Respondent ID: 874670 Mr Douglas Bond

Matter 5 – proposed revision of Green Belt boundaries (including CP 13)

5.1 Do the exceptional circumstances, as required by the NPPF (paragraphs 79–86), exist to justify the plans propose vision 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?

The Statute

1. The relevant statutory duty for the council is section 39(2) of the Act. This requires in relation to local development documents to exercise its function with the objective of contributing to the achievement of sustainable development. This is a positive obligation (Jay J *Calverton* (Appendix 1 paragraph 10)).

The Courts

2. Planning policy makes provision for changes to be made to the Green Belt. Changes to the Green Belt are permitted through a review of a local plan (NPPF 83). To make a change to the Green Belt boundary in the local plan there have to be "exceptional circumstances" (NPPF paragraph 83). Housing need can be an exceptional circumstance to justify a review of a Green Belt boundary. This principle has been acknowledged in Hunston, in the Court of Appeal (Appendix 2) where Sir David Keene observed at [21]:

"In principle, a shortage of housing land when compared to the needs of an area is capable of amounting to very special circumstances"

3. At paragraph 10 of his judgement, Sir David Keene also said in respect of NPPF paragraphs 87 and 88 that:

"The framework does not seek to define further what "other considerations" might

outweigh the damage to the Green Belt, but in principle there seems no reason why in certain circumstances a shortfall in housing land supply might not do so."

4. In the *Calverton* case (Appendix 1) Jay J also reinforced these points finding at paragraph 44:

"The issue is whether, in the existence of planning judgement and in the overall context of the positive statutory duty to achieve sustainable development, exceptional circumstances existed to justify the release of Green Belt."

5. In the *Hundal* case (Appendix 3) paragraph 50 confirmed that the failure to meet needs since a Green Belt boundary had been defined could also amount to exceptional circumstances:

"The overriding policy of PPG2 is that the Green Belt boundaries should remain fixed once they have been validly determined. It is only if a relevant circumstance occurs that requires a change in the future for planning purposes that the circumstance will be an exceptional circumstance. An obvious example would be if, in the present case, the First Defendant had determined that it could not meet the projected housing requirements for its area up to 2031 without using Green Belt land. In that case, for the purposes of the Core Strategy, the exceptional circumstance may have been made out (assuming no other practical alternatives). At that point, a subsidiary question may arise as to which land that was currently within the Green Belt should now be freed for development. In making that latter decision, I accept that the fact that land had recently and erroneously been included within the Green Belt when the local plan was developed might be a relevant consideration in deciding where the boundary had changed but it would be highly unlikely to be the only or the dominant factor".

6. Examination of the definition of the inner Green Belt boundaries in the Vale share similar characteristics as set out in NAT02 at paragraphs 5.12 and 5.13, where circumstances have now clearly changed.

7. In light of the above analysis, housing need can, as a matter of planning judgement, as well as the desire to promote, plan and achieve sustainable patterns of development, amount to exceptional circumstances through the development plan review process. Such an approach would be consistent with Section 39(2) and national policy (NPPF 83 and 84).

8. Exceptional circumstances remain undefined and a matter of planning judgement. As confirmed by the Secretary of State for DCLG, (Nick Boles' letter dated 3/3/14 document LNP 18) local authorities can if they so wish review and tailor the extent of Green Belt in their area to reflect local circumstances. It is a matter of their planning judgement as to whether exceptional circumstances apply.

9. The *Calverton* case (Appendix 1) helpfully sets out the matters to examine in establishing exceptional circumstances in the context of national policy and the positive obligation in section 39(2) to plan for sustainable development. The 5 matters were highlighted by Justice Jay at paragraph 51. They mirror the structure and intent of the Framework including paragraph 84. Each of these 5 matters are addressed in relation to the VoWH.

(i) the acuteness/intensity of the objectively assessed needs (matters of degree may be important);

10. The level of housing need in the VoWH and in particular in the Oxford fringe is well documented.

11. Need for housing close to Oxford is reinforced by the following facts:

- Nationally important science, technology and education sectors.
- Significant excess of jobs over working population. Job growth and the economy are being held back by the lack of housing. For example Oxford has underperformed by comparison to similar cities, for instance Cambridge. If Oxford had grown at the same rate as Cambridge between 1997–2011, an additional £500 million would have been generated in the local economy (Oxford Innovation Engine report 2013).

- Staff recruitment and retention problems identified by key employees.
- Housing affordability ratio is in excess of regional average. Oxford is now the least affordable city outside London[1].
- Very high house prices. The average house price is now 11 times the average local salary[1].
- Large backlog of housing need.
- Increasing traffic congestion due to longer distant commuting into Oxford.

12. This is the context of the Vale's Green Belt review. The submitted local plan at paragraph 5.1 also notes that the Oxford fringe Sub Area:

"provides housing for residents working in Oxford and also functions as a significant employment area in its own right."

13. The significant increase (53%) in previous levels of requirement over the last 5 years following the updated SHMA and the acknowledgement that this is currently only meeting the needs of the Vale and not the City, further reinforce the extent and acuteness of housing need in this area.

(ii) the inherent constraints on supply/availability of land prima facie suitable for sustainable development;

14. The VoWH does not have an infinite capacity of land suitable for sustainable development. The local plan highlighted this fact in the earlier Regulation 18 plan. The council originally sought to meet all of its own needs without impinging upon the green belt around Oxford focusing development instead in the Science Vale, a significant employment hub. Following the updated SHMA and despite the Science Vale Sub Area remaining the main focus for development is was not possible to meet the district's OAN without releasing land from the Green Belt. Moreover the Oxford Fringe Sub Area which includes the villages that lie in close proximity to Oxford, a significant employment hub in its own right, represent the most sustainable locations for residential development in the district owing to their strong relationships / links with Oxford. (PCD02A paragraphs 5.1.27 & 5.1.28).

1http://www.independent.co.uk/news/uk/home-news/oxford-the-least-affordable-city-in-the-uk-where-houses-cost-11-times-local-salaries-9180930.html

15. The council accepted in Document TOP09 paragraph 2.30 that:

"On this basis, in order to meet the housing target set out in the SHMA, there is no reasonable alternative to releasing sites from the Green Belt".
(iii) (On the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt.

16. 2011 census journey to work data[2] confirms that Oxford city residents are significantly less reliant on the car for journeys to work (34%) relative to circa 63% for neighbouring districts. Oxford residents also use the bus (16%) and walk/cycle (35%). These are significantly higher than neighbouring districts 4.5% and 15% respectively. North Hinksey's close physical association with the city maximises the opportunity for these high proportions of non-car modes of transport reinforced by strong pedestrian/cycle linkages to the city (See plan WB1). Development here would therefore result in significantly higher sustainable travel patterns by comparison to other alternatives, in particular sites beyond the Green Belt, some distance from Oxford.

17. Oxford has a greater level of containment of people living and working in the same area (77%) compared with 63% in the rest of Oxfordshire. Again development close to Oxford (North Hinksey) as opposed to beyond the Green Belt will reinforce this level of containment and therefore promote sustainable (short distance) movements of travel.

18. The need therefore for housing to be as close as possible with as many sustainable linkages to Oxford is paramount in promoting sustainable patterns of development (Framework paragraph 84). Avoiding development within the Oxford fringe area would only result in unsustainable patterns of development increasing congestion beyond already high levels due to not locating housing close to where it is needed in respect of housing need, in relation to destinations (the sub regional hub status of Oxford for employment, education, (including University) and retail and other services) and location of housing in relation to transport corridors/sustainable linkages to Oxford. North Hinksey is therefore well placed.

2http://www.oxford.gov.uk/Library/Documents/Planning/Oxford%20Strategic%20Growth%20Options%20Proforma%20Report.pdf (pages 10 and 11)

19. The council acknowledge[3]:

"*It is clear that when the boundaries were drawn around the villages there was little consideration given to future need to expand the villages, even though advice at the time was to consider growth needs beyond the plan period. The Green Belt villages have therefore remained relatively unchanged for over twenty years and probably longer given there was a general presumption of restraint in the area since the outer boundary was set".*

20. To promote development beyond the Green Belt's outer edge would extend travel to work leading to unsustainable patterns of traffic movement. Oxford's affordability is well documented. Consistent with the NPPF's objective of significantly boosting the supply of land development well related to Oxford to meet the significant housing needs would make a positive contribution to seeking to balance the current mismatch between supply and demand/need. The failure to encourage more house building but also in the right place would only restrict further the availability of affordable, as well as new market housing. Consistent with the NPPF 84 of "the need to promote sustainable patterns of development" and the positive obligation of section 39(2) it would be very difficult to achieve sustainable development without impinging on the Green Belt.

(iv) The nature and extent of the harm to this Green Belt (all those parts of it which would be lost if the boundaries were reviewed); and

21. The council's Green Belt review (Document PCD02A para 5.1.4) identifies only 0.1% percent of the Oxford Green Belt within the district to be released. The sites identified have been found not to conflict with the stated purposes of the Oxford Green Belt.

Accordingly the nature of harm to the Oxford Green Belt will be negligible whilst the extent of harm by reason of the amount of land being released from this Green Belt

3http://www.whitehorsedc.gov.uk/sites/default/files/2014_02_20%20council%20comments%20on%20CB%20final.pdf (paragraph 9)

would also be negligible. Consistent with the Framework paragraph 82 "The general extent of Green Belts across the country is already established." The proposed revisions (0.1%) to the Oxford Green Belt within the Vale will not alter the "general extent" of this Green Belt.

(v) The extent to which the consequent impact on the purposes of the Green Belt maybe ameliorated or reduced to the lowest reasonably practicable extent.

22. The council's Green Belt review insures that the consequent impact on the purposes of the Green Belt are ameliorated or reduced to the lowest reasonably practicable extent by only identifying land that does not impact upon the purposes of the Green Belt.

23. In relation to the site at North Hinksey (Botley site D in the Green Belt review (NAT03)) the NPPF provides guidance (6 bullet points) at paragraph 85 on defining Green Belt boundaries.

24. Seek consistency with the Local Plan Strategy for meeting identified requirements for sustainable development. The proposed boundaries in the Oxford Fringe correspond with the desire of seeking to meet identified housing needs close to Oxford and in sustainable locations that provide strong linkages to the city and the needs that arise here in order to secure sustainable patterns of development.

25. The site at North Hinksey fulfils this by reason of its proximity and linkages to the city. These are highlighted on plan WB1 and belie the status of North Hinksey as a "small village" that unlike other smaller villages are isolated. In this instance North Hinksey is physically co-joined with Botley and exceptionally close to Oxford, lying inside the city's ring-road with direct pedestrian and cycle access to the city centre including the railway station (see plan WB1).

26. The locational principles highlighting the benefits of the strategic allocations in the Green Belt (as set out at paras 5.1.27 - 5.1.29 of PCD02A) apply with equal if not greater force to the opportunity at North Hinksey with its *"strong links with the city of*

Oxford", and a *"location(s) close to where the need arises, where it is accessible to employment and to sustainable forms of transport."*

27. 2. Not include land which it is unnecessary to keep permanently open. The Council's Green Belt review has confirmed that the site is not necessary to keep permanently open in a Green Belt context.

28. 3, 4 and 5. Safeguarded land in order to meet longer term development needs stretching well beyond the plan period, and that the Green Belt boundaries not being needed to be altered at the end of the development plan period. Document HEAR03 on changes to the Oxford Green Belt notes in Table 1 that a total of 118.3 hectares have been identified to be released from the Green Belt (excluding the strategic sites and proposed Farmoor inset village), thereby satisfying bullet points 3, 4 and 5. The suggested strategic review of the Green Belt by Oxford City[4] has only identified larger, strategic, Green Belt releases. This duplicates the strategic allocation at North Abingdon proposed in the Local Plan. No other strategic (county wide) area of search was identified within the Vale. This does not weaken the merits of the more local, detailed review of opportunities around settlements closer to Oxford within the VoWH. For instance the North Hinksey proposed Green Belt release lies within Area 35 of the Oxford Study[4] but only forms a small part of this area that Oxford City rejected because it *"almost entirely* (therefore not all) *in high risk flood zones"* (page 38). The North Hinksey site lies beyond this, as confirmed by the plans in the Oxford Study (Pages 37 and 38). The remainder of Area 35, within the flood plain, forms an important green lung and open setting to the city, a role not fulfilled by the North Hinksey site.

29. 6. By realigning the Green Belt boundary along the A34 a clearer boundary using a physical feature that is readily recognisable and is likely to be permanent is achieved.

30. The identified Green Belt release at North Hinksey satisfies NPPF paragraph 85.

[4] http://www.oxford.gov.uk/Library/Documents/Planning/Informal%20Green%20Belt%20Assessment%20May%202014.pdf

31. The number of non-strategic sites proposed to be released from the Green Belt (excluding proposed Farmoor inset village) add up to 118.3ha (HEAR03).

32. The local plan for the Abingdon upon Thames and Oxford Fringe area assumes after the strategic sites 1,285 dwellings coming from local plan part 2 allocations (722) and windfalls (563). A number of the sites proposed to be released from the Green Belt will be required to meet these requirements. TOP09 paragraph 2.90 confirmed that:

"As part of the process of assessing sites to meet the increased housing target set out in the Strategic Housing Market Assessment, the council commissioned a Green Belt Review to identify whether there was any land suitable for release from Green Belt, so that it could be considered for housing alongside other reasonable alternatives".

33. The Green Belt release sites could also be required in the event of the VoWH's housing requirement increases as a result of unmet housing needs elsewhere in the housing market area, most notably from Oxford city, consistent with local plan policy CP2 or required to meet any 5 year housing land supply shortfalls. Alternatively the remaining non-strategic sites proposed to be release from the Green Belt will ensure the permanence of the Green Belt beyond the plan period (consistent with NPPF paragraph 83).

34. The site at North Hinksey has been identified as serving no Green Belt purpose, is required for development as a part 2 local plan allocation or as a windfall and lies in a sustainable location exceptionally close to Oxford city centre/historic core. In this regard it lies closer than any site in the Vale local plan or Oxford City's informal assessment for urban extensions in Oxford's Green Belt.

Conclusions.

35. Exceptional circumstances do exist. Whilst a matter of planning judgement, the council is entitled to make such a judgement consistent with their statutory duty (section 39(2)) and the NPPF. The points raised above together with those set out in PCD02A confirm that exceptional circumstances do exist and are soundly based. The non-strategic sites have been identified housing sites in sustainable locations to meet the Vale's and potentially Oxford's housing needs.

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

36. The local plan at paragraph 5.40 states that a local Green Belt review [51] has been completed and assessed land around settlements in the Vale against the five purposes of the Green Belt. The review demonstrated that parcels of land that no longer met the purposes of the Green Belt could be released. Footnote 51 refers to the Green Belt review which clearly identifies the revisions to the Green Belt boundary. In this regard the plan is entirely clear.

5.4 Is policy CP 13 soundly based?

37. Yes. The policy has been "positively prepared", "justified" and "consistent with national policy" for the reasons set out above in respect of demonstrating, lawfully, exceptional circumstances do exist that justify a revised Green Belt boundary.

38. In order to be "effective" some minor changes are required. Either North Hinksey, which is now to be identified on the proposals map (see minor change 4.4) needs to be added to the list of settlements in the policy, or unless, for the purposes of this policy, North Hinksey is assumed to be part of Botley no further change is required. Some clarification on this point, perhaps an * next to Botley and a footnote confirming this includes North Hinksey, would resolve any misunderstandings.

Neutral Citation Number: [2015] EWHC 1078 (Admin)

Case No: CO/4846/2014

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/2015

Before:

MR JUSTICE JAY

- -

Between:

CALVERTON PARISH COUNCIL	**Claimant**
- and -	
(1) NOTTINGHAM CITY COUNCIL	**Defendants**
(2) BROXTOWE BOROUGH COUNCIL	
(3) GEDLING BOROUGH COUNCIL	
-and-	
(1) PEVERIL SECURITIES LIMITED	**Interested Parties**
(2) UKPP (TOTON) LIMITED	

- -
- -

Richard Turney (instructed by **Public Access**) for the **Claimant**
Morag Ellis QC and Annabel Graham-Paul (instructed by **Nottingham, Broxtowe and Gedling Borough Councils**) for the **Defendants**
Richard Honey (instructed by **Walker Morris, Leeds)** for the **Interested Parties**

Hearing date: 24th March 2015

- -

Approved Judgment

The Hon. Mr Justice Jay:

Introduction

1. This is an application brought under section 113 of the Planning and Compulsory Purchase Act 2004 ("the Act") to quash, in part, the Greater Nottingham - Broxtowe Borough, Gedling Borough and Nottingham City - Aligned Core Strategies ("the ACS"), adopted by the Defendants in September 2014. The ACS is part of the development plan for each of the three Council's areas.

2. Broxtowe Borough and Gedling Borough are contiguous with the outer boundary of the city of Nottingham, and substantially comprise Green Belt. The Claimant is a Parish Council within Gedling Borough and may be described as an enclave within Green Belt. Two Interested Parties have intervened in these proceedings: they own land at Toton, which is within Broxtowe Borough and technically, Green Belt. Although Toton is some distance away from the city boundary, it may fairly be characterised as within the main built-up area of Nottingham.

3. Development within Green Belt is never without controversy. It is clear from the "Chronology of Events", namely Appendix 1 to the witness statement of Alison Gibson dated 11th November 2014, that a strategic review of the Nottingham-Derby Green Belt has been on the table for some time. The precise concatenation of events is not relevant to this application. The ACS was subject to independent review by a planning Inspector, Ms Jill Kingaby, and examination hearings took place in 2013 and 2014. On 24th July 2014 the Inspector published her report, approving the ACS with modifications. The Claimant's advisors identified what were considered to be legal deficiencies in the report, but notwithstanding its contentions the ACS was adopted by the three Councils on various dates in September 2014.

4. The Inspector's report and the ACS will require more detailed exposition subsequently. At this stage, it is appropriate to turn to the relevant legislative framework. I will focus now on the legislative provisions relevant to Grounds 1 and 2; Ground 3 raises a discrete point, and will be addressed subsequently.

The Statutory Scheme

5. I was taken to all the relevant provisions of the Act. Some of these explain the status of the ACS as a local plan, included in the local development documents which form part of the development plan for each of the three Council's areas (see, in particular, sections 15, 17 and 38). I will concentrate on the statutory provisions which bear on the issues between the parties.

6. Section 19(2) of the Act provides:-

> "In preparing a development plan document or any other local development document the Local Planning Authority must have regard to –

> (a) national policies and advice contained in guidance issued by the Secretary of State;
>
> …
>
> (h) any other local development document which has been adopted by the Authority;"

7. Section 20 provides for independent examination by the Secretary of State's Inspector. Pursuant to section 20(5):-

> "The purpose of an independent examination is to determine in respect of the development plan document –
>
> a) whether it satisfies the requirements of section 19...;
>
> b) whether it is sound;"

8. The definition of the adjective "sound" is not to be found in the Act itself but in national policy - the latter being "guidance issued by the Secretary of State" for the purposes of sections 19(2)(a) and 34, and to which regard must be paid.

9. Miss Morag Ellis QC for the Defendants placed particular weight on section 39 of the Act, which provides:-

> "**Sustainable Development**
>
> 1) This section applies to any person who or body which exercises any function –
>
> b) under Part 2 of this Act in relation to local development documents;
>
> …
>
> 2) The person or body must exercise the function with the objective of contributing to the achievement of sustainable development"

10. I agree that this confers a positive obligation on the Councils, but its limitations need to be understood. "Sustainable development" is not a concept which is defined in the Act, in which circumstances the enlightenment which is required may only be found in national policy.

11. Section 113 confers powers on this Court to intervene if satisfied "that a relevant document [including a development plan] is to any extent outside the appropriate power". It is common ground that the jurisdiction of this Court on this statutory appeal is akin to Judicial Review. The Court of Appeal has explained on a number of occasions (see, for example, Blythe Valley BC v Persimmon Homes (North East Limited) and another [2009] JPL 335) that whether a development plan complied with national policy guidance was largely a matter of planning judgment with which the

Court should be slow to interfere, subject always to that guidance being properly understood.

National Policy

12. Relevant national policy is located in the National Planning Policy Framework ("the NPPF"), published by the Department for Communities and Local Government in March 2012. I was taken to the National Planning Policy Guidance finalised in March 2014. This is referred to in the Inspector's report, but in my view does not significantly supplement the NPPF.

13. "Sustainable development" is not expressly defined in the NPPF, but light is nonetheless thrown on it. The effect of paragraph 6 of the NPPF is that the substantive policies set out elsewhere in this national policy, interpreted and applied compendiously, amount to the Government's view of what sustainable development means. On one view, it represents a balance between three factors – economic, social and environmental – which are admittedly not necessarily complementary (see paragraph 7). On another, if certain environmental factors are identified, then their weight must be assessed and these factors constitute a restriction or brake on what would otherwise be sustainable development. The NPPF is not worded with fine legal precision (it is a policy, not a commercial contract), but some further assistance is given by paragraph 14, which 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 areas;
>
> - 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."

14. This last aspect is footnoted as follows:-

> "For example, those policies relating to sites protected under the Birds and Habitats Directive (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of

> Outstanding Natural Beauty, heritage coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."

15. I agree with Miss Ellis that development which meets objectively assessed needs is presumptively sustainable, but I would add that the preposition "unless" is drawing attention to a policy constraint. That approach is reinforced by the footnote.

16. The parties are agreed that paragraph 47 of the NPPF is another important provision. It 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 5 years' worth of housing against their housing requirements with an additional buffer of 5%...
>
> - Identify a supply of specific, developable sites for broad locations for growth, for years 6-10 and, where possible, for years 11-15;
>
> …"

17. The subordinate clause, "as far as is consistent with the policies set out in this framework", is arguably slightly more generous (in terms of favouring sustainable development) than the "unless" in paragraph 14 of the NPPF, but ultimately nothing turns on this. It should be emphasised, though, that paragraph 47 does not create a statutory duty (c.f. section 39(2) of the Act); it constitutes policy to which regard must be had.

18. Section 9 of the NPPF deals with "Protecting Green Belt Land". A fundamental aim of Green Belt policy is to prevent urban sprawl. Under paragraph 80 of the NPPF, the Green Belt serves five purposes, one of which is explicitly environmental – "to assist in safeguarding the countryside from encroachment". Paragraphs 83 and 84 are particularly relevant, and provide:-

> "83. Local Planning Authorities with Green Belts in their areas 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.
>
> 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."

19. Paragraphs 83 and 84 are, clearly, complementary provisions. Mr Richard Turney for the Claimant is entitled to emphasise the second sentence of paragraph 83. The review process referred to in paragraph 84 cannot ignore that sentence. On the other hand, I agree with Miss Ellis that the review process must consider "sustainable patterns of development" – e.g. the desirability of an integrated transport network. During any review process, the *consequences* for sustainable development must be carefully considered. The second sentence of paragraph 84 is not altogether clear. On the face of things, it might well be argued that it appears to reinforce the need to protect the Green Belt, but in my view it is capable of being interpreted slightly more broadly. The *consequences* for sustainable development may require revision of the Green Belt. Nonetheless, I do not readily agree with Miss Ellis that paragraph 84 throws any light on the meaning of "exceptional circumstances" within paragraph 83, or should be taken as somehow diluting this aspect. Sustainable development embraces environmental factors, and such factors are likely to be negatively in play where release of Green Belt is being considered. The second sentence of paragraph 83 supplies a fetter or brake on development which would, were it not for the Green Belt, otherwise be sustainable; but in deciding whether exceptional circumstances pertain regard must be had to the whole picture, including as I have said the *consequences*.

20. "Exceptional circumstances" remains undefined. The Department has made a deliberate policy decision to do this, entrusting decision-makers with the obligation of reaching sound planning judgments on whether exceptionality exists in the circumstances of the individual case.

21. Paragraph 150ff of the NPPF deal with "Local Plans". Paragraph 151 reflects section 39(2) of the Act. Paragraph 152 is material and provides:-

> "Local Planning Authorities should seek opportunities to achieve each of the economic, social and environmental dimensions of sustainable development, and net gains across all three. Significant adverse impacts on any of these dimensions should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered. Where adequate mitigation

> measures are not possible, compensatory measures may be appropriate."

22. I read this provision as making clear that the identification of "exceptional circumstances" (although not expressly mentioned) is a planning judgment for the Local Planning Authority. However, net gains across all three of the dimensions of sustainable development may not always be possible. In these circumstances, the impingement on environmental factors will require the identification of exceptional circumstances in order to be justified ("significant adverse impacts on any of these dimensions should be avoided"), and - to the extent that this cannot be achieved - must be ameliorated to the extent possible.

23. I appreciate that section 39(2) of the Act imposes a positive obligation to achieve sustainable development, and that if such development is not carried out then there would be harm to the economic and social dimensions which form part of this concept. However, I do not accept Miss Ellis' submission that the issue boils down to the balancing of three *desiderata*. Review of Green Belt in the face of sustainable development requires exceptional circumstances. Refraining from carrying out sustainable development, and thereby causing social and economic damage by omission, does not.

24. Paragraph 182 of the NPPF explains the meaning of "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 co-operate, 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 developments;
>
> - **Justified** – the plan should be the most appropriate strategy, when considered against a reasonable alternative, based on proportionate evidence;
>
> - **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priority; and
>
> - **Consistent with National Policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

25. The phrases "consistent with national policy" and "in accordance with the policies in the Framework" reflect earlier language; and, ultimately, sections 19 and 34 of the Act.

The ACS

26. Within the ACS, aspects of Policy 2, "The Spatial Strategy", and Policy 3 "The Green Belt", are under challenge. As I have said, the Inspector approved the ACS with modifications, and the version in the bundle contains the Inspector's input. I will examine the ACS in its final, modified form.

27. Policy 2 states that a minimum of 30,550 new homes will be provided for between 2011 and 2028, with the majority in the main built-up area of Nottingham. Paragraph 2 of Policy 2 refers to a "settlement hierarchy" of growth, with the main built-up area of Nottingham being at the top of the tree, and "Key Settlements" at the third tier. Calverton is specified as a "Key Settlement", with up to 1,055 new homes. It is common ground that the building of these homes will require a revision of the existing Green Belt boundary. These "Key Settlements", and other "Strategic Locations" which are marked on the ACS with an asterisk, "will be allocated through Part 2 Local Plans". On the other hand, "Strategic Allocations", including the Interested Parties' land at Toton, and land at Field Farm, are available for development from the date of adoption.

28. Policy 2 also sets out the justification for the approach taken. I have had regard to paragraph 3.2.10, but will focus for the purposes of this Judgment on the Inspector's Report.

29. Policy 3 deals with the Green Belt. Save for the "Strategic Allocations" already considered, the policy contemplates that the detailed review of Green Belt boundaries, to the extent necessary to deliver the distributions in Policy 2, will be undertaken in what is described as "Part 2 Local Plans". A sequential approach will then be deployed, prioritising the use of land which is not currently within Green Belt. To the extent that adjustment of any Green Belt boundary is required, regard will be had in particular to its statutory purposes.

30. Paragraph 3.3.1 is clearly germane:-

> "The Nottingham-Derby Green Belt is a long established and successful planning policy tool and is very tightly drawn around the built-up areas. Non-Green Belt opportunities to expand the area's settlements are extremely limited and therefore exceptional circumstances require the boundaries of the Green Belt to be reviewed in order to meet the development requirements of the Aligned Core Strategies in Part 2 Local Plans."

31. It is clear from this that the Defendants appear to have had regard to the criterion of "exceptional circumstances". The issue raised by Mr Turney's submissions is whether the approach taken properly engaged with it.

The Inspector's Report

32. The proceedings before the Inspector were lengthy and complex, and a mass of evidence – only some of which is before the Court in these proceedings – was supplied. It is unnecessary to dwell on the proceedings, save to pause to consider a number of points advanced by Mr Turney during his oral argument.

33. Before and during the course of the proceedings, the Inspector appears to have formulated, with the assistance of the parties, the main issues arising in relation to each of the elements of the ACS policy. Thus, as regards "the Spatial Strategy and Housing Policy":-

> "The main issues are:
>
> i. whether the local context, vision and spatial objectives set out in Chapter 2 of the ACS objectives are appropriate, locally distinctive and provide a sound basis for planning the area over the next 15 years; whether Policy 2, the spatial strategy, follows logically from the local context, visual, and spatial objectives, and is sound (i.e. positive, justified, consistent with national policy and capable of delivery); and
>
> ii. whether appropriate provision is made for new housing in the three Local Authority areas, having regard for the requirements of the NPPF and taking account of the proposed numbers, the phasing and distribution of housing, affordable housing, and provision for gypsies and travellers, and other groups."

A number of specific questions were then posed, which I have borne in mind.

34. As for "Green Belt":

> "The main issue is: whether the spatial strategy and Policy 3 of the ACS are consistent with the fundamental aim and purposes of Green Belts as set out in the NPPF, and whether the proposals for alterations to Green Belt boundaries are underpinned by the quick review processes and justified by exceptional circumstances.
>
> **Questions**
>
> The Councils contend that, having objectively assessed the full need for housing across their areas and reviewed their strategic housing land availability assessments, some alteration to Green Belt boundaries is required to accommodate the growth in housing and associated development. Is there substantive evidence to counter this argument?

> The ACS is founded on a two-stage review of Green Belt boundaries: (i) strategic assessment to find the most sustainable locations for large scale development around Greater Nottingham and define a limited number of strategic allocations for growth, and (ii) a detailed examination of individual sites and settlements suitable for sustainable growth with precise boundaries being established in subsequent development plan documents. Given the commitment of the Local Authorities to produce core strategies and consequent, more detailed development plan documents, what precisely is wrong with this two-step approach reviewing the Green Belt? Will it delay the development process unreasonably as some suggest?"

Mr Turney criticised both the formulation of these questions and the Defendants responses to them, and I have had regard to both.

35. On 23rd October 2013 the Inspector sent a note to the parties which said, amongst other things: -

> "Having reviewed all the evidence in respect of housing requirements for the full plan area, I consider the Policy 2: the Spatial Strategy which states that "a minimum of 30,550 new homes will be provided for" is sound."

36. Mr Turney made much of this, in support of a submission that the Inspector came to a conclusion on the issue of soundness before addressing the Green Belt and environmental considerations which were plainly relevant to that issue. I will revert to this alleged criticism in due course.

37. The Inspector's report is quite lengthy, and it would unnecessarily overburden this Judgment if I were to set out every single relevant passage. I will therefore focus on what is key, reassuring the parties that I have borne in mind the entire document.

38. The key passages in the Inspector's report include the following:-

> "29. Local Plans should meet the full, objectively assessed needs for market and affordable housing in their HMA, as far as is consistent with other policies set out in the NPPF. This requires an initial assessment of "need" based on likely demographic change over the plan period…
>
> 40. …I consider that the significant boost in housing supply, to which paragraph 47 of the NPPF refers, is absolutely necessary to reverse the long-term, upward trend in real house prices associated with undersupply and the growing numbers of people, notably young adults and families, who find suitable housing unaffordable.
>
> 41. Even though a boost in Greater Nottingham's housing provision as envisaged may not on its own reduce higher house prices significantly, it should make a positive contribution to

balancing the mismatch between supply and demand/need … a failure to encourage overall house building would only restrict further the availability of affordable, as well as new market, housing …

45. I have taken account of the Court of Appeal judgment for "Hunston". I have noted the Councils' observation that, whilst the judgment pronounced on the interpretation of the first two bullet points in paragraph 47 of the NPPF, the planning decision did not directly consider the question of the soundness or otherwise of a development plan. The issue in dispute was whether, in advance of the area-wide balancing of the many facets of sustainable development which are needed to secure a sound local plan, a Section 78 Inspector could or should take account of policy constraints when deciding what was the relevant figure for "full, objectively assessed needs".

48. Nevertheless, the Hunston judgment importantly sought "a definitive answer to the proper interpretation of paragraph 47" of the Framework. The judgment is clear that the full objectively assessed needs for housing in the area have to be the starting-point when assessing the adequacy of housing supply… The approach to housing need assessment which the judgment supports is not therefore different to that supported by the PPG, which as explained above, I have fully considered in examining in the ACS.

47. Policy 2 of the ACS states that "a minimum" of 30,550 new homes would be provided, which wording should encourage and not impede the provision of additional housing. In looking to meet the needs, the councils have assumed that fewer houses will be developed on windfall sites than in past, once an up to date local plan underpinned by regularly reviewed SHLAAs is in place. However, if windfalls continue to come forward at the same rate as in the past, this should not be perceived as a negative factor as the aim is to boost the supply of new housing. Proposed change **Mod 3,** reinforces the essential point that the councils will adopt a proactive and positive approach to the delivery of new housing.

48. Proposed new paragraph 3.2.6a, **Mod 6**, includes a commitment to review the ACS's future housing projections, based on the 2011 Census data and expected in 2014, show that the Councils' assumptions underpinning its planned housing provision are no longer appropriate. **Mod 17** sets out the process and timing for initiating such a review. The NPPF expects local plans to meet their full needs for housing, "as far as is consistent with the policy set out in the Framework". Subsequent sections of my report address policy for the distribution of housing across the authorities, policy for protecting the Green Belt, for environmental and infrastructure

planning, among other things. These confirm that delivery of the minimum housing numbers should be feasible. I agree with the Councils that there should be no insurmountable constraints to meeting the fully objectively assessed need for housing.

49. I conclude that the overall level of housing provision proposed by the ACS is justified and consistent with national planning policy. The proposed changes are necessary to reflect the Councils' commitment to keep the local plan under review and to ensure that the planned level of housing remains sound.

…

67. Understandably, there is considerable amount of local opposition to the prospect of development here in the Green Belt [in the context of Field Farm]. However the work which has been done to identify the site and will continue to take it forward has been undertaken by the Council as a democratically elected local planning authority. It considers that it has made its decision in the best interests of the Borough and its people, particularly those who now or in the future will need a home of their own. Having regard to the housing requirements and limited availability of alternative sustainable sites, the Councils' decision to allocate this site in the ACS meets the exceptional circumstances requirement as set out in the NPPF for the alteration of Green Belt boundaries. Field Farm's inclusion as a strategic allocation in the ACS is justified.

…

70. …I share the Councils' view that the potential for land at Toton to help meet the requirements for housing and mixed use development in Broxtowe Borough constitutes the exceptional circumstances needed to remove the land from the Green Belt. Its potential to maximise the economic benefits from the proposed HS2 station reinforces the Councils' case for changing the Green Belt boundary at Toton.

…

98. The NPPF seeks a significant boost in the supply of housing, and this is not required to occur only in the first five years of a plan. The first bullet of paragraph 47 expects local plans to meet their full, objectively assessed needs "as far as is consistent with the policies set out in this Framework". Although The Court of Appeal judgment (Hunston) quotes protection of the Green Belt and land in an area of outstanding natural beauty or national park as examples of such policies, I see no justification to look only at land-use designation policies. The NPPF includes a range of other policy matters

requiring local plans to be aspirational but realistic, to take account of relevant market and economic signals, and be effective and deliverable.

99. In this case, I am satisfied that the prospective build rates for each 5 year tranche do not represent an attempt to suppress house building in the early years or rely on past poor economic conditions to justify low housing targets. The proposed build rates are supported by convincing evidence on the operation of housing markets … As the Councils argued, however, significantly increasing the supply of sites in the early years would not necessarily speed delivery, would require the release of additional Green Belt land contrary to national policy, and could delay progress on some of the more challenging regeneration sites.

…

Issue 2 – Whether the Spatial Strategy and Policy 3: the Green Belt are consistent with the NPPF and whether the approach to making alterations to the Green Belt is justified.

110. …In order to meet the housing requirements of 30,550 new homes and achieve sustainable growth with supporting infrastructure, jobs and services, I accept the Councils' judgement that future development will have to extend beyond Nottingham's main built up area.

111. The NPPF continues the well-established planning policy of protecting Green Belt land. The Green Belt boundaries are drawn tightly around Nottingham, and to promote development beyond the Green Belt's outer edge would extend travel to work and for other purposes in an unsustainable fashion. Areas of safeguarded land exist in Gedling Borough, but these are unlikely to meet all the plan area's development requirements outside the main built up area. I agree with the Councils that the exceptional circumstances required for alterations to Green Belt boundaries exist.

…

113. The evidence base was criticised as being too dated, related to a different search for more substantial extensions, and not subject to adequate public consultation. However, I accept that the Green Belt and settlement pattern are largely unchanged since 2005/6 … Ashfield District Council I am advised, assessed all possible sites against the five purposes of including land in the Green Belt enabling the least valuable sites to be identified. Even if the assessment of the ACS area was more strategic, I consider that sufficient investigation of the characteristics of

> potential sites for developments of differing sizes was carried out…
>
> 114. The ACS envisages a two-staged approach to altering Green Belt boundaries, with the precise boundaries for individual sites to be released from the Green Belt being established in the Part 2 Local Plans. The NPPF does not directly support this approach, probably because it expects a single local plan for each authority in contrast to the previous preference for a core strategy followed by more detailed development plan documents. Newark and Sherwood and South Staffordshire with adopted plans were cited as authorities which had used the two-stage approach taken by the Greater Nottingham Councils.
>
> …
>
> 116. I have considered the arguments that a more rigorous assessment could have been carried out of the inner urban edge of the Green Belt, before sites which would only result in long-distance commuting were selected …
>
> 117. Regarding the risk of coalescence of Kimberley, Whatnall and Nuthall, I consider it appropriate that the Part 2 Local Plan should assess the impact of any new development at this more detailed level, having regard for the aim and purposes of the Green Belt…
>
> 118. I strongly support the view that, with a two-stage review process, the ACS should give more direction to Part 2 Local Plans to emphasise that Non-Green Belt sites have first preference, and that sites to be released from the Green Belt must have good sustainability credentials. A sequential approach should secure an effective policy consistent with national policy, and this would be achieved with main modification **Mod 18**…"

Relevant Jurisprudence

39. The Court of Appeal in St Albans CC v Hunston Properties Limited and another [2014] JPL 599 endorsed a two-staged approach to the application of paragraph 47 of the NPPF. The first stage is to reach a conclusion as to the "full objectively assessed needs for market and affordable housing". This is a purely quantitative exercise. The second stage involves an exercise of planning judgement (in relation to development control or the formation of a local plan, as the case may be) as to whether the policy constraints in the NPPF carry the consequence that the objectively assessed needs should not be met. The issue in Hunston was whether "very special circumstances" existed (see paragraphs 87 and 88 of the NPPF), but in my judgment the position must be the same in a case involving a local plan.

40. At paragraph 10 of his judgment, Sir David Keene said this:-

> "The Framework does not seek to define further what "other considerations" might outweigh the damage to the Green Belt, but in principle there seems no reason why in certain circumstances a shortfall in housing land supply might not do so."

41. The two-stage approach underwent further examination in Solihull Metropolitan Borough Council v Gallagher Estates Limited and another [2014] EWCA Civ 1610. In that case, Laws LJ endorsed the conclusion of Hickinbottom J that:-

> "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."

Mr Turney placed particular reliance on paragraph 36 of the judgment of Laws LJ. There, he said:-

> "The fact that a particular site within a Council's area happens not to be suitable for housing development cannot be said without more to constitute an exceptional circumstance, justifying an alteration of the Green Belt by the allocation to it of the site in question. Whether development would be permitted on the sites concerned in this case, were they to remain outside the Green Belt, would depend upon the Council's assessment of the merits of any planning application put forward."

42. Mr Turney sought to turn this through 180 degrees, and submitted that the fact that a particular site happens to be suitable for housing development cannot, without more, constitute an exceptional circumstance justifying an alteration of the Green Belt. I agree with Mr Turney insofar as this goes, but in my view there is not a precise symmetry here. The issue in Solihull was whether land could be allocated to Green Belt: in other words, the point was addition, not subtraction. The mere fact that a particular parcel of land happens to be unsuitable for housing development cannot be a Green Belt reason for expanding the boundary. In a case where the issue is the converse, i.e. subtraction, the fact that Green Belt reasons may continue to exist cannot preclude the existence of countervailing exceptional circumstances – otherwise, it would be close to impossible to revise the boundary. These circumstances, if found to exist, must be logically capable of trumping the purposes of the Green Belt; but whether they should not in any given case must depend on the correct identification of the circumstances said to be exceptional, and the strength of the Green Belt purposes. In the present context, one needs to continue to bear in mind paragraph 10 of Hunston (see paragraph 39 above), and to draw a distinction between, on the one hand, suitability without more, and on the other hand, suitability and availability. Suitability *simpliciter* cannot logically be envisaged as an exceptional circumstance (here, the second sentence of paragraph 36 of Solihull applies); suitability and availability may do, subject to the refinements discussed below.

43. Miss Ellis placed particular reliance on the decision of Patterson J in IM Properties Development Limited v Lichfield District Council [2014] EWHC 2440 (Admin). This case was decided after the first instance decision in Solihull and before the case reached the Court of Appeal. Patterson J observed that the only statutory duty was that contained in section 39(2) of the Act (see paragraph 97 of her judgment). At paragraphs 99 and 100 Patterson J said this:-

> "99. Here, the release from the Green Belt as 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 test 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 judgement where the members had to consider whether the release of Green Belt land was necessary and, in so determining, had to be guided by their statutory duty to achieve sustainable development."

44. "Necessary" may be seen as broadly synonymous with "the existence of exceptional circumstances". Mr Turney submitted that these passages are both *obiter* and inconsistent with Solihull. It is unnecessary for me to reach concluded views about this. My preference would be to express the point made in the final sentence of paragraph 100 slightly differently: the issue is whether, in the exercise of planning judgment and in the overall context of the positive statutory duty to achieve sustainable development, exceptional circumstances existed to justify the release of Green Belt.

The Claimant's Grounds

45. Mr Turney has advanced three grounds on behalf of the Claimant, namely:

(1) Failure to consider whether housing numbers should be reduced to prevent release of Green Belt land;

(2) Failure to apply national policy in considering the release of Green Belt land;

(3) Failure to comply with the Environmental Assessment of Plans and Programmes Regulations 2004 ("the SEA Regulations").

The Claimant's Grounds Developed

46. As I indicated during oral argument, it seems to me that Ground 2 is logically prior to Ground 1. They are, in any event, inextricably intertwined. Accordingly, I will take these together. Although advanced under a different statutory regime, it also seems to me that Mr Turney's third Ground interacts with his earlier Grounds.

47. The primary thrust of Mr Turney's submission, both in oral argument and in his written Reply, is that the Inspector adopted a circular approach. The evidence demonstrates that she considered the 30,550 figure for new housing, and concluded that it was sound, before paying any attention to the environmental and Green Belt constraints. This is borne out by the note the Inspector sent to the parties (see paragraph 35 above), and indeed her examination of Policy 2 in her report. At no stage, so the submission runs, did the Inspector properly consider whether the meeting of objectively assessed needs would be consistent with national policy; and, if so, to what extent. Furthermore, the formulation of the main issue assumed that objectively assessed needs should be met: hence the circularity. Put another way, the "exceptional circumstances" are defined as the requirement to meet the objectively assessed needs.

48. On Mr Turney's argument, the use of the term "insurmountable constraints" in paragraph 48 of the Inspector's report shows that proper regard was not paid to the question of "exceptional circumstances"; the two terms or concepts cannot be readily assimilated the one to the other. Accordingly, the Inspector's approach violated paragraph 47 of the NPPF and a proper application of the two-stage test stipulated by the Court of Appeal in Hunston.

49. Mr Turney advanced two further, specific submissions. First, he contended that the hierarchical approach underpinning both the Inspector's report and the ACS itself suggests there were no exceptional circumstances. Secondly, Mr Turney advanced a methodological attack on the two-stage process, namely Part 1 and Part 2 of the Local Plan. The application of this two-staged process meant that exceptional circumstances were ignored or sidelined: on the one hand, they were not properly considered within Part 1 (because the assumption was that the review of the Green Belt boundary would be left over to Part 2); on the other hand, when Part 2 is reached there would be no room for considering exceptional circumstances, because any later development plan document would have to accord weight to the ACS. The die has been cast. In support of this submission, Mr Turney drew on the Inspector's analysis of the position relating to Field Farm, where exceptional circumstances were considered. Without prejudice to his submission that this analysis was also flawed (and he made the same point as regards the Interested Parties' land, where exceptional circumstances were found), his contention was that a similar approach both could and should have been consistently applied throughout.

Analysis and Conclusions on Grounds 1 and 2

50. I agree with Mr Turney that it would be illogical, and circular, to conclude that the existence of an objectively assessed need could, without more, be sufficient to amount to "exceptional circumstances" within the meaning of paragraph 83 of the NPPF. No

recourse to what I called during oral argument the "mantra" of planning judgment could save a decision from a successful section 113 challenge in such circumstances.

51. In a case such as the present, it seems to me that, having undertaken the first-stage of the Hunston approach (sc. assessing objectively assessed need), the planning judgments involved in the ascertainment of exceptional circumstances in the context of both national policy and the positive obligation located in section 39(2) should, at least ideally, identify and then grapple with the following matters: (i) the acuteness/intensity of the objectively assessed need (matters of degree may be important); (ii) the inherent constraints on supply/availability of land *prima facie* suitable for sustainable development; (iii) (on the facts of this case) the consequent difficulties in achieving sustainable development without impinging on the Green Belt; (iv) the nature and extent of the harm to *this* Green Belt (or those parts of it which would be lost if the boundaries were reviewed); and (v) the extent to which the consequent impacts on the purposes of the Green Belt may be ameliorated or reduced to the lowest reasonably practicable extent.

52. Although it seems clear that what I have called an ideal approach has not been explicitly followed on a systematic basis in the instant case, it is a counsel of perfection. Planning Inspectors do not write court judgments. The issue which properly arises is whether the Inspector's more discursive and open-textured approach, which was clearly carried through into the ACS, was legally sufficient.

53. It is clear from (i) the formulation of the main issues; (ii) the frequent references in the Inspector's report to the need to protect the Green Belt; and (ii) the several references to "exceptional circumstances", that the Inspector had in mind the broad contours and content of paragraph 83 of the NPPF. It is indisputable that she had regard to Hunston and the need for a two-staged approach, with the ascertainment of the objectively assessed need being the "initial" stage (to adopt the epithet used by the Inspector). The main issues might have been expressed with slightly more focus and precision, but I do not accept that their formulation somehow dictated, or pre-judged, the outcome. Further, the Inspector's note dated 23rd October 2013 needs to be read in context: although her reference to the 30,550 housing figure being "sound" is somewhat ambiguous, the note read as a whole indicates that the Inspector had not yet reached a conclusion about Green Belt matters. I read the note as indicating that the Inspector had reached the provisional conclusion which we may now discern at paragraph 48 of her report.

54. Paragraphs 40 and 41 of her report indicate that the Inspector considered that the need for additional housing supply was acute, both generally and in this particular area. Paragraph 48 of the report indicates that in the Inspector's view the 30,550 figure was both feasible and deliverable, although at that stage she was stating in terms that consistency with other NPPF policies would be considered later in the report. Thus, *pace* Miss Ellis' skeleton argument and submissions, I do not read the last sentence of paragraph 48 of the report as containing any finding about exceptional circumstances. We see such a finding at paragraphs 67 and 70 (in relation, respectively, to Field Farm and the Interested Parties' land at Toton), and at paragraph 110ff. The "insurmountable obstacles", or their absence, relate to matters of feasibility and deliverability. Even if I am wrong about this, and paragraph 48 is to be read as a harbinger of paragraph 111, it seems clear that what the Inspector must be taken to

have meant is that the reason why the obstacles were surmountable was that exceptional circumstances existed.

55. Field Farm and Toton are separately addressed because these sites were allocated in the ACS as land suitable for immediate development. The Inspector was considering specific sites, not strategic areas the precise delineations of which would require subsequent analysis and review. The key sentence in paragraph 67, "having regard to the housing requirements and limited availability of alternative, sustainable sites", contains in these circumstances a logically coherent reason for holding that exceptional circumstances existed. Mr Turney sought to persuade me that the issue of limited availability could not sensibly add to the issue of objective assessment of need, but I cannot agree; this was a free-standing factor which was clearly capable of amounting to an exceptional circumstance. Additionally, an examination of all the reasoning contained within paragraphs 63-67 of the report reveals that the Inspector paid regard to the purposes of the Green Belt, the nature and quality of the proposed impingement, and the issue of sustainability. As for the latter, this Green Belt was drawn close to the City boundary and it would have been difficult to have undertaken sustainable development beyond the outer boundary of the Green Belt. This was an issue which, albeit hardly decisive, was properly taken into account – it is referred to specifically in paragraph 84 of the NPPF. All these factors were properly assessed in determining the existence of exceptional circumstances.

56. A similar approach underpins the Inspector's broader consideration of the Spatial Strategy and Policy 3 within the ACS. The formulation of the issue, "whether the approach [in the ACS] to making alterations to the Green Belt is justified", is a reference to paragraphs 47, 83 and 86 of the NPPF. At paragraph 110, the Inspector accepts the Defendants' contention that the acuteness of the need is such that some intrusion into the Green Belt (and its consequent revision) will be required. Paragraph 111 may be quite brief but, read both in isolation and in conjunction with the remainder of the report, makes clear that the Inspector is continuing to ask herself the same sorts of questions that she posed, and answered, at paragraphs 63-67 of her report: viz. (i) limited availability; (ii) the location of the Green Belt in relation to the main built-up area of Nottingham; and (iii) sustainability (to which paragraph 86 of the NPPF relates, in particular). Footnote 26 to her report (relating to the first sentence of paragraph 111) is a legally accurate statement of the position under paragraphs 47, 83 and 86 of the NPPF. It follows that the core conclusion in the first sentence of paragraph 111 of the report – that exceptional circumstances exist – cannot be successfully impugned. Albeit with less than complete precision, I consider that the Inspector has, at least in legally sufficient terms, followed the sort of approach I have set out under paragraphs 19, 21, 22 and 43 above.

57. I agree with Miss Ellis that Mr Turney's submissions go too far, and tend to the very circularity he seeks to identify in the Inspector's report. Specifically, his submissions are in danger of according excessive weight to paragraph 83 of the NPPF, by stacking up a series of objections to sustainable development which came close to being insurmountable.

58. As for Mr Turney's separate point about the two-staged approach adopted by the ACS, I agree that, in principle, there is a danger of the issue of exceptional circumstances falling between two metaphorical stools. If, for example, exceptional circumstances were not properly considered at Stage 1, it would be difficult for the

issue properly to be addressed at Stage 2. Although section 19(2)(a) of the Act would no doubt continue to apply, the ACS would be a powerful dictator of subsequent policy, particularly in circumstances where Stage 2 is only concerned with the detail, and not with the principle.

59. The question arises of whether the flawed approach I have just outlined was, in fact, the approach adopted by the Inspector. In my judgment, it was not. As the Inspector correctly observed, a two-staged approach is not impermissible in principle although it is not expressly authorised by the NPPF. The Inspector recognised that there were some weaknesses inherent in such an approach (see paragraphs 116 and 117), but these were manageable. In my judgment, the key point is that the Inspector was able to reach an evidence-based conclusion as to the presence of exceptional circumstances at the first stage, and that she was not in some way adjourning the matter over for substantive consideration at Stage 2. Further, in modifying the ACS so as to achieve a sequential approach to site release (with Green Belt release occurring, as it were, last) the Inspector was achieving an overall state of affairs which, as she put it, "should secure an effective policy consistent with national policy" (paragraph 118). Not merely was this a legally tenable approach, it was in my judgment both sensible and appropriate in the circumstances of the instant case. I would not go so far as to hold that paragraph 118 of the report directly applied paragraph 83 of the NPPF, and somehow satisfied the touchstone of exceptional circumstances; but what it did was to bring about an outcome which has the strong tendency to protect the Green Belt and its purposes. For example, to the extent that release of Green Belt land would be required, the first candidate for release would be land nearer the inner boundary. The sequential approach was, therefore, a factor to be taken into account.

60. I agree with Miss Ellis that in relation to the Part 2 Local Plan exercise it would remain incumbent on the Defendants to act consistently with national policy, in line with sections 19(2)(a) and 34 of the Act.

61. I am far from convinced that Mr Turney's first ground really adds to his second. The complaint is that consideration was not given to a figure lower than 30,550, such that revision of the Green Belt might not be required. It is of course correct that the majority of the new housing will not be built on Green Belt land, from which it follows that removing several thousand homes from the aggregate figure could well lead to the consequence that no Green Belt release would be required. However, the issue for the Inspector was whether the release of some Green Belt land was justified, having regard to the objectively assessed need. The Inspector concluded that it was, applying paragraphs 47, 83 and 86 of the NPPF. If it was not justified, the Green Belt boundaries would have remained as before. It was not incumbent on the Inspector to "salami-slice" the objectively assessed need further, and to consider some hypothetical lower number. Such an obligation would only have arisen if meeting the whole of the objectively assessed need was not justified, because exceptional circumstances did not exist to amount to that justification.

62. Given these conclusions, the Interested Parties do not need to succeed on their separate submissions directed to the particular attributes of their land at Toton. However, I accept the submissions of Mr Richard Honey for the Interested Parties that his clients' land may be separately considered. First, the subject land is a co-ordinated, mixed-use site, and the Claimants in these proceedings are not challenging those aspects of the ACS which cover employment and transport. Secondly, detailed

consideration was given at paragraphs 68-76 of the report to whether exceptional circumstances existed to justify the revision of the Green Belt to accommodate this particular mixed-use site. Given that the Interested Parties' site was both highly sustainable and on built-up land, albeit within Green Belt, the robust conclusions appearing at paragraph 70 of the Report are hardly surprising.

63. It follows that, despite the clarity and force of Mr Turney's submissions on his primary grounds of appeal, I cannot accept them.

Ground 3

64. By this Ground the Claimant seeks to challenge the Defendants' sustainability appraisal dated June 2012, which it is submitted failed to satisfy the requirements of the SEA Regulations. The general principles are not in dispute: the SEA Regulations provide the framework for development consent decisions to be subject to an assessment of their environmental effects, in line with the purposive interpretation mandated by the SEA Directive (2001/42/EC) (see, for a detailed exposition, Walton v Scottish Ministers [2013] PTSR 51).

65. Regulation 12 of the SEA Regulations provides:-

> "**Preparation of Environmental Report**
>
> 12.—(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this Regulation.
>
> (2) The report shall identify, describe and evaluate the likely significant effects on the environment of—
>
> (a) implementing the plan or programme; and
>
> (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme."

66. Schedule 2 to the SEA Regulations identifies the matters which, so far as may be relevant, ought to be included in the report.

67. The jurisprudence governing the application of Regulation 12 is not substantially in dispute. I am able to draw heavily on paragraphs 19 and 20 of Mr Turney's Skeleton Argument. The following propositions emerge from the decisions of this Court in Save Historic Newmarket v Forest Heath District Council [2011] JPL 1233 and Heard v Broadland DC [2012] Env LR 233:-

(1) It is necessary to consider reasonable alternatives, and to report on those alternatives and the reasons for their rejection;

(2) While options may be rejected as the Plan moves through various stages, and do not necessarily fall to be examined at each stage, a description of what alternatives were examined and why has to be available for consideration in the environmental report;

(3) It is permissible for the environmental report to refer back to earlier documents, so long as the reasons in the earlier documents remain sound;

(4) The earlier documents must be organised and presented in such a way that it may readily be ascertained, without any paper chase being required, what options were considered and why they had been rejected;

(5) The reasons for rejecting earlier options must be summarised in the final report to meet the requirements of the SEA Directive;

(6) Alternatives must be subjected to the same level of analysis as the preferred option.

68. In City and District of St Albans v SSCLG [2009] EWHC 1280 (Admin) Mitting J quashed the relevant policies because reasonable alternatives to them were not identified, described and evaluated before the choice was made.

69. Section 7 of the Sustainability Assessment, "Developing and Appraising Strategic Options", is at issue. This purported to consider reasonable alternatives in line with the SEA Directive and the SEA Regulations. Three options were specifically considered, namely (1) what was described as the "high growth" option, entailing 71,700 new homes, (2) the "medium growth" or ACS option (based on a figure of 52,050 homes – which differs from the eventual ACS figure substantially, although nothing appears to turn on this), and (3) a "low growth" option based on what was described as past house building rates (41,888 new homes). The sustainability assessment analysed each option. It concluded that the high growth option secured more housing than was necessary, and was unlikely to be achievable in any event. As for the medium growth option:-

> "[It] would provide housing in line with the Regional Plan. Its impacts would be similar to that of Option 1 without such positive and negative impacts on the corresponding SA objectives, given that less housing would be provided, but it would meet the needs of the local population, and would allow for more limited in-migration to the planned areas. This level of growth would have a positive impact on the housing and health SA objectives but a negative impact on heritage, environment, bio-diversity and GI, landscape, natural resources and flooding, waste, energy and climate change and transport SA objectives."

70. As for the low growth option:-

> "[It] proposes housing growth below that of the Regional Plan. This is only a minor positive impact on the housing SA objective, as less housing will be provided. All other SA

> objectives either have a negative, neutral or unknown score. Constraining housing supply would have a negative impact on health as this could exacerbate homelessness. This level of housing provision would not meet the needs of the local population (using the 2008 based housing projections); out-migration would also be unlikely. The impact on sensitive land or sites would be less, hence the lower negative scores for heritage, environment, bio-diversity and GI, landscape, natural resources and flooding, waste, energy and climate change and transport SA objectives. There would also be a negative impact on the employment SA objective as this scenario would constrain the labour force. No further mitigation is put forward and is set out for the first two appraisals."

71. On my understanding, Mr Turney advances two related submissions on the Sustainability Assessment. First, he submits that no consideration was given to an option which, in terms, entailed no impingement on existing Green Belt land (in which circumstances no Green Belt review would be required). Secondly, criticism is made of the manner in which the low growth option was examined, in particular in the context of the implications for the Green Belt. In regard to both submissions, Mr Turney took issue with paragraph 22 of Miss Gibson's witness statement, which provides:-

> "The quantum of development allowed for in this lower, below trend assessment of housing provisions was broadly equivalent to the level of housing provision possible without requiring development in the Green Belt, according to the Councils' strategic housing land availability assessments. (DDB8 demonstrates how this is worked out) and the sustainability consequences described would be the same."

72. Mr Turney submits that reaching down into Miss Gibson's witness statement entails an impermissible "paper chase", particularly when one factors in the need to bring into consideration the calculations contained within DDB8.

73. In his written submissions Mr Turney took issue with other passages in Miss Gibson's witness statement which indicate how the evidence base for the Sustainability Assessment was assembled. Mr Turney did not press these points in oral argument, and in my judgment they relate to matters of such minutiae that they cannot properly advance the gravamen of the Claimant's third ground.

74. I cannot accept Mr Turney's submissions on his third ground. Pages 116 and 117 of the Sustainability Assessment do expressly consider the consequences of not reviewing the boundaries to the Green Belt, and the consequent advantages and disadvantages. In my judgment, having regard to paragraph 22 of Miss Gibson's witness statement does not entail an impermissible paper chase: this is admissible, expert evidence which explains the context of the low-growth option within the Sustainability Assessment. This is the option which did not involve incursion into the Green Belt. Furthermore, I take Miss Ellis' point that there were district-specific sustainability assessments within the scope of the overall exercise: see for example, pages 82 and 87-142 in relation to Broxtowe Borough Council. Ultimately, it was for

the Defendants in the exercise of their collective planning judgement to identify which "reasonable alternatives" needed to be considered, and in my view the approach taken simply cannot be impugned in these proceedings for error of law.

Conclusion

75. This appeal brought under section 113 of the Planning and Compulsory Purchase Act 2004 must be dismissed.

Neutral Citation Number: [2013] EWCA Civ 1610

Case No: C1/2013/2734

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEENS BENCH DIVISION
ADMINISTRATIVE COURT
HIS HONOUR JUDGE PELLING QC (Sitting as a Judge of the High Court)
CO 4686 2013

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/12/2013

Before :

LORD JUSTICE MAURICE KAY
LORD JUSTICE RYDER
and
SIR DAVID KEENE

Between :

City and District Council of St Albans	**Appellant**
- and -	
The Queen (on the application of) Hunston Properties Limited	**1st Respondent**
Secretary of State for Communities and Local Government and anr	**2nd Respondent**

Matthew Reed (instructed by the **Appellant's Head of Legal Services**) for the **Appellant**
Paul Stinchcombe QC and Ned Helme (instructed by **Photiades Solicitors**) for the **First Respondent and (Treasury Solicitors** for the **Second Respondent).** The Second Respondent did not appear.

Hearing date: 20 November 2013

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

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Sir David Keene :

Introduction

1. This appeal concerns the interpretation of the relatively recent (March 2012) National Planning Policy Framework ("the Framework") and in particular of the policies contained therein in respect of residential development proposals. The issue is one which arises in the situation where, as in the present case and in a number of other planning authority areas, there is not as yet a local plan produced after and in accordance with the Framework.

2. Hunston Properties Limited ("Hunston") applied for outline planning permission for the construction of 116 dwellings, a care home and some associated facilities on five hectares of agricultural land within the district of St Albans. Permission was refused by the District Council, now the appellant, principally on the ground that the site was almost entirely within the Metropolitan Green Belt. Hunston appealed under Section 78 of the Town and Country Planning Act 1990 ("the 1990 Act") and, simplifying the history of the matter, the appeal was dismissed on 12 March 2013 by an inspector appointed by the Secretary of State. Hunston then challenged that decision in the Administrative Court under Section 288 of the 1990 Act. H.H. Judge Pelling QC, sitting as a judge of the High Court, quashed the inspector's decision, and the Council now appeals with permission granted by Sullivan LJ. The Secretary of State appeared by counsel in the Administrative Court to resist the Section 288 challenge but seeks to play no part in these appeal proceedings.

3. I note the basis on which Sullivan LJ gave permission to appeal. He said that he was not persuaded that the appeal had a real prospect of success, but he found there to be a compelling reason for the appeal to be heard so that there could be a "definitive answer to the proper interpretation of paragraph 47" of the Framework, and in particular the interrelationship between the first and second bullet points in that paragraph.

Policy Context

4. The Framework was published by the Government in order to set out its planning policies for England, so as to give guidance to local planning authorities and other decisions-makers in the planning system. It was seen by the Minister for Planning as simplifying national planning guidance "by replacing over a thousand pages of national policy with around fifty, written simply and clearly." Unhappily, as this case demonstrates, the process of simplification has in certain instances led to a diminution in clarity. It will be necessary to set out the wording of paragraph 47 of the Framework very soon in this judgment. I have to say that I have not found arriving at "a definitive answer" to the interpretative problem an easy task, because of ambiguity in the drafting. In such a situation, where one is concerned with non-statutory policy guidance issued by the Secretary of State, it would seem sensible for the Secretary of State to review and to clarify what his policy is intended to mean. Nonetheless, the Supreme Court in *Tesco Stores Ltd -v- Dundee City Council* [2012] UKSC 13 has emphasised that policy statements are to be interpreted objectively by the court in accordance with the language used and in its proper context, so that the meaning of the policy is for the courts, even if the application of the policy is for planning authorities and other planning decision-makers: see paragraphs 18 and 19. That case

was concerned with policy in a statutory development plan, but it would seem difficult to distinguish between such a policy statement and one contained in non-statutory national policy guidance. I accept, therefore, as do the parties to this appeal, that it is for this court to seek to arrive at the appropriate meaning of paragraph 47 of the Framework.

5. That paragraph begins the section of the Framework entitled "Delivering a wide choice of high quality homes." Insofar as material for present purposes, it reads as follows:

> "47. To boost significantly the supply of housing, local planning authorities should:
>
> - Use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
>
> - Identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land."

These are the two bullet points referred to by Sullivan LJ.

6. There is no doubt, that in proceeding their local plans, local planning authorities are required to ensure that the "full objectively assessed needs" for housing are to be met, "as far as is consistent with the policies set out in this Framework". Those policies include the protection of Green Belt land. Indeed, a whole section of the Framework, Section 9, is devoted to that topic, a section which begins by saying "The Government attaches great importance to Green Belts": Paragraph 79. The Framework 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." It seems clear, and is not in dispute in this appeal, that such a Local Plan could properly fall short of meeting the "full objectively assessed needs" for housing in its area because of the conflict which would otherwise arise with policies on the Green Belt or indeed on other designations hostile to development, such as those on Areas of Outstanding Natural Beauty or National Parks. What is likely to be significant in the preparation of this Local Plan for the district of St Albans is that

virtually all the undeveloped land in the district outside the built up areas forms part of the Metropolitan Green Belt.

7. However, no such new Local Plan for this district currently exists. There remains the old-style Local Plan, the St. Albans City and District Local Plan Review, dating from 1994, but it is not suggested that its contents insofar as they deal with housing land requirements are of any relevance today. The most recent policy document containing a quantified assessment of such requirements in the district was the East of England Plan, which contained a figure of 360 dwelling units per annum, but that Plan was revoked on the 3 January 2013, in accordance with the Government's move away from strategically based figures. Thus, as the inspector in the present case put it:

> "there is a policy vacuum in terms of the housing delivery target." [paragraph 23]

8. The appellant Council resolved on 17 January 2013 that the target of 360 dwellings per annum from 2001 to 2021 remained the most appropriate interim housing target for housing land supply purposes.

9. There are a number of other policies in the Framework which are of relevance. At paragraph 13 it states that the Framework:

> "constitutes guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications."

Paragraph 14 begins by saying that:

> "At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking."

It goes on in that same paragraph to spell out what that means for plan-making and for decision-taking. In respect of the latter, it sets out two bullet points. The first deals with cases where there is a development plan. The second is relevant to the present appeal:

> "where the development plan is absent, silent or relevant policies are out-of-date, [it means] granting permission 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."

A footnote, no.9, gives examples of such policies as are meant by that last sentence, including policies relating to land designated as Green Belt.

10. As I have already said, the Framework includes specific policies to protect Green Belt land. Paragraphs 87 and 88 are of particular relevance. They state:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 88. When considering any planning application, local authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

The Framework does not seek to define further what "other considerations" might outweigh the damage to the Green Belt, but in principle there seems no reason why in certain circumstances a shortfall in housing land supply might not do so.

The Planning Appeal and the Inspector's Decision

11. It was agreed at the planning inquiry that the proposed development on this site would constitute inappropriate development in the Green Belt. The inspector noted that, by virtue of paragraph 87 of the Framework, it should not be permitted except in very special circumstances. That led her to the topic of housing land supply.

12. The inspector referred to paragraph 47 of the Framework and then considered the development plan position. She observed that there was "no definitive housing delivery requirement" in any relevant plan (paragraph 24 of decision letter). She described the Department for Communities and Local Government ("DCLG") 2008 projections of new households as providing the most up-to-date figures. They gave a projection of 688 new households per annum in this district. Hunston contended for various upwards adjustments of that annual figure, but even without those it can be seen that arithmetically the projection produced a five year requirement of 3,440 dwelling units. Hunston's figure was 3,600 units.

13. However, the inspector regarded such figures as failing to take account of the constraints on development within the district, particularly the Green Belt. She noted that the old East of England (regional) Plan had reflected such constraints and had come up with its figure of 360 units per annum:

> "26... striking a balance of the social, economic and environmental objectives with the aim of achieving sustainable development. The balance was evidence based, consulted upon, subject to a sustainability appraisal, justified and publically examined."

The inspector added that there was no evidence to suggest that the constraints would be any less applicable now, and at paragraph 29 she said that the figure in the East of England Plan (the RSS):

> "29. ... provided housing requirements for the period to 2021 and took account of the severe constraints in the District. It provides the only figure that has been scrutinised through the independent examination process. Government policy aims for localism rather than top down set targets but there was nothing to indicate that the constraints identified in the RSS process are reduced because the RSS is no longer extant."

14. Consequently, the inspector concluded as follows on housing need:

> "At this time and in the absence of an identified need that takes account of any constraints to development and acknowledging the age of the RSS data, and the fact that the RSS has now been revoked, I consider it is reasonable that the annual housing target should have regard to constraints in the district and be that which takes them into account. As resolved by the Council on 17 January 2013, provision should be made for a minimum of 360 residential units per annum on specific deliverable sites." (Paragraph 30)

15. On the supply side of the exercise, the District Council put forward a figure of 2183 dwelling unit sites available within five years. On analysis, the inspector found that that was too high by about 100 units, but nonetheless it meant that there was a supply of housing land in excess of the five year requirement if that was put at 360 dwellings per annum. As a five year total, she appears to have put the total five year housing land supply at about 2080 units. Thus the inspector at paragraph 67 concluded:

> "67. Additional delivery of housing would be of value as would the proposed affordable housing provision whether at 35% or 53%. Nevertheless, the five year housing land supply has been found to be robust even if the delivery may not be as high as the Council advises on some sites. A 5% buffer over and above the five year supply has been found to be appropriate and there is a realistic prospect that adequate provision has been made for the delivery of five years plus 5% supply of housing land. Therefore the supply of additional housing on a greenfield Green Belt site is not afforded weight."

16. The inspector in her overall conclusion on the residential development gave weight to certain factors, but said:

> "However, in the absence of an identified need for the release of a greenfield Green Belt site, the substantial harm to the Green Belt and significant harm to the character and appearance of the countryside are not clearly outweighed by the other material considerations either individually or as a whole. Therefore the very special circumstances necessary to justify the inappropriate residential development in the Green Belt do not exist." (Paragraph 71)

She added that the development would be contrary to Local Plan policies and to Government policy in the Framework, and consequently she dismissed the appeal.

The High Court Decision

17. In the Section 288 proceedings it was argued by Hunston that the inspector had erred by failing to identify the "full objectively assessed needs" for housing in the area, as required by the first bullet point in paragraph 47 of the Framework, and had failed, in this situation where there was no new Local Plan containing housing requirements, to recognise the shortfall between those needs and the supply of housing sites. Had she adopted the correct policy approach, she might have found that very special circumstances, sufficient to outweigh the contribution of the appeal site to the Metropolitan Green Belt, existed. Thus she erred in law.

18. The deputy judge accepted this argument. In his judgment at paragraph 28 he said:

> "28. Where it is being contended that very special circumstances exist because of a shortfall caused by the difference between the full objectively assessed needs for market and affordable housing and that which can be provided from the supply of specific deliverable sites identified by the relevant planning authority, I do not see how it can be open to a LPA or Inspector to reach a conclusion as to whether that very special circumstance had been made out by reference to a figure that does not even purport to reflect the full objectively assessed needs for market and affordable housing applicable at the time the figure was arrived at."

He went on to add:

> "A figure that takes account of constraints should not have any role to play in assessing an assertion by an applicant in the position of HPL that an actual housing requirement has not been met."

He observed that the Framework did not encourage the use of need figures derived from such earlier regional plans as the East of England Plan, as it could have done if it had been intended by the government that such should be the approach where a new Local Plan prepared in accordance with the Framework had not been adopted.

19. The District Council had relied upon the wording of the first bullet point in paragraph 47 of the Framework and in particular the words about meeting the housing needs "as far as is consistent with the policies set out in this Framework." The Council contended that this justified the inspector's use of figures for housing needs which reflected the very substantial constraints on development within this district. The judge rejected that argument, commenting at paragraph 29:

> "... the suggestion that the words "... *in so far as is consistent with the policies set out in this Framework...*" requires or permits a decision maker to adopt an old RSS figure is unsustainable as a matter of language. That language requires

> that the decision maker considers each application or appeal on its merits. Having identified the full objectively assessed needs figure the decision maker must then consider the impact of the other policies set out in the NPPF...
>
> ...
>
> ... It is entirely circular to argue that there are no very special circumstances based on objectively assessed but unfulfilled need that can justify development in the Green Belt by reference to a figure that has been arrived at under a revoked policy which was arrived at taking account of the need to avoid development in the Green Belt."

20. He concluded that the inspector's approach had been wrong in law. The proper approach was to assess need, then identify the unfulfilled need having regard to the supply of specific deliverable sites, and then to decide whether fulfilling the need (plus any other factors in favour of permission) clearly outweighed the harm which would be caused to the Green Belt. As he rightly said, that final stage involved planning judgment, which was not for the court. As a result he quashed the inspector's decision.

Discussion

21. In essence, the issue is the approach to be adopted as a matter of policy towards a proposal for housing development on a Green Belt site where the housing requirements for the relevant area have not yet been established by the adoption of a Local Plan produced in accordance with the policies in the Framework. Such development is clearly inappropriate development in the Green Belt and should only be granted planning permission if "very special circumstances" can be demonstrated. That remains government policy: paragraph 87 of the Framework. In principle, a shortage of housing land when compared to the needs of an area is capable of amounting to very special circumstances. None of these propositions is in dispute.

22. Neither party before us sought to take issue with the inspector's findings as to the supply of housing land over the five year period in this district. But, as will be evident from the earlier passages in this judgment, the inspector found that there was no shortfall in the supply because she regarded it as necessary to identify a housing requirement figure which reflected the constraints on built development in the district generally which resulted from the extensive areas of Green Belt there. The best she felt she could do was to adopt the earlier East of England Plan figure which, though in a revoked plan, sought to take account of such constraints. Was she entitled to do so?

23. The appellant Council contends that she was. On its behalf Mr. Reed emphasises the close links between the first two bullet points of paragraph 47 of the Framework (which I will number 47(1) and (2) for the sake of convenience.) Paragraph 47(2) requires there to be five years supply of housing sites, that is to say a supply sufficient to meet a local planning authority's housing requirements for five years. But to discover what is meant by the reference to housing requirements, one has to go to paragraph 47(1), and while that refers to "the full objectively assessed needs," it also adds the qualification "as far as is consistent with the policies set out in this

Framework." That, it is submitted, means that one has to take into account such policies as those on the protection of the Green Belt. The qualification does not relate solely to the process of producing a Local Plan. Paragraph 47(1) has to be read as a whole and, if one goes to it as Hunston do for the reference to "full objectively assessed needs" when dealing with a development control decision, one must take on board the qualification as well. One cannot rely on the objectively assessed needs part without having regard to the reference to policy constraints.

24. The Council contends that the inspector used the former East of England plan figure for housing requirements while recognising that it was not ideal. But she was doing her best to arrive at an assessment which reflected the whole of paragraph 47(1) and not just part of it, so as to include the constraints flowing from other policies as well as the household projections. The mere fact that this was a development control situation as opposed to local plan formulation does not, it is said, undermine the need to reflect the whole of paragraph 47(1). The policies in the Framework provide guidance, as paragraph 13 states, both for the drawing up of plans and in the determination of planning applications.

25. I see the force of these arguments, but I am not persuaded that the inspector was entitled to use a housing requirement figure derived from a revoked plan, even as a proxy for what the local plan process may produce eventually. The words in paragraph 47(1), "as far as is consistent with the policies set out in this 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.

26. Moreover, I accept Mr Stinchcombe QC's submissions for Hunston that it is not for an inspector on a Section 78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. An inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done. That process is an elaborate one involving many parties who are not present at or involved in the Section 78 appeal. I appreciate that the inspector here was indeed using the figure from the revoked East of England Plan merely as a proxy, but the government has expressly moved away from a "top-down" approach of the kind which led to the figure of 360 housing units required per annum. I have some sympathy for the inspector, who was seeking to interpret policies which were at best ambiguous when dealing with the situation which existed here, but it seems to me to have been mistaken to use a figure for housing

requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure.

27. It follows from this that I agree with the judge below that the inspector erred by adopting such a constrained figure for housing need. It led her to find that there was no shortfall in housing land supply in the district. She should have concluded, using the correct policy approach, that there was such a shortfall. The supply fell below the objectively assessed five year requirement.

28. However, that is not the end of the matter. The crucial question for an inspector in such a case is not: is there a shortfall in housing land supply? It is: have very special circumstances been demonstrated to outweigh the Green Belt objection? As Mr Stinchcombe recognised in the course of the hearing, such circumstances are not automatically demonstrated simply because there is a less than a five year supply of housing land. The judge in the court below acknowledged as much at paragraph 30 of his judgment. Self-evidently, one of the considerations to be reflected in the decision on "very special circumstances" is likely to be the scale of the shortfall.

29. But there may be other factors as well. One of those is the planning context in which that shortfall is to be seen. The context may be that the district in question is subject on a considerable scale to policies protecting much or most of the undeveloped land from development except in exceptional or very special circumstances, whether because such land is an Area of Outstanding Natural Beauty, National Park or Green Belt. If that is the case, then it may be wholly unsurprising that there is not a five year supply of housing land when measured simply against the unvarnished figures of household projections. A decision-maker would then be entitled to conclude, if such were the planning judgment, that some degree of shortfall in housing land supply, as measured simply by household formation rates, was inevitable. That may well affect the weight to be attached to the shortfall.

30. I therefore reject Mr Stinchcombe's submission that it is impossible for an inspector to take into account the fact that such broader, district-wide constraints exist. The Green Belt may come into play both in that broader context and in the site specific context where it is the trigger for the requirement that very special circumstances be shown. This is not circular, nor is it double-counting, but rather a reflection of the fact that in a case like the present it is not only the appeal site which has a Green Belt designation but the great bulk of the undeveloped land in the district outside the built-up areas. This is an approach which takes proper account of the need to read the Framework as a whole and indeed to read paragraph 47 as a whole. It would, in my judgment, be irrational to say that one took account of the constraints embodied in the polices in the Framework, such as Green Belt, when preparing the local plan, as paragraph 47(1) clearly intends, and yet to require a decision-maker to close his or her eyes to the existence of those constraints when making a development control decision. They are clearly relevant planning considerations in both exercises.

31. There seemed to be some suggestion by Hunston in the course of argument that a local planning authority, which did not produce a local plan as rapidly as it should, would only have itself to blame if the objectively-assessed housing need figures produced a shortfall and led to permission being granted on protected land, such as Green Belt, when that would not have happened if there had been a new-style local plan in existence. That is not a proper approach. Planning decisions are ones to be

arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers.

32. Where this inspector went wrong was to use a quantified figure for the five year housing requirement which departed from the approach in the Framework, especially paragraph 47. On the figures before her, she was obliged (in the absence of a local plan figure) to find that there was a shortfall in housing land supply. However, decision-makers in her position, faced with their difficult task, have to determine whether very special circumstances have been shown which outweigh the contribution of the site in question to the purposes of the Green Belt. The ultimate decision may well turn on a number of factors, as I have indicated, including the scale of the shortfall but also the context in which that shortfall is to be seen, a context which may include the extent of important planning constraints in the district as a whole. There may be nothing special, and certainly nothing "very special" about a shortfall in a district which has very little undeveloped land outside the Green Belt. But ultimately that is a matter of planning judgment for the decision-maker.

Conclusion

33. The inspector did err in law in the approach she adopted to calculating the housing land requirement over the five year period. I would therefore quash her decision. The Section 78 appeal will consequently have to be redetermined in accordance with the guidance in this judgment, if my Lords agree. I would dismiss this appeal.

Lord Justice Ryder:

34. I agree.

Lord Justice Maurice Kay:

35. I also agree.

Neutral Citation Number: [2012] EWHC 791 (Admin)

Case No: CO/3027/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30th March 2012

Before :

Stuart Catchpole QC
(Sitting as a Deputy High Court Judge)

- -

Between :

BHAGAT SINGH HUNDAL	**Claimant**
- and -	
SOUTH BUCKS DISTRICT COUNCIL	**First Defendant**
- and -	
THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**Second Defendant**

- -
- -

Michael Bedford (instructed by **Pitmans LLP**) for the **Claimant**
Ian Albutt (instructed by **South Bucks District Council**) for the **First Defendant**
The Second Defendant did not appear and was not represented

Hearing date: 15th March 2012

- -

Approved Judgment

Stuart Catchpole QC :

INTRODUCTION

1. In November 1998, the Claimant purchased a house and land known as Fourells, Richings Park, Iver, Buckinghamshire ("Fourells"). Fourells comprises a dwelling house with gardens to the front and rear. It also comprises a reasonably substantial paddock which adjoins the boundary of the rear garden.

2. The First Defendant is the local planning authority for the area in which Fourells and the surrounding land at Richings Park are situated. Amongst other things, the First Defendant was under a duty to produce Development Plan Documents ("DPDs") for its area pursuant to Part 2 of the Planning and Compulsory Purchase Act 2004. The First Defendant prepared and adopted a DPD known as the South Bucks Core Strategy ("the Core Strategy"). The First Defendant adopted the Core Strategy on 22 February 2011. As required by the relevant legislation, the Core strategy had been subject to independent examination by an inspector appointed by the Second Defendant. That report was dated 31 January 2011. The Second Defendant has played no part in the present appeal.

3. In simple terms, the Claimant wishes to change the designation of the rear garden at Fourells and the Paddock as part of the Green Belt. He also wished to have the Paddock identified as land appropriate for housing development. Neither the Inspector nor the First Defendant accepted his submissions. As such, the Core Strategy has maintained both the rear garden at Fourells and the Paddock as part of the Green Belt. The only matter which is challenged in the present appeal is the continued designation of the rear garden as part of the Green Belt.

4. As is set out in more detail below, the rear garden of Fourells was included in the Green Belt in the Local Plan adopted in 1999. Underlying all of the arguments advanced by the Claimant is the submission that the Green Belt was not lawfully extended to include the rear garden of Fourells in 1999. This is because, according to the Claimant, the Green Belt can only be extended if there are exceptional circumstances and none were demonstrated or relied on at the time that the decision to include the rear garden of Fourells in the Green Belt was made. Indeed, on the Claimant's case, the Inspector who conducted the relevant inquiry in 1997 positively concluded that there were no exceptional circumstances.

THE GROUNDS OF CHALLENGE

5. The challenge is made on two grounds.

6. Under the first ground, the Claimant contends that the Inspector appointed by the Second Defendant erred in law in carrying out her independent examination of the Core Strategy. Pursuant to Regulation 31 of the Local Development (England) Regulations 2004 ("the 2004 Regulations"), the Inspector was required to consider, amongst other things, whether the Core Strategy proposed by the First Defendant was "sound".

7. The Claimant contends that the Inspector's conclusion that it was sound was in error because she needed to determine whether the Core Strategy was consistent with

national policy including national policy as set out in PPG2. The Claimant contends that the Inspector did not have regard to the full history of the Green Belt boundary at the Claimant's property (and, in particular, the alleged error of law in extending the Green Belt to include the rear garden of Fourells) because of a mistaken belief that she could not change the Green Belt boundary by reason of events which took place before the adoption of the 1999 Local Plan.

8. The second ground alleges that, because of those errors, the First Defendant should not have adopted the Core Strategy (in relation to the rear garden land) and the recommendations from the Inspector because they were made on a flawed basis.

9. As a result the Claimant says that he has been prejudiced.

THE RELIEF SOUGHT

10. The relief sought is an order quashing the core strategy and its associated Proposals Map to the extent that they seek to include the rear garden at Fourells land within the Green Belt. As I have already noted, there was no challenge in the present proceedings to the continued designation of the Paddock as part of the Green Belt.

THE RELEVANT STATUTORY PROVISIONS, GUIDANCE AND AUTHORITIES

The obligation on the First Defendant to prepare and maintain a local develop scheme

11. Section 15 of the Planning and Compulsory Purchase Act 2004 ("the PCPA 2004") as amended sets out the statutory obligation on the First Defendant to prepare a local development scheme:

> *15. **Local Development Scheme***
> *(1) The local planning authority must prepare and maintain a scheme to be known as their local development scheme.*
> *(2) The scheme must specify –*
> *…*
> *(aa) the local development documents which are to be development plan documents;*
> *(b) the subject matter and geographical area to which each [development plan document] is to relate;*

12. Pursuant to Section 15(8) of the PCPA 2004, the local planning authority must revise their scheme at such time as they consider appropriate or when directed to do so by the Secretary of State. That ties in with the obligation on the local authority under section 13 of the PCPA 2004:

> *13. **Survey of Area***
> *(1) The local planning authority must keep under review the matters which may be expected to affect the development of their area or the planning of its development.*
> *(2) These matters include –*

> *(a) the principal physical, economic and environmental characteristics of the area of the authority;*
> *(b) the principal purposes for which land is used in the area;*
> *(c) the size, composition and distribution of the population of the area;*
> *(d) the communications, transport system and traffic of the area;*
> *(e) any other considerations which may be expected to affect those matters;*
> *(f) such other matters as may be prescribed or as the Secretary of State (in a particular case) may direct.*
>
> *(3) The matters also include –*
> *(a) any changes which the authority think may occur to any other matter;*
> *(b) the effect such changes are likely to have on the development of the authority's area or the planning of such development.*
>
> *(4) The local authority may also keep under review and examine the matters mentioned in subsections (2) and (3) in relation to any neighbouring area to the extent that those matters may be expected to affect the area of the authority.*

Local Development Plan Documents

13. Section 17 of the PCPA 2004 (as amended) provides:

> *17.* ***Local development documents***
>
> *…*
>
> *(3) The local planning authority's local development documents must (taken as a whole set out the authority's policies (however expressed) relating to the development and use of the land in their area.*
>
> *…*
>
> *(6) The authority must keep under review their local development documents having regard to the results of any review carried out under section 13…*
>
> *(7) Regulations under this section may prescribe –*
> *(a) which descriptions of local development documents are development plan documents;*
> *(b) the form and content of the local development documents;*
> *(c) the time at which any step in the preparation of such document must be taken.*
>
> *(8) A 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;*
> *(b) is approved by the Secretary of State…*

14. Regulation 6 of the Local Development (England) Regulations 2004 (SI 2004/2204) as substituted by the Local Development (England) (Amendment) Regulations 2008 (SI 2008/1371) ("the 2004 Regulations") provides:

> *6.* ***Local development documents***
> *(1) The descriptions of document prescribed for the purposes of section 17(7)(za) which are LDDs are –*
>
> *(a) any document containing statements of -*
> *(i) the development and use of land which the local planning authority wish to encourage during any specified period;*
> *(ii) objectives relating to design and access which the local planning authority wish to encourage during any specified period;*
> *(iii) any environmental, social and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i);*
> *(iv) the authority's general policies in respect of the matters referred to in paragraphs (i) to (iii).*
>
> *…*
> *(3) A document of the description in paragraph (1)(a) is referred to in the following provisions of these Regulations as a core strategy.*

15. As its name implies, the Core Strategy was a local development plan document for the purposes of Sections 15 and 17 of the PCPA and Regulation 6 of the 2004 Regulations. Pursuant to Section 20 of the PCPA 2004, the local planning authority was required to submit every development plan document to the Second Defendant for independent examination:

> *20.* ***Independent Examination***
> *(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.*
> *(8) The local planning authority must publish the recommendations and the reasons.*

The obligation to have regard to guidance issued by the Second Defendant

16. Pursuant to Section 34 of the PCPA 2004, the local planning authority was required to have regard to any guidance issued by the Secretary of State in the exercise of any function conferred on it under or by virtue of Part 2 of the PCPA 2004. That requirement applies equally to Inspectors conducting the independent review: see Barratt Developments plc v The City of Wakefield Metropolitan District Council [2010] EWCA Civ 897.

17. It is important to note that the requirement in Section 34 of the PCPA 2004 to have regard to any guidance issued by the Secretary of State does not mean that the guidance is binding on the local planning authority or the Inspector. As Carnwath LJ stated in the Barratt Developments case at paragraph 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 the 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 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."*

The obligation to consider representations and the nature of the independent examination

18. Regulations 28 and 31 of the 2004 Regulations provide:

> ***28. Representations relating to a development plan document***
> *(1) Any person may make representations about a DPD which a local planning authority propose to submit to the Secretary of State.*
> …
>
> ***31. Consideration of representations by appointed person***
>
> *Before the person appointed to carry out the examination complies with section 20(7) he must consider any representations made in accordance with regulation 28(2).*

19. The independent examination of the Core Strategy by the Inspector is not a formal planning inquiry. As recorded by Carnwath LJ in the Barratt Developments case at paragraphs 5 and 7:

> *5. The Planning and Compulsory Purchase Act 2004, supplemented by the Town and Country Planning (Local Development)(England) Regulations 2004, provides the statutory framework for the preparation of the Local Development Framework ("LDF"), of which the Core Strategy forms part. These documents form part of the "development plan" for the area, in accordance with which development applications must be decided unless material considerations indicate otherwise (s 38(3)(6)).*
> …
> *7. It is to be noted that the procedure* [for the adoption of the Core Strategy] *does not include a formal planning inquiry in the traditional sense. Collins J described what I understand to be the ordinary format for such an open hearing:*
>
> > *"…this is not a traditional planning enquiry. It is, as its title suggests, an examination. Inspectors are encouraged to make it relatively informal, and it can be, and frequently is, I understand, carried out by means of a discussion. Although formal evidence can no doubt be given and tested if the Inspector decides that that is essential for the purpose of reaching the necessary result, that would be rare, and generally speaking it is dealt with on the basis of written documents being presented, and then discussion*

> *between the interested parties and the Inspector based upon those written documents."*

20. The Planning Inspectorate has issued its own guidance on the conduct of the independent examination. This is set out in 'Development Plan Document Examination Procedural Advisory Notes (August 2009)'. In so far as is material, it provides as follows:

> *Introduction*
>
> *It is very important for Local Planning Authorities (LPAs) to appreciate the implications of the fact that the examination process is concerned with the legal compliance and soundness of the document as a whole. Consequently the focus at the examination is no longer on individual objections as used to be the case at local plan/UDP inquiries. This fundamentally important difference means that local planning authorities no long need to respond to each and every individual representation. What authorities are required to do is to assess the representations made at publication stage and to provide the Inspectorate with a summary of the main issues at submission.*
>
> *It is also important to appreciate the significance of the frontloaded process which should flush out opposing views and options before the LPA prepares its final document for publication.*
>
> …
> ***5. The Hearing***
> ***Hearing sessions***
> *5.1 The emphasis at the hearing sessions will be on informality with the Inspector inquiring into and leading a debate on the issues identified in advance. …*
>
> *5.2 The old-style local plan or UDP sessions where individuals presented their cases one by one and the local authority responds is not appropriate to the examination format. The emphasis is on the soundness of the DPD not specifically on the representations made on it. The formal presentation of the evidence followed by cross-examination and re-examination will not be allowed other than in very exceptional instances where the Inspector is convinced that a formal approach is essential to adequately test the evidence. If you wish the Inspector to consider having a formal session you must be prepared to make a strong case for this…*
> …

21. Further, in the Planning Inspectorate's 'Local Development Frameworks: Examining Development Plan Documents: Procedure Guidance August 2009 (Second Edition)' it suggested as follows:

> ***Section 6: Report Writing***
> *Key principles for Reporting*
> ….
> *6.2 The Inspector will start on the premise that the report should be as short as possible, whilst ensuring that it is clearly reasoned to justify the conclusions. It is important to remember that the Inspector will not seek to 'improve' the plan. In many instances representations are made about matters that do not go to the heart of the soundness of the plan. The Inspector will not make recommendations about these matters even if the Inspector feels that the representation is well founded. The approach is that it is the LPA's document and the Inspector will only make changes that go to the issue of soundness. In relation to each recommendation, Inspectors are required to ask themselves where the plan would be unsound if the recommendation was not made. If the answer to that question is in the negative, the recommendation should not be set out.*
>
> *6.3 Noting that we are not dealing with 'inquiries into objections', reports will not summarise the cases of individual parties, should avoid as far as possible direct references to specific representations and should not describe discussions at hearing sessions. The report will explain why the Inspector, based on a consideration of all the evidence and his/her professional expertise and judgment, has reached a particular view on legal compliance and soundness.*

22. As Carnwath LJ stated in the Barratt Developments case, at paragraph 32:

> *"The only other potentially relevant statutory requirements are that the Strategy should be "sound", taking account of the relevant policy guidance and that the inspector's recommendations should be adequately reasoned. 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. Reasons are adequate if they are "intelligible" and enable the reader to understand "why the matter was decided as it was and what conclusions were reached on the "principal controversial issues" (see South Bucks DC v Porter (No 2) [2004] UKL 33 para 36, per Lord Brown). If the only failure is one of reasoning (a procedural requirement), the applicant must show also that he was substantially prejudiced by the failure."*

Green Belt Policy

23. As noted above, in the exercise of their functions, the First Defendant and the Inspector were required to have regard to guidance issued by the Second Defendant

and national policy. In relation to Green Belts the relevant guidance and policy for present purposes was contained in 'Planning Policy Guidance 2: Green Belts' ("PPG2"). This was in force both at the time the 1999 Local Plan was adopted and at the time that the Core Strategy was adopted. This provides, amongst other things as follows:

> ***Intentions of policy***
>
> *1.4 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development (see paragraph 2.10).*
>
> ***Purposes of including land in Green Belts***
>
> *1.5 There are five purposes of including land in Green Belts:*
>
> - *to check the unrestricted sprawl of large built-up areas;*
> - *to prevent neighbouring towns from merging into one another;*
> - *to assist in safeguarding the countryside from encroachment;*
> - *to preserve the setting and special character of historic towns; and*
> - *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*
>
> …
>
> ***2. Designation of Green Belts***
>
> *2.1 The essential characteristic of Green Belts is their permanence. Their protection must be maintained as far as can be seen ahead.*
>
> ***Regional guidance and development plans***
>
> …
>
> *2.2 Green Belts are established through development plans. Structure plans provide the strategic policy context for planning at local level. The general extent of Green Belts has been fixed through the approval of structure plans.*

> *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 plans, introduced by the Planning and Compensation Act 1991, will ensure that the definition of detailed boundaries is completed.*
>
> *…*
>
> ***Defining boundaries***
>
> *2.6 Once the general extent of a Green Belt has been approved it should be altered only in exceptional circumstances. If such 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 of earlier approved development plans should be altered only exceptionally. Detailed boundaries should not be altered or development allowed merely because the land has become derelict.*
>
> *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.*

24. The Claimant relies on paragraphs 2.6 and 2.7 of PPG2 in particular in support of his contention that the Green Belt boundary was erroneously extended to include the rear garden at Fourells in the 1999 Local Plan.

25. In Copas & Another v The Royal London Borough of Windsor and Maidenhead [2001] EWCA Civ 180, Simon Brown LJ (as he then was), with whose judgment the Master of the Rolls and Longmore LJ agreed, considered paragraph 2.7 of PPG2 and concluded as follows:

> *1. The Test of Necessity*
>
> *20. I can deal with this argument very briefly. Certainly the test is a very stringent one. The terms of paragraph 2.7 are plain: unless there are approved alterations to the Structure Plan (and here there are not) there must be other exceptional circumstances which necessitate revision of an existing Green Belt boundary. And this, indeed, reflects what Purchas LJ said in Carpets of Worth Limited v Wire Forest DC [1991] 2 PLR 84*, 94:

> *"As it directly prejudices land owners in the otherwise proper development of their land, an extension to the Green Belt should not be brought into effect until it can be justified directly by those purposes for which the Green Belt is designed. There must, therefore, be an inhibition in extending the Green Belt so as to avoid sterilising unnecessarily neighbouring land…just as much as reduction in the boundaries of the Green Belt, which would prejudice the purposes of the Green Belt, must also be made only in exceptional circumstances. On this basis I think that the general concept of the advice in the circulars is that once a Green Belt has been established and approved as a result of all the normal statutory processes it must require exceptional circumstances rather than the general planning concepts to justify an alteration. Whichever way the boundary is altered there must be serious prejudice one way or the other to the parties involved."*

21. To my mind, however, there is no reason to doubt that the Inspector had these considerations well in mind in deciding the present case. Mr Village fixed principally upon the sentence in paragraph 2.43 of the Report:

> *"It is necessary to go further, however, if the 1991 decision is to qualify as an exceptional circumstance which dictates that the Green Belt boundary should be revised."*

22. That sentence, he submits, postulates that exceptional circumstances of themselves will dictate a revision so that the Inspector never came to address the separate question of necessity.

23. I would reject this argument. Paragraph 2.7 of the Guidance should be regarded as expressing a single composite test: circumstances are not for this purpose exceptional unless they <u>do</u> necessitate a revision to the boundary. That necessity is the touchstone by which to determine whether the circumstances are exceptional or not. No point would be served by adopting a two stage approach to the test…

Challenges by a "person aggrieved"

26. As with previous planning legislation, the PCPA 2004 (as amended) sets short time limits within which any challenge to a relevant planning decision must be made and limits the grounds on which any challenge can be made.

27. In the case of a development plan document and a local development plan, section 113 PCPA 2004 (as amended) provides that a "person aggrieved" may apply within

six weeks to the High Court on the grounds that the relevant document is either "not within the appropriate power" or "*a procedural requirement has not been complied with*", causing "*substantial prejudice*" to the interests of the Claimant. The Court's powers are discretionary. If the Court is satisfied that the grounds are made out, it may quash the relevant document, in whole or in part, or remit it to the person or body responsible for its preparation or approval.

28. It is settled law that the statutory grounds of challenge encompass the conventional judicial review grounds of illegality, irrationality and procedural impropriety: see, for example, Barratt Developments at paragraph 14.

PLANNING STATUS OF THE LAND AT FOURELLS

29. The detailed boundary of the Green Belt in South Buckinghamshire was first defined in the Local Plan for South Buckinghamshire, which was adopted in 1989 ("the 1989 Local Plan"). This was an "adopted local plan" for the purposes of paragraph 2.6 of PPG2.

30. The South Bucks Local Plan 1989 showed the land to the front and the rear of Fourells, but not the land immediately to the East, as being in the built up area and therefore excluded from the Green Belt. In other words, the detailed Green Belt boundary in the 1989 Local Plan was drawn so that the whole of the domestic curtilage of Fourells was excluded from the Green Belt. This meant that, although the Paddock forming part of the land at Fourells was part of the Green Belt, the rear garden was not. As a result the house and gardens surrounding Fourells were not subject to policies restricting development in the Green Belt in the 1989 Local Plan.

31. PPG 2 setting out the national policy in relation to Green Belt boundaries was published in January 1995.

32. In April 1995 (after the publication of PPG2) the First Defendant began consultation on a replacement South Bucks Local Plan, which was ultimately adopted in March 1999 ("the 1999 Local Plan").

33. The First Defendant proposed in the April 1995 Consultation Draft Replacement version of the 1999 Local Plan that the detailed Green Belt boundary should be changed at Fourells so that the rear garden should be included within the Green Belt. The Claimant has stated in the present proceedings that he is unaware of any document being produced by the First Defendant at that time to identify, in accordance with paragraph 2.6 of PPG2, the exceptional circumstances which necessitated this change to the detailed Green Belt boundary already established by the 1989 Local Plan. No such evidence was produced in response by the First Defendant.

34. For the First Defendant, Mr Gillespie, the Principal Planner in the Planning Policy Team at the First Defendant, asserts in his witness statement at paragraph 9 that the minor change made to the Green Belt boundary at Fourells was made to ensure that the boundary was clearly defined and defensible. Mr. Gillespie states that the rear wall of the original house at Fourells was a clearly definable and is a defensible boundary. This is disputed by the Claimant, who also points to the fact that Mr. Gillespie did not join the First Defendant until 2008. It is also to be noted that the

explanation given by Mr. Gillespie is somewhat different to the explanation given by the First Defendant to Mr. Dominic Grieve QC, MP in a letter dated 17 December 2008 in which Mr. Beckford, the Head of Sustainable Development of the First Defendant, stated:

> *"In preparing the [1999 Local Plan] the Council gave detailed consideration to ensure that land which it considered fulfilled a Green Belt function, was indeed covered by Green Belt designation. In some cases this meant a change from the boundaries shown in the Local Plan for South Bucks. All of the land to the east, including Thorney House, was included in the Green Belt. None of it was excluded. The Council's view was clearly that whilst the dwelling itself could not be said to fulfill a Green Belt function, the rear garden was considered to fulfill such a function, and thus should form part of the Green Belt."*

35. In June 1996 the First Defendant proposed in the Deposit Draft Replacement version of the 1999 Local Plan that the detailed Green Belt boundary should be further changed so as to include the whole of the curtilage of Fourells within the Green Belt (i.e. including all of the curtilage land to the front, rear and sides of the property). Subsequently, in October 1998 the Council considered that this further change was an error and proposed in the Further Proposed Modifications to remove it. That modification still meant that the Green Belt boundary would be extended to include the rear garden of Fourells.

36. The then owner of Fourells made no objections to the proposed amendments to the Green Belt boundary. No objections were submitted by the Government Office for the South East, the County Council or SERPLAN in relation to the amendments to the boundary of the Green Belt proposed at Fourells or anywhere else. Mr Gillespie points out at paragraph 15 of his witness statement those official bodies would normally raise objections where it was felt that a local planning authority's emerging Plan was in conflict with national planning policy guidance including PPG 2. [4/244]

37. An Inspector examined the plan proposals, produced a report in September 1997 and made no changes to the amendments.

38. Further Modifications were made to the Local Plan which was published on 30 October 1998. The Further Modification in respect of the Green Belt boundary at Fourells was taken forward without further change and accordingly the house and front garden of Fourells are not in the Green Belt but the rear garden and other land is shown in the Green Belt on the Adopted Local Plan Proposals Map.

39. The Claimant in his second witness statement at paragraph 26 says that he completed the purchase of Fourells on 27 November 1998 but was unaware of the proposals to change the Green Belt boundary. The evidence is clear that, at the time of the purchase of Fourells, the Deposit Plan would have erroneously shown the entirety of the land at Fourells as being within the Green Belt. This appears to have resulted in the Claimant bringing legal proceedings against his solicitors as he sets out in paragraph 31 and the eventual court proceedings were settled, with a cash payment being made to the Claimant by his former solicitors.

40. At no stage did the Claimant make a challenge to the Local Plan. The Claimant maintains that he could not have done so even if he was aware of the inclusion of the rear garden in the Green Belt.

41. The adopted version of the 1999 Local Plan was produced in March 1999 and it showed the Green Belt boundary to be that which had been first shown in the Consultation Draft version of the 1999 Local Plan, with the detailed Green Belt boundary drawn so as to include the rear garden of Fourells within the Green Belt. This was a change from the Green Belt boundary of the 1989 Local Plan.

42. Policy GB1 of the 1999 Local Plan provided:

> "The area in which Green Belt policies will be applied is defined on the Proposals Map…"

43. The Proposals Map of the 1999 Local Plan showed the Green Belt boundary at Fourells so that the rear garden was included within the Green Belt. There was no relevant legal challenge to the adoption of the Local Plan.

Core Strategy

44. The First Defendant then developed its Core Strategy. This was ultimately adopted by a resolution of the full Council on 22 February 2011. In simple terms, the Core Strategy sets out the First Defendant's planning policy for area for which it is responsible at a relatively high level.

45. The process of developing and adopting the Core Strategy was started by the First Defendant when it issued its Issues and Options paper which was considered for public consultation from 16 January-27 February 2006.

46. The Claimant responded in relation to the land at Fourells Paddock. He made further responses to the Preferred Options Document for public consultation in September 2006. He argued that the Council should consider releasing Green Belt land within settlements where the land is surrounded by properties. For reasons that I do not need to set out, he contended that Richings Park should be a major candidate for such further development.

47. On 25 September 2007 the Second Defendant made a direction under Schedule 8 to the PCPA 2004, saving Policy GB1 of the 1999 Local Plan (i.e. the part which set out the Green Belt boundary) as part of the development plan until it was replaced by a policy in a DPD which expressly replaced Policy GB1.

48. In June 2008 the Claimant put forward Fourells (i.e. including the rear garden) and Fourells Paddock as a future housing site even though the land was in the Green Belt and suggested its release.

49. In March 2010 the First Defendant published the Proposed Submission version of the Core Strategy. The Strategic Objectives of the Proposed Submission version stated:

> "No amendments required to the Green Belt boundary in the period to 2031 (see Spatial Strategy)."

50. The Spatial Strategy of the Proposed Submission version stated:

> "There are no proposals to amend the Green Belt boundary within South Bucks..."

51. The explanation of the Spatial Strategy as set out in the Proposed Submission version was:

> "More specifically, the Spatial Strategy aims to contribute to the achievement of the following national policy objectives:
>
> …
>
> Maintain the broad extent of the Green Belt (PPG2: Green Belts) - with no amendments to the Green Belt boundary planned in South Bucks in the period to 2031.
>
> …"

52. At the same time the First Defendant also published the Proposals Map as proposed to be changed by the Proposed Submission version of the Core Strategy. There were no changes proposed to the Green Belt boundary at Fourells. Whilst the extent of the Green Belt was also maintained elsewhere, the Proposals Map did put forward changes within the Green Belt so as to identify three Major Developed Sites in the Green Belt where development was expected to take place.

53. Under cover of a letter dated 9 May 2010 the Claimant submitted his completed Publication Stage Representation Form in which he proposed Fourells Paddock as a housing site. He did not specifically mention the rear garden in the Form. In the covering letter, however, the Claimant set out his submission, repeated in the present proceedings, that the adoption of the 1999 Local Plan was unlawful because the Green Belt boundary had been altered to include the rear garden of Fourells despite the absence of any exceptional circumstances. As such, the Claimant contended that the adoption of the Core Strategy which was premised on maintaining the same Green Belt boundary was unsound and was not compliant with the requirements of PPG2. The Claimant concluded by saying:

> *I have further evidence which I will present at the oral examination stage of the Core Strategy to show that the council did not comply with PPG2 and these errors need to be corrected.*
>
> *I kindly request the Inspector to redefine the Green Belt boundaries and remove the curtilage of the dwelling from the Green Belt.*

The Claimant's objections were accurately summarized by the First Defendant in the Core Representation Summary which was submitted to the Inspector.

54. The Core Strategy was submitted to an Inspector for examination on 21 July 2010. The examination hearings were held between 10 and 18 November 2010. The

Claimant attended the hearings. As requested by the Claimant, the Inspector made site visits to, amongst other properties, Fourells on 12 November 2010. At paragraph 12 of his first Witness Statement the Claimant states as follows:

> *The Inspector made a site visit to Fourells which took place on 12 November 2010. At the site visit (attended by Mr Motuel on behalf of the First Defendant as well as by the Inspector and me), the Inspector asked me where the Green Belt boundary was. I pointed to the location where the 1989 Green Belt boundary originally was, which had been between the rear of the southernmost outbuilding and the present wooden fence (which had been installed in 2009 and was not directly on the line of the 1989 Green Belt boundary). The Inspector then suggested that I needed to do some research at the First Defendant's offices, but I indicated I had already done so and could not find any additional information that was in the public domain.*

55. The Claimant also sent specific questions to the First Defendant and the Inspector on 17 November 2010, asking what exceptional circumstances existed which justified the inclusion of the rear garden of Fourells in the Green Belt in the 1999 Local Plan "*when the inspectors report had already concluded that there were no exceptional circumstances to amend the green belt*" (the latter being a reference to the 1997 Inspector's report). That email was included as a Core Document. The Claimant went on to say that:

> *If the Council acknowledge the error, we can avoid unnecessarily further arguments at the hearing and let the inspector provide recommendations on a clearly definable boundary and include all the dwelling on the South East of Old Slade Lane and Richings Way into the settlement of Richings Park. This would bring the boundary in line with the South West [sic – it should read "East"] of Old Salde [sic] Lane and Richings Way/North Park."*

In other words, the Claimant was proposing more extensive inroads in to the Green Belt than simply redrawing the boundary to exclude the rear garden of Fourells.

56. The First Defendant's response was, in effect, simply that it complied with all of the statutory steps leading to the adoption of the 1999 Local Plan and no legal challenge was made to the adopted Plan. The First Defendant went on to conclude:

> *The Council has already clearly demonstrated that it can meet its housing requirements without recourse to the release of land form [sic] the Green Belt. There are no exceptional circumstances warranting the consideration of Green Belt release.*

57. At the hearing session itself, the following exchange took place between the relevant Officer of the First Defendant (Mr Ian Motuel), the Claimant, and the Inspector:

> *Mr Motuel:* *"Mr Hundal had not objected and did not take any legal action."*
>
> *Mr Hundal:* *"What were the exceptional circumstances to change the Green Belt on just my site and not others?"*
>
> *Mr Motuel:* *"It has been some 20 years and we don't have any document to say why."*
>
> *Inspector:* *"I can't change what has happened in the past."*

58. The Claimant relies on the Inspector's comment in that passage as evidencing the fact that she had already accepted the First Defendant's position that there could not be a challenge to the Green Belt boundaries in the 1999 Local Plan on the basis that the boundaries in that Plan had been drawn up as a result of an error of law.

59. The Inspector's report is dated 31 January 2011. The Non-Technical Summary at the front of the report summarises the conclusions reached:

> *This report concludes that the South Bucks Core Strategy Development Plan Document provides an appropriate basis for the planning of the District over the next 15 years. The Council has sufficient evidence to support the strategy and can show that it has a reasonable chance of being delivered.*
>
> *A limited number of changes are needed to meet legal and statutory requirements…All of the changes recommended in this report are based on proposals put forward by the Council in response to points raised and suggestions discussed during public examination. The changes do not alter the thrust of the Council's overall strategy.*

60. In the Introduction to the Report (at paragraphs 1 and 2), the Inspector correctly identified that her role was to consider whether the Core Strategy was "*compliant in legal terms and whether it is sound…[i.e.] justified, effective and consistent with national policy*" and that her starting point for the examination was the assumption that the First Defendant had submitted what it considered to be a sound plan. At paragraph 8 of the Report, the Inspector stated:

> *Taking account of all the representations, written evidence and the discussions that took place at the examination hearing I have identified seven main issues upon which the soundness of the plan depends.*

61. The first Issue identified by the Inspector was "*Does the Council's overall strategy have a firm basis?*". It is helpful to record the Inspector's findings in paragraphs 9, 10 and (part of) 11 of the Report in relation to that issue because, in my judgment, they evidence the fact that the Inspector was adopting the correct approach to her task, namely to assess the soundness of the First Defendant's plan, not to adjudicate on

individual objections per se or see if there was a different plan which she preferred. The relevant paragraphs read as follows:

> *9. The cascade of relationships between the five themes identified in the South Bucks Sustainable Community Strategy (2009) (CD7/01) and the Council's overall vision for the District, its strategic objectives and how they inform policy, critical success factors, related performance indicators and targets, is particularly clearly set out in the plan. The vision is thus carried through to delivery in an exemplary manner.*
>
> *10. The overall housing strategy of the plan is to accommodate growth within existing settlements, whilst avoiding harm to townscape character and without releasing Green Belt land. There is a clear audit trail which shows how alternative strategies were developed and tested, with a variety of spatial distributions of growth including those which would involve the release of some Green Belt land. Sustainability appraisal and effective engagement with stakeholders and the community took place at all main stages of the process.*
>
> *11. …The overall strategy is sound.*

62. The Inspector considered, under Issue 2, whether the Core Strategy made "justified and effective provision for housing in terms of the overall number of dwellings, their distribution and the provision of particular types of dwellings including affordable housing". She concluded that it did. At paragraph 18, she concluded:

> *18. The evidence base is robust, subject to the recommendations above, and no contingency sites, within or outside the Green Belt, are required to make the strategy more deliverable or more flexible.*

That included the affordable housing target which she concluded, in paragraph 29 of the Report, was "*challenging*" but "*realistic and justified*" such that "*the plan is sound in that regard*".

63. Issue 7 was framed in the following way: "Other development sites – does CP17 accord with PPG2? Are sites put forward by representors essential to the delivery and flexibility of the CS as contingency or alternative locations for growth?". In paragraph 45 of the Report, the Inspector answered that issue in the following way:

> *45. I concluded under Issues 1 and 2 that the overall strategy of accommodating housing growth within existing settlements without removing land from the Green Belt is sound, and that there is robust evidence that at least the lower CS housing target can be delivered in the plan period. There is therefore no need for a comprehensive review of Green Belt boundaries at this time, nor any*

> *need to look further for other housing land in the Green Belt to ensure the flexibility or deliverability of the CS, or the protection of existing townscape. A number of sites in the Green Belt were put before the examination, the individual site-specific and other merits of which I have considered carefully. However, for the above reasons, contingency or alternative development sites are not needed to make the plan sound, and none of the benefits put forward by promoters would override that consideration.*

64. Finally, in paragraph 47 of the Report, in relation to the question of whether the Core Strategy complied with all of the legal requirements, the Inspector concluded that "*the Core Strategy meets them all*". She specifically addressed compliance with National Policy, stating that the "*Core Strategy complies with national policy except where indicated and changes are recommended*." No change was recommended in relation to the Green Belt boundary at Fourells.

65. As noted above, the First Defendant adopted the Core Strategy incorporating the changes recommended by the Inspector, on 22 February 2011. The Core Strategy as adopted continues to state that that the Green Belt boundary is to remain unchanged until 2031 and the Proposals Map continues to include the rear garden of Fourells within the Green Belt.

THE COMPETING SUBMISSIONS

The Claimant's Submissions

66. The main ground of challenge is the first ground. Under that ground the Claimant contends that the Inspector appointed by the Second Defendant to carry out the independent examination erred in law in that to the extent that she considered, as she was required to do by Regulation 31 of the Local Development (England) Regulations 2004, the representations made by the Claimant that the Core Strategy was "unsound", she failed to have regard to the full planning history of the Green Belt boundary at Fourells on account of her mistaken belief that she could not change the Green Belt boundary by reason of events that took place before the adoption of the 1999 Local Plan.

67. The Claimant contends that:

    67.1 The Inspector was obliged to "consider" the representations made by the Claimant before making her recommendations as to whether or not the Core Strategy was "sound" in accordance with Regulation 31 of the Local Development (England) Regulations 2004;

    67.2 Proper consideration of the Claimant's representations required the Inspector to have regard to any material considerations referred to in those representations;

    67.3 To determine whether the Core Strategy was "sound" the Inspector had to consider whether it was consistent with national policy;

67.4 The planning history of the Claimant's land at Fourells was a material consideration;

67.5 The question of whether there were exceptional circumstances which necessitated a change to the Green Belt boundary was a matter of planning judgment for the Inspector, provided that in making that judgment she had regard to the relevant material considerations identified in the material before her.

68. During oral argument, with the assistance of very clear submissions by both Counsel, it became clear that the Claimant's case could be distilled into the following submissions.

69. First that the First Defendant and the Inspector were required to ensure that the Core Strategy complied with National Policy. The Claimant contends that, since the Core Strategy proceeded on the basis that the Green Belt boundary would be as set out in the 1999 Local Plan, the First Defendant and the Inspector were required to determine (at least when the issue was raised by the Claimant) whether that boundary was determined in accordance with National Policy when the Local Plan was adopted. The Claimant submits that they failed to address themselves to that question and, as such, their respective decisions should be quashed and/or the only conclusion to which they could have come was that the Green Belt boundary in the 1999 Local Plan had not been determined in accordance with national policy in so far as it was extended to include the rear garden at Fourells with the result that the Core Strategy could not be held to be "sound" and must be quashed.

70. In the alternative, the Claimant contended that the fact of the error (as he characterised it) which resulted in the improper inclusion of the rear garden of Fourells within the Green Belt boundary in the 1999 Local Plan was itself an exceptional circumstance which necessitated a change to the boundary in accordance with PPG2. As such, the Green Belt Boundary should, on the Claimant's case, have been redrawn in the Core Strategy to revert back to original Green Belt boundary defined in 1989.

71. Further, the Claimant submitted that the Inspector's Report contained no reference to the Claimant's representation and that it was impossible to see from the Report alone what the Inspector's reasoning was in relation to it. The Claimant contended that the only reasoning of the Inspector which related to changes to the Green Belt was at paragraph 45 of the Report. In that paragraph, the Claimant submitted, the Inspector did not consider or refer to the need for the Core Strategy to be consistent with national policy in PPG2 and made no reference to whether, leaving aside issues relating to housing growth requirements, there were any other factors which constituted exceptional circumstances which necessitated changing the detailed boundaries of the Green Belt. The Claimant emphasised that the Claimant's representations concerning the Green Belt boundary in so far as it related to the rear garden at Fourells (as opposed to the Fourells Paddock) had not related to any need for boundary changes to accommodate housing growth.

72. In addition, according to the Claimant, neither the First Defendant in its response nor the Inspector in her comments at the hearing session, engaged with the Claimant's representation and submissions on their merits. The Claimant submitted that the First

Defendant wrongly sought to side-step the Claimant's point that the 1999 change had not been justified in terms of PPG2 by stating that the 1999 Local Plan had not been subject to legal challenge. However, it is axiomatic that the "adopted local plan" which establishes a detailed Green Belt boundary will be a plan which has been validly adopted (otherwise it would not be an "adopted local plan"). Thus, the mere fact that the existing boundary is contained within a legally valid local plan provides no basis for contending that exceptional circumstances may not exist which necessitate it being changed. The advice in PPG2 is to be applied to valid local plan boundaries. It is then necessary for all the circumstances in relation to that boundary to be examined to see if they amount to exceptional circumstances which necessitate it being changed.

73. Further, as I have indicated above, the Claimant relied on the Inspector's remarks at the hearing session that "*I can't change what has happened in the past*" as showing that the Inspector considered that she had no power to change the outcome of the earlier actions of the First Defendant in 1999 when it altered the detailed Green Belt boundary. According to the Claimant, the Inspector's remark was intended as an explanation to the Claimant as to what the Inspector saw as the limit of her powers: i.e. she was (wrongly) accepting the First Defendant's proposition that she could not go behind the 1999 Local Plan because it had not been challenged at the time.

74. In so doing, the Claimant submitted that the Inspector erred in law in that she failed to have regard to a material consideration, namely whether the evidence provided by the Claimant as to the absence of any exceptional circumstances in 1999 was sufficient evidence to constitute exceptional circumstances necessitating a change to the 1999 Green Belt boundary to restore it to its original 1989 alignment. The full planning history of the Green Belt boundary at Fourells was a material consideration in any assessment of whether that boundary should be changed. Had the Inspector appreciated that she was entitled to consider the full planning history of the Green Belt boundary at Fourells, there is a real possibility that she may have reached a different conclusion on the Claimant's representation. Had she done so, she could not then have found that the Core Strategy was "sound" as being consistent with national policy in PPG2 without requiring the boundary at Fourells to be changed to restore it to the 1989 boundary.

75. Under the second ground, the Claimant sought to challenge the decision of the First Defendant to adopt the Core Strategy. The Claimant submitted that the First Defendant was not obliged to adopt the Core Strategy and, in particular, was not obliged to perpetuate any error of law by the Inspector in making those recommendations. The First Defendant could see, from a perusal of the Inspector's report, that the Inspector had not addressed in terms the Claimant's representation. The First Defendant was present at the examination hearing session and was aware of the approach that the Inspector had indicated that she was taking to matters taking place before the adoption of the 1999 Local Plan. In essence this was the approach that had been promoted by the First Defendant. For the reasons set out above, the approach of disregarding the full planning history of Fourells, and excluding matters before the adoption of the 1999 Local Plan, when considering whether there were exceptional circumstances which necessitated a change to the Green Belt boundary was erroneous in law and the First Defendant should not have accepted recommendations from the Inspector made on a flawed basis.

76. Finally, the Claimant contended that he had been substantially prejudiced by the errors of the Inspector and of the First Defendant. Had his objection been properly considered on its merits there is a real possibility that the Inspector would have accepted that the boundary in the 1999 Local Plan could not be justified by reference to the advice in PPG2 and that she would have considered that the Core Strategy's failure to address this deficiency was an issue which meant that the Core Strategy was not consistent with national policy and so was not sound.

The First Defendant's Submissions

77. The First Defendant contended that the failure to exclude the rear garden at Fourells from the Green Belt somehow rendered the Core Strategy unsound.

78. The First Defendant argued that the Claimant was asking the wrong forensic question. Contrary to the submissions of the Claimant, it was not a question of what happened in the past as being an exceptional circumstance to remove the land from the Green Belt. The First Defendant contended that, even if (which it disputed) there were no proper grounds justifying the extension of the Green Belt boundary to include the rear garden of Fourells at the time of the 1999 Local Plan, that could not give rise to a challenge to the Core Strategy. The 1999 Local Plan had not been challenged at the time and as such, Policy GB1 of the 1999 Local Plan remained a valid, saved policy. Any error on the adoption of that Plan of the type alleged by the Claimant was not relevant to the development of the Core Strategy or the Inspector's review of that document. It was not their function to consider whether there had been historic errors of law in the formulation of the policies and adopted plans on which the Core Strategy was based. This was because the Core Strategy was, in simple terms, a forward looking document, planning for the future based on the position as it currently existed.

79. In the alternative, the First Defendant contended that the mere existence of an historic error of law or arguable error of law in the adoption of the 1999 Local Plan could not of itself require a change in the Green Belt. This is because, in accordance with paragraph 2.7 of PPG2, in order to qualify as "exceptional circumstances" justifying a change to the Green Belt boundary, the circumstances had to "necessitate" the change. The First Defendant submitted both that in principle the alleged error of law relied on by the Claimant did not, of itself, necessitate a change to the Green Belt boundary and that the Claimant had not at any stage contended that it would. (The latter point was answered by the Claimant in oral argument by submitting that the error of law of itself necessitated the redefinition of the boundary in order to bring it back into line with National Policy as set out in PPG2.)

80. The First Defendant accepted that *if* there were grounds which required a change to the Green Belt boundary (e.g. in order to provide sufficient housing to meet the projected needs of the District), then the existence of a historic error leading to the erroneous adoption of an extended Green Belt boundary may be a relevant consideration in determining where boundary should now be changed in order to accommodate the particular problem. It would, however, be unlikely to be a conclusive factor.

81. In any event, the First Defendant submitted that there were good grounds for the inclusion of the rear garden of Fourells in the 1999 Local Plan. Although this appears to be an assessment made many years after the event, the First Defendant pointed to

82. The First Defendant submitted that, as evidenced by (amongst other things) paragraph 45 of the Report, the Inspector had addressed herself to the correct question and had considered, globally, whether there is any need to review the Green Belt boundaries in order to provide further development sites to ensure the deliverability of the Core Strategy. In doing so, she confirmed that she had carefully considered the merits of specific sites put before her which must necessarily involve the Claimant's submission.

83. In relation to the second ground, the First Defendant contended that the Inspector's report properly addresses the Claimant's representation and the Claimant had failed to demonstrate any substantial prejudice. Further the Claimant had failed to show any irrationality on the part of the First Defendant in adopting the Core Strategy. Accordingly, the second ground must also fail.

DECISION

84. In my judgment, the present appeal must fail.

85. The 1999 Local Plan was adopted without any challenge to its validity. In the absence of any successful challenge to its validity, it is and was valid and lawful. The First Defendant is and was entitled to proceed on that basis. That is also consistent with it being a common feature of legislation governing planning that challenges to any relevant planning decision must be made swiftly (as in the case of the six week time limit allowed within which an appeal must ordinarily be brought). That is an essential feature of the regulatory scheme so that, within reason, there is as much certainty as possible in relation to the limits on land use and development that apply to different areas.

86. The purpose of the development of the Core Strategy is not to consider or rectify historic errors of law. The purpose of the Core Strategy, in simple terms, is to enable the First Defendant to set out its policy for the development and use of the land within its area over a given period. In other words, it is a prospective document, setting out the overall strategy to be adopted in relation to the future development and use of land and the future policies that will be pursued by the First Defendant, consistent with its obligations to review matters which might be expected to affect the development of its area and to develop a local development scheme. That is evident from, amongst other things, Sections 13, 15 and 17 of the PCPA 2004 (as amended) and Regulation 6 of the 2004 Regulations as set out above.

87. Similarly, it is not the function of the Inspector to substitute his or her decision as to the policy that ought to be adopted for that of the Local Planning Authority or to correct historic errors of law in adopted plans. As is clear from Section 20 of the PCPA, and as is accurately recorded in the Introduction to the Planning Inspectorate's Development Plan Document Examination Procedural Advisory Notes (August 2009), the function of the Inspector is to examine the legal compliance of the Local Planning Authority's policy *as a whole*. In other words, if the *prospective* policy set out in the relevant Development Plan Document meets the statutory criteria under

section 20 of the PCPA 2004, that is the end of the matter. It is not the function of the Inspector to adjudicate on individual objections. The Inspector has to take account of such objections, but only in so far as they are relevant to the questions posed by Section 20 of the PCPA 2004. As I have set out below, in my judgment, the Inspector in the present case approached her task in a proper and lawful manner.

88. It follows from the above, that I reject the Claimant's first submission that the Core Strategy should not have been approved by the Inspector or the First Defendant because it was premised on the 1999 Local Plan which, in turn, had included the rear garden of Fourells in the Green Belt as a result of what the Claimant contended had been the erroneous application of PPG2. In the absence of any successful challenge to the adoption of the 1999 Local Plan, everyone, including the First Defendant, was entitled to proceed on the basis that the 1999 Local Plan had been lawfully adopted. PPG2 was then relevant only to the extent that questions arose as to whether or not there should be changes to the Green Belt boundary as established in the 1999 Local Plan. Any such question would have to be answered having proper regard to, amongst other things, the policy set out in paragraphs 2.6 and 2.7 of PPG2.

89. Further, as set out in paragraph 23 of the Judgment of Simon Brown LJ in Copas, circumstances are only exceptional for the purposes of paragraph 2.7 of PPG2 if they *necessitate* a revision to the boundary – "*that necessity is the touchstone by which to determine whether the circumstances are exceptional or not*". I do not accept that an historic error of law in the making of one of the underlying documents constitutes such an exceptional circumstance. The error (if it existed) could have been corrected (subject to the discretion of the Court) in a legal challenge at the time that the relevant decision was made. In the absence of a challenge, the Plan is lawful and there is no need *per se* to change it.

90. Further, I do not accept the Claimant's submission that the mere presence of an error which resulted from the failure in the past to follow national policy "necessitates" a change to the Green Belt boundary for the purposes of paragraph 2.7 of PPG2. That paragraph is contemplating a relevant planning consideration for a change. The overriding policy of PPG2 is that the Green Belt boundaries should remain fixed once they have been validly determined. It is only if a relevant circumstance occurs that requires a change in the future for planning purposes that the circumstance will be an exceptional circumstance. An obvious example would be if, in the present case, the First Defendant had determined that it could not meet the projected housing requirements for its area up to 2031 without using Green Belt land. In that case, for the purposes of the Core Strategy, the exceptional circumstance may have been made out (assuming no other practical alternatives). At that point, a subsidiary question may arise as to which land that was currently within the Green Belt should now be freed for development. In making that latter decision, I accept that the fact that land had recently and erroneously been included within the Green Belt when the local plan was developed *might* be a relevant consideration in deciding where the boundary had changed but it would be highly unlikely to be the only or the dominant factor.

91. It follows that, in my judgment, the Claimant fails on his alterative case that the existence of an alleged historic error meant that there was, at the time of the Inspector's Report and the adoption of the Core Strategy by the First Defendant, an exceptional circumstance which necessitated a change in the boundary of the Green Belt to exclude the rear garden at Fourells.

92. It also follows that there is no basis on which to challenge either the Inspector's Report or the decision of the First Defendant to adopt the Core Strategy. In my judgment the Inspector properly directed herself to the relevant issues and there is no discernible error of law in her approach.

93. The correct position is as follows. The First Defendant properly applied PPG2 in developing its proposed Core Strategy. It developed a policy which sought to avoid changing any of the boundaries of the Green Belt as established in the 1999 Local Plan. It succeeded in doing so. That complied with the requirements of paragraph 2.7 of PPG2.

94. The Inspector addressed the correct question, namely whether the Core Strategy proposed by the First Defendant met the requirements of Section 20 of the PCPA 2004. As part of that process she concluded (as she was entitled to do) that the First Defendant was correct that it's policy and objectives as set out in the Core Strategy could be met without releasing land from the Green Belt. That policy was compliant with the relevant legal requirements and complied with national policy including PPG2. Those conclusions were largely addressed under Issues 1 and 2 of the Report.

95. Given the conclusions that she had reached, it was inevitable that she would conclude that there was no need for a comprehensive review of Green Belt boundaries or to look for other housing land in the Green Belt. It also follows given my conclusions above that, in my judgment, the Inspector was correct to conclude that the Core Strategy complies with the relevant national policy for present purposes (i.e. PPG2).

96. I also do not accept the Claimant's submission either that the Inspector closed her mind to the Claimant's representations or failed properly to address the same in her Report. The fact of the site visit and the inclusion of the Claimant's representations in the documents before the Inspector show that they were being actively considered by the Inspector. Indeed, her comments to the Claimant on the need to do further research as to the line of the old boundary of the Green Belt show that she was actively considering the Claimant's representations. Further, I do not accept that the Inspector's comment at the hearing that "*I can't change what has happened in the past*" meant that the Inspector had dismissed the Claimant's representations without proper consideration. In the relatively informal setting of the examination, it seems to me that the Inspector was saying no more than she had no role or power to open up the 1999 Local Plan and revise it. That was correct.

97. Further, as set out in Barratt Developments, the Inspector did not have to address every representation that had been made to her. She only had to identify which representations were relevant to the task of examining the Core Strategy for compliance with the Section 20 criteria. In my judgment the Inspector approached that task in an entirely proper manner. She identified the key issues and addressed them. The report was relatively short but contains sufficient detail for her reasoning on the key issues to be understood with clarity.

98. Finally, it also follows from the above that there is no ground on which the decision of the First Defendant to adopt the Core Strategy can be challenged.

99. For all those reasons I dismiss this appeal.

100. I indicated at the close of the oral submissions that I would be prepared to deal with any submissions on costs or other matters on paper if the parties agree to that approach. Obviously if either party does not agree to those matters being dealt with on paper, the matter will be listed for a further, short, oral hearing.

Plan WB1 Locational Characteristics of North Hinksey (Botley)