity). Again, the option was judged against the themes of the NPPF. On theme 9 the document said,

> "Dean Slade Park and Cricket Lane would require the release of Green Belt land so very special circumstances would need to be demonstrated."

38. Appendix E considered the opportunities and constraints of potential additional strategic sites. That included an appraisal of both the Cricket Lane and Deans Slade Farm sites. In each, the first constraint that was noted was that they were green belt sites.

39. The minutes of the Economic and Development (Overview and Scrutiny) Committee of the 7th January 2014 record that Neil Cox, the planning policy manager of the defendant, informed members that there had been a review of the green belt and reminded them that they had that at appendix F to the officer report. The best scoring sites were Deans Slade Farm and Cricket Lane. Although Green Belt those sites sat best with the strategy which the planning Inspector had found sound.

40. The minutes record members' discussion which included a councillor raising whether there were exceptional reasons for use of green belt land and other members indicating that the council had been forced to find extra housing and the officers should be commended for doing so. The main modifications were supported.

41. On the 14th January 2014 the main modifications were considered and endorsed by the defendant's cabinet.

42. On the 24th January 2014 councillor Ian Pritchard who was the chairman of the defendant's planning committee sent to the Conservative group members on the committee an email in the following terms,

> "Hello all,
>
> This is to remind group members who attended the last group meeting and inform those who did not, that the group decided in government parlance to have a three line whip in place at the council meeting on Tuesday. In plain terms group members either vote in favour of the report I will be giving regarding the

> local plan or abstain. Also if you are approached by anyone promoting alternative sites, please make no comment. If group members are reported making negative comments it would without any doubt derail our local plan. Sorry if you find this a little heavy handed but there is an awful lot at stake. Have a kind weekend.
>
> Kind regards,
>
> Ian"

43. The matter came before the full council on the 28th January 2014. Members had before them the officer's report with the main modifications. A document link was provided to the strategic green belt review of July 2012 and the green belt review supplementary report. In addition, the full council had all the documents that had been before the cabinet and the scrutiny and overview committee. It endorsed the main modifications proposed.

44. On the 17th January 2014 the Parliamentary Under Secretary for Communities and Local Government made a Ministerial statement about the importance of the protection of the green belt. In it he said,

> "The government's planning policy is clear that both temporary and permanent traveller sites are inappropriate development in the green belt and that planning decisions should protect green belt land from such inappropriate development. I also noted that Secretary of State's policy position that un-met needs, whether for traveller sites or for conventional housing, is unlikely to outweigh harm to the green belt and other harm to constitute the very special circumstances justifying inappropriate development in the green belt."

45. On the 6th February 2014 public consultation on the main modifications and the supporting evidence base commenced. It continued until 20th March 2014.

Issue number one: Jurisdiction

46. The defendant, the first interested party and the second interested party all contend that the claim is barred by reason of section 113(2) of the Planning and Compulsory Purchase Act 2004.

47. Section 113 entitled 'validity of strategies, plans and documents' reads where relevant,

> "(1). This section applies to-…
>
> (c) a Development Plan document;
>
> (2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section.

> (3) A person aggrieved by relevant documents may make an application to the High Court on the ground that-
>
> (a) The document is not within the appropriate powers;
>
> (b) A procedural requirement has not been complied with.
>
> (4) But the application must be made not later than the period of six weeks starting with the relevant date…
>
> (11) Reference to the relevant date must be construed as follows-
>
> (c) For the purposes of a Development Plan document (or a revision of it), the date when it is adopted by the Local Planning Authority or approached by the secretary of state (as the case may be);…"

48. The claimant contends that the submissions of the defendant, first interested party and second interested party are all predicated on the basis that the application is to quash a Development Plan document. It is not. What the claimant is seeking is a quashing order of the main modifications.

49. The claimant relies upon the case of *The Manydown Company Limited v Basingstoke and Deane Borough Council [2012] EWHC 977* and submits that the first sentence of paragraph 84 of the judgement covers the position here. That reads,

> "Under the provisions of section 113(1)(c), (2), (3), (4) and (11)(c) it is a development plan document that may be questioned only upon its adoption, and within six weeks of that date – not some prior step on the part of the Local Planning Authority, even one that might vitiate the development plan document itself once it has been adopted…"

50. The claimant submits that there are two ways in which to quash a resolution to adopt the main modifications. Firstly, through Section 113 and second by an application for judicial review. One does not exclude the other; they are overlapping concepts. There is a policy argument in favour of proceeding which is to enable an error of law to be corrected and a policy argument against, which is to avoid satellite litigation. This is a challenge which is not within Section 113.

<u>The statutory scheme</u>

51. Section 37 of the 2004 Act provides,

> "(1) A Local development scheme must be construed in accordance with section 15."
>
> (2) A Local development document must be construed in accordance with section 17.
>
> (3) A development plan document is a document which—

(a) is a local development document, and

(b) forms part of the development plan."

52. Section 15(1) of the 2004 Act requires a Local Planning Authority to prepare and maintain a scheme to be known as their local development scheme. Section 15(2) (aa) requires the scheme to provide, "the local development documents which are to be Development Plan documents." Section 17(8) provides:

> "The document is a local development document only in so far as it or any part of it-
>
> (a) is adopted by resolution of the Local Planning Authority as a local development document;…"

53. Under section 19(1) Development Plan documents must be prepared in accordance with the local development scheme.

54. Section 20 of the 2004 Act provides,

> "(1) The Local Planning Authority must submit every development plan document to the Secretary of State for independent examination.
>
> (2) But the authority must not submit such a document unless
>
> (a)they have complied with any relevant requirements contained in regulations under this Part, and
>
> (b)they think the document is ready for independent examination.
>
> (3) The authority must also send to the Secretary of State (in addition to the development plan document) such other documents (or copies of documents) and such information as is prescribed.
>
> (4) The examination must be carried out by a person appointed by the Secretary of State.
>
> (5)The purpose of an independent examination is to determine in respect of the development plan document—
>
> (a)whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;
>
> (b)whether it is sound.
>
> (6)Any person who makes representations seeking to change a development plan document must (if he so requests) be given

> the opportunity to appear before and be heard by the person carrying out the examination.
>
> (7)The person appointed to carry out the examination must—
>
> (a)make recommendations;
>
> (b)give reasons for the recommendations.

55. Section 23 of the 2004 Act deals with the question of adoption of local development documents. It provides,

> "(2) The authority may adopt a development plan document as originally prepared if the person appointed to carry out the independent examination of the document recommends that the document as originally prepared is adopted."
>
> (3) The authority may adopt a development plan document with modifications if the person appointed to carry out the independent examination of the document recommends the modifications."

56. The statutory provisions make it clear that the examination process is Inspector led. The critical nature of his role is revealed in that his eventual recommendations are binding upon the Local Planning Authority. Parliament clearly intended that the final planning judgment is entrusted to the Inspector.

57. The other material provision is Section 39. That provides for sustainable development as follows,

> "(1) This section applies to any person who or body which exercises any function—"
>
> (a)under Part 1 in relation to a regional spatial strategy;
>
> (b)under Part 2 in relation to local development documents;
>
> (c)under Part 6 in relation to the Wales Spatial Plan or a local development plan.
>
> (2)The person or body must exercise the function with the objective of contributing to the achievement of sustainable development.
>
> (3)For the purposes of subsection (2) the person or body must have regard to national policies and advice contained in guidance issued by—
>
> (a) the Secretary of State for the purposes of subsection (1)(a) and (b);"

58. The section imposes a duty upon any body exercising its function under part 2. It applies throughout the process to both the Local Planning Authority and to the Inspector.

59. When the document is submitted to the Secretary of State for examination under the Town and Country Planning (Local Planning) (England) Regulations 2012 it is to be accompanied by a sustainability appraisal report.

Discussion and Conclusions

60. It can be seen from the statutory scheme that a Development Plan document is submitted by a Local Planning Authority when it is of the view that the document is ready for independent examination: Section 20(2). The examination then occurs into the DPD which is under the direction of the Inspector throughout. As a result of amendments to the 2004 Act, as set out, if a Local Planning Authority request an Inspector to do so he must recommend modifications to the DPD to make it sound.

61. It follows that, at present, the Lichfield Local Plan Development Strategy is undergoing the process of examination. The Inspector has concluded that it would not be sound to adopt the plan as presented to him and has, therefore, recommended that modifications be carried out to enable it to meet the statutory requirements. The process of examination is thus paused whilst further work is being carried out on the main modifications for the Inspector to examine further at the resumption of the examination process.

62. During the consultation period on the main modifications the claimant and first and second interested parties have all submitted further representations for consideration. The Inspector may or may not be satisfied by the main modifications as a result of his examination process. It follows that what is taking place in Lichfield currently is an integral part of an advanced local plan process.

The case of *Manydown*

63. Given the importance that all parties attach to this case I need to deal with it at some length.

64. In the *Manydown* case the local authority held land under a 999 year lease from 1996. It acquired the land for high quality housing development. The claimant was entitled to receive one half of the proceeds of development provided that took place before 2050. The site had been proposed unsuccessfully in a local plan process in 2005 but, after a change in administration, the local authority decided to suspend its involvement in active promotion of the site for development. The claimant relied on those decisions and claimed that the defendant had adopted an unlawful position as its decisions showed,

    i) a determination to hold off promoting the land for development;

    ii) a decision to thwart the development of the site through actively preventing the inclusion of the land in the core strategy.

65. Having set out the statutory scheme Lindblom J considered the jurisprudence. Of relevance here is the case of *R v Cornwall County Council Ex Parte Huntington & another [1994] 1 All ER 694* where Simon Brown LJ (as he then was) identified three categories of case excluded from the statutory review procedure. They were,

    a) A failure by the statutory decision maker to exercise his jurisdiction…

    b) The reasoning underpinning the decision which is otherwise in the applicant's favour…

    c) Some antecedent step quite separate and distinct from the eventual decision reviewable under the statute…

    He then went on to approve what Brooke J had said at first instance,

    > "It is quite clear in my judgment that parliament intended to prescribe a comprehensive programme of the events which should happen from the time the relevant authority sets in motion the consultation process in paragraph 1 of schedule 15, and that once the order is made the prescribed procedure then follows without any interruption for legal proceedings in which the validity of the order is questioned. Until the stage is reached, if at all, when the notice of a decision is given pursuant to the procedure prescribed in paragraph 11. It is then, and only then that parliament intends a person aggrieved by an order which has taken effect shall have the opportunity of questioning its validity in the High Court provided that he takes the opportunity provided for him by paragraph 12(1) of schedule 15…"

66. Simon Brown LJ acknowledged (at page 771) that there were obvious benefits to a procedure that allowed a challenge to be brought only after a statutory decision making process had run its course. The first of these was "that the very fact that an application for judicial review cannot be made at this preliminary stage means that the inquiry will not be delayed thereby." Another was "that the Secretary of State may in any event refuse to confirm the order, thus making unnecessary any legal challenge whatever."

67. Lindblom J recognised that in some cases public law error committed in a plan making process might best be corrected by a timely claim for judicial review (see the example the obiter dicta of Buxton LJ in his judgment in *First Corporate Shipping v North Somerset Council [2001] EWCA Civ 693*, at paragraphs 36-44 (with which Peter Gibson LJ agreed at paragraph 46)).

68. In any event, it was well settled that the scope of an ouster provision, such as Section 113(2) of the 2004 Act, must be determined by the words of the provision itself. Lindblom J pointed to the difference in language between Section 284(1) of the 1990 Act which applied "whether before or after the plan… has been approved or adopted". He noted that those words do not appear in Section 113 of the 2004 Act. He continued,

"85. I cannot see how the preclusive provision in section 113(2) could catch a decision such as that taken by the Council on 15 December 2011. That decision was, in effect, a decision not to promote land owned by the Council in a plan-making process. In my view it lies well beyond the ambit of section 113. It is, however, plainly susceptible to proceedings for judicial review. "

86. Nor do I accept that the decision taken by the Council's Cabinet on 23 January 2012 lies within the reach of the preclusive provision. That decision had the effect of approving a pre-submission draft of the Core Strategy for consultation, the results of which would later inform the preparation of the submission draft. Such a decision does not, in my judgment, constitute a local development document being adopted as such by resolution of the Local Planning Authority. These proceedings were begun before even the pre-submission Core Strategy had crystallized in a document published for consultation. And they do not seek to question any development plan document as such, either adopted or in draft.

87. Therefore, I do not think it is necessary to decide in this case whether a pre-submission draft of a core strategy qualifies as a "relevant document" within section 113. But I would hold that it does not. The relevant statutory provisions must be read together. Admittedly, the requirement in section 20(1) of the 2004 Act that the Local Planning Authority must submit a development plan document to the Secretary of State for independent examination implies that, according to the particular statutory context, the concept of a development plan document can include the submission draft of such a document. This is also effectively acknowledged in the 2004 regulations. However, I do not believe one can infer from any of the relevant statutory provisions that a pre-submission draft, published – or about to be published – for consultation, qualifies as a development plan document within section 113(1).

88. The conclusion that these proceedings are not ousted by section 113(2) seems both legally right and pragmatic. In a case such as this an early and prompt claim for judicial review makes it possible to test the lawfulness of decisions taken in the run-up to a statutory process, saving much time and expense – including the expense of public money – that might otherwise be wasted. In principle, it cannot be wrong to tackle errors that are properly amenable to judicial review, when otherwise they would have to await the adoption of the plan before the court can put them right. Improper challenges – including those caught by the ouster provision in section 113(2) – can always be filtered out at the permission stage."

69. The factual situation in *Manydown* was entirely different to that in Lichfield. What was of concern there were the contents of a pre submission draft of a core strategy. That was not a local development document. The decisions under attack were, therefore, of proceedings which preceded, but were not properly part of, the statutory process that would end in the adoption of the core strategy. As a result they came within the class described by Simon Brown LJ in *Ex Parte Huntington* as some antecedent step quite separate and distinct from any eventual decision reviewable under statute.

70. Here, the decision relates to main modifications which have been endorsed by the defendant within a local plan process approaching its end. One is not dealing, therefore, with an early claim for judicial review testing the lawfulness of decision taking in the run up to a statutory process but with a claim for judicial review taken during the statutory process which, far from saving time and expense could add time and expense to the process which is currently underway. Although Mr Crean QC submits that the present claim does not seek to question a relevant document of the kind to which Section 113 refers, in my judgment, it is not that simple. What the claimant is seeking is a quashing order of main modifications. If successful such a claim would abort the current plan making process when it is at an advanced stage. That would lead to considerable delay and expense not only to those parties before the court but to others who have made representations on the modifications which will be considered in due course by the Inspector at the resumed examination. The effect of a successful challenge would be to start that process again: a re-making of main modifications, further consultation, further representations which would then be considered at a deferred examination. It is precisely because of the potential chaos that could be caused by a successful challenge at this stage in the plan making process that, in my judgement, Parliament inserted the ouster in the statutory provision.

71. Once a document becomes a Development Plan document within the meaning of section 113 of the 2004 Act the statutory language is clear : it must not be questioned in any legal proceedings except in so far as is provided by the other provisions of the section. Sub-section (11)(c) makes it clear that for the purposes of a Development Plan document or a revision of it the date when it is adopted by the Local Planning Authority is the relevant date from when time runs within which the bring a statutory challenge.

72. It is quite clear, in my judgment and not inconsistent with the *Manydown* judgment, that once a document has been submitted for examination it is a Development Plan document. The main modifications which have been proposed and which will be the subject of examination are potentially part of that relevant document. To permit any other interpretation would be to give a licence to satellite litigation at an advanced stage of the Development Plan process. I do not accept that at such a stage the Venn diagram analogy used by Mr Crean to illustrate that there was a stage in the process where a claimant had a choice whether to challenge by way of judicial review or to await the adoption and then challenge under Section 113 is valid.

73. Further, it should be recalled that the Inspector had found the preferred option for development relied upon by the defendant, namely, town focussed development, to be sound. The new village option was considered by the Inspector and rejected by him.

Yet, that is what the claimant wishes to resuscitate and seeks to do so by these proceedings. To permit that approach to plan making is, in my judgment, inimical to the statutory scheme.

74. For those reasons I find that this claim is not one that can be lawfully brought by reason of the operation of Section 113(2).

75. For the sake of completeness I deal with the other grounds below.

Issue Two: Pre-determination

76. The claimant submits that Councillor Pritchard's email was a dogmatic instruction to councillors as to how to vote. He contends that their discretion as to how to vote was removed. Although there was a vigorous debate at the council meeting the email had foreclosed any discretion about how members could vote.

77. The claimant submits that Section 25 of the Localism Act 2011 is not of any great assistance as it is directed at a situation where a politician has made a public statement about a project: the expression of a view is about the merits of the decision to be taken. That is wholly distinguishable from the current situation where the email that was sent was to fellow councillors and about how they should vote.

78. As a result a fair minded and objective observer would conclude that the decision on the 28th January 2014 carried with it all the appearance of pre-determination.

79. The defendant and interested parties contend that Section 25 of the Localism Act is of considerable assistance and closes down the claim. The email is evidence of something said and done prior to the decision making meeting. As a result the action is caught by section 25.

80. The email was a strongly worded pre-disposition. It is a political group whip and no more. There is no evidential basis to say that all or any of the recipients of the email were unable to weigh the whip with the material that they had been provided with and reach a different conclusion if they considered that was merited.

81. The case of *R v Waltham Forest London Borough Council Ex Parte Baxter [1987] 1 QB 419* established that when a councillor voted in support of a majority or that he faced the sanction of the withdrawal of the party whip should he vote contrary to the group policy his decision was not necessarily evidence that his discretion had been fettered.

82. The claimant's case cannot be made out unless it is shown that the debates which took place were a sham. There is no evidence from the claimant that that is the case here. Witness statements from other councillors present at the meeting indicate that the voting was far from being a sham.

Discussion and conclusions

83. Section 25 of the Localism Act 2011 provides,

> "**25. Prior indications of view of a matter not to amount to predetermination etc**

> (1) Subsection (2) applies if—
>
> (a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and
>
> (b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.
>
> (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—
>
> (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and
>
> (b) the matter was relevant to the decision.

84. The statutory wording makes it clear that just because a decision maker has done anything directly or indirectly which indicated a view that he took or might take on a matter it was not to be taken as an appearance of a closed mind.

85. Mr Crean submits that the section is only applicable when a councillor makes a public statement. The statutory wording does not support that submission. It is broadly phrased. It refers to a decision maker having previously done "anything" in relation to a matter that was relevant to the decision. That would, in my judgment, cover the sending of the email. It was something done prior to the meeting which was relevant to the decision in that it was exhorting the recipients to vote in a particular manner. It comes within the description of doing "anything" which is the statutory wording. In my judgment the indication of the view expressed in the email would not be something that would amount to pre-determination.

86. In any event, despite Mr Crean's submissions, I do not find that the tenor of the email was so strident as to remove the discretion on the part of the recipient as to how he or she would vote. Neither the language used nor the absence of any sanction support that contention. The debate shows a far reaching discussion between members and displays no evidence of closed minds in relation to the decisions that had to be taken. A fair minded and reasonable observer in possession of all of the facts would not be able to conclude on the basis of the evidence that there was any real possibility of predetermination as a result of the email from Councillor Pritchard. This ground fails.

Issue Three: The Approach to Green Belt Boundaries

87. The claimant contends that the defendant has persistently misunderstood the approach to the revisions of the green belt. He relies on the case of *Copas v Royal Borough of Windsor and Maidenhead [2001] EWCA Civ 180* which dealt with previous guidance on green belt in PPG2. There, Simon Brown LJ made it clear that, the terms of the guidance were clear, so that unless there were exceptional circumstances which necessitated a revision of the green belt boundary a single composite test would not be

satisfied. Further, from paragraph 40 of the judgment the claimant derives a proposition which he describes as the falsification doctrine. Paragraph 40 reads,

> "I would hold that the requisite necessity in a PPG 2 paragraph 2.7 case like the present - where the revision proposed is to increase the Green Belt - cannot be adjudged to arise unless some fundamental assumption which caused the land initially to be excluded from the Green Belt is thereafter clearly and permanently falsified by a later event. Only then could the continuing exclusion of the land from the Green Belt properly be characterised as "an incongruous anomaly". The Secretary of State's 1991 objection to development was neither sufficiently long-term nor sufficiently clearly applicable to all possible development on all parts of the site to be capable of constituting such an event, still less when it seemed of itself to demonstrate the sufficiency of existing planning controls to safeguard the various amenity interests identified."

88. From that it is said that a revision proposed to increase a green belt cannot arise unless the fundamental basis upon which the land was originally excluded from the green belt was subsequently falsified. The converse must also apply when the green belt is to be rolled back.

89. The defendant and interested parties assert that the falsification doctrine does not exist. It is a misreading of the case of *Copas* on the part of the claimant. In any event it is not the relevant test. That is whether a necessity has been established as a result of the exceptional circumstances to bring about a boundary alteration.

90. The case of *Gallagher Homes v Solihull Metropolitan Borough Council [2014] EWHC 1283* deals with the test for redefining a green belt boundary since the publication of the NPPF. Paragraphs 124 and 125 of *Gallagher* read:

> "124. There is a considerable amount of case law on the meaning of "exceptional circumstances" in this context. I was particularly referred to Carpets of Worth Limited v Wyre Forest District Council (1991) 62 P & CR 334 ("Carpets of Worth"), Laing Homes Limited v Avon County Council (1993) 67 P & CR 34 ("Laing Homes"), COPAS v Royal Borough of Windsor and Maidenhead [2001] EWCA Civ 180; [2002] P & CR 16 ("COPAS"), and R (Hague) v Warwick District Council [2008] EWHC 3252 (Admin) ("Hague"). "
>
> 125. From these authorities, a number of propositions are clear and uncontroversial.
>
> i) Planning guidance is a material consideration for planning plan-making and decision-taking. However, it does not have statutory force: the only statutory obligation is to have regard to relevant policies.

> ii) The test for redefining a Green Belt boundary has not been changed by the NPPF (nor did Mr Dove suggest otherwise).

a) In *Hunston*, Sir David Keene said (at [6]) that the NPPF "seems to envisage some review in detail of Green Belt boundaries through the new Local Plan process, but states that 'the general extent of Green Belts across the country is already established'". That appears to be a reference to paragraphs 83 and 84 of the NPPF. Paragraph 83 is quoted above (paragraph 109). Paragraph 84 provides:

> "When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development…".

However, it is not arguable that the mere process of preparing a new local plan could itself be regarded as an exceptional circumstance justifying an alteration to a Green Belt boundary. National guidance has always dealt with revisions of the Green Belt in the context of reviews of local plans (e.g. paragraph 2.7 of PPG2: paragraph 83 above), and has always required "exceptional circumstances" to justify a revision. The NPPF makes no change to this.

b) For redefinition of a Green Belt, paragraph 2.7 of PPG2 required exceptional circumstances which "necessitated" a revision of the existing boundary. However, this is a single composite test; because, for these purposes, circumstances are not exceptional unless they do necessitate a revision of the boundary (*COPAS* at [23] per Simon Brown LJ). Therefore, although the words requiring necessity for a boundary revision have been omitted from paragraph 83 of the NPPF, the test remains the same. Mr Dove expressly accepted that interpretation. He was right to do so.

> iii) Exceptional circumstances are required for any revision of the boundary, whether the proposal is to extend or diminish the Green Belt. That is the ratio of Carpets of Worth.
>
> iv) Whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if he fails to adopt a lawful approach to exceptional circumstances. Once a Green Belt has been established and approved, it requires more than general planning concepts to justify an alteration."

91. From that review it can be seen that there is no test that green belt land is to be released as a last resort. It is an exercise of planning judgment as to whether exceptional circumstances necessitating revision have been demonstrated.

92. The interested parties emphasise the importance of section 39 of the Planning and Compulsory Purchase Act 2004 which imposes a duty upon the defendant and the inspector when exercising their functions under part 2 of the Act in relation to local development documents. The section demonstrates that the achievement of sustainable development is an ongoing duty upon any body exercising its function under part 2 of the Act. Sustainable development is a concept which is an archetypal example of planning judgment.

93. The duty to contribute to sustainable development imports a concept which embraces strategic consideration about how best to shape development in a district to ensure that proper provision is made for the needs of the 21st century in terms of housing and economic growth and for mitigating the effects of climate change. Inevitably, travel patterns are important. Both the SEA and the sustainability appraisal are important components in forming a judgment to be made under Section 39(2).

94. As a result it is submitted that the green belt designation is a servant of sustainable development.

Discussion and conclusions

95. In my judgement to refer to a falsification doctrine is to take the words of Simon Brown LJ out of context. To elevate the words that he used into a doctrine is to overstate their significance.

96. What is clear from the principles distilled in the case of *Gallagher* is that for revisions to the green belt to be made exceptional circumstances have to be demonstrated. Whether they have been is a matter of planning judgment in a local plan exercise ultimately for the inspector. It is of note that in setting out the principles in *Gallagher* there is no reference to a falsification doctrine or that any release of green belt land has to be seen as a last resort.

97. The only statutory duty is that in Section 39 (2) (supra). In that regard the contents of paragraph 84 of the NPPF are relevant. That says,

> "84. When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary."

98. That is clear advice to decision makers to take into account the consequences for sustainable development of any review of green belt boundaries. As part of that patterns of development and additional travel are clearly relevant.

99. Here, the release from the green belt is proposed in Lichfield which is seen by the defendant as consistent with the town focused spatial strategy. The further releases have been the subject of a revised sustainability appraisal by the defendant. That found that no more suitable alternatives existed for development.

100. The principal main modifications endorsed by the defendant expressly referred to the green belt review and to the supplementary green belt review as informing the release of green belt sites. They contained advice as to the relevant tests that members needed to apply. Both documents were available to the decision making committees and were public documents. Ultimately, the matter was one of planning judgment where the members had to consider whether release of green belt land was necessary and, in so determining, had to be guided by their statutory duty to achieve sustainable development.

101. The members were aware that they had originally been presented with the Deans Slade and Cricket Lane sites as directions of growth at a much earlier stage of the local plan development. As the sites were to the south of Lichfield members were advised that development there would have little impact on the setting of the city overall and there were few limitations beyond the policy constraint of green belt. However, the extent of concern about loss of green belt at that time meant that the plan was revised to reduce the amount of growth in that direction. The inspector had found that the defendant had failed to produce a sound plan with that approach. An alternative strategy of a new village had been considered by the inspector as a first stage of the examination process and he had found that that failed to outperform the council's preferred strategy. The members were entitled to take all of those factors into account in concluding whether there was a necessity to propose to release sites from the green belt.

102. In my judgment, the members were aware of the test which they had to apply through the content of the documents before them together with their experience and knowledge as members of a council where a significant amount of its land was within the green belt. They were entitled to take into account the genesis of the plan and the inspector's findings in concluding that in their view there were exceptional circumstances for a green belt revision. The main modifications endorsed show, in my judgment, that the defendant grappled with matters set out in the NPPF, their duty under Section 39 and the request by the Inspector to remedy shortcomings in their Development Plan.

103. Further, the letter from Deloitte of the 6th January 2014 which was sent to members of the Environment and Development (Overview and Scrutiny) Committee, albeit on the part of the claimants, was absolutely clear as to the correct approach to adopt. It rightly said that exceptional circumstances had to be demonstrated. It is odd, in those circumstances, for the claimant to make the submission that the defendant throughout misunderstood, misinterpreted and/or was misled as to the relevant test to apply. This ground fails.

Issue Four - Fairness of the process adopted by the defendant

104. The claimant submits that deliverability of a development site is a central concern. The process that the defendant has embarked upon is geared up to the resolution of a housing shortfall identified by the inspector in the order of 900 units. It is clearly material for the local authority, in those circumstances, to have regard to land outside the green belt. That is especially the case when such land as is suggested is supported by experienced developers.

105. It was unfair, therefore, in the circumstances, to tell the members of the defendant that the information on the claimant's proposal was too vague. That is especially the case as a planning permission was submitted accompanied by an EIA. That members were not informed was as a result of the guillotine on receipt of information after the 10th July 2013. It is contended that that is an unfair approach especially as that date has been applied selectively. It is apparent from the supplementary sustainability appraisal and the habitats regulations assessment that information has been provided after the 10th of July which is favourable for other sites, in particular, to Deans Slade Farm and Cricket Lane.

106. Further, the Parliamentary Statement of the 17th January 2014 should have been brought to members attention. That is a further example of unlawfulness. There was no attempt to bring it to the notice of the relevant decision making committee. The statement made it clear that unmet housing need could not amount to an exceptional circumstance.

107. The defendant submits that the guillotine was applied ruthlessly in relation to all prospective development sites. There was no unfairness as it applied to all of those who were promoting a site. It was the logical place to apply a guillotine as the defendant had thought that was the end of the evidence process. It did not know when the date was set about the contents of the interim report on the part of the inspector.

108. The progress of the claimant's planning application was entirely a matter for the claimant. The claimant wanted to rely on later information from December 2013 and January 2014. It would not be fair to take that into account for the claimant's site but not for others.

109. The Ministerial Statement was directed towards decision taking as opposed to plan making. The defendant was engaged in the process of plan making. The statement was, in any event, primarily directed towards traveller sites.

Discussion and conclusions

110. The defendant had invited the inspector to consider main modifications which would remedy any lack of soundness that he found. Once the inspector had found that the plan was potentially unsound because of the housing shortfall the defendant was under a duty to carry out work to remedy that identified flaw. In carrying out that work the defendant updated its sustainability appraisal as it was obliged to do. To make its case for additional land release the defendant had to embark upon a supplementary report dealing with the green belt and consider what principles may be applicable should any land have to be released.

111. Both the exercise of a sustainability appraisal and a strategic environmental assessment are integral to the Development Plan process. They are iterative documents. There can be no unfairness on the part of the defendant in carrying out the necessary updating work on those documents. The defendant would have failed in its legal duties had it not done so.

112. There is a distinction between applying a guillotine in relation to developer submissions on individual sites and applying that rigorously across the board which is clearly fair and the more strategic task which the defendant had to carry out to repair its local plan. To have permitted further evidence to be adduced on the claimant's planning application before members in January 2014 would be to place the claimants at an unfair advantage compared to other sites promoted by other developers. That would clearly be an inappropriate approach on behalf of the defendant and it was right not to adopt it.

113. The Ministerial Statement is primarily directed at individual decision taking rather than the plan making process. In those circumstances, I do not find that the failure to bring it to the attention of the members was the omission of a material consideration. If that is wrong, that defect can be remedied so far as the inspector is concerned when he considers the main modifications at the resumed examination.

114. The fact of the pending further examination is the answer to the claimant's complaints. The claimant will have ample opportunity at that hearing to raise all of these issues, if it thinks it is appropriate to do so, and to have the inspector's findings upon them. I do not find that there has been any lack of fairness in the process thus far which seems to me to have been carried out in a thorough manner on the part of the defendant. However, the claimant is not deprived of any opportunity to make representations on the main modifications as the examination process is ongoing. In truth, the claimant has an alternative remedy for its complaints.

115. Accordingly this ground fails also.

Conclusions

116. In the circumstances if it was necessary to do so I would have dismissed the claim on all the other grounds. However, as is clear, in my judgement this claim fails at the first hurdle as there is no jurisdiction for the court to entertain it.

117. I invite submissions as to the form of final order and costs.