Neutral Citation Number: [2020] EWHC 1984 (Admin)

Case No: CO/3809/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2020

Before :

THE HON. MR JUSTICE HOLGATE

- -

Between :

KEEP BOURNE END GREEN	**Claimant**
- and -	
(1) BUCKINGHAMSHIRE COUNCIL (formerly Wycombe District Council)	**Defendants**
(2) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	
- and -	
(1) CATESBY ESTATES Plc	**Interested Parties**
(2) LEOPOLD NOE	

Mr. James Burton (instructed by **the Claimant** directly) for the **Claimant**
Mr. Paul Brown QC and Mr Guy Williams (instructed by **Sharpe Pritchard LLP**) for the **First Defendant**
Ms. Estelle Dehon (instructed by **Government Legal Department**) for the **Second Defendant**
Mr. John Litton QC (instructed by **Eversheds Sutherland LLP**) for the **First Interested Party**
The Second Interested Party did not appear

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:00 on the 23rd July 2020

Hearing dates: 23rd – 24th June 2020

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Approved Judgment

Mr Justice Holgate :

Introduction

1. The Claimant, Keep Bourne End Green, applies under s.113 of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") to challenge the decision by Wycombe District Council on 19 August 2019 to adopt the Wycombe District Local Plan (2013–2033) ("the Plan"). On 18 March 2020 Lang J granted permission to apply for statutory review on grounds 1, 2, 3 and 5 (and the reasons challenge under ground 6 limited to errors alleged in those preceding grounds). On 1 April 2020 the District Council, along with the County Council and all other district councils in Buckinghamshire were abolished and replaced by a single unitary authority, Buckinghamshire Council (the Buckinghamshire (Structural Changes) Order 2019 – SI 2019 No. 957). This authority has become the First Defendant as the statutory successor to Wycombe District Council. All the relevant steps were taken by the former district council and the Buckinghamshire Council is merely its statutory successor. Because there is no need in this claim to draw any distinction between the two, it is convenient to refer to them as "the Council".

2. The Secretary of State for Housing, Communities and Local Government ("the Secretary of State") appears as the Second Defendant. It was the Secretary of State's Inspector who carried out and reported to the Council on the statutory examination of the submission draft of the Plan. The First Interested Party, Catesby Estates Limited ("Catesby") has an option over land at Holland Farm, Bourne End, which forms part of the allocation the subject of these proceedings. Mr. Noe, the Second Interested Party, owns part of the land allocated, but did not appear at the hearing.

3. This challenge is mainly concerned with alleged errors of law by the Inspector and the Council in the approach taken to two matters: (1) whether the 2016-based household projections produced by the Office for National Statistics ("ONS 2016") should have been taken into account in the assessment of the "objectively assessed housing need" ("OAHN") for the district and (2) the identification of "exceptional circumstances" to justify the release of green belt land through a review of green belt boundaries.

4. Policy BE2 of the Plan (read together with Policy CP8) removes from the green belt a site of about 32 ha at Hollands Farm ("the site") and allocates the majority of the site for housing (about 467 dwellings). The built-up area of Bourne End lies to the west and north of the site, the "semi-rural" area of Hawks Hill and Harvest Hill lie to the east and ribbon development runs along Hedsor Road to the south. The site is mainly agricultural land but there is also a former orchard.

5. The Claimant is a charity set up to conserve and improve the natural and physical environment and to promote sustainable development. The Council's proposal to allocate site BE2 has been strongly opposed by residents of the local area. The Claimant has devoted considerable resources to advancing objections in the local plan process. This has included evidence to the examination from a team of expert consultants. Some of the issues raised are referred to in these proceedings. But it is important for the court to emphasise at the outset that its role is not to consider the merits of the Council's proposed policy or of the objections made to it. The court is

only able to consider whether an error of law has been made in the decision or in the process leading up to it.

6. The district of Wycombe is subject to substantial planning constraints. About 48% of the total area lies within the Green Belt and about 71% lies within the Chilterns Area of Outstanding Natural Beauty ("AONB").

7. In January 2016 the four district councils in Buckinghamshire, namely Aylesbury Vale, Chiltern, South Bucks and Wycombe decided that they would treat the combined area of their four districts as the Housing Market Area ("HMA") and the Functional Economic Market Area ("FEMA") for the evidence base and assessment of residential and employment needs used in the preparation of their local plans. In so doing they applied the guidance in paragraphs 159 and 160 of the National Planning Policy Framework published in 2012 ("the NPPF 2012").

8. The Buckinghamshire Housing and Economic Development Needs Assessment 2015 ("HEDNA") was published at the beginning of 2016. Using the 2012-based household projections published by DCLG in February 2015 as the "starting point" for assessing OAHN, the Council concluded that the OAHN for Wycombe over the period 2013-2033 was 15,100.

9. In mid-2016 updated ONS 2014-based population projections and DCLG household projections were published. These resulted in the updating of the HEDNA in September 2017, when the OAHN was reduced to 13,200. The draft Plan submitted to the Secretary of State on 28 March 2018 for examination was based upon that OAHN figure. The submitted Plan was also based upon a Housing and Employment Land Availability Assessment ("HELAA") produced in September 2017, which identified a land supply within the district which providing 10,927 dwellings up to 2033. This included 1,139 dwellings on 10 sites to be released from the Green Belt. One of those sites was the land at Hollands Farm. That left a shortfall of 2,273 dwellings to meet the OAHN for the district.

10. On 13 July 2017 the four Buckinghamshire District Councils had entered into a Memorandum of Understanding pursuant to their duties under s.33A of PCPA 2004 to co-operate with each other in the planning of sustainable development. They agreed that the OAHNs for their districts was as follows: -

Aylesbury Vale	19,400	
Chiltern and South Bucks	12,900	
Wycombe	13,200	
	45,500	dwellings

They also agreed that Aylesbury Vale would provide 8000 dwellings, in addition to meeting its own OAHN of 19,400, to supply 5,725 dwellings towards the OAHN for the districts of Chiltern and South Bucks and 2,275 dwellings towards the OAHN for Wycombe, so that the distribution would be as follows:-

Aylesbury Vale	27,400
Chiltern and South Bucks	7,175
Wycombe	10,925
	45,500 dwellings

11. The agreed approach of the four councils was that housing needs of each *local plan area* would fall to be met within that area first. But if that were shown not to be possible, then unmet need would be fulfilled elsewhere within the HMA "where it was reasonable to do so and was consistent with achieving sustainable development." In the same spirit of co-operation, the HELAA undertaken by each district council employed an agreed, common methodology. All local plan periods had the same end date of 2033.

12. Very sensibly the four councils also co-operated on the approach they would take to considering whether land should be released from the green belt through a review of green belt boundaries. Paragraph 2.3 of the Memorandum of Understanding records:-

> "As part of ensuring that all reasonable options have been explored to meet housing and economic needs in the preparation of the Councils' Local Plans it was agreed between the Councils that an assessment of the Green Belt be undertaken. A jointly commissioned Buckinghamshire Green Belt Assessment (the Part 1 assessment) was therefore undertaken on the basis of an agreed methodology to examine the degree to which each District's designated Green Belt meets Green Belt purposes. In addition the Green Belt Assessments Part 2 undertaken by the constituent district councils have identified potential Green Belt sites that could be considered for development.
>
> **Agreement**
>
> 1. The methodology and outcomes of the Green Belt Part 1 work are agreed.
>
> 2. That all the parcels/sub parcels of land recommended in the Part 1 assessment for further consideration be assessed in the Green Belt Part 2 assessments as well as other options that each council considers to be appropriate for their respective plan areas."

13. The examination of the Plan for Wycombe district ran between 16 July and 26 September 2018. Not long before the examination started, the ONS published 2016 sub-national population projections which projected *growth* in the *population* of the district of 9,446 persons, rather than 20,300 persons according to the 2014 *population* projections (a reduction of 53%). However, in order to arrive at an estimate of

OAHN it is necessary to consider how estimates of future population translate into projections of the future number of households to be accommodated, by *inter alia* estimating future changes over time in the size of households. On 20 September 2018 the ONS published its 2016-based household projections ("ONS 2016"). These projected a growth in the number of households in the Council's district of 6,350 by 2033, compared to the 2014-based projections of 10,990, i.e. a reduction in projected growth in the number of households in the district of 4,640 or about 42%.

14. The NPPF 2012 continues to apply to plans submitted for examination on or before 24 January 2019, such as the local plan in this case, under the transitional arrangements contained in paragraph 214 of NPPF 2019. For this reason, they have been referred to as "transitional plans". For plans submitted after that date the NPPF 2019 applies.

15. For that latter category, paragraph 60 of the NPPF 2019 states that the *minimum* number of homes needing to be built within a district should be informed by a "local housing needs assessment" which should now use a "standard method" as set out in National Planning Policy Guidance ("NPPG"), unless exceptional circumstances justify an alternative approach which reflects current and future demographic trends as well as "market signals". Under the NPPF 2012 this "standard method" did not apply to transitional plans.

16. The "standard method" is also to be used for assessing "local housing need" (as defined in the Glossary at Annex 2 to NPPF 2019) for the purposes of assessing an authority's 5 year housing land supply where adopted strategic policies are more than 5 years old, unless they have been reviewed and found not to require updating (see para. 73 of NPPF 2019).

17. It is common ground that the population and household projections for the district were only the starting point for the assessment of that area's OAHN and that a number of substantial adjustments had to be made, following the NPPG on HEDNA. It was necessary to address such matters as long-term migration trends, local demographic trends (e.g. birth and death rates), household formation rates, transactional vacancies, second homes, "suppressed households", market signals and the impact of employment growth on the need for housing (see the Inspector's Report on the examination of the Plan at IR 22 to 23). Consideration also had to be given to the needs for affordable housing and student accommodation (IR 25 to 27). The expression "suppressed households" refers to the suppression of the formation of new households through the non-availability or unaffordability of accommodation. This suppression may well have affected the number of dwellings actually delivered in the past. Because trends and future projections of households are derived from those figures, the demand for additional housing may therefore be understated. It is common ground that these factors would have needed to be re-assessed if a revised HEDNA were to be produced for Wycombe using ONS 2016 rather than the 2014-based household projections.

18. In October 2018 the Inspector put a formal question to the Council asking whether the ONS 2016 household projections represented a "meaningful change in the housing situation in the district" and would have any bearing on the "soundness" of the draft plan, the latter being a legal requirement for its adoption. In November 2018 the Council responded to that question in the negative. On 4 February 2019 that response was published together with the Inspector's statement that she accepted the Council's

position. She added that to ensure transparency, the Plan should be amended so as to include an explanation of the Council's reasoning on this aspect. That became the subject of a proposed "main modification" to the Plan (referred to as "MM6"). No objection has been raised to the procedure followed by the Inspector.

19. On 27 March 2019 the Claimant responded to the consultation on the proposed main modifications, contending that the OAHN should be based upon the ONS 2016 projections published in September 2018 as the most up-to-date source of data and suggesting that the Inspector's position was inconsistent with that taken by the Inspector examining the Guildford Borough Local Plan. One of the Claimant's members, Mr. Simon Carter, provided his own assessment as to how the OAHN might be revised using this data, arriving at a figure of 8,351 (paragraph 1.28 of his representations on the proposed main modifications).

20. In April 2019 the Council forwarded to the Inspector the representations made by consultees together with its response.

21. On 10 July 2019 the Inspector produced her report to the Council. She addressed the ONS 2016 household projections in IR 28 and 29:-

> "28. The 2016 - Based Household Principal Projections for England were issued shortly after the completion of the LP hearing sessions in September 2018. The projections indicate that household growth in Wycombe has slowed significantly and that the number of households shown in the 2016-based household projections is approximately 40% lower than that shown in the 2014-based household projections. Additional evidence presented in respect of this matter indicates that should the OAHN be revisited in light of the latest projections it is likely to result in a reduced housing requirement for the District.
>
> 29. However, there are some doubts about the reliability of the 2016-projections and their reliability for plan making. Notwithstanding this, the PPG on HEDNA makes clear that the household projections are only the starting point for establishing a housing requirement figure. For these reasons and having regard to the importance of boosting the supply of housing, it would be unjustified to revisit the Plan's evidence base and delay adoption of the Plan in the light of the 2016-based projections. In order to ensure certainty about the approach, it is recommended that the revisions outlined in MM6 [main modification 6] in respect of this matter are included in the plan."

22. The Council accepted the Inspector's recommendation that the Plan be adopted subject to the main modifications and so the Plan was adopted on 19 August 2019.

Summary of the grounds of challenge

23. Against this background, the Claimant summarises its grounds of challenge as follows:-

(1) The release of the BE2 site is based on a misinterpretation or misunderstanding of national policy/guidance regarding published household projections, leading to the erroneous rejection of the 2016 projections as the demographic starting point for calculation of OAHN. It is also the result of an unexplained and unjustified inconsistency in approach to the 2016 projections on the part of the Secretary of State, through his appointed Inspectors, as well as internal inconsistency within the LP itself;

(2) Even if it was right to reject the 2016 projections as the starting point for calculation of OAHN, they were a material consideration to be taken into account *inter alia* when finalising the OAHN calculation, addressing reasonable alternatives within the Sustainability Appraisal ("SA") and whether exceptional circumstances existed for release of green belt, yet the LP proceeds on the basis that they are immaterial;

(3) The release of the BE2 site is based on a misinterpretation or misunderstanding of national green belt policy requiring exceptional circumstances for release of land from green belt, and/or an irrational application of that national green belt policy. There were no exceptional circumstances for release of Hollands Farm from the green belt;

(5) The Habitats Regulations Assessment ("HRA") was unlawful in two specific respects;

(6) Further or alternatively, the reasoning was inadequate because it conceals public law errors in the Inspector's approach.

The relief sought by the Claimant

24. The Claimant seeks an order quashing parts of the Plan as follows:-

(1) in Policy CP4:-

> "1. The housing target for the District for the plan period 2013-2033 is 10,925 homes.
> 2. These homes will be distributed across the District broadly as follows:
> a) …
> b) Tier 2 – 3,200 homes, broadly distributed as follows:
> i. …
> ii. …
> iii. 800 homes at Bourne End and Wooburn."

(2) the site-specific policy for Hollands Farm, policy BE2, and accompanying text.

25. The Claimant also seeks to quash those parts of the plan which remove the BE2 site from the green belt (i.e. the map at p.260 of the Plan linked to policy CP8).

26. The Claimant asks that the policies quashed by the court should be remitted together with directions that they be reconsidered in the light of the court's judgment and an amended version of the Plan prepared for submission to the Secretary of State.

27. The remainder of this judgment is set out under the following headings:-

The scope of the grounds of challenge

28. Ground 6 alleges that "as noted above there are numerous flaws in the Inspector's reasoning as set out in the Inspector's Report making it difficult if not impossible to scrutinise the reasoning to establish the lawfulness, or otherwise, of the approach taken". It is then said that these "affect matters generally, but so far as relevant affect all of the questions the subject of the grounds above." In so far as this purported to be a roving ground of challenge, enabling the Claimant to sweep up complaints not

otherwise pleaded, it would have been impermissible and would have been liable to be struck out.

29. The burden lies on a claimant to show that the reasons of the decision-maker may well conceal a public law error, or that there is a lacuna in the reasoning raising a substantial doubt as to whether a public law error has been committed (see Save Britain's Heritage v Number 1 Poultry Limited [1991] 1 WLR 153, 168). As a matter of elementary fairness, parties opposing a claim are entitled to know what errors of public law a claimant is seeking to raise before the court. Since a claimant must show that the reasoning given has failed to address a principal important controversial issue, a defendant may need to be able to place before the court material which was in front of the decision-maker and which puts matters into context. A failure to plead a reasons challenge may deprive the defendant of the opportunity to do this. In any event, a defendant and any interested party, and indeed the court, are entitled to know what the claimant's case is and, furthermore, in straightforward, clear language.

30. This pleading style for a reasons challenge is just as objectionable as a bare, unparticularised assertion of irrationality. It is high time that these generalised or unparticularised forms of pleading (sometimes referred to in this case as a "wrapping up") should cease to be used. If nothing else, it is incompatible with a party's duty under CPR 1.3 to assist the court to further the overriding objective.

31. Paragraph 91 of the Claimant's skeleton simply repeated this defective pleading. Fortunately for the Claimant, in granting leave Lang J curtailed ground 6 so that it refers solely to issues pleaded under the other grounds, for which permission was granted. In the circumstances, there is no need for me to deal with the reasons challenges separately under ground 6. However, it should be noted that ground 5 is concerned with alleged flaws in the Habitats Regulations Assessment carried out by the Council and not with any allegation that the Inspector failed to comply with her duty to give reasons.

32. At 9.23pm on 22 June 2020, the evening before the start of the hearing of this matter, the Claimant's counsel indicated that, subject to instructions from his client, he wished to raise an additional argument under ground 3 challenging the first sentence of IR 155. As Mr James Burton candidly said on behalf of the Claimant, this was a point which had not been noticed before.

33. Just before the hearing began on the first day, the court received a proposed amendment to the Statement of Facts and Grounds. The amendment lacked particulars, which had to be supplied by some further drafting over the luncheon adjournment. Not long before the court sat on the second day of the hearing a formal application to amend was received.

34. This application to amend was unjustifiably late. Mr. Paul Brown QC for the Council reserved his position on the application, but did say that he would object if his client was unable to respond properly within the two days allotted to the hearing. Plainly, if the matter had been listed for only one day, the Council could not have had sufficient time to respond and the application would have been refused in order to maintain fairness between the parties and in accordance with the overriding objective in CPR 1.1. The court's resources have to be allocated appropriately as between this and other cases.

35. The Council was able to provide to the court some material on this new point on the second day of the hearing. I heard the point argued *de bene esse*, so that the Claimant could have it ventilated. I will deal with permission to amend when I come to deal with the arguability of this point below.

36. The court was not helped by the diffuse nature of some of the written arguments from the Claimant and it was therefore necessary during the hearing for certain points to be clarified. Unfortunately, some of the Claimant's oral arguments shifted from their written position. Four matters were mentioned which did not appear to have been pleaded or raised before. To avoid any ambiguity on the matter the Court asked counsel for the Claimant to provide a note explaining the extent to which these matters had been pleaded. After carefully considering the note received on 26 June, I am satisfied that these matters have not been raised in the pleadings. To some extent Mr. Burton appears to accept that and seeks to justify that position. I am wholly unpersuaded by his submissions. For example, in one instance it is said that a particular point was not pleaded because the Claimant was relying upon a different argument. However, that second point was also not pleaded, and, in any event, this provides no justification for not pleading a point which might be relied upon in the alternative.

37. In recent years the Court of Appeal has emphasised the need for procedural rigour in public law proceedings just as in other areas of civil justice. That requirement extends to the proper pleading of cases so as to identify formally, clearly, concisely and precisely the points being raised.

38. I would refer to the following statement by Singh LJ in R (Talpada) v Secretary of State for the Home Department [2018] EWCA Civ 841 at [67] to [69]:-

> "67. I turn finally to the question of procedural rigour in public law litigation. In my view, it cannot be emphasised enough that public law litigation must be conducted with an appropriate degree of procedural rigour. I recognise that public law litigation cannot necessarily be regarded in the same way as ordinary civil litigation between private parties. This is because it is not only the private interests of the parties which are involved. There is clearly an important public interest which must not be overlooked or undermined. In particular procedure must not become the master of substance where, for example, an abuse of power needs to be corrected by the court. However, both fairness and the orderly management of litigation require that there must be an appropriate degree of formality and predictability in the conduct of public law litigation as in other forms of civil litigation.
>
> 68. In the context of an appeal such as this it is important that the grounds of appeal should be clearly and succinctly set out. It is also important that only those grounds of appeal for which permission has been granted by this Court are then pursued at an appeal. The Courts frequently observe, as did appear to happen in the present case, that grounds of challenge have a habit of "evolving" during the course of proceedings, for

> example when a final skeleton argument comes to be drafted. This will in practice be many months after the formal close of pleadings and after evidence has been filed.
>
> 69. These unfortunate trends must be resisted and should be discouraged by the courts, using whatever powers they have to impose procedural rigour in public law proceedings. Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleaded or where permission has not been granted to raise them. Otherwise there is a risk that there will be unfairness, not only to the other party to the case, but potentially to the wider public interest, which is an important facet of public law litigation."

39. These principles have been re-emphasised in other cases (e.g. R (Spahiu) v Secretary of State for the Home Department [2019] 1 WLR 1297 at [2]). They resonate in planning cases, not least in challenges to local plans, because, not only is there the general public interest in the making of lawful development plans, but the very nature of the proceedings may potentially affect a number of interested parties, particularly where new issues are raised.

40. It is well-established that the parties on both sides are under a duty to keep the merits of the grounds of challenge under review as a claim progresses (see eg. the Administrative Court Guide 2019). If a claimant wishes to rely upon a point which has not been pleaded in a claim for judicial review, by definition that is a point for which permission has not been granted, and an application must be made under CPR 54.15 to obtain the court's permission to argue it. He must give notice of the application to the court and to the parties *at least* 7 clear days before the hearing (PD 51A para. 11.1). It is unacceptable for the matter to be dealt with informally (e.g. simply in a skeleton). The same approach applies in a planning statutory review (see PD 8C para.13). It should not be assumed that it is generally acceptable to leave an application to amend until a week before the hearing. That may pose difficulties in a particular case. For example, sometimes a defendant may not be able to respond properly in time for the hearing or it may not be possible to cover a substantial new argument within the time allocated for the hearing. A fixture would not normally be vacated at such a late stage so that a new point could be argued, thereby wasting the court's resources, without a sufficiently strong justification.

41. There has not been a formal application to amend the pleadings to rely upon any of the four matters addressed in counsel's note. The failure to plead these points and to make a proper application to amend has not been justified. The onus lay on the Claimant to take the appropriate procedural steps, without having to be prompted by the court. The informal approach taken in this case is impermissible. Parties are entitled to prepare for a hearing in the expectation that it will deal with those points which have been formally pleaded, and so far as grounds of challenge are concerned, for which the court has given its permission to proceed. If that approach is not respected there will be uncertainty, for example, as to what matters those responding should expend resources on addressing and for the court in deciding how it should allocate its resources, not only for the hearing but in preparing a judgment. The lack of proper *formal* notice of a point being taken may also deprive other parties of an adequate opportunity to prepare a response and deprive the court of hearing full

argument from all sides. As I say below, this arose in the present case. In the interests of fairness to all parties, the overriding objective and the allotting of an appropriate share of the court's resources to this case, I do not accept that the Claimant is entitled to raise any of these four new points. Although the Court is not obliged to deal with any of these new points, I will, however, comment on certain aspects below.

Statutory framework

42. Section 13(1) of PCPA 2004 requires the authority to keep under review the matters which may be expected to affect the development of their area or the planning of its development. Those matters include *inter alia* the principal physical, economic, social and environmental characteristics and the size, composition and distribution of the population of the area (s.13(2)). The obligation to keep under review also includes "any changes which the authority think may occur" and "the effect such changes are likely to have on the development of the authority's area or on the planning of such development" (s.13(3)). A local planning authority *may* also keep under review matters set out in s. 13(2) or (3) in relation to any neighbouring district to the extent that those matters may be expected to affect the authority's area (s.13(4)).

43. Section 17(3) of PCPA 2004 requires a local planning authority to set out its policies relating to the development and use of land in their area in local development documents, such as the Plan in this case. The authority must keep under review their local development documents having regard to the results of any reviews under s.13 (s.17(6)).

44. Section 19(2)(a) requires that in the preparation of a local development document the local planning authority must have regard to "national policies and advice contained in guidance issued by the Secretary of State".

45. Section 19(5) provides that:-

> "The local planning authority must also-
>
> (a) carry out an appraisal of the sustainability of the proposals in each development plan document;
>
> (b) prepare a report of the findings of the appraisal."

A "development plan document" is a local development document designated as such a plan under the authority's local development scheme (s.37(3)), and which will form part of the statutory development plan once adopted (s.38(3)). Once adopted, the provisions of s.70(2) of the Town and Country Planning Act 1990 ("TCPA 1990") and s.38(6) of PCPA 2004 become applicable.

46. It is normal practice for the sustainability appraisal ("SA") to be combined with the "environmental report" required by the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No 1633) ("the 2004 Regulations").

47. A draft development plan document must be submitted to the Secretary of State for independent examination (s.20(1)) before adoption may be considered under s.23. Before submitting a draft plan, the authority must comply with a number of requirements in the Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012 No. 767) ("the 2012 Regulations"), including consultation on proposals for a draft plan, publicity for the plan submitted for examination, and the procedure for making representations on that submitted version. Any such representations must be forwarded to the Secretary of State with the submitted plan and must be taken into account by the Inspector who carries out the examination under section 20(4) (regulations 18 to 23 of the 2012 Regulations).

48. The authority must not submit a draft development plan document to the Secretary of State unless "they think the document is ready for independent examination" (s.20(2)(b)). Commenting on this provision, paragraph 1.3 of "Procedural Practice in the Examination of Local Plans" (published by the Planning Inspectorate in June 2016) states:-

> "there is a very strong expectation that further LPA-led changes will not be necessary and this is a key premise of delivering an efficient examination timetable. Provision for changes after submission of the plan is to cater for the unexpected. It is not intended to allow the LPA to complete or finalise the preparation of the plan"

49. The purpose of the examination is (so far as is material) to determine whether the submitted plan satisfies the requirements of s.19 and regulations relating to plan preparation (s.20(5)(a)) and "whether it [the submitted plan] is sound" (s.20(5)(b)).

50. "Soundness" is not a term defined in the legislation. However, paragraph 182 of the NPPF 2012 states:-

> "A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
>
> - **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
>
> - **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
>
> - **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and

- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

51. For the purposes of this claim, key points in paragraph 182 of the NPPF 2012 include the following:-

(i) the Plan should seek to meet objectively assessed development requirements;

(ii) the Plan should enable the delivery of "sustainable development" in accordance with NPPF 2012;

(iii) the Plan should be the most appropriate strategy, when considered against reasonable alternatives, and be based on "proportionate evidence".

52. If the examining Inspector considers that the authority has complied with the duty under s.33A to co-operate with other planning authorities and the requirements referred to in s.20(5)(a) and that the plan is "sound", he must recommend that the document be adopted by the authority (s.20(7)). Where he considers that one or more of those requirements is not satisfied he must recommend to the authority that the plan is not adopted (s.20(7A)). However, subject to being satisfied that the authority has complied with the duty to co-operate under s.33A, the Inspector must recommend "main modifications" to the draft plan which would make it "sound" or otherwise compliant, if requested by the plan-making authority to do so (s.20(7B) and (7C)).

53. The legislation imposes a duty on the Inspector to give reasons for his or her recommendations (s.20(7) and (7A)). The authority must publish the Inspector's "recommendations and the reasons" (s.20(8)).

54. The local planning authority may adopt the plan only if the Inspector has either recommended that outcome or has recommended main modifications to make the plan sound and/or satisfy the requirements referred to in s.20(5)(a) (see s.23(2) to (4)). At this stage, the authority has a discretion as to whether or not to adopt a plan in accordance with the Inspector's recommendations. It has the option of withdrawing a plan and of starting all over again. If the Inspector has recommended against the adoption of the Plan (s.20(7A)) the authority cannot adopt that Plan.

55. Section 113(3) enables an "aggrieved person" to apply to the High Court for statutory review of *inter alia* a development plan document on the grounds that (a) it is not within (in this case) the powers conferred by Part 2 of PCPA 2004 or (b) a "procedural requirement" (under the relevant powers or regulations made under those powers) has not been complied with. The High Court may only intervene if either (a) the document "is to any extent outside the appropriate power" or (b) "the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement" (s.113(6)). Limb (b) might cover a failure to comply with the Inspector's duty to give reasons for his recommendations under s.20.

56. The Court's jurisdiction under s.113 depends upon the application of conventional public law principles (Solihull Metropolitan Borough Council v Gallagher Homes Limited [2014] EWCA Civ 1610 at [2]; Blythe Valley Borough Council v Persimmon

Homes Limited [2009] J.P.L 335 at [8]). As Mr. Burton stated, it is not an opportunity for parties to re-run the planning merits on an issue.

57. Although a plan should not be submitted for examination unless *inter alia* the authority considers it to be "sound" (see e.g. s.20(2)), that provision does not give rise to any presumption in the examination that the plan is "sound" or to any legal burden on the part of objectors to produce evidence to the contrary (Blythe at [37] to [40]).

58. It follows from the analysis above, that the judgment made by an Inspector as to whether a submitted plan (with any "main modifications") is "sound" is central to the legal ability of the authority to adopt that document as part of its development plan. In Barratt Development Limited v City of Wakefield Metropolitan District Council [2011] J.P.L 48 at [11] Carnwath LJ (as he then was) said this about the concept of "soundness" and Government policy on the subject:-

> "I would emphasise that this guidance, useful though it may be, is advisory only. Generally it appears to indicate the Department's view of what is required to make a strategy "sound", as required by the statute. Authorities and inspectors must have regard to it, but it is not prescriptive. Ultimately it is they, not the Department, who are the judges of "soundness". Provided that they reach a conclusion which is not "irrational" (meaning "perverse"), their decision cannot be questioned in the courts. The mere fact that they may not have followed the policy guidance in every respect does not make the conclusion unlawful."

At [33] he 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*." (emphasis added).

That last statement of principle is in line with the approach recently taken by the Supreme Court in R (Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020] PTSR 221. It has been followed on many occasions (see e.g. Oxted Residential Limited v Tandridge District Council [2016] EWCA Civ 414 at [27]; Grand Union Investments Limited v Dacorum Borough Council [2014] EWHC 1894 (Admin) at [59]; Barker Mill Estates Trustees v Test Valley Borough Council [2017] PTSR 408 at [88]).

National Policy

NPPF 2012

59. Paragraph 14 states (so far as relevant):-

> "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.
>
> For **plan-making** this means that:
>
> - local planning authorities should positively seek opportunities to meet the development needs of their area;
>
> - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
>
>   – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
>   – specific policies in this Framework indicate development should be restricted."

60. Footnote 9 refers to protective policies and legal codes which include green belt, AONB and sites protected under the Habitats Directive. So it is plain that the *presumption* in favour of meeting OAHN can be overridden if those "restrictive policies" point to a different outcome. Although that presumption is solely contained within paragraph 14 (East Staffordshire Borough Council v Secretary of State for Communities and Local Government [2018] PTSR 88 at [47]), what is meant by sustainable development is explained in paragraphs 6, 7 and 18 to 219 of the NPPF.

61. Under the heading "Delivering a wide choice of high quality homes" the first part of paragraph 47 of NPPF 2012 states:-

> "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."

62. The same objective is further developed in paragraph 50:-

> "To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:
>
> - plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with

> disabilities, service families and people wishing to build their own homes);
>
> - identify the size, type, tenure and range of housing that is required in particular locations, reflecting local demand; and
>
> - where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time."

63. In Hunston Properties v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 and in the Solihull case, the Court of Appeal identified the "radical change" which had been introduced by the NPPF 2012. According to previous national policy the formulation of housing and employment policies in development plans involved an overall exercise balancing all material considerations, including need, demand and policy constraints. But the NPPF 2012 requires a two-step approach to be followed whereby the full objectively assessed need has first to be identified and secondly that need met unless, and only to the extent that, other policy factors in the NPPF indicate otherwise. The words in paragraph 47 of NPPF 2012 "so far as is consistent with the policies set out in this Framework" do not qualify the identification of what is objectively needed, simply the extent to which the local plan should go to meet those needs (Hunston at [25] and Solihull at [9] to [10]).

64. When the Court of Appeal in Solihull endorsed the analysis of national policy by Hickinbottom J (as he then was), including the greater policy emphasis in the NPPF 2012 on the provision of housing, it added that that was supported not only by paragraph 47 of the Framework, but also by paragraph 14. Laws LJ expressly stated (at [15] to [16]) that that interpretation was not undermined by the second indent to the second bullet point in paragraph 14, containing the words "specific policies in this Framework indicate development should be restricted" and referring *inter alia* to green belt policy. There is a policy imperative for meeting OAHN and boosting the housing supply to which the NPPF gives effect unless the presumption in paragraph 14 is outweighed by the *application* of one or more relevant footnote 9 policies (see by analogy East Staffordshire Borough Council at [22(2)] and Monkhill Limited v Secretary of State for Housing, Communities and Local Government [2020] PTSR 416 at [39(10)]). It is insufficient that a restrictive footnote 9 policy merely exists or is engaged. Instead, that policy must be applied to see whether that produces an outcome which is judged to outweigh the objective of meeting OAHN.

65. These principles are carried through in greater detail to the sections of the NPPF 2012 dealing with plan-making:-

> "151. Local Plans must be prepared with the objective of contributing to the achievement of sustainable development. To

> this end, they should be consistent with the principles and policies set out in this Framework, including the presumption in favour of sustainable development.
>
> 156. Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver:
>
> - the homes and jobs needed in the area;
>
> - […]
>
> 159. Local planning authorities should have a clear understanding of housing needs in their area. They should:
>
> - prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
>
> – meets household and population projections, taking account of migration and demographic change;
>
> – addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and
>
> – caters for housing demand and the scale of housing supply necessary to meet this demand;
>
> - prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period."

66. Paragraph 158 of the NPPF 2012 addresses the use of "a proportionate evidence base":-

> "Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals."

67. In relation to the duty under s.33A of PCPA 2004 paragraph 179 of NPPF 2012 states:-

> "Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans. Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework. […]"

68. Paragraphs 79 to 92 of NPPF 2012 set out policy on green belts. Paragraph 79 states:-

> "The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence."

69. Paragraph 80 sets out the five purposes which green belt land may serve, depending on the local circumstances:-

> "Green Belt serves five purposes:
>
> - to check the unrestricted sprawl of large built-up areas;
> - to prevent neighbouring towns 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."

70. In relation to the review of green belt boundaries, paragraphs 83 and 84 are relevant:-

> "83. Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period.

> 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."

National Planning Practice Guidance

71. The NPPG provides practical guidance on the application of paragraph 158 of NPPF 2012 for the use of a "proportionate evidence base" in the preparation of a local plan.

72. In the section dealing with "local plan development" paragraph 014 (revision dated 6 March 2014) refers to paragraph 158 of NPPF 2012 and continues:-

> "The evidence needs to inform what is in the plan and shape its development rather *than being collected retrospectively*. It should also be kept up-to-date. For example *when approaching submission*, if key studies are already reliant on data that is a few years old, they should be updated to reflect the most recent information available (and, if necessary, the plan adjusted in the light of this information and the comments received at the publication stage)." (emphasis added)

So the focus in that guidance is on up-dating when the local authority is approaching the submission of a draft plan for examination.

73. The section of the NPPG dealing with HEDNAs was updated on 20 March 2015. Paragraph 014, in answering the question "what methodological method should be used?" states that:-

> "Establishing future need for housing is not an exact science. No single approach will provide a definitive answer."

74. Paragraph 015 provides an important and helpful explanation on the use of household projections as the starting point for estimating future, overall housing need:-

> "Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.
>
> The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.
>
> The household projections are *trend based*, ie they provide the household levels and structures that would result *if the*

> *assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.*
>
> *The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing. As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply.*" (emphasis added)

75. Under ground 1 the issues which are said to involve interpretation of policy concern paragraph 016 of the NPPG. That provides the following guidance under the heading "how often are projections updated?":-

> "The government's official population and household projections are generally updated every 2 years to take account of the latest demographic trends. The most recent published Household Projections update the 2011-based interim projections to be consistent with the Office of National Statistics population projections. Further analysis of household formation rates as revealed by the 2011 Census will continue during 2015.
>
> *Wherever possible*, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. *A meaningful change* in the housing situation should be considered in this context, but this *does not automatically mean that housing assessments are rendered outdated every time new projections are issued.*" (emphasis added).

Legal Principles

76. The *interpretation* of policy is an objective question of law for determination by the court, in so far as the meaning of a particular policy or phrase can properly be said to be justiciable. However, the *application* of policy is a matter for the judgment of the decision-maker and may only be reviewed on public law grounds, primarily that of irrationality. A contention that the decision-maker failed to take into account a material consideration cannot succeed unless the claimant establishes not only that that consideration was legally relevant but also that he was obliged as a matter of law (or policy) to take it into account, or that it was irrational not to have done so, because

it was "obviously material" (Oxton Farm v Harrogate Borough Council [2020] EWCA Civ 805 at [8]).

77. The general principles governing the interpretation of planning policy have been set out in a number of authorities, including Tesco Stores Limited v Dundee City Council [2012] PTSR 983; Hopkins Homes Limited v Secretary of State for Communities and Local Government [2017] 1 WLR 1865; East Staffordshire Borough Council v Secretary of State for Communities and Local Government [2018] PTSR 88; R (Mansell) v Tonbridge and Malling Borough Council [2019] PTSR 1452; St Modwen Developments Limited v Secretary of State for Communities and Local Government [2018] PTSR 746; Canterbury City Council v Secretary of State for Communities and Local Government [2019] PTSR 81; and Samuel Smith [2020] PTSR 221.

78. Planning policies should not be interpreted as if they were statutory or contractual provisions. They are not analogous in nature or purpose to a statute or a contract. Planning policies are intended to guide or shape practical decision-making, and should be interpreted with that purpose in mind. They have to be applied and understood by planning professionals and by the public to whom they are primarily addressed. Decision-makers are entitled to expect both national and local planning policy to be as clearly and simply stated as they can be and, however well or badly expressed, the courts to provide a straightforward interpretation of such policy (Mansell at [41]; Canterbury at [23]; Monkhill at [38]).

Housing Need Assessments

79. There have been many attempts in the last few years to entice the courts into making pronouncements on the methods used to assess OAHN. Repeatedly the response has been that this is a matter of planning judgment for the decision-maker and not for the courts. For example, in connection with the requirement for a 5 year supply of housing land, Lindblom LJ said this in Jelson Limited. v Secretary of State for Communities and Local Government [2018] J.P.L 790 at [24] to [25]:-

> "24. As this court has emphasized in *Oadby and Wigston Borough Council*, against the background of its earlier decisions in *Hunston Properties Ltd*. and *Gallagher Estates Ltd.*, national policy and guidance does not dictate, for decision-making on applications for planning permission and appeals, exactly how a decision-maker is to go about identifying a realistic and reliable figure for housing need against which to test the relevant supply (see paragraphs 35 and 36 of my judgment). In this respect, government policy, though elaborated at length in the guidance in the PPG, is not prescriptive. Where the Government wanted to be more specific in the parameters it set for decision-makers considering whether a local planning authority could demonstrate the required five-year supply of housing land, it was — in laying down the approach to calculating the supply of deliverable housing sites in paragraphs 47 and 49 of the NPPF, and, in particular, in carefully defining the concept of a "deliverable" site (see my judgment in *St Modwen Developments Ltd. v*

> *Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 , at paragraph 36).
>
> 25. Responsibility for the assessment of housing need lies with the decision-maker, and is no part of the court's role in reviewing the decision. Although the decision-maker is clearly expected to establish, at least to a reasonable level of accuracy and reliability, a level of housing need that represents the "full, objectively assessed needs" as a basis for determining whether a five-year supply exists, this is not an "exact science" (the expression used in paragraph 2a-014-20140306 of the PPG). It is an evaluation that involves the decision-maker's exercise of planning judgment on the available material, which may not be perfect or complete (see the judgment of Lang J. in *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin), at paragraph 27). The scope for a reasonable and lawful planning judgment here is broad (see the judgment of Hickinbottom J. in *Stratford-on-Avon District Council v Secretary of State for Communities and Local Government* [2013] EWHC 2074 (Admin), at paragraph 43). Often there may be no single correct figure representing the "full, objectively assessed needs" for housing in the relevant area. More than one figure may be reasonable to use. It may well be sensible to adopt a range, rather than trying to identify a single figure. Unless relevant policy in the NPPF or guidance in the PPG has plainly been misunderstood or misapplied, the crucial question will always be whether planning judgment has been exercised lawfully, on the relevant material, in assessing housing need in the relevant area (see paragraphs 32 to 38 of my judgment in *Oadby and Wigston Borough Council*). A legalistic approach is more likely to obscure the answer to this question than reveal it (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*)."

80. Lindblom LJ returned to the subject in CPRE Surrey v Waverley Borough Council [2019] J.P.L 505 in the context of a legal challenge to a local plan at [34] to [35]:-

> "34. On at least four previous occasions this court has considered challenges attacking a planning decision-maker's assessment of housing need: in *R. (on the application of Hunston Properties Ltd.) v City and District Council of St Albans* [2013] EWCA Civ 1610; in *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040; in *Jelson Ltd. v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council* [2018] EWCA Civ 24; and in *Hallam Land Management Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808. There are also several relevant judgments at first instance, including *Dartford Borough Council v Secretary of*

State for Communities and Local Government [2016] EWHC 649 (Admin) and *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin).

35. Some basic points emerge:

(1) Although the cases so far have all concerned decisions on applications for planning permission and appeals under section 78 of the 1990 Act against the refusal of, or failure to determine, such an application, the court's approach to a challenge to a local plan will not be materially different. It too will be governed by the principles of public law. The court will not revisit the relevant assessment on its merits. As was emphasized in *Jelson* (at paragraphs 22 and 25), responsibility for assessing housing need lies with the decision-maker, not with the court (see also *Oadby and Wigston Borough Council*, at paragraphs 33 to 48; and *Hallam Land Management*, at paragraph 51).

(2) In both processes – plan-making and development control – the decision-maker must have in mind the relevant policy and guidance issued by the Government, in the NPPF and the PPG. To apply such policy and guidance the decision-maker must understand it properly. The correct interpretation of planning policy is ultimately a question for the court (see the judgment of Lord in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 17 to 19, and the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] 1 W.L.R. 1865, at paragraph 22). But statements of planning policy and guidance are not equivalent to statements of legal principle (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 13).

(3) Relevant policy and guidance on the assessment of housing need is not framed in mandatory or inflexible style. No single methodology is prescribed, and no level of precision is specified. As this court said in *Jelson* (at paragraph 25) and *Hallam Land Management* (at paragraphs 50 and 53), the exercise does not lend itself to mathematical exactness. Indeed, such precision may well be misleading. While the decision-maker is expected to establish, to a reasonable level of accuracy, a level of housing need representing the "full, objectively assessed needs", this is not an "exact science" (see *Jelson*, ibid.). There may be no single right answer – especially perhaps where a housing market area embraces more than one administrative area and the preparation of local plans in the boroughs concerned is asynchronous, as often it will be (see *Oadby and Wigston*

> *Borough Council*, at paragraph 38). Where the decision-maker is considering the weight to be given to the benefit of new housing development in an area of shortfall, the "broad magnitude of the shortfall" is likely to be one of the factors to consider, but "great arithmetical precision" is not required (see *Hallam Land Management*, at paragraphs 47 and 51 to 53).
>
> (4) The evaluation the decision-maker must carry out will always involve an exercise of planning judgment, and the scope for reasonable planning judgment here is broad. The degree of accuracy required in establishing the "full, objectively assessed needs" for housing will depend on the circumstances, and will itself be a matter of planning judgment. The court will only interfere if some distinct error of law is shown – for example, a misinterpretation of relevant policy or guidance, or a failure by the decision-maker to apply reasonable planning judgment to the available evidence, which may well be imperfect or incomplete (see *Jelson*, ibid.). It will not be tempted into an assessment of the evidence, expressing a preference of its own for one set of data or another, or forecasts from a particular source. Nor will it engage with the arithmetic unless the decision-maker's own calculations have clearly gone wrong.
>
> (5) Arguments contending what a decision-maker "should" or "could" or "might" have done in assessing housing need are unlikely to prevail. For a challenge to succeed, the applicant will always have to show that what was done was actually unlawful, not merely contrary to its own case at an inquiry or examination hearing. Otherwise, the proceedings are liable to be seen as an attempt to extend by other means a debate belonging only in that forum. It is at an inquiry or examination hearing that the parties have the opportunity to argue their case on housing need, not before the court."

81. The claimants in the CPRE case complained that the assessment of need in Woking, a town outside Waverley's district, failed to use the most up-to-date household projections published in 2016 and based upon 2014 data ([43] and [45]). It was said that these figures were "meaningfully different" from those in fact used for Woking, resulting in a lower assessment of need. It was also submitted that there was an unexplained inconsistency between the approach which the local authority had applied when estimating OAHN for its own district, where it did use the 2014-based household projections, as compared to the need assessed for Woking where it did not (relying upon North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P & CR 137).

82. The Court of Appeal rejected those arguments. At [46] Lindblom LJ said:-

> "The fatal weakness in such arguments is that they draw the court beyond the line dividing the role of the judge from the role of the planning decision-maker – territory where the court will not intrude."

At [49] he continued:-

> "Assessing the extent of such need, and gauging the proportion of it that should be accommodated by the plan being prepared, will always involve a series of planning judgments. The scope here for a rational and lawful planning judgment is broad, and the scope for the court's intervention correspondingly narrow. This has been acknowledged in the authorities. The choice of relevant data and projections and the use made of such evidence are matters for the inspector conducting the examination and assessing the soundness of the plan, and for the local planning authority with statutory responsibility for preparing it. In a particular case there may be several reasonable decisions available to the inspector and the authority. It may be a reasonable approach, for example. To use projections that are not the very latest to have emerged, but to rely on evidence underpinning the strategy in the recently adopted local plan for a neighbouring authority's area. Some other approach may also be reasonable, and so may its outcome. Either approach may therefore be lawful."

As the Court of Appeal made plain, these statements apply to the assessment of housing need, whether inside or outside the area of the plan-making authority.

The duty to give reasons

83. The Inspector's statutory obligation was to give reasons for her recommendations, whether under s.20(7), (7A) or (7C). The legal standard for the giving of reasons was set out in South Bucks District Council v Porter (No. 2) [2004] 1 WLR 1953. In particular, the claimant must demonstrate that there is a substantial doubt as to whether the Inspector's reasoning was vitiated by a public law error ([36]). In the CPRE case the Court of Appeal stated that the reasons given by an Inspector on the examination of a local plan may be more succinctly expressed than in a decision letter on a planning appeal. It is unlikely that he or she will need to set out the evidence of every participant. It will be sufficient if he conveys to a "knowledgeable audience" how he has decided the main issues before him. He may only need to set out the main parts of his assessment and the essential planning judgments he has made ([75] to [76]).

Ground 1

A summary of the Claimant's submissions

84. Mr. Burton submitted that the Inspector had misinterpreted paragraph 016 of the NPPG on HEDNAs, namely the requirement to use the latest available information

"wherever possible". Applying that paragraph, the ONS 2016 household projections should have been used to calculate OAHN unless it were "not possible to do so".

85. Second, the Inspector raised the wrong question by asking whether household projections in the ONS 2016 represented a "meaningful change". That question would be appropriate for an adopted but not an emerging local plan.

86. Third, the Inspector misunderstood the answer given by the Council to her question (see [18] above) as referring to the district of Wycombe, whereas it related instead to the whole of the HMA.

87. Fourth, the Claimant submits that in IR 29 the Inspector identified only three reasons for not requiring ONS 2016 projections to be used in the evidence base for the Plan:-

(i) There are doubts about the reliability of the projections and their use for plan making;

(ii) Household projections are only a starting point for establishing a housing requirement figure;

(iii) The importance of boosting housing land supply.

It is submitted that point (i) could only have been based upon the MHCLG's "Technical Consultation on updates to national policy and guidance" (October 2018) and its February 2019 response to consultation and involves a misinterpretation of those documents. The Claimant submits that the second and third reasons were irrelevant and/or were incapable of amounting to reasons for not requiring the ONS 2016 household projections to be used. Furthermore, it is submitted that the Inspector did not rely upon delay to the adoption of the local plan as a fourth reason.

88. Fifth, the Inspector failed to have regard to the Inspector's report on the examination of the Guildford Local Plan (see e.g. IR 25 of that report) or to give reasons for taking an approach inconsistent therewith.

89. Sixth, there was an internal inconsistency between, on the one hand, the Council's amendment of the Plan through a main modification to update the housing land *supply* figures and, on the other, the rejection of the use of the ONS 2016 household projections to update the assessment of housing *need*.

90. Seventh, the Inspector failed to give reasons addressing the Claimant's case, in particular Mr. Carter's estimate of a revised OAHN of 8,351 dwellings using the latest ONS projections. Alternatively, the reasons given by the Inspector were inadequate because they give rise to a substantial doubt as to whether she committed one or more of the public law errors set out above.

The ONS projections and their merits

91. On 19 October 2018 ONS issued a statement about their 2016-based household projections. In particular, they explained that household projections "are not a measure of how many homes would need to be built to meet housing demand; they show what would happen if *past trends in actual* household formation continue" (emphasis added). The projections show the number of households that there would

be in England if a set of assumptions based on *previous* demographic trends in population (births, deaths, migration and household formation) were to be realised in practice. "Therefore, it is important that projections are not viewed as predictions or forecasts, but as an indication of the future if recent trends continue." Because these household projections "are based on trends in *actual* numbers of households" "they do not take account of how many people may want to form new households, but for whatever reason are not able to …" (emphasis added). This statement is in line with paragraph 015 of the NPPG (see [74] above).

92. Accordingly, the Claimant's point that the ONS 2016 projections "reflected hard edged demographic facts" is incorrect. The projections provide *future* estimates of the number of households that may come into existence and, therefore, by definition are not "fact". Instead, they involve the use of trend lines drawn from facts in the past in order to project into the future.

93. The Inspector who held the examination into the Guildford Local Plan (which was also a transitional plan) issued a note prior to a hearing convened to consider the use of the ONS 2016 and a revised OAHN, upon which the local planning authority wished to rely. He explained that the 2014-based household formation rates had been based on a time series (drawn through 5 points - see [114] below going back to 1971, whereas the 2016-based figures (ONS 2016) used "only the two reference points of 2001 and 2011". He referred to a view that the household projection rates put forward in ONS 2016 were "unduly suppressed by the factors prevalent during the short time period on which they are based: deteriorating affordability, low housing delivery, and recession for part of the period." Nevertheless, Guildford Borough Council had decided to use the ONS 2016 projections together with "a range of significant adjustments to allow for factors such as household formation rates, jobs-related growth and other local issues" to update the evidence base and OAHN for their local plan. The Inspector in that case accepted that their approach did not conflict with the letter or spirit of national policy (IR 25).

94. By now it should be plain from Jelson and the CPRE case that this highly technical debate, although virtually meat and drink to specialist planning officers, consultants, lawyers and Inspectors conducting examinations, is not a matter for argument, let alone resolution, in the courts. This litigation might have given the impression to some that the court would express a view as to whether the approach taken in Guildford was preferable to that taken in Wycombe, or whether one view was right and the other wrong. However, unless the court can be persuaded that a decision-maker's planning judgment on such a matter is irrational, the merits of competing arguments such as these are forbidden territory into which the court may not stray.

95. Where the judgment is that of an expert tribunal such as a planning Inspector, the threshold for irrationality is a notoriously high and difficult one for a claimant to surmount; it is "a particularly daunting task" (Newsmith Stainless Limited v Secretary of State for Environment, Transport and the Regions [2017] PTSR 1126). Furthermore, there is an enhanced margin of appreciation afforded to the judgments of such decision-makers on technical and predictive assessments (R (Mott) v Environment Agency [2016] 1 WLR 4338; R (Spurrier) v Secretary of State for Transport [2020] PTSR 240; R (Plan B Earth) v Secretary of State for Transport [2020] EWCA Civ 214 at [177]).

96. Not surprisingly, Mr. Burton made it plain that he was not contending that the only rational choice for a local planning authority to have made in relation to a transitional plan was to use the ONS 2016 projections.

Discussion

Alleged misinterpretation of policy or guidance

97. The Claimant's skeleton submitted that the requirement in paragraph 158 of the NPPF 2012 that a local plan be based upon up-to-date evidence was only qualified by paragraph 016 of the NPPG on HEDNAs by the phrase "wherever possible". It was also suggested that the sentence in the NPPG beginning "A meaningful change in the housing situation…" applies only to plans which have already been adopted and not to emerging plans, because the immediately preceding sentence refers to "local plans" being kept up to date.

98. That is the kind of legalistic, overly forensic, approach to policy guidance, particularly guidance addressed to practitioners, which the courts have repeatedly sought to discourage. Read in a straightforward way the phrase "local plans" in the NPPG refers to both emerging and adopted plans. But obviously the NPPG does not expect adopted local plans to be reviewed every 2 years or so as new household projections are published. As the NPPG states (paragraph 016), housing assessments are not automatically rendered out-of-date every time new projections are issued. Whether adopted or emerging policy, or the basis upon which it has been prepared, needs to be revised depends upon whether there is a "meaningful change" in the "housing situation".

99. Indeed, at the hearing the Claimant moved on from the position taken in its skeleton by accepting that the advice about "meaningful change" applies to emerging as well as adopted plans. But it was asserted that this applies with more "rigour" or "force" where a plan is adopted. In my judgment, there is no basis, whether in the NPPG or NPPF or elsewhere, for adding that gloss.

100. Up until that change of position, it appeared that the Claimant was seeking to interpret the NPPG as always requiring the latest household projections to be used in the evidence base for an emerging local plan unless it would be "impossible" to do so. This illustrates why the case law emphasises that a forensic, lawyerly approach to understanding such guidance is wholly inappropriate. "Possible" is an ordinary English word. Dictionary definitions show that it has various shades of meaning ranging from something that may be done, or lies within a person's power, to suitable, tolerable or reasonable. The Claimant's "not impossible" approach was in danger of treating the guidance in the NPPG as laying down a wholly unrealistic, if not absurd, requirement.

101. The Claimant's revised approach tacitly recognised this. For example, the Claimant accepts that the disadvantages of delay to an emerging local plan may provide a reason as to why it may not be considered "possible" to revise the OAHN by using recently published household projections.

102. Reading together the sentences beginning "wherever possible" and "a meaningful change", it is plain that the NPPG contains an exhortation to use the latest available

information, but not if the change affecting housing would not be meaningful. Beyond that I do not think that the language of paragraph 016 of the NPPG is susceptible to judicial interpretation.

103. Instead, the expressions "wherever possible", "meaningful change" and "housing situation" depend for their application upon the use of judgment by individual Inspectors and planning authorities, which may only be challenged on the grounds of irrationality.

104. Indeed, when asked to explain how the Claimant submits that the Inspector and/or the Council misinterpreted paragraph 016 of the NPPG and how that provision should be interpreted, Mr. Burton said that the correct interpretation of "wherever possible" *applied to the facts* of this case was that the ONS 2016 household projections were to be used, subject to the caveat that they need not be applied if no "meaningful change" in the housing situation would be involved. That answer confirmed that the Claimant's argument is in truth about the *application*, not the *interpretation*, of the guidance, and depends upon the decision-maker's use of judgment.

105. According to the law on irrationality as a ground of judicial review, it is generally accepted that when presented with a given set of circumstances and information, different decision-makers may legitimately come to a range of different conclusions, none of which can be criticised as falling beyond the spectrum of rational decision-making. That applies to the treatment by Inspectors examining "transitional local plans" of the ONS 2016 household projections (see the principles in [79] - [82] above). If the Secretary of State as the national planning authority should wish to influence or constrain that spectrum, then it is open to him to issue policy guidance. Even so, it is necessary to keep in mind the principle that such guidance does not amount to a legal rule, and that local decision-makers are free to rely on local or exceptional circumstances as to why a departure from that national guidance is considered to be justified (R (West Berkshire District Council) v Secretary of State for Communities and Local Government [2016] 1 WLR 3923 at [17], [21] and [24] to [30]).

106. Here it is necessary to return to the overarching policy in paragraph 158 of NPPF 2012. The Claimant focuses on the term "up-to-date", but that should be read in the context of the overall statement that local plans should be based on "adequate, up-to-date and relevant evidence." These three words are meant to be read together. There was no need for paragraph 158 to refer explicitly to the concept of *legal* relevance. That is inherent in the statutory code in any event. So in this instance "relevant" refers to evidence which is pertinent, apposite, appropriate to the matter or task in hand. That word is to be read alongside "adequate". All three terms describe the *quality* of the evidence base used for the preparation of a local plan. Beyond that we are dealing with matters of planning judgment and not matters susceptible to legal interpretation or prescriptive rules. On analysis, there is no merit in the Claimant's case that the Inspector misinterpreted national policy or guidance. It also follows that the Inspector made no error of law when in October 2018 she posed "Question 3" to the Council in these terms: whether the ONS 2016 household projections "represent a meaningful change in the housing situation in the District and if that would have any bearing on the soundness of the Plan."

Whether the Inspector misunderstood the Council's response to her Question 3

107. In IR 28 the Inspector compared the 2014-based and 2016-based household projections and noted that the latter were approximately 40% lower than the former. She then referred to evidence from the Council that if the OAHN were to be revised in the light of the 2016-based projections, it would be likely to result in "a reduced housing requirement for the District." The Claimant submits that that involved a misreading of the Council's response because that had related to the whole of the HMA rather than just to its own district. That submission was based in particular upon one paragraph which stated:-

> "It is important to emphasise that the approach taken to assessing housing requirements has been across the Bucks HMA. Considering this approach, the inherent uncertainties associated with projections, and the likely lower overall impact on the OAN when the various adjustments are made, it is not considered that this will result in a meaningful change at that level."

108. But the Claimant's reading of that passage is inappropriate. The approach taken by the four district councils had been to look at "housing requirements across the HMA" in the sense that the OAHN had been assessed for each district, before going on to consider how that need could be met within the relevant district, and then whether current need could be satisfied elsewhere in the HMA. The approach had been to consider OAHN district by district and not solely for the HMA as a whole. Read properly in context, and not in a forensic manner, the phrase "at that level" should not be understood as meaning *solely* by reference to the HMA as a whole, as the Claimant sought to suggest.

109. Furthermore, this point is made clear in a subsequent passage of the Council's response:-

> "Ultimately, for the purposes of this Plan being examined under the transitional arrangements, the revised projections are likely to result in a somewhat lower housing OAN in Wycombe District and across the HMA. This would provide some additional flexibility into the Plan in addition to that identified in the Council's evidence and somewhat greater flexibility across the HMA, helping to boost the supply of housing in line with Government objectives.
>
> Overall, the new projections involve a change on one basis of analysis (i.e. household projections) but not necessarily a meaningful change overall (in terms of the OAN). Other considerations relevant to this question are:
>
> - the local plan period
> - the desirability of assessing a plan on a reliable and proportionate evidence base

- the uncertainties over the approach being taken nationally to the projections alongside the overall Government objective to boost housing supply

Taking all these together, the Council considers that the soundness of the Plan is unaffected by the recent projections."

110. The Council made the same point briefly in their document submitted to the Inspector replying to the consultation responses on main modification MM6.

111. In my judgment, the Council correctly addressed the Inspector's question in terms of "meaningful change" and the fundamental requirement of "soundness" and addressed those two concepts in relation to the OAHN both for Wycombe district and across the HMA. The Inspector did not misunderstand the substance of the Council's response.

Whether the Inspector's acceptance that the ONS 2016 projections should not be used involved an error of law

112. I now turn to deal with the challenge to the legality of the reasons given by the Inspector in IR 29 for not requiring ONS 2016 to be used. The main criticism was directed to the first reason, namely that there are some doubts about the reliability of the ONS 2016 projections and their reliability for plan-making.

113. In its response produced in October 2018 to the Inspector's question 3 the Council relied upon the MHCLG's Technical Consultation document. They pointed out that the document contained proposals for "the new methodology" (i.e. the standard method) and was "silent on the approach to be taken under the transitional arrangements that apply to this examination in relation to the assessment of OAN". Ms. Dehon made a similar point in her oral submissions on behalf of the Secretary of State.

114. However, the question remains whether the Technical Consultation document also made any broader comments which, as a matter of judgment, could be material to the preparation and assessment of the evidence base for a transitional plan. In this regard, both Mr. Brown QC and Ms. Dehon relied upon a number of paragraphs in the document. In summary:-

> Paragraph 2 referred to the emphasis in the White Paper published in February 2017 "Fixing the Broken Housing Market" on the delivery of more homes more quickly to meet the diverse needs of communities.
>
> Paragraph 5 stated that the lower household projections in ONS 2016 do not mean that fewer homes need to be built. If more homes are planned for and built, more people will be able to own or rent their own home.
>
> Paragraph 11 states that the Government has decided that it would not be appropriate to change its aspirations to increase housing supply in the light of ONS 2016. The ONS projections involved methodological changes for converting population change into estimates of household formation reducing the historic period on which the projections are based from 5 census points to 2, focusing "more acutely on a period of low household formation where the

English housing market was not supplying enough additional homes." The Government considered that these changes in *method* "were not a reason why the Government should change its aspirations." The household projections were constrained by housing supply. The historic under-delivery of housing means that there is a case for public policy to support delivery in excess of household projections, even if those projections fall. A "more responsive supply of homes through local authorities planning for more homes" where needed would "help to address the effects of increasing demand, such as declining affordability, relative to a housing supply that is less responsive" (as indicated by the Barker Review). The declining affordability of housing indicates that the Government should not reduce its ambitions to increase the housing supply.

Paragraphs 22 and 23 show that the Government also had in mind "transitional" local plans undergoing examination, although the specific comments at that point were directed at attempts in that context to use the ONS projections in the standard method.

Paragraph 27(2) stated that although the Government generally recommends the use of the latest data when assessing housing need, there has been a substantial change in the *method* for producing household projections, resulting in major changes in the distribution of housing nationally. "The Government would like to see the new *method* settling down before making a decision on whether this data provides the best basis for planning" (emphasis added).

As Ms Dehon put it, MHCLG's view was that the use of the most up-to-date evidence *may* be considered to be inappropriate where it runs counter to a key policy objective. I see nothing in the Ministry's Response document as detracting from the points summarised above.

115. Mr. Burton submitted that because the Inspector's phrase "doubts about the reliability" of the ONS 2016 projections could only have (a) come from the Council's representations relying upon MHCLG's documents and (b) related to the methodology used in these projections, she must have misunderstood or misinterpreted the MHCLG's position. He pointed out that in MHCLG's Response to the Technical Consultation, the Government stated that it did not doubt the methodological basis of the ONS 2016 projections.

116. I do not accept the legal approach to this material upon which Mr Burton's argument is founded. The Inspectors examining the Guildford and Wycombe local plans were both considering MHCLG's Technical Consultation and Response documents in the context of evaluating or weighing the use of the ONS 2016 projections. Those documents set out the Ministry's views as summarised in [114] above, but those views did not purport to be statements of policy for decision-making, akin to the NPPF or NPPG or a Written Ministerial Statement and open to judicial interpretation in the manner explained in, for example, Tesco, Hopkins and Samuel Smith. So, the court's function is not to determine *for itself* the single correct "meaning" of that material as if it were an objective question of law. The authorities do not justify applying that approach to documents emanating from a Government Department, let alone generally to written material before a public inquiry or examination. That would

involve a distortion of classic principles of judicial review and the court usurping the role of decision-makers, such as Inspectors and local planning authorities, to form their own judgments on the written and other material before them.

117. The Inspectors were fact-finding tribunals simply using their judgment in drawing inferences from the MHCLG material, just as from other material before them. It follows that the Claimant has to show that the Wycombe Inspector committed a public law error in the inferences she drew from it. Mr Burton rightly made no attempt to argue that she made an error of fact of the kind identified in E v Secretary of State for the Home Department [2004] QB 1044 at [66]. There was no error about an "established" "existing fact", in the sense of a fact which was uncontentious and objectively verifiable. Accordingly, unless it could be shown that the MHCLG documents were altogether *incapable* of supporting the inference drawn by the Wycombe Inspector, so that she acted perversely, there is no legal basis for the court to interfere.

118. In my judgment any such contention is unsustainable. It involves reading both the Inspector's report and the material upon which she relied in a highly forensic manner. It needs to be reemphasised that such an approach should not be applied to decision-making of this nature. The consultation and response documents have to be considered fairly and as a whole. It is a permissible inference that the MHCLG, whilst stating that it did not doubt the *methodology* employed by ONS, did have doubts about the use of the projections generated by that method for planning in relation to the assessment of housing need and the key policy objective of increasing the supply of housing. The language used in the passages to which I have referred was capable of applying more generally, and was not confined to districts where, because the draft local plan has been submitted for examination after 24 January 2019, the standard method for assessing local housing need must be applied.

119. There is no basis for criticising the first sentence of IR 29 as containing any error of law. The Inspector was entitled to treat the MHCLG material as providing some evidence of there being doubts about the reliability of the ONS 2016 projections in the relevant context here, namely their use for the purposes of plan-making. The concerns raised by Government were not limited to the use of the projections in the standard method. The Government's thinking explicitly went further.

120. Mr. Burton sought to counter this view of the Government's documents by asserting that there is a distinction to be drawn between those cases where the standard method is used and others where it is not. He said that under the standard method an adjustment cannot be made to deal with suppressed housing demand, whereas under other methods it can. However, Ms. Dehon contradicted that assertion. The court was not shown any evidence which could resolve this issue. Even if there had been such material, it is not the court's function in an application for judicial review to resolve a dispute of this kind as to fact and/or expert opinion. The issue here is not one of jurisdictional fact, or a factual issue going to procedural propriety. It is simply a point to do with a matter of judgment on planning merit.

121. To summarise, the Wycombe Inspector was plainly entitled to rely upon the MHCLG material to support her view that there were doubts about the reliability of the ONS projections for plan-making, particularly in the context that (1) they only provide a starting point for assessing housing need and (2) a key objective of national policy is

that housing supply should be "boosted". But it should be emphasised that this is not a situation where all Inspectors examining transitional plans would be legally obliged to come to the same judgment as the Wycombe Inspector. Another Inspector, dealing with the circumstances of a different planning authority's area and the policies, evidence and arguments in that examination (including, for example, a decision by the authority to use the ONS 2016 projections), might decide to treat views expressed in the MHCLG documents in a different way and/or to attach little or no significance to them. That is an intrinsic feature of the lawful processes by which independent decision-makers reach their judgments (see also the principles in [79] – [82] above). Furthermore, it should not be forgotten, as the Ministry's documents make clear, that this is an evolving situation.

122. I see no legal error in the Inspector's second and third reasons in IR 29. She referred to the PPG on HEDNA as stating that the household projections were only the starting point for establishing an OAHN figure. She was referring to the Council's answer to her question 3 which added that various adjustments would need to be made. The authority said that two particular factors would have the effect of "closing the gap", first the use of long term migration trends based on 10 year averages and second, "the lower population growth associated with the new projections would probably lead to a need for a larger uplift than currently included to align jobs and workers. That second point stood in contrast with the HEDNA upon which the submitted plan had been based because, as the Inspector had already noted, that made no adjustment for the impact on housing of employment growth after allowing for market signals (IR 23). Of course, what the Inspector said in IR 29 was addressed to a knowledgeable audience well aware of the material produced during the course of the examination. The Inspector's second reason was a relevant factor capable of going to the issue whether there was a "meaningful change" in "the housing situation".

123. The same also applies to the Inspector's third reason. She had in mind the references to the Housing White Paper in the Council's response and in the MHCLG's Technical Consultation and would have been well aware of paragraph 47 of the NPPF 2012. The stance taken by the Council was that although the revised household projections would result in "a somewhat lower OAN" in the district as well as across the HMA, that would provide some additional flexibility and thereby help "to boost the supply of housing in line with Government objectives." That is a factor on which different local planning authorities, or Inspectors, might lawfully hold different views. Some might consider, for example, that little or no weight should be given to that flexibility and support for boosting the supply of housing in their area. It cannot be said that this was a legally irrelevant consideration.

124. Contrary to Mr. Burton's submission, the Inspector did in fact rely upon delay to the local plan process as a further reason for not requiring the ONS 2016 projections to be used. This was an additional matter advanced by the Council in its response to the Inspector's Question 3. The Council said:-

> "In terms of the implications for the soundness of the Plan, the Council considers that the Plan was published and submitted based on a sound and proportionate evidence base. Updating the evidence base in relation to housing need at this late stage in the process would have implications for the wider evidence base of the Plan and is not considered to be a proportionate

> approach. It would also have implications for other nearby authorities relying on the same or similar evidence base, not least Aylesbury Vale. This could result in significant delays to the adoption of the Plan, contrary to the objectives of the Government and, if changes in housing numbers across the HMA were to balance out, delaying plan preparation for no overall benefit."

And subsequently:-

> "Furthermore the transitional arrangements introduced in Annex 1 of the new NPPF (2018) that provide for assessment of plans submitted until January 2019 against the old NPPF reflect the recognition that plans and their evidence base have a significant lead-in time. This suggests that the balance of advantage lies in securing the adoption of plans that are sound against the policy and evidence base they were prepared under, rather than building in delay or non-adoption of plans which would be inconsistent with the plan-led system."

The Inspector agreed saying:-

> "… it would be unjustified to revisit the Plan's evidence base and delay adoption of the Plan in the light of the 2016-based projections."

125. It is also relevant to bear in mind that the Claimant's objective was, and remains, not simply to have the Plan based upon a revised OAHN which used the ONS 2016 projections as its starting point, but to have deleted from the Plan the policy removing the BE2 site from the green belt and its allocation for housing. In other words, the relevant period of delay would be the time needed, not only to produce a revised OAHN, but to revisit the distribution of housing land (and employment land) through the production of, consultation upon and examination of a revised local plan. There was no error in law in the Inspector's reliance upon delay. Paragraphs 50 to 51 of the Claimant's skeleton simply amounts to a disagreement on the merits of the delay point.

Whether the Inspector failed to give reasons on the Guildford Local Plan examination

126. In its representations to the Inspector the Claimant relied upon the approach taken by the Inspector in the examination of the Guildford Local Plan. There, the Inspector considered that the local authority's decision to revise the OAHN using the ONS 2016 projections as a starting point and then making significant adjustments for matters such as household formation rates, was an up-to-date assessment of housing need in accordance with the policy framework for transitional plans (IR 25). The Inspector examining the Wycombe Plan made no reference to the report of the Guildford Inspector.

127. The Claimant relies upon the principle of consistency in North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P & CR 137. Where a party relies upon a previous decision in like circumstances, that is a decision which is

not distinguishable, and the Inspector reaches a decision in the instant case which necessarily involves disagreement with "some critical aspect" of the previous decision, then he or she is obliged to give reasons for departing from it. As Lindblom LJ put it in Baroness Cumberlege of Newick v Secretary of State for Communities and Local Government [2018] PTSR 2063 at [56] cases are "like" if they are indistinguishable on an issue of critical importance *in their determination*. Consequently, Ouseley J emphasised in H.J. Banks & Co. Limited v Secretary of State for Housing, Communities and Local Government [2019] PTSR 668 that the disagreement with a point decided in an earlier decision must relate to a principal, important controversial issue in the present case, a key criterion for determining the applicability and scope of the duty to give reasons ([110] to [113]).

128. Mr. Burton has pointed out similarities in the steps taken in the preparation of each of the two plans. But, as Ms. Dehon put it, that amounted to no more than a "congruency of chronology" and is insufficient here to engage a duty to give reasons applying the North Wiltshire line of authority.

129. We have seen that the present case did not involve any issue on the *interpretation* of national policy on the use of up-to-date information in the evidence base for a local plan. Instead, it was to do with the use of judgment in the *application* of that policy to the circumstances of this case. Likewise, it has not been suggested, nor could it be, that the material parts of the Guildford Inspector's report involved a decision on the *interpretation* of a relevant national policy.

130. There was not even any congruent issue in both cases involving the *application* of that national guidance. I accept the analysis by Mr. Brown QC and Ms. Dehon on this point.

131. In the present case, the issue raised by the Inspector and addressed by the Council was whether the ONS 2016 projections gave rise to a "meaningful change" for the "housing situation" in Wycombe. It is plain from IR 29 that the Inspector accepted the Council's reasons as to why the ONS projections did not give rise to any such "meaningful change" or impact on the "soundness" of the draft local plan.

132. In the case of Guildford, the local authority decided to put forward a revised HEDNA based upon the ONS 2016 projections and a series of other significant adjustments leading to a revised OAHN. In other words, the authority did not suggest that the ONS 2016 projections should not be used, or that no "meaningful change" was involved. Nothing has been produced to the court to show that that issue arose for the Inspector to determine *or* that his report includes reasoning which determines that point. The Inspector's further examination of the Guildford Local Plan focused on whether the new OAHN figures were sound, looking not only at the appropriateness of using the ONS projections, but all the further substantial adjustments made. It follows that the two cases were not "like" in any material respect, that is for the purposes of dealing with a principal, important controversial issue which the Inspector in the present case had to resolve.

133. Ultimately Mr Burton's argument on the relevance of the report by the Inspector on the examination of the Guildford Local Plan rested on IR 46, where he found that the annual housing requirement figure in the submitted plan was "not sound", whereas Guildford's revised requirement figure was "sound". That does not support his

argument. That conclusion only arose after the Inspector had examined the complete package of assumptions and calculations made by the local planning authority to arrive at their revised OAHN, using not only the ONS 2016 projections as a starting point, but also all the other adjustments which followed. He then took some care to see whether the resultant figure was sound, looking at the context of the borough and surrounding areas, specialist types of housing need and other issues more broadly (IR 30-35). His reasons for concluding that the main modifications based upon this updated exercise were necessary so that the plan could be treated as sound under s.20(7C) of PCPA 2004 necessarily involved the legal consequence that the submitted plan, based on the earlier data and OAHN assessment, could only be treated as "unsound". None of the Inspector's reasoning on the Guildford plan involved discussing whether the submitted plan in that case should have been treated as unsound if the authority had chosen to follow a different course and *not* use the ONS 2016 and produce a revised OAHN.

134. The Council in the present case briefly drew a similar distinction in their document submitted to the Inspector replying to the consultation responses on main modification MM6.

The Oxton Farm case

135. For completeness, I should mention that on 25 June 2020, the day after the hearing of this claim concluded, the Court of Appeal handed down its judgment in Oxton Farm v Harrogate Borough Council [2020] EWCA Civ 805. The parties were given an opportunity to make written submissions on that decision, which they declined

Whether there was an internal inconsistency between housing need and land supply

136. Turning to the next complaint, in my judgment there was no internal inconsistency between the amendment of the Plan to update the figures for housing land supply, and the decision not to use the ONS 2016 household projections to inform the assessment of housing need. The updating of the land supply simply arose from the monitoring which takes place within any authority of permissions which have in fact been granted and sites where dwellings have been completed or are under construction (see IR 35 to IR 40). These were indeed matters of "hard edged fact", unlike projections into the future with their attendant uncertainty. Taking those figures into account involved no issue of unreliability or the other concerns which the Council had raised before the Inspector in relation to the use of the ONS 2016 projections. The Council's difference of approach did not involve any illegality.

137. In IR 40 the Inspector acknowledged that the housing land supply in the updated Policy CP4 (including the green belt sites) exceeded by between 734 and 974 dwellings the housing requirement for Wycombe (after allowing for that part of the district's requirement which will be met within Aylesbury Vale – 2275 dwellings). But she concluded that that level of exceedance was "not significant", having regard to the need to provide for flexibility and to allow the Council to manage fluctuations in the supply and delivery of new housing during a plan period running to 2033. In IR 45 the Inspector concluded that the Plan's overall requirement for housing had been based on a rigorous and objective assessment of need based on local circumstances. She added that the approach to identifying land supply had also been rigorous, based on robust and credible evidence and had "sought to maximise the provision in

accordance with the key objectives of national planning policy" (e.g. paragraph 47 of NPPF 2012). Her reliance upon the policy objective to boost the supply of housing land makes it plain that she did not consider the housing figures proposed in the plan as merely creating a buffer or reserve, as Mr Burton sought to suggest. Ultimately, these were a series of planning judgments for the Inspector and the Council. They reveal no error of law.

Whether the Inspector failed to comply with her duty to give reasons

138. Lastly, I reject the submission that the Inspector failed to give adequate reasons. Applying the principles in the South Bucks case, the Claimant has not identified any inadequacy raising a substantial doubt as to whether a public law error was made. For the reasons given above, it is indeed clear that none of the public law errors which have been alleged were committed. I acknowledge that the Inspector did not specifically address Mr. Carter's exercise in which he made his own attempt to estimate an OAHN starting with the ONS 2016 projections. But in IR 28 and 29 the Inspector explained why she agreed with the Council that those projections should not form part of the evidence base for this Plan. Having reached that conclusion there was no legal requirement for her to address Mr. Carter's assessment in her report.

139. For all these reasons ground 1 must be rejected.

Ground 2

140. This ground also concerns the use of ONS 2016 projections and is related to Ground 1. In particular, it is accepted that if the Inspector and the Council were entitled to reach a judgment that the projections should not be used because of doubts about their reliability or suitability then ground 2 adds nothing. But the Claimant says that that is not so. It then goes on to submit that even if there were good reasons for not using the ONS 2016 projections as a starting point in estimating an OAHN, nonetheless:-

(i) These projections were still a mandatory consideration which the Inspector and the Council had to take into account, either because of the effect of the guidance in paragraph 158 of NPPF 2012 and the NPPG or because they were "obviously material" in the sense used in the Samuel Smith case;

(ii) The projections should have resulted in a downwards adjustment to the OAHN figure below 13,200 dwellings and/or the expression of housing need should have been caveated in some qualitative way so as to indicate the it was not "acute" or "intense";

(iii) The 2016 ONS projections represented a material change which necessitated a further appraisal of reasonable alternatives under regulation 12(2) of the 2004 Regulations (relying on Save Historic Newmarket v Forest Heath District Council [2011] J.P.L 1233 at [15 to 18] and R (Friends of the Earth) v Welsh Minister [2016] Env. L.R. 1 at [88xi]. Although the SA had considered a range of housing targets, the lowest considered had been 9,600 dwellings and so the matter needed to be revisited;

(iv) The Inspector and the Council had failed to consider the implications of point (ii) above for the review of green belt boundaries.

Discussion

141. Under ground 1 I have rejected the challenge to IR 29. In part that was because the Inspector found that there were doubts about the reliability of the ONS 2016 projections. That was a matter for her judgment. Accordingly, I accept the Council's submission that ground 2 goes nowhere. There was no obligation on the Council to take the projections into account in the manner suggested by the Claimant or to carry out any further SEA work on this aspect. It also follows that point (iv) falls away. I will nonetheless briefly address the submissions made for the Claimant.

142. The guidance given to local planning authorities makes it plain that the household projections are used as a starting point in the assessment of the OAHN and are subject to the making of a number of adjustments, related to local circumstances and requiring the use of expert judgment. The guidance gives no indication as to how household projections might be used to adjust the OAHN figure which is the outcome of this process, if the decision-maker has decided (lawfully) not to use them as a starting point. Given that it is common ground that household projections are not an expression of need and require adjustments so that need can be identified, it is difficult to see how logically they could be relied upon to make an alteration to the OAHN figure arrived at, whether upwards or downwards. The size of any adjustment might be arbitrary. In any event, it is plain from the CPRE case and from basic principles of judicial review, that it is not for the court to express a view on whether a numerical adjustment should be made or a qualitative comment applied to the OAHN figure. These are matters of planning judgment and the court's supervision of the rationality of decision-making cannot be used to justify interference on issues of this kind. It also follows that the legal argument which the Claimant advances has no implications for the legality of the SEA process or the review of green belt boundaries undertaken by the Council.

143. For these reasons ground 2 must be rejected.

Ground 3

144. The Claimant's challenge relates to the basis upon which the Inspector accepted that there were exceptional circumstances to justify revising the green belt boundary so as to remove site BE2 from it at IR 153 to 155:-

> "153. Land at Hollands Farm is allocated for the construction of 467 dwellings, a primary school and associated public open space. The site is situated in the Green Belt and comprises some 23 hectares of agricultural land which is enclosed on all sides by built development and located within the Tier 2 settlement of Bourne End/Wooburn. The findings of the GB2 Assessment indicate that the allocated site only fulfils the Green Belt purposes defined in the NPPF relatively weakly, is in a sustainable location, is capable of being removed from the Green Belt without adversely impacting on the wider designation and is suitable for the proposed use.

> 154. The NPPF indicates that the first purpose of Green Belts is to check the unrestricted sprawl of large built up areas. The Buckinghamshire Green Belt Assessment, defines 'large built up areas' as being the Tier 1 settlements within constituent authority areas. In this case, the land proposed for removal is located adjacent to the Tier 2 settlement of Bourne End/Wooburn, and so therefore has correctly been adjudged not to fulfil the requirements of the first purpose.
>
> 155. The Settlement Hierarchy Study does not identify either Hawks Hill/Harvest Hill as a separate settlement and considers that it is, functionally, part of the Tier 2 settlement. As such, I do not consider that the proposed allocation would materially alter this situation or promote the coalescence of separate settlements. As for encroachment, the proximity of the surrounding built development, gives the site the appearance of being semi-urban, and as such, I do not consider that its removal from the Green Belt would result in the loss of, or promote development in, the countryside. Based on the foregoing, the evidence presented and having regard to my conclusions on Issue 1 and 4, I consider that exceptional circumstances exist to justify the alteration of the Green Belt boundary to remove the site for housing development."

145. In summary the Claimant submitted:-

(i) Unmet housing need cannot by itself amount to "exceptional circumstances" justifying an alteration in the boundaries of the green belt;

(ii) The Inspector misinterpreted "exceptional circumstances" in paragraph 83 of NPPF 2012 by accepting that unmet housing need alone justified the review of the green belt boundary;

(iii) Alternatively, the Inspector's application of this aspect of green belt policy was irrational;

(iv) The Inspector failed to give legally adequate reasons.

Discussion

146. I begin by summarising principles set out by Sir Duncan Ouseley in Compton Parish Council v Guildford Borough Council [2020] JPL 661 at [68]-[72]:-

(i) There is no definition of the policy concept of "exceptional circumstances". The expression is deliberately broad and not susceptible to dictionary definition. The matter is left to the judgment of the decision-maker in all the circumstances of the case;

(ii) Whether a factor is *capable* of being an exceptional circumstance may be a matter of law, as an issue of legal relevance. But whether it amounts to such a circumstance in any given case is a matter of planning judgment;

(iii) But the suggestion that a factor is legally incapable of amounting to an exceptional circumstance will generally require caution and judicial restraint. The breadth of the phrase and the array of circumstances which may qualify as "exceptional" indicate that judicial emphasis is very much more on the rationality of the judgment made by the decision-maker than on seeking to define what can or cannot amount to "exceptional circumstances";

(iv) "Exceptional circumstances" is a less demanding test than the "very special circumstances" test (as explained in paragraphs 87-88 of NPPF 2012 and now paragraphs 143-144 of NPPF 2019) used in development control in the green belt;

(v) There is no requirement that green belt land may only be released as a last resort,

(vi) There is no requirement to show that the assumptions upon which a green belt boundary was originally drawn up have been falsified by subsequent events;

(vii) Exceptional circumstances may comprise one factor or a combination of factors of varying natures;

(viii) General planning needs, for example general housing, are not excluded from amounting to exceptional circumstances. The need does not have to relate to a special form of housing or to a particular level of intensity.

147. Although Mr Burton appeared to make oral submissions contrary to principle (v), they were not pleaded (without any good reason) and were unsupported by any authority. There has been no opportunity for detailed argument on the point. This is one of the additional matters which, as I have explained above, it would be inappropriate to allow the claimant now to raise. But for my part, I see no reason to disagree with principle (v), as stated both in R (I M Properties Development Limited) v Lichfield District Council [2014] PTSR 1484 at [91] and in Compton.

148. It is also necessary to recall the warning which the court gave in Compton of the "danger of the simple question of whether there are 'exceptional circumstances' being judicially over-analysed" [77] and which underlies principle (iii). That warning is reinforced by the statements made by Lord Carnwath in Hopkins at [23]-[25]. In Samuel Smith he explained that the meaning of some broad policy expressions may be wholly or partly non-justiciable [21-[22]. For example, in relation to another part of national green belt policy Lord Carnwath said at [39]:-

> "… the matters relevant to openness in any particular case are a matter of planning judgement, not law."

The Claimant's arguments in this case failed to heed those warnings.

149. Mr. Burton began by relying upon a single paragraph [50] in the judgment of Jay J in Calverton Parish Council v Nottingham City Council [2015] EWHC 1078 (Admin) for the proposition that the "existence of an objectively assessed need could [not], without more, be sufficient to amount to "exceptional circumstances" within the meaning of paragraph 83 of the NPPF."

150. Mr. Burton sought to distinguish Calverton and Compton on the basis that in the latter case, each release from the green belt had involved the provision of beneficial infrastructure (see e.g. [44]), whereas in the former that had not been the case. But that would be an unprincipled distinction. The effect of the submission would be that unmet housing need could, as a matter of law, qualify as an exceptional circumstance provided that it is accompanied by *some* infrastructure, but not unmet need by itself, no matter how great or important that need. There is nothing in the NPPF or in the case law cited which would require or allow such an arbitrary approach to be taken.

151. Mr. Burton based his argument on paragraph 47 of the NPPF 2012, which states that a local planning authority should ensure that its local plan meets the full, objectively assessed needs for housing in the area, so far as is *consistent with* the policies in the NPPF, which include paragraph 83. But reading those paragraphs properly together, the effect is that the mere *identification* of housing need, or unmet housing need, cannot be *assumed* by itself to constitute an exceptional circumstance to justify an alteration in the boundary of the green belt. But it does not follow that it is *incapable* of amounting to an exceptional circumstance. Whether it does so is a matter of judgment for the decision-maker, which depends in part on how much significance or weight the decision-maker attaches to that identified need.

152. When paragraph [50] of the judgment of Jay J is read in the context of the criticisms made of the Inspector's report in that case ([46] to [49] of the judgment, notably the end of [47]), it is plain that this was the approach he took. Ultimately, Mr. Burton accepted that analysis in his reply. He was right to do so. It accords with the principles summarised in [146]-[148] above. There is no tension between, on the one hand, Calverton and, on the other, Compton and other authorities. Much caution and judicial restraint is generally called for when dealing with a contention that a particular factor was legally incapable of amounting to an "exceptional circumstance", a deliberately broad phrase which depends essentially upon the application of planning judgment.

153. It should also be emphasised that what may be judged by a decision-maker to amount to exceptional circumstances" is highly fact sensitive in each individual case. It will be sensitive to a range of case-specific considerations and the varying weight given to each, including the circumstances of a particular area, the policy context, the evidence base and the arguments advanced in the consultation and examination stages. That is why Sir Duncan Ouseley was, with respect, entirely correct to place much greater emphasis upon the court's role of determining whether a decision-maker's judgment was irrational, and not on attempting to define "exceptionality". Of course, claimants face a high hurdle when seeking to advance irrationality in relation to the making of a planning judgment (see [95] above).

154. Mr. Burton then relied upon [51] of Calverton where the judge said:-

> "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."

155. However, it is to be noted that at [52] Jay J described what he had set out in [51] as "an ideal approach", "a counsel of perfection". The judge did not lay down any standard or rule requiring that approach to be followed in order for a review of green belt boundaries to be lawful. He stated that a more discursive, or open-textured approach by a Planning Inspector, as taken in that case, would suffice. Indeed, the challenge in that particular case failed. It is necessary to understand Calverton in this way so that that decision accords with the principles laid down by the Supreme Court in Hopkins and in Samuel Smith.

156. Before looking at the Inspector's report, it is helpful to have in mind the approach which the Council took to the review of green belt boundaries in Part Two of its assessment. Paragraph 2.4 states:-

> "The Council's position is that, exceptional circumstances will not exist unless all four of the following requirements are satisfied:
>
> > i The location is capable of contributing to sustainable development. This means it must be a logical extension to an existing settlement in Tiers 1-4 as identified in the Settlement Hierarchy. (Settlements in these tiers include all identified transport hubs).
> >
> > ii The site is capable of removal from the Green Belt. In this context, a site is considered 'capable' of removal from the Green Belt when its removal from the Green Belt could be acceptable having regard to a) the purposes of including land in the Green Belt, b) the general extent of the Green Belt, and c) the requirement for permanent and robust boundaries. On its own, 'capable' does not mean that there are 'exceptional circumstances'.

> iii If proposed for housing, the site must also be a deliverable or developable site in the terms set out in para 47 of the NPPF (footnotes 11 and 12) – this means that it is suitable from a detailed sustainability perspective, and has a reasonable prospect of delivery within the plan period, thereby contributing to meeting the OAN. If proposed for employment, the site must similarly have realistic prospects of delivering the proposed allocation within the plan period, having regard to local market indicators and any other relevant factors.
>
> iv The OAN is not being met from other sources of supply and the scale of unmet need balanced against the contribution a site makes to the quality and function of the Green Belt weighs in favour of release."

157. Mr. Burton accepted that there was nothing unlawful about the criteria set down in that paragraph. Criteria (i) and (iii) related in part to paragraph 84 of the NPPF 2012 and the deliverability requirement is an obviously sensible precaution before considering changes to a green belt boundary. Criterion (iv) rightly required the scale of any unmet need to be weighed. Criterion (ii) required an assessment to be made of green belt function. Here I note Mr Burton's acceptance that where an area of land had ceased to serve *any* green belt function that could amount to an exceptional circumstance. In my judgment, the criteria used by the Council are an example of the sort of "open-textured" approach referred to by Jay J which cannot be impugned.

158. Mr. Brown QC showed how the Inspector's analysis did not treat unmet housing need without more as constituting an exceptional circumstance. The OAHN was assessed to be 13,200 dwellings for the district (IR 21 to 24). The Inspector then addressed the need for affordable housing and student accommodation at IR 25 to 27 before going on to consider the ONS 2016 projections (IR 28 to 29). One of the reasons why she rejected the use of the ONS 2016 projections was the importance of boosting the local housing land supply in line with national policy. The Inspector then examined the capacity of the various sources of land within the district which had been assessed by the Council, providing 10,927 dwellings, and leaving an unmet need of 2275 dwellings, if 1139 dwellings were to be provided on green belt sites (IR 30 to 34). She endorsed the positive approach taken to meeting that shortfall outside the Council's district, in Aylesbury Vale, through the Memorandum of Understanding (IR 34).

159. The Inspector addressed the information on the supply of land to meet the housing requirement within the district at IR 35 to 40. She endorsed the land supply figures and concluded that the Plan's overall housing requirement was based on robust and credible evidence and had maximised housing provision in accordance with national policy (IR 45). As I have previously mentioned [136], in this exercise the Inspector took into account the increase in supply within the Council's district through the updating of data on dwellings completed or under construction. After allowing for the provision of dwellings in Aylesbury Vale to meet some of Wycombe's need, the total supply (including green belt sites) exceeded that part of Wycombe's OAHN to be met within the district (10,925 dwellings) by 734 to 974 dwellings (or a margin of about 7 – 9%). But the Inspector regarded that exceedance as being "insignificant" because it

would be used by the Council to manage fluctuations in the supply and delivery of housing over the Plan period to 2033 and provide flexibility (IR 40). No doubt the Inspector had in mind here the well-known continuing requirements for the Council to demonstrate adequate land supply and delivery throughout that period (paragraphs 73 to 75 of NPPF 2019). She had regard to the objective of boosting housing supply, as she was entitled to do (see Solihull and [64] above).

160. The Inspector considered the soundness of the spatial strategy of the Plan (issue 3) at IR 61 to 83, including the regard which the Council had had to AONB and green belt constraints in the district (IR 69).

161. Under issue 4 the Inspector considered whether it would be possible for the Council to meet the identified need for housing and employment provisions without releasing any land from the green belt and, if not, whether there were exceptional circumstances to justify such release. She concluded that there was a compelling case for the release of land from the green belt to meet the identified needs, *subject to exceptional circumstances being demonstrated* to justify the removal of individual sites, an issue which she addressed under issue 8 (IR 88). At IR 89 to 95 the Inspector explained why she endorsed what she considered to be the "rigorous" approach taken by the Council to considering the review of green belt boundaries, which included the four criteria in paragraph 2.4 of the Part Two assessment (see [156] above).

162. Under issue 8 the Inspector's assessment of the extent to which the BE2 site serves green belt purposes (IR 153 to 155) reflected the analysis undertaken by the Council. Those conclusions had been strongly contested by the Claimant during the examination. But such differences of judgment are not matters for review in this court. The Council's view was that the site would not check the unrestricted sprawl of a "large built up area", or prevent neighbouring towns from merging (because it does not provide a gap between settlements), or preserve the setting and special character of a town. The Council considered that the site served only one green belt purpose, namely to assist in safeguarding the countryside from encroachment, and even then scored weakly. In the Council's judgment, "the development surrounding the site weakens the connection to the wider countryside, giving the site a semi-urban character overall." The Inspector also considered that the site was a sustainable location, suitable for housing development and was capable of being removed from the green belt without adversely impacting on the wider designation.

163. At this stage the Inspector brought back into her assessment her earlier conclusions under issues 1 and 4. The overall package of considerations upon which the Inspector relied was plainly capable of amounting to "exceptional circumstances" and could not be described as simply "commonplace". It is impossible to say that the judgment which the Inspector reached was irrational. It did not fall outside the range of decisions which a reasonable Inspector could reach. For completeness, I would add that her approach could not be criticised by reference to the observations in Calverton at [51] to [52].

164. Mr Burton sought to draw an analogy with the decision of Lieven J in Aireborough Neighbourhood Development Forum v Leeds City Council [2020] EWHC 1461 (Admin) at [98] - [107]. There the judge decided that the examining Inspectors had failed to give legally adequate reasons in relation to substantial releases of green belt land in the Leeds Site Allocations Plan because their reasoning was based *solely* upon

the level of need established in the 2014 Core Strategy, and did not address the substantial reduction in the housing need figures produced by the City Council for its review of that Strategy. The judge accepted that the Inspectors would have been entitled to consider relying upon other planning considerations to justify the green belt releases, such as spatial distribution of housing land across the City's area, notwithstanding the reduction in objectively assessed housing need, but they had not in fact relied upon any other factors in their report. There is no true analogy with the present case. First, I have held that there is no legal basis for impugning the decision not to require the OAHN to be revised (whether under ground 1 or ground 2). Second, the Inspector in the present case did not simply rely upon the OAHN in order to justify the release of green belt land. She relied upon a number of considerations relating to the district and to the BE2 site itself, as summarised above.

165. Next, in paragraph 76 of his skeleton Mr. Burton referred to what he called a "worrying error" in IR 84 where the Inspector referred to a shortfall of 5,869 dwellings against the OAHN of 13,200 after allowing for the provision of 9,788 dwellings on non-green belt sites in the district. It is agreed that the figure of 5,869 should have read 3,412. Mr. Burton submits that this error tainted the assessment in IR 87:-

> "It is clear from the evidence presented that although every effort has been made to identify suitable land for development outside the designation, there would still be a considerable shortfall in the provision of land for new housing and employment development. The release of land from the Green Belt to provide for 1,139 new dwellings and 17 hectares of new employment land would make a significant contribution towards reducing this shortfall."

He says that the Inspector was under the misapprehension that the release of green belt land to provide 1,139 dwellings would make only a "contribution" towards reducing a "considerable shortfall" of 5,689 dwellings.

166. This point was not advanced as a legal challenge in the Statement of Facts and Grounds, which simply alluded to the figure of 5,869 being a *textual* error, not a legal error in the Inspector's reasoning. Mr. Burton's earlier thoughts on this subject were correct. It was simply a typographical error of no consequence. The correct shortfall figure of 3,412 is plainly implicit in IR 86 and all the capacity and shortfall figures elsewhere in the report were correctly stated. The text in IR 87 makes perfect sense, as referring to a significant contribution of 1,139 dwellings on green belt land to a considerable shortfall within the district of 3,412, leaving a balance of 2,273 (rounded to 2,275) dwellings to be met outside the district in Aylesbury Vale (see also IR 32 and 34).

167. The "11th hour" application to amend the Statement of Facts and Grounds relates to the first sentence of IR 155 in which the Inspector referred to the Council's Settlement Hierarchy Study as showing the area of Hawks Hill/ Harvest Hill (which lie to the east of site BE2) as forming a functional part of the Tier 2 Settlement of Bourne End/Wooburn. Mr. Burton relied upon extracts and plans from that study to show that Hawks Hill/ Harvest Hill (and indeed the BE2 site) were not included within the boundary of the tier 2 settlement of Bourne End/Wooburn, but instead were treated as

falling within Hedsor. Mr. Brown QC responded with passages from the Council's representations to the examination dealing with Bourne End in which the Council effectively restated the analysis in the Part 2 Green Belt Assessment, notably that Bourne End, Wooburn and Hawks Hill were "physically merged forming a contiguous and built up area." "In Green Belt terms there are not two (or three) separate settlements and there is no existing separation between them to be protected." Essentially, the Inspector accepted that judgment and concluded that site BE2 did not serve the purpose of preventing coalescence between settlements. Her reference to the Settlement Hierarchy Study was gratuitous. It did not materially affect her conclusion which was lawfully based on other, ample material. Because this new point is not arguable, it would be inappropriate for me to give permission for the amendment to be made, quite apart from the lateness of the application.

168. Mr. Burton complains that the Inspector did not explicitly deal with the representations made by the Claimant on the green belt issue. The position is that his client was diametrically opposed to the Council on the key points. It is plain that in accepting the Council's judgments the Inspector was implicitly rejecting the Claimant's. The duty to give reasons did not require the Inspector to give "reasons for reasons", or to go into a greater level of detail specifically dealing with the Claimant's points. The reasoning she gave satisfied the legal tests in South Bucks as further explained in the CPRE case.

169. I am satisfied that the reasons given by the Inspector on the green belt issues do not raise any substantial doubt as to whether a public law error was committed.

170. Accordingly, ground 3 must be rejected.

Ground 5

171. The Burnham Beeches Special Area of Conservation ("SAC") lies within about 5km of the BE2 site. The Council acknowledged that the occupation of the dwellings on that site would be likely to impact on the SAC by increasing recreational pressure at the SAC. This was addressed in the Habitats Regulations Assessment for the Plan pursuant to The Conservation of Habitats and Species Regulations (SI 2017 No. 1012) ("the 2017 Regulations"). The assessment was amended to take into account recent CJEU jurisprudence, in particular, Holohan v An Bord Pleanala (Case C-461/17); [2019] PTSR 1054.

172. In addition, there is a designated country park nearby at Little Marlow Lakes. Policy BE2.3(b) of the Plan requires the development of site BE2 to "provide section 106 contributions to mitigate recreational impacts at Burnham Beeches SAC". Paragraph 5.4.25 explains that these contributions will be directed towards the development of the country park at Little Marlow Lakes, including improvements to the accessibility of the park. This is also addressed at paragraph 5.5.22 of the supporting text to the policy on the country park, Policy RUR4.

173. Mr. Burton advances two criticisms under ground 5:-

(i) The text of the Plan fails to meet the test set out in Cooperatie Mobilisation for the Environment UA v College van Gedeputeerde (C-293/17); [2019] Env. L.R 27 [126], that it must be sufficiently certain

that a mitigating measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the SAC;

(ii) The appropriate assessment failed to identify the implications of development on the BE2 site for habitat types and species present outside the boundaries of the SAC which would affect the conservation objectives of the SAC (Holohan at [40]).

Discussion

174. As to point (i), the issue for the court is whether the appropriate assessment for the Plan failed to comply with the 2017 Regulations, bearing in mind that no development will be able to take place on the BE2 site without the grant of planning permission, which itself will be subject to a further appropriate assessment complying with those Regulations at that stage. Mr. Burton recognised that if that future assessment is legally deficient, for example by failing to comply with the test laid down in the Cooperatie case, then the planning permission will be liable to be quashed in an application for judicial review. This then begged the question, what more was required of the Plan in order to render it compliant with the 2017 Regulations? Mr. Burton did not object that policy does not spell out the exact nature of the section 106 contribution required or how it is to be applied. Rather, the complaint is that policy BE2 fails to require that residential units should not be occupied until improvements are made to the country park.

175. I accept the Council's submission that, as a matter of law, the wording of Policy BE2 did not need to go further. It was appropriate for the Plan as a development plan forming part of a multi-stage decision-making process, which includes a more detailed application for the grant of a development consent and a further HRA at that point. It was sufficient for the examination and adoption of the Plan that there was sufficient information before the Council enabling it to be satisfied, as it was, that the proposed mitigation could be achieved in practice (No Adastral New Town Limited v Suffolk Coastal District Council [2015] Env. L.R. 28 at [72]). The requirement of s.106 contributions to a "suitable natural alternative green space" ("SANG") is a well-established form of mitigation under the 2017 Regulations for dealing with recreational pressure on a European protected site. The wording of Policy BE2, understood within the multi-stage nature of the statutory scheme, complies with the requirements of the Habitats Directive.

176. There is nothing in point (ii). The updating of the HRA expressly addressed the relevant principles in Holohan in terms which demonstrate that they were properly understood. In the case of the Chilterns Beechwood SAC the report clearly shows Holohan being applied to a species present outside the SAC. It cannot be inferred from the mere fact that no such "external" effect or impact is described in relation to Burnham Beeches SAC that the author failed to apply the same principle in that case. This complaint attempts to treat mere silence at that stage as indicating an omission or failure to apply the law which the author had so carefully set out and applied elsewhere.

177. Mr. Litton QC for the Interested Party helpfully referred to the statement in Boggis v Natural England [2010] PTSR 725 at [37] that a complaint of the kind made by the

Claimant should be based upon "credible evidence" of a real, rather than a hypothetical risk of harm. This point was raised in the Interested Party's Detailed Grounds of Defence (paragraphs 33-34) and has not been addressed by the Claimant. Furthermore, it does not appear that it was raised at any stage during the examination. It is an entirely hollow point and without any merit in these proceedings.

178. For these reasons ground 5 must be rejected.

Conclusion

179. The claim for statutory review is dismissed.