

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**PLANNING COURT**

**CO/709/2023**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN**

**LOCHAILORT INVESTMENTS LIMITED**

**Claimant**

**-and-**

**SOMERSET COUNCIL  
(formerly known as MENDIP DISTRICT COUNCIL)**

**Defendant**

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# Judicial Review

## Claim form

For Court use only

Name of court

High Court of Justice  
Planning Court

Reference number

CO/709/2023

Date

Day

23

Month

02

Year

2023

If you do not have all the documents or information you need for your claim, you must not allow this to delay sending or taking the form to the Administrative Court Office within the correct time. Complete the form as fully as possible and provide what documents you have. The notes to section 9 will explain more about what you have to do in these circumstances.



### Time limit for filing a claim

Where an application for judicial review relates to a decision made by the Secretary of State or local planning authority under the planning acts, the claim form must be filed **not later than six weeks** after the grounds to make the claim first arose.

## Section 1 – Details of the claimant(s) and defendant(s)

### 1. Claimant(s) name and address(es)

First name(s)

Lochailort Investments Limited

Last name

#### Address

Building and street

Eagle House, 108-110 Jermyn Street

Second line of address

Town or city

London

County (optional)

Postcode

S	W	1	Y	6	E	E
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Phone number

Email (if you have one)

#### 1.1 Claimant's or claimant's legal representative's address to which documents should be sent.

**Note 1.1:** Give full name(s) and address(es) to which all documents relating to the judicial review are to be sent.

First name(s)

c/o Nikita Sellers, Town Legal LLP

Last name

**Address**

Building and street

10 Throgmorton Avenue

Second line of address

Town or city

London

County (optional)

Postcode

E | C | 2 | N | 2 | D | L

Phone number

07990 342150

Email

nikita.sellers@townlegal.com

**1.2 Claimant's Counsel's details**

First name(s)

James

Last name

Findlay KC

**Address**

Building and street

Cornertstone Barristers, 2-3 Gray's Inn Square

Second line of address

Town or city

London

County (optional)

Postcode

W | C | 1 | R | 5 | J | H

Phone number

020 7242 4986

Email

JFindlay@cornerstonebarristers.com

**1.3** 1st Defendant's name

Mendip District Council

**1.4** Defendant's or (where known) Defendant's legal representative's address to which documents should be sent.

**Address**

Building and street

Mendip District Council, Cannards Grave Road

Second line of address

Town or city

Shepton Mallet

County (optional)

Somerset

Postcode

B | A | 4 | | 5 | B | T

Phone number

07971 045977

Email

Martin.Evans@mendip.gov.uk

**1.5** 2nd Defendant's name

**1.6** Defendant's or (where known) Defendant's legal representative's address to which documents should be sent.

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

Phone number

Email

**Section 2 – Contact details of other interested parties**

**2.1** 1st Interest party

First name(s)

Last name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email (if you have one)

**2.2 2nd Interest party**

First name(s)

Last name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email

## Section 3 – Details of the decision to be judicially reviewed

### 3.1 Give details of the decision you seek to have judicially reviewed.

The decision by the Defendant to publish amendments to the Mendip District Council Local Plan Part II: Sites and Policies on 12 January 2023. In particular, the decision to publish a policies map showing land known as NSP1 outside of the development limit for Norton St Philip and within the countryside.

**Note 3.1:** Use a separate sheet if you need more space for your answers, marking clearly which section the information refers to.

### 3.2 Date of decision

Day

 12

Month

 01

Year

 2023

**3.3** Name and address of the court, tribunal, person or body who made the decision to be reviewed.

Name

Mendip District Council

**Address**

Building and street

Mendip District Council, Cannards Grave Road

Second line of address

Town or city

Shepton Mallet

County (optional)

Somerset

Postcode

B | A | 4 | | 5 | B | T

## **Section 4 – Permission to proceed with a claim for judicial review**

**This section must be completed. You must answer all the questions and give further details where required.**

**4.1** Are you making any other applications?

Yes. Complete Section 8.

No

Is the claimant in receipt of a Civil Legal Aid Certificate?

Yes

No

Does your claim, or any application for interim relief or expedition need to be decided urgently?

Yes. Complete form **N463PC** and file this with your application.

No

Have you complied with the pre-action protocol?

Yes

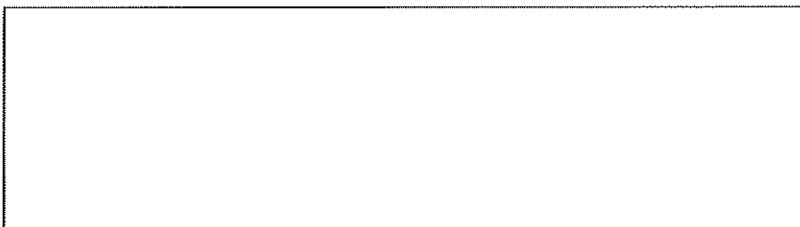
No. Give reasons for non-compliance in the box below.

Partial compliance - the Claimant served a letter before claim on the Defendant on 9 February 2023 and a letter of response has been received from the Defendant (which are both included within the Claim Bundle). Unfortunately due to timing of instructions we were able to provide the Defendant with the typical 14 day response time period.

Have you issued this claim in the region with which the claim is most closely connected?

Yes. Give any additional reasons for wanting it to be dealt with in this region in the box below

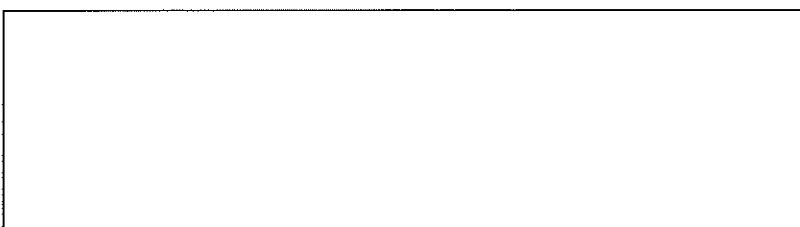
No. Give reasons in the box below



Does the claim include any issues arising from the Human Rights Act 1998?

Yes. State the articles which you contend have been breached in the box below.

No



## Section 5 – Statement of facts relied on

See attached statement of facts and grounds.

**Note 5:** The facts on which you are basing your claim should be set out in this section of the form, or in a separate document attached to the form. It should contain a numbered list of the points that you intend to rely on at the hearing. Refer at each point to any documents you are filing in support of your claim.

## Section 6 – Detailed statement of grounds

6.1 The detailed statement of grounds are:

- Set out below
- attached

See attached statement of facts and grounds.

**Note 6.1:** Use a separate sheet if you need more space for your answers, marking clearly which section the information refers to.

## Section 7 – Aarhus Convention claim

7.1 I contend that this claim is an Aarhus Convention claim

- Yes. Indicate in the following box if you do not wish the costs limits under CPR 45.43 to apply.
- No

**Note 7:** The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in government decision-making processes on matters concerning local, national and transboundary environment.

It focuses on interactions between public and public authorities. Please indicate whether you are seeking the costs protection in CPR 45.

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

## Section 8 – Details of remedy (including any interim remedy) being sought

The Claimant claims:

- (1) An order quashing the revised policies map published on 12 January 2023 and requiring Mendip District Council to republish a policies map which accords with the terms of the Order of Holgate J dated 16 December 2022;
- (2) The Claimant's costs in the proceedings;
- (3) Such further relief as the Court considers appropriate.

**Note 8:** Complete this section stating what remedy you are seeking:

- (a) a mandatory order;
- (b) a prohibiting order;
- (c) a quashing order; or
- (d) an injunction restraining a person from acting in any office in which he is not entitled to act.

A claim for damages may be included but only if you are seeking one of the orders set out above.

## Section 9 – Other applications

**9.1** I wish to make an application for:-

**Note 9:** You may wish to make additional applications to the Administrative Court in connection with your claim for Judicial Review. Any other applications may be made either in the claim form or in a separate application (form N244). This form can be obtained from any of the Administrative Court Offices listed overleaf or from our website at [www.justice.gov.uk](http://www.justice.gov.uk).

## Statement of truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**I believe** that the facts stated in this form are true. I confirm that all relevant facts have been disclosed in this application.

**The claimant** believes that the facts stated in this form are true. **I am authorised** by the claimant to sign this statement.

### Signature



Claimant

Litigation friend

Claimant's legal representative (as defined by CPR 2.3(1))

### Date

Day	Month	Year
23	02	2023

### Full name

Nikita Leigh Sellers

### Name of claimant's legal representative's firm

Town Legal LLP

### If signing on behalf of firm or company give position or office held

Associate

## Section 10 – Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

Statement of grounds

Included  attached

Statement of the facts relied on

Included  attached

Application to extend the time limit for filing the claim form

Included  attached

Application for directions

Included  attached

Any written evidence in support of the claim or application to extend time

Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision

Copies of any documents on which the claimant proposes to rely

A copy of the legal aid or Civil Legal Aid Certificate (if legally represented)

Copies of any relevant statutory material

A list of essential documents for advance reading by the court (with page references to the passages relied upon)

Where a claim relates to an Aarhus Convention claim, a schedule of the claimant's significant assets, liabilities and income.

Included  attached

a detailed statement of the grounds

Included  attached

**Note 10:** Do not delay filing your claim for judicial review. If you have not been able to obtain any of the documents listed in this section within the time limits referred to on the previous page, complete the notice as best you can and ensure the claim is filed on time. Set out the reasons why you have not been able to obtain any of the information or documents and give the date when you expect them to be available.

Reasons why you have not supplied a document and date when you expect it to be available:-

Signature

Claimant or legal representative

## The Court and venue

CPR part 54 – claims for Judicial Review are dealt with by the Administrative Court.

The general expectation is that proceedings will be administered and determined in the region with which the claim has closest connection; see Practice Direction 54C 2.5.

- Where the claim is proceeding in the Administrative Court in **London**, documents must be filed in the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.
- Where the claim is proceeding in the Administrative Court in **Birmingham**, documents must be filed in the Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 BullStreet, Birmingham B4 6DS.
- Where the claim is proceeding in the Administrative Court in **Wales**, documents must be filed in the Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.
- Where the claim is proceeding in the Administrative Court in **Leeds**, documents must be filed in the Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.
- Where the claim is proceeding in the Administrative Court in **Manchester**, documents must be filed in the Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

**IN THE HIGH COURT OF JUSTICE**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

**CO/ /2023**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**BETWEEN**

**LOCHAILORT INVESTMENTS LIMITED**

**Claimant**

**- and -**

**MENDIP DISTRICT COUNCIL**

**Defendant**

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**STATEMENT OF FACTS AND GROUNDS**

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*Note: References to the Claim Bundle are in the form [CB/Tab X/Page X].*

**List of Essential Reading:**

- [CB/5/78-112] – Judgment in Norton St Philip Parish Council v Mendip District Council [2022] EWHC 3432 (Admin)
- [CB/6/113-115] – Order of Holgate J dated 16 December 2022
- [CB/7/116-119] – Short Advice of David Forsdick KC dated 6 January 2023
- [CB/8/126] – Mendip District Council Local Plan Part II: Sites and Policies (Post-Judicial Review - Explanatory Note) published 12 January 2023
- [CB/8/147-149] - Mendip District Council Local Plan Part II: Sites and Policies (Post-Judicial Review Tracked Version – NSP1 Extract) published 12 January 2023
- [CB/9/159] – Revised Policies Map (Extract) published by Mendip District Council on 12 January 2023
- [CB/10/160-164] – Mendip District Council’s Members’ Briefing Note dated January 2023
- [CB/11/165-169] – Letter from Town Legal LLP to Mendip District Council dated 9 February 2023
- [CB/12/170-175] – Letter from Mendip District Council to Town Legal LLP dated 22 February 2023
- Statement of Facts and Grounds
- Any Summary Grounds of Defence

## INTRODUCTION

1. This is an application for judicial review of Mendip District Council's ('the Council') decision to publish amendments to the Mendip District Council Local Plan Part II: Sites and Policies ('LPP2') on 12 January 2023 [CB/8/120]. In particular, the decision to publish a policies map [CB/9/159] ('the Revised Policies Map') showing land known as NSP1 outside of the development limit for Norton St Philip and within the countryside.
2. The Claimant contends that this decision was unlawful and the designation of the land for housing under allocation NSP1 should be shown on the Revised Policies Map as being struck through, so as to make clear that it is currently 'white land', that is land without any designation in the adopted development plan. The Claimant does not seek any advantage for its site, but only seeks that it be treated fairly – without unjustified disadvantage.

## FACTUAL BACKGROUND

3. The development plan for Mendip includes the Mendip District Local Plan Part I: Strategy and Policies ('LPP1') and the Mendip District Council Local Plan Part II: Sites and Policies ('LPP2').
4. LPP2 was adopted on 20<sup>th</sup> December 2021. The land known as NSP1 is shown shaded orange on the policies map published alongside LPP2 [CB/4/77] and was allocated for development of a minimum of 27 dwellings in the adopted version of the LPP2. This allocation was added to LPP2 as a main modification to address a failure of the submitted plan to make allocations for an additional requirement of 505 dwellings.
5. A claim for statutory review pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') was brought challenging the Council's decision to adopt the LPP2. The claim was allowed for the reasons given by Holgate J in *Norton St Philip Parish Council v Mendip District Council* [2022] EWHC 3432 (Admin) [CB/5/78] ('the Judgment').

6. The consequence of this, as set out at paragraph 2 of Holgate J's order [CB/6/113] ('the Order'), was that certain policies in LPP2 including NSP1, their supporting text and other related text, tables and diagrams, as set out in Schedule 1 to the order, were remitted to the Council for review and reconsideration.
7. Paragraph 3 of the Order provided that the remitted parts of LPP2 were to be treated as not having been adopted as part of the local development plan. Paragraph 4 required the Council to publish a revised version of LPP2 on its website showing the remitted parts as being struck through. Striking through a policy proposal is, in one sense, a limited action. It does not permit, let alone require, the relevant land to be otherwise designated (e.g. as countryside which appears to be the Council's current view - see further below).
8. Paragraph 5 required the Council to amend the policies map so that it reflected the terms of the Order and any consequential changes to LPP2. Amendments to the policies map are therefore only justified in so far as they reflect the terms of the Order i.e. *inter alia* the requirement to show NSP1 as having been struck through.
9. Paragraph 6 then set out the process by which the Council was required to review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2 of Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies [CB/3/28] and the Judgment. This included a requirement to prepare and publish modifications to LPP2 which allocate sites to meet the additional requirement; the submission of those modifications to the Secretary of State for Independent examination; and then taking a decision in accordance with section 23 of the Planning and Compulsory Purchase Act 2004.
10. For the avoidance of doubt<sup>1</sup>, this challenge does not concern the paragraph 6 review process or whether NSP1 should be allocated for housing as part of that separate process. Instead, this challenge concerns the publication of the Revised Policies Map under paragraph 5 of the Order on 12<sup>th</sup> January 2023. It is purely concerned with what

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<sup>1</sup> The Council's Pre-Action response [CB/12/170] comments on matters such as the weight to be given to the LPP1 Inspector's positive assessment of the merits of allocating NSP1 for housing which is a matter irrelevant to this challenge.

designation, if any, the site should be labelled with in the Revised Policies Map, pending the outcome of the paragraph 6 review process.

11. The Council published a briefing note in January 2023 [CB/10/160] explaining the steps it had taken in consequence of the Order:

“16. The following sites have been deleted from the LPP2. No weight or regard can now be given to these policies in the determination of planning applications.

Policy MN1 Land at White Post, Midsomer Norton

Policy MN2 Land at Underhill Lane, Midsomer Norton

Policy MN3 Land east of the A367, Midsomer Norton

Policy BK1 Land off Great Dunns Close, Beckington

Policy NSP1 Land off Mackley Lane, Norton St Phillip

17. The site allocation policies and supporting text are shown as ‘struck-out’ from the adopted Local Plan Part II. References to these sites have been removed from other parts of the LPP2 and changes made to summary tables and projected dwellings.

18. The policies map has been changed to show the deleted sites as land in the countryside outside development limits.

19. An updated Local Plan Part II (Post JR-version) and the policies map was published on 12th January 2023...”

## **SUBMISSIONS AND GROUNDS FOR JUDICIAL REVIEW**

12. In consequence of the Judgment and the Order, it is clear NSP1 should not be shown as an extant allocation on the Revised Policies Map.

13. However, neither should it be shown as covered by any other annotation, in particular countryside outside development limits. Nothing in the Judgment or the Order has that effect.

14. As per the requirements of paragraph 4 of the Order, the allocation for NSP1 should be shown on the Revised Policies Map as being struck through so as to make clear that the status of the land is currently neutral. Its future status is to be assessed afresh in accordance with paragraph 6 of the Order.

15. In consequence, the development limit of Norton St Philip should not have been redrawn in the Revised Policies Map (as it has been) so as to exclude NSP1 from the development limits for Norton St Philip and to impose a countryside designation on the site. The relevant extent of the development limit is inextricably connected with the status of the NSP1 allocation – which has been struck through and remains to be redetermined. Whilst that redetermination takes place, no new designation should be imposed on the land.
16. The development limit for this part of Norton St Philip requires review and reconsideration as part of the process set out in the Order. To redraw the development limit in a perfunctory manner, as the Council has done, is to pre-empt the review and reconsideration required by paragraph 6 of Order and is at odds with the clear terms of paragraphs 4 and 5 of the Order.
17. The purpose of the Revised Policies Map is to reflect the policies of the adopted development plan not to make new policies. Those adopted policies do not set a development limit in this part of Norton St Philip, that part of LPP2 has been remitted to the Council by order of the court for review and reconsideration.
18. There is no lawful basis on which the Revised Policies Map can purport to re-determine the development limit without the review and reconsideration having taken place.
19. In particular, as was held in *Cummings v Weymouth & Portland BC* [2007] EWHC 1601 (Admin) at [73], when an allocation is quashed (or remitted as it was here) it leaves the land without designation:

“In relation to relief, it is agreed between the parties that, if there was a breach of rules of natural justice, the designations for Areas A, B and D should be quashed. Given that the Inspector’s decision with regard to the DDB involved a comparison of the objection site and the Louviers Road site - that was how the objection was put by the claimants and how it was contested by the Council - it seems to me inevitably to follow that the inclusion of the latter site within the DDB” [meaning the Defined Development Boundary] “and the allocation of the Louviers Road site for housing under policy H1t must also be quashed, leaving

both the objection site and the Louviers Road site as “white land”, without designation.”

20. “Without designation” means what is says. By way of example, in *Cummings* the first order the Judge proposed to make was as follows:-

“the Defined Development Boundary shown on the Proposals Map shall be quashed insofar as it excludes Areas A, B and D: and insofar as it includes the Louviers Road site.”

21. There is no justification or legal basis for the land being treated as allocated as it was in earlier drafts and so subject to another designation, e.g. as open countryside. That would be to pre-empt any reconsideration as required by the Order. Nor does any previous allocation/designation from any earlier plan spring back to life. Likewise, it cannot be said to be without or, it is accepted, within any development limit for local plan purposes.

22. It is understood that the Council will contend<sup>2</sup> that *Cummings* should be distinguished on the facts. *Cummings* concerned an application to quash aspects of the Weymouth and Portland Local Plan Review (§1). The Claimants were the developers of a site referred to in the judgment as “the objection site” (§2-4). The Local Plan Review and Policies Map designated the objection site as lying outside the development boundary of the settlement within land designated as an important open gap and as an area of local landscape importance (§6). The Local Plan Review placed a nearby site known as the “Louviers Road site” within the development boundary and allocated that site for development (§6). The Claimants sought to quash the Local Plan Review in so far as it made those designations (§7). The Claimant contended (i) that an adequate opportunity to put their case in respect of their objections to the plan had not been given as evidence they relied on had been excluded from consideration; and (ii) inadequate reasons had been given for making the designations (§8). The claim succeeded with the court holding that the procedure was unfair to the Claimants in that they were not provided with an adequate opportunity to put their case (§53). At §76 Hickinbottom J addressed

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<sup>2</sup> See its Pre-Action Response [CB/12/165] and the Short Advice of David Forsdick KC dated 6<sup>th</sup> January 2023 [CB/7/116].

the question of relief. He quashed the allocation policy and also the designations which applied to the objection site. This left both sites as ““white land”, without designation”.

23. It is accepted that the facts of the two cases are not the same, but that is beside the point. That case was no more complex than the present case. *Cummings* concerned allocations and development boundaries. In *Cummings*, in consequence of the judgment the allocations and designations were quashed and the development boundary was left undefined. The key issue on redetermination in *Cummings* was very similar to this case – which site should be allocated for housing. In this case, on redetermination, the Council will need to consider whether NSP1 should be allocated for housing or whether the housing that it contained should be allocated to another site in the district. There is no dispute as to the need to find 505 additional housing units and that sites would have to be allocated somewhere. The only difference is that in *Cummings* there was already an identified alternative site, whereas in this case there is not. That is distinction without any practical impact, in particular, as to the status of the quashed/remitted allocated site. What matters is the consequences of part of a development plan having been quashed or remitted and not the justification for that quashing. It is quite clear that an old development plan or an earlier draft of the extant plan does not resurrect.

24. In so far as the Council may contend that absent an allocation, the land should revert to countryside land outside any development limit, this is disputed. It presupposes that the development limit in this part of Norton St Philip should be redrawn to exclude NSP1 from being within the development limit. That this is how the Council considers the site is confirmed in paragraph 18 of its published briefing note [CB/10/162] (set out above). The purported consequence is confirmed in paragraph 22 and 23 likewise, where it is stated:

#### **“Planning applications on the deleted sites**

22. A number of the deleted sites are subject to planning applications under consideration by the Council. The Order does not prevent the Council from determining these applications.

23. Applications on the affected sites would now be treated as a departure from the Development Plan and considered against the adopted LPP1 and revised LPP2 policies. This would be similar in approach to speculative windfall applications in the countryside. The lack of a five-year housing land supply would need be taken into account...”

25. This goes beyond what is justified by the Order of Mr Justice Holgate. Nor is it supported by the Explanatory Note in the adopted LPP2 [CB/8/120], paragraphs 2-5:

“2. The Judgement of Hon. Mr Justice Holgate was handed down on 16th December 2022. It is accompanied by an Order directing the Council to make revisions to this Plan. Copies of both these documents can be found online.

3. Two grounds of challenge to the adopted Plan were upheld by the Court relating the housing sites allocated in the north-east of the district. These sites have been remitted back to Mendip District Council. The relevant policies and supporting text are deleted from the adopted Local Plan Part II and are shown as ‘struck-out’ of this document. No weight or regard can be given to these policies or their supporting in the determination of planning applications.

4. The policies which are subject to the Order and struck out are:

Policy MN1 Policy MN2 Policy MN3 Policy BK1 Policy NSP1

Land at White Post, Midsomer Norton Land at Underhill Lane, Midsomer Norton Land east of the A367, Midsomer Norton Land off Great Dunns Close. Beckington Land off Mackley Lane, Norton St Phillip

Consequential changes from the deletion of these policies have also been made to Section 3 of this Plan (Housing Land) including adjustments to summary tables of allocations and dwellings to be delivered over the plan period.

5. Development and allocation policies in the remainder of Local Plan Part II remain as adopted on 20th December 2021.”

26. Instead, as per *Cummings*, the Court has not predetermined where the development limit should be and therefore whether NSP1 should be within it or outside it. That depends on the decisions and review which will follow. Again, as per *Cummings*, it is not appropriate to revert here to the development limit in the previous draft – that serves to predetermine the issue – until such time as the review is completed, the development limit in this location should be left at large.

27. In those circumstances the Claimant has invited the Council to replace the Revised Policies Map with a version which properly reflects the current circumstances of NSP1 [CB/11/168]. It has declined to do so [CB/12/174]. It has therefore been necessary to make this application for judicial review.

28. The Council’s publication of the Revised Policies Map is unlawful. It fails to accord with the requirements of the Order, it purports to designate NSP1 as countryside and to amend the development limits for Norton St Philip without any lawful basis for doing so. This could very simply be rectified by the Council by showing NSP1 as ‘struck

through' on the Revised Policies Map as per paragraphs 4 of the Order. This would ensure, as required by paragraph 5 of the Order, that the Revised Policies Map reflects the terms of the Order.

## **CONCLUSION**

29. For the reasons set out above, the Court is asked to quash the Revised Policies Map and to require the Council to republish a policies map which accords with the terms of the Order of Holgate J. The Claimant seeks its costs and such alternative or further relief as the court considers appropriate.

James Findlay KC

Ben Du Feu

Cornerstone Barristers

23 February 2023

# Judicial Review

## Acknowledgment of Service

Name of court

High Court of Justice  
Administrative Court

Claim number

CO/709/2023

Name of claimant (including any reference)  
LOCHAILORT INVESTMENTS LIMITED

Name of defendant

MENDIP DISTRICT COUNCIL

Interested parties

--

who is the

Defendant

Interested party

## Name and address of person to be served

Name

LOCHAILORT INVESTMENTS LIMITED

### Address

Building and street

c/o Town Legal LLP

Second line of address

10 Throgmorton Avenue

Town or city

London

County (optional)

--

Postcode

E	C	2	N	2	D	L
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## Section 1

Tick the appropriate box

- I intend to contest all of the claim  
– **complete sections 2, 3, 4 and 6**
- I intend to contest part of the claim  
– **complete sections 2, 3, 4 and 6**
- I do not intend to contest the claim  
– **complete section 6**
- The defendant (interested party) is a court or tribunal and  
intends to make a submission  
– **complete sections 2, 3 and 6**
- The defendant (interested party) is a court or tribunal and does  
not intend to make a submission  
– **complete sections 2 and 6**
- The applicant has indicated that this is a claim to which the  
Aarhus Convention applies  
– **complete sections 5 and 6**
- The Defendant asks the Court to consider whether the outcome  
for the claimant would have been substantially different if the  
conduct complained of had not occurred (see s.31(3C) of the  
Senior Courts Act 1981)  
– **A summary of the grounds for that request must be set out  
in/accompany this Acknowledgment of Service**

**Note:** If the application  
seeks to judicially review  
the decision of a court  
or tribunal, the court or  
tribunal need only provide  
the Administrative Court  
with as much evidence as  
it can about the decision  
to help the Administrative  
Court perform its judicial  
function.

## Section 2

2.1 Insert the name and address of any person you consider should be added as an interested party.

Name

Norton St. Philip Parish Council

Organisation

Norton St. Philip Parish Council

**Note 2.1:** If you consider there is more than one interested party, set out their details on a separate sheet, marking that sheet so that it is clear it relates to this part of the Acknowledgment of Service.

### Address

Building and street

The Parish Clerk

Second line of address

81 Studland Park

Town or city

Westbury

County (optional)

Wiltshire

Postcode

BA13	3	HN			
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Phone number

07971 987806

Email (if you have one)

clerk@nortonstphilipparishcouncil.gov.uk

Reference, if known

\*See attached sheet for 2nd IP

### **Section 3**

Summary of grounds for contesting the claim. If you are contesting only part of the claim, set out which part before you give your grounds for contesting it. If you are a court or tribunal filing a submission, please indicate that this is the case.

**Note 3:** See Practice Direction 54A at paragraphs 6.1 – 6.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the Acknowledgment of Service.

Please see attached Summary Grounds on behalf of the Council.

## Section 4

### 4.1. Give details of any directions you want the court to make.

**Note 4:** If you wish to make any interlocutory application now, set out the application and the reasons and/or evidence relied on in support of it in this Section. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the Acknowledgment of Service.

If you are seeking a direction that this matter be heard at an Administrative Court venue other than that at which this claim was issued, you should complete, lodge and serve on all other parties form **N464** with this acknowledgment of service.

If, after this Acknowledgment of Service has been filed, you wish to make an interlocutory application, use form **N244**.

## Section 5

Response to the claimant's contention that the claim is an Aarhus claim

### 5.1 Do you dispute that the claim is an Aarhus Convention claim?

Yes. Set out your reasons in the box below.  
N/A

No

### 5.2 Do you wish the court to vary or remove the costs limits under CPR45.43(2)?

Yes. Set out your reasons in the box below.  
N/A

No

## Section 6

### Statement of truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

- I believe** that the facts stated in this form are true.
- The defendant** believes that the facts stated in this form are true. **I am authorised** by the defendant to sign this statement.
- The interested party** believes the facts stated in this form are true. **I am authorised** by the interested party to sign this statement.

#### Signature



- Defendant
- Defendant's legal representative (as defined by CPR 2.3(1))
- Interested party
- Interested party's legal representative (as defined by CPR 2.3(1))
- Litigation friend

#### Date

Day	Month	Year
15	03	2023

Full name

Martin Evans Solicitor

If legal representative, state name and firm

Shape Partnership Services

If signing on behalf of firm or company give position or office held

Solicitor

Give an address to which notices about this case can be sent to you

Name

Martin Evans Solicitor

Organisation

Shape Partnership Services

**Address**

Building and street

Council Offices

Second line of address

Cannards Grave Road

Town or city

Shepton Mallet

County (optional)

Somerset

Postcode

BA4	5	BT				
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If applicable

Phone number

07971045977

DX number

43001 Shepton Mallet

Email

martin.evans@mendip.gov.uk

Reference number

M2019/1905

If you have instructed counsel, please give their name address and contact details below.

Name

David Forsdick KC

**Address**

Building and street

Landmark Chambers

Second line of address

180 Fleet Street

Town or city

London

County (optional)

Postcode

E	C	4	A	2	H	G
---	---	---	---	---	---	---

If applicable

Phone number

02074301221

DX number

1042 (Chancery Lane)

Your reference

198252

Email

clerks@landmarkchambers.co.uk

**Completed forms**, together with a copy, should be filed at the Administrative Court Office (court address, listed below), at which this claim was issued within 21 days of service of the claim upon you, and further copies should be served on the Claimant(s), any other Defendant(s) and any interested parties within 7 days of filing with the Court. See CPR 54.8.

### **Administrative Court addresses**

#### **Administrative Court in London**

Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.

#### **Administrative Court in Birmingham**

Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 Bull Street, Birmingham B4 6DS.

#### **Administrative Court in Wales**

Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.

#### **Administrative Court in Leeds**

Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.

#### **Administrative Court in Manchester**

Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

**IN THE HIGH COURT OF JUSTICE**

**CO/709/2023**

**ADMINISTRATIVE COURT**

**PLANNING COURT**

**BETWEEN:**

**LOCHAILORT INVESTMENTS LIMITED**

**Claimant**

**and**

**MENDIP DISTRICT COUNCIL**

**Defendant**

**SUMMARY GROUNDS ON BEHALF OF THE COUNCIL**

1. These are the Summary Grounds of Mendip District Council (“the Council”) in response to the proposed claim for judicial review of Lochailort Investments Limited (“LIP”) concerning the decision of the Council pursuant to the Order of Holgate J dated 16<sup>th</sup> December 2022 to publish amendments to the Mendip District Local Plan: Part 2 (“LLP2”) on 12<sup>th</sup> January 2023 and in particular the decision to publish a Revised Policies Map showing land known as NSP1 (“the Land”) outside of the development limit for Norton St Philips (“NSP”).
2. The Land had been allocated in LLP2 in response to the conclusion of the inspector conducting the local plan examination into it (“the Inspector”) that a shortfall of 505 units identified through the Mendip District Local Plan: Part 1 (“LPP1”) process was required under Part 1 policy to be met in the north-east of the Council's area. Holgate J held that conclusion to be flawed. The area of search was not so limited under LLP1 and the Inspector's approach was thus in error (“the Error”).
3. The consequence was that all elements of LLP2 consequent on the Error were to be deleted as if they had not been made. How to meet the need for the 505 units is to be the subject of an early review. In that exercise the area of search will not, in accordance with the judgment of Holgate J, be required to be limited to the north-eastern part of the District.

4. LIP contends that nonetheless, in the meantime and pending that review, the Council had to show the Land as white/neutral land and that the development limits in LLP2 for NSP could not revert to those shown before the Error. LIP's proposed approach is misplaced and its grounds disclose no error of law on the part of the Council.

*The History of the allocation of NSP1*

5. Under the previous development plan, the Land was outside the development limits of NSP and was thus, in policy terms, open countryside. A copy of the policies map under the former Mendip District Local Plan (adopted December 2002) showing the development limits for NSP at that time is appended at Annex A to these Summary Grounds.
6. The Land was not allocated in the regulation 19 version of LLP2. The Policies Map showed the Land as before - outside the development limits of NSP and thus in the open countryside. A copy of the policies map for the regulation 19 version of LPP2 showing the development limits for NSP at that time is appended at Annex B to these Summary Grounds.
7. However, based on his erroneous interpretation of policy in LLP1, the Inspector required a main modification (MM5: CB/10/160 para 2) to allocate a further 505 additional dwellings "in the north east of the District" including at the primary villages, of which NSP was one.
8. The Land was identified in direct response to the Inspector's erroneous approach.
9. Modifications were thus made to the policy text and to the development limits of NSP so as to include the Land as shown at CB/4/77. Those changes were a direct response to what is now known to be the Error.
10. The short point is that prior to the Error the Land was at all times shown as outside the development limits of NSP. In the decision under challenge, the Council has simply reverted to the position prior to the Error.

*The Judgment and Order of Holgate J*

11. Holgate J determined that LLP2 was unlawful – the decision to allocate NSP1 (and other sites) was based on a misdirection of law as to the area of search for additional housing sites ("the Area of Search") required under the relevant policy under LLP1 to meet the 505 unit housing shortfall ("the Shortfall").

12. In short, LLP2 had wrongly limited the Area of Search to an area including NSP and the allocation of NSP1 was made consequent on, or at least partly because of, that unlawful limitation.
13. Holgate J therefore ordered [CB/6/113] that policies in LLP2 including NSP1, their supporting text and other related text, tables and diagrams, in the schedule to the Order, be remitted to the Council; that the remitted parts be treated as “not having been adopted as part of the local development plan”; the offending text be struck through; and that, under para 5, the Council amend the Policies Map so that it reflected the terms of the Order – namely that NSP1 had not been adopted (para 3); had been deleted/struck through (para 4) and that thus NSP1 had not been identified as a suitable site for development (cp para 11.20.4 CB/8/147).
14. The express intended effect of the Order was that the remitted parts of the Local Plan be treated as not having been adopted as part of LLP2 (in accordance with the statutory provisions under which LLP2 was challenged in the first place). Paragraph 5 required the consequences to be followed through to the Revised Policy Map. Striking through the offending text has the effect of deleting and removing it such that it is no longer any part of LLP2 and that the land formerly in NSP1 has no special status under LLP2.

#### *The Result of the Judgment and Order*

15. The result of the Judgement and the Order was that the whole issue of which countryside sites to allocate for development has been remitted to the Council to consider afresh - to “review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2” (para 6a: CB/6/114).
16. The Land by definition has no special status in that process of reconsidering the appropriate response to the Shortfall. Removing any special status was the purpose of the challenge to LLP2 and the result of the Order. LIP appears to accept that the Land should have no special status but contends that it, alone, had to be shown as white land – not part of the countryside and, apparently, not beyond the development limits of NSP – thus giving it, as a formerly and unlawfully allocated site, the very special status that is said not to be claimed.
17. On the contrary, returning the land (formerly in NSP1) to its status immediately before the unlawful policy is the necessary and inevitable consequence of the judge’s order. This is not a case of “imposing a countryside designation on [the Land]”: Grounds para

15. Nor is it about “redraw[ing] the development limit in a perfunctory manner” (Grounds para 16). Nor is it about “pre-empting the review” (Grounds para 16). It is simply about reverting to the position before the unlawful policy change allocating NSP1.

18. That is the usual, and it is submitted, logical (indeed inevitable) effect of a former allocation being found to be unlawful. Para 18 [CB/10/160] could perhaps have been more carefully worded – “The policies map has reverted to the former position before the erroneous approach to allocations for the 505 units and thus shows the deleted sites as they were before the Error” but that more precise formulation does not impact the legality of the approach of the Council.

19. The para 6a LLP2 review effectively requires the question of where the 505 units should be located to start afresh and to go through the normal reg 18 and 19 stages before examination and adoption without preconditions or any of that review having been pre-determined based on the former unlawful allocation.

#### Cummings

20. Relying on *Cummings v Weymouth and Portland BC [2007] EWHC 1601 (Admin)*, LIP contends that, in accordance with the Order, the Council had to show the land formerly comprising NSP1 as neutral (with the allocation simply struck through on the Revised Policies Plan) and with the land being shown as neither in the countryside nor beyond the development limit – effectively creating a void/gap in the plan. There is no “neutral” designation known to law or planning. There is no allocation of NSP1 as “neutral” or “white” and no policy in the lawful LLP2 or LLP1 to support that approach. LIP’s approach seeks to give the Land a status it has never been given under any policy or any allocation. It is not required or implied by the Order. Yet LIP has to show that based on *Cummings* that was the only lawful route open to the Council.

21. The facts of *Cummings* are wholly different from those here, the approach in the Order in the light of the Judgement appears to have been undisputed, there is no legal analysis to justify the application of the approach more broadly, and if it was meant to be setting down a general rule, it was wrongly decided.

22. In *Cummings*, there, there was effectively a contest between just two sites for an allocation. In the plan under challenge, one (“the Louviers Road Sites”) was allocated and therefore newly included within the relevant development boundary and the other (“the Objection Site”) was not allocated and was in part<sup>1</sup> taken out of and in part

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<sup>1</sup> Parts of the Objection Site had already been included in the Development Boundary under the previous local plan.

left outside the development boundary. All the latter was also included in the Important Open Gap (“IOG”) and in the area of local landscape importance (“ALLI”) even though it had (deliberately) not been so included in the previous local plan.

23. The relevant policies of the plan were quashed on the application for those interested in the Objection Site.
24. The order made (para 77) appears<sup>2</sup> to have been that the development boundary and associated boundaries of the IOG and ALLI were quashed insofar as they excluded one site and included the other. The development boundary was thus left undefined in this general location as was the boundary of the IOG and the LLSI.
25. The key issue on redetermination would be whether the Louviers Road Site or the Objection Site would be allocated. There was no dispute that the development boundary in this location would have to include the whole of one of them and therefore would have to change both from the previous local plan and from that in the quashed parts of the local plan. The only issue was which one should be included and which one should be excluded.
26. The Court could not predetermine that issue - where the development boundary should be and therefore which site should be within it and which outside it would be wholly dependent on new decisions following, and in the light of, the decision of the Court.
27. It was therefore agreed by the parties (an agreement endorsed without apparent argument by the judge) not to be appropriate to revert to the previous development boundary which would have included part of the Objection Site but excluded the Louviers Site – that would have served to at least in part predetermine the very issue to be determined; but instead the issue as to the future development boundary in this location was left at large.
28. The comment LIP rely on in *Cummings* has to be read and understood as a whole - namely that “given that the inspector’s decision with regard to the [Development Boundary] involved a comparison of the objection site and the Louviers Road site - that was how the objection was put by the claimants and how it was contested by the Council – it seems to me inevitably to follow that the inclusion of the latter site within the [Development Boundary] and the allocation of the Louviers Road site for housing ... must also be quashed leaving both...as white land without designation.” That would allow the Council to reconsider the issue afresh without the Plan including any

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<sup>2</sup> The order actually made is not provided. The order was provisional on representations of third parties. It is not known what the outcome of that process was.

predetermined outcome in the meantime. It appears that that was the “agreed” position of the parties. It was a preliminary view subject to input from the owners of the Louviers Road site.

29. On the complex and very specific facts of that case that approach was not wholly surprising. There had to be a change to the development boundary in this area – the question was whether to pull it back from the Objection Site so as to exclude the whole of it and extend it over the Louviers Road Site or to include the whole of the Objection Site and exclude the Louviers Road site. Those were the only two permutations in play.
30. That approach cannot, for obvious reasons, be translated to the facts of the current case where the question for the Council is not the precise development boundary in this location but where to allocate land to meet the Shortfall anywhere in the Council’s area. That does not pose just a choice between two sites. The possible permutations are very numerous and may result in no allocations in this area at all.

#### The reasoning of the Court here

31. Fundamentally, the issue before the Inspector and the Court here was not a contest for an allocation between two adjoining sites part of one of which was already within the development boundary but a much wider issue as to which greenfield sites anywhere in the district should be allocated.
32. That issue had been approached based on a wrong understanding of the LLP1 in respect of the 505 units. Rather than just look in, or focus the search in, the narrow area including around NSP (based on a wrong understanding of those policies) the search for new greenfield sites was to be area wide. There was thus no implication that any sites would necessarily be chosen around NSP, that there would be any change to its development limits or that the sites previously allocated had any special status over any other site anywhere in the district.
33. The approach in *Cummings* cannot therefore apply here. The facts are wholly different.
34. Indeed, to apply it would be to subvert rather than to give effect to the judgement of the Court. The Court has determined that the starting point for the identification of sites for the 505 units was wrong in principle. The exercise of choosing where those 505 should go must start afresh without preconceptions based on the flawed former approach. The effect of para 2 and 3 of the Order (and schedule 1) is effectively to delete the parts of the plan covered by the judgment. Absent the allocations - deleted by the terms of the Order and as specifically listed in the schedule – the relevant land has no allocation whether for white land or for housing. It therefore reverts to what it

was before the unlawful policies were adopted. It is therefore countryside. Countryside requires no allocation to be countryside - it is just a description of undeveloped greenfield land which is not allocated, or within a development boundary.

35. If *Cummings* has the broad effect claimed - namely that when allocations of greenfield land are quashed the land becomes white land or neutral land by definition then *Cummings* must be wrong. There is no legal, policy or factual basis for taking that approach. *Cummings* cannot be read in that way and it does not appear to ever have previously been applied in that way.
36. The Revised Policies Map can thus lawfully show the Land as greenfield undeveloped land beyond any development boundaries without any allocation and thus countryside.

*The Result*

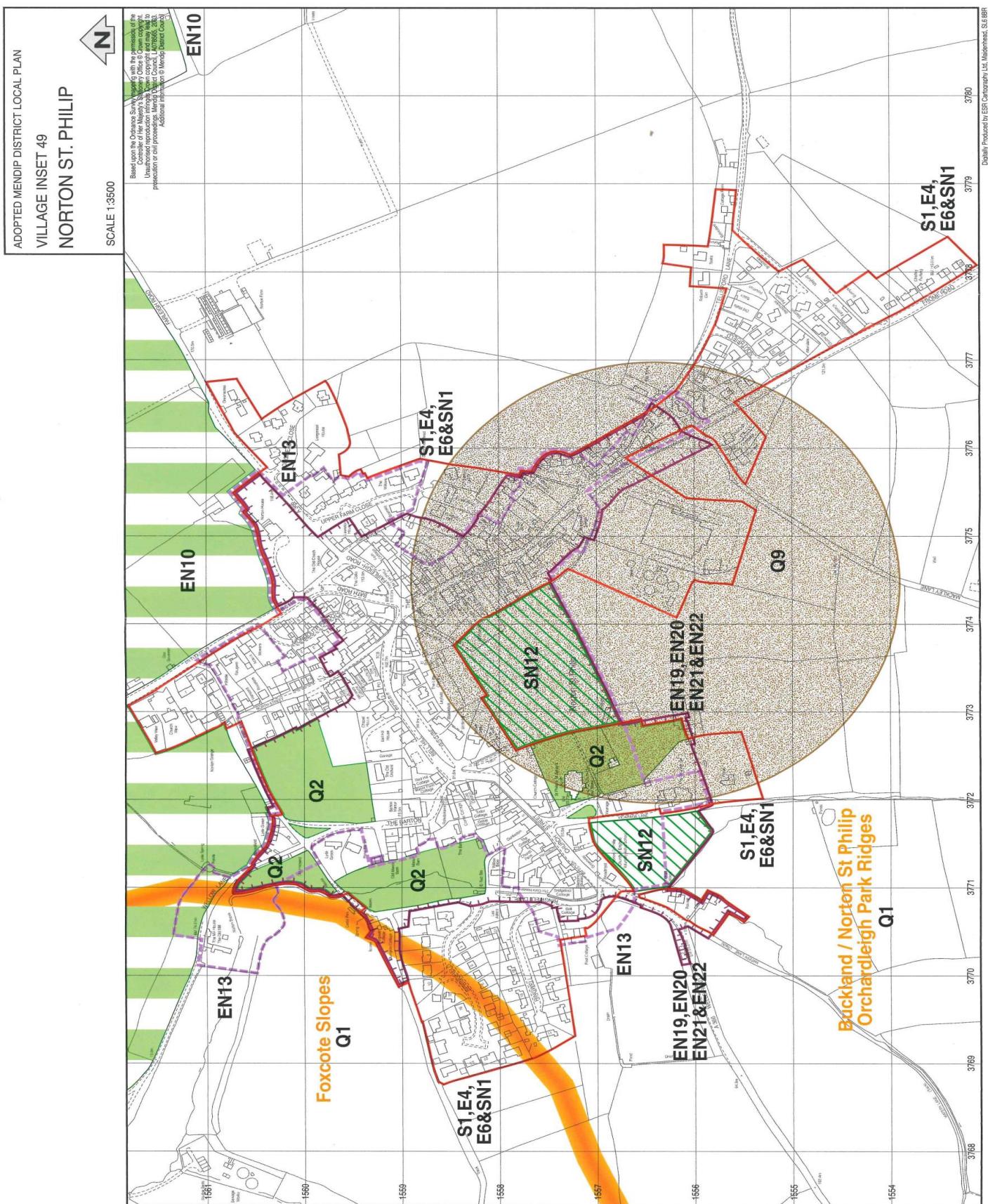
37. The application for permission to apply for judicial review should thus be dismissed with costs assessed in the sum of £3,840.00 in accordance with the schedule attached.

David Forsdick KC

Landmark Chambers

13<sup>th</sup> March 2023

## Annex A

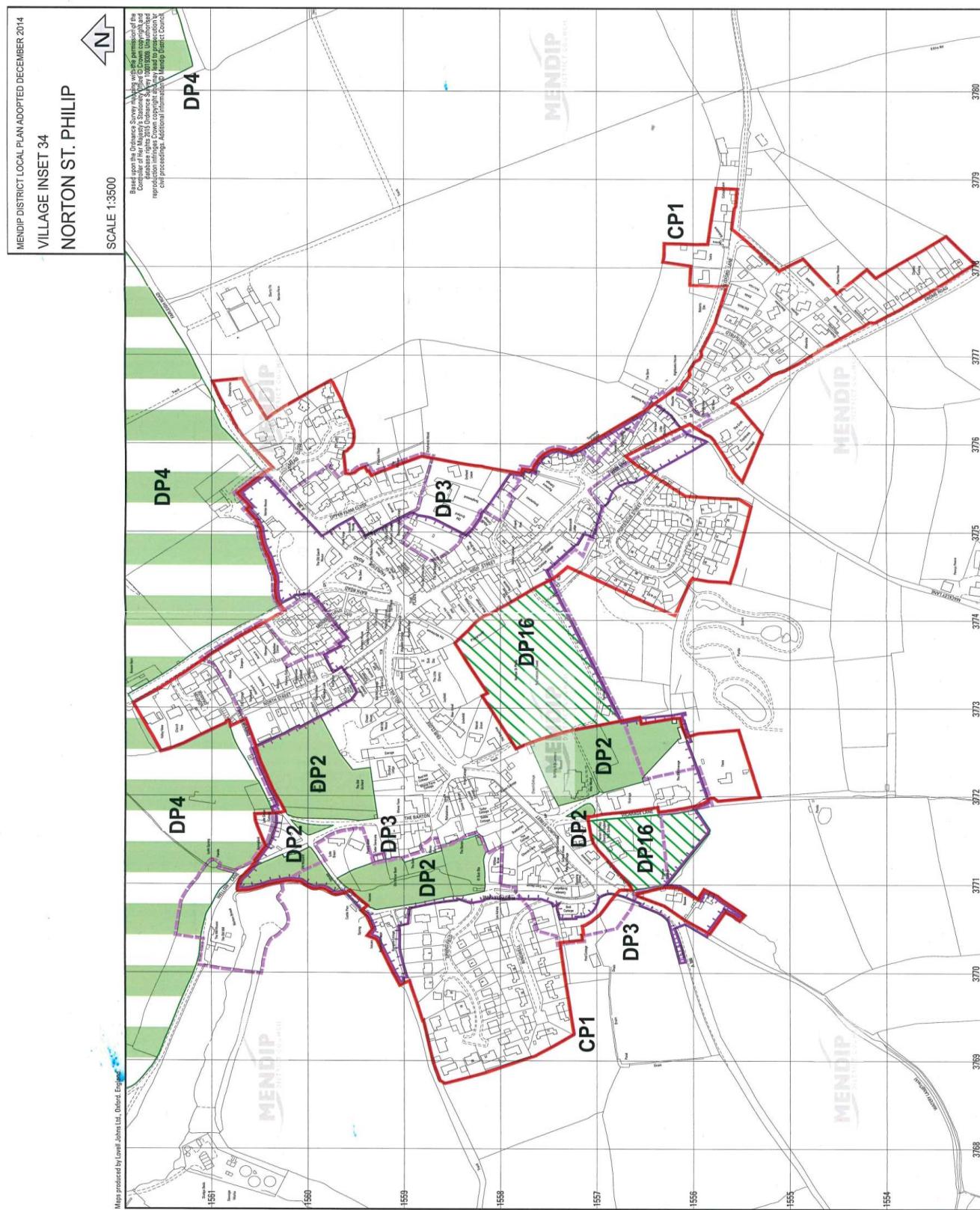


**MENDIP**  
DISTRICT COUNCIL  
ADOPTED  
MENDIP DISTRICT LOCAL PLAN  
KEY TO INSERTS 11-70

<b>INFORMATION</b>								
District/Local Plan Area Boundary		County Wildlife Site		Area of High Archaeological Potential (AHAP)		Policy EN13		
<b>POLICIES</b>		Regionally Important Geological Site (RIGS)		Groundwater Source Protection Area (Zone 1)		Policy EN14		
<b>Strategy</b>		Policies S1, E4, E6 & S11		Policy EN2		Policy EN14		
<b>Building in Quality</b>		Area of Outstanding Natural Beauty (AONB)		Policy EN6		Groundwater Source Protection Area (Zone 2)		Policy EN14
Open Space of Visual Significance		Landscape Character Area Boundary		Policy Q1		Groundwater Source Protection Area (Zone 3)		Policy EN14
Sewage Treatment Works Buffer Zone		Polden Ridge		Policy Q1		Flood Risk Area		Policy EN15
<b>Meeting the Community's Social Needs</b>		Protection of Formal and Informal Recreation Spaces		Policy EN7		Conservation Area		Policies EN19, EN20, EN21 & EN22
Protection of Former Transport Corridors for future transport use		Policy SH12		Policy EN8		Site Allocations		Redevelopment or Re-use of Bulleigh Hospital
<b>Protecting &amp; Conserving Environmental Assets</b>		Special Area of Conservation (SAC)		Policy EN10		Recreation Allocation		Policies EV1 & LOM1
Site of Special Scientific Interest (SSI)		Special Protection Area (SPA)/Ramsar site		Policy EN11				

Digitally Produced by ESR Cartography Ltd, Midsomer Norton, Somerset, BS21 7ER

## ANNEX B



KEY TO INSETS 11-44

**CORE POLICIES**



District/Local Plan Area Boundary



Development Limit

**Policy CP1**

**Development Constraints**



Open Space of Local Significance

**Policy DP2**



Scheduled Monuments (SAM)

**Policy DP3**



Areas of High Archaeological Potential (AHAP)

**Policy DP3**



Conservation Area

**Policy DP3**



Registered Parks and Gardens

**Policy DP3**



Special Landscape Feature

**Policy DP4**



Regionally Important Geological Site (RIGGS)

**Policy DP4**



Area of Outstanding Natural Beauty (AONB)

**Policy DP4**



Green Belt

**Policy DP4**



Special Area of Conservation (SAC)/  
Special Protection Area (SPA)/Ramsar site

**Policy DP5**



Site of Special Scientific Interest (SSSI)

**Policy DP5**



National Nature Reserve

**Policy DP5**



Local Nature Reserve

**Policy DP5**



Local Wildlife Sites

**Policy DP5**



Protection of Formal and Informal Recreation Spaces

**Policy DP16**



Protection of Former Transport Corridors  
for Future Transport Use

**Policy DP18**



**In the High Court of Justice  
King's Bench Division  
Planning Court**

CO/709/2023

**In the matter of an application for judicial review**

**THE KING**

**on the application of**

**LOCHAILORT INVESTMENTS LIMITED**

**Claimant**

**-and-**

**MENDIP DISTRICT COUNCIL**

**Defendant**

**Notification of the Judge's decision on the application for permission to apply for judicial review (CPR 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

**ORDER** by His Honour Judge Jarman KC sitting as a judge of the High Court

1. The application for permission to apply for judicial review is granted.
2. The application is to be listed for 1 day: the parties to provide a written time estimate within 7 days of service of this order if they disagree with this direction.

**Observations**

1. Although the defendant's arguments, including as to reverting to the allocation prior to the struck through policies and the inappropriateness of neutral land in the plan, may prevail in the end, the test at this stage is whether the grounds are arguable. Given the dispute between the parties regarding *Cummings v Weymouth and Portland BC* [2007] EWHC 1601 (Admin) the claim passes this threshold.

**Case Management Directions**

1. The Defendant and any other person served with the Claim Form who wishes to contest the claim or support it on additional grounds shall, within 35 days of the date of service of this Order, file and serve (a) Detailed Grounds for contesting the claim or supporting it on additional grounds, and (b) any written evidence that is to be relied on. For the avoidance of doubt, a party who has filed and served Summary Grounds pursuant to CPR 54.8 may comply with (a) above by filing and serving a document which states that those Summary Grounds shall stand as the Detailed Grounds required by CPR 54.14.

2. Any application by the Claimant to serve evidence in reply shall be filed and served within **21** days of the date on which the Defendant serves evidence pursuant to 1(b) above.
3. The parties shall agree the contents of the hearing bundle and the Claimant must file it with the Court not less than **21** days before the date of the hearing of the judicial review. An electronic version of the bundle shall be prepared and lodged by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant shall, if requested by the Court lodge hard-copy versions of the hearing bundle not less than **4** days before the hearing.
4. The Claimant must file and serve a Skeleton Argument not less than **14** days before the date of the hearing of the judicial review.
5. The Defendant and any Interested Party must file and serve a Skeleton Argument not less than **7** days before the date of the hearing of the judicial review.
6. The parties shall agree the contents of a bundle of authorities to be referred to at the hearing. An electronic version of the bundle shall be prepared by the Claimant in accordance with the Guidance on the Administrative Court website. The Claimant shall if requested by the Court, prepare a hard-copy version of the authorities bundle. The electronic and hard copy versions of the bundle must be lodged by the Claimant with the Court not less than **4** days before the date of the hearing of the judicial review.

Signed: **MILWYN JARMAN**

Dated: **23 March 2023**

**The date of service of this order is calculated from the date in the section below**

---

**For completion by the Administrative Court Office**

Sent / Handed to

**either** the Claimant, and the Defendant [and the Interested Party]

**or** the Claimant's, and the Defendant's, [and the Interested Party's] solicitors

Date: **27/03/23**

Solicitors: **TOWN LEGAL LLP**

Ref No. **LOC002/0003/4143-4020-5381/1/NS**

**Notes for the Claimant**

To continue the proceedings a fee is payable.

**For details of the current fee please refer to the Administrative Court fees table at <https://www.gov.uk/court-fees-what-they-are>.**

Failure to pay the fee or submit a certified application for fee remission may result in the claim being struck out.

The form to make an application for remission of a court fee can be obtained from the Justice website <https://www.gov.uk/get-help-with-court-fees>

You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's grounds of defence and evidence.

IN THE HIGH COURT OF JUSTICE

CO/709/2023

KING'S BENCH DIVISION

PLANNING COURT

**BETWEEN:**

**LOCHAILORT INVESTMENTS LIMITED**

Claimant

**And**

**SOMERSET COUNCIL (formerly MENDIP DISTRICT COUNCIL)<sup>1</sup>**

Defendant

**DETAILED GROUNDS ON BEHALF OF THE COUNCIL**

1. These are the Detailed Grounds of Somerset Council (“the Council”) in response to the claim for judicial review of Lochailort Investments Limited (“LIP”) concerning the decision of the Council pursuant to the Order of Holgate J to publish amendments to the Mendip District Local Plan: Part 2 (“LLP2”) on 12<sup>th</sup> January 2023 and in particular the decision to publish a Revised Policies Map showing land known as NSP1 (“the Land”) outside of the development limit for Norton St Philips (“NSP”). Permission was granted on 23<sup>rd</sup> March 2023 by His Honour Judge Jarman KC.

**Preliminary Issue**

2. Paragraph 8 of the Order of Holgate J dated 16<sup>th</sup> December 2022 – “the Order” **[CB/6/114]** gives the parties to the earlier claim liberty to apply to “vary or modify this order on notice”. If, as the Claimant contends, there is any ambiguity as to what the Order requires, the correct route is to apply under paragraph 8 to the Judge to clarify Paragraph 5 of the earlier Order by the inclusion of appropriate words to make clear what amendments to the Policies Map were required. That approach would ensure the Order is clear as to what is required and this dispute as to how it is to be interpreted and applied would, thus, be avoided. That approach has the added advantage that the judge who decided the case and made the Order will be able to make such amendments to it as gives proper effect to his Judgment.
3. There is thus an alternative remedy available to the Claimant. This claim is unnecessary as an alternative route to resolving the issue has been provided for in the Order.

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<sup>1</sup> Mendip District Council ceased to exist on 1<sup>st</sup> April 2023 and became part of the new unitary Somerset Council. This only requires a change to the name of the Defendant in these proceedings.

4. In the alternative it would be appropriate for this claim to be heard by Holgate J.

Statutory Scheme

5. The judgment of Holgate J and the Order were made in proceedings under s.113 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) which provides for challenges to adopted development plans.
6. S113(6) – (7B) provide so far as relevant as follows:

**(6) Subsection (7) applies if the High Court is satisfied—**

(a) *that a relevant document is to any extent outside the appropriate power;*

...

**(7) The High Court may—**

(a) *quash the relevant document;*

(b) *remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.*

**(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.**

**(7B) Directions under subsection (7A) may in particular—**

(a) *require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;*

(b) *require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;*

(c) *require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);*

(d) *require action to be taken by one person or body to depend on what action has been taken by another person or body.*

7. The statutory purpose of the Court’s powers under s.113(6) to (7B) is to ensure the illegality is removed (and then to provide a framework for remedying it).
8. In *JJ Gallagher v. Cherwell DC* [2016] EWCA Civ 1007; [2016] 1 WLR 5126 (a case concerning the ambit of the s.113(7) power albeit on very different facts from here) the Court held at [29] that s.113(7) - (7B) “afford an ample range of remedies to overcome unlawfulness in the various circumstances in which it may occur in a plan making process” and at [33] “such directions are, by their nature, a form of mandatory

relief. They enable the court to fit the relief it grants precisely to the particular error of law, in the particular circumstances in which that has occurred”.

9. As demonstrated below, that is what the Order has done here. It has required all the consequences of the error identified in the Judgement to be excised, but has not quashed the Plan as a whole instead using the flexibility also referred to in *Gallagher* @ [29] to fashion a solution which: (1) removes the offending elements; and then (2) sets a framework as to the how the issue which was wrongly approached can be determined afresh absent the error and untrammelled in any way by the error.

#### The Key Facts

10. The Land can be seen on the Plan highlighted in beige on the Plan [**CB/4/77**].
11. The Land had been allocated in LLP2 in response to the conclusion of the inspector conducting the local plan examination into LLP2 (“the Inspector”) that a shortfall of 505 units identified through the Part 1 process was required under Part 1 policy to be met in the north-east of the Council’s area.
12. Holgate J held that conclusion to be flawed. The area of search was not so limited under Part 1 and the Inspector’s approach was thus in error (“the Error”).
13. The consequence was that all elements of LLP2 consequent on the Error were to be deleted as if they had not been made (“struck through”: Order para 4; and “treated as not having been adopted”: Order para 3 [**CB/6/114**]).
14. How to meet the need for the 505 units was then to be the subject of an early review (Order para 6a). In that exercise the area of search will not, in accordance with the judgment of Holgate J, be required to be limited to the north-eastern part of the District.
15. LIP contends that nonetheless, in the meantime and pending that review, the Council had to show the Land on the Policies Map as white/neutral land or with NSP1 shown as “struck through” (Statement of Facts and Grounds [28]) - whatever that means - and that the development limits in LLP2 for NSP could not revert to those shown before the Error. LIP’s proposed approach is misplaced for the short reason that, if adopted, it would not result in the removal of the effects of the Error but would give the Land a preferential status predicated on and arising only from the Error compared to other unallocated sites elsewhere in the area of the former district council. It would further have the absurd consequences referred to below and render the Judgment

and Order of no, or no significant effect in respect of the planning policy status of NSP1. The Claimant's grounds disclose no error of law on the part of the Council.

*Short history of the 505 Dwellings shortfall*

16. LLP1 had identified the need for a further 505 dwellings: see Judgment at [27] [CB/5/84] – “the 505 Shortfall”. By the time of LLP2 the Council considered that “non-plan commitments” had largely met that requirement [CB/5/86 para 36] and thus there was no need to provide for them in the Plan. The Inspector found that approach to be wrong and that the 505 dwellings shortfall was required to be made good in the north east of the former district council’s area.

*The History of the allocation of NSP1*

17. Under the previous development plan, the Land was outside the development limits of NSP and was thus, in policy terms, open countryside: see the first plan appended to the Council’s Summary Grounds.

18. The Land was not allocated in the regulation 19 version of LLP2. The Policies Map showed the Land as before - outside the development limits of NSP and thus in the open countryside: see the second plan appended to the Council’s Summary Grounds.

19. However, based on his erroneous interpretation of policy in Part 1 of the Local Plan, the Inspector required a main modification: MM5 [CB/10/160 para 2] to allocate a further 505 additional dwellings “in the north-east of the District” including at the primary villages of which NSP was one and including NSP1.

20. The Land was identified in direct response to, and as a direct consequence of, the Inspector’s erroneous approach.

21. Modifications were thus made to the policy text and to the development limits of NSP so as to include the Land as shown at CB/4/77. Those changes were a direct response to what is now known to be the Error.

22. The short point is that prior to the Error the Land was at all times shown as outside the development limits of NSP. Consequent on the Error it shown as inside the development limits: [CB/4/77].

23. In the decision under challenge the Council has simply reverted to the position prior to the Error: [CB/9/159] consequent on the required deletion of the text and diagram at [CB/8/147 – 149].

*The Judgment and Order of Holgate J*

24. Holgate J determined that LLP2 was unlawful – the decision to allocate NSP1 (and other sites) was based on a misdirection of law as to the area of search for additional housing sites (“the Area of Search”) required under the relevant policy under Part 1 of the Local Plan (“LLP1”) to meet the 505 unit housing shortfall (“the Shortfall”).

25. In short LLP2 had wrongly limited the Area of Search to an area including NSP and the allocation of NSP1 was made consequent on, or at least partly because of, that unlawful limitation.

26. Holgate J therefore ordered **[CB/6/113]** that policies in LLP2 including NSP1, their supporting text and other related text, tables and diagrams, in the schedule to the Order, be remitted to the Council; that the remitted parts be treated as “not having been adopted as part of the local development plan”; and the offending text be struck through. That was done: see **[CB/8/147-149]** including the deletion of the plan of the Land @ **[CB/8/149]**. All references to the former allocation were required to be and were expunged including from the total housing numbers **[CB/8/142-144 see CB/6/115]**

27. Under paragraph 5 of the Order, the Council was further required to amend the Policies Map so that it “properly reflects the terms of this order and any consequential changes to LLP2 as set out in Schedule 1”. The Policies Map was amended to remove all the allocations referred to in paragraph 1 of the Order including NSP1 by reverting to the position before those allocations had been made.

28. As to the Land, the Policies map, had to (under paragraph 5) reflect the terms of the Order including deletions at **[CB/8/147-149]**. The terms of the Order meant that NSP1 had not been adopted (para 3); had been deleted/struck through (para 4) and that thus NSP1 had not been identified as a suitable site for development (cp para 11.20.4 **CB/8/147**). Nor had it, as a result, been properly included within the development limit of NSP and the development limit in this location had been wrongly changed to encompass it: see the new alignment of the red boundary representing the development limit at **CB/4/77** compared to the previous alignment of that boundary on the plans attached to the summary grounds.

29. The express intended effect of the Order was that the remitted parts of the Local Plan be treated as not having been adopted as part of LLP2 (in accordance with the statutory provisions under which LLP2 was challenged in the first place). Paragraph 5 required the consequences to be followed through to the Revised Policy Map. Striking through the offending text has the effect of deleting and removing it such that it is no longer any part of LLP2 and that the land formerly in NSP1 has no special status under

LLP2. The changes in the development limit consequent on the erroneous allocation had also be reversed under para 5.

#### The Result of the Judgment and Order

30. The result of the Judgement and the Order was that:
  - a. the Council's former approach to the area of search was wrong;
  - b. all parts of the Plan consequent on that Error were to be treated as not have been adopted and the Policies Map amended to reflect that;
  - c. the whole issue of which countryside sites to allocate for development was remitted to the Council to consider afresh - to "review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2" (para 6a: **CB/6/114**).
31. The land by definition has no special status in that process of reconsidering the appropriate response to the Shortfall. Removing any special status was the purpose of the challenge to LLP2 and the result of the Order. LIP appears to accept that the Land should have no special status but contends that it, alone, had to be shown as white land or "struck through" but still within the development limit boundary line—not part of the countryside thus giving it as a formerly and unlawfully allocated site the very special status that is said not to be claimed.
32. On the contrary, returning the land (formerly in NSP1) to its status immediately before the unlawful policy is the necessary and inevitable consequence of the judge's order. This is not a case of "imposing a countryside designation on [the Land]": Grounds para 15. Nor is it about "redraw[ing] the development limit in a perfunctory manner" (Grounds para 16) . Nor is it about "pre-empting the review" (Grounds para 16). It is simply about reverting to the position before the unlawful policy change allocating NSP1.
33. That is the usual, and it is submitted, logical (indeed inevitable) effect of a former allocation being found to be unlawful. Para 18 [CB/10/160] could perhaps have been more carefully worded – "The policies map has reverted to the former position before the erroneous approach to allocations for the 505 units and thus shows the deleted sites as they were before the Error" - but that more precise formulation does not impact the legality of the approach of the Council.
34. The para 6a LLP2 review effectively requires the question of where the 505 units should be located to start afresh and to go through the normal reg 18 and 19 stages before examination and adoption without preconditions or any of that review having been pre-determined based on the former unlawful allocation.

Cummings

35. Relying on *Cummings v Weymouth and Portland BC [2007] EWHC 1601 (Admin)*, LIP contends that, in accordance with the Order, the Council had to show the land formerly comprising NSP1 as neutral (with the allocation simply struck through on the Revised Policies Plan) and with the land being shown as neither in the countryside nor beyond the development limit – effectively creating a void/gap in the plan. There is no “neutral” designation known to law or planning. There is no allocation of NSP1 as “neutral” or “white” and no policy in the lawful LLP2 or LLP1 to support that approach. LIP’s approach seeks to give the Land a status it has never been given under any policy or any allocation. It is not required or implied by the Order. Yet LIP has to show that based on *Cummings* that was the only lawful route open to the Council.
36. The facts of *Cummings* are wholly different from those here, the approach in the Order in the light of the Judgement appears to have been undisputed, there is no legal analysis to justify the application of the approach more broadly, and if it was meant to be setting down a general rule, it was wrongly decided.
37. In *Cummings*, there, there was effectively a contest between just two sites for an allocation. In the plan under challenge one (“the Louviers Road Sites”) was allocated and therefore newly included within the relevant development boundary and the other (“the Objection Site”) was not allocated and was in part<sup>2</sup> taken out of and in part left outside the development boundary. All the latter was also included in the Important Open Gap (“IOG”) and in the area of local landscape importance (“ALLI”) even though it had (deliberately) not been so included in the previous local plan.
38. The relevant policies of the plan were quashed on the application for those interested in the Objection Site.
39. The order made (para 77) appears<sup>3</sup> to have been that the development boundary and associated boundaries of the IOG and ALLI were quashed insofar as they excluded one site and included the other. The development boundary was thus left undefined in this general location as was the boundary of the IOG and the LLSI.

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<sup>2</sup> Parts of the Objection Site had already been included in the Development Boundary under the previous local plan.

<sup>3</sup> The order actually made is not provided. The order was provisional on representations of third parties. It is not known what the outcome of that process was.

40. The key issue on redetermination would be whether the Louviers Road Site or the Objection Site would be allocated. There was no dispute that the development boundary in this location would have to include the whole of one of them and therefore would have to change both from the previous local plan and from that in the quashed parts of the local plan. The only issue was which one should be included and which one should be excluded.
41. The Court could not predetermine that issue - where the development boundary should be and therefore which site should be within it and which outside it would be wholly dependent on new decisions following, and in the light of, the decision of the Court.
42. It was therefore agreed by the parties (an agreement endorsed without apparent argument by the judge) not to be appropriate to revert to the previous development boundary which would have included part of the Objection Site but excluded the Louviers Site – that would have served to at least in part predetermine the very issue to be determined; but instead the issue as to the future development boundary in this location was left at large.
43. The comment LIP rely on in *Cummings* has to be read and understood as a whole - namely that “given that the inspector’s decision with regard to the [Development Boundary] involved a comparison of the objection site and the Louviers Road site - that was how the objection was put by the claimants and how it was contested by the Council – it seems to me inevitably to follow that the inclusion of the latter site within the [Development Boundary] and the allocation of the Louviers Road site for housing ... must also be quashed leaving both...as white land without designation.” That would allow the Council to reconsider the issue afresh without the Plan including any predetermined outcome in the meantime. It appears that that was the “agreed” position of the parties. It was a preliminary view subject to input from the owners of the Louviers Road site.
44. On the complex and very specific facts of that case that approach was not wholly surprising. There had to be a change to the development boundary in this area – the question was whether to pull it back from the Objection Site so as to exclude the whole of it and extend it over the Louviers Road Site or to include the whole of the Objection Site and exclude the Louviers Road site. Those were the only two permutations in play.
45. That approach cannot, for obvious reasons, be translated to the facts of the current case where the question for the Council is not the precise development boundary in this location but where to allocate land to meet the Shortfall anywhere in the Council’s

area. That does pose just a choice between two sites. The possible permutations are very numerous and may result in no allocations in this area at all.

The reasoning of the Court here

46. Fundamentally, the issue before the Inspector and the Court here was not a contest for an allocation between two adjoining sites part of one of which was already within the development boundary but a much wider issue as to which greenfield sites anywhere in the district should be allocated.
47. That issue had been approached based on a wrong understanding of the LLP1 in respect of the 505 units. Rather than just look in, or focus the search in, the narrow area including around NSP (based on a wrong understanding of those policies) the search for new greenfield sites was to be area wide. There was thus no implication that any sites would necessarily be chosen around NSP, that there would be any change to its development limits or that the sites previously allocated had any special status over any other site anywhere in the district.
48. The approach in *Cummings* cannot therefore apply here. The facts are wholly different.
49. Indeed to apply it would be to subvert rather than to give effect to the judgement of the Court. The Court has determined that the starting point for the identification of sites for the 505 units was wrong in principle. The exercise of choosing where those 505 should go must start afresh without preconceptions based on the flawed former approach. The effect of para 2 and 3 of the Order (and schedule 1) is effectively to delete the parts of the plan covered by the judgment. Absent the allocations - deleted by the terms of the Order and as specifically listed in the schedule – the relevant land has no allocation whether for white land or for housing. It therefore reverts to what it was before the unlawful policies were adopted. It is therefore countryside. Countryside requires no allocation to be countryside - it is just a description of undeveloped greenfield land which is not allocated, or within a development boundary.
50. If *Cummings* has the broad effect claimed - namely that when allocations of greenfield land are quashed the land becomes white land or neutral land by definition then *Cummings* must be wrong. There is no legal, policy or factual basis for taking that approach. *Cummings* cannot be read in that way and it does not appear to ever have previously been applied in that way.

51. The Revised Policies Map can thus lawfully show the Land as greenfield undeveloped land beyond any development boundaries without any allocation and thus countryside.

#### **The absurd consequences of the Claimant's approach**

52. The Claimant is not clear precisely what the Policies Map should contain pending the review required under para 6 of the Order. However the central point appears to be that, even if the allocation is removed, the development limits consequent on that allocation should be retained: see Grounds [15]. That is so even though it is accepted that “the relevant extent of the development limit is inextricably connected with the status of the NSP1 allocation...”.

53. The result appears to be that any application for residential development of the Land pending the adoption of new allocations following the para 6 review would not be contrary to the development plan. Instead, it would accord with CP1 [CB/3/57] by complying with CP1.1(b) and not conflicting with CP1.1(c) or CP1.3. Such an application would also accord with CP2.2(a) [CB/4/69] as permissible infill development because it would remain within the settlement limit. NSP1 would therefore be an equivalent policy position as if the allocation remained. Fundamentally it is the development limit which provides the threshold between one policy framework (supportive if the land is within the development limit) and the other (not-supportive if the land is outside the development limit). Failing to amend the development limit to reflect the deletion of the allocation would be to rob the Judgment and Order of much (if not all) of its effect because it would provide a green light to a permission whilst the whole logic of the Judgment and Order was that there to the opposite effect.

54. The effect of the Claimant's proposal is thus to retain much if not all of the benefit of the quashed allocation. That is absurd.

#### **The Result**

55. The claim for judicial review should thus be dismissed with costs.

David Forsdick KC

Landmark Chambers

27<sup>th</sup> April 2024

MENDIP DISTRICT

# LOCAL PLAN

2006-2029

## PART I: STRATEGY AND POLICIES



ADOPTED 15<sup>TH</sup> DECEMBER 2014



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# 1.0 INTRODUCTION

1.1 The Mendip District Local Plan Part I sets out a long term strategic vision for the future of the District and how it will develop over the next 15 years. The Plan has been shaped and informed by a comprehensive evidence base and a changing context to planning at both a national and regional level. Consultation, formal and informal, has helped to identify key local issues and then probe in more depth on particular matters. This plan now sets out how the Council intends to stimulate the development which the district needs including housing, economic development and infrastructure. It also puts in place a selection of policies to manage development in a manner appropriate to this district which generic national policy would not adequately cover. A further part of the plan, Part II: Site Allocations, will be prepared by the Council to allocate and/or designate specific sites for development or other purposes in line with the intentions of the policies in this Part I document.

## The Local Plan

1.2 The Local Plan is the statutory Development Plan for the district. This Part I Plan, together with the forthcoming Part II Plan, will supersede the 2002 Mendip District Local Plan in its entirety. When brought into use it will primarily be used as the main basis for decision making in relation to planning applications made to the Council. However, the confirmation of the main development proposals in the plan will also stimulate an extensive array of joint working between landowners, developers, communities, public service providers, utility companies, interest groups and many others to help ensure that proposals formulated deliver the best and most sustainable outcomes possible. This plan is just the beginning. Its outcomes will depend upon effective coordinated and collaborative participation.

1.3 To this end, there are some clear distinctions between this plan and its predecessor. National policy since 2004 has sought to shift the emphasis of the planning system away from rigid policies that sought to control every conceivable possibility in the development and use of land, towards a broader framework that instead focused on Spatial Planning – planning for places and outcomes.

1.4 This document, Part I of the Local Plan therefore establishes an overarching development **Vision** and key **Objectives** for the area based on evidence and consultation which subsequent policies and proposals will aim to deliver.

1.5 Furthermore, once the Local Plan Part I is adopted, all other parts of the planning framework for the area must be aligned with its intentions in order that a coherent and consistent basis for decision making is established. This is discussed in the following subsection.

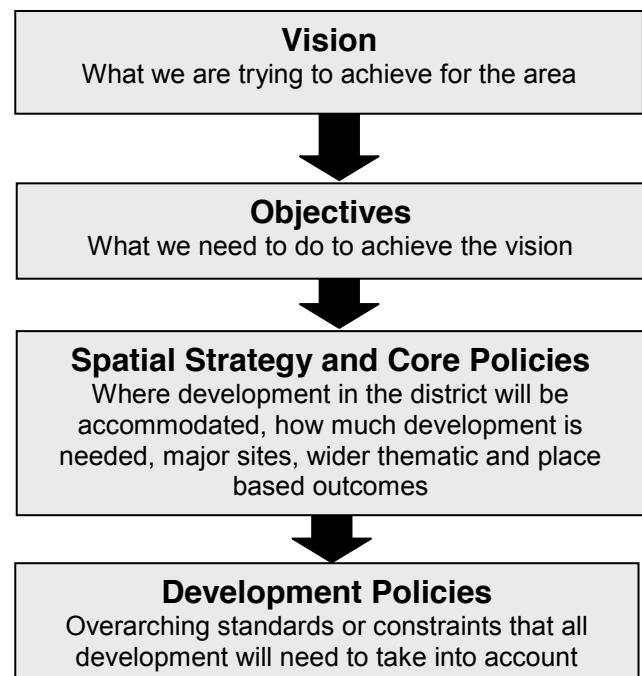
1.6 Having established these, this document then goes on to make the big decisions about broadly what scale of new development is needed, where that growth should be located, which key initiatives or projects to pursue and other key principles. This plan contains an overall spatial strategy for the district, broad principles to direct how development will take place across the extensive rural part of the district as well as specific policies for each of the five towns. These aspects are set out in the **Core Policies** of this plan contained within sections 4 and 5.

### **Spatial Planning**

Spatial planning aims to bring together and integrate policies for the development and use of land with other strategies and programmes which influence the nature of places and how they function. As a result, the nature of Local Plans will vary from area to area with districts and unitary authorities preparing policy documents in response to specific local needs and issues. The policies and proposals in this Plan are consistent with national policy, but will be used to add specific emphasis to reflect local circumstances. A key feature of this approach is to build in flexibility. Old style rigid policies, frequently applied in the past on a very 'black or white' basis, have resulted in development that passes the policy tests, but along the way have failed to deliver the outcomes intended. A Spatial Planning framework, provided by this Local Plan, accepts that the wider benefits of proposals for a particular place are central, rather than the policies themselves. However, this still requires that proposals inherently contribute to the achievement of sustainable development as discussed later in this introduction.

1.7 Beyond this, the plan then sets out **Development Policies** in section 6 which will be applicable, to a greater or lesser degree, to all proposals for development. There are Development Policies, which together with the National Planning Policy Framework, will enable the Council to manage impacts on areas where there are constraints on development or where the Council is seeking to manage particular effects. In most cases the policies are permissive – i.e. saying what can be achieved – but put in place relevant criteria which will need to be satisfied during the conception or design stages of preparing a development proposal. To this end, the Council will continue to encourage early dialogue with those considering development in order that subsequent applications are well founded.

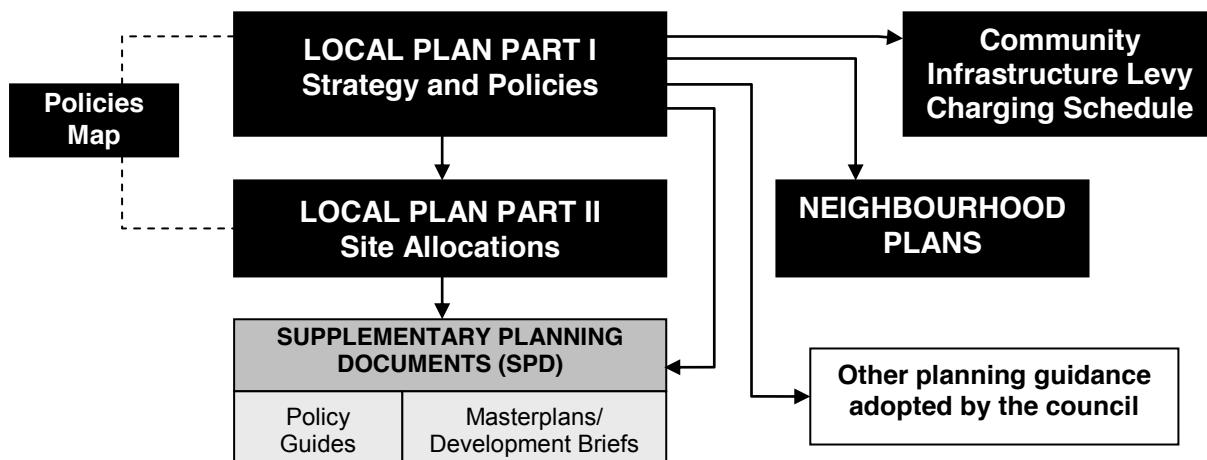
1.8 The adjacent diagram outlines in a visual form the broad structure of this Local Plan Part I and the role which the key components play.



### Other Parts of the Council's Planning Framework

1.9 This Local Plan Part I, as the cover and content indicates, sets out the strategy and policies that the Council will pursue to meet its development needs and accommodate other development opportunities that emerge during the period to 2029.

1.10 However, other documents will be needed to address specific development issues. The diagram below illustrates the documents which the Council intends to prepare in coming years. Production of these documents will be timetabled within the Local Development Scheme which outlines how and when the Council will update and add to its planning framework.



1.11 Those elements identified in black are parts of the statutory Development Plan which are subject to national regulations governing their preparation and formal independent Public Examination. Identified in grey are Supplementary Planning Documents which can be adopted locally, but are subject to a preparation process defined by national regulations. The final white box would include other forms of guidance prepared, consulted upon, and adopted locally which would form significant Material Considerations in planning decisions.

The following paragraphs provide a simple outline of the role and nature of the components above:

- **Local Plan Part II: Site Allocations** – a Development Plan Document (DPD) which will identify sites to deliver specific, but non strategic, development needs as guided by the principles contained in this Local Plan Part I document. The Site Allocations document may also include

designations of other land to safeguard it from development where justified. Where development sites are considered significant in their setting, the Council may require that a formal Masterplan or Development Brief is prepared and adopted as a Supplementary Planning Document (SPD).

- **Policies Map** – is the geographical representation of planning policies relevant in the area contained within the Local Plan (Parts I and II). Using an Ordnance Survey base map it will detail relevant land designations as well as policy boundaries and land allocations.
- **Neighbourhood Plans** – introduced by the 2011 Localism Act, are parts of the statutory Development Plan relevant to a specific local area and represent policies and proposals made at a community level as guided by the principles contained in this Local Plan Part I document. These are discussed further in a following Section related to the Localism Act.
- **Community Infrastructure Levy Charging Schedule** – The Community Infrastructure Levy (CIL) is a development tariff which in future years will be collected to fund the delivery of infrastructure needed to support local growth. It is discussed further in relation to Development Policy 19. The Charging Schedule sets the level of tariff which the Council will charge for specific types of development expressed per square metre.
- **Supplementary Planning Documents** (SPD) - are documents which offer an opportunity for the Council to provide more detail about how a Local Plan proposal or policy will be applied, or in the case of Development Briefs and Masterplans, how a particular development site might be planned. Text related to Development Policy 7 explains more about these.
- **Other Planning Guidance** – is made up of other strategies and sources of information which are considered to be important for planning purposes. This currently includes Area of Outstanding Natural Beauty Management Plans, Conservation Area Character Appraisals, Village Design Statements and some Parish Plans. Such guidance will still be required to have undergone appropriate levels of local consultation and be subject to a formal Council resolution to adopt them.

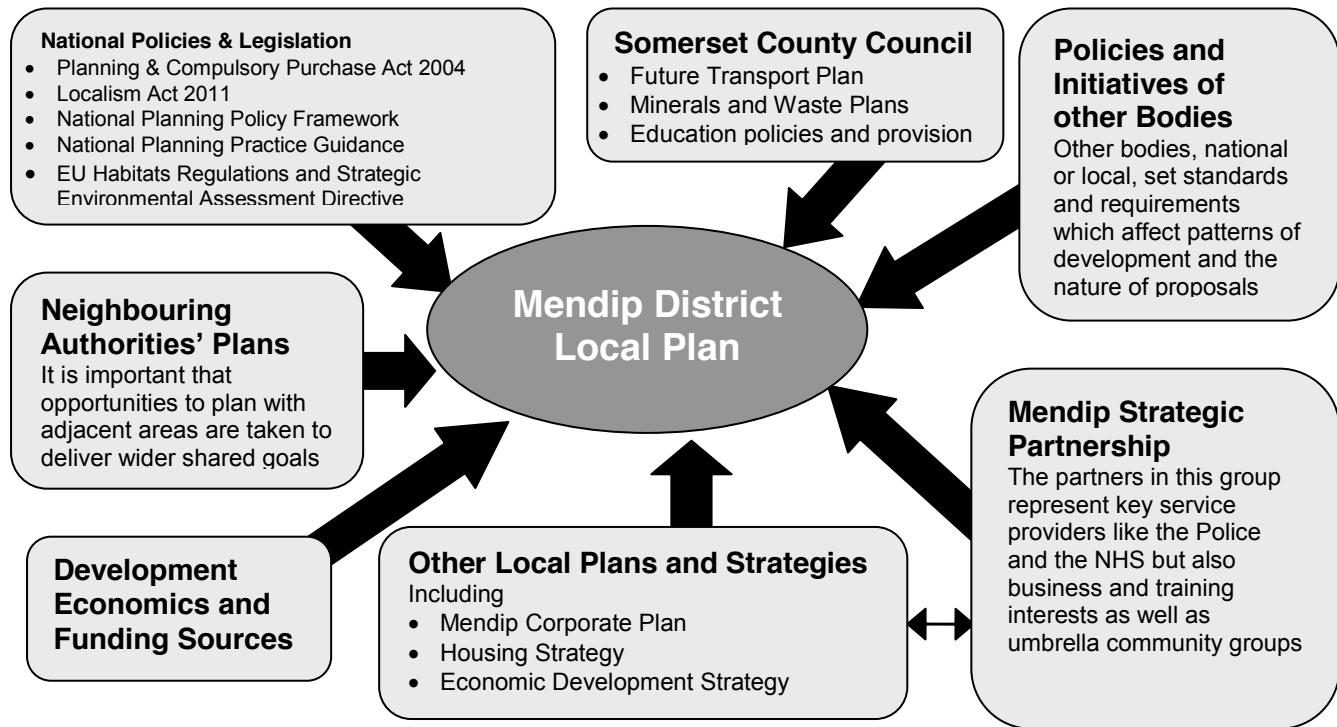
1.12 Alongside the main policy framework, the Council will produce or update two main supporting documents periodically:

- **Authority's Monitoring Report** – This document will report upon delivery and effectiveness of the Local Plan's policies and proposals and be a means to highlight where changes or amendments might be needed to policies in any future review.
- **Local Development Scheme** – This document will set out a timetable for the production and review of parts of the Local Plan in order that interested parties can be clear when particular strands of work will be published for consultation or are to be adopted.

## The Context within which we Plan

1.13 The District Council does not have a free hand in planning for the district's future. Whilst the Localism Act 2011 gives local authorities and communities new powers and responsibilities devolved down from central government, it remains there will always be national planning policies which the Council is bound to work within. As set out in relation to spatial planning above, the Local Plan must also rationalise how it can deliver the goals and aspirations of the community, public service and, most crucially, private investment.

1.14 The diagram below outlines many, but not all, of the influences which the Council has sought or been required to incorporate into its thinking.



1.15 Some of the key influences are explored in the following paragraphs:

### **National Planning Guidance**

1.16 The Local Plan works within alongside, and takes account of, the [National Planning Policy Framework \(NPPF\)](#) which set out the Government's policies on different aspects of planning.

1.17 At its heart it must be in broad conformity with national policy, now primarily encapsulated in the NPPF which states in para.6 that "the purpose of the planning system is to contribute to the achievement of sustainable development."

1.18 Sustainable development is defined in United Nations resolution 42/187 as "*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*"

1.19 The NPPF restates the long held rationale for the planning system, namely to maximise, collectively, the social, economic and environmental benefits in the development and use of land. The Vision and Objectives set out in section 3 are predicated on this rationale.

1.20 In essence, sustainable development is already embedded within this plan and the key challenge is therefore more about the application of sustainable development principles in specific circumstances and at a site based level. The Council will continue to adopt a positive approach in seeking to meet the objectively assessed development needs of the district. The strategy and policies in this Local Plan (and its subsequent parts) provide a clear framework to guide development that delivers positive, sustainable growth.



1.21 Paragraph 14 of the NPPF sets out a **Presumption in Favour of Sustainable Development**, which makes it clear that proposals that accord with Local Plans should be approved without delay. In assessing and determining planning applications the Council will apply the overarching policy approach set out below.

## Presumption in Favour of Sustainable Development

**When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will work proactively with applicants to seek solutions which mean that proposals secure development that improves the economic, social and environmental conditions in the area.**

1. **Planning applications that accord with the policies in this Local Plan (and, where relevant, with policies in Neighbourhood Plans) will be approved without delay, unless material considerations indicate otherwise.**
2. **Where there are no policies relevant to the application or relevant policies are out-of-date at the time of making the decision, the Council will grant permission – unless material considerations indicate otherwise – taking into account whether:**
  - **Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or**
  - **Specific policies in that Framework indicate that development should be restricted.**

1.22 There may be instances where the Plan is silent or in future years, policies become out-of-date. To enable the Council to continue to take a sustainable and positive approach to decision making, applicants will need to assist by submitting evidence to demonstrate how the benefits of the proposal outweigh any adverse impacts. In this way economic, social and environmental responsibilities can continue to be met without compromising the ability of future generations to meet their own needs and well-being.

## Sustainable Community Strategy

1.23 The Mendip Sustainable Community Strategy represents the collaborative strategy of a range of partners who work together as the Mendip Strategic Partnership. As an entity, the partnership has few resources of its own, but has a role in agreeing joint working using member resources and budgets to collectively support and deliver each others aims. With representative views from the public, private and voluntary sectors they have established an overall vision for the future of the Mendip area which is set out in the Sustainable Community Strategy which was adopted in 2010.

1.24 The early stages of production of this Local Plan were coordinated with the production of the Sustainable Community Strategy in order that the development visions set out in section 3 of this document are consistent with the wider vision being pursued by partner groups.

## Mendip Corporate Plan

1.25 The Mendip [Corporate Plan](#) has evolved during the production of this Local Plan reflecting the need for the Council to deliver clearer and more focused priorities. The objectives of this Plan remain consistent with the current corporate priorities, namely:

- to support business development and growth
- to take all steps possible to support the provision of housing in the district
- to address issues of rural isolation, primarily through ensuring partner activity
- to take a clear strategic and community leadership role for the district

The objectives and subsequent policies of the Plan align directly with these priorities.

## **“Time to Plan”: The Preparation of this Local Plan**

1.26 “Time to Plan” has been the name of the publicity campaign used throughout the production of this Local Plan. In early 2008, formal consultation (under the previous Local Development Framework arrangements) commenced with a phase of agenda setting dialogue. This work, undertaken as a joint exercise to inform the Sustainable Community Strategy, allowed local people, businesses and other interests to highlight issues in their locality. Where possible the Council also worked with community groups, such as ‘Shepton 21’ and ‘[Vision for Frome](#)’, allowing strategic and local issues to be gathered in one exercise. Over 1,200 people came along to one of the 6 public events held across the district. This attracted over 1,800 individual responses on a whole range of issues, as well as many hundreds of place based points arising from mapped exercises.

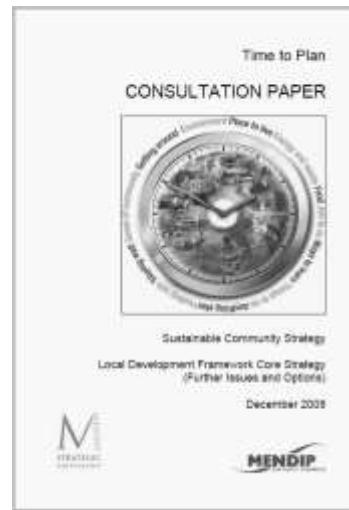
1.27 Following on from this consultation phase, a Stakeholder Workshop in July 2008 involving a wide range of public, private, governmental and voluntary sector interests from within and outside Mendip came together to consider the key findings and identify local priorities for the Sustainable Community Strategy and the Core Strategy (as it was then referred to). In light of the outcomes, the Mendip Strategic Partnership was able to agree an overarching vision statement for the Sustainable Community Strategy which in turn helped to frame a ‘spatial vision’ and ‘strategic objectives’ to provide an overall direction for the Core Strategy (which is set out in section 3 of this Local Plan). In the following months specific visions for each of the five Mendip towns were also drawn together to provide a strategic view of their development needs. These vision statements were endorsed by the Council’s executive in the autumn of 2009 and are set out in section 4 of this Local Plan.

1.28 After consolidating all the material from the initial phase of consultation and evidence gathering, a set of six ‘Portraits’<sup>1</sup> were pulled together. These documents drew together an understanding of each of the five towns and of the district as a whole, taking in relevant parts of the evidence base, consultation responses and monitoring data. The information was supplemented in many cases with information from face to face meetings with service providers, community leaders and other interests including local businesses, voluntary groups and representatives of minority groups. The ‘Portraits’ effectively provided a baseline source of information for the production of both the Core Strategy and the Sustainable Community Strategy.

1.29 Alongside this consolidation of information, a detailed consultation paper<sup>2</sup> was prepared setting out various questions in response to issues where there were realistic choices to be made. The document focused on issues relevant in each of the Mendip towns, promoting sustainable rural development as well as a range of topic based issues applicable across the district as a whole. This was published for a formal eight week consultation period at the start of 2009. The exercise attracted 475 individual responses.

1.30 As a roundup to the initial two rounds of consultation, a summary report<sup>3</sup> of the issues raised was prepared in mid 2009 as a means to consolidate the views of contributors.

1.31 During 2009 and 2010 it became apparent that one of the foundations of the planning system that was present at that time, Regional Spatial Strategies (RSS) were likely to be abolished which was confirmed in 2010 following the formation of the Coalition Government. One of the key consequences of this was that the Council had to move from having a defined development strategy and a fixed level of housing provision towards a strategy that was predicated on local needs and demands. As a result, an extensive range of new evidence was gathered to underpin what were then termed “local development requirements.” At the time of publication, the government’s attempts to abolish RSS had yet to be concluded. Nevertheless, the proposals in this



<sup>1</sup> Portraits of Frome, Glastonbury, Shepton Mallet, Street and Wells as well as the Portrait of Mendip (December 2008)

<sup>2</sup> Time to Plan Consultation Paper (December 2008)

<sup>3</sup> Time to Plan Consultation Responses Summary Report (July 2009)

Local Plan Part I are not radically different from the intentions of the RSS, due primarily to the general consistency in the fundamental planning principles set out in national policy.

- 1.32 In February 2011, having responded to the impending removal of RSS as well as working through the issues emerging from the preceding Consultation Paper, the District Council published what was then called its Draft Core Strategy setting out its preferred options for public consultation. That draft plan was broadly similar in structure to this document, setting out a Vision, Objectives, Core Policies and Development Policies. A range of events were held to coincide with the consultation period as well as summary proposals being sent to every household. 400 written representations were received.
- 1.33 The latter part of 2011 and early 2012 saw proposals by Government to do away with the national policy contained within Planning Policy Statements (PPS), Planning Policy Guidance notes (PPGs) and a range of other policies and circulars and to consolidate them within the [National Planning Policy Framework \(NPPF\)](#). This was subsequently published in March 2012 and introduced new uncertainty. The Council chose to hold back the publication of this pre-submission draft to consider the implications of the new NPPF. This delay conveniently enabled new background evidence about local demographics, economic growth land supply and housing need to be built in, in addition to work needed to introduce new policies where the NPPF had left policy gaps in the Plan.
- 1.34 It was also during this period that the Localism Act came into being. Associated government guidance brought an end to the complicated and confusing terminology associated with the Local Development Frameworks system that had been in place since 2004, instead asking local authorities to return to using the term Local Plan.

### **The Evidence Base**

- 1.35 To inform the production of this Local Plan, and future parts of the Council's planning framework, it has been necessary for the Council and its partners to develop a range of evidence to justify its content. "[Evidence Base](#)" is the collective term used to describe all of the background studies and work, including consultation views, which have and will continue to inform plan making and planning decisions. The full range of information gathered together by the Council is available to view on the website or on request from the Council's offices. All parts of this Local Plan have been informed by evidence, whether in the form of consultation views, official statistics or specific studies.
- 1.36 The Council has a duty to keep this information current to ensure that its flexible policies, when used for decision making, draw upon the most up to date information the Council can get about circumstances and conditions prevalent across the area. As stated before, the plan is a framework and the Council intends to regularly review its evidence so that decisions reflect current circumstances.
- 1.37 Throughout the preparation process of this plan, stakeholders and contributors have been challenged to identify or produce evidence to back their assertions, particularly where fundamental policy stances would result. Where necessary, the Council has also prepared technical papers which bring together various sources of evidence. These papers explore particular issues weighing up alternative approaches and considering their relative impacts. These approaches have ensured that the Local Plan is based on rational and objective decision making, rather than being unduly influenced by unsubstantiated opinions or unqualified assumptions which could ultimately undermine the soundness of the overall strategy.

### **Regulatory Requirements**

- 1.38 The preparation of this Local Plan has been undertaken in line with processes set out in national planning policy and associated statutory regulations. Where relevant, other sources of guidance have been taken into account including that produced by the Department for Communities and Local Government, the Planning Advisory Service and the Commission for Architecture and the Built Environment.
- 1.39 In terms of specific regulatory requirements, the following points itemise specific processes and regulations that this plan had to be assessed against:

- **Sustainability Appraisal (SA)** is a mandatory requirement under the Planning and Compulsory Purchase Act 2004 and helps to fulfil the objective of achieving sustainable development in preparing projects, policies and plans. To ensure that policies and proposals in the Local Plans contribute to sustainable development, each document produced will be subject to a Sustainability Appraisal, incorporating the requirements of the EU Directive on Strategic Environmental Assessment (SEA). The auditing process of the SA leads to more informed and transparent decision-making and helps to achieve the aims of sustainable development in Mendip.
- **Habitat Regulations Assessment (HRA)** is required following a ruling in October 2005 by the European Court of Justice that land-use plans including Local Plans should be subject to an 'Appropriate Assessment' of their implications for European Sites. European Sites are nature conservation sites which have been designated under European Law, for example Special Protection Areas (SPAs) and Special Areas of Conservation (SACs), as well as species outlined in Regulation 10 of the Habitats Regulations 1994.
- **Equalities Impact Assessments (EqIA)** are required under the Race Relations (Amendment) Act 2000, Disability Discrimination Act 2005 and the Sex Discrimination Act 2007. Impact Assessments are a systematic way of examining whether new or existing functions, policy or procedures differentially affect any person or group of persons.
- **Community Involvement Regulations** require that the Council sets out evidence of how it has engaged the community in plan making when preparing a development plan document. This is partially summarised in paragraphs 1.26 - 1.34 above with a full account being available on the Council's website. Full consultation statements were published after each stage of engagement.

Copies of all of these documents are available on the Council's [website](#)

## **Delivery and Monitoring**

- 1.40 Delivery of the proposals of the Local Plan is a critical consideration. The content of this document has been based upon a sound understanding of issues, evidence and views relevant to the area and of its constituent communities, however the ability to deliver proposals has also been an important consideration.
- 1.41 Accompanying this Local Plan is a Delivery Plan which sets out how key proposals and projects of the Core Policies will be delivered, including where relevant, the roles of other parts of the planning framework. The Delivery Plan itemises the proposals, key partners/agencies, timescales and other details which, during consultation and further work, will be refined to make it clear how things will happen on the ground. The Delivery Plan also itemises elements of key infrastructure which will need to be provided as part of development, through legal agreements associated with planning consents or through development contributions which in future may be accumulated via a Community Infrastructure Levy (CIL)<sup>4</sup>
- 1.42 Appendix 2 of this document sets out a range of indicators against which policies – notably the Development Management Policies in section 6 – will be assessed to determine their effectiveness over their lifetime, and where appropriate trigger reviews or other support mechanisms to ensure they better achieve the aims set out within the overall Local Plan objectives set out in section 3.
- 1.43 Reporting progress on delivery and effectiveness of policies will be through the Authority's Monitoring Report as considered previously.

## **Status of policies and supporting text in the Local Plan**

- 1.44 For the avoidance of doubt, both the policies and the supporting text of all parts of the Local Plan make up the statutory Development Plan for the purposes of determining planning applications.

<sup>4</sup> See Development Policy 19 and its supporting text

## 2.0 A PORTRAIT OF MENDIP

### Issues facing the District

2.1 This section of the Local Plan provides an account of the issues facing the Mendip area as distilled from the background evidence that has been used to inform this plan. By exploring the issues that arise across the area, this offers context and establishes the basis for the subsequent policy statements and proposals contained later in the plan.

#### Location and characteristics

2.2 Mendip is a rural district, covering an area of 738 square kilometres. The district contains five principal towns: Frome, Glastonbury, Shepton Mallet, Street and Wells. They each function as 'market towns' and meet a high proportion of the everyday needs of their residents and those of their rural catchments. There are in excess of 100 smaller rural settlements, varying in size from the largest villages like Coleford and Chilcompton (population circa 2,000) through to the smallest of hamlets which may consist of a dozen or so houses. In 2006, the base date for this strategy, the district had an estimated population of 108,300 with around two thirds living in the five main centres. Frome is the largest town while Glastonbury is the smallest.

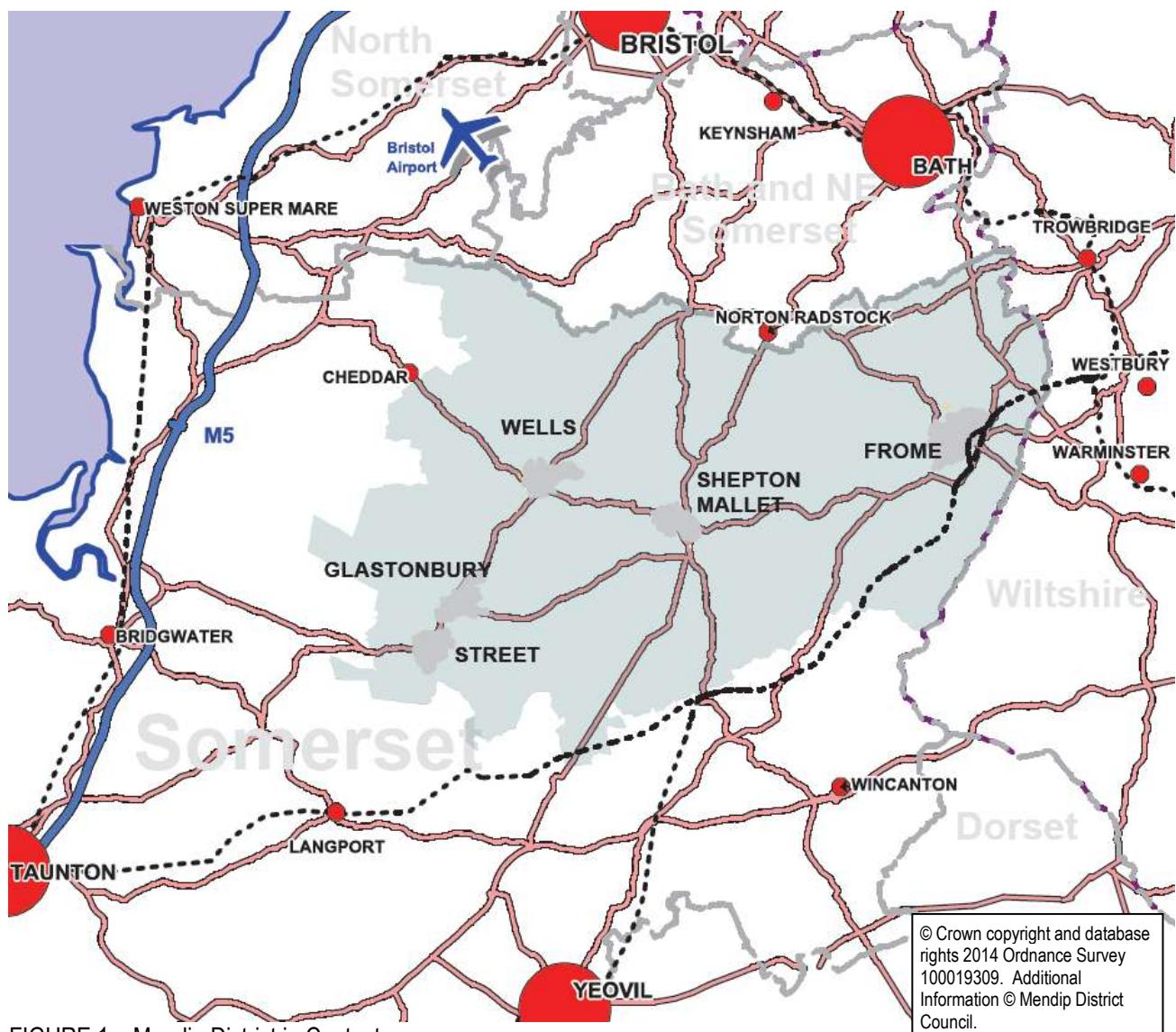


FIGURE 1 : Mendip District in Context

2.3 Whilst containing five towns of varying characteristics, the district is influenced by centres that lie outside its boundaries to greater or lesser degree. To the south and west, Yeovil and Taunton draw trade and workers from the area to some degree, however Bristol and Bath to the north have a much greater degree of influence. They attract commuters to comparatively better paid jobs, shoppers for a wider choice of higher order goods and place pressures on local housing markets.

The market towns of Midsomer Norton and Radstock, in Bath and North East Somerset, immediately adjoin the northern boundary of the district and meet some of the needs of residents of nearby Mendip villages.

2.4 Frome and the rural communities to the east of the district have strong links with the Wiltshire towns of Trowbridge, Westbury and Warminster, facilitated by road including the A36/A350 corridor and rail links via Westbury.

2.5 Commuting and a workforce to meet the needs of business were highlighted as significant issues during consultation. In light of the fact that the census remains the only true means of assessing flows between work and residence the Council has had to rely on 2001 census data, supplemented by commentary in the 2009 West of England Strategic Housing Market Assessment as well as survey data gathered from the latest 2012 Mendip Housing Needs Assessment. The figures below, whilst dated, give an idea of the scale of outflows to each place which are not considered to have changed significantly since the data was recorded.

2.6 The level of net out commuting is a particular issue for Frome with around 2,500 commuters travelling to Bath and the west Wiltshire towns whilst reverse flows are substantially lower as indicated in Table 1a below. As a result the town has the lowest ratio of jobs to economically active population of any of the main centres.

	Mendip	Frome	G'bury/Street	Shepton	Wells
West Wiltshire	<b>1350</b>	<b>1245</b>	42	29	35
B&NES	<b>2104</b>	<b>1660</b>	107	<b>258</b>	80
Bristol	<b>1185</b>	<b>325</b>	131	<b>279</b>	<b>450</b>
N Somerset	<b>282</b>	59	48	68	106
S Gloucestershire	<b>399</b>	189	68	57	87
Somerset & Other South West	-62	<b>527</b>	<b>-350</b>	-126	-112
Other Areas	-95	<b>375</b>	<b>-492</b>	144	-122
<b>TOTAL</b>	<b>5163</b>	<b>4380</b>	<b>-448</b>	<b>709</b>	<b>524</b>

TABLE 1a : Net Commuting Flows to / from adjacent areas (2001 Census/2009 West of England SHMAA)

2.7 In the other towns, actual and net commuting flows are not as significant particularly when the local Mendip labour force is factored in as shown in Table 1b. The exceptions to this are Glastonbury/Street and Wells. At Street, specifically, there was a substantial inflow (signified by the negative figures in the table above) of workers from other areas, notably other parts of Somerset. At Wells, the net outflow of 524 employees to areas outside Mendip masks a far more dynamic flow of labour which sees around 2500 workers commute out to Bristol/Bath and other destinations in Somerset with around 1900 travelling in – half from Bristol/Bath and half from other locations in Somerset. Local labour flows within the district showed that Wells drew in almost 1000 employees from other towns.

Work in....		Frome	Glastonbury / Street	Shepton	Wells
Live in...	Frome	10122	207	758	203
	G'bury / Street	156	<b>8100</b>	559	862
	Shepton	451	318	<b>4582</b>	833
	Wells	171	614	763	<b>5342</b>
<b>NET FLOW</b>		391 (out)	437 (out)	479 (in)	963 (in)

TABLE 1b : Commuting Flows within Mendip (2001 Census/2009 West of England SHMAA)

2.8 In terms of travel for goods and services, the [2010 Mendip Town Centres study](#) indicates that Mendip performs relatively well with 88% of its residents convenience shopping needs (food, everyday purchases) met within the district. 55% of comparison goods (e.g. clothes, shoes, electrical goods, furniture, DIY, garden, etc.) are also bought within Mendip with 14% of the remainder obtained from online sources. In common with work patterns, Bristol, Bath, Yeovil and Taunton attract trade away from the district although this is accepted to be as a result of the wider range and choice available in these larger centres.

2.9 In terms of future needs, the 2010 study indicated that there would be plenty of spending capacity to support town centre regeneration in all of the towns within the non-food sector. However, a significant change in the outlook for retail and the extended role that online retailing will play in the future means that the emphasis must be upon schemes which complement the existing offer and extend consumer choice – in essence making town centres attractive, convenient and well designed shopping and leisure destinations.

2.10 In terms of food store provision, capacity to 2021 – a reliable future horizon – is limited on account of existing operators and consents recently granted in Glastonbury and Wells. Any future stores will be predicated on competition rather than absolute need for them. Scope for better food stores in town centre locations which attract shoppers to purchase food and goods from other shops exist, however a fine balance is needed to ensure the wider vitality and functioning of those centres is maintained, and regeneration of sites in Frome will need to be especially cautious in this respect.

### Environment

2.11 Mendip's natural and man-made environments are highly diverse and this is a distinctive feature of the district. The complex geology, topography, hydrology and geography of the area have resulted in habitats and landscapes of distinctive character and high visual quality. There is a wealth of internationally, nationally and locally designated sites of wildlife value as well as important designated geological sites.

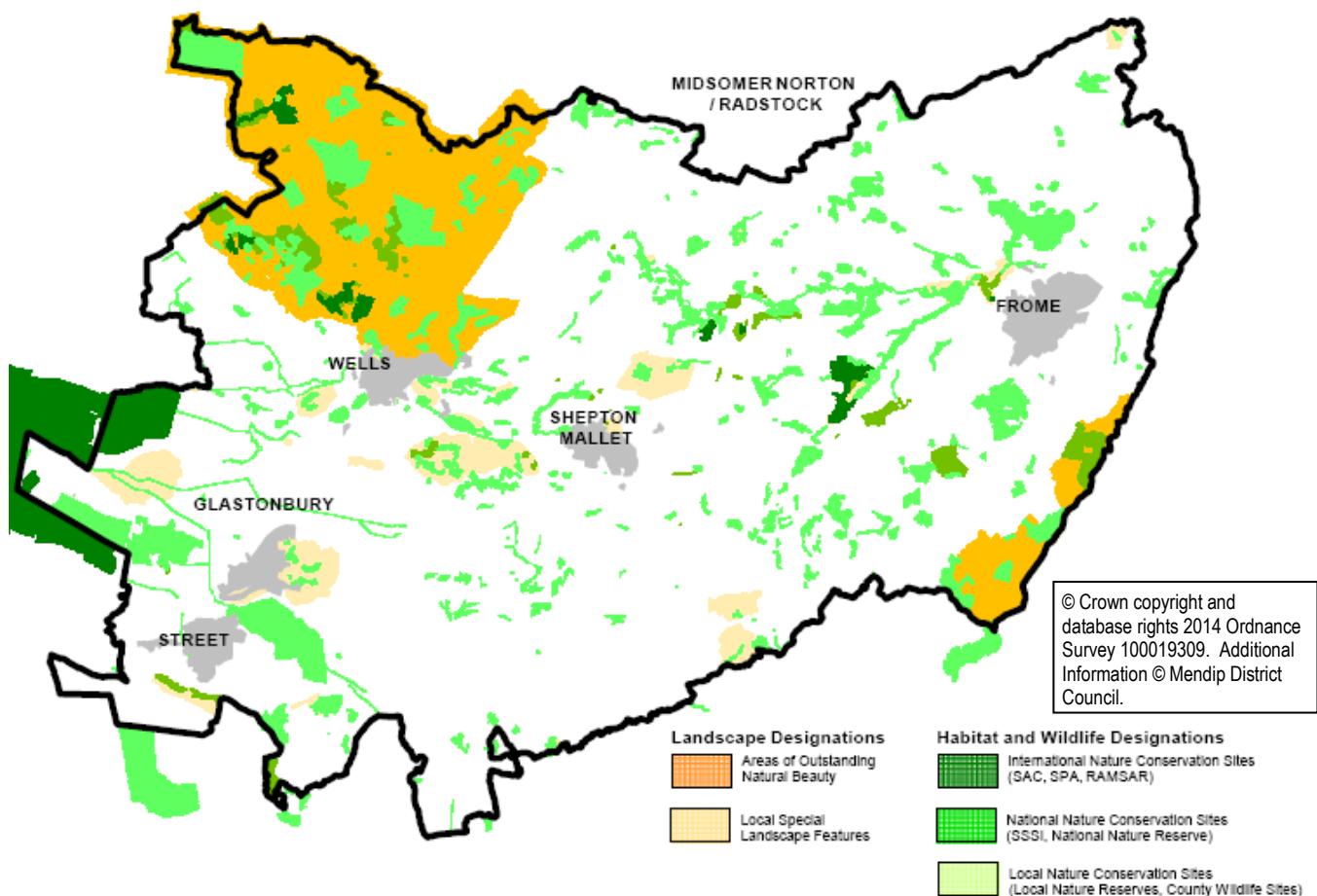


FIGURE 2: The Extent of Designated Landscapes and Wildlife Sites across Mendip District

2.12 The Mendip Hills give the district its name and part of the hills form the Mendip Hills AONB. This high landscape quality forms part of the setting for the City of Wells and contributes to the strong sense of place. Three of the district's EU Special Areas of Conservation (SAC) are associated with the Mendip Hills and their extensive cave systems which provide important habitats for bat species. Furthermore, the area around Priddy in the north west of the district has one of the highest concentrations of Scheduled Ancient Monuments. The Mendip Hills are also one of the UK's principal sources of high quality hard Carboniferous Limestone rock and the district contains seven

active quarries. Most of these lie between Shepton Mallet and Frome, producing around 12 million tonnes per year, and indirectly employ 1,500 people across varied sectors.

2.13 Since the late 1990s, a new process called Hydraulic Fracturing, sometimes shortened to “Fracking” has emerged which is capable of allowing the recovery of pockets of hydrocarbons from rock strata. The process, very simply, involves injecting fluid at high pressure into rock formations to propagate cracks and fractures which in turn releases gas (of varying forms including natural gas and coal seam gas) which can then be extracted. In recent years, assessments in the UK have revealed that there may be potential in the Mendip Hills for the extraction of gas using this method. The government is granting exploration licences, but commercial exploitation would be planned and managed through Somerset County Council’s Minerals Plan. The District Council expects that a precautionary principle is applied by bodies considering the use of this technique given the importance of the area’s geology on water supply, landscapes and biodiversity. Until the impacts, localised and area wide, including knock on effects on tourism, are understood the Council will not support this form of development.

2.14 In contrast to the Mendip Hills are the Somerset Levels and Moors - a low lying plain modified by man over centuries to create grazing land drained by interlocking ditches, known as rhynes. A significant proportion of the Levels and Moors is designated as an EU Special Protection Area (SPA), primarily on account of its birdlife interest. The area is also internationally recognised for discoveries of prehistoric remains that lie preserved in the peat.

2.15 The Cranborne Chase and West Wiltshire Downs AONB fringes the eastern side of the district offering panoramic views across the undulating countryside which formerly made up the ancient Selwood Forest.

2.16 The geology, topography and geography of the district have had a direct bearing on the pattern of settlement and communication. The resulting diversity has contributed to the tremendous variation of settlement layout and building styles. These generate a varied sense of place and true local distinctiveness ranging from the Arts and Crafts style worker’s housing built from Blue Lias in Street, to the distinctive honey coloured historic buildings of Frome. As a result, and recognising the extensive heritage, there are 27 conservation areas and nearly 3,000 listed buildings in Mendip. These features are important culturally and economically.

2.17 The Levels and Moors form a substantial area at high risk of fluvial flooding and this affects Glastonbury and its surrounding villages. Flash flooding, caused by surface run-off is also a problem in some areas, especially Shepton Mallet. In the future, acknowledging climate change effects, flood risk areas will be more prone to incident and pressure on drainage systems in areas where flood risk is less prevalent may still result in localised inundation.

**People**

2.18 In terms of the 2006 population, observable existing variations from national averages were that there was under-representation of 16-30 year olds primarily based on the movement of school leavers from the area for higher education, employment or career progression. Conversely, pre-retirement age groups (50-60) were over-represented as these groups migrate into the area from urban districts.

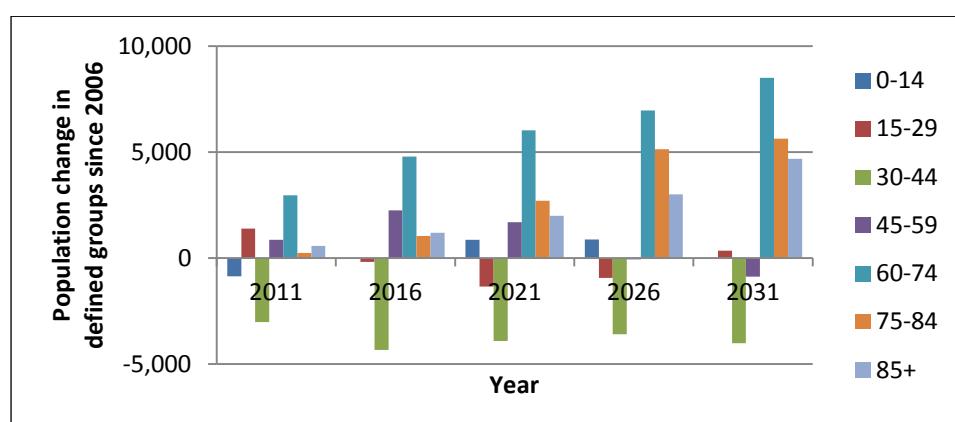


FIGURE 3: Projected Change in the Structure of Mendip’s Population 2006-2031 (Justin Gardner Consulting, 2013)  
CO/709/2023

2.19 Figure 3 reveals the trends likely to occur over the next 20 years. It indicates that the decline in younger age groups will continue. More dramatic however, is the growth in age groups aged over 60 which by 2029 will have increased its share of the district population from 27% in 2011 to 36% with the number of people aged 90 or more trebling to over 3,000.

2.20 A clear implication of the latter trend is that the number of households will grow and, furthermore, the average household size is set to fall as retired couples and widow(ers) households make up a larger share of all households as illustrated in the table below.

	Frome	G'bury	Street	Shepton Mallet	Wells	Rural Area	Total
2011 Population	26,223	8,943	11,820	10,374	10,556	41,489	109,406
2011 Households	11,205	4,040	4,771	4,378	4,917	16,900	46,212
2011 Economically Active	14,088	4,616	5,730	5,926	4,981	21,551	56,893
2029 Projected Population	30,365	9,819	12,938	12,276	10,542	44,474	120,414
2029 Projected Households	13,582	4,644	5,716	5,496	5,095	18,988	53,520
2029 Economically Active	15,768	4,794	6,283	6,633	4,873	21,791	60,141

TABLE 2: SNPP updated – based on population projection (Mendip Housing Requirements Study 2013)

2.21 As implied from the 2011 average household sizes, to some degree this trend is already advanced in Wells which has a markedly older age structure than that of the rest of the district, save for some rural communities. In response to these trend based projections, there is a clear argument that pure application of household growth will only perpetuate trends, in turn justifying levels of new housing provision that improves the inherent balance of economically active people and jobs.

2.22 Indicators of health are generally good in comparison to the averages for England. Mendip residents have life expectancies in line with the national average of 78.1 years (England - 77.3) for men and 82.4 (England – 81.5) years for women. Although the district is a prosperous area there are pockets of deprivation as recorded in the Indices of Deprivation. The main areas are Street North, Shepton East, Frome Welshmill, Glastonbury St John's and Glastonbury St Benedict's.

## Housing

2.23 The number of dwellings in the district in 2006 was 46,933 and at that time around 1,250 homes, 2.5% of the total, were vacant. In 2012, that figure had risen to 1,441, although under a more meaningful measure – those vacant for longer than six months – the figure stands at 445.

2.24 Owner occupation represents the largest share of housing stock, standing at 73% in 2011. 13% are in social rented tenure, with the remaining 14% privately rented. Compared with English averages social rented and private rented properties are marginally underrepresented although the proportions are consistent with South West and Somerset averages. Some commentators have observed that a larger private rented sector has benefits for workforce mobility.

2.25 Affordability of housing is the major issue in Mendip as it is across much of southern England. Between 2001 and 2006 the district experienced some of the largest house price rises of any of the local authorities in the West of England area. The average price of a semi-detached house rose by 63%. By the end of this period the proportion of young households able to buy or rent in the market fell to 42%. Whilst affordability of housing has marginally improved as a result of house price falls observed during the 2008-2012 period, all expectations point towards this being a blip as the national housing market continues to be dogged by inconsistent delivery and unrealistic land value

expectations. The impact will be most acute on young people and the population change trends shown in figure 3 above will be partly driven by housing affordability.

2.26 The table below summarises the scale of housing need in Mendip for the period to 2016 based on information set out in the latest 2011 Mendip Housing Needs Assessment.

Net annual affordable housing need	Frome	Glastonbury/ Street	Shepton Mallet	Wells	Rural	Mendip District
	145	186	65	67	281	<b>743</b>

TABLE 3: Projected net annual affordable housing need in Mendip's sub housing market areas 2011-16 (Fig. 7.19 MDC/JGC Housing Needs Assessment, 2011)

2.27 The district total of 743 new affordable homes per year is an unrealistic target for the Council to seek to deliver. Public subsidy for affordable homes is, in the current period of austerity, very scarce. Furthermore, the development industry highlights, quite fairly - up to a point – that development viability cannot support ever escalating levels of affordable housing obligations on the back of market housing. This is recognised nationally and over recent years government has sought to grapple with the issues, making announcements about “affordable rented” tenures, adjusting the benefits regime by bringing in Universal Credit and tackling worklessness. The extent to which these measures will address ever rising demands for affordable homes will become apparent during the lifetime of this Local Plan.

2.28 In considering what the District Council can do to address this matter, the clear starting point is that the delivery of affordable homes must be maximised as far as this is possible to achieve. Development Viability work undertaken to inform this plan provides one means to ensure this can be achieved and, as a headline figure, most development sites should be able to support a 30% requirement (40% at Wells and some rural villages) for affordable homes although in each case, specific circumstances will need to be explored where developers argue this level cannot be achieved.

2.29 In respect of housing delivery, Mendip District was successful over the preceding plan period in making provision for the development industry to build all of the planned housing. The previous Mendip District Local Plan, guided by the Somerset County Structure Plan (1991-2011) made provision for “about 8,950” for that 20 year period. The table below summarises supply towards the targets set out in that plan.

	Somerset Structure Plan Target Provision (1991-2011)	Homes Completed (1991-2011)	% of Target Met	Brownfield Completions (2000-2011)
Frome	2,590	2,357	91%	1,257
Glastonbury	1,000	1,061	106%	450
Shepton Mallet	1,120	1,338	119%	334
Street	1,135	1,069	94%	394
Wells	1,100	1,001	91%	406
<b>All Towns</b>	<b>6,980</b>	<b>6,826</b>	<b>98%</b>	<b>2,841</b>
Rural Areas	1,970	2,553	129%	796
<b>Total</b>	<b>8,950</b>	<b>9,379</b>	<b>104%</b>	<b>3,637</b>

TABLE 4: Housing Targets and Completions in Mendip 1991-2011 (Mendip DC Housing Monitoring)

2.30 Overall 104% of the target provision has been built although there is some variation between where it was planned and built. This is largely down to the unpredictable supply of brownfield land arising particularly from the restructuring in the local economy in the towns and, in rural areas, infilling and redevelopment promoted during the housing boom. The later than planned release of a major greenfield area at Shepton Mallet coinciding with some modest speculative brownfield development since 2000 led to a modest overprovision of 180 homes, counteracting the under delivery at Frome and Street. In both of the latter however, delays in major sites (Garsdale/Saxonvale and Houndwood respectively) has been the cause.

2.31 Since 2006, the District has been successful in securing 2,131 of the total 3,201 new homes (67%) on brownfield sites to 2013. Land supply data considered in section 4 of this strategy suggests that brownfield sites will continue to play a part in delivering a substantial number of new homes in the

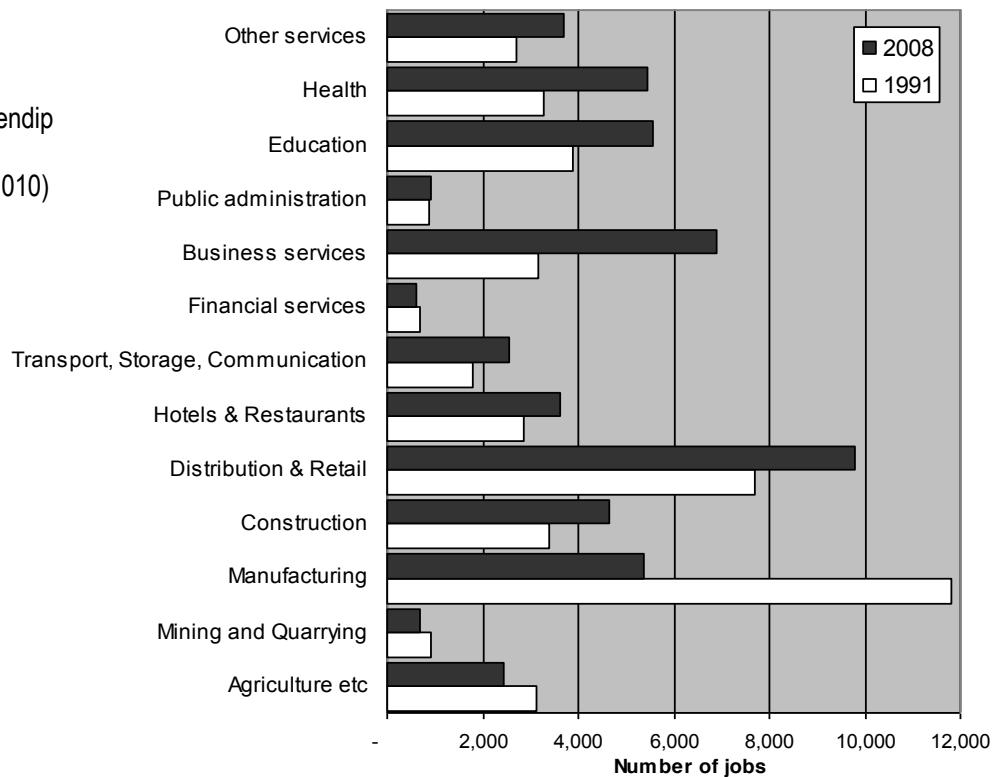
period to 2029. However, the supply of such sites is diminishing and so there will be a need for new development to take place on new greenfield sites.

2.32 As a result of Mendip's geographic position and the large number of festivals that take place within its boundaries, the district is an area of considerable importance for the travelling community. Based upon the Gypsy and Traveller Accommodation Assessment (updated 2013), there is a need for 90 additional residential pitches to 2020 and 51 from 2021-2029. In addition, at least 80 transit pitches may be required in the plan period.

## Economy

2.33 The economy of Mendip is made up predominantly of micro and small companies and is now largely service based having seen many of its traditional industries decline or move away from the area over the last 20 to 30 years. The diagram below shows the change that has taken place and that the greatest number of jobs are now in distribution, retailing, construction, health, education and business services (such as property management, information technology and professional services). Traditional manufacturing industry has markedly declined which has required some reskilling of the workforce. Nevertheless, unemployment is low with a rate below the regional and national averages.

FIGURE 4:  
Change in the structure of  
Economic Sectors in the Mendip  
Economy 1991-2008  
(MDC/Oxford Economics, 2010)



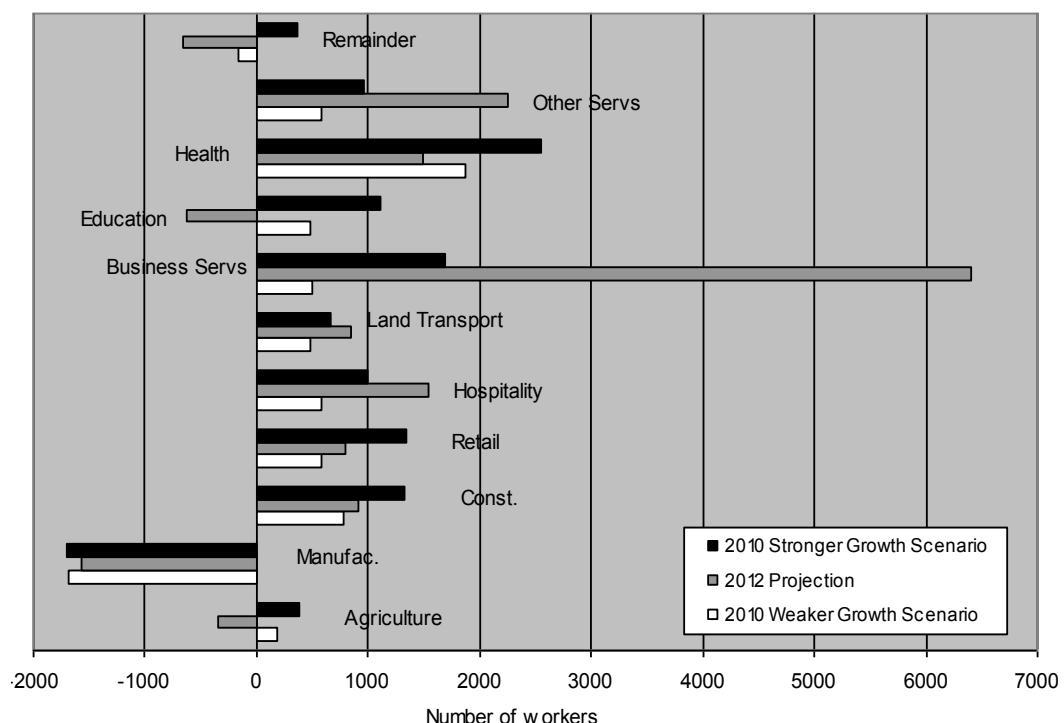
2.34 Another clear observation is that the local economy is a lower skilled, lower paid one, although it should be noted that this is common to economies across the South West as shown in the table below. Mendip wages are consistent with Somerset averages, about 5% lower than SW averages and 15-20% below the UK average. Whilst regional variations are to be expected, the most significant implication for Mendip is that it nestles up against the West of England where higher wages can be secured. The main effects of this are borne out in relatively higher housing prices and significant commuting patterns.

% of UK Average	2000	2008	2012	2020	2030
Mendip	85	80	81	80	79
South Somerset	88	87	83	81	79
Sedgemoor	79	77	77	75	72
Somerset	86	84	82	81	79
South West	89	90	87	86	85
<b>United Kingdom</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

TABLE 4a: Comparative Wage Levels (Heart of the West of England LEP/Oxford Economics, 2012)

2.35 Despite the prolonged downturn and recession precipitated by the global financial crisis of 2008-09, the longer term prospects for the local economy are good with growth predicted in many sectors. Unsurprisingly, employment in the Business Services sector is expected to grow more than any other with technical and scientific, information, communication and support services being the main drivers. This sector offers significant opportunity within Mendip as employees are less dependent on large scale centralised places of work. Such activities can be remotely based and as a result new business activity has the potential to bring higher value jobs which may reduce some of the commuting trends to places outside the district which have developed since the 1990s. In turn this may enable the local workforce to compete better in the local housing market. Providing improvements in broadband speeds will be crucial in facilitating this.

FIGURE 5:  
Projected Job Growth  
in Mendip to 2030 by  
Economic Sector  
(Oxford Economics/  
Mendip DC, 2012)



2.36 Retailing has emerged as a strong component of the local economy which is linked to health and competitiveness of the market towns. By 2030 retailing will be the second largest employment sector. Over the last decade there has been a change to the retailing landscape with large format retailing – particularly foodstores – changing the function of the traditional high street towards a specialist destination with a greater social leisure function. The Council will continue to encourage town centre development that supports the high street.

2.37 The district's towns provide the best access to employment, services and shops. Glastonbury town centre satisfies the basic shopping needs of local people whereas the other centres offer a broader range and choice of goods. Street has a wider sub-regional offer due to the Clarks Village outlet centre. Nevertheless opportunities exist to improve shopping, particularly in Wells and Frome.

2.38 The close proximity of Glastonbury and Street means that together they provide enhanced access to services and together provide the second greatest concentration of jobs in the district. Shepton Mallet Town Centre remains the weakest of the district centres and new efforts to encourage regeneration of the town centre are proposed through a Neighbourhood Plan being advanced by the Town Council which intends to encourage key landowners to work more closely to reshape the offer of the town.

2.39 The other main growth sectors include Construction, Health and Other Services with the latter including a range of arts, entertainment and recreational activities. Hospitality (made up of hotels, restaurants) contributes to the wider tourism economy. Visitors to the district spend an estimated £161 million a year. 2010 data indicates that 3,570 jobs are directly related to tourism enterprises, however this understates the contribution made by pubs, restaurants and other visitor orientated businesses that also serve the local population. The district has a number of attractions of regional significance, including Glastonbury Tor and Abbey, Wookey Hole Caves and Wells Cathedral, and the high quality natural and built environments already act as a major draw to the area. One of the

biggest challenges for tourism in the district is to increase the quality on offer and to translate a large number of day visits to overnight stays and longer breaks.

2.40 The annual Glastonbury Festival at Pilton, near Shepton Mallet remains the largest regular music festival in the country attracting over 100,000 people. It is estimated to be worth £73m to the local economy. Nearby, at the Bath and West Showground, agricultural shows, exhibitions and other events draw even larger numbers throughout the year offering potential to tap into. The Royal Bath and West Society have set out a clear regeneration plan to modernise the site and accommodate new business growth, offering improved conference space and exhibition buildings, with the aim to stimulate the site as a showcase of rural activities including food producers, outdoor activities and renewable energy alongside their core agricultural show role.

### **Accessibility & Transport**

2.41 Access to most services can be achieved in each of the five Mendip towns although the increasing scale of Frome as a town means that there is greater need to provide more effective intra urban public services as well as further extending foot and cycle links with the River Frome Corridor being seen as an opportunity in this respect. Delivering a wider network of walking and cycling routes is a goal in each of the towns based on community consultation. Across the district there are examples of community groups, supported by Sustrans, who are working towards delivery of multi-user paths utilising, where possible, former railway corridors.

2.42 Across rural areas the availability of services in villages is varied. Larger communities like Evercreech, Beckington and Chilcompton have a good range of services allowing people to meet a wide range of daily needs. In others, facilities are limited to the basics, namely a shop, primary school, pub and bus service whilst in the scattered remaining villages and hamlets services are less viable and common. Mendip's villages, like so many across the country, have experienced a decline in the number of facilities and services, such as village shops, pubs and Post Offices. However, it is fair to observe that in reaction to the centralised, homogenised offer of the main supermarkets there are an increasing number of farm shops and similar enterprises which are creating new markets around local and specialist produce.

2.43 Transport is critical for Mendip's residents, employers and providers of services. Frome is the only Mendip town to have a railway station and this provides good linkages to Bristol, Bath and the west Wiltshire towns along with services to Yeovil, Weymouth and London Paddington. There are frequent bus services between the towns and Wells has good onward connections to a variety of larger centres including Bristol, Bath and Taunton. Connections from Shepton Mallet to larger centres are less straightforward requiring journeys via Wells. Evening services are limited.

2.44 Rural services are varied. Where villages lie on or close to routes the bus can provide a reasonable alternative to the car. However, away from these villages services are less frequent and not suited to serving travel to work needs. The map below is a representation of accessibility by public transport to work in a nearby town before 10am on a weekday. Shaded areas illustrate zones where, with a short walk to a stop, a bus can get you to a town (inside or outside Mendip) whilst the white areas are those where standard public transport would not be feasible. Dial-a-ride services also cover the district but capacity is limited and oversubscribed. Service cuts since 2010 have maintained services to the villages where development is planned, however services and frequency to smaller communities is noted to have declined.

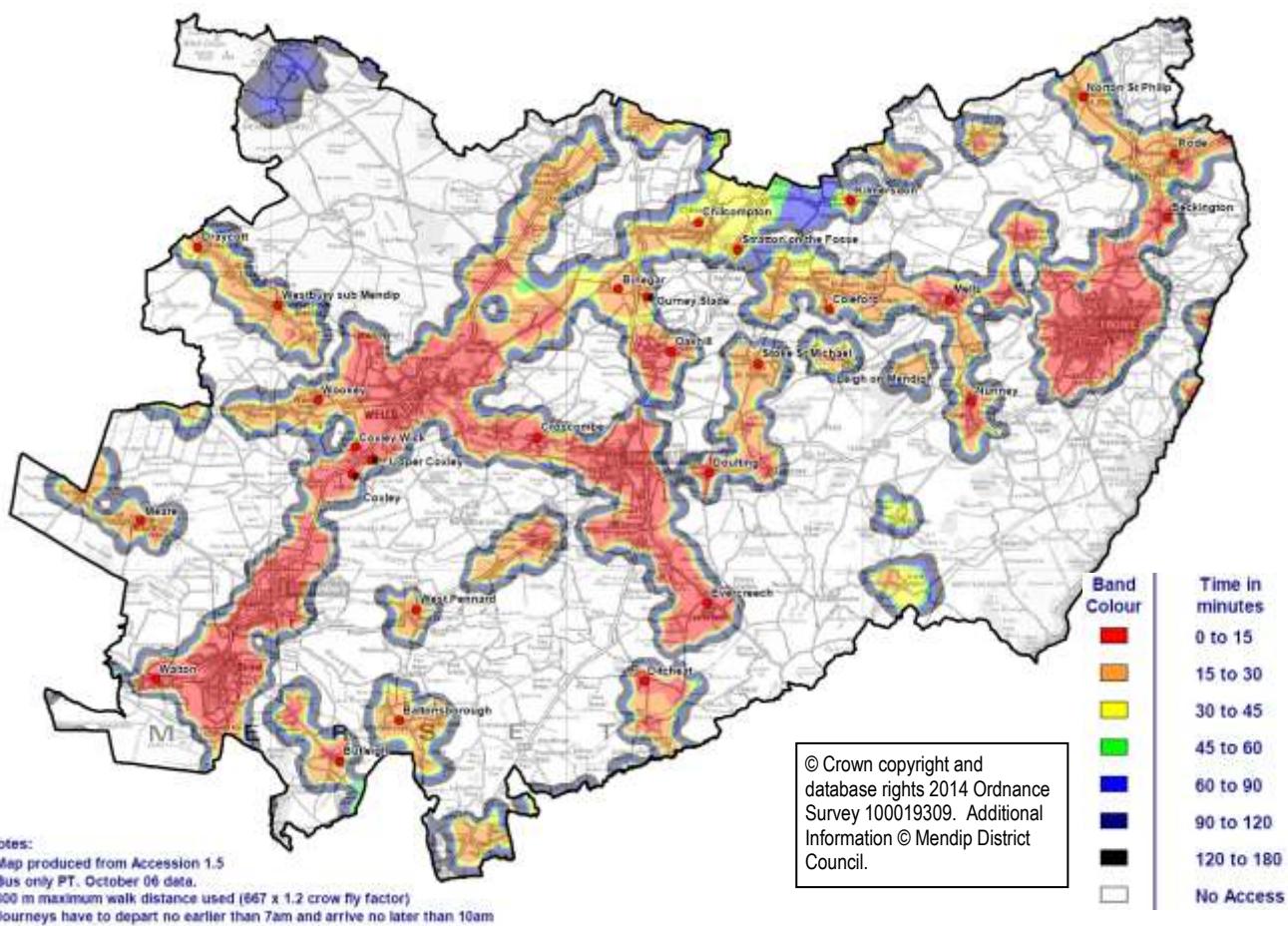


FIGURE 6: Accessibility by Public Transport to a Town before 10am on a weekday

2.45 Rates of car ownership are relatively high but, because of the multi-centric nature of the district, patterns of rural travel do not generate substantial congestion flow along specific road corridors. Mendip is not however, immune from congestion. Pinch points on the road network exist at Glastonbury using the A361, whilst at peak times travel within Frome can be delayed. Local views indicated that in Frome, travel outwards to Bath and west Wiltshire combined with a large amount of school traffic (on account of the distribution of schools) is the cause. Whilst observation bears this out, there is evidence that suggests that a high proportion of pupils in Frome walk to school.

2.46 In terms of priorities for highway investment, the eastern approach to Glastonbury via Chilkwell Street and the Walton Bypass, west of Street remain important schemes and, at Frome, a western relief road to divert heavy goods vehicles approaching from the A362 which pass through the town remains a long held aspiration.

2.47 Parking provision has remained a sensitive issue with government policy in the last decade aimed at reducing parking provision to dissuade car use and stimulate the use of public transport, walking and cycling. Under provision associated with new residential development has stretched on-street parking in some towns, notably Frome and Glastonbury, whilst in Wells parking to serve the town centre remains a pressure point which an allocation in the last Local Plan has not delivered. Many views from consultation also highlighted parking charges as a barrier that town centre shops had to endure which supermarkets and retail parks did not.

2.48 Broadband coverage is an important means for people to work from home and access services from more remote locations as well as being a key form of infrastructure to stimulate the local economy. Away from the towns, coverage is currently poor and business interests highlight that without this key infrastructure, the ability of people to establish small businesses will be stifled. In 2011, a bid for specific funding by councils in Somerset and Devon to secure accelerated delivery of “unlimited broadband” delivering speeds of up to 100MB/sec was successful and the first stages of that rollout will begin in 2013.

## Culture and Leisure

2.49 The district's main centres have varied social, cultural and leisure facilities. Frome has a significant cultural offer with two theatres, a cinema, the Cheese and Grain - which offers a venue for live music - as well as a museum and a range of art establishments. Wells has a cinema and a range of local groups and societies, actively supported by sections of the community whilst at Street, Strode Theatre offers a performance venue associated with the college. Shepton Mallet is arguably less well provided for in terms of cultural venues with attempts to bring the Amulet Theatre back into use being dogged by financial constraints.

2.50 Social leisure, in terms of pubs, bars, restaurants and other venues to provide people of all ages with places to meet, eat and revel is varied across the district. Across rural areas the village hall and local pubs remain at the heart of rural communities although the availability of cheap supermarket alcohol continues to erode viability. Within the towns the traditional pub still has a place however the range of activities sought has broadened to bars, restaurants and clubs which are common place in centres like Bath, Yeovil and Taunton. The town centres study suggests that there is scope for operators to find niches in Mendip although opportunities will depend upon trading conditions and the right site. On the face of it Street (with its Quaker roots that limited commercial leisure development) and Frome (with its proportionately greater population) appear to have the greatest potential to attract this type of investment as both are relatively underprovided for.

2.51 Open space and provision for sport is reasonable across the towns. Deficiencies exist in particular types of spaces as detailed in the Council's Play Strategy and Open Space Assessment although planned provision in line with future development can address these needs. The towns and villages have various sports clubs, including bowls, netball, cycling, golf, football, rugby and cricket, although in some cases, notably Street and Shepton Football Clubs and Wells Rugby Club, investment in facilities is needed to maintain support and encourage participation.

2.52 Physical sports infrastructure like sports halls, swimming pools and the like are under financial pressure. Local authority provision in Mendip, through managed contracts, remains the subject of review. Pressures exist and will arise for investment to refurbish or replace facilities and costs, particularly energy costs, for swimming facilities continue to rise. The conclusion of the review will make recommendations about how future provision should be best made across Mendip and the planning framework will facilitate that during the Local Plan Part II: Site Allocations process if required.

2.53 In terms of cultural heritage the district is blessed. Wells, with its ecclesiastical heart and fine townscapes, and Glastonbury, with the iconic Tor and Abbey steeped in history and legend, stand out but there is so much more. Frome, Shepton and Street also have important and impressive heritage with potential to further exploit in a sensitive manner. And, across rural Mendip, the caves at Wookey Hole, the Somerset Levels, the East Somerset Railway and the Mendip Hills exist within the varied landscapes that in themselves people like to visit, enjoy and walk.

## **Summary: Key local issues forming the context for the Local Plan.**

### **Environment:**

- Flooding & flood risk:
  - Significant parts of the district have a high risk of flooding which are predicted to worsen under the effects of climate change – particularly in response to more frequent heavy rainfall events.
  - Surface water drainage in all areas is and will be put under increasing pressure requiring more natural (as opposed to engineered) solutions to be more common.
- Renewable energy:
  - Energy costs are making alternative technologies more viable.
  - Mendip has potential and grid connectivity for certain types of technologies.
- Biodiversity and Landscapes:
  - A wealth of biodiversity and habitats within the district's diverse landscapes is designated nationally and internationally warranting clear measures to safeguard them and encourage their sustained management.
- Sustainable construction:
  - Buildings completed in the next 20 years may stand until 2126 – they must be adaptable, efficient and well built to meet the challenges of a low carbon future and the potential effects of climate change: new development needs to be built using more sustainable construction methods and higher standards adhered to, whilst opportunities to retrofit energy efficiency measures to existing buildings needs to be encouraged.
- Built environment:
  - Mendip has distinctive places defined by the variety of their setting, materials, history and by the way that people have and continue to live and work in them. Heritage should be preserved and new development should be promoted which adds to the richness of local diversity and creates a sense of place.
- Open space:
  - Protect open spaces, improve access to open space and provide new space to address existing deficiencies (both quality and quantity) and meet the needs of growing communities.

### **People:**

- Ageing population:
  - people are living for longer generating more need for supported accommodation.
  - Mendip remains an attractive area to move into for elderly groups and as a result becomes more expensive for younger people in turn affecting the ability of businesses to recruit.
- Falling household size:
  - Social trends (including the ageing population) are resulting in average household sizes to fall. In Mendip it is expected to fall from 2.35 in 2006 to 2.25 persons by 2029 generating the need for new homes without even adding to the population.
- Education and training:
  - Ongoing need to renew school buildings and extend/relocated provision, particularly at Frome and Street.
  - Provision of new schools to meet growing populations.
  - Improve and extend local vocational training opportunities.

### **Housing:**

- House prices and affordability:
  - Mendip saw a leap of over 60% in average house prices in the early 2000s – more than any in the West of England.
  - In 2006, a Mendip average of 61% of newly forming households could afford to buy or privately rent in the district – even within the cheapest sector of the market.
  - In some parts of the district this dips below 50% in the period to 2026.
  - Typical ratios of average house prices to average incomes are over 8.
  - Most acute needs in Wells and rural Mendip although need in all areas warrants maximised affordable housing delivery.

- In-migration pressures:
  - Chronic undersupply of housing in major centres surrounding the district.
  - Mendip is an attractive place for wealthier urban migrants to downsize/retire.
  - Impact upon families/communities social identities and ways of life.
  - Affordable homes for local people first.
- Accommodation for Gypsies and Travellers:
  - Identified need for 141 residential pitches and 80 transit pitches to 2029.

## **Economy:**

- Restructuring of the local economy:
  - Need to diversify the economy following continued decline in manufacturing.
  - Provide higher skilled employment that improves local earnings and enables local people to compete for housing.
  - Overdependence on certain sectors limiting resilience in uncertain times.
  - High levels of entrepreneurial activity.
- Commuting patterns:
  - Providing appropriate jobs at Frome to recapture a workforce travelling outside Mendip for employment.
- Loss of employment land to other uses:
  - 30 hectares of employment land lost to other uses 1991-2007.
  - More effort needed to ensure that jobs are provided as part of redevelopment sites to limit growth in new travel demands to employment sites on town peripheries.
- Provision of new employment land and premises to meet business needs:
  - Cautious estimates indicate need for around 80,000sq m of new employment space requiring up to 12ha of new land.
  - Promoting flexible, adaptable and sustainable employment space more aligned to light industrial, service and commercial uses, particularly around town centres.
  - Small / flexibly financed incubator spaces to support business start-up.
- Encourage and support the rural economy:
  - Farm diversification.
  - Home working and web based small business start-ups.
  - Limited availability of rural business premises.
- Maximising tourist potential in a manner sensitive to the area's natural, physical and historical assets.
- Vitality and Viability of town centres:
  - Complimentary retail development in Frome and Wells to draw trade back from major centres but in a manner that does not erode the strong and characteristic independent sectors.
  - Ongoing need for regeneration of Shepton Mallet high street.
  - Underdeveloped 'evening' economies in Frome and Street.
  - Modern accessible space in town centre locations for commercial needs.

## **Accessibility & Transport:**

- Loss of key facilities in villages:
  - Increase in unsustainable travel as villagers travel to other places to access services and facilities.
  - Affordability, falling household size and ageing population are combining to erode future school rolls in some villages with some risks of closure.
- Public Transport:
  - High frequency/journey to work services along certain corridors serving towns and some villages but most rural services considered ineffective and unresponsive to commuter or leisure needs.
- Parking:
  - On street parking pressure has increased
  - Town centre parking considered scarce, although pressure most acute in Wells
- Telecommunications
  - Poor broadband limits many types of business that could exist in a rural setting.
  - Reason for optimism with Somerset wide scheme delivering 'superfast' services by 2015.

**Culture and Leisure**

- Shepton Mallet needs support to develop a clearer cultural identity as is present in the other towns.
- Frome and Street in particular have the potential to offer local people a better social experience which town centre development (in different ways) can help to accommodate.
- Open space deficiencies, both in terms of area and quality of useable spaces, can be addressed through new provision and investment.
- Public and private investment in sports facilities needs to be coordinated through the planning process to enable new or improved facilities to be delivered

### 3. A VISION FOR MENDIP

3.1 This section sets out the Spatial Vision for Mendip, which along with the Strategic Objectives that follow it, aims to give a clear statement about how participants in the preparation process would like to see the area in the year 2029.

#### A Vision of Mendip District In 2029

3.2 The following vision provides a guide to users of the planning framework about the expectations we have for our area. It give some clear signals about the types of places we want to encourage support and enhance, the types of development we need and the key local issues we need to tackle. *It is set out to read as if it were written in 2029 by someone reflecting back on what has been achieved* through coordinated effort, private investment and the resultant way in which it may have benefited people.

#### ***A Vision of Mendip District in 2029***

*In 2029, Mendip remains a rural, multi-centred district of great diversity. Although still strongly influenced by larger centres outside the district for jobs, shopping and leisure, Mendip's market towns have continued to improve their services, facilities and amenities, enabling a higher proportion of peoples' needs to be met locally. In more rural parts of the district, access to basic goods and services has been secured with a number of villages offering an increasingly wide range of facilities to their surrounding communities. New development, primarily focused in the towns, has made efficient use of land but has been used to reinforce the distinctive character of each place.*

*In Frome and Wells, promoting a better balance between homes and jobs has been achieved. In Frome, economic development has been stimulated to improve opportunities for local employment, reducing the outflow of the workforce to Bath or places in the west of Wiltshire. Furthermore, the appeal of its town centre has been dramatically improved by major redevelopment which makes the most of the natural and cultural assets of the town. In Wells, a greater proportion of new housing has been designed to provide for working people, particularly those on lower incomes who are less able to access housing, despite having work in the city. In both of these places, new development has been sensitive to their landscape setting and cultural heritage. In Shepton Mallet, the potential of the town has been unlocked. Its heritage, trained workforce and central geographical position have been harnessed to generate higher incomes, provide community facilities and stimulate new vitality in the town centre. The close proximity of Street and Glastonbury has been exploited through sustainable transport links, enabling local people to gain the best of their complementary offers in terms of housing, employment, shopping and community facilities.*

*The diversification of the local economy is continuing, with high speed broadband access helping to counteract the limitations of the local transport network. New and improved education and vocational training facilities have improved the skills of the workforce, encouraging new and dynamic businesses on well designed sites in the towns.*

*These factors have also facilitated a rural renaissance, allowing small office/workshop based businesses and a new generation of local food producers, making use of older farm buildings and other structures, to employ local people in better paid roles. New rural housing has been primarily focused on the villages with the best range of services and facilities. Demand responsive rural transport services and sustainable transport links are also being developed to improve accessibility for rural residents to their nearest town.*

*The sensitive landscapes and environments of the Mendip Hills and Somerset Levels remain critical assets for wildlife and informal recreation, but alongside cultural attractions like Glastonbury Tor and Wells Cathedral, also attract tourism which is important to the local economy.*

## **Strategic Objectives Of The Mendip Local Plan**

3.3 The following Strategic Objectives now go on to draw out the key things that need to happen to provide an opportunity for parts of the Vision to become reality. The objectives are grouped under headings which link back to the Mendip Sustainable Community Strategy.

3.4 Many other factors will have a bearing on the outcomes, if indeed this Vision is the one that is achieved. However, provided changing circumstances are recognised and flexibility is built in, effective planning can influence the nature of the physical environment in which we live, work and enjoy ourselves and this in turn, little by little, can influence our use of that environment.

### **TO DIVERSIFY AND STRENGTHEN THE LOCAL ECONOMY**

1. Deliver suitable employment land and premises at the towns to enable forecast job growth potential to be realised, with additional provision in Frome to promote a better balance of jobs and economically active people.
2. Deliver a mixture of modern and flexible employment premises with an emphasis on supporting existing local firms, flexible/incubator space to support the establishment and growth of small businesses and office space that reinforces the vibrancy of our town centres.
3. Retain jobs on redundant employment sites through mixed use re-development.
4. Support proposals which improve and extend tourism across the district.

### **TO EQUIP PEOPLE AND LOCAL BUSINESS WITH SKILLS THEY NEED**

5. Deliver new vocational training and skills development facilities at the towns including the expansion of Strode College in Street and expansion in secondary education facilities in Frome on a site which could also fulfil potential for further education opportunities.
6. Deliver new primary/first schools in Frome, Shepton Mallet, Wells and Street.

### **TO PROMOTE GREATER VITALITY AND VIABILITY IN OUR MARKET TOWNS AND RURAL COMMUNITIES**

7. Develop and reinforce the distinctive identities and specialisms of the Mendip towns.
8. Concentrate the majority of jobs, housing, cultural activity and services within the district's towns.
9. Maintain and enhance town centres to make them attractive places to visit at any time of the day, and promote sensitive redevelopments, particularly in Wells and Frome, that make them the first choice shopping destination for the widest range of goods that their catchment areas can support.
10. Ensure that the rural population has better access to basic community facilities such as shops, schools and social venues, as well as housing to meet local needs.
11. Support and enable diversification of the rural economy in suitable and sustainable locations.

### **TO ENABLE PEOPLE TO MAINTAIN AND IMPROVE THEIR STATE OF HEALTH**

12. Deliver additional or replacement healthcare facilities in Frome, Glastonbury and Shepton Mallet.
13. Maintain and extend the networks of open spaces and sports facilities, particularly in the towns, to improve their use as a means to promote more active lifestyles.

**TO PROVIDE ADEQUATE LEVELS OF DECENT HOUSING WHICH IS ACCESSIBLE TO ALL**

14. Deliver new housing within our towns at levels that maintain or, as in the case of Frome and Wells, improve the balance of jobs and economically active people and rural housing that is clearly related to identified local needs.
15. Maximise the delivery of affordable housing.
16. Deliver a range and mix of house types and sizes to meet the variety of local housing needs in both the open market and affordable housing sectors.
17. Provide for sites to accommodate the needs of Gypsy and Traveller communities.

**TO IMPROVE ACCESSIBILITY BY MEANS OTHER THAN THE PRIVATE CAR**

18. Ensure that the majority of new developments, particularly major traffic generators, are located to be accessible by a range of transport modes.
19. Create safe and convenient footpath and cycleway networks, ensuring that new development encourages walking, cycling and the use of public transport.

**TO MAINTAIN AND ENHANCE THE QUALITY OF THE LOCAL ENVIRONMENT AND CONTRIBUTE TO INTERNATIONAL CLIMATE CHANGE GOALS**

20. Create well designed places that are safe and responsive to their surroundings, whether built, natural or cultural, whilst maintaining and enhancing the historic environment.
21. Deliver new development that makes efficient use of land, using sustainable methods of construction and utilising technologies that minimises their environmental running costs.
22. Protect sensitive wildlife habitats and valued landscapes from development and enhance biodiversity and local scenery through an integrated network of green spaces, corridors and protected areas.
23. Recognise and manage development in light of emerging climate change impacts with particular regard to the location of new development away from areas of flood risk and developments that would increase the risk of flooding elsewhere.

3.5 The following sections now go on to set out policies and proposals aimed at delivering the stated vision and objectives through development within the district. The policies are split into three main groupings, namely:

- Section 4: A Spatial Strategy – *the broad locations, amounts and overall planning principles that will be pursued in parts of the district.*
- Section 5: Town Strategies – *five individual visions – along the same lines as that set out at the start of this section – set out a view of how each town is intended to evolve through the delivery of this planning framework. Subsequent policies and delivery frameworks for each town then set out what needs to happen and how this will be achieved.*
- Section 6: Development Management Policies – *these, in parallel with national planning policies, will provide development interests and the communities with a clear set of local directives to achieve the types of development the area needs, the delivery of appropriate supporting infrastructure and safeguards for valued local assets.*

3.6 As set out in Appendix 1, there are a small number of Saved Policies carried forward from the 2002 Local Plan and the 2000 Joint Structure Plan which relate to site specific issues. These will be reviewed and normalised into the plan during the preparation of Part II – Site Allocations.

## 4.0 SPATIAL STRATEGY AND CORE POLICIES

4.1 The determination of what, where and how much development takes place in the Mendip district is set out in this section of the Local Plan and draws upon the vision set out in section 3.

### A Spatial Strategy for Mendip

4.2 [National Planning Policies](#) set out principles which define an overall framework which local planning authorities should use to define where best to focus growth. It is the role of the plan making process to use these principles to outline what is the most appropriate means to plan for the area and set this out in a Spatial Strategy. In simple terms, a Spatial Strategy broadly defines where most development will be focused and what scale of development is appropriate in identified parts of the area.

4.3 Taking these cues from national policies and drawing on what has been agreed in the Vision for Mendip set out previously, the broad principles Mendip will apply are as follows:<sup>5</sup>

- The majority of new development should be focused in the towns where there are a range of employment opportunities, services, community facilities and other infrastructure. Where necessary local infrastructure will need to be supplemented to meet the needs of the community and local economy.
- Outside of the main towns, appropriate levels of provision for new development should be made in rural areas to meet local needs and to sustain the rural economy. Again the emphasis is upon delivering the majority of this development in the settlements where people can access local employment or where residents and businesses can make use of available services.
- In smaller communities that have more limited community facilities, small scale development aimed at delivering affordable homes and meeting the specific needs of rural business is considered appropriate.
- Development in the open countryside should be strictly controlled.

4.4 The following subsections now examine each group of settlement types in turn.

#### **The Mendip Towns**

4.5 Within Mendip District, the towns of **Frome**, **Glastonbury**, **Shepton Mallet**, the city of **Wells** and the village of **Street** all perform traditional market town roles offering employment, services, cultural and community facilities as well as high street shopping to varying degrees. As the principal centres in the district they offer the best opportunities to deliver sustainable new housing and economic development to meet the needs of the growing population. The towns of Radstock and Midsomer Norton in neighbouring Bath and North East Somerset also have close functional relationships with some settlements in the wider rural catchment within the north of the district (see paragraphs 4.7 and 4.21).

4.6 In respect of housing growth, the overall objectively assessed needs of Mendip have been updated to reflect projections based on 2011 Census and other data and are set out in a “[Review of Housing Requirements](#)” prepared by Justin Gardner Consulting (JGC) (November 2013). This updates the [Housing Distribution Technical Paper](#) which has considered the relative needs of these five settlements examining expected population growth and prospects for employment growth, labour market dynamics, as well as affordable housing need and the availability of brownfield land. It should be noted that in examining jobs driven housing needs, the JGC update does not seek to update in detail the economic projections for Mendip as set out in the updated Technical Paper published in October 2012. However, for comparison purposes, job growth projections produced by Experian in spring 2013 have been drawn upon which provide forecasts at District level which are unadjusted to take account of local trends and business requirements. In light of these aspects and in response to the vision statements drawn up for each town, the broad level of housing development and employment land requirements have been determined as set out in Core Policies 2 and 3.

<sup>5</sup> More detailed consideration of these issues is set out in the Technical Paper “Housing Distribution Options for Mendip” (September 2012).

4.7 The towns of **Radstock** and **Midsomer Norton** lie on the northern fringe of Mendip district. The main built extent of these towns lie in Bath and North East Somerset; but some built development exists within Mendip and other built and permitted development immediately abuts the administrative boundary. This Local Plan, whilst taking into account development opportunities on land abutting the towns, does not make any specific allocations for development, particularly for housing. The Council will consider making specific allocations as part of the Local Plan Part II Site Allocations to meet the development needs of Mendip which have not been specifically allocated to any particular location in this Part I Local Plan. In the event that such allocations are considered, this will be undertaken in consultation with B&NES and local communities. Any impact on infrastructure in B&NES such as education, transport or community facilities, will be addressed either through s.106 contributions or through CIL arising from new development in Mendip.

### Rural Mendip

4.8 For rural Mendip, the Council has drawn together a broad range of intelligence<sup>6</sup> related to all of its villages and many of its hamlets, as well as taking regular soundings from parish councils, to understand their character and roles.

4.9 As set out in the Vision for Mendip, the rural communities are diverse with some being able to meet most everyday needs, including some employment needs, whilst at the other end of the spectrum some consist only of a handful of dwellings and effectively operate as dormitory communities where residents are required to travel for almost all their daily needs.

4.10 In considering how best to provide for the localised needs in rural areas, the Council has concluded that there are two principal tiers of settlements:

- **Primary Villages** – those villages with at least a primary school, a community venue (either a pub or a village hall), a shop able to meet a range of daily needs and a ‘journey to work’ bus service.<sup>7</sup> Here new residents can meet many of their daily household needs locally and have a realistic transport alternative to the private car in order to access other services and employment.
- **Secondary Villages** - those villages with some, but not all, of the basic facilities available in the primary villages but that all lie within transport corridors where ‘journey to work’ bus services operate. On account of their relative accessibility to nearby centres, new development in these villages, albeit of a smaller scale envisaged in the Primary Villages, will enable local needs to be satisfied closer to where that need arises.

4.11 In all **other villages and hamlets**, which have few or no community facilities and where residents are typically reliant on the private car to meet all their everyday needs, new development of any scale is unlikely to stimulate the provision of new services. Nevertheless, in exceptional circumstances, as allowed for in national policy and Core Policy 4, these villages may be appropriate places to meet specifically identified local housing needs (as allowed for by Development Policy 12) or dwellings to accommodate rural workers. Economic development appropriate to the scale and infrastructure available locally may also be appropriate. It should also be noted that Neighbourhood Plans provide an opportunity for all communities to plan for their own needs should they be so minded so long as the proposals made broadly conform with the policies of this document.

4.12 In the **Open Countryside**, in line with national policy, new development will be strictly controlled. Core Policy 4 (Rural Development) sets out the overall approach which the Council will take in the rural area beyond that which is set out in the Spatial Strategy (Core Policy 1).

<sup>6</sup> In a document called “Rural Settlement Role and Function Study” (2012)

<sup>7</sup> A bus service that enables residents to arrive in an employment centre (i.e. one of the 5 Mendip towns or other major centres outside the district) by 9am and then return them home after 5pm.

## Core Policy 1: Mendip Spatial Strategy

All new development is expected to contribute positively towards delivering components of the Vision for the district and the associated strategic objectives.

1. To enable the most sustainable pattern of growth for Mendip district:
  - a. The majority of development will be directed towards the five principal settlements of Frome, Glastonbury, Shepton Mallet, Street and Wells to reinforce their roles as market towns serving their wider rural catchments. Specific proposals for each place are set out in Core Policies 6-10.
  - b. In the rural parts of the district, new development that is tailored to meet local needs will be provided for in:
    - i. Primary Villages – These villages offer key community facilities (including the best available public transport services) and some employment opportunities making them the best placed to accommodate most new rural development.
 

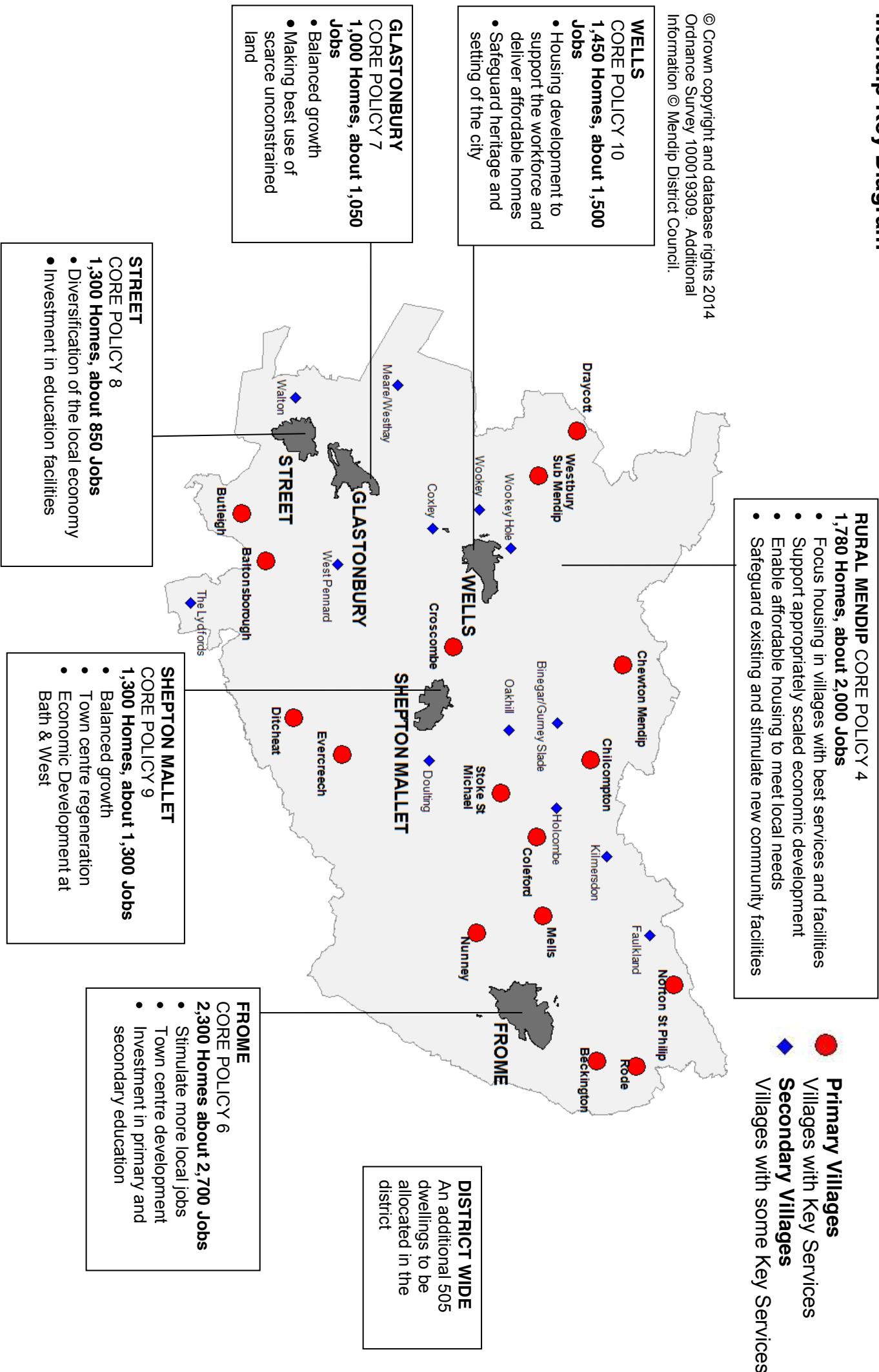
Baltonsborough	Croscombe	Norton St Philip
Beckington	Ditcheat	Nunney
Butleigh	Draycott	Rode
Chewton Mendip	Evercreech	Stoke St Michael
Chilcompton	Mells	Westbury sub Mendip
Coleford		
    - ii. Secondary Villages – These villages offer some services and the best available public transport services making them appropriate for development aimed at meeting more localised housing, business and service needs.
 

Binegar/Gurney Slade	Kilmersdon	Walton
Coxley	The Lydfords	West Pennard
Doulting	Meare/Westhay	Wookey
Faulkland	Oakhill	Wookey Hole
Holcombe		
    - iii. In other villages and hamlets, development may be permitted in line with provisions set out in Core Policy 4 to meet specifically identified local needs within those communities.
  - c. Development in the open countryside will be strictly controlled but may exceptionally be permitted in line with the provisions set out in Core Policy 4: Sustaining Rural Communities.
2. The scale of housing and employment development within the settlement tiers is set out within the tables associated with Core Policies 2 and 3.
3. In identifying land for development the Local Plan's emphasis is on maximising the re-use of appropriate previously developed sites and other land within existing settlement limits as defined on the Policies Map, and then at the most sustainable locations on the edge of the identified settlements. Any proposed development outside the development limits, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities.
4. Development is required to provide infrastructure in accordance with the infrastructure needs for each town as defined in Core Policies 6-10, the accompanying Infrastructure Delivery Plan or other needs as they arise. Infrastructure to be secured from development within rural communities will be defined as part of the Site Allocations DPD process.

## Mendip Key Diagram

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4.13 The Council is mindful that there is the potential for the availability of services and facilities within rural communities to change over time which may act to undermine their inherent sustainability. Regular monitoring of services and facilities, particularly the key community facilities, will be reported in the Authority's Monitoring Report. Where communities gain or lose key facilities their status within the settlement classification in Core Policy 1 will be reviewed enabling a more appropriate application of policy.

### **Application**

4.14 The Council intends to continue to operate its planning framework by defining development limits for those places identified in the Spatial Strategy. Development limits are clear boundaries which effectively define the principal built form of settlements where most development is to be focused in line with the Spatial Strategy. Within these development limits, as set out in subsequent policies, most forms of development will be acceptable in principle subject to their compliance with other policies in the Mendip Local Plan, relevant parts of the [National Planning Policy Framework](#) or any other material considerations. Where exceptional development is considered in communities unnamed in the policy (under Core Policy 1, section 1) a) ii), any site should be broadly adjacent to the existing built extent of the community concerned and have regard to the surrounding landscape setting, as well as being compliant with national and local planning policies.

4.15 Until reviewed in the Local Plan Part II: Site Allocations, the Council will carry forward from the Mendip District Local Plan (2002) the existing development limits for those settlements named in the Spatial Strategy including proposed amendments to reflect strategic site allocations.

### **Mitigating the effects of Development: Strategic Level Impacts arising from Sustainability Appraisal**

4.16 In completing the formally prescribed Sustainability Appraisal of the development scenarios a number of approaches were rejected as a result of significant negative impacts. Of those options remaining most had some residual impacts that would need to be addressed through policy making to mitigate against their effects. The table below identifies impacts and mitigation measures to address them which will be relevant for development proposals in the district, or those where a specific localised issue was apparent.

4.17 In many of the instances below, the intentions have been incorporated into the Town Strategies (section 5) or into the intentions of Development Management Policies (section 6). However, as a checklist, all proposals should be assessed against this list of strategic impacts to determine their direct effects or in combination effects alongside other proposals.

Issue	Most applicable	To be addressed and monitored through
Sustainable urban drainage on brownfield development sites needed in all areas to limit flood risk and reliance on costly engineered drainage	District wide, esp. Shepton Mallet	Policy DP7 requires new development to maximise opportunities from SUDS. (Relevant indicator for DP7)
Pressure to release employment land for housing will be arrested by requiring mixed use development on former employment sites	District Wide	Policy DP20 tackles this issue. (Relevant indicator for DP20)
Brownfield development will have more limited potential to deliver affordable housing	District Wide	Contribution for affordable housing from all development as part of Policy DP12 (Relevant indicator for DP12)
Provide additional recreational open space alongside development near to the Somerset Levels & Moors SPA to limit disturbance to wintering waterbirds and bird breeding from increased population	Glastonbury, Street	Policies CP7 and CP8 include the need for strategic scale open space to address this issue

Issue	Most applicable	To be addressed and monitored through
Growth in water and energy use to be addressed through delivery of development with efficient fixtures and fittings	District Wide	Policy DP7 requires energy and water efficiency. (Relevant indicator for DP7)
Landscape, biodiversity and heritage impacts must be key considerations in the selection of sites for development	District Wide	Site Allocations DPD process will include Sustainability Appraisal of landscape, biodiversity and heritage impacts to inform site selection.
Better collaborative planning between Street and Glastonbury to deliver shared benefits	Glastonbury, Street	Addressed within CP7: Glastonbury Town Strategy and CP8: Street Parish Strategy. Potential for a Joint Neighbourhood Plan over the medium term.
Localised flood risk must be carefully assessed in rural areas during site selection	Villages	Use of SFRA and EA Flood Map to fully inform Site Allocations DPD Sustainability Appraisal
Information received from the Environment Agency has highlighted that nutrient discharge from sewage works is affecting water quality and ecology. Under the EU Water Framework Directive there will be an obligation to address this problem.	District Wide	Encouragement of Wessex Water – supported by Env. Agency - to invest in improved sewage treatment to serve proposed new development

TABLE 5: Recognised issues arising from the Sustainability Appraisal of the proposed Mendip Spatial Strategy.

## Supporting the Provision of Housing

4.18 Having established the broad overall spatial strategy, the Local Plan must next define the overall level of housing and employment development. Following the Review of Housing Requirements (2013), and to make provision for around 15 years supply from the likely date of adoption, this Local Plan is making provision for at least 9,635 dwellings in the period 2006-2029 and a development rate of 420 dwellings per annum from 2011-2029.

4.19 Housing provision is a central element in planning for the future of the area. In Mendip district, the housing market is complex with pressures arising from commuters to larger centres outside the district, those moving into the area (including a substantial proportion of the retired and pre-retired age groups) and the local population, including much of the workforce. The Review of Housing Requirements has examined these trends and establishes that for the purposes of planning for housing, Mendip represents a self contained Housing Market area albeit with strong links to parts of Bath and North East Somerset in particular.

4.20 In the updated [Housing Distribution Technical Paper](#) (July 2012), prepared to inform this Local Plan, the amount of housing appropriate to each town has been determined through an assessment of population, employment growth, housing need, land supply, environmental limitations and in light of other place based factors which will be discussed further in the town strategies. The Review of Housing Requirements (2013) concludes that the proposed housing provision set out in the Pre-Submission Draft Local Plan makes provision for Mendip's objectively assessed needs, although modest additional supply is needed to cater for slightly higher annual needs beyond 2011 and to extend the time horizon of the Plan to 2029. The following paragraphs and tables summarise the essence of the Local Housing Target setting process:

4.21 The Review of Housing Requirements (2013) and the rolling forward of the plan period to 2029 will result in an additional requirement for 505 dwellings in the District. This will be addressed in Local Plan Part II: Site Allocations which will include a review of the Future Growth Areas identified in this plan. The Site Allocations document will also be able to take account of issues in emerging Neighbourhood Plans, updated housing delivery, revised housing market areas and housing needs identified through cross boundary working. Allocations from this roll-forward are likely to focus on sustainable locations in accordance with the Plan's overall spatial strategy as set out in Core Policy 1 and may include land in the north/north-east of the District primarily adjacent to the towns of Radstock and Midsomer Norton in accordance with paragraph 4.7 above.

4.22 The residual level of housing to provide 9,635 dwellings will be met through the strategic sites identified in this Plan and allocations made through the Local Plan Part II. For the avoidance of doubt, however, and taking account of advice in the NPPF on the need to increase housing delivery and maintain a rolling five year supply, the requirements in Core Policy 2 will be treated as minima to be achieved over the plan period. The Council will explore opportunities to deliver above the policy minimum through the site allocations process in the Local Plan Part II, including in primary and secondary villages, informed by the testing of site options through local consultation and Sustainability Appraisal. Opportunities for such additional provision may arise where the most effective planning of sites needed to meet the requirements of individual settlements would naturally enable somewhat higher levels of development. In this regard, provision on a settlement by settlement basis will not be artificially constrained to exactly match the numerical requirement as set out in Core Policy 2. The need to plan for proportionate levels of growth in Primary and Secondary Villages will, however, remain an essential consideration in accordance with the spatial strategy set out in Core Policy 1. Local communities may also wish to support higher levels of growth, for example through the Part II Site Allocations process, through Neighbourhood Plans or in accordance with Core Policy 4.

### **Establishing a Local Housing Distribution**

4.23 The following paragraphs and tables summarise the process of establishing a local housing distribution:

*A number of options were developed reflecting different pressures arising from population growth, employment growth, affordable housing need and land supply. Each option was then subjected to*

*Sustainability Appraisal which sought to identify benefits and drawbacks associated with the levels of development proposed under each. Those raising significant negative impacts were set aside. Following this scoping exercise, each town and the rural area was assigned a broad range based on the numbers set out in the remaining options. Local considerations, including issues arising from the Vision, identified constraints, land supply, were then applied to each set of numbers to determine where in the range the level of provision should be fixed. The table below summarises the issues and sets out the local target established.*

	<b>Range</b>	<b>Issues</b>	<b>Conclusion</b>
<b>Frome</b>	1901-2379	Need to tackle commuting flows out of the town High affordable housing need High level of brownfield land Strong employment growth potential	<b>2,300</b>
<b>Glastonbury</b>	683-1190	Employment growth Town is environmentally constrained Brownfield land supply Relationship with Street	<b>1,000</b>
<b>Street</b>	856-1670	More jobs than homes Affordable housing need Economic diversification needed Relationship with Glastonbury	<b>1,300</b>
<b>Shepton Mallet</b>	787-1650	Many more jobs than homes Economic potential – although dependent upon Bath & West Showground regeneration	<b>1,300</b>
<b>Wells</b>	1452-1594	Acute affordable housing need Many jobs, but lower level of economically active people Strong economic potential Risk of harm to important city character	<b>1,450</b>
<b>Rural</b>	927-2545	Meeting rural housing needs Safeguarding the countryside	<b>1,780</b>
		Requirement resulting from updated housing review and rolling forward the plan to 2029 – to be allocated in Local Plan Part II: Site Allocations	<b>505</b>
<b>Mendip District Housing Requirement 2006-2029</b>			<b>9,635</b>

TABLE 6: Summary of the exercise used to determine local housing targets

### Housing at the Mendip Towns

4.24 Having established appropriate development levels for each town it is necessary to consider the supply of land available to deliver the housing. The table below sets out the supply picture at the 31<sup>st</sup> March 2013 and draws conclusions about the need to identify land to accommodate housing development. Decisions about housing provision in rural areas will be made in the Local Plan Part II: Site Allocations document in line with Core Policy 1.

		<b>Frome</b>	<b>G'bury</b>	<b>Street</b>	<b>Shepton Mallet</b>	<b>Wells</b>
Housing Requirement (as concluded in Table 6 above)		2,300	1,000	1,300	1,300	1,450
Less homes built 1/4/06-31/3/13		828	426	521	558	206
Less homes with granted planning permission at 31/3/13		200	188	275	36	130
Less yield of housing from sites identified in the SHLAA <sup>8</sup>	Identified sites within adopted town Development Limits	1,044	205	39	91	496
<b>Residual Requirement (excluding windfall)</b>		<b>228</b>	<b>181</b>	<b>465</b>	<b>615</b>	<b>618</b>

<sup>8</sup> Strategic Housing Land Availability Assessment (SHLAA) roll-forward to March 2013 – Totals of 'B' sites (acceptable in principle within development limits).

Need for a Strategic Site(s) to be identified in the Local Plan	Yes	No (see below)	Yes	Yes	Yes
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TABLE 7: Mendip District Housing Land Supply at 31<sup>st</sup> March, 2013

4.25 The table concludes that in each town, to a greater or lesser degree, expected sources of urban land alone will not be sufficient to satisfy the identified requirements. The Key Diagrams associated with the Town Strategies (associated with Core Policies 6, 8,9 and 10) identify Strategic Sites on new greenfield land which consultation and evidence have indicated most appropriate to consider for development. These are differentiated into two types, namely:

- Development areas which are allocated to meet the needs of the plan period
- Future Growth Areas on adjacent land which would represent logical extensions for subsequent plan periods, or offer flexibility in the latter part of the plan period if housing supply from other sources does not materialise or if other evidence warrants the further release of land. Any release of additional land will normally be made through future site allocations. However, where housing completions in the relevant town fall more than 20% behind the expected rate of delivery implied by the annual target provision set out in Core Policy 2, the Council will consider the reasons for this and may resolve to bring forward the release of land in advance of the Site Allocations document. Equally, land within Future Growth Areas may be released where this would logically contribute to a better pattern of development in the release of allocated sites.

4.26 In order to encourage a longer term and proactive view in planning for new development, the Council will, where necessary, require the production of and formal adoption as Supplementary Planning Documents (SPD) of Development Briefs and Masterplans for the Strategic Sites. These documents will inform the development of sites and, where appropriate consider - over timescales beyond the current plan period - where strategic scale infrastructure and community facilities would be appropriate.

4.27 In Glastonbury, there are a number of matters to balance up, namely;

- a) land supply from committed and identified sites in the SHLAA falls marginally short of that required.
- b) the town is heavily constrained by landscape, environmental and flood risk constraints
- c) there are competing demands for the use of scarce developable land for employment use
- d) the close relationship of the town to nearby Street which forms part of the same housing sub-market area and which has less constrained land supply

In light of the uncertainties surrounding these issues, the Council will, through the Local Plan (Part II) - Site Allocations process, allocate modest additional greenfield land to address any shortfall in housing land supply that is identified at that time.

### **Housing for Rural Communities**

4.28 In considering the level of housing to plan for it was concluded that the Council should provide only for locally arising population growth encapsulated in a development level of 1,780 homes. This level of housing does not cater for the demands arising from those wanting to move to the area which, based on 2009 household projections, amounted to 4,320 new homes. To provide for this higher level of housing would dramatically alter the character of communities, generate growth in unsustainable travel, as well as putting pressure on limited local infrastructure.

4.29 Subsequent 2010 household projections reduced the locally arising growth component to 1,190 new homes and the full household growth (including immigration) to 2,545 homes. The 2012 Housing Distribution Technical Paper considers the issues involved, concluding that to fulfil the 2,545 figure would impose levels of development on villages that would be out of scale, yet to reduce provision to 1,190 using the previously justified locally arising needs figure would mean that legitimate demand from migration would not be satisfied over the plan period. In conclusion, and reflecting the intensive consultation with rural parishes involved in agreement of the initial 1,780 figure, the Council has concluded that this level strikes a balance between satisfying all locally arising needs as well as a significant proportion of the demand expected to arise from in-migration. The updated Housing Requirements Study (2013) also confirms that the proposed rural housing requirement is well in excess of projected natural change.

4.30 The acknowledged gap between the proposed 1,780 and the full projected household growth means that there will be a mismatch between rural supply and trend based projections including in-migration. This is in line with the overall spatial strategy of locating most development in the towns where there are a range of jobs, services and facilities. The implications and mitigatory measures proposed are considered in relation to Core Policy 4.

4.31 Having established a reasoned level of provision for rural Mendip, consideration is now given to how the planned 1,780 homes would be distributed across the numerous and varied rural settlements within the district. From a national policy angle, the aim is to deliver a sustainable pattern of development which allows new households access to services and some form of transport choice to larger centres but in a manner which allows housing need to be met as locally as possible. At a local level, a lengthy and intensive period of engagement with Parish Councils concluded that two broad principles should be applied in distributing new rural development:

- a. That new development should be located in villages with certain key services, including the best available public transport services.
- b. That levels of new development in each place should be appropriate to their existing scale and have regard to environmental constraints.

4.32 In developing and revising this approach it was concluded that there are 16 villages (termed Primary Villages in Core Policy 1) which had core facilities – namely a primary school, a shop meeting a range of daily needs, a meeting place (whether a public house or a village hall) and a public transport service that allowed people to at least reach a nearby town by 9am and return them to their village after 5pm. These villages would be the first places to consider when distributing planned rural housing in the Local Plan. In response to the second principle set out in the preceding paragraph, the Council proposes village housing requirements based on a proportionate growth equating to 15% of the existing housing stock. These have been adjusted taking account of identified local constraints to tailor development levels in each community to an appropriate scale.

4.33 A further group of 13 villages (termed Secondary Villages in Core Policy 1), had the same public transport service but only two of the remaining core facilities. Hence, where the rural development was unable to be accommodated in the Primary Villages (predominantly on account of the excessive scale of new homes proposed when compared to the existing stock of dwellings) these Secondary Villages were considered well placed to accommodate a more modest amount of new homes, again applying the 15% guideline as a proportionate level of growth. The inclusion of these villages has also allowed local housing needs to be met more locally.

4.34 The tables below summarise the conclusions of the exercise including the contribution that development from 2006 – 2013 has made towards the identified requirements for each village.

Full details of the methodology used are set out in section 6 of the 2012 Housing Distribution Technical Paper.

Primary Villages	Village Requirement	Completions / consents granted (1/4/2006–31/3/2013)	Level of development
Baltonsborough	45	27	18
Beckington	55	12	43
Butleigh	45	17	28
Chewton Mendip	15	4	11
Chilcompton	70	78	-
Coleford	70	34	36
Crocombe	35	4	31
Ditcheat	25	4	21
Draycott	65	27	38
Evercreech	70	35	35
Mells	10	4	6
Norton St Philip	45	73	-
Nunney	55	1	54
Rode	65	30	35
Stoke St Michael	45	8	37
Westbury sub Mendip	50	10	40
<b>TOTALS</b>	<b>765</b>	<b>368</b>	<b>433</b>

TABLE 8: Proposed Housing Requirements for Primary Villages 2006-2029. Development figures are updated annually and published on the Council's website.

Secondary Villages	Village Requirement	Completions / consents granted (1/4/2006–31/3/2012)	Level of development
Binegar/Gurney Slade	40	9	31
Coxley	40	21	19
Doulting	15	4	11
Faulkland	20	5	15
Holcombe	40	43	-
Kilmersdon	15	14	1
The Lydfords	25	3	22
Meare/Westhay	40	84	-
Oakhill	40	43	-
Walton	40	29	11
West Pennard	25	6	19
Wookey	40	33	7
Wookey Hole	15	15	0
<b>TOTALS</b>	<b>395</b>	<b>309</b>	<b>136</b>

TABLE 9: Proposed Housing Requirements for Secondary Villages 2006-2029. Development figures are updated annually and published on the Council's website.

4.35 The total housing proposed in the Primary and Secondary Villages amounts to 1160 homes. This leaves 620 of the 1,780 total earmarked for the rural area. 405 of these already arise from dwellings granted consent or built in other rural locations between 2006 and 2013. The remaining 230 are currently unallocated, however it is expected that further consents will be granted outside of the villages identified in this Local Plan prior to its adoption. Furthermore, opportunities will continue to exist within existing development limits and on well related brownfield sites and so a limited degree of overprovision can be expected. Monitoring of completions and consents will seek to ensure supply is managed within the overall framework of this Local Plan.

4.36 In terms of how the Council will promote the delivery of the proposed housing requirements in each place. The following principles will be followed:

- a. In villages where the residual level of development is less than 15 homes the Council will, with regard to the supply of development land within existing development limits, assume that housing supply will be delivered from small site development within defined development limits during the remaining period to 2029. Where land supply suggests this is not achievable, small adjustments of existing development limits will be made in the Local Plan Part II: Site Allocations process. Recommendations about areas of land to include will be based upon views expressed by the community where there has been an informed and objective consideration of the relative merits and drawbacks of sites promoted through the [Strategic Housing Land Availability Assessment \(SHLAA\)](#).
- b. In villages where the residual level of development is in excess of 15 homes, the Council will, with regard to the supply of development land within existing development limits, allocate sites and/or make adjustments to existing development limits to deliver the majority of the residual housing requirement through the Local Plan Part II: Site Allocations process. Recommendations about areas of land to include will be based upon views expressed by the community where there has been an informed and objective consideration of the relative merits and drawbacks of sites promoted through the Strategic Housing Land Availability Assessment (SHLAA).
- c. The selection of sites within the Local Plan Part II: Site Allocations process will be informed by the relative benefits and disbenefits of sites and in line with relevant national planning policies, the Local Plan, site specific Sustainability Appraisal work and any local material considerations.
- d. In all circumstances the Council will ensure that new land released makes appropriate contributions to the delivery of local infrastructure or contributes to wider strategic objectives defined as being relevant to the community concerned or the wider locality. In all cases this will include affordable housing provision in line with Development Policy 11.

4.37 It should be noted that the Local Plan Part II: Site Allocations process will not begin until 2014 and is unlikely to be concluded until mid 2016 based on the current procedural requirements. The residual levels of development in each village will be monitored to ensure that when allocations come to be made all recently completed and consented development is accounted for.

**Affordable Housing**

4.38 Affordability in Mendip's housing market has worsened considerably in the last decade. [The West of England Strategic Housing Market Assessment \(2009\)](#) considered a range of measures in the broader housing market. A key figure in the tables prepared for Mendip's sub-housing market areas was that even during the best market conditions (higher supply, shallower rises in house prices) only 61% of newly forming households would be able to afford to buy or take on market rents for housing across the district as a whole. In Frome and Shepton Mallet the levels were marginally less with the best situation allowing up to 65% of new households to compete in the housing market. In Wells, for much of the next decade, less than half of new households will be able to reasonably access market housing. Updated information in a [Housing Needs Assessment](#) produced for the Council in 2012 indicates that the situation is not improving despite recent falls in house prices. Using a slightly different methodology it records that the proportion of newly forming households unable to afford market housing increased to 75% in 2012.

4.39 A supply of affordable housing is therefore important yet chronic undersupply already ensures that a backlog of around 1,224 households are on the Council's waiting lists in 2012. If all those projected to be in housing need notified the Council to join the waiting list, that figure could increase by 522 to 743 per year until 2016, depending upon differing assumptions used.

4.40 Since 2010, the Government has introduced a range of changes to the funding and manner in which it sees housing needs being met including a proposed cap on housing benefit, replacement of properties in "social rented"<sup>9</sup> tenures with new ones in an "affordable rented" tenure and

<sup>9</sup> Affordable Housing is an umbrella term for a range of tenures of housing. Social Rented properties are made available at rent levels typically below 30% of market rents. Affordable Rented properties are typically let at 75% of market rents. There are other tenures within a grouping called Intermediate Housing where rents or purchase prices are set anywhere between 70 and

indication that the private rented sector can be used to address a higher proportion of need. Such measures may address those households whose incomes fall just short of being able to compete in the open housing market, however in Mendip, where median incomes fall short of that needed to secure even “affordable rented” properties it remains unclear how far these measures will tackle the scale of the problem indicated by the research referred to above. To compound the problem further, the economic downturn since 2009 has seen development viability decline in turn limiting the proportion of affordable housing able to be negotiated on the back of market housing.

4.41 Given that the proposed 9,635 housing requirement for Mendip as a whole would deliver around 420 homes per year to 2029, it is clear that the problem is not one that can be fully solved through the level of development considered appropriate in the previous section. The council continues to work closely with Housing Associations to facilitate their affordable housing delivery programmes. Ultimately the Council is open to negotiation about any scheme that can secure and make available housing to meet identified needs.

4.42 Against this background, the Council will continue to maximise, as far as development viability can bear, the delivery of affordable homes. As a result Core Policy 2 sets out the Council’s intention to secure affordable housing, or a contribution in lieu on small sites. The mechanics of these requirements are addressed in more detail in Development Policies 11 and 12.

### **Housing Density**

4.43 The Council does not intend to impose a rigid housing density policy for new residential developments. The density of development should primarily be established through careful consideration of local context, local character and specific site conditions having regard to matters set out in Development Policies 1-10.

4.44 Nevertheless, the Council is mindful that land is efficiently used in order that the need for new greenfield land for development is minimised. Hence, as broad guidelines, the net density of new housing development (i.e. the developable area excluding roads, footpaths and other public areas) should aim to be equal to or greater than the levels set out below.

- Sites within towns - 30-40 dwellings per hectare
- Sites in rural areas - 25-30 dwellings per hectare

4.45 Issues arising from higher density development will be managed by Development Management Policies, notably those related to design, amenity and environmental protection. Where an application for development is of a density significantly lower than the guidelines above without reason that is obviously apparent from the local context, applicants will be expected to specifically explain their approach in their Design and Access Statement.

### **Gypsy and Traveller Accommodation**

4.46 Government has made it clear that provision to meet the needs of Gypsy and Traveller communities must be planned for through the Local Plan process as set out in a separate policy document called “[Planning Policy for Traveller Sites](#)” published alongside the National Planning Policy Statement in March 2012. In essence it sets out that where councils do not adequately plan for these needs, planning applications for sites in any location (subject to conformity with national and local planning policies) may be granted on appeal to the Planning Inspectorate.

4.47 The Council intends to plan for the level of provision set out in the most current [Gypsy and Traveller Needs Assessment](#) (as set out in the text supporting Development Policy 15) when it undertakes a dedicated Site Allocations DPD in 2014 and, in advance of that, will undertake an exercise to identify potential sites to allocate in the same way that the Strategic Housing Land Availability Assessment (SHLAA) does for mainstream housing.

4.48 In the interim period, proposals submitted to the Council will be assessed against the criteria within Development Policy 15 as well as the content of “Planning Policy for Traveller Sites.” The criteria

in the policy will also be used to consider the suitability of potential sites it may seek to allocate.

## Core Policy 2: Supporting the Provision of New Housing

1. Provision for a minimum of 9,635 additional dwellings will be made in line with the table below over the plan period from 2006 to 2029.

	Settlement	New homes 2006-2029	Annual target provision	% of the district requirement
Towns	Frome	2,300	105	25%
	Glastonbury	1,000	45	11%
	Shepton Mallet	1,300	60	14%
	Street	1,300	60	14%
	Wells	1,450	65	16%
Villages	16 Primary Villages, 13 Secondary and other Villages	1,780	80	20%
District	Additional requirement 2011 to 2029 <u>as per 4.21 of the supporting text</u>	505		
Total	Mendip District	9,635	420	100%

2. Delivery of housing will be secured from:

- Infill, conversions and redevelopments within Development Limits defined on the Policies Map subject to compliance with national planning policy and specific policies within the Local Plan, particularly matters relating to design, local distinctiveness and identity and amenity.
- Strategic Sites identified on the Key Diagrams for each town associated with Core Policies 6-10. On the Policies Map, detailed extents of Housing Allocations within the Strategic Sites are shown which are capable of delivering housing to 2029 as identified in Table 7.

Strategic Sites for Frome, Shepton Mallet, Street and Wells include Future Growth Areas shown on the Policies Map. Areas of land within these Future Growth Areas will, where necessary, be released for development through a formal Site Allocation process or where:

- the Council otherwise determines in the light of evidence that the rate or volume of housing provision should be increased in the relevant town; or
- the release of land is needed to logically contribute to a better pattern of development in the release of sites allocated for development.

All Strategic Sites will be the subject of Development Briefs, Masterplans or other agreed pre-application processes (to be prepared from the outset in dialogue with the local community) which will then, if necessary, be adopted as Supplementary Planning Documents (SPD) prior to the granting of any planning permission for new housing or mixed use development. Where adjacent Future Growth Areas are identified, Development Briefs will be expected to indicate a broad provisional form of subsequent development areas including substantive infrastructure or community facilities.

- Other allocations of land for housing and, where appropriate, mixed use development, outside of Development Limits through the Site Allocations process in line with:
  - the principle of the proportionate growth in rural settlements guided by the requirements identified within supporting text above
  - informed views of the local community
  - the contribution of development since 2006 towards identified requirements in each place, development with planning consent and capacity within existing Development Limits.

All allocations made will be the subject of an appropriately detailed Masterplan or other agreed pre-application process prepared with the relevant community and, if necessary, adopted as a Supplementary Planning Document prior to the granting of planning permission.

3. Housing developments will make contributions towards the delivery of affordable housing in line with Development Policies 11 or 12.

## GLOSSARY

Unfortunately the complexity and technical nature of the planning system can be a barrier to people becoming involved, particularly the use of acronyms and confusing terminology. Whilst we endeavour to keep our documents as clear and understandable as possible, there is still likely to be some content that is unfamiliar or for which further clarification is required. To provide some assistance on this we have included a glossary of key technical terms below.

### Key Terms

<b>Adoption</b>	The final confirmation of a Development Plan or one of its subsidiary parts by a local planning authority (LPA) bringing it into formal use.
<b>Accessible Natural Greenspace Standards (ANGst)</b>	A set of benchmarks for ensuring access to a variety of green spaces near to where people live.
<b>Affordable Housing</b>	Social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. A full national definition is set out in the National Planning Policy Framework.
<b>Allocated</b>	Land which has been identified in the Local Plan and shown on the Policies Map (or inset map) for a specific form of development.
<b>Amenity</b>	Those qualities of life enjoyed by people who can be influenced by the surrounding environment in which they live or work. ‘Residential amenity’ includes, for example, a reasonable degree of privacy, freedom from unacceptable levels of noise, air and light pollution”.
<b>Ancillary</b>	Use or structure which is related to and often found in association with primary use or development. For the purposes of planning ancillary uses that are materially different would typically be tolerated up to 15% of a wider site area. For example, a trade counter (retail use) within a larger warehouse (distribution use).
<b>Authority's Monitoring Report (AMR)</b>	A report on how the Council is performing in terms of the effectiveness of its Local Plan. Includes a review monitoring data to determine the success of planning policies.
<b>Area Action Plan (AAP)</b>	A type of Development Plan Document focused upon a specific location or an area subject to conservation or significant change (for example major regeneration). There are no Area Action Plans proposed in Mendip currently
<b>Area of Outstanding Natural Beauty (AONB)</b>	A statutory landscape designation to recognise, conserve and enhance landscape of national importance.
<b>Aquifer</b>	Underground layer (stratum) of rock in which water naturally occurs. Water for human use may be extracted by means of wells or boreholes.
<b>Biodiversity</b>	The range of life forms which constitute the living world, from microscopic organs to the large trees, animals, their habitats and the ecosystem in which they live.
<b>Biodiversity Action Plan (BAP)</b>	An internationally recognized program addressing threatened species and habitats and is designed to protect and restore biological systems. Biodiversity Action Plans are prepared at various geographic scales. There are BAPs for Somerset and Mendip.
<b>Brownfield Land</b>	Previously developed land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure (does not include agricultural buildings and, since 2010, domestic gardens)
<b>Built Environment</b>	Surroundings which are generally built up in character. The collection of buildings, spaces and links between them which form such an area.
<b>Climate Change</b>	Natural or man made processes which result in changes to weather patterns on a global scale. The effects include changes in rainfall patterns, sea level rise, potential droughts, habitat loss, and heat stress. The greenhouse effect – arising from the build up of man-made gases in the atmosphere observed over the last two centuries – is a well recorded man made process. However, volcanic activity and permafrost melting are other

	examples.
<b>Community Facilities</b>	Services available to residents in the immediate area to meet the day-to-day needs of the community. Includes village halls, post offices, doctors and dentists' surgeries, recycling facilities, libraries and places of worship as well as commercial services and open spaces.
<b>Community Infrastructure Levy (CIL)</b>	Levy on development proposed by the government but charged locally with gathered funds used to deliver infrastructure necessary to support housing and economic growth.
<b>Comparison Goods</b>	Typology of purchased goods. Also see Convenience Goods. Defined as household or personal items which are bought on an infrequent basis and typically would involve the buyer comparing alternative styles/prices/types. Would generally include products like clothing, electrical goods and furniture amongst many other things.
<b>Conservation Area</b>	Area of special historic and/or architectural interest which is designated by the local planning authority as being important to conserve and enhance. Special planning controls apply within these areas.
<b>Convenience Goods</b>	Items bought for everyday needs. Includes food and other groceries, newspapers, drink and tobacco and chemist's goods. Generally such goods are used or consumed over a relatively short period. Also see Comparison Goods.
<b>Core Strategy</b>	A Development Plan Document forming the central part of a Local Development Framework under regulations that existed between 2004 and 2011. It sets out the spatial vision and strategic objectives of the planning framework for an area, having regard to the Community Strategy. This Local Plan is an evolved version of a Core Strategy.
<b>County Wildlife Site</b>	Wildlife habitat identified and designated as being of particular local interest of importance but is not of sufficient national merit to be nationally designated as, for example, an SSSI.
<b>Curtilage</b>	The area of land associated with a building. The curtilage of a dwelling house is normally its garden and the curtilage of a commercial building its ancillary open areas such as for parking/services and landscaping.
<b>Culturally Significant Landscape</b>	A landscape, modified, natural or built, that retains physical attributes of past interventions that are of significance. Examples include deer parks, deserted settlements and large-scale water management systems.
<b>Development</b>	Defined in planning law as 'the carrying out of building, engineering, mining or other operations in, on, over, or under land, or the making of a material change of use of any building or land' (see also Permitted Development).
<b>Development Brief</b>	A document that outlines how a large or complex site will be developed. It will set out an analysis of site context, development principles, design solutions and details about matters of implementation. It will contain maps and diagrams to articulate the issues and solutions proposed. Also see Supplementary Planning Guidance.
<b>Development Contribution/Commuted Payment</b>	Either a payment made by a developer to the local planning authority (usually secured by means of Planning Obligation) to fund provision of a facility needed to serve a development, but to be built or provided elsewhere or in some way other than by the developer, or a one off payment by a developer to another body to enable it to adopt a facility.
<b>Development Management Policies</b>	A suite of criteria-based policies to ensure that all development within the areas meets the spatial vision and spatial objectives. Mendip has decided to include these in section 6 of this Local Plan document.
<b>Development Plan</b>	A statutory document setting out the local planning authority's policies and proposals for the development and use of land and buildings. It is the starting point for the determination of planning applications as set out in the National Planning Policy Framework.
<b>Development Plan Document (DPD)</b>	A local planning policy document that has development plan status by virtue of being prepared subject to community involvement and independently examined.
<b>Early Engagement</b>	A very early stage of consultation and community involvement, when interested parties can help formulate and comment on aspects of the local

	authority's future planning proposal. Early engagement is also an important part of any development proposal in that a developer can explore local peoples views before designing a new development which it turn can then – potentially – be more responsive to local conditions.
<b>Employment Land (B1, B2, B8)</b>	Land used, with planning permission, or allocated in a development plan principally for offices, research and light industrial (B1), general industrial (B2) and storage / distribution (B8) uses.
<b>Environmental Impact Assessment (EIA)</b>	The process by which information is collected and reported on the environmental impacts of a project or proposal. This is then taken into account by the local planning authority when determining an application for planning permission. Certain types of applications for development are required to be accompanied by an EIA.
<b>Environmental Statement</b>	Written statement, required to be submitted by the applicant with certain kinds of planning application.
<b>Evidence Base</b>	The information and data gathered by local authorities to justify the “soundness” of the policy approach set out in Local Development Documents, including physical, economic, and social characteristics of an area.
<b>Exception Test</b>	In addition to the Sequential Test and in accordance with national policy, this test seeks to consider exceptional circumstances why a particular development would be acceptable in an area that is acknowledged to be subject to flood risk.
<b>Flood Risk Assessment</b>	An assessment of the likelihood of flooding in a particular area so that development needs and mitigation measures can be carefully considered.
<b>Future Growth Area</b>	An area of land, normally greenfield in nature, identified within the Local Plan as one being suitable to accommodate housing or employment future growth but which is still subject to formal allocation as part of the Site Allocation process.
<b>Greenfield Land</b>	Land (or a defined site) usually farmland, that has not previously been developed.
<b>Ground Water Source Protection Zones</b>	An integral part of land surface zoning within the Environment Agency's Policy and Practice for the Protection of Groundwater. In essence the zones limit the use of land for purposes which might result in contamination of water sources, or ensure that measures are in place to capture potential contaminants percolating into groundwater strata.
<b>Habitat Regulations Assessment</b>	Document to determine, understand and, if appropriate, mitigate impacts on European Designated wildlife sites (Natura 2000 sites).
<b>Heritage Assets</b>	Defined in the National Planning Policy Framework. A building, monument, site, place, area, or landscape positively identified as having a degree of significance meriting consideration in planning decisions. Heritage assets are the valued components of the historic environment. They include designated assets and assets identified by the local planning authority during the process of decision-making or through the plan-making process (including local listing).
<b>Housing Needs Survey</b>	Assessment of housing needs in the local area. This plays a crucial role in underpinning the planning policies relating to affordable housing and housing location.
<b>Infill Development</b>	Small scale development filling a gap within an otherwise built up frontage.
<b>Infrastructure</b>	The network of services to which it is usual for most buildings to be connected. It includes physical services serving the particular development (eg gas, electricity and water supply; telephones, sewerage) and also includes networks of roads, public transport routes, footpaths etc. In its widest sense the definition may also include open spaces, community facilities and commercial services which sustain a community's way of life.
<b>Issues and Options</b>	Produced relatively early as part of the preparation of Development Plan Documents and used for consultation and community involvement.
<b>Key Diagram</b>	A map based diagram to illustrate the broad proposals and contents of a development plan, normally contained within the main strategy or in relation to particular places.

<b>Landscape Character Assessment</b>	Identifies areas with similar features or qualities, mapping and classifying them and describing their character. It is based on an understanding of landscape character and of the natural, historic and aesthetic factors that combine to create local distinctiveness.
<b>Legal Agreement</b>	See Section 106 Agreements (S106)
<b>Listed Building</b>	A building of special historical and/or architectural interest considered worthy of special protection and included and described in the statutory list of such buildings. Also see Heritage Asset.
<b>Local Development Framework (LDF)</b>	A portfolio of planning documents required by legislation between 2004 and 2011 which collectively delivers the spatial planning strategy for the area. A former name for what is now included in the Local Plan.
<b>Local Development Order</b>	A Local Development Order grants planning permission for a site, sites or area for specific types of development (specified in the Order), and by doing so, removes the need for a planning application to be made. Local planning authorities have powers to make them.
<b>Local Development Scheme (LDS)</b>	A document that sets out what parts of the Council's planning framework are to be produced or reviewed and the timetable for their production.
<b>Local Nature Reserve</b>	Area of botanical or wildlife interest designated by a local authority.
<b>Local Transport Plan (LTP)</b>	A five-year integrated transport strategy, prepared by local authorities in partnership with the community, seeking funding to help provide local transport projects. The plan sets out the resources predicted for delivery of the targets identified in the strategy. Somerset County Council are the responsible authority.
<b>Major Development</b>	For residential - 10 or more dwellings or a site area of 0.5 hectares or more. For other uses- the floorspace to be built is 1000 square metres or more, or where the site area is 1 hectare or more.
<b>Mitigation Measures</b>	Any works or actions required to be carried out by developers to reduce or remove the impact of the development on the surrounding environment or to address particular environmental effects which would otherwise make that development unacceptable.
<b>Monitoring</b>	Regular collection and analysis of relevant information in order to assess the outcome and effectiveness of policies and proposals and to identify whether they need to be reviewed or altered.
<b>National Policy Statements (NPS)</b>	Provides national policy guidance for matters that are considered to be of importance
<b>Natura 2000</b>	An ecological network of protected areas in the territory of the European Union.
<b>Neighbourhood Plan</b>	New rights and powers for communities to prepare Neighbourhood Plans were introduced by the Localism Act (2011). Plans can be prepared by Parish Councils or, in unparished areas, an agreed forum to guide development in a local area. Plans must be subject to public consultation, an independent examination and public referendum. Once adopted, a Neighbourhood Plan will form part of the statutory development plan for that area and must be used when determining planning applications.
<b>Passive Solar Energy</b>	Energy provided by a simple architectural design to capture and store the sun's heat. An example is a south facing window in a dwelling.
<b>Permitted Development</b>	Certain categories of minor development as specified in the General Permitted Development Order, which can be carried out without having first to obtain specific planning permission.
<b>Photovoltaic Cells</b>	Technological component of solar panels that capture energy from the sun and transform it into electricity for use in homes and businesses
<b>Planning Obligations</b>	See Section 106 Agreements.
<b>Planning Policy Statements (PPSs)</b>	Set out the Government's national land use planning policies (now superseded by National Planning Policy Framework and National Planning Policy Guidance)
<b>Preferred Options Document</b>	Produced as part of the preparation of planning document. The council sets out what it thinks are the most appropriate set of policy responses to the issues needing to be addressed. These would be consulted on to seek views as to their validity prior to refinements being made.

<b>Policies Map</b>	A component of a Local Plan and an important part of the development plan. It shows the location of proposals in all current planning proposals and designations of land on an Ordnance Survey base map.
<b>Protected Species</b>	Any species (of wildlife etc) which, because of its rarity or threatened status is protected by statutory legislation.
<b>Ramsar Sites</b>	A term adopted following an international conference, held in 1971 in Ramsar in Iran, to identify wetland sites of international importance, especially as waterfowl habitat.
<b>Regional Spatial Strategy (RSS)</b>	Strategies prepared by Regional Assemblies in the 2000s to establish a region wide patterns of development, necessary infrastructure and consistent policies for broad areas across the UK reflecting their common interests, economic potential and general characteristics. Localised issues would then be addressed in Local Plans.
<b>Registered Social Landlords</b>	Independent housing organisations, including trusts, co-operatives and companies, registered under the Housing Act 1996.
<b>Renewable Energy</b>	In its widest definition, energy generated from sources which are non-finite or can be replenished. Includes solar power, wind energy, power generated from waste, biomass etc.
<b>Retail Assessment / Town Centres Study</b>	An assessment which may be required in connection with major retail purposes assessing the likely effect of the proposals on patterns of trades and the viability and vitality of existing retail centres.
<b>Saved Policies</b>	Plans and policies that were originally in the Local Plan but are still relevant in the current spatial environment and, therefore, remain current policy. They are included in Appendix 1 of this document.
<b>Scheduled (Ancient) Monument</b>	Ancient structure, usually unoccupied, above or below the ground, which is preserved by order of the Secretary of State.
<b>Section 106 Agreements (S106)</b>	Allows a Local Planning Authority to enter into a legally-binding agreement or planning obligation, with a land developer over a related issue (often to fund necessary improvements elsewhere).
<b>Sequential Approach/Test</b>	A planning principle that seeks to identify, allocate or develop certain types or locations of land before others.
<b>Sequential Test (Flooding)</b>	A test carried out in accordance with the National Planning Policy Framework to demonstrate that certain land is appropriate to develop as has less flood risk, after alternative sites have been ruled out.
<b>Site of Special Scientific Interest (SSSI)</b>	Site or area designated as being of national importance because of its wildlife plants or flower species and/or unusual or typical geological features. SSSIs are identified by Natural England and have protected status.
<b>Site Allocations DPD</b>	A Development Plan Document (part of the Local Plan) which allocations of sites for specific or mixed development uses, or which makes other designations of land for a particular purpose. Part II of the Mendip Local Plan will be a site allocations document.
<b>Soundness</b>	To be considered sound, a Development Plan Document must be justified (founded on robust and credible evidence and be the most appropriate strategy) and effective deliverable, flexible and able to be monitored).
<b>Spatial Planning</b>	Brings together and integrates policies for the development and use of land with other policies and programmes which influence the nature of places and how they function.
<b>Spatial Strategy</b>	A strategy which sets out the distribution and nature of development across a given area. Section 4 of this plan contains Mendip's spatial strategy.
<b>Special Areas of Conservation (SAC)</b>	Sites of European nature conservation importance designated under the Habitats Regulations.
<b>Special Protection Area (SPA)</b>	A site designated under the European Commission Directive on the Conservation of Wild Birds.
<b>Species Action Plan (SAP)</b>	A framework for conservation of particular species and their habitats.
<b>Strategic Environmental Assessment</b>	A term used to describe environmental assessment as applied to policies, plans and programmes. The European 'SEA Directive' (2001/42/EC) requires a formal 'environmental assessment of certain plans and

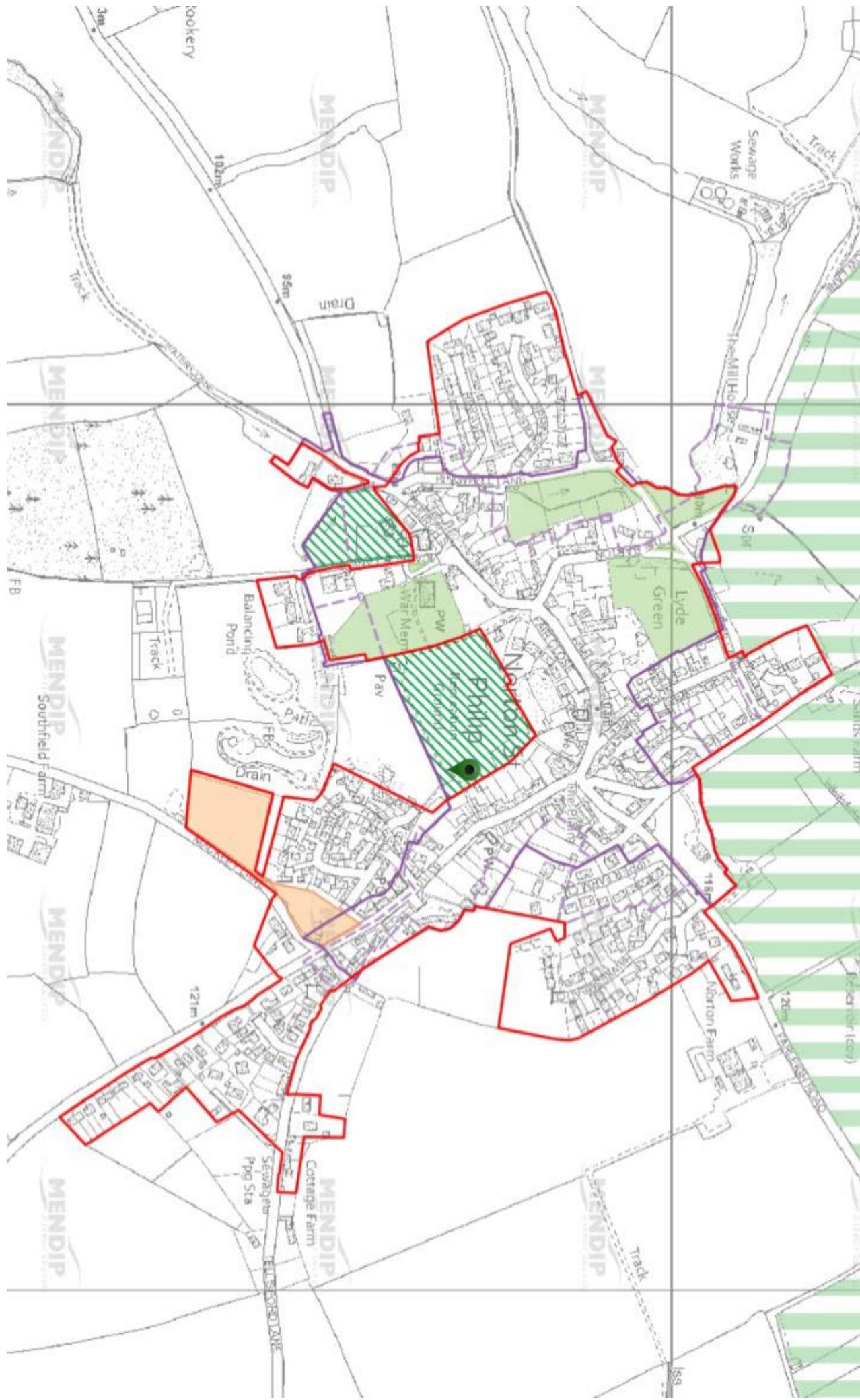
	programmes, including those in the field of planning and land use.' In the UK this is achieved through the Sustainability Appraisal.
<b>Strategic Flood Risk Assessment (SFRA)</b>	Provides information about flood risk throughout the area of the Local Planning Authority (LPA), either individually or combined with neighbouring LPAs. The SFRA will consider the effects of climate change on river and coastal flooding, identify the risk from other sources of flooding, and consider appropriate policies for development in or adjacent to flood risk areas.
<b>Strategic Housing Land Availability Assessment (SHLAA)</b>	An assessment of land which is available for housing. The SHLAA does not allocate land for development but is a source of information to understand what is available when making choices about where new development should be located.
<b>Strategic Housing Market Assessment (SHMA)</b>	An assessment of housing need and demand within a housing market area.
<b>Statement of Community Involvement (SCI)</b>	Sets out the standards which authorities will achieve with regard to involving communities in the preparation of planning documents and development control decisions. Where one is not produced by the council, the council must involve the community and other interests in line with basic requirements defined regulations and legislation.
<b>Supplementary Planning Document (SPD)</b>	A locally adopted planning document that is prepared to give clarity and technical detail to a matter contained within the Local Plan. They can include technical guidance on a matter or set out how a development site will be laid out and serviced. SPD is subject to public consultation requirements defined in regulations and law, but are not subject to Independent Examination. All SPD must be linked to policies or proposals in a current part of the Local (Development) Plan. SPD were formerly known as Supplementary Planning Guidance (SPG).
<b>Sustainability Appraisal</b>	An appraisal of the economic, environmental and social effects of a plan undertaken throughout its preparation to enable understanding of different alternative solutions and to mitigate effects where a proposed development solution is recognised to have limited negative effects. Ultimately allows decisions to be made that deliver more sustainable form of development. Also see Strategic Environmental Appraisal.
<b>Sustainable Community Strategy</b>	A long-term vision for improving the quality of people's lives, with the aim of improving economic, social and environmental well being of the area and contribute to the achievement of sustainable development.
<b>Sustainable Development</b>	Development which meets the needs of the present without compromising the ability of future generations to meet their own needs.
<b>Sustainable Drainage System</b>	Drainage system, generally incorporating natural methods of ground percolation, which seeks to minimise surface water run off without, or lessening the need for, extensive networks of municipal pipes. Systems can also include the use of natural filtration to capture and hold waterborne pollutants or suspended materials. Systems – termed 'grey water' systems - can also be found which recycle precipitation or other relatively clean water for non potable domestic or business uses.
<b>Town Centre</b>	The centre of larger market towns where there is a concentration of shops and other services which cater for local customers, including those from nearby settlements.
<b>Transport Assessment</b>	An assessment, which may be required in connection with major development proposals, which looks at how people are likely to access the development and its effects on travel patterns. It will also look at how any undesirable consequences can be mitigated. It should consider how access on foot, by cycle or public transport can be promoted and how access on foot, by cycle or public transport can be promoted and how demand for car parking can be minimised.
<b>Use Classes Order</b>	A statute that groups uses into various categories and which specifically states that permission is not required to change from one use to another within the same class: A1 -Shops;

	<p>A2 - Financial and Professional Services;  A3 - Restaurants and Cafes;  A4 - Drinking Establishments;  A5 - Hot Food Takeaway;  B1 - Business;  B2 - General Industrial;  B8 - Storage and Distribution;  C1 - Hotels;  C2 - Residential Institution;  C3 - Dwelling Houses;  C4 - Houses in Multiple Occupation;  D1 - Non- Residential Institutions;  D2 - Assembly and Leisure.</p> <p>Sui Generis - Certain uses that do not fall within any use class such as theatres, petrol filling stations, launderettes and nightclubs.</p>
<b>Water Framework Directive</b>	A European Directive that aims to establish a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater.



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Neutral Citation Number: [2022] EWHC 3432 (Admin)

Case No: CO/323/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/12/2022

**Before :**

**THE HON. MR JUSTICE HOLGATE**

**Between :**

**Norton St. Philip Parish Council**

**Claimant**

**- and -**

**Mendip District Council**

**Defendant**

**-and-**

**(1) Secretary of State for Levelling Up, Housing and  
Communities**

**(2) Lochailort Investments Limited**

**(3) Redrow Homes Limited**

**Interested  
Parties**

**Alexander Greaves (instructed by DLA Piper UK LLP) for the Claimant**  
**Hashi Mohamed (instructed by Mendip District Council) for the Defendant**  
**Robert Williams (instructed by the Government Legal Department) for 1<sup>st</sup> Interested Party**  
**James Findlay KC and Ben Du Feu for (instructed by Town Legal) for Second and Third  
Interested Parties**

Hearing dates: 18 and 19 October 2022

**JUDGMENT APPROVED**

This judgment was handed down remotely at 10.30am on 16 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

**The Hon. Mr Justice Holgate :**

**Introduction**

1. This is a challenge brought by Norton St. Philip Parish Council under s.113 of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) against the decision by the defendant, Mendip District Council (“MDC”) on 20 December 2021 to adopt the Mendip District Local Plan 2006-2029 Part II: Sites and Policies (“LPP2”). This Plan complements the Mendip District Local Plan 2006-2029 Part I: Strategy and Policies (“LPP1”). They form part of the statutory development plan for the district of Mendip in Somerset.
2. At the heart of the challenge lie Core Policies 1 and 2 (“CP1” and “CP2”) of LPP1. Policy CP1 sets out the spatial strategy for the District, distributing development between its hierarchy of settlements, directing the “majority of development” towards the five principal settlements, the towns of Frome, Glastonbury, Shepton Mallet, Street and Wells. Policy CP2 sets the District’s overall housing requirement at 9,635 homes over the plan period. Largely as the result of a decision to extend that period from 2028 to 2029 that figure included an additional 505 homes, but no work was carried out at that stage to identify where in the District that development should be located. That was left to be considered in LPP2.
3. There are two central issues in this challenge. First, whether the Inspector who conducted the independent examination of LPP2 under the PCPA 2004 and/or MDC misinterpreted LPP1 as requiring all of the 505 dwellings to be located in the north-east of the District, rather than considering their distribution across the District in accordance with the spatial strategy. Second, did MDC fail to comply with regulation 12(2)(b) of the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633) (the “2004 Regulations”) by failing to consider through their sustainability appraisal any alternative locations to allocating the 505 dwellings in the north-east of the District?
4. The towns of Midsomer Norton and Radstock straddle the north-eastern boundary of Mendip District with the District of Bath and North East Somerset Council (“BANES”). They mainly lie within the area of BANES. The upshot of the examination of LPP2 was that the Plan was modified so as to allocate land for 455 dwellings on the fringes of Midsomer Norton through policies MN1, MN2 and MN3. The largest of these sites, land at White Post, would provide 250 homes (Policy MN1). In addition LPP2 allocates land off Mackley Lane, Norton St. Philip for 27 dwellings (Policy NSP1) and land off Great Dunns Close, Beckington for 28 dwellings (Policy BK1). Overall, LPP2 allocates land for 510 dwellings to satisfy the requirement for 505 units. The claimant and BANES objected to these allocations in the examination process.
5. The claimant seeks relief by way of an order for remittal in respect of Policies MN1, MN2, MN3, NSP1 and BK1 and related text. No other part of LPP2 would be affected.

6. The Secretary of State for Levelling Up, Housing and Communities has been joined as the first interested party because of the criticisms made by the claimant of the Inspector who conducted the examination of LPP2.
7. The second and third interested parties ("the developers") were represented jointly. Lochailort Investments Ltd owns the site allocated by Policy NSP1. Redrow Homes Limited has an option to acquire the site allocated by Policy BK1. Both participated in the examination process.
8. I am grateful to all counsel for their written and oral submissions.

### **Legal Framework for development plans and statutory review.**

9. The legal framework for the preparation, examination and adoption of development plans and for legal challenges under s. 11 of the PCPA 2004 has been set out in many authorities and need not be repeated here (see for example *Aireborough Neighbourhood Development Forum v Leeds City Council* [2020] EWHC 1461 (Admin) at [64]-[72]; *Keep Bourne End Green v Buckinghamshire Council* [2021] JPLI 81 at [42]-[58]; *Flaxby Park Limited v Harrogate Borough Council* [2021] JPL 833 at [21]-[38] and [124]-[127]).
10. As part of the preparation of a development plan, s.19(5) of the PCPA 2004 requires the local planning authority to carry out an appraisal of the sustainability of the proposals in the plan and to prepare a report of the findings of that appraisal (a sustainability appraisal or "SA"). Section 19(5) integrates the requirements for Strategic Environmental Assessment ("SEA") and the preparation of an environmental report under the 2004 Regulations (transposing Directive 2001/42/EC) with the statutory process under the PCPA 2004 for the preparation, examination and adoption of a development plan. In practice, a sustainability appraisal will be prepared under s.19(5) so as to satisfy the requirement in the 2004 Regulations for an "environmental report" (*Flaxby* at [26]). One of the purposes of the examination is to determine whether the requirements of s. 19 of the PCPA 2004, and hence of the 2004 Regulations, have been met (s. 20(5)(a)). It is well established that a breach of those Regulations is a potential ground of challenge under s. 113.
11. A further purpose of the examination is to determine whether the plan is "sound" (s. 20(5)(b)). A plan cannot be adopted unless it is determined by the Inspector to be sound (s. 20(7A) and s. 23(2)). If an Inspector is minded to conclude that a plan is unsound in one or more respects, then, if asked to do so by the local planning authority, he must recommend "main modifications" of the plan so as to make it sound (s. 20(7C)). The authority is then empowered to adopt the plan with those modifications (s. 23(3)). Accordingly, the judgment made by an Inspector as to whether a submitted plan (with any "main modifications") is sound is crucial to the legal ability of the local authority to adopt that document as part of its development plan (*Keep Bourne End Green* at [58]).
12. The legislation does not define the concept of "soundness". However, paragraph 35 of the NPPF provides guidance on the subject. A plan is sound if it is, *inter alia* :-

“a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet needs from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;”

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) ..... ; and

d) .....

13. The examining Inspector is obliged to give reasons for his conclusions on soundness and for the recommendations made (see s. 20(7) and (7A) and, in relation to s. 20(7C), see *University of Bristol v North Somerset Council* [2013] JPL 940 at [72]-[75] and *CPRE Surrey v Waverley Borough Council v Secretary of State for Housing, Communities and Local Government* [2020] JPL 505 at [72]). The legal standards for the duty to give reasons are set out in *Save Britain’s Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153 and *South Bucks District Council v Porter (No.2)* [2004] 1 WLR 1953.

14. 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 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 judgements he has made ([75]-[76]).

15. Neither an Inspector’s report nor the decision of the authority should be subjected to “hypercritical scrutiny”. They should be read with reasonable benevolence and in a reasonably flexible way (*St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2018] PTSR 746 at [6]-[7] and *R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452 at [41]-[42]).

16. The court’s jurisdiction under s. 113 is confined to the conventional public law principles of judicial review and statutory review (*Flaxby* at [124]).

17. The principles governing the interpretation of planning policy are well established. They were summarised in *Keep Bourne End Green* at [77]-[78].

### **The policies of LPP1 and LPP2 and the process followed**

#### *LPP1*

18. LPP1 was adopted on 15 December 2014. The Plan set out an overall spatial strategy for the District, specific policies for each of the five towns in the District and broad principles to direct how development will take place across

the rural areas. The Plan also contained strategic allocations of land for development and identified Future Growth Areas. LPP2 was to deal with the non-strategic allocation of land and more detailed development control policies.

19. The draft plan had been submitted for independent examination on 9 December 2013. Examination hearings took place between 31 March and 14 April 2014. The Inspector produced his report on the examination (“IR”) on 2 October 2014.
20. On MDC’s assessment of housing needs, the Inspector accepted that commuting and migration patterns showed links with neighbouring areas, particularly between the north-east of the District and BANES (IR 6). But he concluded that it had been reasonable for MDC to treat the District as a fairly self-contained housing market area and to base the assessment of housing need on the District (IR 9). Neighbouring local authorities were not seeking to meet any of their housing needs in Mendip and MDC was not relying upon neighbouring areas to meet the housing needs of its District (IR 11).
21. The Inspector then went on to assess the “soundness” of the LPP1 under ten main issues. Issue 1 considered whether the spatial strategy was sound. Three sub-issues had been raised, the first of which was that no consideration had been given to the alternative of developing land at Radstock and Midsomer Norton (IR 20).
22. The Inspector acknowledged that Radstock and Midsomer Norton are comparable in size with the main towns of Mendip, they have a similar range of services and have close functional links with settlements in the northern part of the District (IR 21). However, the Inspector considered that planning for those towns was primarily the responsibility of BANES, whose Plan did not see them as particularly sustainable locations for growth. He concluded that large scale, strategic allocations at Radstock and Midsomer Norton would not have been a reasonable alternative to MDC’s strategy (IR 22). As one of the main modifications to make LPP1 sound, the Inspector recommended Main Modification 16 (“MM16”), which deleted references to Mendip meeting the needs of Radstock and Midsomer Norton.
23. However, the Inspector went on to deal with the issue of whether LPP2 should consider making local, rather than strategic, allocations at Radstock and Midsomer Norton, in the context of meeting Mendip’s needs, particularly the need for about 500 additional homes. IR 23 to IR 25 should be read full:-

“23. What the Plan does not deal with, however, is whether such sites should be considered through the Local Plan Part II Allocations document as a way of meeting Mendip’s own development needs. This is particularly relevant as, largely as a result of the decision to extend the end date of the Plan to 2029, the Local Plan Part II Allocations document will need to find sites for an additional 500 or so sites across the District. *No substantial evidence has been put forward to suggest that sites on the edge of these towns should be ruled out as possible alternatives for such local, as opposed to strategic, allocations.* However, such allocations would need to be considered in

conjunction with B&NES and local communities and arrangements would need to be made to deal with any impact they might have on infrastructure in B&NES. The Plan is therefore, unjustified, and hence unsound in this respect. The Council proposes to remedy this element of unsoundness by making specific reference to the role that these towns play in Mendip and to *the possibility that sites on the edge of them will be considered for allocation* in order to meet Mendip's housing needs. (MM14, MM16, MM23 & MM26).

24. *No substantial evidence has been put forward which would justify going further than this and including a reference in Core Policy 1 which would commit the Council to directing some development towards Radstock and Midsomer Norton.* Indeed, on a similar point, no substantial evidence has been put forward to support suggestions that the Council should specify in more detail where the additional 500 houses will go. On the basis of the information available I consider that the Council is correct to take the approach that it does in the Plan and *simply state in general terms that these houses will be located in accordance with the Plan's spatial strategy as set out in Core Policy 1 and that this could include land adjacent to Radstock and Midsomer Norton.*

25. I am satisfied, therefore, that there was no necessity for the Council to have fully appraised the alternative of allocating a strategic site or sites at Radstock or Midsomer Norton and that the Plan, as proposed to be modified, provides an adequate framework within which *the possibility of allocating sites at these towns could be appraised in the future.*" (emphasis added)

24. Under issue 3 the Inspector considered whether MDC had justified the distribution of housing in Policy CP1 between the settlements of the District. Concerns had been raised about the housing numbers indicated for individual villages. These had been based upon allowing a 15% increase in the existing housing stock of a village, subject to an upper limit. But it was recognised that a flexible approach to allocation would be taken in LPP2 (see IR 65 to IR 70).
25. The Inspector returned to the subject of the additional 500 houses at IR 101:-

*"The point is made earlier in this report (paragraphs 23 and 24) that the decision to extend the end date of the Plan means that the Part II Local Plan Allocations document will need to find sites for an additional 500 or so houses. Various proposals as to how these houses could be distributed have been put forward by representors. However there is no substantial evidence at this time to indicate that these houses should be directed towards one or another location. The approach taken in the Plan, which is to indicate that these houses will be distributed in accordance with the Plan's spatial strategy, is, therefore, sound."* (emphasis added)

26. Policy CP1 of the adopted LPP1 sets out the spatial strategy for Mendip. The policy provides that to enable the most sustainable pattern of growth for the District:

- (i) The majority of development will be directed towards the five principal settlements, the towns of Frome, Glastonbury, Shepton Mallet, Street and Wells to reinforce their roles as market towns. Specific policies for each town were set out in Core Policies 6 to 10;
- (ii) In the rural parts of the District new development to meet local needs will be provided in :-
  - i) Sixteen “primary villages”, including Beckington and Norton St. Philip. These villages offer key community facilities and some employment opportunities, making them best placed to accommodate more new rural development;
  - ii) Thirteen “secondary villages”. These villages offer some services making them appropriate for development to meet more localised housing, business and service needs;
  - iii) In other villages and hamlets, development in line with Policy CP4 to meet specifically identified local needs.
- (iii) Development in the open countryside will be strictly controlled, but may exceptionally be permitted in accordance with Policy CP 4.

27. The scale of housing development within the settlement hierarchy is set out in Policy CP2. This provides for 9,635 new houses, of which 7,350 are to be located in the five towns and 1,780 in the primary, secondary and other villages. Lastly there is a requirement to provide 505 additional houses in the District in accordance with para. 4.21 of the explanatory text.

28. The Inspector's MM 23 inserted into the explanatory text of LPP1 a new paragraph 4.21:-

“The Review of Housing Requirements (2013) and the rolling forward of the plan period to 2029 will result in an additional requirement for 505 dwellings in the District. This will be addressed in Local Plan Part II: Site Allocations which will include a review of the Future Growth Areas identified in this plan. The Site Allocations document will also be able to take account of issues in emerging Neighbourhood Plans, updated housing delivery, revised housing market areas and housing needs identified through cross boundary working. Allocations from this roll-forward are likely to focus on sustainable locations in accordance with the Plan’s overall spatial strategy as set out in Core Policy 1 and may

*include land in the north/north-east of the District primarily adjacent to the towns of Radstock and Midsomer Norton in accordance with paragraph 4.7 above.” (emphasis added)*

29. Paragraph 4.7 of LPP1, as amended by the Inspector’s MM16, reads as follows:-

“The towns of Radstock and Midsomer Norton lie on the northern fringe of Mendip district. The main built extent of these towns lie in Bath and North East Somerset; but some built development exists within Mendip and other built and permitted development immediately abuts the administrative boundary. This Local Plan, whilst taking into account development opportunities on land abutting the towns, does not make any specific allocations for development, particularly for housing. *The Council will consider making specific allocations as part of the Local Plan Part II Site Allocations to meet the development needs of Mendip which have not been specifically allocated to any particular location in this Part I Local Plan.* In the event that such allocations are considered, this will be undertaken in consultation with B&NES and local communities. Any impact on infrastructure in B&NES such as education, transport or community facilities, will be addressed either through s.106 contributions or through CIL arising from new development in Mendip.” (emphasis added)

30. Consistent with Policy CP2 and paras. 4.7 and 4.21, the Key Diagram of LPP1 stated under the heading “District Wide”: “an additional 505 dwellings to be allocated in the district”.

31. Policy CP2(2)(c) set out principles for allocating housing land in addition to the strategic allocations, a process to be undertaken in LPP2:-

“c. Other allocations of land for housing and, where appropriate, mixed use development, outside of Development Limits through the Site Allocations process in line with:

- (i) the principle of the proportionate growth in rural settlements guided by the requirements identified in the text above;
- (ii) informed views of the local community;
- (iii) The contribution of development since 2006 towards identified requirements in each place, development with planning consent and capacity within existing Development Limits.”

The “proportionate growth” criterion in Policy CP2 (2)(c)(i) is the subject of the claimant’s challenge in ground 3.

32. Paragraphs 4.31 to 4.36 of the explanatory text set out more fully MDC's approach to the allocation of housing land in the rural part of the District. They aim to meet housing needs as locally as possible. One of the two broad principles on distribution was that new development in each place should be appropriate to its existing scale and have regard to environmental constraints. That led to a village housing requirement for each settlement that has been based upon proportionate growth equating to 15% of the existing housing stock. Where more than 15 units remained to be provided in order to meet the necessary housing requirement for a particular village, the land would be allocated in LPP2.

*LPP2*

33. In October 2015 MDC began consultation on an Issues and Options document for LPP2. In January 2018 a pre-submission draft of LPP2 was published for consultation. That was accompanied by MDC's first SA report dated December 2017. Paragraph 6.4 of the SA explained that no allocations were proposed for any settlement where its housing requirement figure in LPP1 had already been exceeded (see also para. 7.4). That was the case for all the villages in the north-east part of the District. Accordingly, the drafts of LPP2 did not select any sites in that area.

34. The SA assessed only two options in relation to the provision of housing. Option 1 was simply for the delivery of the housing targets in LPP1. Option 2 went further by increasing development in the towns of Frome, Glastonbury, Street and Wells, in addition to meeting the requirements identified in LPP1 for villages. MDC decided in favour of Option 2, despite it having greater negative impacts, because of the need to deliver more housing than the minimum requirement figures in LPP1.

35. Paragraph 3.10 of the pre-submission draft of LPP2 (January 2018) set out the five objectives of the Plan for housing supply. They included "(a) to address the minimum requirements specified in Local Plan Part I" and "(d) to achieve a distribution of growth consistent with the spatial strategy housing supply objectives of the Plan". Paragraph 3.11 said those five objectives could be addressed through LPP2 and without needing "a complete review of the spatial strategy". Paragraph 3.12 stated that LPP2 relied upon a site-based approach which relied upon "assessing available and sustainable sites to address these objectives rather than revising district and settlement housing requirements". Paragraphs 3.13 to 3.36 then set out how the policies in LPP2 proposed to meet those objectives.

36. Paragraphs 3.21 to 3.34 explained MDC's policy approach for satisfying objective (d). Paragraph 3.33 referred to the need identified by Policy CP2 of LPP1 to distribute a further 505 dwellings and to para. 4.21 of that Plan. MDC considered that that need had largely been met by "non-Plan commitments", that is by the grant of planning permissions, so that LPP2 need not make any allocation of land to fulfil that particular need. Against that background, para. 3.34 then addressed the possibility of allocations at Midsomer Norton and Radstock:-

“3.34 Outside the five main towns, Local Plan Part 1 indicates (in para. 4.7) that land promoted on the edge of the district near Westfield, Midsomer Norton and Radstock could be identified to meet housing need in Mendip. No land is allocated in these locations as there are sufficient sites in Mendip settlements which are better placed to fulfil the district’s housing and employment needs. In addition, the adopted development plans for Bath and NE Somerset and recently published West of England Joint Spatial Strategy do not consider this area as a suitable location for additional housing growth.”

37. Paragraph 3.38 of the January 2018 draft of LPP1 explained that no additional allocations would be made for villages which had exceeded their LPP1 requirements, applying the principle of proportionate growth in Policy CP2(c)(i) of LPP1.
38. Thus, the policies prepared in accordance with Option 2 in the SA and objective (d) of the January 2018 draft of LPP1 proposed no housing allocations for any part of the north-east of the District.
39. In January 2019 the submission version of LPP2 was sent for examination by an Inspector. The first set of examination hearings took place between July and August 2019.
40. On 25 July 2019 the Inspector issued a Request for Further Statements (document ED 11). Paragraph 7 sought information from MDC on meeting the need identified in LPP1 for an additional 505 dwellings:-

“MDC to write Note on the status of the 505 dwellings which are identified in Core Policy 2 taking into account the references in LPP1 paragraphs 4.5, 4.21 and paragraph 23 of the LPPI Inspector’s Report. In particular, does LPP1 provide for, or anticipate in LPP2, allocations within the north-eastern part of Mendip – eg sites adjacent to Midsomer Norton and Radstock and sustainable villages in that area?”

41. During August 2019, MDC responded in a document referred to as IQ7. The Council stated that in its view the text in LPP1 and the Inspector’s report of the examination “do not direct [LPP2] to address a specific quantum of planned growth or create a specific requirement for this to be located adjacent to Midsomer Norton and Radstock”. MDC added that it did not accept that those settlements should be regarded as the District’s “sixth town”.
42. On the subject of “direction of growth” the Council stated in IQ7:-

“While it is accepted that while these locations are not exempted from consideration in LPP2, para. 4.21 only states that this ‘may include’ land in the north/ north east of the District. The council dispute the interpretation with other parties that the phrase “that the council will consider making specific allocations” amounts to a direction in LPP1 to explicitly allocate sites. Subject to the

specific concerns raised around sustainability appraisal, the council's view is that it has 'considered' sites in this location in the emerging LPP2. This is summarised in appendix 1"

43. As to villages in the north-east of the District the Council stated in IQ7:-

"LPP1 paras. 4.28 – 4.27 set out the rationale and principles of site allocations in villages based on proportionate growth (see para. 4.32). LPP2 does not make additional allocations in primary and secondary villages in the north east of the district. LPP2 Para 3.22 explains that the Plan focuses on those settlements where land supply falls short of the minimum requirements. Table 1 demonstrates that settlements in the north east of district have already significantly exceeded minimum requirements"

44. Appendix 1 to IQ7 summarised the various documents in which MDC had considered whether to allocate sites in the north-east of the District and concluded that no such allocations should be made applying the spatial strategy. Table 1 showed that commitments completed between 2006 and 2018 had already provided 196% and 251% of the requirements set out in LPP1 for Beckington and Norton St. Philip respectively.

45. On 13 August 2019 MDC requested the Inspector to recommend "main modifications" to LPP2, thus triggering s. 20(7C) of the PCPA 2004.

46. On 10 September 2019 the Inspector issued an "Interim Note" (document ED20) following the first round of examination hearings. He stated that LPP2 "could be found sound, subject to the main modifications .... below" (para. 2). However, he emphasised that he had not reached any final conclusions at that stage. The modifications would need to be the subject of consultation and SEA.

47. In relation to the requirement for 505 additional dwellings the Inspector said:-

"16. Land to the North-East of Mendip District: The overall distribution of development proposed in the Plan broadly conforms with the relevant policies in LPP1, with one exception. The table in policy CP2 of LPP1 makes specific reference to an additional figure of 505 dwellings; furthermore, paragraph 4.21 in LPP1 refers to the requirement *to address the housing needs of the north-eastern part of the District*, including land adjacent to the towns of Radstock and Midsomer Norton. These two towns are located just over the Mendip border in the local planning authority (LPA) of Bath and North-East Somerset (BANES).

17. From my reading of the LPP1 Inspector's Report and LPP1 itself, and from the discussion at the Hearing sessions, it seems to me that there *is a strategic expectation that allocations for development in this part of the Plan area should be considered*. I consider that in these circumstances it is

appropriate for this additional element of 505 dwellings to be apportioned to sustainable settlements *in the north-east part of the District*, both on sites adjacent to the two aforementioned towns within BANES, and possibly also within other settlements which lie within the District, which could lead to other sustainable benefits, for example to provide additional pupils to assist schools with decreasing complements, or where the future existence of these schools within the plan period is at risk.” (emphasis added)

48. The note was accompanied by a draft schedule of main modifications which included MM5:-

“Allocation of 505 additional dwellings (with reference to the table in core policy CP2 and para. 4.21 of the supporting text) in *the north-east of the District*, at sites adjacent to Midsomer Norton and Radstock, and on sustainable sites at primary and secondary villages within this part of the District. All the sites considered for possible allocations, including those identified in Note IQ-3, will be subject to Sustainability Appraisal.” (emphasis added)

49. On 23 September 2019 MDC sent a letter to the Inspector seeking clarification of whether the Interim Note had been intended to identify an area of search for the Council to use and, if so, to clarify that area. The letter was accompanied by a draft “505 dwellings – Background Paper”. That set out MDC’s understanding of the Interim note, namely that the Inspector had directed the Council to assess the capacity and deliverability of sites adjacent to Midsomer Norton and Radstock and to review the sustainable settlements in the north-east of the District for allocations.

50. The Inspector responded on 25 September 2019 (document ED26) that the area of search should include the edges of Midsomer Norton and Radstock within the District, “as well as considering the possibility of land for new homes within the primary villages which are located to the North of Frome.” It is agreed that that last phrase referred to Norton St. Philip, Beckington and Rode. The area of search was to be confined to the north-east of the District.

51. On 21 January 2020 MDC published “505 Dwellings – Background Paper” and the Second Addendum to the SA for public consultation.

52. MDC’s Background Paper referred to MM5 in the same terms as the modification identified by the Inspector in his Interim Note ED20 (see [48] above). MDC explained that they were treating MM5 as a requirement to *allocate* 505 additional dwellings. Windfalls and unplanned development could not be counted towards that figure. Consequentially, a criteria-based policy or identification of a “broad location” were considered to be inappropriate alternatives (para. 19). MDC also considered and rejected deferral of the allocation of 505 dwellings to the next review of the local plan (paras. 20-22).

53. As for the area of search, the Background Paper assessed sites on the edge of Midsomer Norton and Radstock and all primary and secondary villages in the north-east quadrant of the District. MDC “interpreted” the Interim Note and MM5 as not referring to allocations across the District (p.11). Accordingly, MDC did not consider possible allocations outside the north-east quadrant.
54. BANES objected to the Interim Note and the proposed allocations. They said that the policy in LPP1 was for the 505 dwellings to meet the wider needs of the District, was not specific to the north or north-east sector, and would be better met in more sustainable locations in accordance with the spatial strategy in Policy CP1 of LPP1.
55. Appendix 3 to MDC’s Background Paper shows the growth which had taken place in the villages in the north/north-east of the District. Norton St Philip and Beckington have experienced the greatest rates of growth in housing stock between 2006 and 2019, 34.4% and 30.6% respectively. That level of growth had already exceeded the minimum requirements stated in LPP1 for additional development in each village by 233.3% and 196.4% respectively.
56. The Second Addendum to the SA re-assessed MDC’s Option 2 Strategy after the proposed main modifications. Those modifications included the 5 allocations which eventually formed part of the adopted version of LPP2, plus one other draft allocation of land for 26 homes at Rode (draft policy RD1). MDC did not review its previous assessment of Option 1 (para. 16).
57. During the consultation BANES made representations objecting to the approach taken by the Inspector and to MM5. The authority considered that they were both based upon a misinterpretation of LPP1. The requirement for 505 dwellings did not relate to the north/north-east of the District. The figures derived from a district-wide, numerical shortfall. BANES explained that incremental housing growth in Midsomer Norton and Radstock had resulted in an imbalance with jobs, so that more employment land needed to be allocated in its Core Strategy. MDC’s proposed allocations in those settlements would worsen that imbalance, impact on infrastructure and increase out-commuting. The policies proposed for extensions to Midsomer Norton were contrary to the Core Strategy for BANES. LPP1 referred to a requirement for 505 additional dwellings in the District. “Therefore, reasonable alternative sites should be district-wide.”
58. The claimant (together with Beckington and Rode Parish Councils) made representations through their solicitors DLA Piper. They also submitted that the Inspector’s reading of the policy in LPP1 for 505 additional dwellings was incorrect. This was to be a contribution towards meeting district-wide housing needs and not the particular needs of the north-east of the District. They even went so far as to describe the Inspector’s interpretation as perverse. They relied upon paras. 23-24 of the Inspector’s Report on the examination of LPP1, along with the text of that Plan, to support their position. LPP1 required the additional dwellings to be distributed in accordance with the spatial strategy. The proposed allocations failed to comply with that approach or, indeed, with Policy CP2. MDC had failed to consider locating the additional allocations in the five towns of the District. The proposed allocations in Norton St. Philip, Rode and

Beckington did not respect the principle of proportionate growth. Furthermore, MDC had failed to consider the relative underprovision of housing in the towns and six primary villages in other parts of the District which would not meet their LPP1 requirements.

59. Following the consultation exercise, on 3 April 2020 the Inspector stated that a second set of examination hearings would take place solely to address the 505 dwellings issue and the proposed allocations.
60. On 29 June 2020 the Inspector issued his note on Suggested Matters, Issues and Questions for that part of the examination, which included the following:

**“Matter 1 – Overall Housing Provision for Mendip**

(i) .....

(ii) Is there a ‘strategic expectation’, based on LPP1, for allocating 505 additional dwellings in the north-east part of the District, and if so, what is the evidence to support it?

(iii) Assuming that the additional 505 dwellings are part of the LPP1 total of 9,635, is the ‘strategic expectation’ for allocating these dwellings in the north-east part of the District still justified and sustainable?

(iv) Is the definition of the North/Northeast ..... of the District ..... justified?

(v) Is there a justified and sustainable case for spreading the allocation for the additional 505 dwellings out across the entire District?

.....

**Matter 3 – Selection of settlements to accommodate growth**

(i) What is the justification for the selection of specific settlements to be the basis of the allocations of the 505 additional dwellings?”

.....

**Matter 4**

.....

**4.3 Other sites within the north-east of the District:**

In the light of the consideration of the sites identified in sections 4.1 and 4.2 above, are there any other sites, either on the edge of Midsomer Norton/ Radstock, or within the three Primary Villages identified above, or in any other settlements in the

north-east of the District, which are considered to be more sustainable for the allocation of new development to meet the additional 505 dwellings total? If so, what is the evidence?"

61. The second set of examination hearings took place between 24 November and 3 December 2020. In its hearing statement the claimant reiterated its objections and pointed out that the Second Addendum to the SA erroneously limited its area of search to the north-east sector. In its statement BANES continued to challenge the Inspector's interpretation of LPP1. The requirement for 505 dwellings came from a district-wide, numerical shortfall, and not a shortfall in provision in the north-east of the District. LPP1 did not create any "strategic expectation" that the 505 dwellings would be allocated in the north-east part of the District.
62. In its hearing statement on matter 1, MDC stated that it did not consider a further district-wide site allocation exercise would address the concerns over soundness raised by the Inspector in his Interim Note (ED 20). Furthermore, a wide area of search "is neither appropriate nor proportional given the pressing commitment to update LPP1" (paras. 13 and 14).
63. In relation to the Second Addendum to the SA, MDC said this at para. 6 of their hearing statement on Matter 2:-

"The SA for the allocation of sites for 505 dwellings in the *north-east of Mendip District* is complementary to the original SA undertaken for LPP2 (SD11, SD12 and SD13). Since the spatial strategy has already been established in the adopted LPP1, it is the Council's view that there is no further requirement for the LPP2 SA to establish alternative distribution scenarios *in the north east of the district*. The Council has sought to meet the need in accordance with the adopted spatial strategy *as directed by the examining Inspector with reference to ED20*. In accordance with the locational directions set out within LPP2 Core Policy CP2 and the supporting text, land to accommodate 505 dwellings was sought in the north east of the district including sites adjacent to Midsomer Norton and Radstock." (emphasis added)

64. In its hearing statement on Matter 3, MDC stated at para. 3 that "the justification" for the selection of specific settlements to meet the need for 505 dwellings was drawn from a number of documents: the Inspector's advice at paras. 17 and 18 of ED20, the "clarification" in ED26, the Inspector's Main Modification MM5, and Policy CP2 and paras. 4.7 and 4.21 of LPP1.
65. In paras. 4, 5 and 11 of its hearing statement on Matter 3 MDC stated:-

"4. The Inspector has advised the Council that, in order for LPP2 to be considered sound, it is necessary for an additional 505 dwellings to be allocated. It is clear from the Inspector's advice as set out in ED20 and ED26, that the *location of these allocations is expected to be within the north-eastern area of the*

*district* and specifically adjacent to Midsomer Norton or Radstock and the villages to the north of Frome. However, there is no specific locational direction set out within Policy CP2 of LPP1. Paragraph 4.21 of LPP1 notes that, “Allocations...are likely to focus on sustainable locations in accordance with the Plan’s overall spatial strategy...and may include land in the north/north-east of the District primarily adjacent to the towns of Radstock and Midsomer Norton...”

5. The Council’s position is that all sustainable locations within the north-eastern area of the district should be considered to accommodate the 505 additional dwellings required. *It is clear from ED20, ED26 and the pertinent sections of LPP1 that distribution of these dwellings across other sustainable locations in the district would not satisfy the Inspector’s interpretation of Policy CP2.* Housing delivery and allocations across the District are already expected to exceed LPP1 plan period requirements. The additional dwellings are sought to address the specific north-eastern requirement and the exercise undertaken has sought to achieve that specific aim in a timely manner. The commitment to early review of the plan as evidenced through MM01 is intended to satisfy any general changes to the district housing requirement; this is considered to be outside the remit of LPP2.

11. It is the Council’s position that *the justification for the allocation of the 505 additional dwellings to the north east of Mendip District is based on the Inspectors’ interpretation of LPP1 CP2 as set out in ED20 and ED26. The Council have therefore undertaken additional sustainability appraisal to support the achievement of this aim; not to assess alternative levels of provision across the rest of Mendip District.*” (emphasis added)

66. The Inspector’s report on the examination of LPP2 was published on 1 September 2021. Under his assessment of the soundness of LPP2 the Inspector identified seven main issues.
67. In relation to the second issue, which dealt with *inter alia* the SA, the Inspector said at IR 40 – IR 41:-

“40. As part of its response to my Interim Note, the Council commissioned further SA19 and HRA work as part of the consultation on the MMs, in relation to considering provision for an additional 505 dwellings in the north-east part of the District (see Issue 3). These documents considered the sustainability and ecological impacts of all the additional sites proposed for development and they conclude that the ‘preferred option’ sites are sustainable, subject to certain mitigation measures, set out in the MMs.

41. The Council's 505 Dwellings Background Paper also explains that realistic alternative sites were considered around Midsomer Norton and Radstock, as well as assessing the suitability of villages within the north-east of the District, based a set of criteria covering key elements of sustainability.”

He concluded that the SA was “justified”.

68. At IR 53 the Inspector considered that the overall distribution of housing in the submitted draft of LPP2 was broadly in line with LPP1 with one significant exception, namely meeting the requirement in Policy CP2 for an additional 505 dwellings. He said in IR 55 that policy CP2 states that this additional requirement is to be provided in line with para. 4.21 of LPP2, which refers in turn to para. 4.7 Both of these paragraphs address not only housing numbers but also strategic distribution.
69. At IR 66 the Inspector explained why the additional 505 dwellings should be provided as planned allocations, not windfalls. The claimant does not challenge that conclusion.
70. At IR 59 to IR 62 the Inspector referred to conclusions in para. 23 of the Report of the Inspector who conducted the examination of LPP1, but he did not refer to para. 24 (see [23] above). At IR 63 the Inspector said:-

“It therefore seems to me that the LPP1 Inspector’s view was that this Plan should clearly consider the possibility of allocating housing sites on the edge of the towns of Midsomer Norton and Radstock, which implies they should have been assessed by SA/HRA. This has not happened in the preparation emerging Plan, that is until the Council’s response to my invitation to consider doing so, as set out in document ED 20. This document precipitated firstly, a Background Paper from the Council, which assesses the potential for additional housing at sites around Midsomer Norton and Radstock (and elsewhere within the north/north-east of the District), together with site assessments for additional allocations in addendums to the SA and HRA.”

71. The Inspector’s views on the interpretation of LPP1 are to be found within IR 65 to IR 72. It is necessary to quote these paragraphs in full:-

“65. The 505 dwellings provision appears in a box in the LPP1 Key Diagram, which refers to this quantum of additional housing “to be allocated in the District”. This was raised by representors in support of spreading any additional development generally across the District, and not in the north-east of Mendip. *However, this would be contrary to the strategic thrust of paragraphs 4.21 and 4.7 in the LPP1, which focus on the need to consider making specific allocations with reference to the towns of Radstock and Midsomer Norton rather than distributing the additional development generally across the District.*

66. Others argued that the additional 505 dwellings should be provided through windfalls. However, there is no mention in either the IR or LPP1 of windfalls as appropriate for this purpose. I consider there are two reasons for this. Firstly, allocations, unlike windfalls, represent a planned commitment to make LPP2 positively prepared, with a reasonable certainty of delivery; and secondly, many windfalls, by their nature, are small sites, below the threshold for securing a proportion of AH, which is a critical issue for Mendip, which I explain later in my report.

67. LPP1 (para. 4.21) states that the allocations for the additional 505 dwellings, to be addressed in LPP2, are likely to focus on sustainable locations in accordance with the strategy in core policy 1 and may include land in the north-east of the District, primarily adjacent to the towns of Radstock and Midsomer Norton.

68. However, this is not reflected in this Plan. The Plan's treatment of the potential options for development in paragraph 3.34, page 12, falls short of what I consider to be the expectations of the LPP1 Inspector and LPP1 itself. The sustainability doubts expressed in this paragraph, for example, run counter to the findings of the SA Second Addendum.

69. In fact, paragraph 4.7 adds further strategic input on this issue; firstly by drawing attention to the potential for new development on the fringes of Midsomer Norton and Radstock; secondly by stating that the Council will consider making specific allocations in this area to meet the development needs of Mendip; thirdly by stating that any development in this area will be undertaken in consultation with B&NES Council; and fourthly by raising the issue of addressing the impact on infrastructure in B&NES, such as education, transport and community facilities.

70. Although paragraph 4.21 states that the additional 505 dwellings 'may' rather than 'will' include allocations in the north-east of the District, I consider it significant that nowhere else in Mendip is singled out for comment, in either the IR or in LPP1, in relation to where the 505 additional dwellings requirement should be allocated.

71. *It is clear to me that the strategic direction in LPP1 requires the Council to consider development allocations to meet the needs in the north-east of the District; that this development is to be carried out in consultation with B&NES and is to be located primarily on the edge of Midsomer Norton (but not necessarily in partnership with B&NES); and that key infrastructure decisions need to be faced.*

72. The Council has now acted *on this strategic steer* by responding positively in response to document ED20, that the 505 dwellings should be allocated in the north/ north-east part of the District. Its subsequent documentation in the 505 Dwellings Background Paper and the supporting SA and HRA addenda, present robust and convincing justification for its view.” (emphasis added)

72. At IR 73 to IR 84 the Inspector addressed a separate question: the economic, social and housing needs evidence to justify the allocation of 505 dwellings in the north-east of Mendip District. Here the Inspector assessed the planning merits of the proposed distribution of the 505 dwellings and concluded that it was sound and consistent with the objectives of LPP1. The claimant, understandably, raises no legal challenge to this part of the Inspector’s report.
73. In IR 85 to IR 86 the Inspector provided a “summary of the strategic reasons for increasing the total housing provision in Mendip by 505 dwellings”. At IR 85 he said:-

“In response to the key question expressed in paragraph 58 above, there is a robust case, both in relation to the IR and LPP1, and supported by the economic, social and housing needs evidence set out above, that it is appropriate and sustainable for an additional 505 dwellings to be allocated within the north-east part of the District, primarily centred on the towns of Radstock/Midsomer Norton. This view is supported by the recent work undertaken by the Council in its 505 Dwellings Paper and its addendums to the SA and HRA. I therefore conclude that the decision to allocated 505 dwellings in the north-east of the District is justified, sound and consistent with the aims and objectives of LPP1.”

It is common ground that the Inspector’s key conclusion in this paragraph, agreeing with MDC’s decision to allocate the additional housing in the north-east of the District, was not based solely on his assessment of the planning merits. It was also based upon his interpretation at IR 59 to IR 72 of both LPP1 and the Inspector’s Report in 2014 on the examination of that Plan. The reasoning in IR 86 does not alter that analysis.

74. A report on the adoption of LPP2 was made to the meeting of the Full Council on 20 December 2021. MDC noted the Inspector’s report, accepted the Main Modifications considered necessary to make LPP2 sound and agreed that the Plan as amended be adopted. The report referred to the Inspector’s Interim note dated 10 September 2019 (ED 20) and stated that for the Council “the main area of work was to respond to the requirement for additional housing sites for 505 homes in the north/north-east of the District”.
75. The Inspector had recommended against the inclusion in LPP2 of the proposed allocation at Rode and so the adopted plan contained only the three allocations at Midsomer Norton and the allocations at Norton St Philip and Beckington.

76. Paragraphs 1.4 and 1.6 of the adopted LPP2 state that the Plan allocates specific sites for development in line with the objectives and policies of LPP1.
77. Table 4a of LPP2 sets out the uplift from the requirement figures for settlements given in Policy CP2 of LPP1. Whereas CP2 had set out an additional requirement of 505 dwellings in relation to “the District”, Table 4a of LPP2 stated that this figure related to “NE Mendip District”.
78. The SA Adoption Statement for LPP2 says at page 8:-

“During the examination of the plan, the Council were advised by the Inspector to seek allocations for a further 505 dwellings in the north/north east of the District. Since the spatial strategy had already been established in LPP1, there was no further requirement for the LPP2 SA to establish alternative distribution scenarios in the north east of the district. *Instead, the Council sought to meet the need in accordance with the adopted spatial strategy as directed by the Inspector.*

*In accordance with the locational directions set out within LPP2 Core Policy CP2 and the supporting text, land to accommodate 505 dwellings was sought in the north east of the district including sites adjacent to Midsomer Norton and Radstock. The SA undertaken was consequently a site assessment process. ....”*

(emphasis added)

79. In the section of LPP2 dealing with Beckington and Norton St. Philip, paras. 11.2.2 and 11.20.3 (derived from MM 66 and MM 111) state that the allocations were necessary to make the Plan sound, specifically to address *the requirement in policy CP2 of LPP1* to provide 505 dwellings adjacent to Midsomer Norton and Radstock and in settlements in the north/north-east of the District. In the section dealing with Midsomer Norton and Radstock, para. 10.6.2 (derived from MM 58) summarises paras. 4.7 and 4.21 of LPP1.

### **A summary of the grounds of challenge**

80. The claimant advances the following grounds of challenge:-

Ground 1: Misinterpretation of the LPP1 by considering that it required an additional 505 dwellings to be allocated in the north-east of the district through LPP2; or, at the very least, set a “strategic expectation” that required primary consideration to be given to allocations within this location.

Ground 2: In breach of regulation 12(2)(b) of the 2004 Regulations, failure to consider any reasonable alternatives to allocating the additional 505 dwellings within the north-east of the District through the sustainability appraisal.

Ground 3: Failure to have regard to Policy CP2.2(c) and the requirement for proportionate development in rural settlements

and/or provide adequate reasons to explain how this had been taken into account.

Ground 4: the decision to allocate sites in Norton St Philip (NSP1) and Beckington (BK1) through modifications to LPP2 was irrational.

## Ground 1

81. There are two preliminary points which are not in dispute. First, the approach taken to the allocation of the additional 505 dwellings in LPP2 was that their distribution should accord with Policies CP1 and CP2 of LPP1. Neither the Inspector nor MDC sought to justify allocations in Midsomer Norton, Beckington and Norton St Philip on a basis which departed from the spatial strategy laid down in those policies. If a departure had been intended, MDC and/or the Inspector would have been expected to say so in explicit terms and to explain why that course was being taken. But they did not do so.
82. As noted in [73] above, the Inspector's endorsement of the allocations was not based solely on his appraisal of the planning merits at IR 73 to IR 84. It was also based upon his understanding of LPP1 and the Report of the Inspector's examination of that plan.
83. Accordingly, there are four issues which the court needs to consider:-
  - (i) What is the correct understanding of the Report on the examination of LPP1 in relation to the 505 dwellings issue?
  - (ii) What is the correct understanding of the adopted LPP1 on that matter?
  - (iii) Did the Inspector who conducted the examination of LPP2 misunderstand (i) and/or (ii)?
  - (iv) Did MDC misunderstand (i) and/or (ii)?
84. Ordinarily a development plan should be interpreted as it stands, given that it is a public document. It is inappropriate to investigate its provenance and evolution (see *R (on the application of TW Logistics Limited v Tendring District Council* [2013] 2 P. & C.R. 9 at [13]-[15]). In this case, however, both MDC and the Inspector who examined LPP2 relied upon the 2014 Report of the examination of LPP1 in order to inform their understanding of the relevant policies in LPP1. BANES and other objectors to the draft allocations made strong representations that the 2014 Report and LPP1 had been misunderstood. That was a substantial issue in the second examination which the Inspector addressed. No one has suggested that he should not have done so because the views of the Inspector who examined LPP1 were legally irrelevant.
85. Mr. Williams, on behalf of the Secretary of State, emphasised the observations of Lord Carnwath JSC in *Hopkins Homes Limited v Secretary of State for Communities and Local Government* [2017] 1 WLR 407 at [25]-[26]. A

development plan contains statements of policy. It is not a statutory text. The courts should respect the expertise of specialist Planning Inspectors and start from the presumption that they will have understood the policy framework correctly. They have primary responsibility for resolving disputes between local planning authorities, developers and others over the practical application of policies, both national and local. The courts must exercise caution against undue intervention in policy judgments within the areas of specialist competence of the Inspectors. A distinction must be drawn between interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy.

86. Similarly, there is no dispute that it is for the courts to resolve a genuine issue about the meaning of what an Inspector has said in a decision letter or report. But Mr. Williams rightly emphasised that legal inadequacy of reasoning depends on whether there is a genuine, rather than a forensic, doubt as to what an Inspector concluded and why, or whether the reasoning raises a substantial doubt that a public law error has been made. An adverse inference of that kind will not readily be drawn (*South Bucks District Council v Porter (No. 2)* [2004] 1 WLR 1953 at [31]-[36]).

*(i) What is the correct understanding of the Report on the examination of LPP1?*

87. The Inspector proceeded on the basis that MDC was not seeking in LPP1 to meet any of its housing needs in neighbouring districts nor were neighbouring authorities seeking to meet any of their needs in Mendip ([20] above).

88. The Inspector had to consider representations by developers that MDC had failed to consider development at Midsomer Norton and Radstock as an alternative option. He concluded that it was unreasonable to seek “large scale, strategic allocations” at those two towns and that a main modification was required deleting references to the needs of those settlements being met in Mendip ([22] above).

89. The Inspector then went on to conclude that LPP1 had failed to consider the making of local, as opposed to strategic, allocations at Midsomer Norton and Radstock. This was particularly relevant in the context of the need to find sites for the additional 505 dwellings and so LPP1 was “unsound” in this respect. To remedy that issue, main modifications were necessary so that the Plan referred to the “possibility that sites on the edge of [Midsomer Norton and Radstock] will be considered for allocation in order to meet Mendip’s housing needs” (IR 23).

90. The following points in the Inspector’s report on LPP1 are crystal clear:-

(i) There was no justification for including in LPP1 any statement which would commit MDC to directing some development towards Midsomer Norton and Radstock. There was no justification for going any further than requiring MDC to *consider* making allocations in LPP2 on the edge of those settlements (IR 23 and IR 24);

- (ii) That is entirely consistent with the nature of the criticism which the Inspector identified and dealt with. MDC had failed to *consider* whether some development should take place in Midsomer Norton and Radstock. There was no evidence to justify ruling out any such consideration (IR 20 and IR 23);
- (iii) Allocating additional land for housing at Midsomer Norton and Radstock was no more than a “possibility” (IR 23 and IR 25);
- (iv) The object of any such allocation would be to meet the housing needs of Mendip District, not the needs of Midsomer Norton or Radstock. In LPP2 MDC would need to find land “across the District” for an additional 505 dwellings. The Inspector therefore did not say that the relevant area of search for meeting that need was confined to the north-east of the District (IR 23);
- (v) LPP1 should simply state that the additional 505 dwellings will be located in accordance with the Plan’s spatial strategy in Policy CP1 and this “could include” land adjacent to Midsomer Norton and Radstock (IR 24).

No other reading of the Inspector’s report is possible.

91. In IR 101 (see [25] above) the Inspector reinforced points (iv) and (v). Participants in the examination had put forward various proposals as to how the additional 505 dwellings could be distributed. The court was told that they included development at Midsomer Norton and Radstock. But the Inspector unequivocally stated that there was no substantial evidence to indicate that “these houses should be directed towards one or another location”. The upshot was that this housing was to be distributed in accordance with LPP1’s spatial strategy. It is difficult to see how the Inspector who examined LPP1 could have set out these points any more clearly.
92. One other conclusion is self-evident. The SEA for LPP1 did not address the relative advantages and disadvantages of locating all or some of the additional 505 dwellings in the north-east of the District as against other parts of the District, or across the District as a whole.

*(ii) What is the correct understanding of LPP1?*

93. The text of LPP1 is entirely consistent with points (i) to (v) in [90] above. That is hardly surprising, given that important passages in the adopted Plan were the result of main modifications recommended by the Inspector.
94. Policy CP2 para. 1 states that a minimum of 9,635 additional dwellings is to be provided in accordance with the table set out in the policy. The five main towns in the District are to provide 7,350 dwellings and the primary, secondary and other villages are to provide 1,780 dwellings. There is then a requirement for an additional 505 dwellings in the “District” in accordance with para. 4.21 of the supporting text. Likewise, the Key Diagram refers to this as a “district-wide” requirement.

95. Paragraph 4.21 refers to a need for 505 additional dwellings “in the District”. Allocations would be likely to focus on sustainable locations in accordance with the spatial strategy in CP1 and *may* include land in the north/north-east of the District, primarily adjacent to Midsomer Norton and Radstock in accordance with para. 4.7. The latter indicated that MDC would *consider* making specific allocations in those settlements as part of the exercise to be carried out in LPP2 to meet the needs of the District.
96. The spatial strategy in CP1 directs the majority of new development to the five principal towns in the District and then provides for development in the primary villages to meet local needs. As Mr. Williams pointed out, CP1 does not refer to Midsomer Norton or Radstock and so those settlements needed to be mentioned in paras. 4.7 and 4.21 of the explanatory text. But those paragraphs go no further than to require consideration to be given to making allocations in Midsomer Norton and Radstock, as part of an exercise to distribute the additional 505 dwellings in accordance with the spatial strategy in CP1. There is nothing in LPP1 to suggest that the Plan directs any development towards those settlements or to the north-east of the District, or expresses a preference for those locations over other parts of the District. There was no “strategic thrust” in that direction. There is nothing to suggest that the 505 dwellings were required to meet needs arising in the north-east of the District. Instead, those needs were said to be district-wide. Similarly, in their representations to the examination of LPP2, BANES stated that the figure of 505 dwellings had been derived from a quantitative shortfall across the district as a whole (see e.g. [57] above). That statement has not been contradicted.

*(iii) Did the Inspector who examined LPP2 misunderstand LPP1 and/or the Report of the Inspector who examined LPP1?*

97. As we have seen, in the submission version of LPP2 MDC had taken the view that there was no need to make any allocations of land to meet the requirement for 505 additional dwellings, because of planning permissions which had already been granted. No allocations were proposed for the north-east of the District ([35] to [38] above).
98. While the first set of examination hearings was still taking place, the Inspector issued document ED11, asking for MDC’s views on whether LPP1 provided for allocations in the north-east of the District. He referred to IR 23 of the first Inspector’s Report but not to IR 24 or IR 25. In its reply (document IQ7) MDC gave its interpretation of LPP1 as *not* directing allocations to be made in the north-east of the District, disputing the contrary view which some parties had advanced ([40] to [43] above).
99. In his Interim Note issued on 10 September 2019 (ED 20) the Inspector stated that the overall distribution of housing in LPP2 accorded with LPP1 save in one respect, namely compliance with para 4.21 of that plan. The Inspector considered that para. 4.21 contained a requirement to address the housing needs of the north-east of the District and the Inspector’s Report on LPP1 contained a “strategic expectation” that allocations in that area should be considered. This note was accompanied by draft main modifications. Draft MM5 required 505

dwellings to be allocated in the north-east of the District in order for the plan to satisfy the test of “soundness” (see [46]-[48] above).

100. In its response MDC said that they had understood the Inspector as directing them to consider settlements in the north-east of the District, and not in any other part of the District. The Inspector did not disabuse the authority of that notion (see [49] to [50] above).
101. The Inspector’s Report explains what then took place. On 21 January 2020 MDC published the Second Addendum to the SA, the “505 Dwellings - Background Paper” and proposed main modifications allocating six sites in the north-east of the District. Public consultation took place between 21 January and 2 March 2022 (IR 6). This generated a considerable response from the public, many of whom said that they had been denied the opportunity to deal with the principle of allocating 505 additional dwellings as well as the six new allocations (IR7). Accordingly, the second set of hearings were arranged to enable those matters to be addressed.
102. I accept Mr. Williams’s submission that the Inspector’s documents to which I have referred set out only provisional views and were subject to the examination process. The Inspector was careful to make that clear. Accordingly, what matters is how those issues were dealt with in the Inspector’s Report.
103. Nevertheless, it is also plain that the Inspector’s provisional statements relied upon his interpretation of both LPP1 and the first Inspector’s report to support his view that the requirement for 505 additional dwellings was to meet needs in the north-east of the District and that MDC should consider allocations in that area. His notes did not address the requirement in LPP1 that the additional dwellings be distributed in accordance with the spatial strategy in CP1 for the whole District.
104. The interpretation of LPP1 adopted by the Inspector resulted in MDC changing its approach to that subject. That interpretation was roundly criticised by BANES, the claimant and others during the examination (see [57] to [58] and [61] above). For its part, MDC proceeded on the basis that it should only consider allocations in the north-east of the District and not in sustainable settlements in other parts of the District. This was because of the Inspector’s interpretation of LPP1 and his directions to MDC in the context of the “soundness” of the Plan. The authority also referred to the pressing need to update LPP1 through the second part of the Local Plan (see [62] to [65] above).
105. On any view, these differences in the interpretation of LPP1 and also the 2014 Report, were “principal important controversial issues” engaging the legal duty to give reasons. If the Inspector felt that MDC, BANES and objectors had misunderstood what he had said about the interpretation of LPP1 and the first Inspector’s Report, then he ought to have said so in clear terms. The Report of the examination of LPP1 had been pellucid. The five points summarised in [90] above were unequivocal. The policies in LPP1 proceeded on that basis. If the second Inspector in his Report and/or MDC intended to depart from LPP1 in relation to those points then, at the very least, they were duty bound to say so and the local plan process would have been conducted on that footing. But we

do not find any such reasoning in the Report on the examination of LPP2 or in MDC's decision-making documents, or any other documentation. The Inspector's examination, and MDC's adoption, of LPP2, took place on the basis that the distribution of the 505 dwellings in that plan should accord with LPP1.

106. Counsel for the defendant and the interested parties point out that in his note "Suggested Matters, Issues and Questions" the Inspector had posed for the examination this question: "is there a justified and sustained case for spreading the allocation for the 505 dwellings out across the entire District?". That involved a consideration of the planning merits of the approach he had set out in ED 20 which resulted in the Inspector's evaluation in IR 73 to IR 84. But, as we have seen, the Inspector's overall conclusions on the allocations in the main modifications did not rest solely on those paragraphs. They also relied materially upon IR 56 to IR 72, which included his interpretation of LPP1 and of the 2014 Report on the examination of that Plan.
107. There is no doubt that in some parts of his Report the second Inspector used language which accurately reflected the 2014 Report and parts of LPP1. For example, in IR 63 he said that the 2014 Report had said that LPP2 should consider the "possibility" of allocating sites on the edge of Midsomer Norton and Radstock. In IR 67 the Inspector accurately referred to the last sentence of para. 4.21 of LPP1. But the problem is that the Inspector did not stop there. It is, of course, necessary to read his Report as a whole.
108. In IR 56 the Inspector posed the question whether "the intended location" of the additional housing is within the north-east of the District. That can only be understood as referring to a location intended by LPP1.
109. At IR 59 to IR 62 the second Inspector went through the reasoning of the first Inspector in IR 23 of the 2014 Report. However, the second Inspector still did not address IR 24 of the 2014 Report, where the first Inspector explicitly stated that there was no justification for MDC to be committed in LPP1 to directing development towards Midsomer Norton and Radstock. Nor did the second Inspector address IR 101 where the first Inspector had said that there was no evidence to indicate that the additional housing should be directed towards one location or another. Instead, distribution of the housing by LPP2 should be left to the district-wide spatial strategy in Policy CP1. Those omissions are significant.
110. In IR 65 the Inspector discounted the statement in the Key Diagram under the heading "District-Wide" that the 505 dwellings should be allocated in the district. He treated that as contrary to "the strategic thrust" of paras. 4.21 and 4.7 of LPP1 "which focus on the need to consider making specific allocations with reference to the towns of Radstock and Midsomer Norton *rather than distributing the additional development generally across the District*". Neither that antithesis, nor that "focus", are to be found in paras 4.7 or 4.21 of LPP1. There is no such "strategic thrust" in LPP1. Instead, "allocations ... are likely to focus on sustainable locations in accordance with the Plan's overall spatial strategy as set out in Core Policy 1 and *may include* land in the north/north-east of the District ...". That marked shift in the language used by the Inspector from that actually used in LPP1 demonstrates his incorrect interpretation of the Plan.

It is also inconsistent with IR 24 of the 2014 Report. Moreover, Policy CP2 of LPP1 expressly states that there is a requirement to provide 505 additional houses in the District, without any preference, let alone exclusivity, for the north-east.

111. The discussion in IR 67 to IR 69 of the 2021 Report involves a criticism of the submission version of LPP2 for failing to consider sites in the north-east of the District, contrary to paras. 4.7 and 4.21 of LPP1. That is not the point now in issue.
112. In IR 70 the Inspector acknowledged that para. 4.21 of LPP1 stated that the allocation of the 505 dwellings “may” rather than “will” include land in the north-east of the District, but he considered it significant that nowhere else in Mendip had been singled out for comment, whether in the 2014 Report or in LPP1. With respect, no significance could properly have been attached to that last point. First, it completely overlooks IR 24 and IR 101 of the 2014 Report. Second, it provides no rational basis for discounting the use of the word “may”. It is plain from the 2014 Report and LPP1 that the word “may” was chosen deliberately.
113. IR 70 appears to have been included as part of the reasoning leading to IR 71, where the Inspector referred to the “strategic direction” in LPP1 requiring MDC to consider allocations to meet “the needs in the north-east of the District.” Even if, as Mr. Williams submitted, IR 71 is to be read in the context of IR 69 so that “the needs” in IR 71 refer to “the needs of the District,” there is no “strategic direction” in LPP1, nor a “strategic steer” supporting allocations in the north / north-east of the District, as IR 72 claims. The language used in LPP1 (and in the 2014 Report) cannot be read in the manner relied upon by the second Inspector. Instead, those earlier documents required a failure by MDC to consider allocations in the north/north-east of the District to be remedied in LPP2 by being considered as part of the application of the spatial strategy in CP1 of LPP1, but not restricted to the north/north-east of the District as happened here.
114. I am left in no doubt that the Inspector who examined LPP2 misinterpreted LPP1 and also the 2014 Report in the material respects identified above.
115. In my judgment the legal errors I have identified above are sufficient for this claim to be allowed under ground 1. The decision of MDC to adopt LPP2 was dependent upon the Inspector reaching the conclusion that the Plan was sound (ss. 20(7) and 23(2) and (4) of the PCPA 2004). That in turn was dependent upon the main modifications he recommended to make the Plan sound, including the modifications the subject of this challenge (ss. 20(7B) and (7C) and 23(2A) and (3)). That recommendation was vitiated by the errors identified above and so MDC’s decision to adopt LPP2 with Policies MN1, MN2, MN3, NSP1 and BK1 cannot stand.

(iv) Did MDC misunderstand LPP1 and/or the Report of the Inspector who examined LPP1?

116. As we have seen, MDC participated in the examination of the main modifications of LPP2 on the basis that the second Inspector's interpretation of LPP1 and of the 2014 Report was correct. It appears from the documents before the court, including the witness statement of Mr. Andre Sestini, a Principal Planning Officer of MDC, that before ED 20 and the draft MM5 were issued, the authority had treated LPP1 as not requiring it to make additional allocations to meet the requirement 505 dwellings, whether in the north-east of the District or anywhere else. MDC had not previously accepted that there was any "strategic thrust" or "steer" or requirement in LPP1 for additional housing in the north east.
117. MDC would have been well aware of the controversy between other participants in the examination regarding the proper interpretation of LPP1. It was open to MDC to ask the Inspector to reconsider the interpretation of LPP1 he had put forward, in particular that there was a requirement for the additional housing to be located in the north-east of the District. If the Inspector's view had remained unchanged, MDC could have considered applying for judicial review to seek an urgent ruling from the High Court on the interpretation of LPP1 (see e.g. *R (CK Properties (Theydon Bois) Limited v Epping Forest District Council* [2019] PTSR 183). Instead, it accepted the Inspector's interpretation of LPP1.
118. At the adoption stage MDC considered the Inspector's Report on the examination of LPP2. The council was advised to accept all of the main modifications recommended by the Inspector which he considered necessary to make the plan "sound" in accordance with the PCPA 2004 (see also [74] above). At no stage did MDC disagree with the Inspector's interpretation of LPP1 or of the 2014 Report. The report on the adoption of LPP2 and the SA Adoption Statement are consistent with that understanding. Furthermore, the language of the explanatory text of the adopted LPP2, read fairly and as a whole, does not displace that misinterpretation. For this additional reason, MDC's decision to adopt LPP2 with the five policy allocations under challenge was unlawful.
119. There is no basis for the Court to refuse relief, applying the test in *Simplex GE (Holdings) Limited v Secretary of State for the Environment* [2017] PTSR 104.
120. Accordingly, ground 1 must be upheld.

## **Ground 2**

121. By regulation 12(1) of the 2004 Regulations, where SEA is required in relation to a plan the "responsible authority", here MDC, is required to prepare an "environmental report" in accordance with regulation 12(2) and (3) of the 2004 Regulations. Regulation 12(2) and (3) provide:-
  - "(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—
    - (a) implementing the plan or programme; and

(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of—

- (a) current knowledge and methods of assessment;
- (b) the contents and level of detail in the plan or programme;
- (c) the stage of the plan or programme in the decision-making process; and
- (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.”

122. The information which may reasonably be required includes in para. 8 of schedule 2:-

“An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.”

123. The environmental report is required to undergo the process of consultation laid down by regulation 13. Regulation 13(1) provides:-

“Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (“the relevant documents”) shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.”

Under regulation 13(2) the plan-making authority is obliged to consult on its environmental report with “consultation bodies” (which include Natural England, the Environment Agency and Historic England) and “public consultees”, that is persons who, in the authority’s opinion, are affected or likely to be affected by, or have an interest in decisions on, the adoption of the plan. The consultees must have an “effective opportunity” to express their opinions on the environmental report as well as the plan (regulation 13(3)). If the plan is adopted the authority must publish a statement giving particulars of how they have taken into account the environmental report and the opinions expressed in the consultation exercise (regulation 16(2), (3) and (4)).

124. In *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240 the Divisional Court analysed the statutory framework established by Directive 2001/42/EC and the 2004 Regulations at [378]-[400]. That was endorsed by the

Supreme Court in *R (Friends of the Earth Limited and another) v Secretary of State for Transport* [2021] PTSR 190 at [48]-[69].

125. The Supreme Court accepted that SEA may properly involve an iterative process, so that a legal defect in the adequacy of an environmental report may be cured by the production of supplementary material by the plan-making authority, subject to complying with the statutory requirements for consultation on that material ([66]-[67]).
126. The Supreme Court also confirmed that the legislation confers a broad discretion on the plan-making authority as to the information to be included in the environmental report and that judgment may only be challenged by applying the Wednesbury standard of review ([142]-[148]).
127. Similarly, in *Ashdown Forest Economic Development LLP v Wealden District Council* [2016] PTSR 78 the Court of Appeal held at [42] that the identification of reasonable alternatives is a matter of evaluative assessment for the local planning authority. But the corollary is that the authority must at least apply its mind to that question.
128. In *Spurrier*, the Divisional Court stated that there is a distinction between the failure by an authority to give any consideration at all to a matter which it is expressly required by the 2004 Regulations to address, for example, whether there are reasonable alternatives to a proposed policy, as opposed to criticisms about the non-inclusion of information on a particular topic, or the nature and level of detail of the information provided by the authority, or the nature and extent of the analysis carried out. That distinction derives from the court's analysis of *St Albans District Council v Secretary of State for Communities and Local Government* [2010] JPL 70, *Save Historic Newmarket Limited v Forest Heath District Council* [2011] JPL 1233, *Heard v Broadland District Council* [2012] Env.L.R. 23, *Re Seaport Investment Ltd's Application for Judicial Review* [2008] Env.L.R. 23, *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12 (Admin), and *R (Gladman Developments Limited) v Aylesbury Vale District Council* [2015] JPL 656 (see [424]-[434]). That analysis need not be repeated here. Suffice to say that, as Mr. Greaves rightly pointed out, the Court has intervened in some cases where the plan-making authority gave no consideration to alternative locations to that put forward in a proposed policy (see e.g. *St Albans* and *Heard*).
129. If at one stage in the plan process reasonable alternatives are consulted upon and considered, but certain options are then discarded, there is generally no requirement for those options to be revisited at a later stage in the process (*Heard* at [67]). But, of course, in that situation there is no issue about those alternatives having been consulted upon and considered at some earlier point in the process.
130. In *R (Friends of the Earth) v Welsh Ministers* [2016] Env. L.R. 1 at [88] Hickinbottom J (as he then was) stated:-

“(iv) “Reasonable alternatives does not include all possible alternatives: the use of the word “reasonable” clearly and

necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.

(v) Article 5(1) refers to “reasonable alternatives *taking into account the objectives ... of the plan or programme...*” (emphasis added). “Reasonableness” in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an “alternative” to the preferred plan, is not a “reasonable alternative”. An option which will, or sensibly may, achieve the objectives is a “reasonable alternative”. The SEA Directive admits to the possibility of there being no such alternatives in a particular case: if only one option is assessed as meeting the objectives, there will be no “reasonable alternatives” to it.”

131. The claimant contends that MDC failed to comply with regulation 12(2) of the 2004 Regulations because reasonable alternatives to the allocation of the additional 505 dwellings in the north-east of the District were not considered. That option had not previously been considered in the LPP1 process because that Plan did not consider where the housing should be located. The upshot of the examination of LPP1 was that the distribution of the dwellings was to be considered in LPP2 in accordance with the spatial strategy in Policy CP1 (see also para. 4.21 of LPP1). The work undertaken by MDC up to and including the submission draft of LPP2 did not consider how allocations to meet the additional requirement of 505 dwellings should be distributed across the District in accordance with CP1, because MDC took the view at that stage that there was no need to make any allocations for that purpose. MDC only addressed the issue of allocations when the Second Inspector directed them to do so during the examination of LPP2. At that stage MDC issued an Addendum to the SA which only considered sites in the north-east of the District. They explained that they had taken that course because of the Inspector’s interpretation of LPP1, as set out in documents ED20 and ED26. At that point MDC ought to have published an Addendum to the SA which considered alternative allocations to those being considered in the north-east and consultation should then have taken place on that assessment before LPP2 could lawfully be adopted containing policies MN1, MN2, MN3, BK1 and NSP1.
132. In my judgment the various arguments advanced by the defendant and interested parties come nowhere near refuting ground 2.
133. It was correctly accepted by the Inspector and by MDC that an SA Addendum had to be carried out so that there would be an assessment compliant with the 2004 Regulations in relation to the proposed allocations and relevant modifications. They represented new, additional policy proposals in LPP2 which had not previously been the subject of SEA.
134. In the present case MDC’s decision to confine the location of reasonable alternatives to the north/north east of the district cannot be characterised as simply an evaluative judgment. It is plain from *inter alia* MDC’s hearing

statements on matters 2 and 3, that a substantial justification for the authority to have considered only the north-east of the District, and not *any* sites elsewhere in the District, was what it took to have been the second Inspector's interpretation of LPP1. MDC misinterpreted LPP1 and the 2014 Report. Those documents provided for the 505 dwellings to be distributed across the District in accordance with the spatial strategy. They did not require (or even give a steer) that the dwellings be provided in the north/north-east (see ground 1 above). That self-misdirection applied from the stage when the Inspector issued draft MM5 and his Interim Note through to the adoption of LPP2. It is clear that that error of law materially influenced MDC's decision not to consider in the SEA process sites outside the north/north-east of the District. Accordingly, that decision was unlawful.

135. In order to overcome that flaw the defendant and interested parties sought to rely upon what they submitted were the objectives of LPP2 in order to justify the exclusion of sites outside the north-east of the District from the SEA process (see [130] above).
136. Objective (d) was to achieve a distribution of growth consistent with the spatial strategy. The following paragraphs explained how MDC's policies sought to meet that objective. Paragraph 3.34 of the submission version of LPP2 explained that no land had been allocated in Midsomer Norton or Radstock because MDC considered there were sufficient sites in other settlements in Mendip better placed to meet the District's needs. Furthermore, other development plans did not consider this area to be a suitable location for growth. I do not see how para. 3.34 of LPP1 can be treated as an objective of that Plan.
137. But the defendant and interested parties relied upon the fact that in the adopted LPP2 paragraph 3.34 was altered to read as follows:

“3.28 Outside the five main towns, Local Plan Part I indicates (in para 4.7) that land on the edge of the district near Westfield, Midsomer Norton and Radstock could be identified to meet housing need in Mendip. This has resulted in additional allocations around Midsomer Norton (see section 10.6) and in Primary villages in the north/northeast of the district.”

They suggested that para. 3.28 of LPP2 should be treated by the court as a revised “objective” of LPP2, so that there was no legal requirement for the SA to consider as “reasonable alternatives” the allocation of sites in the remainder of the District, simply because they were not located in the north-east.

138. A decision as to what are the objectives or aims of plan is a matter for the judgment of the plan-making authority (see *Welsh Ministers* at [88(ii)]). Assuming that MDC did adopt the approach for which the defendant and the interested parties contend, I am in no doubt that this involves a further freestanding error of law on which ground 2 must succeed. There are several flaws in the argument.
139. First, it confuses “ends and means”, or objectives and policies. The function of para 3.28 of the adopted LPP2 is not materially different from para. 3.34 of the

earlier draft version of the Plan. They both describe means (or policies) rather than ends (or objectives).

140. Second, the first sentence of paragraph 3.28 of LPP2 merely repeated the established policy in LPP1 that the application of the spatial strategy in CP1 to the distribution of the 505 additional dwellings could include land in the north/north-east of the District (which was set out in para. 4.21 rather than para. 4.7 of LPP1). If that first sentence were to be treated as an objective of LPP2, it would not have the legal consequence of excluding sites falling outside the north-east. Instead, it allows for the allocation of sites across the District.
141. Third, the second sentence of para. 3.28 of LPP2 merely summarised the decisions on allocations taken by MDC in order to meet objective (d). It did not purport to define an additional “objective” delimiting what could be considered under the 2004 Regulations as a reasonable alternative. Treating ordinary site allocation policies as “objectives” of a plan would render ineffectual the requirement of the Regulations for reasonable alternatives to those proposed policies to be assessed in the environmental report and included in the subsequent consultation. That approach would largely, if not wholly, defeat the purpose of that requirement.
142. Fourth, treating the second sentence of para.3.28 as an “objective” of LPP2, the effect of which was to limit what might be considered as a reasonable alternative, is inconsistent with the first sentence of that paragraph which does not restrict the allocation of sites to the north/north-east of the District.
143. Obviously, it is no answer to the various legal flaws identified above to point to the fact that MDC considered alternative locations *within* the north-east of the District.
144. It is also no answer to ground 2 to point out that MDC assessed other alternatives to making further allocations for the provision of the additional 505 dwellings, such as a criteria-based policy and the deferral of any allocations to the next review of the Local Plan. MDC now accepts, and there is no dispute in these proceedings, that the effect of LPP1 was to require allocations to be made. Accordingly, the issue was where those allocations should go, but alternative allocations to sites in the north-east of the District were not considered at any stage in the local plan process.
145. However, the defendant and interested parties submit that, applying the principles in *R (Champion) v North Norfolk District Council* [2015] 1 WLR 3710, the court should nevertheless refuse to grant relief under ground 2. It is said that the claimant has in practice been able to enjoy the rights conferred by the 2004 Regulations and cannot demonstrate substantial prejudice. There were 6 days of hearings on the distribution of the 505 dwellings. The claimant took part in those sessions. The hearings considered whether allocations should be made in the district as a whole. The claimant would have been able to rely upon its own local knowledge of the District to advance an alternative distribution to that proposed in the draft main modifications. Sites had been considered across the District in the original SA for LPP1. The Inspector considered the proposed allocations in detail.

146. In my judgment, these arguments have no merit. The original SA did not consider alternative sites across the district for the purposes of the allocations to be made in LPP2, or in particular the allocation of the additional 505 dwellings. The SEA process proceeded on the basis that further work by way of an Addendum to the SA and public consultation was required. Furthermore, as Mr Greaves pointed out, in the original SA a number of villages were excluded because the relevant “village requirement” figure had already been exceeded. The claimant contends that a number of settlements would have had capacity to accommodate more housing. But the SEA for LPP2 did not consider sites outside the north/north-east of the District.
147. It was for MDC to produce a legally-compliant environmental report upon which consultation could take place with statutory consultees and the public. On the material before the court, contributions made by the claimant and others at the hearing were no substitute for a proper appraisal of housing distribution by the local planning authority followed by consultation (see e.g. [125] above). Worse still in the present case, it is apparent from the evidence that MDC’s approach to SEA for the 505 dwellings issue was influenced by the Inspector’s misreading of LPP1 documentation. The authority stated that one of the reasons why it did not wish to undertake a district-wide exercise was because that would not address the Inspector’s concerns on “soundness”. The court cannot assume that MDC’s approach might not have been significantly different if that had not been a constraining factor. The contemporaneous documents show MDC firmly stating that it was following the “direction” given by the Inspector.
148. I should make it clear that in dealing with the discretion point I am assuming, without deciding, that the *Champion* approach, rather than the stricter *Simplex* approach, should be applied. It is unnecessary in this case to resolve the arguments on that issue. Accordingly, ground 2 must be upheld.

### **Grounds 3 and 4**

149. These grounds differ from grounds 1 and 2 in that they could only justify intervention by the court in relation to the allocations at Beckington and Norton St Philip. They would not justify the grant of relief in relation to the Midsomer Norton allocations. That is common ground between the parties.
150. There is no merit in either ground 3 or ground 4. They can be dealt with briefly.
151. Under ground 3 the claimant contends that in relation to the allocations at Beckington and Norton St. Philip the Inspector failed to apply the principle of “proportionate growth” in Policy CP2(2)(c)(ii) of LPP1, as further explained in paras. 4.33 to 4.34 of the Plan. The claimant says that the Inspector explicitly applied this criterion in relation to other allocations, but not in the case of NSP1 or BK1. This is said to be important because of the high exceedance of the village housing requirements which had already been achieved in both Norton St. Philip and Beckington as presented to the Inspector (see IQ7 and Appendix 3 to MDC’s “505 Dwellings – Background Paper”).
152. Mr. Williams rightly pointed out that the Inspector required modifications to be made so that the village requirements operate as a minimum figure, not a cap.

153. More importantly, it is clear that the Inspector did apply the proportionate growth criteria by referring to the percentage increases involved for a number of settlements. However, it cannot properly be inferred that he did not take that criterion into account in relation to Beckington and Norton St. Philip simply because he did not mention the percentages which were before him, and of which he must have been well aware, when dealing with those two settlements. There is no positive indication in the Report that the Inspector disregarded the proportionate growth criterion in that respect (see e.g. *R (Goesa Limited) v Eastleigh Borough Council* [2022] PTSR 1473 at [154]). IR 116 shows that the Inspector had the criterion in mind.

154. Accordingly, ground 3 must be rejected.

155. Under ground 4 the claimant contends that it was irrational for MDC to allocate BK1 and NSP1 through the main modifications to LPP2, having regard to LPP1 correctly interpreted, the absence of any consideration of alternative sites outside the north-east of the District and the proportionate growth criterion in Policy CP2 (see para. 78 of the claimant's skeleton). I agree with Mr. Findlay KC and Mr. Du Feu that ground 4 adds nothing to grounds 1 to 3. Furthermore, the arguments presented by Mr Greaves for the claimant come nowhere near overcoming the high hurdle for establishing irrationality (*R (Newsmith Stainless Limited) v Secretary of State for the Environment, Transport and the Regions* [2017] PTSR 1126).

156. Accordingly, ground 4 must be rejected.

## **Conclusions**

157. For the reasons set out above, the challenge to policies MN1, MN2, MN3, NSP1 and BK1 of LPP2 succeeds solely on grounds 1 and 2.

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**  
Before the Hon. Mr Justice Holgate

**BETWEEN:**

**NORTON ST PHILIP PARISH COUNCIL**

**Claimant**

**-and-**

**MENDIP DISTRICT COUNCIL**

**Defendant**

**-and-**

**(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND  
COMMUNITIES**

**(2) LOCHAILORT INVESTMENTS LIMITED**

**(3) REDROW HOMES LIMITED**

**Interested Parties**

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**ORDER**

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**UPON HEARING** Alexander Greaves for the Claimant; Hashi Mohamed for the Defendant; Robert Williams for the First Interested Party; and James Findlay KC and Ben Du Feu for the Second and Third Interested Parties

**IT IS ORDERED THAT**

1. The claim for statutory review be allowed.
2. Policies MN1, MN2, MN3, NSP1 and BK1 of Mendip District Local Plan 2006-2009 Part II: Sites and Policies (“LPP2”), their supporting text and other related text, tables and diagrams, as set out in Schedule 1 to this order, shall be remitted to the Defendant.

3. The remitted parts of LPP2 shall be treated as not having been adopted as part of the local development plan. The rest of LPP2 is unaffected by this order.
4. The Defendant shall publish a revised version of LPP2 on its website within 28 days, which explains the effect of this order, and shows the remitted parts of the plan as being struck through.
5. The Defendant shall amend the Policies Map within 28 days so that it properly reflects the terms of this order and any consequential changes to LPP2 as set out in Schedule 1.
6. The Defendant shall:
  - a. review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2 of Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies and the judgment of the court;
  - b. in light of their review, prepare and publish modifications to LPP2 which allocate sites to meet the additional requirement. The preparation and publication of these modifications shall be in accordance with requirements of section 19 of the Planning and Compulsory Purchase Act 2004 (“2004 Act”), and Regulations 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012;
  - c. submit the proposed modifications to LPP2 to the First Interested Party, who shall appoint an Inspector to carry out and report on an independent examination of them, which shall be carried out in accordance with section 20 of the 2004 Act; and
  - d. once it receives the Inspector’s report, the Defendant must make a decision in accordance with section 23 of the 2004 Act.
7. The Defendant shall pay the Claimant’s costs in the sum of £35,000.
8. All parties shall have liberty to apply to vary or modify this order on notice.

**Signed: Sir David Holgate**

**Dated: 16 December 2022**

## Schedule 1

The table below sets out the amendments and deletions that are to be made to LPP2 in accordance with paragraph 2 of the order.

<b>Relevant part of plan</b>	<b>Amendment / deletion</b>
Para. 3.19	Amend affordable housing totals
Para. 3.24	Delete entire paragraph
Para. 3.36	Delete final sentence
Para. 3.45	Delete “and around Midsomer Norton”
Table 1	Delete section dealing with Land adjacent to Midsomer Norton and amend total number of dwellings accordingly
Table 2	Delete rows dealing allocations in NE Mendip and sub-total
Paras. 3.56	Amend housing totals
Table 3	Amend totals for Primary Villages, delete row dealing with growth “Adj. Midsomer Norton”, and amend overall totals
Table 4a	Amend figures in the “Planned Growth” and “Change from Policy CP2” columns for the “Villages & rural” row, to account for the reduction in allocations. Delete the row for NE Mendip District and delete footnote 2. Amend the total figures
Table 4b	Amend figures in the row dealing with Primary Villages, to account for the reduction in allocations. Remove the row for “Sites adj Midsomer Norton”. Amend total figures
Para. 3.59	Amend figures to reflect removal of allocations in the North East.
Page 35	Delete “10.6 Midsomer Norton”
Section 10.6 (pp. 95 – 103)	Delete all text and policies
Paragraph 11.2.2	Delete the final sentence
Para. 11.2.3	Delete paragraph and bullet point relating to allocation
Pages 108 and 109	Delete Policy BK1
Para. 11.20.3	Delete final sentence
Para. 11.20.4	Delete paragraph and bullet point relating to allocation
Pages 145 - 146	Delete Policy NSP1

**Signed: Sir David Holgate**

**Dated: 16 December 2022**

## MENDIP LOCAL PLAN

### CONSEQUENCES OF COURT ORDER

#### SHORT ADVICE

1. Lochailort Investments Limited ("LIP") are interested in a site which was allocated in the Mendip District Local Plan: Part 2 ("LLP2"). On 16<sup>th</sup> December 2022, the High Court (Holgate J) ordered that the relevant allocations and policies and their supporting text in LLP2 be remitted to the Council and that the remitted parts should be treated as not having been adopted as part of the plan. As a result the Council is required to "review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2" (para 5a). The review effectively requires the question of where the 505 should be located to start afresh and go through the normal reg 18 and 19 stages before examination and adoption. Relying on *Cummings v Weymouth and Portland BC [2007] EWHC 1601 (Admin)*, LIP contends through a Note of its KC dated 20<sup>th</sup> December 2022 ("the Note") that that result means that the formerly allocated sites should be treated as "white land" in the adopted local plan pending the reconsideration of where the 505 should go. It makes further points all apparently designed to strengthen its chances of securing a permission now or furthering its chances of getting a new allocation in due course.
2. I do not agree with any of its substantive analysis on the facts even though some of the legal points it makes are correct.

#### Cummings

3. The facts of *Cummings* are clearly distinguishable in material respects from those here.
4. There, there was effectively a contest between two sites for an allocation – in the plan under challenge one ("the Louviers Road Sites") was allocated and therefore included within the relevant development boundary and the other ("the Objection Site") was not allocated and was in part<sup>1</sup> taken out of and in part left outside the development boundary. All the latter was also included in the Important Open Gap ("IOG") and in the area of local landscape importance ("ALLI") even though it had (deliberately) not been so included in the previous local plan.
5. The relevant policies of the plan were quashed on the application for those interested in the Objection Site.
6. The order made (para 77) appears<sup>2</sup> to have been that the development boundary and associated boundaries of the IOG and ALLI were quashed insofar as they excluded one site and included the other. The development boundary was thus left undefined in this general location as was the boundary of the IOG and the LLSI.
7. The key issue on redetermination would be whether the Louviers Road Site or the Objection Site would be allocated. There was no dispute that the development boundary in this location would have to include the whole of one of them and therefore would have to change both

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<sup>1</sup> Parts of the Objection Site had already been included in the Development Boundary under the previous local plan.

<sup>2</sup> The order actually made is not provided and I have not been able to locate it on the Court's websites. The order was in any event provisional on representations of third parties.

from the previous local plan and from that in the quashed parts of the local plan. The only issue was which one should be included and which one should be excluded. The Court could not predetermine that issue - where the development boundary should be and therefore which site should be within it and which outside it would be wholly dependent on new decisions following, and in the light of, the decision of the Court. It was therefore judged on the facts not to be appropriate to revert to the previous development boundary which would have included part of the Objection Site but excluded the Louviers Site – that would have served to at least in part predetermine the very issue to be determined; but instead the issue as to the future development boundary in this location was left at large.

8. LIP rely on a obiter comment in *Cummings* but that comment has to be read and understood as a whole - namely that “given that the inspector’s decision with regard to the [Development Boundary] involved a comparison of the objection site and the Louviers Road site - that was how the objection was put by the claimants and how it was contested by the Council – it seems to me inevitably to follow that the inclusion of the latter site within the [Development Boundary] and the allocation of the Louviers Road site for housing ... must also be quashed leaving both...as white land without designation.” That would allow the Council to reconsider the issue afresh without the Plan including any predetermined outcome in the meantime. It appears that that was the “agreed” position of the parties. It was a preliminary view subject to input from the owners of the Louviers Road site.
9. On the complex and very specific facts of that case that approach was not surprising. There had to be a change to the development boundary in this area – the question was whether to pull it back from the Objection Site so as to exclude the whole of it and extend it over the Louviers Road Site or to include the whole of the Objection Site and exclude the Louviers Road site. Those were the only two permutations in play.
10. That approach cannot, for wholly obvious reasons, be translated to the facts of the current case.

#### The reasoning of the Court here

11. Fundamentally, the issue before the Inspector and the Court here was not a contest for an allocation between two adjoining sites part of one of which was already within the development boundary but a much wider issue as to which greenfield sites anywhere in the district should be allocated.
12. That issue had been approached based on a wrong understanding of the Core Strategy policies in respect of the 505. Rather than just look in, or focus the search in, the narrow area including around Norton St Philips – “NSP” (based on a wrong understanding of those policies) the search for new greenfield sites was to be area wide. There was thus no implication that any sites would necessarily be chosen around NSP, that there would be any change to its development limits or that the sites previously allocated had any special status over any other site anywhere in the district.
13. The approach in *Cummings* cannot therefore apply here. The facts are wholly different.
14. Indeed to apply it would be to subvert rather than to give effect to the judgement of the Court. The Court has determined that the starting point for the identification of sites for the 505 was

wrong in principle. The exercise of choosing where those 505 should go must start afresh without preconceptions based on the flawed former approach. The effect of para 2 and 3 of the Order (and schedule 1) is effectively to delete the parts of the plan covered by the judgment. Absent the allocations - deleted by the terms of the Order and as specifically listed in the schedule – the relevant land has no allocation whether for white land or for housing. It therefore reverts to greenfield land undeveloped outside any development boundary without any allocation and is therefore countryside. Countryside requires no allocation to be countryside - it is just a description of undeveloped greenfield land which is not allocated, or within a development boundary.

15. I reach this conclusion without any hesitation. I am confident that it is the only possible approach in the light of the Court's judgment.
16. I would go further, if *Cummings* has the broad effect claimed to the effect that when allocations of greenfield land are quashed the land becomes white land by definition then *Cummings* must be wrong. I do not read *Cummings* in that way and note that it does not appear to ever have previously been applied in that way. It follows that para 4 and 5 of the Note from LIP are wrong but if that is how it is to be read it cannot be correct and should not be extended to the facts of this case.
17. The proposals map and policy framework for the allocated sites must therefore show them as greenfield undeveloped land beyond any development boundaries without any allocation and thus countryside.

#### **Weight to be attached to previous assessments**

18. It is correct that the quashing of a decision does not result in the underlying evidence base or assessment of comparative merits being irrelevant or legally immaterial. However, that point is of limited effect here because the comparative assessment of merits was from a flawed starting point as to the (far too narrow) ambit of the sites to be considered. The fact a site beat other sites in the narrow area under consideration is of little if any assistance in deciding whether those sites should be re-allocated when one is looking over a far wider area. I therefore agree with para 6 in principle but not on the facts here. The factual conclusions on the sites may be carried forward (subject to consultation responses) but the judgment as to whether sites here or further afield should be allocated is a new and separate exercise from that which has gone before. Para 8 refers expressly to the Inspector's conclusions on the appropriateness of locating housing in the north east. I am not clear as to how those conclusions can be separated from his view as to what the core policies required but in any event his views cannot be determinative given the process in which those conclusions were reached has now been quashed.

#### **Out of Date**

19. I do not understand para 7. I assume it is being said that because the plan is now 505 short of that required therefore it is out of date. That is clearly an attempt to justify an application now on an unallocated greenfield site. I do not think it is correct. First, there is no reference to the written ministerial statement of 16<sup>th</sup> December or the NPPF consultation referred to in it and published on 22<sup>nd</sup> December and the possible implications for housing numbers in constrained areas such as Mendip. Second, the Court has set out the process which must now be adopted. It is correct that pending that process it is not known where or even if the Council will provide

for the 505 but given the WMS it is not obvious that that makes the plan out of date or it appropriate to pre-judge the process now required to be embarked upon.

**Conclusion**

20. I consider the approach in the LIP note to be wrong in principle and that it would be unlawful for the Council to follow it. I am content for this Short Advice to be made public. I have provided it at speed given the tight deadline given to me but can elaborate in due course if required. Any threat of judicial review should be resisted on the above logic and the logic in the Note cannot be relied on by the Council in deciding whether to grant permission on any planning application.

David Forsdick KC

Landmark Chambers

6<sup>th</sup> January 2023

# LOCAL PLAN

## PART II: SITES & POLICIES



Adopted Dec. 2021 - Post JR version

2006-2029

CO/709/2023

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## QUICK LINKS TO POLICIES

[LP1: Future Development Plan Review](#)

[DP24: Single-plot Exception Sites for Self & Custom-Build](#)

[DP25: Employment Land](#)

[DP26: Green Belt](#)

[DP27: Highway Infrastructure Measures for Frome, Beckington and Rode](#)

### Frome

[FR1: Saxonvale](#)

[FR2: Land North and South of Sandy's Hill Lane](#)

[FR3a: Land South of Little Keyford and The Mount](#)

[FR7: Land at Little Keyford](#)

[FR8: Land at Marston Gate](#)

### Glastonbury

[GL1: Glastonbury Highway Depot](#)

[GL1a: Avalon Motors](#)

[GL2: Allotments, Lowerside Lane](#)

[GL3: Frogmore Garage](#)

[GL4: Lintells and Avalon Garage, Wells Road](#)

[GL5: Land at Morlands](#)

### Street

[ST1: Land west of Somerton Road](#)

[ST2: Land adjacent to Street Cemetery](#)

[ST3: Land west of Brooks Road & Future Growth Area](#)

[ST4: Land south of Street Business Park](#)

### Shepton Mallet

[SM1: Land off Fosse Lane](#)

### Wells

[WL1: Land off Bubwith Walk](#)

[WL2: Land at Wells Rugby Club](#)

[WL3: New Rugby Club site at Haybridge](#)

[WL4: Tincknells Depot](#)

[WL5: Land off Elm Close](#)

### Midsomer Norton & Radstock (Deleted following Judicial Review)

[MN1: Land at White Post](#)

[MN2: Land at Underhill Lane](#)

[MN3: Land east of the A367](#)

### Villages

[BK1: Land off Great Dunns Close, Beckington](#)

[BG1: Land off Station Road, Gurney Slade](#)

[BT1: Land at West View, Sub Road, Butleigh](#)

CL1: Land off Highbury Street, Coleford

CX1: Land adjacent to the Pound Inn and A39, Coxley

DT1: Land adjacent to the eastern edge of Ditcheat

DT2: Land at Back Lane, Ditcheat

DR1: Land at Westfield Lane, Draycott

ML1: Land at Park Hill, Mells

NSP1: Land off Mackley Lane, Norton St Philip

NN1: Land at Green Pits Lane, Nunney

SS1a: Land East of Frog Lane, Stoke St Michael

WM1: Land south of Roughmoor Lane, Westbury Sub Mendip

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[Appendix 1](#): Glossary of Terms

[Appendix 2](#): Saved Policies

# Explanatory Note

## Revisions to Mendip Local Plan Part II following Statutory Review

16<sup>th</sup> December 2022

**Norton St. Philip Parish Council v Mendip District Council (1) Secretary of State for Levelling Up, Housing and Communities (2) Lochailort Investments Limited (3) Redrow Homes Limited (4) Administrative Court (Planning Court) : Claim No: CO/323/2022**

1. This Plan includes revisions to text, inset maps and policies following a Statutory Review in the High Court challenging parts of the adopted Mendip District Council Local Plan Part II Sites and Policies.
2. The Judgement of Hon. Mr Justice Holgate was handed down on 16<sup>th</sup> December 2022. It is accompanied by an Order directing the Council to make revisions to this Plan. Copies of both these documents can be found online.
3. Two grounds of challenge to the adopted Plan were upheld by the Court relating the housing sites allocated in the north-east of the district. These sites have been remitted back to Mendip District Council. The relevant policies and supporting text are deleted from the adopted Local Plan Part II and are shown as 'struck-out' of this document. No weight or regard can be given to these policies or their supporting in the determination of planning applications.
4. The policies which are subject to the Order and struck out are:

Policy MN1	Land at White Post, Midsomer Norton
Policy MN2	Land at Underhill Lane, Midsomer Norton
Policy MN3	Land east of the A367, Midsomer Norton
Policy BK1	Land off Great Dunns Close, Beckington
Policy NSP1	Land off Mackley Lane, Norton St Phillip

Consequential changes from the deletion of these policies have also been made to Section 3 of this Plan (Housing Land) including adjustments to summary tables of allocations and dwellings to be delivered over the plan period.

5. Development and allocation policies in the remainder of Local Plan Part II remain as adopted on 20<sup>th</sup> December 2021.

# 1. Introduction

## **The Purpose of the Plan**

1.1 The Local Plan is split into two parts. The first stage, Local Plan Part I, took effect on 15<sup>th</sup> December 2014. It sets out how much land for housing and employment will be needed and the sorts of places where it will be acceptable for it to be located. It also identifies a number of “strategic” development sites.

1.2 The purpose of Mendip District Local Plan Part II - Sites and Policies is to:

- Identify and allocate additional sites for housing to meet the requirements for affordable and market housing set out in Local Plan Part I;
- To ensure that there are sufficient sites to enable a rolling five-year supply of housing land in the district and to meet the housing delivery test;
- To review and allocate additional employment land to support economic development;
- To review and update development limits around the towns and villages;
- To review and update the open and community space designations;
- To set out additional development management policies to meet objectives in Local Plan Part I and the National Planning Policy Framework.

## **Status of Local Plan Part II**

1.3 Local Plan Part I (LPP1) and Local Plan Part II (LPP2) are complementary documents and should be read together. Local Plan Part I sets out a long-term strategic vision for the future of the district and sets out how Mendip District Council (the Council) intends to stimulate the development which the district needs, including housing, economic development and infrastructure. It puts in place a selection of policies to manage development in a manner appropriate to this district which generic national policies do not adequately cover.

1.4 Local Plan Part II allocates specific sites for development or for other purposes in line with the intentions of the policies in Local Plan Part I. Both the policies and the supporting text make up the statutory Development Plan for the purposes of determining planning applications. Local Plan Part II was adopted on 20<sup>th</sup> December 2021.

## **Relationship to other Planning Documents**

1.5 Local Plan Part I establishes an overarching development vision and key objectives for the district. All other parts of the planning framework for the district must be aligned with its intentions in order that a coherent and consistent basis for decision making is in place.

1.6 Local Plan Part II identifies additional sites and sets out additional development management policies to meet objectives set out in Local Plan Part I and the NPPF.

1.7 In addition to the development plan, the Council may also produce Supplementary Planning Documents which will provide details of how policies in the development plan will be implemented in practice.

1.8 Neighbourhood Plans can be prepared by Parish and Town Councils and are an additional way in which sites and policies promoting development can be drawn up to reflect the needs of local communities. Once "made" Neighbourhood Plans have the same status in planning decisions as the Local Plan.

1.9 A schedule of the documents which make up the development plan for Mendip, relevant guidance and community plans is published on the Mendip website.<sup>1</sup>

### **Supporting Documents**

1.10 Local Plan Part II is supported by a number of background papers and statutory documents which are required as part of the development plan process. Documents that were published alongside the pre-submission consultation were:

- Sustainability Appraisal of Local Plan Part II
- Habitat Regulations Assessment
- Infrastructure Delivery Plan
- Equality and Diversity Impact Assessment

Documents published at submission were:

- An update to the Duty to Co-operate Statement
- Statement of Consultation

1.11 Background papers cover housing land and future supply.

### **Sustainability Appraisal**

1.12 Sustainability Appraisal is a mandatory requirement and helps to ensure the objective of achieving sustainable development is fully considered in preparing plans. Sustainability Appraisal incorporates the requirements of the EU Directive on Strategic Environmental Assessment (SEA). The auditing process of the Sustainability Appraisal leads to more informed and transparent decision-making and helps to achieve the aims of sustainable development.

1.13 The Council have prepared a Sustainability Appraisal (SA) of the Plan. SA is iterative and integrated into the plan-making process, influencing the selection of site options and policies through the assessment of likely significant effects.

1.14 A SA report was published for consultation alongside the Pre-submission Plan and updated at submission and through the examination process. A summary of the SA process and revisions is contained in the SA adoption statement (Dec 2021)

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<sup>1</sup> <http://www.mendip.gov.uk/lds>

1.15 Habitat Regulations Assessment (HRA) is required following a European Court of Justice ruling that land use plans should be subject to an appropriate assessment of their implications for European wildlife sites and protected species. These include Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) and species protected under regulation 10 of the Habitat Regulations 1994. An HRA was published alongside the Pre-Submission Plan taking account of Proposed Changes with supplementary updates associated with Main Modifications. The HRA has also been updated following Natural England advice of the impact of excessive phosphates on the condition of the Somerset Levels and Moors RAMSAR. An adoption version of the HRA (v4 December 2021) is available with this Plan. Recommendations in the HRA are incorporated into policy and development allocations.

### **Duty to Co-operate**

1.16 The Plan is prepared under a legal 'duty to cooperate' requirement through the Localism Act 2011 which requires local authorities to work with neighbouring authorities and other prescribed bodies when preparing a development plan document. There are major proposals in the Part II plan which have cross-boundary implications.

1.17 The Council have been engaged with neighbouring authorities and statutory consultees throughout the preparation of the Local Plan Part I, which sets the framework for Local Plan Part II. The spatial strategy and level of development are considered to be strategic issues where the duty to cooperate has been addressed through Local Plan Part I.

1.18 There is an ongoing discussion with neighbouring authorities on their own development plans. There are no proposals in neighbouring districts which set out expectations for housing or employment growth in Mendip to meet the needs of neighbouring areas.

1.19 An updated statement on the Duty to Co-operate was prepared at Submission stage.

### **Infrastructure**

1.20 A range of infrastructure providers have been consulted during the preparation of this plan. The Infrastructure Delivery Plan provides an overview of Infrastructure constraints at settlement and site allocation level. Advice received on specific sites has been included in the site allocation policies.

### **Equality and Diversity Impact Assessment**

1.21 An Equality and Diversity Impact Assessment was published with the Pre-submission Plan. These assessments are a systematic way of examining whether new policies differentially affect any person or groups of people.

## **Consultation**

1.22 Preparation of this Plan has involved three significant consultation exercises: a district wide Issues and Options Consultation; an informal consultation with parish and town councils on site options and a Pre-submission consultation in January 2018. Additional consultation took place on Proposed Changes in February 2019 which were examined with the Plan. Further information can be found in the statement of consultation. Additional consultation was undertaken on Main Modifications and Additional Main Modifications during the examination.

## **Policies Map**

1.23 The Policies Map will be revised following adoption to include changes to development limits and other designations set out in this plan. Changes to the Policies Map are shown in schedules and versions of the Plan published at submission and at examination. This has included any revisions needed to correct errors or deletions to saved policy.

## **Implementation**

1.24 Local Plan Part I contains a policy monitoring framework (in Appendix 2) which sets out indicators and topics against which monitoring will be reported.

1.25 Updates on housing/employment delivery and supply are published on the Mendip website including current five year housing supply.

1.26 A 'Delivery Action Plan' will be developed and published separately from Local Plan Part II. This will set out progress on major sites and specific measures to bring forward housing and employment delivery.

## **2. Policy Overview**

### **National Planning Framework**

2.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England. The NPPF must be taken into account in the preparation of Local and Neighbourhood plans and is a material consideration in planning decisions. One of its core principles is that development should be genuinely plan-led, empowering local people to shape their surroundings, with Local and Neighbourhood plans setting out a positive vision for the future of the area. It is an objective of the NPPF to deliver a wide choice of high quality homes and to boost significantly the supply of housing.

2.2 A revised NPPF was published in July 2018 and was subsequently reviewed in July 2021. Local Plan Part II was submitted under transitional arrangements. The Council expects that significant policy changes will be addressed through a review of Local Plan Part I rather than this Plan (see Future Local Plan Review).

## **Mendip Local Plan Part I**

2.3 National planning policy places Local Plans at the heart of the planning system and planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

2.4 The Local Plan Part I is a district-wide plan which sets out a vision for the area, key objectives and a strategy for development over the plan period 2006 to 2029. The Plan was adopted in December 2014 and can therefore be treated as an 'up-to-date' plan for the area, prepared in accordance with the NPPF.

2.5 The Local Plan Part I identifies a number of objectives:

- To diversify and strengthen the local economy;
- Providing new homes to complement economic growth and a growing population;
- To improve accessibility by other means than the private car;
- To maintain and enhance the quality of the local environment and contribute to mitigating climate change;
- Infrastructure investment to meet the needs of the growing population and economy.

2.6 Local Plan Part I establishes a minimum target of **9,635** homes to be built in the district from 2006 – 2029 equating to development of **420** homes a year from 2011-2029. The Plan also identifies a settlement hierarchy which directs development to the five towns in Mendip and identifies 'Primary' and 'Secondary' villages where more limited development is appropriate. Core Policy 3 (CP3) sets out targets for the level of employment land which needs to be delivered across the district to meet the projected growth in jobs.

## **Mendip Local Plan Part II**

2.7 The Mendip Local Plan Part II is not a new plan for the district and does not replace the Policies in the Part I Plan. However, the Part II Plan does provide clarification where appropriate and also addresses matters specifically highlighted for review at this stage in Local Plan Part I.

2.8 The Plan allocates sites for development over the same Plan Period which is 2006 - 2029.

2.9 The additional development management policies align and support the objectives of the Part I Plan. A number of policy areas were considered for inclusion in the Local Plan Part II but are considered to be more appropriate to be addressed in a future Local Plan Review. This will also take into account proposed changes made to the NPPF in 2018 and 2021.

## **Policy LP1: Future Development Plan Review**

2.10 Local Plan Part II forms part of the Council's development plan timetable - the Local Development Scheme or LDS - which was agreed in January 2017.

2.11 Following adoption of this Plan, the Council is committed to undertake an immediate review of Local Plan Parts I and II updating strategic and non-strategic policies over a revised plan period.

2.12 The Local Plan Review will take into account the district housing requirement set by the standard method (Local Housing Need) and changes to the NPPF since the Part 1 Plan was adopted.

2.13 In recognition of the significant shortfall in Gypsy and Traveller pitches, at least one site will be allocated through the Local Plan Review unless a site has been identified in a separate document already submitted for examination.

## **Policy LP1: Future Development Plan Review**

**The Council commits to an immediate review of the Local Plan Part I and Part II. One or more documents will be produced which replace, revise or update adopted policies. The review of the Local Plan will commence within 2 months of adoption of the Local Plan Part II. The Council also commit to submit a successor development plan to the Planning Inspectorate within 3 years of commencement.**

**The replacement Mendip Local Plan will extend the existing Part I plan period by at least 5 years and as a minimum will review the following matters:**

- The housing requirement for Mendip and the housing supply needed to meet this need;
- Any unmet need arising from adjacent authorities;
- Employment land requirements for Mendip as identified through an updated comprehensive evidence base;
- Provision for Gypsies, Travellers and Travelling Showpeople (GTTS), to include at least one site to accommodate the needs of the Gypsy and Traveller community unless a site has already been allocated in a submitted development plan document; and
- An evidence-based assessment of highways and other infrastructure needs, in partnership with Somerset County Highways Authority and Highways England.

### 3. Housing Land

#### **Housing Requirements and Local Plan Part II**

3.1 The housing requirement in Local Plan Part I provides the starting point for considering the delivery levels to be obtained from sites in this Plan. It also forms the basis for the calculation of the five year housing supply.

3.2 The Part I Plan establishes a requirement of 420 dwellings per annum over the period from 2011 to 2029. This was tested through the Local Plan examination and takes into account national household projections, assumptions about long term migration rates and other factors.

#### **Strategic Housing Market Assessment**

3.3 Since the Plan was adopted, the Council have published two studies which provide an updated picture of housing need in the district and the extent of the local Housing Market Area (HMA). The findings of these studies do not replace the adopted plan figure but are a significant consideration in assessing housing delivery through Local Plan Part II.

3.4 The conclusions of the Housing Market Area study<sup>2</sup> demonstrate that Mendip District can be treated as a self-contained HMA. This means that for practical purposes, Local Plans can continue to be prepared for the area to address housing need arising in Mendip without a specific need for joint planning with neighbouring areas.

3.5 The Strategic Housing Market Assessment (or SHMA)<sup>3</sup> updates the Mendip Housing Needs study (mid 2011) and the 2011-based housing projections incorporated in Local Plan Part I. It provides an estimate of *Objectively Assessed Need* which is the level of housing required in a HMA before any constraints (such as planning policy or land supply) are taken into account.

3.6 The SHMA 2016 concludes that OAN can be considered as reasonable and justified within a range of 411 – 491 dwellings p.a. It also recommends that, as a starting point, a level towards the higher end of the range would be more robust. This takes into account sensitivity testing using alternative assumptions in the projections and a better alignment of housing with job growth.

3.7 In responding to the SHMA, the Council have taken the following approach as to how its outputs are used to inform Local Plan Part II.

- A recognition that while the findings in the SHMA represent the most up-to-date evidence on housing need, they have not been tested through an examination process and do not replace the adopted plan requirement.

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<sup>2</sup> Housing Market Areas and Functional Economic Areas in Somerset (ORS) Sept 2015.

<sup>3</sup> Mendip, Sedgemoor, South Somerset & Taunton Deane – Strategic Housing Market Assessment (Oct 2016), JG Consulting

- That the role of re-examining housing requirements is best considered through a Local Plan Review to follow Local Plan Part II;
- That at this stage, the SHMA findings provide a means to test the overall robustness of housing delivery rather than target setting.

3.8 The need to explore higher levels of development than Local Plan Part I also reflects the fact that the dwelling requirements are minima and that a significant proportion of housing needed over the plan period has already been built or is already committed. The Local Plan Inspector in examining Local Plan Part I also considered that there were likely to be sustainable options to increase housing delivery over the adopted plan figure.

3.9 This approach also aligns with the expectations of national planning policy to boost the supply of housing and is more likely to produce a ‘sound’ plan through examination.

### **Housing Supply Objectives**

3.10 In terms of housing supply, there are a number of principal objectives to be delivered from the site allocations through this Plan. This takes into account national guidance and the policies and approach adopted in Local Part I. These are:

- a) To address the minimum requirements specified in Local Plan Part I;
- b) To support a rolling five year supply of deliverable land;
- c) To provide opportunities to increase delivery of affordable housing;
- d) To achieve a distribution of growth consistent with the spatial strategy;
- e) To explore an uplift in housing growth through testing of suitable sites.

3.11 It is considered these objectives can be addressed through the scope of Local Plan Part II and do not require a complete review of the spatial strategy.

3.12 The plan takes a site-based approach. This means assessing available and sustainable sites to address these objectives rather than revising district and settlement housing requirements.

#### **Objective (a): Meeting minimum housing requirements specified in Local Plan Part I**

3.13 LPP1 Core Policy 2 sets out that the district should accommodate at least 9,635 additional dwellings over the period 2006 to 2029. It also sets out minimum housing requirements for the main towns and Primary and Secondary villages. The residual levels of development to meet the district target are set out in the Housing Background Paper, which covers housing supply. In total, Local Plan Part II would need to provide 726 dwellings located in towns and villages with a residual requirement.

#### **Objective (b): To help demonstrate a rolling five year supply of deliverable land**

3.14 The NPPF requires that each Local Planning Authority demonstrate that there is a five year supply of deliverable sites for housing development. These are specific sites within the overall land supply where there is confidence that dwellings can be

delivered in a rolling five year period. Based on the adopted plan target, the requirement equates to demonstrating a supply of 2,055 dwellings (including a 5% buffer).

- 3.15 The five year supply figure is regularly updated through statements and monitoring reports published on the Council's website.
- 3.16 The allocation and release of sites in this Plan will make a significant contribution to maintaining a five year supply over the longer plan period to 2029 and particularly in Years 5 – 10 (from 2022-2027).
- 3.17 An assessment has been made of the likely timings of construction of the various supply sources to produce a trajectory of dwelling completions. Housing trajectories are site by site estimates of delivery and start and finish dates for a development. Combining housing trajectories for each settlement demonstrates that the plan can deliver in excess of five years supply of land to well beyond the timing of the next Local Plan Review<sup>4</sup>.

**Objective (c): To increase delivery of affordable housing**

- 3.18 Evidence from the 2016 SHMA re-iterates the need to make the maximum use of the development plan to deliver affordable housing and particularly housing for social rent. However, the expectations in the Part I Plan of increased delivery through small sites has been compromised by government policy to generally exclude sites under 10 units from contributing to delivery of affordable homes. Added uncertainties to the corporate plans of Registered Providers have also added to delays on securing and delivering homes on larger sites.
- 3.19 Policies in Local Plan Part I are intended to deliver 2,500 affordable homes over the plan period. The allocations identified in Tables 1 and 2 should contribute 747 affordable homes in compliance with Policy DP11. 1,201 affordable homes have been completed between 2006 and 2019. The housing trajectory, which includes sites allocated in this plan, together with existing and potential commitments should provide around 1,274 affordable homes to the end of the plan period in 2029 and 1,390, dwellings over the next 15 years. Additional affordable homes would also be expected from windfall sites.
- 3.20 A refreshed Somerset Housing Strategy will provide a basis for developing a policy response to housing need for specific groups – particularly the need for older-age households. It is considered there is sufficient flexibility within adopted Local Plan Part I policy for any revised Council's approach to be set out in Supplementary Planning Documents. If specific development management policies are required these will be included in the Local Plan review.

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<sup>4</sup> See Testing Housing Supply Background Paper which shows a provisional housing trajectory.

**Objective (d): To achieve a distribution of growth consistent with the spatial strategy**

3.21 The Part I Local Plan directs development to the five towns (Frome, Glastonbury, Shepton Mallet, Street and Wells) and a proportion to the 16 larger villages with local facilities (identified as Primary Villages) and a group of 13 Secondary Villages. A principle of this Plan is to allocate land to support this distribution.

3.22 The Plan allocations therefore focus on those settlements where land supply falls short of the minimum requirements. It also seeks to prioritise suitable and sustainable sites in the towns over village locations.

3.23 In addition to requirements for towns and the rural area, Core Policy 2 also identified a need to distribute a further 505 dwellings in towns and villages as a consequence of rolling forward the plan period to 2029 (see also para 4.21 in Local Plan Part I).

3.24 ~~Outside the five main towns, Local Plan Part I indicates (in para 4.7) that land on the edge of the district near Westfield, Midsomer Norton and Radstock could be identified to meet housing need in Mendip. This has resulted in additional allocations around Midsomer Norton (see section 10.6) and in Primary villages in the north/northeast of the district.~~

**Objective (e): To provide for an uplift in housing growth**

3.25 This Plan does not seek to review the adopted dwelling requirement as this will be addressed in the future Local Plan Review. However, the potential delivery from site allocations can be compared against the findings of the 2016 SHMA. For example, applying the highest level of OAN in the SHMA (490 dwellings per annum) over the plan period from 2014 – 2029 would result in a revised plan target of 10,685 dwellings – an uplift of around 11% on the adopted plan.

3.26 Table 3 shows that potential delivery based on the capacity of the site allocations in this Plan, together with other sources of supply could provide approximately 11,200 dwellings.

**Primary and Secondary Villages**

3.27 An important part of the spatial strategy is that there should be a proportionate approach to growth in the designated Primary and Secondary villages. However, a number of villages have seen significant additional development built or granted permission. This reflects the impact of a period where the Council was not able to demonstrate a five-year housing land supply.

3.28 The approach of this Plan is that further growth in these villages through planned site allocations does not reflect the adopted spatial strategy. The proposed site allocations reflect this principle by not identifying allocations in villages which have already fulfilled the requirements set out in Local Plan. However, small residential development schemes on sustainably located sites within all Primary and Secondary Villages, will in principle be acceptable, subject to environmental and infrastructure

considerations and impact on the living conditions of neighbouring residential occupiers.

3.29 Monitoring data at a district level indicates a marked shift in the balance of housing delivery to the rural area. This supports the case for the emphasis of this plan to be on allocations in the Mendip towns. The residual housing numbers quoted for villages in the Plan are based on 2017 surveys.

### **Other Villages**

3.30 In preparing Local Plan Part II, the Council have considered the impact of the spatial strategy on settlements which are not identified as Primary or Secondary villages. These settlements lack the range of facilities and services to be considered as sustainable locations for growth – although housing can come forward under the exception policy (DP12) to meet local affordable need. Policy DP24 which promotes single-plot exception sites, will provide additional flexibility in these settlements for lower-cost market housing.

3.31 The Council intends that a review of the rural settlement hierarchy is best accomplished through the future Local Plan Review. This would allow for a comprehensive district-wide re-assessment of transport and other relationships between villages and the main towns. This cannot be achieved through promoting or demoting individual villages in the hierarchy in Local Plan Part II.

3.32 The Council continues to monitor the level of services and facilities in smaller settlements, and this can be taken into account in deciding individual development proposals. Further information can be found on the Development Monitoring page of the Council website.

### **Steps in the Selection of Sites**

3.33 The identification and selection of sites in this plan has followed a structured approach.

#### **Starting Point - Land available for development (the HELAA)**

3.34 All councils are required to maintain a register of land that has been put forward for Development. This is referred to as the **Housing and Employment Land Availability Assessment (HELAA)**. HELAA sites provide a starting point for development but this does not mean any particular site is developable or suitable for development; either in part or whole.

3.35 Housing sites not included in the HELAA may possibly be capable of development. However, because neither a developer nor landowner has promoted the site as available, these sites cannot generally be considered as options in the site allocations process. As the HELAA tends to be focused on greenfield land, a more flexible approach has been taken for employment sites and more complex sites such as those in town centres.

### **Stage 1: Appropriate Areas for Growth**

3.36 The settlements suitable for development are defined in the Spatial Strategy - Core Policy 1 of the Local Plan Part I. This includes the five principal settlements of Frome, Glastonbury, Shepton Mallet, Street and Wells, alongside the Primary and Secondary villages. No allocations were proposed outside these settlements. ~~Allocations on the boundary of Mendip and Bath & NE Somerset were made through the examination process.~~

### **Stage 2: Initial Sift - High level Assessment**

3.37 Those sites put forward by landowners and developers for inclusion in the 2014 HELAA were the subject of an initial desktop assessment. This was to establish whether sites were subject to constraints which would rule out housing development for example being located within Flood Zone 3; within a Special Landscape Feature; very steep topography etc.

3.38 A number of sites from the HELAA were ruled out at this stage and the results were published as part of the Issues & Options Consultation Document in 2015. A number of new sites were put forward as part of the consultation process and an opportunity was provided for landowners to submit further evidence.

### **Stage 3: Sustainability Appraisal of suitable sites**

3.39 The sites that were considered suitable after the initial sift of Stage 2, alongside the new sites put forward through the Issues & Options Consultation, were then subject to Sustainability Appraisal (SA). The SA framework contains a series of objectives that cover the likely environmental, social and economic effects of development. The performance of each site was assessed against each of the objectives using a consistent set of decision aiding questions. The sustainability appraisal used common evidence and the process ensures a transparent, consistent and equitable comparison of all reasonable alternatives.

3.40 The appraisal process ruled out some sites and left a number of sites considered to be suitable as preferred options. Further information is set out in the Sustainability Appraisal.

### **Stage 4: Informal consultation on Preferred Options**

3.41 In those settlements where allocations were required an informal consultation on the preferred options took place with Town and Parish Councils from December 2016 – February 2017. Where a choice needed to be made between a number of preferred options the views of the Town and Parish councils, alongside views expressed by respondents to the 2015 Issues & Options Consultation, were taken into account in choosing a site for allocation.

### **Stage 5: Review of draft plan allocations**

3.42 The preferred options were reviewed, informed by high level assessments from infrastructure providers, additional ecological advice and the Habitat Regulations Assessment. Broader judgements on the role of development sites to fulfil district

growth objectives, community aspirations and policies in neighbourhood plans were also taken into account in the shortlisting of sites.

3.43 An assessment has also been made as to whether preferred sites were capable of delivery taking into account policy obligations such as affordable housing and necessary infrastructure. Further information is contained in the Infrastructure Delivery Plan.

3.44 The potential level of housing delivery from shortlisted sites was compared with the higher growth targets indicated by the findings in the SHMA and the overall level of uplift was tested through the Sustainability Appraisal. This assessment supports the position that growth objectives can be achieved within the principles set out in the adopted Local Plan Part I.

### **Summary of Site Allocations**

3.45 Sites for housing or housing-led development in the Mendip Towns ~~and around Midsomer Norton~~ are identified in Table 1. The sites are allocated to support the role of these centres, increase delivery of affordable housing and ensure a rolling five-year housing land supply. The selection of sites has been informed by Sustainability Appraisal, housing delivery and community objectives.

3.46 The specific requirements and the form development will take are described in the individual site allocation policies in the Settlements chapter of this Plan. This is to ensure they are each appropriate in scale and character to their location and in accordance with Local Plan Part I and national policy.

3.47 A Future Growth Area is identified in Street. This is to provide flexibility in determining the extent of development and strategic open space which will come through master planning work. This is explained in Policy ST3.

3.48 The Future Growth Area in Frome identified in Local Plan Part I is not being retained and will be reassessed as part of town-wide options in the future Local Plan Review.

### **Housing Site Allocations in Primary and Secondary Villages**

3.49 The housing sites in Table 2 are allocated in Primary and Secondary villages in Mendip. The sites are allocated to achieve the objectives of the spatial strategy and to meet the village development requirements set out in LPP1.

3.50 The selection of sites was informed by the Sustainability Appraisal which accompanied the development of the Plan.

3.51 The specific requirements and the form each development will take are described in the individual site allocation policies in the Settlements chapter of this Plan. This is to ensure they are each appropriate in scale and character to their location and in accordance with Local Plan Part I and national policy.

## **Additional Sources of Housing Supply**

3.52 In addition to the allocations made in this Plan, additional housing delivery will come forward through a number of planning policy measures and initiatives. These include:

- Sites allocated through Neighbourhood Plans;
- Rural exception sites including the introduction of a single-site exception policy;
- Sites for self-build and custom-build housing;
- Specific redevelopment opportunities and windfall conversions in the towns;
- Rural windfall from infill in Primary/Secondary villages and conversions of agricultural buildings.

## **Brownfield Land**

3.53 A number of brownfield sites are allocated in the towns for housing or mixed use. Some brownfield sites in employment use have not been allocated, reflecting a strategic need to retain land for economic development purposes in central locations.

3.54 Land at Saxonvale, Frome has recently been acquired by the Council. A planning application for mixed use redevelopment has been approved in principle.

3.55 The Council is required to publish a brownfield register which identifies policy-compliant sites which are suitable for housing-led development and which have not started. Nearly all of these sites are existing commitments and already included in the housing trajectory. The Council will continue to explore options and invite suggestions for brownfield sites through the consultation process on the Local Plan review and other initiatives.

**Table 1: Site Allocations in Mendip/Other Towns**

Settlement	Local Plan Part II Policy Reference	HELAA Site Ref	Minimum Dwellings
<b>Frome</b>			
Saxonvale <sup>(*1)</sup>	FR1	FRO009	250
Land N and S of Sandy's Hill Lane	FR2	FRO152M	250
Land S of Little Keyford & The Mount	FR3a	FRO001/150/150a	325
Little Keyford	FR7	FRO004	20
<b>Glastonbury</b>			
Highway Depot & Avalon Motors	GL1/1a	GLAS001/1a	67
Allotments, Lowerside Lane	GL2	GLAS119	50
Frogmore Garage	GL3	GLAS027	25
Lintells & Avalon Garage	GL4	GLAS055/GLAS121	25
<b>Street</b>			
Land West of Somerton Road	ST1	STR003	280
Land adj Street Cemetery	ST2	STR137	32
Land West of Brooks Road – MDA <sup>(*2)</sup>	ST3	STR001/WAL026	400
<b>Wells</b>			
Land off Bubwith Walk	WL1	WELLS044	120
Wells Rugby Club	WL2	WELLS094	80
Tincknells Depot	WL4	WELLS116M	25
Land of Elm Close	WL5	WELLS084	100
<b>Total Dwellings</b>			<b>2049</b>
(*1) Revised boundary from land allocated in LPP1 Policy CP6b			
(*2) Main Development Area shown in Policy ST3 – revised boundary from LPP1 Allocation CP8a			
(*2) Policy ST3 – Capacity of Future Growth Area to be confirmed through masterplanning			

**Table 2: Allocations in Primary and Secondary Villages**

Settlement	Site Name	Local Plan Part II Policy Reference	HELAA Site	Dwellings in allocated sites
Binegar & Gurney Slade	Land Off Station Road	BG1	GS001	11
Butleigh	West View, Sub Road	BT1	BUT003	25
Coleford	Land s.o Recycling Centre	CL1	COLE024	21
Coxley	Community Centre	CX1	COX030	
Ditcheat	Land on Edge of Ditcheat	DT1	DIT008	16
Ditcheat	Land at Back Lane (*1)	DT2	DIT009	0
Draycott	Land N of Westfield Lane	DR1	DRAY004a/22	33
Mells	Part Hill House, Woodlands End	ML1	MELLS002	4
Nunney	Land at Green Pits Lane	NN1	NUNN01a	70
Stoke St Michael	Land East of Frog Lane	SS1	SSM009	30
Westbury Sub Mendip	Land S. of Roughmoor Lane	WM1	WSM006	40
<b>Total</b>				<b>250</b>

(1\*) granted permission and shown as '0' to avoid double counting in Tables 3 and 4

### Summary of Potential Delivery in Local Plan Part II

3.56 The proposed allocations in this Plan provide 1,776 additional dwellings over the Plan period to 2029. Together with the remaining sites identified in LPP1 (1,150 dwellings), the combined site allocations will provide 2,916 dwellings.

3.57 Table 3 shows delivery by settlement over the plan period to 1st April 2019, and the level of commitments, site allocations and other developable sites as at 1st April 2019. This does not include windfall development or housing which may come forward in the Future Growth Area in Policy ST3.

**Table 3: Summary of planned growth 2006-2029 (\*2)**

Net Dwellings	Completions	Commitments		Part I & 2 Plan Allocations	Other sites	Planned Growth
		2006-19	Started			
Frome (*1)	1502	195	294	845	44	2880
Glastonbury	636	142	91	167	0	1036
Street (*1)	803	52	13	712	0	1580
Shepton Mallet	727	5	181	600	30	1543
Wells	802	312	309	345	0	1768
Primary Villages	750	75	126	236	24	1211
Secondary Villages	386	38	109	11	0	544
Other villages & Countryside	527	113	123		20	783
<b>Total</b>	<b>6133</b>	<b>932</b>	<b>1246</b>	<b>2916</b>	<b>118</b>	

(\*1) includes sites part allocated in Local Plan Part I – Saxonvale (FR1) and Land west of Brooks Road (ST3)

(\*2) delivery from allocations scheduled to commence in remaining plan period 2019 - 2029

3.58 Table 4a compares the level of planned growth by settlement to the minimum requirements in the adopted Part I Plan. Frome has the highest level of growth reflecting the availability of preferred options and other sites. Glastonbury is particularly constrained. The uplift in the rural area from Local Plan Part I reflects the impact on unplanned growth in villages when the Council was not able to demonstrate a five year supply.

3.59 Planned growth is expected to deliver a total of 11,345 dwellings which equates to a 15% uplift over the minimum district requirement of 9,635 dwellings in the Local Plan Part I.

3.60 Table 4b illustrates dwelling delivery from planned growth and windfall over the 5-year period (2019 – 2022) and from Years 6 – 10 and then beyond the plan period.

**Table 4a: Planned uplift from settlement requirements in CP2**

Dwellings	CP2 Minimum Requirement 2006 – 2029	Planned Growth 2006 – 2033/34 (*1)	Change from Policy CP2
Frome	2300	2880	25%
Glastonbury	1000	1036	4%
Street	1300	1580	22%
Shepton Mallet	1300	1543	19%
Wells	1450	1768	22%
Villages & rural	1780	2538	43%
<b>Total</b>	<b>9635 (*2)</b>	<b>11345</b>	<b>15%</b>
Windfall 2020/21- 2029 (*3)		<b>900</b>	
Total uplift	9635	<b>12245</b>	27%

Source: Mendip Housing Trajectory (November 2019)

(\*1) Includes completions to 2019 plus + delivery from commitments, LP1 and LP2 allocations and developable sites to 2029

(\*2) Total includes unallocated 505 dwellings

(\*3) Estimated at 100 dwellings per year

**Table 4b: Mendip Housing Trajectory by 5 year Periods**

Settlement	5 year period 19/20 – 23/24	Remainder of Plan Period 2024/25 – 2028/29	Beyond Plan period 2029/30 – 2033/34	Total
Frome	648	710	20	1378
Glastonbury	233	105	62	400
Street	207	430	140	777
Shepton Mallet	202	356	258	816
Wells	641	305	20	966
Primary Villages	225	214	22	461
Secondary Villages	147	11	0	158
Other villages/countryside	245	11	0	256
<b>Total Planned Growth</b>	<b>2548</b>	<b>2142</b>	<b>522</b>	<b>5212</b>
Windfall allowance	400	500	500	1400
<b>Total Growth with Windfall</b>	<b>2948</b>	<b>2642</b>	<b>1022</b>	<b>6612</b>

3.61 A Sustainability Appraisal (SA) has been undertaken to consider the cumulative impacts of the uplift in the towns and in the district resulting from the allocation of all of the preferred options sites. While some impacts are highlighted, these are considered acceptable provided mitigation is provided on the individual sites.

3.62 The SA also compares the impacts of the allocation of all the preferred sites in Frome, Glastonbury, Street and Wells against an option of just meeting the minimum housing requirements in Local Plan Part I. However, this approach would not achieve the objective of delivering a rolling five-year supply over the plan period. The SA concludes that the impacts of uplifts proposed are not so significant that the lower growth option should be preferred.

## 4. Employment Land

### **Mendip Economic Development Strategy (EDS)**

4.1 The supporting text to Core Policy 3 emphasises the Council's 'open for business' approach which was introduced with the Council's Economic Development Strategy (EDS) in 2013. This strategy has now been refreshed involving engagement of businesses, town councils, chambers of commerce and key site owners. The strategy includes a Baseline Conditions Survey (August 2016) which provides an up to date socio-economic picture for the district.

4.2 The strategy also links to addressing objectives in the Somerset Growth Plan and broader regional strategies in the LEP area.

4.3 The Mendip EDS identifies a number of high level issues which relate to future planning for employment land. These include:

- Identification of additional land in Frome, Wells, Shepton Mallet and Glastonbury;
- Promoting regeneration opportunities in the Mendip town centres;
- Making positive use of planning measures to support local economic growth;
- Increasing the supply of 'starter' and 'grow-on' space; and
- Increasing the availability of sites and premises for 'foot-loose' business enquiries.

4.4 The strategy reports on the significant revival in interest, development activity and investment on the main serviced employment sites at Morlands Enterprise Area (Glastonbury), Commerce Park (Frome), Cathedral Park (Wells) and the Street Business Park. In addition, land allocated at Dulcote Quarry is now being developed as a food production campus. A new brewery has recently been approved on the Royal Bath & West Showground which forms part of a 10ha enterprise area focused on agri-food businesses. This area benefits from streamlined planning via a Local Development Order.

## 11 Settlement Allocations - Villages

- 11.1 Baltonsborough
- 11.2 Beckington
- 11.3 Binegar & Gurney Slade
- 11.4 Butleigh
- 11.5 Chewton Mendip
- 11.6 Chilcompton
- 11.7 Coleford
- 11.8 Coxley
- 11.9 Croscombe
- 11.10 Ditchet
- 11.11 Doulting
- 11.12 Draycott
- 11.13 Evercreech
- 11.14 Faulkland
- 11.15 Holcombe
- 11.16 Kilmersdon
- 11.17 The Lydfords
- 11.18 Meare and Westhay
- 11.19 Mells
- 11.20 Norton St Philip
- 11.21 Nunney
- 11.22 Oakhill
- 11.23 Rode
- 11.24 Stoke St Michael
- 11.25 Walton
- 11.26 West Pennard
- 11.27 Westbury sub-Mendip
- 11.28 Wookey
- 11.29 Wookey Hole

## 11.20 Norton St Philip

11.20.1 Norton St Philip is a medium sized village located 12km (9 miles) south of Bath and 11km (8 miles) north of Frome, situated around the junction of the A366 Wells to Trowbridge road and the B3110 route, about 1.5km west of the A36 (T) main route from Bath to Warminster. It occupies an elevated position on a pronounced west-facing ridge overlooking the valley of Norton Brook. The village's position on a ridge and down its western slopes, means that it dominates its immediate surroundings and is visible from lower ground to the west. There are many older and listed buildings and much of the village is Conservation Area. The older buildings of High Street and The Plain form a strong skyline when viewed from the lower ground. The village lies adjacent to an area designated as the Bath & Bristol Green Belt.

### **Community Planning**

11.20.2 A Neighbourhood Plan for the Parish Area of Norton St Phillip was submitted and examined in June/July 2019.

### **Site Allocations**

11.20.3 Norton St Philip is identified in LPP1 as a Primary Village with a minimum housing requirement of 45 dwellings in Policy CP2. Completions and committed development in the plan period to date totals 105 dwellings, a 34% increase to dwelling stock. Given this level of growth, no sites were allocated in this village in the Submission plan. ~~Following examination hearings, additional allocations were necessary to make the plan sound, specifically to address the requirement in Policy CP2 to provide 505 dwellings located adjacent to Midsomer Norton and Radstock and in settlements in the north/northeast of the district.~~

11.20.4 ~~Land to the east of the Fortescue Fields development, off Mackley Lane, is identified as a suitable location for additional development. This location is not subject to designations in the Neighbourhood Plan. The land is outside but adjacent to the adopted development limit.~~

- ~~Land off Mackley Lane is allocated for residential development under Policy NSP1 (27 dwellings)~~

### **Windfall Development**

11.20.5 Norton St Philip continues to have an identified development limit. Therefore, over the lifetime of the plan, additional small scale development can potentially come forward within this boundary.

### **Development Limit**

11.20.6 The development limit has been amended than to reflect committed development at Longmead Close and to reflect existing development on the southern edge of Fortescue Fields.

## **NSP1: Land off Mackley Lane (HELAA sites NSP013 and NSP16)**

### **Context**

~~This site is 1.1 ha and lies outside of development limits to the south of the village, north west of Mackley Lane. It is a greenfield site consisting of fields and is adjacent to the Fortescue Fields development. It borders the B3110 and there is other residential development on the opposite side of this road. The land is raised above the level of surrounding road.~~

### **Highways**

~~The site adjoins Mackley Lane with the potential for a suitable access from here. There is also potential to access the Laverton Triangle section of the site from Fortescue Fields. Mackley Lane is currently a lightly used rural lane and the need for improvements, including the junction with Townsend, should be considered. There are currently no footpath links and no footways on Mackley Lane. There is potential to link into the local footpath network and to provide convenient access to local facilities, including the playing field and school.~~

### **Landscape & Ecology**

~~The north eastern part of the site is considered to be visually important – a gateway to the village and important to its setting. A bank of newly planted trees is also identified as important to the character and setting of the village and has the potential to reduce the sense of buildings being an incursion into open countryside. It would be necessary to retain the appearance of countryside at this gateway in order to mitigate the impact of development.~~

~~The south western part of the site is on the slopes forming the southern edge of the ridge on which Norton St Philip sits. Although the landscape setting on the ridge is important to the character of the village, the slopes here are less prominent than in other parts of the village.~~

~~The site lies within the outer area (Band C) of the Mells Valley and Bradford on Avon Bat consultation zones. Appropriate mitigation measures will be required.~~

### **Affordable Housing**

~~A village survey has identified a need for an affordable housing format that allows for purchase as well as rental. Affordable housing formats that allow an element of purchase should be considered.~~

### **Heritage**

~~Development should respect the local context and be sensitive to the location. The Norton St Phillip Conservation Area covers part of the Laverton Triangle site.~~

### **Flood Risk / Drainage Infrastructure**

~~There is no known flood risk on the site. There has been significant development in the village in recent years and therefore it is possible that additional development will require drainage capacity improvements.~~

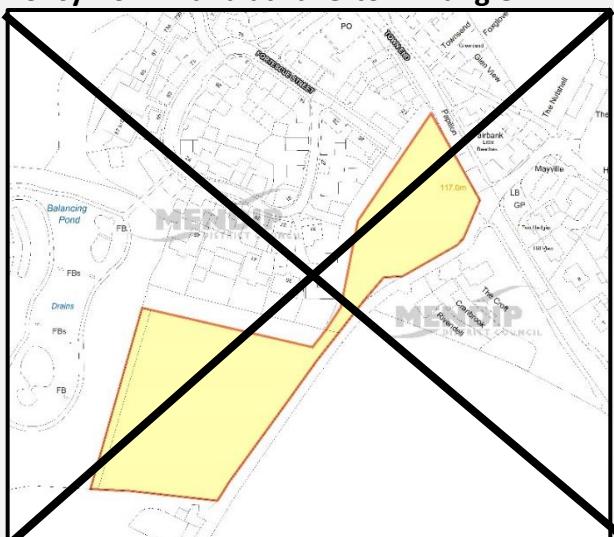
## **School Infrastructure**

~~Norton St Philip is served by both Norton St Philip First School and Rode First School. Middle school provision is in Frome. At present, both of the First schools are relatively full but not at capacity. The number of pupils on the school roll is expected to fall over the next five years. Therefore, it is likely that the school would be able to accommodate growth from the identified allocation.~~

## **Policy NSP1: Development Requirements and Design Principles**

1. A minimum of 27 dwellings (7 on Laverton Triangle and 20 on land to the south), making provision for affordable housing in line with relevant policies.
2. Have particular regard to site layout, building height and soft landscaping, to minimise the visual impact of the development, respect the rural character of the locality and maintain the Laverton Triangle's role as a feature at this gateway to the village. In particular the belt of trees on the site should be retained. Regard should be had to the elevation of the site compared to surrounding land.
3. Proposals should preserve and enhance the significance and setting of heritage assets in the adjoining Conservation Area. Creating an appearance of countryside on the northern edge of the site will be important to the setting of the Conservation Area.
4. New development should have regard to local materials and style.
5. The site should be designed to safeguard the amenity of neighbouring residential properties.
6. Opportunities should be taken to maintain and enhance biodiversity in any scheme. Provisionally 0.24 ha of bat replacement habitat should be included within the development site alongside any other required mitigation measures.
7. Links should be made to the local footpath network, to provide convenient access to village facilities, including the recreation ground and the school.
8. Safe access should be provided to the site from Mackley Lane, and at the junction between Mackley Lane and Townsend.

## ~~Policy NSP1: Land at Laverton Triangle~~



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# Appendix 1:

## Mendip Local Plan Parts I and II: Glossary of Terms

While the Policy team endeavour to make the Local Plan as clear as possible, the wide-ranging nature of development plans and policy requirements makes it difficult to avoid technical terms. A number of key terms used in Local Plan Parts I and II are below. Please also refer to the definitions in the NPPF Annex 2: Glossary.

The schedule will be kept up-to-date as far as possible and was last updated in September 2021 and includes changes recommended in the Inspector's Report.

<b>Adoption</b>	The final confirmation of a Development Plan or one of its subsidiary parts by a local planning authority (LPA) bringing it into formal use. Policies and proposals carry full weight in planning decisions from this stage.
<b>Accessible Natural Greenspace Standards (ANGst)</b>	A set of standards to ensure that everyone, no matter where they live, has access to an accessible natural greenspace.
<b>Affordable Housing</b>	Housing for sale or rent, for those whose needs are not met by the market (including housing that provides a subsidised route to home ownership and/or is for essential local workers); and which complies with one or more of the following definitions: a) Affordable housing for rent b) Starter homes c) Discounted market sales housing d) Other affordable routes to home ownership  A full national definition is set out in the National Planning Policy Framework - <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf</a>
<b>Affordable in perpetuity</b>	Housing which is subject to a legal restriction to remain 'affordable' forever.
<b>Allocation</b>	Land identified for development in the Local Plan. Allocations are subject to specific policies which will be significant in determining a planning application.
<b>Amenity</b>	Those qualities of life enjoyed by people who can be influenced by the surrounding environment in which they live or work. 'Residential amenity' includes, for example, a reasonable degree of privacy, freedom from unacceptable levels of noise, air and light pollution.
<b>Ancillary</b>	Use or structure which is related to and often found in association with primary use or development. For the purposes of planning, ancillary uses that are materially different would typically be tolerated up to 15% of a wider site area e.g. a trade counter (retail use) within a larger warehouse (distribution use).
<b>Authority's Monitoring Report (AMR)</b>	A report produced by the Council to monitor planning policies and determine whether they are being effectively implemented.
<b>Area Action Plan (AAP)</b>	A type of Development Plan Document focused upon a specific location or an area subject to conservation or significant change (for example major regeneration).
<b>Area of Outstanding</b>	A statutory landscape designation to recognise, conserve and enhance landscape of national importance.

<b>Natural Beauty (AONB)</b>	
<b>Areas of High Architectural Potential (AHAP)</b>	Areas identified on the Policies Map as most likely to contain important archaeological features. Where ground disturbance is expected as part of a development within an AHAP, an archaeological assessment will usually be required.
<b>Aquifer</b>	Underground layer (stratum) of rock in which water naturally occurs. Water for human use may be extracted by means of wells or boreholes.
<b>Bat Consultation Zone (Band A/B/C)</b>	Locations considered to have a potentially significant effect on horseshoe bat roosts / feeding areas. Development allocations in a local plan area must be assessed for their impact and subject to assessment under Habitat Regulations.
<b>Biodiversity</b>	The existence of a wide variety of plant and animal species living in their natural environment.
<b>Biodiversity Action Plan (BAP)</b>	An internationally recognised program addressing threatened species and habitats, designed to protect and restore biological systems. Biodiversity Action Plans are prepared at various geographic scales. Mendip has a Biodiversity Action Plan (BAP) that outlines which important species and habitats have been prioritised in the district for protection and enhancement.
<b>Built Environment</b>	Surroundings which are generally built up in character. The collection of buildings, spaces and links between them which form such an area.
<b>Call for Sites</b>	Where the Local Planning Authority invite individuals, organisations and developers to submit details of land or sites they wish to be considered for development. These sites form the basis of the HELAA assessments.
<b>Climate Change</b>	Refers to changes in the earth's climate, especially the gradual rise in temperature caused by high levels of carbon dioxide and other gases.
<b>Committed Development</b>	Land with a current planning permission or an allocation in an adopted Local Plan where there is a reasonable degree of certainty that development will proceed.
<b>Community Facilities</b>	Services available to residents in the immediate area to meet the day-to-day needs of the community. Includes village halls, post offices, doctors and dentist surgeries, recycling facilities, libraries and places of worship, as well as commercial services and open spaces.
<b>Community Infrastructure Levy (CIL)</b>	A charge made on new development (calculated per sq metre of additional floorspace) and used to support local infrastructure. The process of setting charges must go through local consultation and examination to ensure they are set at a level which does not prevent development.
<b>Comparison Goods</b>	Defined as household or personal items which are bought on an infrequent basis and typically would involve the buyer comparing alternative styles/prices/types. Would generally include products like clothing, electrical goods and furniture amongst many other things. Also see Convenience Goods.
<b>Conservation Area</b>	An area of special historic and/or architectural interest which is designated by the local planning authority as being important to conserve and enhance. Special planning controls apply within these areas.
<b>Convenience Goods</b>	Items bought for everyday needs. Includes food and other groceries, newspapers, drink and tobacco and chemist goods. Generally such goods are used or consumed over a relatively short period. Also see Comparison Goods.
<b>Core Area (ecological network)</b>	One component of an ecological network (the other components are corridors and buffer zones). They have a high nature conservation value. They are connected to each other with corridors and surrounded by buffer zones which serve as a protection from possible disruptive external influences.
<b>Core Strategy</b>	A Development Plan Document forming the central part of a Local Development Framework under regulations that existed between 2004 and 2011. It sets out the spatial vision and strategic objectives of the planning framework for an area, having regard to the Community Strategy. Local Plan Part I is an evolved version of a Core Strategy.

<b>County Wildlife Site</b>	Wildlife habitat identified and designated as being of particular local interest of importance but is not of sufficient national merit to be nationally designated as, for example, an SSSI.
<b>Curtilage</b>	The area of land associated with a building. The curtilage of a dwelling house is the land immediately surrounding it, including any closely associated buildings and structures.
<b>Culturally Significant Landscape</b>	A landscape, modified, natural or built, that retains physical attributes of past interventions that are of significance. Examples include deer parks, deserted settlements and large-scale water management systems.
<b>Co-housing</b>	Semi-communal housing consisting of private homes clustered around shared space.
<b>Custom build</b>	Where an individual or group commissions a new home for their own occupation.
<b>Development</b>	Defined in planning law as 'the carrying out of building, engineering, mining or other operations in, on, over, or under land, or the making of a material change of use of any building or land' (see also Permitted Development).
<b>Development Brief</b>	A document that outlines how a site will be developed. It will set out an analysis of site context, development principles, design solutions and details about matters of implementation. It will contain maps and diagrams to articulate the issues and solutions proposed. Also see Supplementary Planning Document.
<b>Development Contribution/ Commuted Payment</b>	Either a payment made by a developer to the local planning authority (usually secured by means of a Planning Obligation) to fund provision of a facility needed to serve a development, but to be built or provided elsewhere or in some way other than by the developer, or a one off payment by a developer to another body to enable it to adopt a facility.
<b>Development Management Policies</b>	A suite of criteria-based policies to ensure that all development within the area meets the spatial vision and spatial objectives.
<b>Development Plan</b>	A statutory document setting out the local planning authority's policies and proposals for the development and use of land and buildings. It is the starting point for the determination of planning applications as set out in the National Planning Policy Framework.
<b>Development Plan Document (DPD)</b>	A local planning policy document that has development plan status by virtue of being prepared subject to community involvement and independently examined.
<b>Dispersal Area (ecological network)</b>	An area that can be crossed easily by a protected or other species from a core area of habitat when moving out into the wider landscape.
<b>Duty to Cooperate</b>	Government policy setting out a duty to work jointly with other bodies and neighbouring authorities to ensure that strategic priorities are properly coordinated across local boundaries.
<b>Early Engagement</b>	A very early stage of consultation and community involvement, when interested parties can help formulate and comment on aspects of the local authority's future planning proposal. Early engagement is also an important part of any development proposal in that a developer can explore local people's views before designing a new development which in turn can then, potentially, be more responsive to local conditions.
<b>Ecological Network</b>	A group of habitat patches that species can move easily between, thereby maintaining and conserving biodiversity. See also Core Area (ecological network).
<b>Employment Land</b>	Employment land includes the following types of premises: <ul style="list-style-type: none"> <li>• Traditional employment land uses where impact on site noise, disturbance and building scale would warrant specific land provision. This includes storage and distribution uses, construction yards, bulk processing and larger scale manufacturing uses;</li> <li>• Town centre uses such as offices, hospitality, retail and leisure uses;</li> <li>• Commercial uses such as motor trade uses, research and development and property management activities.</li> </ul>

<b>Environmental Statement</b>	A written statement that is required to be submitted by the applicant with certain kinds of planning application.
<b>Established Employment Areas</b>	Established Employment Areas include a range of uses (industrial, commercial, <i>sui generis</i> and retail) but exclude freestanding supermarkets.
<b>Evidence Base</b>	The information and data gathered by local authorities to justify the “soundness” of the policy approach set out in Local Development Documents, including physical, economic, and social characteristics of an area.
<b>Exception Site</b>	A site that is granted planning permission as an exception to Local Plan policy for a particular reason. It usually refers to a site with permission granted for affordable housing outside development limits on the basis that the housing will remain affordable.
<b>Exception Test</b>	In addition to the Sequential Test, and in accordance with national policy, this test seeks to consider exceptional circumstances why a particular development would be acceptable in an area that is acknowledged to be subject to flood risk. Also see Sequential Test (flooding).
<b>Extant</b>	Usually refers to a planning permission which has yet to start.
<b>Favourable Conservation Status</b>	European Habitats Directive definition requiring that habitats have sufficient area and quality, and species have a sufficient population size, to ensure their survival into the medium to long term, along with favourable future prospects in the face of pressures and threats.
<b>Flood Risk Assessment</b>	An assessment of the likelihood of flooding in a particular area so that development needs and mitigation measures can be carefully considered.
<b>Five Year Housing Supply</b>	An estimate of the additional dwellings predicted to be built over a five year period against the annual housing requirement in the Local Plan plus a 5,10 or 20% buffer. Where an adopted Local Plan figure is more than five years from adoption, the requirement is based on Local Housing Need calculated through a national standard method. The five year supply figure is updated each year.
<b>Future Growth Area</b>	Land identified as being suitable to accommodate housing or employment use that cannot come forward immediately due to development issues still needing to be explored.
<b>Future Transport Plan (FTP)</b>	The Somerset Future Transport Plan sets out the long term strategy for getting the best from transport. It describes transport issues and the policies and investments needed to tackle them. The current plan covers the period 2011-2026.
<b>Green Belt</b>	An area of land defined by national policy to protect countryside around larger urban centres from urban development.
<b>Greenfield Land</b>	Open land which has not previously been developed. Agricultural buildings, urban gardens and former industrial areas which have blended back into the landscape are also greenfield.
<b>Groundwater Source Protection Zones</b>	Zones which limit the use of land for purposes which might result in contamination of groundwater.
<b>Habitat Regulations Assessment</b>	Document to determine, understand and, if appropriate, mitigate impacts on European designated wildlife sites (Natura 2000 sites).
<b>Housing Needs Survey</b>	An assessment of the housing need in an area or settlement using primary data collection such as surveys/questionnaires. It is usually used to provide the evidence to justify an affordable housing exception site.
<b>Housing Requirement</b>	The net additional level housing to be planned for in an area. It is usually expressed as an annual rate or a total over a Local Plan period.
<b>Housing Trajectory</b>	Estimates of dwelling completions over the Plan Housing trajectories can be used to demonstrate that a plan can deliver in excess of a five year supply of land.

<b>Housing and Employment Land Availability Assessment</b>	An assessment of land promoted as available for development and its suitability. It is used to inform choices about where new development could be located. Can be referred to as HELAA or SHELAA.
<b>Implementation</b>	The point at which construction work is considered to have started.
<b>Infill Development</b>	Small scale development filling a gap within an otherwise built up frontage.
<b>Infrastructure</b>	The network of services to which it is usual for most buildings to be connected. It includes physical services serving the particular development (e.g. gas, electricity and water supply, telephones, sewerage) and also includes networks of roads, public transport routes, footpaths etc... In its widest sense the definition may also include open spaces, community facilities and commercial services which sustain a community's way of life.
<b>Infrastructure Delivery Plan (IDP)</b>	Sets out infrastructure issues and requirements which are needed to make growth happen or mitigate against the effects of growth.
<b>Issues and Options</b>	This is an early stage in the production of a Development Plan Document involving consultation and community involvement. Its purpose is to identify the issues which need to be addressed and to receive initial feedback on a range of proposed alternatives.
<b>Key Diagram</b>	A map based diagram to illustrate the broad proposals and content of a development plan, normally contained within the main strategy.
<b>Landscape Character Assessment</b>	Identifies areas with similar features or qualities, mapping and classifying them and describing their character. It is based on an understanding of landscape character and of the natural, historic and aesthetic factors that combine to create local distinctiveness.
<b>Legal Agreement</b>	See Section 106 Agreements (S106).
<b>Listed Building</b>	A building of special historical and/or architectural interest considered worthy of special protection and included and described in the statutory list of such buildings.
<b>Local Development Framework (LDF)</b>	A portfolio of planning documents required by legislation between 2004 and 2011 which collectively delivers the spatial planning strategy for the area. A former name for what is now included in the Local Plan.
<b>Local Development Order</b>	A Local Development Order grants planning permission for a site, sites or area for specific types of development (specified in the Order) and, by doing so, removes the need for a planning application to be made. Local planning authorities have powers to make them.
<b>Local Development Scheme (LDS)</b>	A document that sets out what parts of the Council's planning framework are to be produced or reviewed and the timetable for their production.
<b>Local Nature Reserve</b>	Area of botanical or wildlife interest designated by a local authority.
<b>Local Plan Part I</b>	Development Plan Document setting out the long term strategic vision for the district and its development over the specified timescale.
<b>Local Plan Part II</b>	Development Plan Document which identifies sites to deliver non-strategic development needs as guided by the principles set out in Local Plan Part I.
<b>Local Transport Plan (LTP)</b>	A five-year integrated transport strategy, prepared by local authorities in partnership with the community, seeking funding to help provide local transport projects. The plan sets out the resources predicted for delivery of the targets identified in the strategy. Somerset County Council are the responsible authority.
<b>Major Development</b>	For residential development it is defined as 10 or more dwellings or a site area of 0.5 hectares or more. For other uses it is defined as the floorspace to be built being 1000 square metres or more, or a site area of 1 hectare or more.

<b>Masterplanning</b>	A framework used to structure land use and development including strategic principles. It sets the context within which individual developments or parts of a development can come forward.
<b>Mitigation Measures</b>	Any works or actions required to be carried out by developers to reduce or remove the impact of the development on the surrounding environment or to address particular environmental effects which would otherwise make that development unacceptable.
<b>Monitoring</b>	Regular collection and analysis of relevant information in order to assess the outcome and effectiveness of policies and proposals and to identify whether they need to be reviewed or altered.
<b>National Planning Policy Framework (NPPF)</b>	The key government statement of national planning policy to be taken into account in both plan making and decisions on planning applications. See <a href="https://www.gov.uk/government/publications/national-planning-policy-framework--2">https://www.gov.uk/government/publications/national-planning-policy-framework--2</a>
<b>Plan Period</b>	The period that is covered by a plan. Normally development plans cover a 15 year period from adoption. The starting year of the plan is usually linked to the latest population/household forecasts.
<b>Planning Practice Guidance</b>	An online resource which sets out more detail and expectations of how planning authorities should work with national policy in practice.
<b>Natura 2000</b>	An ecological network of protected areas in the territory of the European Union.
<b>Passive Solar Energy</b>	Energy provided by a simple architectural design to capture and store the sun's heat. An example is a south facing window in a dwelling.
<b>Permitted Development</b>	Certain categories of minor development, as specified in the General Permitted Development Order, which can be carried out without having to first obtain planning permission.
<b>Phosphate</b>	A chemical compound that contains phosphorus. Concentrations of phosphates in water causes excessive algae and plant growth which damages the quality and ecology of rivers and lakes. The main sources of phosphates are domestic waste water, livestock and use of fertilizers.
<b>Phosphate Mitigation</b>	Measures to reduce phosphate entering a water catchment or removing it. These include managing phosphates at source, wastewater treatment (engineered solutions) and natural mitigation (designed wetlands, trees etc...).
<b>Phosphate Neutral</b>	When the additional loading of phosphate as a result of a development proposal can be offset by mitigation measures leading to no net increase.
<b>Photovoltaic Cells</b>	Technological component of solar panels that capture energy from the sun and transform it into electricity for use in homes and businesses.
<b>Planning Obligations</b>	See Section 106 Agreements.
<b>Planning Policy Statements (PPSs)</b>	Sets out the Government's national land use planning policies (now superseded by National Planning Policy Framework and National Planning Policy Guidance).
<b>Preferred Options</b>	Produced as part of the preparation of planning documents. The council sets out what it thinks are the most appropriate set of policy responses to the issues needing to be addressed. These would be consulted on to seek views as to their validity prior to refinements being made.
<b>Policies Map</b>	A component of a Local Plan and an important part of the development plan. It shows the location of proposals in all current planning proposals and designations of land on an Ordnance Survey base map.
<b>Presumption in Favour of Sustainable Development</b>	Set out in paragraph 11 of the National Planning Policy Framework and , this means that proposed developments should be granted planning permission unless their adverse impacts significantly and demonstrably outweigh their benefits.

<b>Primary Village</b>	These are larger villages in rural areas defined by Part I of the Local Plan. They have core services and facilities and are the first places to consider in distributing planned rural housing. See also Secondary Village.
<b>Protected Species</b>	Any species which, because of its rarity or threatened status, is protected by statutory legislation.
<b>Ramsar Sites</b>	Wetland sites of international importance, especially as waterfowl habitat. The term was adopted following an international conference, held in 1971, in Ramsar in Iran).
<b>Registered Social Landlords</b>	Independent housing organisations, including trusts, co-operatives and companies, registered under the Housing Act 1996.
<b>Residual requirement</b>	Local Plan Part I sets out minimum levels of development. The residual requirement is that portion of the requirement that remains to be identified.
<b>Retail Assessment / Town Centres Study</b>	An assessment which may be required in connection with major retail purposes assessing the likely effect of the proposals on patterns of trades and the viability and vitality of existing retail centres.
<b>SAMSEN</b>	A mapping system depicting Somerset's ecological network.
<b>Scheduled (Ancient) Monument</b>	An ancient structure, usually unoccupied, above or below the ground, which is preserved by order of the Secretary of State.
<b>Schedule 1 Species</b>	Species protected under the Wildlife and Countryside Act 1981 as amended.
<b>Secondary Village</b>	Villages, defined by Part I of the Local Plan, which are of a sufficient size and have sufficient facilities to be considered as sustainable locations for a modest amount of development. See also Primary Village.
<b>Section 106 Agreements (S106)</b>	Allows a Local Planning Authority to enter into a legally-binding agreement or planning obligation with a land developer over a related issue (often to fund necessary improvements).
<b>Section 41 Species (s41)</b>	This refers to the rarest and most threatened species of wildlife, as set out in Section 41 of the 2006 Natural Environment and Rural Communities Act.
<b>Sequential Approach/ Test</b>	A planning principle that seeks to identify, allocate or develop certain types or locations of land before others.
<b>Self Build</b>	Where an individual or group constructs a new home for their own occupation.
<b>Sequential Test (Flooding)</b>	A test that is carried out, in accordance with national policy, to ensure that areas at little or no risk of flooding are developed in preference to areas at higher risk. See also Exception Test.
<b>Settlement Hierarchy</b>	Categorisation of settlements in the plan area according to their services and facilities.
<b>Site Allocations DPD</b>	A Development Plan Document (part of the Local Plan) which allocates sites for specific or mixed development uses, or which makes other designations of land for a particular purpose. Part II of the Mendip Local Plan will be a site allocations document.
<b>Soundness</b>	A term which describes how a development plan is scrutinised at the examination stage. To be considered sound, a Development Plan Document must be positively prepared (meet the needs of the area), justified (founded on robust and credible evidence), effective (deliverable over the plan period) and consistent with national policy.
<b>Spatial Planning</b>	Brings together and integrates policies for the development and use of land with other policies and programmes which influence the nature of places and how they function.
<b>Spatial Strategy</b>	A strategy which sets out the distribution and nature of development across a given area.
<b>Special Landscape Feature</b>	A local designation recognising specific features which make an outstanding contribution to the scenic quality of the area or have cultural or historical significance.

<b>Species Action Plan (SAP)</b>	A framework for conservation of particular species and their habitats.
<b>Strategic Development Site</b>	A site allocated in Local Plan Part I and defined as a key site in delivering the vision outlined.
<b>Strategic Flood Risk Assessment (SFRA)</b>	Provides information about flood risk throughout the area of the local authority, either individually or combined with neighbouring authorities. The SFRA will consider the effects of climate change on river and coastal flooding, identify the risk from other sources of flooding, and consider appropriate policies for development in or adjacent to flood risk areas.
<b>Strategic Housing Market Assessment (SHMA)</b>	A study which calculates the housing requirements in an area by interpreting and modelling secondary data such as population change and household formation. One output of the SHMA is to produce an estimate of Objectively Assessed Need (OAN) which can then be translated into land use targets.
<b>Statement of Community Involvement (SCI)</b>	A document which sets out standards for engagement with individuals, organisations and communities in the preparation of planning documents and development control decisions.
<b>Sustainability Appraisal</b>	An appraisal of the economic, environmental and social effects of a plan undertaken throughout its preparation to enable understanding of different alternative solutions and to mitigate effects where a proposed development solution is recognised to have limited negative effects. It ultimately allows decisions to be made that deliver more sustainable forms of development.
<b>Sustainable Community Strategy (SCS)</b>	A long-term vision for improving the quality of people's lives, with the aim of improving economic, social and environmental wellbeing of the area and contribute to the achievement of sustainable development.
<b>Sustainable Construction</b>	Building using processes and materials that are environmentally responsible and resource efficient throughout a buildings life cycle.
<b>Sustainable Development</b>	Development which meets the needs of the present without compromising the ability of future generations to meet their own needs.
<b>Sustainable Drainage Systems (SUDS)</b>	Drainage systems, generally incorporating natural methods of ground percolation, which seek to minimise surface water run-off without, or lessening the need for, extensive networks of municipal pipes. It can also include the use of natural filtration to capture and hold waterborne pollutants or suspended materials. 'Grey water' systems can also be found which recycle precipitation or other relatively clean water for non-potable domestic or business uses.
<b>Up-to-Date Plan</b>	A development plan adopted since the introduction of the NPPF and less than five years old from the date of adoption.
<b>Use Classes Order</b>	A statute that groups uses into various categories and which specifically states that permission is not required to change from one use to another within the same class:  B2 - General Industry; B8 - Storage and Distribution; C1 - Hotels; C2 - Residential Institutions; C3 - Dwelling Houses; C4 - Houses in Multiple Occupation; E - Commercial, Business and Service; F1 - Learning and Non-Residential Institutions; F2 - Local Community Uses; Sui Generis - Certain uses that do not fall within any of the use classes above such as theatres, petrol filling stations, launderettes and nightclubs.

<b>Water Framework Directive</b>	A European Directive that aims to establish a framework for the protection of inland surface waters (rivers and lakes), transitional waters (estuaries), coastal waters and groundwater.
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## Appendix 2: Saved Policies

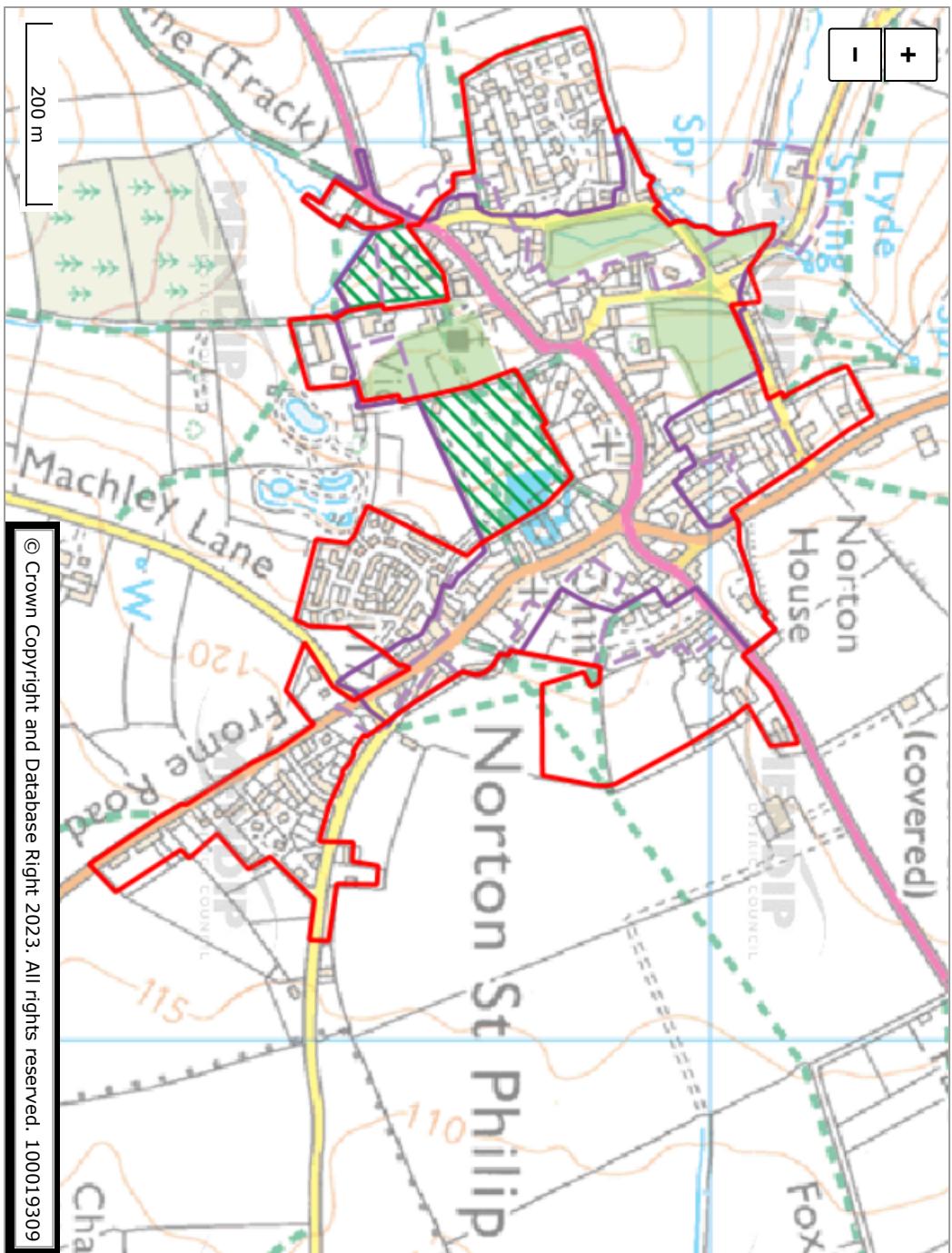
This table confirms the status of extant saved policies from the Adopted Local Plan 2002 and the Somerset and Exmoor Park Joint Structure Plan (2000)			
Adopted Mendip District Local Plan (2002) Policies	F10	Sites for Education Use	Deleted
	S&W9	Brookside School	Deleted
Somerset and Exmoor National Park Joint Structure Plan Review 1991-2011 (April 2000) Policies	Policy 6	Bristol/Bath Green Belt	Superceded by Local Plan Part II DP26 and Local Plan Part I DP4



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## Revised Policies Map (Extract)



Extract showing development limit for Norton St Philip

## **Draft Members' Briefing Note Local Plan Part II (LPP2) Statutory Review**

### **Purpose**

This note provide a briefs summary for Members and Parish Councils of the Statutory Review challenge of the Local Plan Part II (LPP2). It also covers the revisions now made to the LPP2 and the implications of the judgment for policy and development management.

### **Background to the Statutory Review**

1. Following extensive public consultation, Local Plan Part II was submitted to the Planning Inspectorate in January 2019 and a government Inspector, Mike Fox was appointed to conduct an examination of the Plan.
2. The Inspector raised at an early stage in the hearings his concerns regarding the soundness of LPP2 around the unallocated 505 dwellings (out of a housing target of 9,635 in LPP1) and the potential of land promoted for development around Midsomer Norton and Radstock.
2. Following the examination hearings held in Summer 2019, the Inspector issued an Interim Note ED20 dated 10th September 2019 setting out his post-hearing advice, together with a draft Schedule of Main Modifications (MMs) to make the plan sound. This included MM5 regarding the allocation of an additional 505 dwellings as follows:

*"MM5 Allocation of 505 additional dwellings (with reference to the table in core policy CP2 and para. 4.21 of the supporting text) in the north-east of the District, at sites adjacent to Midsomer Norton and Radstock, and on sustainable sites at primary and secondary villages within this part of the District. All the sites considered for possible allocations, including those identified in Note IQ-3, will be subject to Sustainability Appraisal"*

This approach was reiterated by the Inspector in his later response (ED26) which confirmed that the area of search should include the edges of Midsomer Norton and Radstock within the District, *"as well as considering the possibility of land for new homes within the primary villages which are located to the North of Frome."*

3. In response to ED20, the Council identified potential additional allocations of some 455 dwellings on sites adjoining Midsomer Norton and Westfield, with a further three allocations made in the Primary Villages of Beckington, Norton St Philip and Rode. Members and Parishes will recall that these proposals were submitted to the Inspector for approval prior to further consultation and he was clear that this was 'without prejudice' to his final report. Further examination hearings were held in November and December 2020.
4. The Inspector's Final Report was issued on 1st September 2021. This recommended that the allocations of BK1 in Beckington for 28 dwellings and NSP1 in Norton St Philip for 27 dwellings were necessary and sustainable contributions towards the provision of an additional 505 dwellings in the north-east part of the District (Paras 122 and 138 Final Report).
5. On 20th December 2021, MDC Full Council resolved to accept the findings of the Inspector's Report to formally adopt LPP2 as part of the Development Plan for the

Mendip District. Officers made clear in the report to Council that it had no option but to accept all the recommended modifications to confirm a sound plan.

6. The potential of a judicial challenge to the decision was raised at Cabinet and Full Council and legal advice provided to Members. This confirmed that following receipt of ED20 after the first phase of the examination into LPP2, the Council had no realistic option but to seek to meet the requirements set by the Inspector re: 505 dwellings in the north-east of its area. The Council's practical room for manoeuvre at that stage was very limited (as was the scope of alternatives for it to consider given the narrow exercise it was set by the Inspector). Further, faced with the Inspector's final report the Council had no realistic option but to adopt LPP2 with the Main Modifications for the reasons discussed in detail at the Full Council meeting of 20th December 2021
7. On 21st December 2021, the Council received a Pre-Action Protocol Letter in respect a Statutory Review on behalf of Norton St. Philip Parish Council (NSPPC/Claimant) pursuant to Section 113 of the Planning and Compensation Act 2004. In summary, the letter requested that MDC consent to the quashing of Policies NSP1 and BSK1, leaving the remainder of LPP2 in force.

### **The Claim**

8. The formal claim was issued by NSPPC on 28th January 2022 against MDC as the Defendant seeking to challenge the legality of MDC's decision to adopt LPP2 on four grounds, namely:
  - Ground 1: The approach to the additional 505 Dwellings and the need for main modifications to allocate further development in the north-east of the District was founded upon a misinterpretation of LPP1. Namely, the Inspector wrongly considered that LPP1 created a "strategic direction" or "strategic expectation" that 505 additional dwellings should be allocated in the north-east part of the District.
  - Ground 2: A failure in the Sustainability Appraisal process to consider reasonable alternatives to allocating the additional 505 dwellings only in the north east of the District.
  - Ground 3: In respect of the allocations made in Beckington and Norton St Phillip, the Inspector's failure to have regard or explain in his report the requirement for proportionate development set out in Local Plan Part
  - Ground 4: That the decision to allocate NSP1 and BK1 through main modifications to LPP2 was irrational.
9. The Claim was granted permission to proceed to a full hearing by Hon. Mrs Justice Lang sitting in the Planning Court on 12th April 2022. MDC defended the claim in full taking specialist legal advice via Counsel throughout this process. The Secretary of State for Levelling Up Housing and Communities and two developers (Redrow and Lochailort) with interests in BK1 and NSP1 were also joined as Interested Parties and participated in defending the claim.

## **Judgment of 16<sup>th</sup> December 2022**

10. The Claim was heard on the 18<sup>th</sup> and 19th October 2022 in the High Court before Hon. Mr Justice Holgate who specialises in planning cases. The hearings scrutinised both the Inspectors interpretation of Local Plan Part I, the examination process following the Interim Note, 'directions' Mr Fox issued to the Council and the findings of the examination report. The Judgment<sup>1</sup> was published on 16<sup>th</sup> December 2022.
11. In respect of Ground 1, the Judge considered that on his careful reading of Local Plan Part I, the Inspector had clearly misinterpreted its requirements. He concluded that Inspector's Main Modifications recommended to Council and their adoption could not therefore be considered legally sound.
12. The Judge also upheld the claim under Ground 2 regarding the legal compliance of the Sustainability Appraisal. It was considered that the allocations represented a significant change in growth which should have been subject to assessment of alternative sites and this evidence put to the examination.
13. Grounds 3 and 4 were not upheld. The Inspector was considered to have had regard to the issue of proportionate growth and had provided sufficient explanation in his report. Overall, the high legal bar to meet prove the Inspector had demonstrated 'irrationality' could not be met.
14. The Judgment is clear in its reasoning and the possibility of an appeal has not been raised by the Council, its legal advisors or the other Interested Parties. There is no process for the Council to reclaim its legal or other costs from Planning Inspectorate
15. The Judgement was accompanied by an Order of the Court directing the Council to make revisions to the Plan and Policies Map. It also gives directions on how the sites should be reconsidered through updating the LPP2 (see Plan Update below).

### **Changes Made to Local Plan Part II**

16. The following sites have been deleted from the LPP2. No weight or regard can now be given to these policies in the determination of planning applications.

Policy MN1	Land at White Post, Midsomer Norton
Policy MN2	Land at Underhill Lane, Midsomer Norton
Policy MN3	Land east of the A367, Midsomer Norton
Policy BK1	Land off Great Dunns Close, Beckington
Policy NSP1	Land off Mackley Lane, Norton St Phillip
17. The site allocation policies and supporting text are shown as 'struck-out' from the adopted Local Plan Part II. References to these sites have been removed from other parts of the LPP2 and changes made to summary tables and projected dwellings.
18. The policies map has been changed to show the deleted sites as land in the countryside outside development limits.

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<sup>1</sup> Norton St. Philip Parish Council v Mendip District Council (1) Secretary of State for Levelling Up, Housing and Communities (2) Lochailort Investments Limited (3) Redrow Homes Limited (4). Administrative Court (Planning Court) : Claim No: CO/323/2022

19. An updated Local Plan Part II (Post JR-version) and the policies map was published on 12<sup>th</sup> January 2023. Links to the amended LPP2, the full judgment and the order can be found on the Mendip website in the planning policy pages.  
<https://www.mendip.gov.uk/planningpolicy>

### **Status of the Local Plan Part II**

20. The Order is clear that the remainder of Local Plan Part II remains as adopted on 20<sup>th</sup> December 2021. This means other site allocations in the LPP2 and development management policies can be given full weight in planning decisions. As the Order does not change the Council's decision to adopt LPP2 and there is no necessity for the Council to re-adopt the Plan.
21. The LPP2 as amended still provides for a 15% (rather than 19%) uplift from the Core Strategy Housing requirement of 9,635 dwellings.

### **Planning applications on the deleted sites**

22. A number of the deleted sites are subject to planning applications under consideration by the Council. The Order does not prevent the Council from determining these applications.
23. Applications on the affected sites would now be treated as a departure from the Development Plan and considered against the adopted LPP1 and revised LPP2 policies. This would be similar in approach to speculative windfall applications in the countryside. The lack of a five-year housing land supply would need be taken into account.
24. The Judgment deals only with the grounds of challenge and legal errors in the process through which sites were identified, presented at examination and inadequacies in the Inspector's Report. It does not consider or review the site-specific requirements of the deleted allocations.

### **Five Year Housing Land Supply**

25. The Council published a position statement in October 2022 which estimated a supply of 'deliverable' sites equivalent to 3.7 years. This acknowledges the impacts of phosphate mitigation holding back permissions and housing delivery in large areas of Mendip. The removal of the above allocations will reduce this position as it includes a contribution from sites allocated at Midsomer Norton.
26. There is current planning Inquiry in Frome where the position statement is under challenge. The supply position between the Council and the appellant at dispute in this Inquiry is between 2.8 and 3.3 Years.
27. The Government has recently proposed to revise five year supply targets and requirements as part of wider planning reforms. Amendments to the National Planning Policy Framework have been published for consultation but do not have immediate effect. The proposals to remove five year supply requirements will only apply to Councils with up to date Plans.

## **Plan Update of LPP2**

28. Following the first examination hearings, the Council argued that the 505 dwellings had already been met through permissions already granted. However, the LPP2 Inspector considered this as a specific requirement to be addressed through allocations in the Plan. The LPP2 was not challenged on this issue and the Judgment is clear that there remains a requirement to identify further allocations.
29. The Order specifies that the Council should review the deleted allocations and propose either these or alternative sites through a full Plan Update of the adopted LPP2<sup>2</sup>.
30. A Plan Update would involve a new call for sites and their assessment district wide, stages of public consultation, an updated sustainability appraisal and submission of sites through examination. This update process would be likely to take at least 12 months and would need a budget and officer resources agreed.
31. The direction in the Order makes it difficult for Mendip to make immediate revisions to the LPP2 before vesting day on 1<sup>st</sup> April 2023. For example, an exercise which would involve a short review of alternative sites, amendments to the sustainability appraisal followed by consultation and re-adoption. It also prevents the Council taking a formal position that sufficient sites have been permissioned to meet the 505 dwellings.
32. The need for Plan-led process involving consultation and re-submission of site allocations to address the 505 requirements would mean that windfall or speculative applications could not be counted towards the 505 dwellings. The Council's position is that no weight can be attached to them in meeting this requirement.
33. At this stage, the option of an expedited review process would not be in compliance with the Order. However, the Order does not set a timescale for a Plan Update and does allow for parties to return to Court and seek revisions to the Order
34. The most practical way forward under consideration is that the sites for 505 dwellings are identified as part of the new Somerset Plan process. Officer discussions led by Mendip on options around the LPP2 plan review will take place and would need to involve SCC, somerset districts and other stakeholders.
35. Mendip or the new Somerset Council is able to amend the Order but the Planning Authority would need to present reasons on how the requirement could be addressed through an alternative route. The change to unitary status would not be sufficient on its own. This could include details of the Local Development Scheme and programme for the new Somerset Plan and that the 505 could be included as part of this process.

Last updated January 2023

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<sup>2</sup> This requirement was added by the Secretary of State as an interested party.

Mr Martin Evans  
Solicitor  
Law & Governance - Shape Partnership Services  
Mendip District Council  
Council Offices  
Cannards Grave Road  
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Somerset  
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E: [Meeta.Kaur@townlegal.com](mailto:Meeta.Kaur@townlegal.com)

By email ([martin.evans@mendip.gov.uk](mailto:martin.evans@mendip.gov.uk))

Our ref LOC002/0001/4130-1426-5669/1/NS  
9 February 2023

**THIS LETTER IS A PRE-ACTION PROTOCOL LETTER RELATING TO A PROPOSED ACTION IN JUDICIAL REVIEW.  
THIS LETTER SHOULD BE SENT TO YOUR LEGAL ADVISERS FORTHWITH.**

**A RESPONSE IS REQUIRED BY 4PM ON TUESDAY 21 FEBRUARY FOLLOWING WHICH DATE LEGAL PROCEEDINGS MAY BE ISSUED IF NO REONSE OR NO SATISFACTORY RESPONSE IS RECEIVED.**

Dear Sirs,

**Amendments to the Mendip District Council Local Plan Part II: Sites and Policies – Land known as NSP1 outside development limit for Norton St Philip**

**1. Proposed claim for judicial review**

To Mendip District Council –  
Council Offices  
Cannards Grave Road  
Shepton Mallet  
Somerset  
BA4 5BT

**2. The claimant**

Lochailort Investment Limited –  
Eagle House  
108-110 Jermyn Street  
London  
SW1Y 6EE

**3. The defendant's reference details**

Martin Evans – Council Solicitor  
Andre Sestini – Principal Planning Policy Officer

Partners: Elizabeth Christie, Mary Cook, Duncan Field, Clare Fielding, Michael Gallimore, Raj Gupta, Meeta Kaur, Simon Ricketts, Patrick Robinson, Louise Samuel, Spencer Tewis-Allen

**4. The details of the claimants' legal advisers**

Meeta Kaur, Town Legal LLP, 10 Throgmorton Street, London EC2N 2DL

**5. The details of the matter being challenged**

The decision to publish amendments to the Mendip District Council Local Plan Part II: Sites and Policies ('LPP2') on 12 January 2023. In particular, the decision to publish a policies map ('the Revised Policies Map') showing land known as NSP1 outside of the development limit for Norton St Philip.

**6. The details of any Interested Parties**

None

**7. The issue**

7.1 We write on behalf of Lochailort Investments Limited ("the Claimant") in respect of a proposed claim for judicial review of Mendip District Council's ('the Council') decision to publish amendments to the Mendip District Council Local Plan Part II: Sites and Policies ('LPP2') on 12 January 2023. In particular, the decision to publish a policies map ('the Revised Policies Map') showing land known as NSP1 outside of the development limit for Norton St Philip.

7.2 The land was allocated for development of a minimum of 27 dwellings in the adopted version of the LPP2. A claim for statutory review pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') was brought challenging the Council's decision to adopt the LPP2. The claim succeeded and paragraph 2 of Mr Justice Holgate's order provided that policies in LPP2 including NSP1 of LPP2, their supporting text and other related text, tables and diagrams, as set out in Schedule 1 to the order, be remitted to the Council.

7.3 Paragraph 3 provided that the remitted parts of LPP2 shall be treated as not having been adopted as part of the local development plan. Paragraph 4 required the Council to publish a revised version of LPP2 on its website showing the remitted parts as being struck through. Striking through a policy proposal is, in one sense, a limited action. It does not permit, let alone require, it to be otherwise designated (e.g. as countryside which appears to be the Council's current view- see further below).

7.4 Paragraph 5 then required the Council to amend the Policies Map so that it reflects the terms of the order and any consequential changes to LPP2. Amendments to the Policies Map are only justified in so far as they reflect the terms of the order.

7.5 As such, it is clear NSP1 should not be shown as an allocated site on the Revised Policies Map. But neither should it be shown as covered by any other annotation. Nothing in Mr Justice Holgate's order has that effect. As per the requirements of paragraph 4 of the order, we suggest that the allocation could be shown on the policies map as being struck through so as to make clear that the status of the land is currently neutral. Its future status is to be assessed afresh. As Norton St Philip Parish Council were anxious to have made clear it does not start with any in principle advantage as a result of having been previously identified. But neither does it start with any disadvantage. The Claimant does not seek any advantage for its site, but only seeks that it be treated fairly – without unjustified disadvantage.

7.6 In consequence, the redline of the development limit of Norton St Philip should not have been withdrawn (as it has been) so as to exclude NSP1 from the development limits for Norton St Philip. The relevant extent of the development limit is inextricably connected with the status of the NSP1 allocation – which has been struck through and remains to be redetermined. The development limit

for this part of Norton St Philip requires review and reconsideration as part of the process set out in the order of Mr Justice Holgate. To redraw the development limit in a perfunctory manner is to pre-empt the review and reconsideration required by paragraph 6 of Mr Justice Holgate's order and is at odds with the terms of paragraphs 4 and 5 of his Order.

- 7.7 The purpose of the Revised Policies Map is to reflect the policies of the adopted development plan. Those adopted policies do not set a development limit in this part of Norton St Philip, that part of LPP2 having been remitted to the Council by the order of the court for review and reconsideration.
- 7.8 There is no lawful basis on which the Revised Policies Map can purport to re-determine that development limit without the review and reconsideration having taken place.
- 7.9 In particular, as was held in *Cummings v Weymouth & Portland BC* [2007] EWHC 1601 (Admin) at [73], when an allocation is quashed (or remitted as it was here) it leaves the land without designation:

*... it seems to me inevitably to follow that the inclusion of the latter site within the DDB and the allocation of the Louviers Road site for housing under policy H1t must also be quashed, leaving both the objection site and the Louviers Road site as "white land", without designation.*
- 7.10 "Without designation" means what it says. There is no justification or legal basis for the land being treated as allocated as it was in earlier drafts and so subject to another designation, e.g. as open countryside. That would be to pre-empt any reconsideration as required by Holgate J. Nor does any previous allocation/designation from any earlier plan spring back to life either. Likewise, it cannot be said to be without or, it is accepted, within any development boundary for local plan purposes.
- 7.11 We have seen the Short Advice the Council received from David Forsdick KC dated 6<sup>th</sup> January 2023, however with respect we do not agree with his analysis, in particular as it relates to NSP1. (However, we do agree that the exercise of where the 505 should go must start afresh without preconceptions based on the flawed former approach.)
- 7.12 At paragraphs 3 – 11 his seeks to distinguish *Cummings* on the facts. Indeed, the facts of the two cases are not the same, but that is beside the point. That case was no more complex than the case which led to the order referred to above.
- 7.13 That said, first, it is, though, of interest in that it concerned both allocations and development boundaries and Mr Forsdick accepts in that case that the development boundary was left undefined. Secondly, as Mr Forsdick identifies the key issue on redetermination (see his paragraph 7) it is in reality very little different from this case – which will be should NSP 1 be allocated or should the housing that it contained be allocated to another site. There is no dispute as to the need to find 505 additional housing units and that sites would have to be allocated somewhere. The only difference in *Cummings* is that there was an identified alternative site, whereas in this case there is not. That is distinction without any practical impact, in particular as to the status of the 'quashed allocated site'. His paragraphs 7 and 8 are, in reality, broadly supportive of the Claimant's case.
- 7.14 What matters is the consequences of part of a development plan having been quashed or remitted and not the justification for that quashing. It is quite clear that the old plan or an earlier draft does not resurrect.

7.15 The advice relies on a proposition at paragraph 14 for which no authority is cited namely that absent an allocation:

*"the land should revert to greenfield land undeveloped outside any development boundary without any designation and is therefore countryside. Countryside requires no allocation to be countryside – it is just a description of undeveloped greenfield land which is not allocated, or within a development boundary."*

7.16 The problem with this analysis is that it presupposes that the development limit in this part of NSP should be redrawn, as per the earlier draft of LPP2 to exclude NSP1 from being within the development limit. Further, it is logically flawed. Having accept that the relevant land has no allocation he then suggests it reverts to greenfield land and is therefore countryside – which is in effect 'allocating' it as part of the countryside and so subject to such policies. That is wholly contrary to the approach in *Cummings*.

7.17 That this is how the Council considers the site is confirmed in paragraph 18 of its published briefing note. The consequence is confirmed in paragraph 23 likewise, where it is stated:

*"Applications on the affected sites would now be treated as a departure from the Development Plan and considered against the adopted LPP1 and revised LPP2 policies. This would be similar in approach to speculative windfall applications in the countryside. The lack of a five-year housing land supply would need be taken into account."*

7.18 In our view, this goes beyond what is justified by the Order of Mr Justice Holgate. Nor is it supported by the Explanatory Note in the adopted LPP2, paragraphs 3-6.

7.19 Instead, as per *Cummings*, the Court has not predetermined where the development limit should be and therefore whether NSP1 should be within it or outside it. That depends on the decisions and review which will follow. Again, as per *Cummings* it is not appropriate to revert here to the development boundary in the previous draft – that serves to predetermine the issue – until such time as the review is completed, the development boundary in this location should be left at large.

7.20 In those circumstances we invite you to replace the Revised Policies Map with a version which properly reflects the current circumstances of NSP1 – i.e. showing it as neutral white land – or to confirm that you will consent to judgment on an application for judicial review.

## **8. The details of the action that the defendant is expected to take**

Republish the policies map showing NSP1 as white land i.e. neutral land that is neither within or outside the development limit for Norton St Philip.

## **9. ADR proposals**

We are happy to discuss this matter further with the Council to reach agreement on the precise notation for NSP1.

## **10. The details of any information sought**

Any notes, minutes, correspondence, or other documents which are relevant to the question of:

- (a) whether the Council considered the issue of how to redraw the development limit in the relevant area;
- (b) if so, any reasoning as to why it was drawn as it was.

Mr Martin Evans  
Mendip District Council  
- 5 -  
9 February 2023

**11. The details of any documents that are considered relevant and necessary**

As per section 10 above.

**12. The address for reply and service of court documents**

By email addressed to [meeta.kaur@townlegal.com](mailto:meeta.kaur@townlegal.com). In this matter we will accept service by email.

**13. Proposed reply date**

A response to this letter should be received by the Claimant's solicitors no later than 4pm on Tuesday 21 February 2023.

Yours faithfully

*Town legal LLP*

Town Legal LLP



Town Legal LLP  
10 Throgmorton Avenue  
London  
EC2N 2DL

Dear Sirs

Our ref: M2109/1905  
Your ref: LOC002/0001/4130-1426-5669/1/NS  
DDI: 07971045977  
Email: [martin.evans@mendip.gov.uk](mailto:martin.evans@mendip.gov.uk)  
Date: 22<sup>nd</sup> February 2023

**Response to a letter before claim**

**Amendments to the Mendip District Council Local Plan Part II: Sites and Policies – Land known as NSP1 outside development limit for Norton St Philip**

Thank you for your letter before claim dated. This is the response of the proposed Defendant in the form required by Annex B of the Pre-Action Protocol for Judicial Review.

**The Claimant**

1. Lochailort Investment Limited  
Eagle House  
108-110 Jermyn Street  
London  
SW1Y 6EE

**The Defendant**

2. Mendip District Council (“the Council”)  
c/o Law & Governance - Shape Partnership Services,  
Council Offices,  
Cannards Grave Road  
Shepton Mallet  
Somerset  
BA4 5BT

**Reference details**

3. Claimant's solicitor's reference: LOC002/0001/4130-1426-5669/1/NS
4. Defendant's solicitor's reference: M2019/1905. Martin Evans is the solicitor handling this dispute for the Defendant ([martin.evans@mendip.gov.uk](mailto:martin.evans@mendip.gov.uk)).

Providing legal services on behalf of:



We do not accept service of documents  
by electronic transmission.

## **Details of any other Interested Parties**

5. The Council considers that Norton St. Philip Parish Council is clearly an Interested Party as they were the claimant in the proceedings which led to the Order of Holgate J. Also, the Parish Council is in the process of progressing a Neighbourhood Plan for their administrative area, which includes NSP1. The designation of that site is clearly relevant to the Neighbourhood Plan process.

## **The details of the matter being challenged**

6. The matter being challenged is the decision of the Council pursuant to the Order of Holgate J, to publish amendments to the Mendip District Local Plan: Part 2 ("LLP2") on 12<sup>th</sup> January 2023
7. Against that background, the Council responds to your client's putative grounds of challenge as set out below.

## **Response to the proposed claim**

8. As stated above, this is the response of the Council to the pre-action protocol letter on behalf of Lochailort Investments Limited ("LIP") dated 9<sup>th</sup> February 2023 ("the PAPL") concerning the decision of the Council pursuant to the Order of Holgate J, to publish amendments to the Mendip District Local Plan: Part 2 ("LLP2") on 12<sup>th</sup> January 2023 and in particular the decision to publish a Revised Policies Map showing land known as NSP1 outside of the development limit for Norton St Philips ("NSP").
9. Holgate J had determined that LLP2 was unlawful – the decision to allocate NSP1 (rather than any other site anywhere in its district) was based on a misdirection of law as to the area of search for additional housing sites ("the Area of Search") required under the relevant policy under Part 1 of the Local Plan ("LLP1") to meet a housing shortfall ("the Shortfall").
10. In short, LLP2 had wrongly limited the Area of Search and the allocation of NSP1 was made consequent on, or at least partly because of, that unlawful limitation.
11. Holgate J therefore ordered that policies in LLP2 including NSP1, their supporting text and other related text, tables and diagrams, in the schedule to the Order, be remitted to the Council, that the offending text be struck through and that, under para 5, the Council amend the Policies Map so that it reflected the terms of the Order. The express intended effect of the Order was that the remitted parts of the Local Plan be treated as not having been adopted as part of LPP2 (in accordance with the statutory provisions under which LLP2 was challenged in the first place). Paragraph 5 required the consequences to be followed through to the Revised Policy Map.
12. The result of the Order was that the whole issue of which countryside sites to allocate for development has been remitted to the Council to consider afresh - to "review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2" (para 5a). The land by definition has no special status in that process of reconsidering the appropriate response to the Shortfall. Removing any special status was the purpose of the challenge to LLP2 and the result of the Order.

13. Returning the land (formerly in NSP1) to its status immediately before the unlawful policy is the necessary and inevitable consequence of the judge's order. This is not a case of "designating" NSP1 as countryside or "redetermining the development limit" - it is simply about reverting to the position before the unlawful policy change allocating NSP1. That is the usual effect of a former allocation being found to be unlawful.
14. We have set out our position previously and nothing in the PAPL causes us to revise that position. The review effectively requires the question of where the 505 should be located to start afresh and go through the normal reg 18 and 19 stages before examination and adoption.
15. Relying on *Cummings v Weymouth and Portland BC [2007] EWHC 1601 (Admin)*, you contend that the land formerly comprising NSP1 should be treated as neutral (with the allocation simply struck through on the Revised Policies Plan). We do not agree and there is no illegality in our approach. There is no "neutral" designation known to law or planning. There is no allocation or policy of NSP1 as "white land". Your proposal would be to give it a status it has never been given under any policy or any allocation. It is not required or implied by the Order.
16. We have considered with care your points on *Cummings* but we do not accept your analysis. Further if *Cummings* has the broad effect you argue for, the Council will show that it was wrongly decided - in this regard we note the approach adopted was common ground and there does not appear to have been any debate on the appropriateness or legality of the approach.
17. We repeat the earlier analysis contained in the Advice of David Forsdick KC to which the PAPL refers.
18. The facts of *Cummings* are clearly distinguishable in material respects from those here.
19. There, there was effectively a contest between just two sites for an allocation. In the plan under challenge, one ("the Louviers Road Sites") was allocated and therefore newly included within the relevant development boundary and the other ("the Objection Site") was not allocated and was in part<sup>1</sup> taken out of and in part left outside the development boundary. All the latter was also included in the Important Open Gap ("IOG") and in the area of local landscape importance ("ALLI") even though it had (deliberately) not been so included in the previous local plan.
20. The relevant policies of the plan were quashed on the application for those interested in the Objection Site.
21. The order made (para 77) appears<sup>2</sup> to have been that the development boundary and associated boundaries of the IOG and ALLI were quashed insofar as they excluded one site and included the other. The development boundary was thus left undefined in this general location as was the boundary of the IOG and the LLSI.

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<sup>1</sup> Parts of the Objection Site had already been included in the Development Boundary under the previous local plan.

<sup>2</sup> The order actually made is not provided. The order was provisional on representations of third parties. It is not known what the outcome of that process was.

22. The key issue on redetermination would be whether the Louviers Road Site or the Objection Site would be allocated. There was no dispute that the development boundary in this location would have to include the whole of one of them and therefore would have to change both from the previous local plan and from that in the quashed parts of the local plan. The only issue was which one should be included and which one should be excluded. The Court could not predetermine that issue - where the development boundary should be and therefore which site should be within it and which outside it would be wholly dependent on new decisions following, and in the light of, the decision of the Court. It was therefore agreed by the parties (an agreement endorsed without apparent argument by the judge) not to be appropriate to revert to the previous development boundary which would have included part of the Objection Site but excluded the Louviers Site – that would have served to at least in part predetermine the very issue to be determined; but instead, the issue as to the future development boundary in this location was left at large.
23. The comment LIP rely on in *Cummings* has to be read and understood as a whole - namely that “given that the inspector’s decision with regard to the [Development Boundary] involved a comparison of the objection site and the Louviers Road site - that was how the objection was put by the claimants and how it was contested by the Council – it seems to me inevitably to follow that the inclusion of the latter site within the [Development Boundary] and the allocation of the Louviers Road site for housing ... must also be quashed leaving both...as white land without designation.” That would allow the Council to reconsider the issue afresh without the Plan including any predetermined outcome in the meantime. It appears that that was the “agreed” position of the parties. It was a preliminary view subject to input from the owners of the Louviers Road site.
24. On the complex and very specific facts of that case that approach was not wholly surprising. There had to be a change to the development boundary in this area – the question was whether to pull it back from the Objection Site so as to exclude the whole of it and extend it over the Louviers Road Site or to include the whole of the Objection Site and exclude the Louviers Road site. Those were the only two permutations in play.
25. That approach cannot, for wholly obvious reasons, be translated to the facts of the current case where the question for the Council is not the precise development boundary in this location but where to allocate land to meet the Shortfall. That does pose just a choice between two sites. The possible permutations and may result in no allocations in this area at all.

The reasoning of the Court here

26. Fundamentally, the issue before the Inspector and the Court here was not a contest for an allocation between two adjoining sites part of one of which was already within the development boundary but a much wider issue as to which greenfield sites anywhere in the district should be allocated.
27. That issue had been approached based on a wrong understanding of the Core Strategy policies in respect of the 505. Rather than just look in, or focus the search in, the narrow area including around NSP (based on a wrong understanding of those policies) the search for new greenfield sites was to be area wide. There was thus no implication that any sites would necessarily be chosen around NSP, that there would be any change to its development limits or that the sites previously allocated had any special status over any other site anywhere in the district.

28. The approach in *Cummings* cannot therefore apply here. The facts are wholly different.
29. Indeed, to apply it would be to subvert rather than to give effect to the judgement of the Court. The Court has determined that the starting point for the identification of sites for the 505 was wrong in principle. The exercise of choosing where those 505 should go must start afresh without preconceptions based on the flawed former approach. The effect of para 2 and 3 of the Order (and schedule 1) is effectively to delete the parts of the plan covered by the judgment. Absent the allocations - deleted by the terms of the Order and as specifically listed in the schedule – the relevant land has no allocation whether for white land or for housing. It therefore reverts to what it was before the unlawful policies were adopted. It is therefore countryside. Countryside requires no allocation to be countryside - it is just a description of undeveloped greenfield land which is not allocated, or within a development boundary.
30. If *Cummings* has the broad effect claimed - namely that when allocations of greenfield land are quashed the land becomes white land or neutral land by definition then *Cummings* must be wrong. There is no legal, policy or factual basis for taking that approach. *Cummings* cannot be read in that way and it does not appear to ever have previously been applied in that way.
31. The Revised Policies Map must therefore show NSP1 as greenfield undeveloped land beyond any development boundaries without any allocation and thus countryside.

#### Weight to be attached to previous assessments

32. For the avoidance of doubt it is not accepted that the inspector's conclusions on the appropriateness of NSP1 on the facts in making the unlawful decision to allocate it can be separated from the unlawful of the approach to the policy framework. It is, of course, correct that the quashing of a decision does not result in the underlying evidence base or assessment of comparative merits being irrelevant or legally immaterial. However, that point is of limited effect here because the comparative assessment of merits was from a flawed starting point as to the (far too narrow) ambit of the sites to be considered. The fact a site beat other sites in the narrow area under consideration is of little if any assistance in deciding whether those sites should be re-allocated when one is looking over a far wider area. The factual conclusions on the sites may be carried forward (subject to consultation responses) but the judgment as to whether sites here or further afield should be allocated is a new and separate exercise from that which has gone before. Para 8 refers expressly to the Inspector's conclusions on the appropriateness of locating housing in the north east. Those conclusions cannot be separated from his view as to what the core policies required but in any event his views cannot be determinative given the process in which those conclusions were reached has now been.

#### The Result

33. Any claim for judicial review will thus be resisted.

#### **ADR proposals**

34. For the reasons set out above – none.

## **Aarhus Convention**

35. We note that your letter is silent on the matter of costs protection under CPR 45 and the Aarhus Convention.

## **Response to requests for information and documents**

36. Please find annexed the Short Advice of Mr David Forsdick KC dated 6<sup>th</sup> January 2023.

## **Address for further correspondence and service of court documents**

37. Please mark for the attention of Martin Evans Solicitor, Law & Governance - Shape Partnership Services, Mendip District Council, Council Offices, Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT. We will accept service by email.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M Evans'.

**Martin Evans**  
**Solicitor**

# Persimmon Homes (Thames Valley) Ltd v Stevenage BC

Held,

The following judgment was given.

H.H. Judge Mole Q.C. sitting as a Deputy High Court Judge:

Case Comment

Journal of Planning & Environment Law

J.P.L. 2006, Jan, 84-102

Subject

Planning

Other related subjects

Environment

Keywords

Green belt; Local plans; Planning authorities' powers and duties; Residential development; Structure plans; Transitional provisions

Cases cited

Persimmon Homes (Thames Valley) Ltd v Stevenage BC [2005] EWHC 957 (Admin); [2006] J.P.L. 84; [2005] 5 WLUK 516 (QBD (Admin))

Legislation cited

Town and Country Planning Act 1990 (c.8)s.287

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**\*J.P.L. 84** The Hertfordshire Structure Plan Review 1991-2011, was adopted by Hertfordshire County Council ("HCC") on April 30, 1998. One of the matters that it needed to address was the provision of land for strategic housing development. The deposit version of the plan was based upon the need for the provision of a total of 65,000 new dwellings. HCC believed that much of this would come from outstanding permissions, other commitments and planned regeneration. However, there would remain a balance of 6,000 dwellings, for which specific strategic provision might have to be made. HCC therefore sought to make strategic provision on a "contingency basis" for up to 6,000 additional dwelling sites. Draft Policy 7 showed 5,000 dwellings within the plan period being provided at Stevenage west of the A1(M). Of those dwellings, 1,000 were to be within the boundary of Stevenage Borough Council ("SBC"). The policy stated that construction of dwellings would not be permitted to start until at least 2004, and in effect, not at all until it was clear that they were needed. The contingent nature of Policy 7 was challenged at the Examination in Public ("EIP"), held in March 1997, and the Panel considered this issue and set **\*J.P.L. 85** out its recommendations for the revision of Policy 7. HCC accepted those recommendations and the Hertfordshire Structure Plan Review 1991-2011 ("HSP") adopted in April 1998, contained a renumbered Policy 8--Strategic Locations for Supplementary Housing Development. This provided that land suitable for strategic housing allocations, together with necessary associated development would be identified in the following locations and excluded from the Green Belt: Stevenage--West of A1(M)--1000. It also provided that the planning of these developments would be brought forward through the review of the relevant local plans.

A year later SBC put on deposit the Stevenage District Plan, Second Review 1991-2011. Policy H2 identified an area of land called Stevenage West as allocated for an estimated 1,000 dwellings in order to meet the Structure Plan Housing requirement. The County Council wrote formally to inform SBC that the deposit review plan was considered to be in general conformity with the Structure Plan Review. The District Plan Review progressed to a second deposit draft in May 2001. Policy H2 now read "Policy H2: Strategic Housing Allocation--Stevenage West--in order to meet the provisions of Structure Plan Policy 8, Land at Stevenage West is allocated for the Development of approximately 1000 dwellings". Policy H4 dealt with the phasing of the sites in policy H2. The proposals map showed the area within SBC's boundaries, north of Norton Green, as the "Stevenage West" development area. It was excluded from the Green Belt.

At this time HCC was rethinking Policy 8 and in July 2002, it published a First Consultation Draft Alterations 2001-2016 to the HSP. This document deleted former Policy 8 and replaced it with the bare statement that no strategic allocations would be identified in the review of Local Plans and no further strategic scale housing developments should be permitted anywhere in Hertfordshire. The Inquiry into the Stevenage District Plan Review opened in September 2002. HCC appeared as objectors to Policy H2, arguing that the Stevenage West proposals should be deleted and that the district plan would still remain in general conformity with the Structure Plan. In 2003, HCC pressed ahead with a Deposit Draft version of the Structure Plan alterations and consulted the Government Office for the Eastern Region. However, HCC decided not to proceed to an EIP and the deposit draft document had not significantly proceeded further.

On December 8, 2004, the SBC District Plan Second Review was adopted. In accordance with the recommendations of the Local Plan Inspector, Policy H2: Strategic Housing Development Stevenage West stated: "In order to meet the provisions of Policy 8 in the adopted Structure Plan, land at Stevenage West is identified for the development of approximately 1000 dwellings. The allocated land is safeguarded from development pending reconsideration and acceptance of its strategic justification." It further stated that the Structure Plan was currently being reviewed in the light of the material changes that had occurred since it had been adopted in 1998, including the need to take into account the provisions of PPG3 and that that exercise would reassess the justification for the strategic development west of the A1(M) at Stevenage. Only if that review of the Structure Plan or an alternative form of reconsideration of the strategic need for the development determines that Stevenage West was required to meet County's development needs up to 2011 would the site be considered as allocated and available to be released for development. If the Review Structure Plan or alternative form of reconsideration does not justify development of the land up to 2011, it would be necessary to review this Local Plan to take account of the revised strategic policy context.

The Claimants applied under s.287 of the Town and Country Planning Act 1990 ("the Act") on the grounds that (1) SBC had erred in law in adopting a replacement local plan that was not in "general conformity" with the Structure Plan; (2) that SBC, in breach of the law, had adopted the plan without considering the objection the Claimants had made to the proposed new boundary of the Green Belt near Norton Green. SBC did not oppose this ground save to argue that, in the exercise of its discretion, the court should not grant relief.

1. The task of statutory construction required a court to discern and express the meaning of the statutory provisions, their scope or limits, or defining characteristics. Once the court had determined, as a matter of law, the scope of the phrase, the decision as to whether a particular **\*J.P.L. 86** policy was within its scope was a matter for the decision maker provided that he had correctly directed himself as to its scope, or its defining characteristics and not by reference to irrelevant characteristics or considerations, and had reached a decision which fell within the scope of the phrase as a matter of law.
2. The Act did not require "conformity" but "general conformity". The word "general" was there to introduce a degree of flexibility. The best approach was to consider whether the words actually used were objectively capable of falling within the scope that the words "general conformity" left open to the local planning authority. To read in "general conformity" as simply meaning that the proposals of the Local Plan were to be in character with the Structure Plan was much too broad. The Local Plan was there to inform and guide local planning decisions. It was desirable in the public interest that the Local Plan should address relevant issues and do so as accurately and fully as it reasonably could. The word "general" was likely to have been put in to make it clear that, to a degree, the need for conformity could be balanced against the need for the Local Plan to take account of and explain the circumstances in which the strategic policy would be given effect. A local planning authority who took objection to putting forward a policy which, although in strict conformity with the Structure Plan, was likely, in their view, to be shown to be seriously misconceived, had the option of withdrawing their proposals. On the other hand a local planning authority who judged that, although there was a reason for caution, it was unlikely to affect the basic correctness of the Structure Plan policy, could choose to adopt a local policy that generally conformed with the Structure Plan but set out a particular reservation, qualification or reason for caution in respect to that policy. The proposition that the principle of general conformity allowed the Local Plan nothing between a bare and misleading repetition of the Structure Plan on the one hand or silence on the other, would be unattractive.
3. On the facts of the present case, the need for the Local Plan to reflect the uncertainty about the provision of 1,000 dwellings at Stevenage West was argued at the Local Plan Inquiry and expressly addressed by the Local Plan Inspector. He recommended the wording of Policy H2 and H4 that SBC adopted. It was tolerably plain that he did not think or intend that his formulation would be taken as meaning that the strategic provision might not go ahead at all in the plan period. Indeed he recommended that there was justification to amend the boundary of the Green Belt to accommodate that provision. The words of Policy H2 had to be read in context. If Policy H2 had been expressed as the Claimants wished, with certain passages deleted, and no caveat or qualification by way of explanation, it would have been misleading. It was difficult to define the scope of the statutory

phrase "in general conformity" as a matter of universal principle. It was easier to decide whether specific policies came within it. Judged objectively, the words were wide enough to encompass a reproduction of the Structure Plan policy in the Local Plan, subject to a qualification as to justification or timing that nonetheless contemplated that the purpose of the strategic policy could be achieved in the plan period. The way that SBC had worded Policy H2 and its explanatory material fell within the scope of the phrase. The application on Ground 1 failed.

4. The Proposals Map in so far as it identified the detailed boundary of the Green Belt to the south of the land allocated for development at Stevenage West so as to include Norton Green within the Green Belt was quashed.

1. This is an application under s.287 of the Town and Country Planning Act 1990. By Ground 1 the Claimants say that Stevenage BC ("SBC") have erred in law in adopting a replacement local plan **\*J.P.L. 87** that is not in "general conformity" with the Structure Plan, and claim the quashing of the offending parts of the plan.

2. The claim under Ground 2 is that in breach of the law Stevenage BC adopted the plan without considering the objection the Claimants had made to the proposed new boundary of the Green Belt near Norton Green and ask that the proposals map be quashed so far as it relates to that boundary. SBC does not oppose this ground save to argue that, in the exercise of my discretion, I should not grant the relief sought.

## GROUND 1

3. The Hertfordshire Structure Plan Review, 1991-2011, was adopted by Hertfordshire CC ("HCC") on the April 30, 1998. One of the matters it needed to address was the provision of land for strategic housing development. The deposit version of the plan was based upon the need for the provision of a total of 65,000 new dwellings. HCC believed that much of that would come from outstanding permissions and other commitments, and of the remainder a great proportion could be found through planned regeneration. There would remain a balance of 6000 dwellings, for which specific strategic provision might have to be made. HCC therefore sought to make strategic provision "on a contingency basis" for up to 6000 additional dwelling sites. Draft Policy 7 showed 5000 dwellings within the plan period being provided at Stevenage west of the A1(M). Of those dwellings 1000 were to be within SBC's boundary and the remainder within the boundary of North Herts DC ("NHDC"). The Policy said that construction of dwellings would not be permitted to start until at least 2004, and in effect, not at all until it was clear they were needed.

4. The contingent nature of Policy 7 was challenged at the Examination in Public, held in March 1997. Developers and several District Councils, including SBC, objected to this limitation as creating an undesirable uncertainty in a situation where there were long lead times to planning development. The Panel concluded that:

"while it is just about possible to proceed on a contingency basis in entertaining local plan reviews/amendments and related work which would give effect to strategic proposals, it would be highly confusing to the public and interested parties and the procedure would lack credibility..... moreover, it is a fatal objection to such an approach in the case of Green Belt land, that "exceptional circumstances" could not possibly have been demonstrated at the initial stage, and the decision on whether development of Green Belt was justified on that criterion would have passed out of the Structure Plan context and be left entirely to HCC at a later stage."

5. This point relates to the important principle that once the general extent of the Green Belt has been approved it should be altered only in "exceptional circumstances". In order to justify a boundary alteration there has to be a demonstrable and, effectively, immediate need. The Panel held that this requirement would be met by the impossibility of otherwise making adequate and sustainable provision to meet the development need they foresaw. But if the need were so uncertain that the policy had to be expressed as subject to a contingency that might never be satisfied within the plan period, it could not justify a Green Belt alteration.

6. The Panel continued:

"However the more fundamental objection is that in the Panel's view there is no realistic prospect of progress with regeneration removing or diminishing the need for supplementary **\*J.P.L. 88** provision for 6,000 dwellings over and above the 15,000 covered by Policy 6 if the total 65,000 dwelling requirement is to be met, a requirement in the nature of a minimum or near minimum requirement. Given the long lead time in planning for such developments, and the need for as much certainty as practicable in structure planning, planning should begin on a firm basis without delay."

7. The Panel also considered the proposals for west Stevenage and the timetable within which they could be brought forward. The Panel examined the arguments about the number of completions that it considered it reasonable to assume by the end of the plan period. The Panel set out its recommendations for the revision of Policies 7 and 8. HCC accepted those recommendations and the Hertfordshire Structure Plan Review 1991-2011, adopted April 1998, incorporated policies accordingly. Policies 8 and 9, as adopted and renumbered, read as follows:

#### "POLICY 8 STRATEGIC LOCATIONS FOR SUPPLEMENTARY HOUSING DEVELOPMENT

Land suitable for strategic housing allocations, together with necessary associated development, will be identified in the following locations... and excluded from the Green Belt.

%Y(5)27

Stevenage West of A1(M) 1,000

North Hertfordshire West of A1(M) at Stevenage 2,600

The planning of these developments will be brought forward through the review of the relevant local plans.

%Y(5)27

In the case of the development west of the A1(M) at Stevenage, the master plan will provide for:

- i) an initial phase of 5,000 dwellings, some of which to be completed after 2011;
- ii) in the longer term, a possible second phase of a further 5,000 dwellings.

Providing that 3,600 dwellings in the initial phase are planned to be built by 2011, the detailed dwellings split at this location between North Hertfordshire district and Stevenage Borough will be determined in the relevant local plans, informed by agreed master planning work to establish the most sustainable form of development.

#### POLICY 9 DWELLING DISTRIBUTION, 1991 TO 2011

Local plans will make provision in accordance with the development strategy as set out in policies 6, 7 and 8, for a net increase in the period 1991 to 2011 of about 65,000 dwellings distributed as follows:

%Y(5)27

Stevenage 5,700 includes 1000 West of A1(M)."

8. A year later SBC put on deposit the Stevenage District Plan, Second Review 1991-2011. Policy H2 identified an area of 93ha called Stevenage West as allocated for an estimated 1,000 dwellings **\*J.P.L. 89** in order to meet the Structure Plan Housing requirement. Further specific guidance was given in Policies SW1 to SW10.

9. On the November 24 the County Council wrote formally to inform Stevenage Borough Council that the deposit review plan was considered to be in general conformity with the Structure Plan Review.

10. The District Plan Review progressed to a second deposit draft in May 2001. Policy H2 now read:

#### "POLICY H2: STRATEGIC HOUSING ALLOCATION - STEVENAGE WEST

IN ORDER TO MEET THE PROVISIONS OF STRUCTURE PLAN POLICY 8, LAND AT STEVENAGE WEST IS ALLOCATED FOR THE DEVELOPMENT OF APPROXIMATELY 1,000 DWELLINGS."

11. Policy H4 dealt with the phasing of the sites allocated in policy H2. It showed that in Phase 2, from 2004 to 2008, 500 dwellings were expected in Stevenage West the remaining 500 were expected to come forward in Phase 3, from 2008 to 2011.

12. The proposals map showed the area within SBC's boundaries, north of Norton Green, as the "Stevenage West" development area. It was excluded from the Green Belt, although the Green Belt boundary in the NHDC area came up to the southern boundary of the development area and included Norton Green.

13. The revised deposit version of the plan, with some proposed modifications, moved towards a Local Plan Inquiry. A number of objections were made to the principle of Stevenage West and the consequent changes to the definition and extent of the Green Belt that flowed from it.

14. At the pre-inquiry meeting, on the June 19, 2002, Leading Counsel for SBC, defining the scope of the inquiry, said:

"There are a number of responses both to the deposit and the revised deposit versions of the local plan which question the appropriateness of the strategic housing allocation at Stevenage West ..... Indeed very recently it is understood that the County Council has proposed to issue a pre-deposit consultation document on possible alterations to the structure plan. The Borough Council has consistently responded to such objections by referring to the adopted Hertfordshire Structure Plan Policy 8 which allocates Stevenage West as a strategic housing allocation and to the fact that the local plan must be in conformity with the adopted structure plan."

15. He continued:

"it would be wrong to delay the Local Planning Inquiry. Firstly, there is no present intention on the part of the Borough Council to withdraw its plan and secondly, the scope of the Inquiry could not be affected by any decision of the County Council. Indeed given the importance of meeting the identified housing need, delay at this stage would be likely to be harmful to the achievement of this aim. In conclusion, the Local Plan must be in general conformity with the adopted Structure Plan, which includes Stevenage West as a strategic Housing allocation. Consequently, the scope of this inquiry cannot include arguments, for example, that Stevenage West should neither be allocated nor developed during the plan period up to 2011."

**\*J.P.L. 90** 16. HCC was indeed rethinking Policy 8. It claimed that recent work showed that the EIP had dramatically underestimated the scope for planned regeneration. It was clear, HCC felt, that there was no need for strategic green-field allocations within the plan period. So in July HCC published a First Consultation Draft Alterations 2001-2016 to the HSP. This document deleted former Policy 8 and replaced it with the bare statement that no strategic allocations would be identified in the review of Local Plans and no further strategic scale housing developments should be permitted anywhere in Hertfordshire. (I observe that this was a consultation document and thus did not amount to "proposals for the alteration of the structure plan", which would have triggered the provisions of s.46 (6) of the Town and Country Planning Act 1990.)

17. The Inquiry into the Stevenage District Plan Review opened in September 2002. HCC appeared as objectors to Policy H2, arguing that the Stevenage West proposals within the Stevenage area should be deleted and that the district plan would still remain in general conformity with the structure plan. SBC resisted those objections, submitting to the Inspector that a Local Plan without Stevenage West in it could not be in general conformity with the Structure Plan.

18. The NHDC had also been preparing a local plan to allocate that part of Stevenage West within their area but their response to the County Council's changed attitude had been to withdraw their local plan completely. (That this was action the local planning authority was entitled to take was decided by Collins J. in *Persimmon Homes v North Hertfordshire DC* [2001] EWHC 565.)

19. In July 2003 the Local Plan Inspector's report on objections to the Local Plan was received. He examined the reassessed countywide capacity estimates and noting the objections to the County Council's views, he said it was beyond his remit to reach a view on such a matter.

20. He continued:

"3.59 As the need for this development has been justified strategically, I consider it can only be reassessed as part of a similar strategic exercise. Until that strategic exercise has been carried out, an exercise that will need to take into account the revised policy approach to the selection of new housing development that is promoted in national policy guidance, there must be at least some uncertainty on the strategic justification for the development."

3.60 In order to be in general conformity with the adopted Structure Plan I consider this Local Plan should identify the land necessary to provide about 1000 dwellings as required by the Structure Plan. ... At the same time, in order to reflect the current

uncertainty, that identification should however be caveated by a statement that makes it clear the formal release of the land for development is dependent on completion of a strategic evaluation of the proposed development determining it continues to be needed. The necessary evaluation could be carried out as part of the preparation of the emerging Review Structure Plan. If development of the land continues to be justified strategically, then the formal release of the relevant land in the form of granting planning permission can be considered. If that justification is not confirmed, this Local Plan will need to be reviewed to delete the proposed development. In this latter event it will also be necessary to make changes to the Plan, particularly to Chapter 12, but also associated changes to matters related to the west of Stevenage development, such as to the Plan's transport, Green Belt, countryside and employment provisions.

3.61 I consider this approach would ensure that previously-developed sites in urban areas are developed before green field sites. In this way the Plan would be consistent with a main thrust of the plan, monitor and manage new policy direction advised in PPG3 and as expanded in the DETR publication "Planning to Deliver".

**\*J.P.L. 91** 21. He dealt with the arguments about conformity thus:

"It is argued that a version of the Plan amended in this way would remain in general conformity with the Structure Plan. The proposed development has been justified strategically in the light of the sustainability provisions of Policy 1 in the adopted Structure Plan and represents an important part of the strategic policies/proposals of that Plan. To remove the relevant part of that growth from this Local Plan would in my view pre-judge the outcome of a proper re-appraisal of its strategic justification, an exercise that could be carried out within the context of reviewing the Structure Plan. The County-wide considerations cannot properly and fully be assessed as part of this Local Plan. I cannot therefore accept that removal from this Local Plan of part of the development proposed to the west of the A1 (M.) at Stevenage that is proposed in Policy 8 of the adopted Structure Plan as a strategic Housing allocation, would result in a Local Plan in general conformity with that Plan. Removal of the proposed development would represent a material change to the structure plan's proposals."

22. He said he had formed the following views:

"Firstly, in order for this Local Plan to be in general conformity with the adopted Structure Plan it must satisfy Policy 8 of that Plan and identify land west of the A1(M) for the development of about 1,000 dwellings.

Secondly, there is considerable uncertainty over the strategic justification for that development, particularly given the national planning policy guidance introduced by PPG 3. Given that uncertainty, the Local Plan should make it clear that the identified land cannot be granted planning permission for the proposed development until and if the strategic justification for it has been reconsidered and accepted. If the strategic justification for the development is not made, either in the emerging Structure Plan or within some other framework, then this Local Plan will need to be the subject of a review to delete that part of the proposed new settlement west of the A1(M) at Stevenage or otherwise to respond to the revised strategic policy context.

Thirdly, other provisions of the plan that relate to Policy H2 will also need to be changed to remain consistent with this approach. For example, given the current uncertainty referred to above and the suggested policy change I have considered it unlikely that 500 dwellings could be completed within West of Stevenage up to 2008. Policy H4 should therefore be amended to indicate the completion of 400 dwellings up to 2008, with 600 between 2008 and 2011.

Finally, I consider this approach would ensure the Local Plan remained in general conformity with the adopted Structure Plan whilst reflecting the changes in circumstance, such as the publication of PPG3, that have occurred since the Structure Plan was adopted. It would therefore most appropriately respond to the current situation."

23. The clear inference to be drawn from the Inspector's third conclusion (above) is that he did not think that the caveat he was introducing was likely to mean more than a later start to the strategic housing development. He still contemplated that it would all come forward within the plan period.

24. In the meantime, in the spring of 2003, HCC had pressed ahead with a Deposit Draft version of the Structure Plan alterations and had consulted the Government Office for the Eastern Region (GOER). On April 15, 2003 GOER replied, querying the point of taking the alterations any further forward in the light of the uncertainties about the state of long-term housing need and the continuing work to address them. The letter also commented "As a result of this uncertainty, we also question **\*J.P.L. 92** whether it is prudent to omit strategic greenfield reserves which may be needed to meet longer-term housing requirements during the Structure Plan period."

25. HCC decided not to proceed to an EIP and the deposit draft document does not seem to have gone significantly further. I am told that it will not now do so. (It follows that passages in para.3.2.13 of the adopted explanatory text, (below) are no longer accurate.)

26. But the Stevenage Local Plan Second Review did make progress. Modifications were proposed which followed the Inspector's recommendations. To these the Claimants objected. (I note that it was their first opportunity to enter the argument.) SBC considered the objections and recorded the Claimant's stated intention of seeking to quash the plan if it were to go ahead in its proposed form. Nonetheless the Council resolved to adopt the policies as they were proposed to be modified and on December 8, 2004 the Stevenage Borough Council District Plan Second Review was adopted. As finally adopted Policy H2 read as set out below. (The underlining indicates those passages that the Claimants seek to quash).

#### "POLICY H2: STRATEGIC HOUSING DEVELOPMENT STEVENAGE WEST

In order to meet the provisions of Policy 8 in the adopted Structure Plan, land at Stevenage West is identified for the development of approximately 1000 dwellings. The allocated land is safeguarded from development pending reconsideration and acceptance of its strategic justification.

3.2.11 ....

3.2.12 ....

3.2.13 the Structure Plan is currently being reviewed in the light of the material changes that have occurred since it was adopted in 1998, including the need to take into account the provisions of PPG 3. That exercise will reassess the justification for the strategic development west of the A1 (M.) at Stevenage. Only if that review of the Structure Plan or an alternative form of reconsideration of the strategic need for the development determines that Stevenage West is required to meet the County's development needs up to 2011 can the site be considered as allocated and available to be released for development. If the Review Structure Plan or alternative form of reconsideration does not justify development of the land up to 2011, it will be necessary to review this Local Plan to take account of the revised strategic policy context."

27. A planning application has been made to SBC in relation to the development area of Stevenage West. That application was called in by the Secretary of State for his determination and an inquiry has been held. No decision has yet been announced.

#### THE LAW

28. It was an important principle of the Town and Country Planning Act 1990, s.54A, that:

"Where,....regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

29. From September 28, 2004, this principle has found expression in s.38 of the Property and Compensation Act 2004 in almost the same words. I shall set out the whole of the section.

#### \*J.P.L. 93 "Section 38 Development Plan

(1) A reference to the development plan in any enactment mentioned in subsection (7) must be construed in accordance with subsections (2) to (5).

(2) %Y(7)27

(3) For the purposes of any other area in England the development plan is-

(a) ....

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area.

(4) ....

(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be).

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

(7) The enactments are-

(a) this Act;

(b) the planning Acts; ....

(8) (1) During the transitional period a reference in an enactment mentioned in section 38(7) above to the development plan for an area in England is a reference to-

(a) ...

(b) the development plan for the area for the purposes of section 27 or 54 of the principal Act."

30. Schedule 8 says that:

"1(1) During the transitional period a reference in an enactment mentioned in section 38(7) above to the development plan for an area in England is a reference to--

(a) ...

(b) the development plan for the area for the purposes of section 27 or 54 of the principal Act.

(2) The transitional period is the period starting with the commencement of section 38 and ending on whichever is the earlier of

(a) the end of the period of three years;

(b) the day when in relation to an old policy, a new policy which expressly replaces it is published, adopted or approved."

So the effect of the legislation is to continue the old development plan for a transitional period of no more than three years from September 24, 2004.

**\*J.P.L. 94** 31. Another vitally important principle reflected the scheme of the earlier legislation that the development plan was comprised of the strategic Structure Plan, prepared by the County Council outside urban areas, and the Local Plan that translated it into effect within the Districts and Boroughs. This was the principle that the Local Plan should be in "general conformity" with the structure plan. Section 36 of the Town and Country Planning Act 1990 provided:

"36 (1) the local planning authority shall within such period if any as the Secretary of State may direct, prepare for their area a plan to be known as a local plan.

(2) a local plan shall contain a written statement formulating the authority's detailed policies for the development and use of land in their area.

%Y(5)27

(4) a local plan shall be in general conformity with the structure plan.

%Y(5)27

(6) a local plan shall also contain-

(a) a map illustrating each of the detailed policies; and

(b) such diagrams, illustrations or other descriptive or explanatory matter in respect of the policies as may be prescribed, <DPAC2>and may contain such descriptive or explanatory matter as the authority think appropriate."</DPAC2>

32. Section 43 dealt with the adoption of the local plan, providing in s.43 (3) that "the authority shall not adopt any proposals which do not conform generally to the structure plan". Section 44 provided that the Secretary of State might direct that the proposals, or any part of them might be submitted to him for his approval.

33. Section 46 dealt with conformity between plans by giving the structure plan authority the power to issue, or refuse to issue, a certificate of general conformity. The Local Plan Authority had to serve on the Structure Plan Authority a copy of their proposed plan and allow 28 days to elapse. Then, where the Structure Plan Authority had been served with a copy:

"they shall, before the end of any period prescribed for the purposes of that subsection, supply the authority responsible for the local plan with-

(a) a statement that the plan or the proposals are in general conformity with the Structure Plan; or

(b) a statement that the plan or the proposals are not in such conformity.

(3) a statement that a plan or proposals are not in such conformity shall specify the respects in which the plan or proposals are not in such conformity.

(4) any such statement shall be treated for the purposes of this Chapter as an objection made in accordance with the regulations."

34. Section 46 (6) continued:

"Where-

**\*J.P.L. 95** (a) a local planning authority proposes to make, alter or replace a local plan;

(b) copies of proposals for the alteration or replacement of the Structure Plan for their area have been made available for inspection under section 33 (2); and

(c) the authority mentioned in paragraph (a) include in any relevant copy of the plan or proposals a statement that they are making the permitted assumption, the permitted assumption shall, subject to subsection (9), be made for all purposes (including in particular any question as to conformity between plans).

(7) in this section "the permitted assumption" means the assumption that-

(a) the proposals mentioned in subsection (6) (b); or

(b) if any proposed modifications to those proposals are published in accordance with regulations made under section 53, the proposals as so modified,

<DPAC2>have been adopted.</DPAC2>

%Y(5)27

(10) the provisions of a local plan prevail for all purposes over any conflicting provisions in the relevant Structure Plan unless the local plan is one-

(a) stated under section 35C not to be in general conformity with the Structure Plan; and

(b) neither altered nor replaced after the statement was supplied."

35. It will be recalled that under s.7 (1) (as amended) of the Town and Country Planning Act 1971, the County Planning Authority was required to prepare and submit a structure plan, formulating general policies, and the District or Borough councils, in their turn, were required to produce local policies in a local plan, subject to the same requirement that the Local Plan be in general conformity with the Structure Plan. (see s.11 (4)) If so satisfied, the County Planning Authority was required to issue

its certificate to that effect. But if not the Local Plan could not proceed further. The matter had to be referred to the Secretary of State for decision. He had the power to direct the County to issue a certificate, or issue one himself, or direct the local planning authority to revise its proposals. Substantial reforms were made in 1992 by the amendment of the 1990 Act. The system was changed for the future but approved structure plans in force at the commencement of the new act were continued and provision was made for their replacement or alteration. (ss.31 and 32.)

36. It was foreseen that both structure and local plans would require alteration and replacement and the principles of conformity and priority between plans were dealt with in statute to cover such changes. Thus a Structure Plan authority that adopted or approved an alteration or replacement structure plan was required to notify the local planning authority in their area that the local plan was or was not in general conformity with the altered structure plan. (s.35C) A statement that the local plan was not in conformity with the structure plan then the meant that the rule that the provisions of the local plan prevailed in the case of conflict did not apply until the local plan was altered or replaced (s.46 (10)).

37. What "general conformity" or "conform generally" mean seems never to have been considered in the authorities. I have been referred to the definitions of the words in the Shorter Oxford English Dictionary. The most apt definition of "general" is probably "including the main features, elements, etc and neglecting or ignoring unimportant details or exceptions" and of "conformity", perhaps "compliance with". Mr Straker urges, "agreement in character". I did not feel the dictionary **\*J.P.L. 96** definitions helped the process of analysis very much. The approach of the Local Plan Inspector seems to have been that to be in general conformity the plan must be "consistent with a main thrust of the (structure) plan" and not "represent a material change to the structure plan's proposals" but at the same time it could and should reflect the changes in circumstances since the structure plan was adopted. This sounds sensible and pragmatic

38. Some indication that the test of general conformity is comparatively strict might be drawn from certain statutory provisions. As is set out above, s.46 (6) permits the Local Planning Authority to make the "permitted assumption" where the Structure Planning Authority have prepared proposals for the alteration or replacement of the Structure Plan and have made them available formally under s.33(2). The "permitted assumption" is that the proposals, or the proposals as proposed to be modified, have been adopted. On that "permitted assumption" the local authority is bound to develop its own proposals in conformity with the Structure Plan as proposed to be altered. But, by the same token, it would seem that it would not be permissible to make the same assumption if the structure plan alteration has not got to the specified stage, as in the present case. It might fairly be said, of course, that there is a difference between making an assumption in a plan, and making an allowance in a plan for a possibility.

39. The Planning and Compulsory Purchase Act 2004, Sch.8, para.11, provides that:

"11(1) this paragraph applies if the Secretary of State thinks-

- (a) that the conformity requirement is likely to give rise to inconsistency between the proposals and relevant policies or guidance, and
- (b) it is necessary or expedient to avoid such inconsistency.

(2) the Secretary of State may direct that to the extent specified in the direction the conformity requirement must be ignored."

40. This provision suggests that it is contemplated that the local planning authority may have to follow the structure plan in the interests of general conformity at the expense of consistency and compliance with government policy. The local plan authority cannot simply resolve the inconsistency with an aging structure plan by a degree of purposive nonconformity.

## SUBMISSIONS

41. On behalf of the Claimants Mr. Purchas submitted that Policies 8 and 9 of the Structure Plan are unconstrained. Those policies say that land will be identified and excluded from the Green Belt. The contingency to which it was sought to subject Policies 8 and 9 was struck out, for good reason. Policy H2 of the District Plan Second Review has reintroduced a contingency which is objectionable for virtually the same compelling reasons. The contingency may or may not be satisfied at some date in the plan period. Policy H2 expressed in those tentative terms cannot be said to be in general conformity with the clarity and certainty of the Structure Plan.

42. Whether or not a provision is in general conformity with the Structure Plan is a matter for the Court to determine objectively. It is not something to be left to the discretion of the local plan authority, only to be interfered with by the court on *Wednesbury*

principles. The requirement for general conformity is set out in mandatory terms and several provisions of the Acts suggest that it is a matter to be interpreted strictly. Such an interpretation, he argued, was in line with the dictionary definitions.

\***J.P.L. 97** 43. Mr Purchas emphasised the submissions of counsel for SBC, at the local plan inquiry, resisting the argument advanced by the County Council and others that the principle of development west of Stevenage should be re-examined. SBC should stick by their own arguments.

44. Section 38 (6) requires determination in accordance with the development plan, unless material considerations indicate otherwise. There is a significant advantage, he argued, in being able to demonstrate to the Planning Authority or to the Secretary of State that proposals are in accordance with the development plan, although material considerations may raise some doubt about their immediate implementation. The position where the proposals are not in accordance with the development plan, although they may be said to be supported by material considerations, is significantly weaker. What may seem comparatively fine distinctions in the wording of the plan are not trivial; they can make a difference.

45. In practical terms, a long lead time is necessary to put in the infrastructure and to build the large number of dwellings the Structure Plan requires. No consortium of developers would contemplate starting development, putting in expensive infrastructure, unless they were confident of a planning permission that would enable them to move on to the development of houses within a predictable timescale. Policy H2 should be amended by deleting the underlined words and thus removing the contingency.

46. Mr Straker, for the defendant, submitted that general conformity meant simply that the proposals of the local plan should be in character with the Structure Plan policies. The Act itself contemplated that a generally conforming local plan might still have provisions which conflicted with the Structure Plan, as s.46 (10) showed. The Structure Plan and the local plan could be years apart and in the meantime policies might change dramatically. Parliament cannot have intended that the Structure Plan could stultify the local plan by requiring that it should do more than broadly reflect the character of the Structure Plan. He examined the Act and pointed to provisions that he felt implied a measure of flexibility.

47. The Court's approach should be to determine the permissible scope allowed by the words "general conformity". If, as he submitted, the action taken by SBC fell within the permissible range, the Court should be slow to interfere. Just as making a determination in accordance with the plan always involves judgment and a balance between policies, so should the formulation of those policies in conformity with the structure plan.

48. Mr Straker particularly relied on Ouseley J. in the case of *J.S. Bloor Ltd v Swindon BC* [ 2001] EWHC Admin 966. Ouseley J. said:

"107. The task of statutory construction here requires a court to discern and express the meaning of the statutory provisions, their scope or limits, or defining characteristics. I put it that way because the phrases in question do not readily permit of the expression of their true construction by a process of substitution of more or different words. It is easier to set out what are the characteristics which define the concept, in its statutory context, or rather to identify whether a particular characteristic is within or without the statutory concept.

108. Once the Court has determined, as a matter of law, the scope of the phrase "general policy," the decision of whether a particular policy is within its scope is a matter for the decision maker provided that he has correctly directed himself as to its scope, or its defining characteristics and not by reference to irrelevant characteristics or considerations, and has reached a decision which falls within the scope of the phrase as a matter of law. It is not a \***J.P.L. 98** question of whether his interpretation is reasonable and therefore right. It is a question first of statutory construction and then of application: what is the scope of the statutory phrase? Does the policy fall within its scope? Both questions are for the Court but the latter is answered by a review of the application of the true scope of the phrase to the facts, rather than a primary decision by the Court. If the policy is reasonably regarded as falling within the true scope of the phrase, there is a duty to include it in the Plan."

49. Mr Straker also referred me to the case of *R. v Derbyshire CC, Ex p. Woods* [ 1997] J.P.L. 958. Brooke L.J. said:

"If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy (*Horsham DC v. Secretary of State for the Environment* [1992] 1PLR81, per

Nolan LJ at 88) if there is room for dispute about the breadth of the meaning the words may properly bear, then there may in particular cases the material considerations of law which will deprive a word of one of its possible shades of meaning in that case as a matter of law. This in my judgment, is the underlying principle of law which Auld J was putting into words in his judgment in *Northavon D. C. v. Secretary of State for the Environment* [ 1993] JPL 761. When discussing the meaning of the expression "institutions standing in extensive grounds", the report reads at 763:

"The words spoke for themselves and were not readily susceptible to precise legal definition. Whether a proposed development met the description was in most cases likely to be a matter of fact or degree and planning judgment. He [the judge] said "in most cases" because it was for the Court to say as a matter of law whether the meaning given by the Secretary of State or one of his Officers or Inspectors to the expression when applying it was outside the ordinary and natural meaning of the words in their context. See *Gransden v. Secretary of State for the Environment* (1987) 54 P. & CR86 *per* Woolf J., as he then was (upheld by the Court of Appeal [1987] JPL 465). The test to be applied by the court was that it should only interfere where the decision-maker's interpretation was perverse in that he has given to the words in their context a meaning that they could not possibly have all restricted their meaning in a way that the breadth of their terms could not possibly justify."

50. Mr Straker said that on the facts of the case it was highly desirable for SBC to say something in Policy H2 about the change in circumstances. The local plan was there to tell the public and developers what the local planning authority's proposals were. If there were likely to be important qualifications to policies, the plan ought to say so. That was clearly the view of the Local Plan Inspector. He recommended a change to the wording of the policy. SBC accepted his recommendation and drafted the policy as he recommended it should be worded.

51. Mr Straker drew attention to the Claimants' skeleton argument (para.61 (b)) in which it seems to be accepted that noting in the supporting text to Policy H2 matters that may be material as planning considerations would be lawful. Section 36 (6) makes it clear that "explanatory matter", such as noting matters that may be material as planning considerations, is part of the local plan and therefore part of the "development plan" for the purposes of s.54A or s.38 (6). The distinction that the claimants seek to draw is not there.

#### **\*J.P.L. 99 THE INTERPRETATION OF "GENERAL CONFORMITY"**

52. The correct approach is expressed with clarity by Ouseley J. in the case of *Bloor* (paras 107 and 108) It is true in this case that the task of interpretation will not be far advanced by substituting further words. But there are some conclusions that may be drawn. The Act did not require "conformity" but "general conformity". The word "general" is there to introduce a degree of flexibility. Of the SOED definitions, the most apt meaning of "general" seems to me to be "including the main features and elements and neglecting unimportant details or exceptions". Even those words cannot be transplanted to a planning context without some reservation. There may be some details or exceptions that, in my view, may properly be left to the local plan, yet which cannot be said to be "unimportant". Attempts to define "General conformity" in different words probably only illustrate the point made by Ouseley J., that adding more and different words just postpones the problem of definition. The question becomes: what is a main feature, as opposed to an unimportant detail or exception? What is a "material change" to the policies as opposed to an immaterial one? The better approach is to consider whether the words actually used are objectively capable of falling within the scope that the words "general conformity" leave open to the local planning authority.

53. It is not unusual for further work or new thinking to put a question mark over a comparatively old structure plan policy. I think Mr Purchas is right to say that the legislation cannot contemplate that the words "general conformity" allow much flexibility to accommodate important adjustments through the Local Plan, otherwise s.46(6) of the 1990 Act and Sch.8, para.11 of the 2004 Act would hardly be necessary. I do not find s.46(10) very convincing the other way. To read in "general conformity" as simply meaning that the proposals of the Local Plan should be "in character" with the Structure Plan seems to me to be much too broad. But not all unresolved questions are equally important or need recording in the same way. While the requirement that the Local Plan should be in general conformity with the Structure Plan is an important legislative purpose, there are other purposes. The local plan is there to inform and guide local planning decisions. The guidance of the Local Plan is likely to be of considerable significance to local investment and to choices made about the pattern of local development and the environment. It is desirable in the public interest that the Local Plan should address relevant issues and do so as accurately and fully as it reasonably can. The word "general" is likely to have been put in to make it clear that, to a degree, the need for conformity may be balanced against the need for the local plan to take account of and explain the circumstances in which the strategic policy will be given effect. In the first instance it will be for the local planning authority to decide how to strike this balance subject, of course, to the power of the Secretary of State to direct them to prepare proposals for alteration or to direct that the proposals they have prepared should be submitted to him for approval. (See s.39(2) (b) and ss.44(1) and 45.)

54. A District Council who take objection to putting forward a policy which, although in strict conformity with the Structure Plan, is likely, in their view, to be shown to be seriously misconceived, have the option of withdrawing their proposals. This is what NHDC did. The absence of a local plan policy cannot be criticised on the basis of non-conformity. It may be criticised for other reasons. Silence may not be of much assistance in guiding the proper planning of a District Council's area but the District Council may judge it to be the best response if it has serious doubts about the current relevance of a particular Structure Plan policy and the alternative is to adopt a conforming policy which it believes would be seriously misleading..

55. On the other hand, a local planning authority who judge that, although there is a reason for caution, it is unlikely to affect the basic correctness of the Structure Plan policy, may reasonably choose, it seems to me, to adopt a local policy that generally conforms with the Structure Plan but **\*J.P.L. 100** sets out a particular reservation, qualification or reason for caution in respect to that policy. Which course is best will depend upon the balance, as each council sees it, between the likelihood that the Structure Plan policy will not prove to be soundly based and the desirability of having a local plan that sets out policies for their area in a realistic and fair way. The Local Plan authority that chooses to take the latter course will have to ensure that its plan is in general conformity with the Structure Plan. The proposition that the principle of general conformity allows the local plan nothing between a bare and misleading repetition of the structure plan policy on one hand or silence, on the other, would be unattractive.

56. At one end of the range, if the local planning authority's judgment is that it is likely that further work will show that a Structure Plan strategic housing allocation is not justified at all, it would seem unhelpful to promote a proposed policy that said, without qualification, that land should be allocated to meet it. Equally, to allocate land for strategic housing in terms that were so qualified that it was clear that the allocation was considered unlikely to be translated into planning permissions during the plan period would not, it seems to me, be in general conformity with a Structure Plan policy that required allocation. In such a case silence or the withdrawal of proposals, would probably be the only sensible course. At the other end of the range, for a council to allocate land required for a strategic housing provision within the plan period, confident in the need for it, but to add a caution that for reasons, for example, to do with the proper development of the urban land in the borough, the local planning authority would oppose development starting before a specified time into the plan period, would be in general conformity with the Structure Plan, in my judgment.

57. Within that broad range of action lies the narrower range of policy that would be in general conformity with the Structure Plan. On the facts of the present case, the need for the Local Plan to reflect the uncertainty about the provision of 1000 dwellings at Stevenage West was argued at the Local Plan inquiry (though not with the participation of the Claimants) and expressly addressed by the Local Plan Inspector. He recommended the wording of Policy H2--and consequently H4--that the SBC adopted. It is tolerably plain that he did not think or intend that his formulation would be taken as meaning that the strategic provision might not go ahead at all in the plan period. Indeed he recommended that there was justification to amend the boundary of the Green Belt to accommodate that provision. I think the words of Policy H2 need to be read in their context.

58. If Policy H2 had been expressed as the Claimants wish, with the underlined passages deleted, and no caveat or qualification by way of explanation, it would have been misleading. If Policy H2 had been worded without the underlined words but had then, in the explanatory text recorded both the Inspector's conclusion that the land could not be granted permission until the strategic justification for it has been reconsidered and accepted, and SBC's acceptance of that conclusion, I think that would have been in general conformity with Structure Plan Policy 8. The wording would simply have recorded the facts. While I am not sure that Mr Purchas actually accepted that proposition, he did say that such a position might be acceptable in that the qualification would not be in the wording of the policy itself but in the explanatory text, which could be taken into account as a material consideration.. But, as Mr Straker emphasised, in a local plan the explanatory text is part of the plan in accordance with which the determination is to be made, for the purposes of s.54A of the 1990 Act or s.38 of the 2004 Act. The distinction between such a wording and the actual wording of the adopted Policy H2 is fine.

59. It is difficult to define the scope of the statutory phrase "in general conformity" as a matter of universal principle; it is easier to decide whether specific policies come within it. However it seems to me that, judged objectively, the words are wide enough to encompass a reproduction of **\*J.P.L. 101** the structure plan policy in the local plan, subject to a qualification as to justification or timing that nonetheless contemplates that the purpose of the strategic policy may be achieved in the plan period. The way the SBC have worded Policy H2 and its explanatory material does fall within the scope of the phrase. The application on Ground 1 therefore fails.

## GROUND 2

60. The claimants properly made an objection to the plan as proposed to be modified in respect of the Green Belt boundary near Norton Green to the south of Stevenage West. They argued for more of the area to be excluded from the Green Belt than was proposed in the plan. The Claimant's objection to that was heard at the Local Plan Inquiry. The Inspector was, of course, obliged by law to consider that objection. Unhappily, there is no sign that he did so, since the objection was not addressed at all in his report.

61. It is common ground between the Claimants and the defendant SDC that there has been an error of law in the adoption of the plan. The issue for decision is whether or not, in the exercise of my discretion, I should quash the plan so far as the relevant area is concerned. One might suppose that to quash the relevant part of the Second Review District Plan would simply mean that the situation would revert to what it was before the Second Review process started: the land would have the planning status it had at the beginning of the review, namely it would be green belt. But that, it is agreed, is not the law. The matter was considered in the case of *Charles Church Developments Ltd v South Northamptonshire DC* (1999, May 26). Hidden J. accepted the argument that on the true construction of s.287 of the 1990 Act the Council must start the process afresh for the quashed parts of the Plan. Reasons of convenience, although compelling up to a point, could not be determinative. He continued

"There are a wide range of defects which may occur in the plan process which make it impossible to state that a Planning Authority must revert to a single point in the process, other than its inception. For example, in the present case the defect occurred at the modification stage. However, in (*Laing Homes Ltd v Avon County Council* [1993] 67 P. & CR 34) at page 56, the fault occurred at the Inquiry Inspector's Report stage. It is possible that defects could occur along the length of the plan process, and the lack of a single fixed point other than inception strongly underlines the logic of the construction argument which Mr Elvin had submitted. The absence of a single fixed point other than inception to which the process should revert after quashing, would allow for undesirable differences in opinion to arise between the Planning Authority and the objectors as to the appropriate time."

62. Hidden J. accepted the submission that the Council was not entitled to revert to any stage of the planning process other than to commence new proposals for the alteration and replacement of the Plan as adopted, leaving out the quashed parts.

63. Applying that to the circumstances of this case means that the land in question would not be notated as Green Belt, as it was at the start of the Review process but would be "white land", that is land as it was at the start of the Local Plan process, without any special policy protection. This, submits Mr Straker, would be to give the Claimants a policy advantage they do not deserve. If it does, responds Mr Purchas, the problems are of the Council's own making in that they adopted the plan in full knowledge of the likely consequences. He showed me the Council's report of November 24, 2004 which, at para.4.16 reads:

**\*J.P.L. 102** "Should the court choose to quash all or part of the plan, those quashed parts are treated as if they had never been included in the plan when it was deposited but any remaining un-quashed parts of the plan retain adopted status. It is not considered likely that a successful legal challenge to the plan can be sustained. However should all or part of the plan be quashed the council will have the power to bring forward again--through the new Local Development Framework (LDF)--any policies all proposals that are quashed."

64. I have been assisted by an agreed joint note on the provisions of the 2004 Act as they relate to bringing forward plans for part of the local authority's area. It is clear to me from an examination of s.15(2)(a) and (b) and s.17(3) of the Planning and Compulsory Purchase Act 2004 that the Council does have the power to bring forward new proposals for a part of its area in respect of which the plan has been quashed: it is not necessary to bring forward a plan for the whole of its area. When and if it does so, the Claimants will have statutory rights to have any objection heard. I appreciate that the process may take some time but I do not find that a very compelling objection in the circumstances. It will have to be accepted. If an application is made the decision maker will have regard not only to the notation on the Proposals Map but also to the history of that notation and all the other surrounding circumstances.

65. I therefore quash the Proposals Map in so far as it identifies the detailed boundary of the Green Belt to the south of the land allocated for development at Stevenage West so as to include Norton Green within the Green Belt.

**Comment.** Readers are directed to the discussion of this case in the Current Topics section of the September 2005 issue ([2005] J.P.L. 1125).

**Held,**

**The following judgment was given.**

**H.H. Judge Mole Q.C. sitting as a Deputy High Court Judge:**

## \*334 Persimmon Homes (Thames Valley) Ltd and others v Stevenage Borough Council



Positive/Neutral Judicial Consideration

**Court**

Court of Appeal (Civil Division)

**Judgment Date**

22 November 2005

**Report Citation**

[2005] EWCA Civ 1365

[2006] 1 W.L.R. 334



Court of Appeal

Laws , Wall and Lloyd LJJ

2005 Aug 23; Nov 22

*Planning—Development—Local plan—County council's structure plan setting out policy of new residential housing development allocation in county—Local planning authority proposing changes to local plan to reflect structure plan's policy—County council reviewing structure plan and proposing deletion of policy—Adoption of local plan incorporating original structure plan allocation but suspending release of land for development—Application by housing developers to quash local plan—Nature of court's role—Whether local plan "in general conformity" with structure plan—Town and Country Planning Act 1990 (c 8), ss. 36(4) (as substituted by Planning and Compensation Act 1991 (c 34), s. 27, Sch. 4, para 17), 43(3), 287 (as substituted by Planning and Compulsory Purchase Act 2004 (c 5), Sch. 6, para 9)*

The claimants, a consortium of residential housing developers, were interested in the development of land partly within the administrative boundary of the borough council, a district planning authority in the county of Hertfordshire. In non-metropolitan counties in England the county planning authority produced a structure plan and district planning authorities produced local plans for their areas, and the structure plan and the local plans constituted the development plan. The county council adopted its structure plan in 1998; its general policies authorised district planning authorities to provide for the allocation of 65,000 new dwellings by 2011, and identified 1,000 to be within the borough council's area. The borough council deposited drafts of its local plan in 1999 and 2001 so as to meet the policies in the structure plan. Following changes in government policy relating to housing, which in effect required the development of previously developed land in urban areas before that in green field sites, the county council published draft alterations to the structure plan which deleted its policy for strategic residential housing development and stated that no further allocations for development of green field sites were necessary within the plan period. The borough council adopted its local plan in December 2004, and its policy, although stating that land would be allocated for the development of 1,000 dwellings, provided that the land would be safeguarded from development until the review of the structure plan made it available to be released for development. The claimants contended that the borough council's local plan was not in general conformity with policies in the structure plan, in accordance with sections 36(4) , as substituted, and 43(3) of the Town and Country Planning Act 1990 <sup>1</sup> , and they applied to quash the plan pursuant to section 287 , as substituted. The judge held that the words "in general conformity" were wide enough to encompass a reproduction of the structure plan policy in the local plan, subject to a qualification as to justification or timing that contemplated that the strategic plan's purpose might be achieved within the plan period.

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On appeal by the claimants-

Held:

(1) that [section 287 of the Town and Country Planning Act 1990](#), as substituted, created a form of statutory judicial review of a range of planning decisions, so that the nature of the court's task was supervisory, to ensure there was no error of statutory construction, and that the judgment of the decision-maker was reasonable taking into account the surrounding facts and the correct interpretation of the relevant documents; and that, therefore, the court did not have jurisdiction to make a decision on the factual merits of the particular case (post, paras 8, 21, 30, 70, 91, 92).

(2) Dismissing the appeal (Lloyd LJ dissenting), that the question whether there was "general conformity", within the meaning of [sections 36\(4\)](#), as substituted, and [43\(3\)](#), between a structure plan and the local plan was a matter of degree and of planning judgment, and the court had to apply the ordinary meaning of the words as a matter of language taking into account the practicalities of planning control inherent in the statutory scheme; that those practicalities required the accommodation of two factors, namely the fact that the implementation of planning policies in structure plans and local plans was very likely to be subject to long lead-times, and that over such periods of time the needs and exigencies of good planning policy were liable to change; that the accommodation of those factors tended to favour the court adopting a balanced and more relaxed rather than a tighter approach to the requirement of general conformity which would allow a considerable degree of movement within the local plan to meet the various and changing contingencies that might arise; that, therefore, the borough council did not in the circumstances misconstrue the statutory requirement, and its actions were plainly within the range of measures open to it (post, paras 22, 24-26, 28, 29, 32, 35, 36, 93, 94).

*Per* Lloyd LJ dissenting. The local plan must not put obstacles in the way of the fulfilment of the strategic policies in the structure plan such that they will not, or may well not, be achieved as provided for in the structure plan. Otherwise the purpose of the structure plan, and the basis of the relationship between one structure plan and a series of local plans, would be altogether undermined, with the purpose behind an overall strategic policy being implemented differently and in conflicting ways in different parts of the area governed by the structure plan, and in some of those parts possibly not implemented at all (post, para 86).

*Decision of Judge David Mole QC sitting as a High Court judge [2005] EWHC 957 (Admin) affirmed.*

The following cases are referred to in the judgments:

[Associated Provincial Picture Houses Ltd v Wednesbury Corpn \[1948\] 1 KB 223; \[1947\] 2 All ER 680, CA](#)  
[Bloor \(JS\) Ltd v Swindon Borough Council \[2001\] EWHC Admin 966; \(2001\) 5 PLCR 404](#)  
[Northavon District Council v Secretary of State for the Environment \[1993\] JPL 761](#)  
[R v Derbyshire County Council, Ex p Woods \[1997\] JPL 958, CA](#)  
[R \(Sainsbury's Supermarkets Ltd\) v First Secretary of State \[2005\] EWCA Civ 520, CA](#)

No additional cases were cited in argument.

**APPEAL** from Judge David Mole QC sitting as a High Court judge

By a claim made on 18 January 2005 the claimants, Persimmon Homes (Thames Valley) Ltd, Taylor Woodrow Homes Ltd, The Garden Village Partnership plc and Bryant Homes Southern Ltd, applied under [section 287 of the Town and Country Planning Act 1990](#) as substituted to quash the adoption by Stevenage Borough Council on 8 December 2004 of the [\\*336](#) Stevenage District Plan Second Review 1991-2011 on the grounds that (1) the borough council erred in law in adopting a replacement local plan that was not in general conformity with the county structure plan of Hertfordshire in specific respects, and (2) the borough council in breach of the law adopted the plan without considering the claimants' objections to the proposed new boundary of the Green Belt near Norton Green. On 20 May 2005 Judge David Mole QC sitting as a High Court judge dismissed the claim under ground (1) and allowed it in respect of ground (2) [2005] EWHC 957 (Admin).

By a notice of appeal filed on 3 June 2005 the claimants appealed on the ground that the decision of the judge on ground (1) was wrong in concluding as a matter of law or law and fact that the adopted Stevenage District Plan Review (the local plan) containing policy H2 together with its explanatory text was in general conformity with the adopted Hertfordshire Structure Plan Review ("the HSP") and in particular policies 8 and 9 thereof for the purposes of [Part II of the Town and Country Planning Act 1990](#), in that, *inter alia*, (a) the judge failed to take account of or sufficiently to recognise that the effect of policy H2 of the local plan and its explanatory material was to prevent implementation of policies 8 and 9 of the HSP indefinitely and it did not provide a specified time so as to ensure provision by 2011; (b) the judge erred in seeking to apply policy H2 on the basis of the beliefs of a local plan inspector when the meaning of the policy as explained in the supporting text was clear, and in any event the inspector and the borough council, in considering the proposed modifications to and adopting the local plan, were well aware that the proposed review of the HSP was not to proceed; (c) the judge erred in concluding that policy H2 as originally proposed by the borough council was misleading; and (d) in concluding that the local plan was in general conformity with the HSP because it "contemplates that the purpose of the strategic policy may be achieved in the plan period", the judge failed to take into account or give proper weight to the fundamental inconsistency between policies 8 and 9 in the HSP which required the certainty of provision in the plan period and local plan policy H2 which placed an embargo on that provision indefinitely. Mummery LJ granted the claimants permission to appeal on 11 July 2005.

The facts are stated in the judgment of Laws LJ.

*Robin Purchas QC and Douglas Edwards* for the claimants.

*Timothy Straker QC and Richard Humphreys* for the borough council.

*Cur. adv. vult.*

22 November. The following judgments were handed down.

LAWS LJ

## **Introductory**

1. This is an appeal against the decision of Judge David Mole QC sitting as a High Court judge in the Administrative Court on 20 May 2005. The litigation arises out of the adoption on 8 December 2004 by Stevenage Borough Council of the Stevenage District Plan Second Review 1991-2011 ("the SLP"). The claimants, who are a consortium interested in the residential development of land to the west of the A1(M) at Stevenage, [\\*337](#) applied to the court under [section 287 of the Town and Country Planning Act 1990](#), as substituted by [paragraph 9 of Schedule 6 to the Planning and Compulsory Purchase Act 2004](#), for an order to quash the adoption of the SLP on two grounds which have been referred to as (1) the general conformity ground and (2) the green belt ground. The judge dismissed the claim relating to ground (1) but allowed it in respect of ground (2). This appeal is only concerned with ground (1). Permission to appeal was granted by Mummery LJ on consideration of the papers on 11 July 2005.

2. The claimants have applied to the borough council for planning permission for residential development of land which lies in part within the administrative boundary of Stevenage Borough and part within the administrative boundary of North Hertfordshire District, and wholly within the county of Hertfordshire. The First Secretary of State called in the applications, an inquiry was held and the inspector's report was submitted to the Secretary of State in late 2004. No decision has yet been made. This appeal has been expedited, the claimants having submitted that the Secretary of State ought to have the benefit of this court's view of ground (1) before arriving at his conclusion on the planning applications.

## **The statutory background**

3. The case concerns an aspect of the relationship between the structure plan for the county of Hertfordshire and the local plan for the district of Stevenage. In Hertfordshire, as in other non-metropolitan counties in England, it was the responsibility of the county planning authority to produce the structure plan, and that of the district planning authorities to produce local plans for their areas. By [section 54](#) of the 1990 Act, as substituted by [section 27 of and paragraph 29 of Schedule 4 to the Planning and Compensation Act 1991](#), the structure plan and the local plan, and any alterations to either, constituted "the development plan for any district outside Greater London and the metropolitan counties". I should set out [section 54A](#), as inserted by [section 26](#) of the 1991 Act:

"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."

The scheme of the 1990 Act is principally in play in these proceedings. However, the development plan process, and indeed the meaning of "development plan", have recently been changed by measures contained in the [Planning and Compulsory Purchase Act 2004](#) so as to introduce, among other things, the new concept of a "regional spatial strategy" ("RSS"). Some of the provisions of the 2004 Act, coming into effect on 28 September 2004 (the commencement date of [section 38](#)), are material to the issues in this case. The successor to [section 54A](#) is [section 38\(6\)](#) of the 2004 Act:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

This provision will apply to the Secretary of State's consideration in due course of the claimants' called-in applications.

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4. [Section 31\(2\)](#) of the 1990 Act, as substituted by [section 27 of and Schedule 4](#) to the 1991 Act, required that a structure plan should contain "a written statement formulating the authority's general policies in respect of the development and use of land in their area". [Section 31\(6\)](#) as so substituted obliged the authority "In formulating their general policies" to have regard among other things to strategic planning guidance given by the Secretary of State and current national policies. Where the authority adopted or approved an alteration or replacement of a structure plan, they were obliged by [section 35C](#), as so substituted, to supply "any authority responsible for a local plan in their area" with a statement that the local plan was or was not in general conformity with the altered or new structure plan.

5. The duty to prepare a local plan was imposed on district planning authorities by [section 36\(1\)](#) of the 1990 Act as so substituted. [Section 36\(2\)](#) provided: "A local plan shall contain a written statement formulating the authority's detailed policies for the development and use of land in their area." [Section 36\(4\)](#) provided: "A local plan shall be in general conformity with the structure plan." A local plan (in contrast to a structure plan: see [section 31\(5\)](#) and [regulation 5 of the Town and Country Planning \(Development Plan\) \(England\) Regulations 1999](#) (SI 1999/3280) had to contain a map: [section 36\(6\)](#). [Section 36\(9\)\(a\)](#) required authorities, in the formulation of their detailed policies, to have regard to considerations prescribed by the Secretary of State. Accordingly the borough council, when it came to revise the draft local plan, was obliged to have regard to the Secretary of State's policy document PPG3 issued in March 2000, to which I will refer below. [Section 43](#) as substituted provided for the adoption by the local planning authority of proposals for a local plan or for its alteration or replacement. [Section 43\(3\)](#) stated: "The authority shall not adopt any proposals which do not conform generally to the structure plan." [Section 43\(4\)](#) allowed the Secretary of State to direct the modification of proposals submitted to him if he considered them to be "unsatisfactory". [Section 46](#) as substituted was concerned with conformity between the structure plan and local plans, requiring the structure plan authority to issue a statement to the effect that the local plan or proposals which had been served on them were, or were not, in general conformity with the structure plan ([section 46\(2\)](#) as substituted). Where the statement is to the effect that the plan or proposals are not in general conformity, it falls to be treated as an objection to the plan or proposals in accordance with the relevant regulations ([section 46\(4\)](#) as substituted). [Section 24](#) of the 2004 Act, which I will not set out, made provision for general conformity between what in that statute's language were called "the local development documents" and the RSS.

6. [Section 46\(10\)](#) of the 1990 Act as substituted provided:

"The provisions of a local plan prevail for all purposes over any conflicting provisions in the relevant structure plan unless the local plan is one- (a) stated under section 35C not to be in general conformity with the structure plan; and (b) neither altered nor replaced after the statement was supplied."

The provision made by the 2004 Act for the resolution of conflicts between plans differs somewhat from that contained in section 46(10). Section 38(5) of the 2004 Act provides: [\\*339](#)

"If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)."

7. Schedule 8 to the 2004 Act contains transitional provisions. Their effect in part is to preserve in being the Hertfordshire structure plan, to whose history I shall come shortly, until 28 September 2007, or until the date (if earlier) of the adoption or approval of a new plan in its place. Paragraph 9 of Schedule 8 preserves in this case (given the relevant dates) the procedure for the adoption of the local plan prescribed by the 1990 Act. Paragraph 12 has effect to continue the SLP in being until 8 December 2007 unless it is replaced meantime. A new provision, which had no analogue in the 1990 Act, is to be found in [paragraph 11 of Schedule 8](#):

"(1) This paragraph applies if the Secretary of State thinks- (a) that the conformity requirement is likely to give rise to inconsistency between the proposals and relevant policies or guidance, and (b) that it is necessary or expedient to avoid such inconsistency.

"(2) The Secretary of State may direct that to the extent specified in the direction the conformity requirement must be ignored.

"(3) The Secretary of State must give reasons for the direction.

"(4) The conformity requirement is- (a) the requirement under section 36(4) of the [1990] Act that the local plan is to be in general conformity with the structure plan; (b) the prohibition under section 43(3) of the [1990] Act on the adoption of proposals for a local plan or for its alteration or replacement which do not conform generally with the structure plan."

8. Lastly while dealing with the statutory material I should refer to [section 287](#) of the 1990 Act as substituted, which as I have foreshadowed confers the High Court's jurisdiction to entertain these proceedings. I need not set it out. It is enough for present purposes to say that it creates a form of statutory judicial review of a range of planning decisions, certainly including the adoption by the borough council of the SLP.

### The history

9. The immediate focus of the claimants' challenge, as I have foreshadowed, is the adoption by the borough council on 8 December 2004 of the Stevenage Borough Council District Plan Second Review. It is said that policy H2 as then adopted

amounts to a violation of the mandatory requirement of general conformity with the structure plan specified in [sections 36\(4\)](#) as substituted and [43\(3\)](#) of the 1990 Act. In order to understand how the issue arises, it is necessary to describe something of the history.

10. The Hertfordshire Structure Plan Review 1991-2011 was adopted by Hertfordshire County Council, which is the structure plan authority, on 30 April 1998. But it is necessary to go a little further back in time. The deposit version of the plan was based upon a perceived need of 65,000 new dwellings. The county council believed that the great majority would be provided through extant permissions, other commitments, and plan regeneration. However, a balance of 6,000 would be left over for which [\\*340](#) specific strategic provision might have to be made. The judge takes up the story, at para 3:

"[The county council] therefore sought to make strategic provision 'on a contingency basis' for up to 6,000 additional dwelling sites. Draft policy 7 showed 5,000 dwellings within the plan period being provided at Stevenage west of the A1(M). Of those dwellings 1,000 were to be within [the borough council]'s boundary and the remainder within the boundary of North Herts District Council ('NHDC'). The policy said that construction of dwellings would not be permitted to start until at least 2004, and in effect, not at all until it was clear they were needed."

11. There followed the statutory examination in public ("EIP") of the deposit version of the plan, held in March 1997. There was a good deal of objection to draft policy 7 because it was said to create, as the judge put it, "an undesirable uncertainty in a situation where there were long lead times to planning development" (para 4). The borough council was one of the objectors. The panel, giving the conclusions of the EIP, took the view that there was

"no realistic prospect of progress with regeneration removing or diminishing the need for supplementary provision for 6,000 dwellings over and above the 15,000 covered by policy 6 if the total 65,000 dwelling requirement is to be met ... Given the long lead time in planning for such developments, and the need for as much certainty as practicable in structure planning, planning should begin on a firm basis without delay."

The panel also considered the timetable for the proposals for West Stevenage. They set out their recommendations for the revision of policies 7 and 8.

12. The county council accepted the panel's recommendations. The result was the renumbered policies 8 and 9 as they appear in the structure plan review adopted in April 1998:

"Policy 8: strategic locations for supplementary housing development

"Land suitable for strategic housing allocation, together with necessary associated development, will be identified in the following locations ... and excluded from the Green Belt ...

"Stevenage West of A1(M) 1,000

"North Hertfordshire West of A1(M) at Stevenage 2,600

"The planning of these developments will be brought forward through the review of the relevant local plans ... In the case of the development west of the A1(M) at Stevenage, the master plan will provide for: (i) an initial phase of 5,000 dwellings, some of which to be completed after 2011; (ii) in the longer

term, a possible second phase of a further 5,000 dwellings. Providing that 3,600 dwellings in the initial phase are planned to be built by 2011, the detailed dwellings split at this location between North Hertfordshire district and Stevenage borough will be determined in the relevant local plans, informed by agreed master planning work to establish the most sustainable form of development.

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"Policy 9: dwelling distribution 1991 to 2011

"Local plans will make provision, in accordance with the development strategy as set out in policies 6, 7 and 8, for a net increase in the period 1991 to 2011 of about 65,000 dwellings distributed as follows ...

"Stevenage 5,700 includes 1,000 West of A1(M)."

13. Those, then, are the relevant structure plan provisions.

14. A year later the borough council put on deposit the Stevenage District Plan Second Review 1991-2011. There was a second deposit draft in May 2001. Policy H2 read:

"Policy H2: Strategic housing allocation- Stevenage West

"In order to meet the provisions of structure plan policy 8, land at Stevenage West is allocated for the development of approximately 1,000 dwellings."

This version of the plan went to a local plan inquiry. By the time of the pre-inquiry meeting on 19 June 2002 the county council had been re-thinking policy 8 of the structure plan review. As the judge said, at para 16:

"It claimed that recent work showed that the EIP had dramatically underestimated the scope for planned regeneration. It was clear, [the county council] felt, that there was no need for strategic green-field allocations within the plan period. So in July [the county council] published a first consultation draft alterations 2001-2016 to the HSP. This document deleted former policy 8 and replaced it with the bare statement that no strategic allocations would be identified in the review of local plans and no further strategic scale housing developments should be permitted anywhere in Hertfordshire."

Part of the background to this changed view consisted of important recent government policy relating to housing, contained in PPG3 published in March 2000. That required urban capacity assessments to be carried out, and also that previously developed land in urban areas should generally be developed first before green field land.

15. The local plan inquiry into the Stevenage District Plan Review opened in September 2002. The county council objected to policy H2, arguing that the Stevenage West proposals should be deleted and asserting that the district plan would still remain in general conformity with the structure plan if that was done. By contrast the borough council submitted "that a local plan without Stevenage West in it could not be in conformity with the structure plan".

16. The inspector's report on objections to the local plan was received in July 2003. The inspector considered that it was beyond his remit to take a position on the county council's fresh views about the structure plan policy. He acknowledged that until they had been addressed and resolved "as part of a strategic exercise" there was bound to be some uncertainty "on the strategic justification for the development" (inspector's report, para 3.59). The inspector went on to state, at para 3.60:

"In order to be in general conformity with the adopted structure plan I consider this local plan should identify the land necessary to provide \*342 about 1,000 dwellings as required by the structure plan ... At the same time, in order to reflect the current uncertainty, that identification should however be caveated [sic] by a statement that makes it clear the formal release of the land for development is dependent on completion of a strategic evaluation of the proposed development determining it continues to be needed. The necessary evaluation could be carried out as part of the preparation of the emerging review structure plan. If development of the land continues to be justified strategically, then formal release of the relevant land in the form of granting planning permission can be considered. If that justification is not confirmed, this local plan will need to be reviewed to delete the proposed development."

There is an important passage at para 3.63:

"I have also taken into account the view expressed on behalf of one of the objectors who raised this issue ... that deletion of the development proposed in this local plan west of the A1(M) at Stevenage would comply with the over-arching policy 1 [sc. providing for consistency with the principles of sustainable development] in the adopted structure plan. It is argued that a version of the plan amended in this way would remain in general conformity with the structure plan. The proposed development has been justified strategically in the light of the sustainability provisions of policy 1 in the adopted structure plan and represents an important part of the strategic policies/proposals of that plan. To remove the relevant part of that growth from this local plan would in my view pre-judge the outcome of a proper re-appraisal of its strategic justification, an exercise that could be carried out within the context of reviewing the structure plan. The county-wide considerations cannot properly and fully be assessed as part of this local plan. I cannot therefore accept that removal from this local plan of part of the development proposed to the west of the A1(M) at Stevenage, that is proposed in policy 8 of the adopted structure plan as a strategic housing allocation, would result in a local plan in general conformity with that plan. Removal of the proposed development would represent a material change to the structure plan's proposals." (Emphasis added.)

17. The inspector concluded, at para 3.64:

"In the light of all of the evidence on this issue placed before me in writing and verbally at the inquiry, I have therefore formed the following views: First, in order for the local plan to be in general conformity with the adopted structure plan it must satisfy policy 8 of that plan and identify land west of the A1(M) for the development of about 1,000 dwellings. Secondly, there is considerable uncertainty over the strategic justification for that development, particularly given the national planning policy guidance introduced by PPG3 . Given that uncertainty, the local plan should make it clear that the identified land cannot be granted planning permission for the proposed development until and if the strategic justification for it has been reconsidered and accepted. If the strategic justification for the development is not made, either in the emerging structure plan or within some other framework, then this local plan will need to be the subject of a review to delete that part of the proposed new settlement west of the A1(M) at Stevenage or otherwise to respond to the \*343 revised strategic policy context. As part of any review of the plan it would also be necessary to introduce associated changes. These would include the reinstatement of the appropriate part of the Green Belt, and changing the relevant transport, countryside and employment proposals to reflect the deletion of the proposed development west of the

A1(M) at Stevenage. Thirdly, other provisions of the plan that relate to policy H2 will also need to be changed to remain consistent with this approach. For example, given the current uncertainty referred to above and the suggested policy change I have recommended to policy H2, I consider it is unlikely that 500 dwellings could be completed within west of Stevenage up to 2008. Policy H4 should therefore be amended to indicate the completion of 400 dwellings up to 2008, with 600 between 2008 and 2011. Finally, I consider this approach would ensure the local plan remained in general conformity with the adopted structure plan whilst reflecting the changes in circumstance, such as the publication of PPG3, that have occurred since the structure plan was adopted. It would therefore most appropriately respond to the current situation."

18. I should say in passing that in spring 2003 the county council had produced a deposit draft version of their contemplated structure plan alterations; however, after consultation with the Government Office for the Eastern Region they decided not to proceed to an EIP and the deposit draft document got no further. The judge noted, at para 25, that he was told "that it will not now do so". The inspector acknowledged this changed position in corrigenda to his report issued in September 2003, but made no further recommendation. He said:

"The original justification for the principle of development west of Stevenage was provided strategically by the structure plan and my report advises that any reconsideration of this proposed growth will need to take place within a similar framework (e.g. strategic- countywide and with the same or similar opportunity for public involvement as would occur with the structure plan). The review of the structure plan would clearly have provided a suitable framework for that reconsideration. In the light of changes in circumstances since the inquiry, that may not now be possible/practical. I do not, however, consider it would be within my remit to determine or even to advise on procedural matters relating to how/where/when reconsideration of the west of Stevenage proposed development could or should take place. It is for the relevant authorities to determine how this can best be achieved."

19. The borough council accepted the inspector's recommendations, and modified the local plan accordingly. After considering representations as to the proposed modifications they adopted the plan as modified, as I have said on 8 December 2004. As adopted policy H2 reads as follows (I have underlined, as the judge did, the passages which the claimants sought to have quashed):

"In order to meet the provisions of policy 8 in the adopted structure plan, land at Stevenage West is identified for the development of approximately 1,000 dwellings. The allocated land is safeguarded from development pending reconsideration and acceptance of its strategic justification."

\*344 The accompanying text includes:

"3.2.13 The structure plan is currently being reviewed in the light of the material changes that have occurred since it was adopted in 1998, including the need to take into account the provisions of PPG3. That exercise will reassess the justification for the strategic development west of the A1(M) at Stevenage. Only if that review of the structure plan or an alternative form of reconsideration of the strategic need for the development determines that Stevenage West is required to meet the county's development needs up to 2011 can the site be considered as allocated and available to be released

for development. If the review structure plan or alternative form of reconsideration does not justify development of the land up to 2011, it will be necessary to review this local plan to take account of the revised strategic policy context."

### The issue

20. As I have said the claimants' contention in this court, as it was before the judge below, was that policy H2 of the SLP, as adopted, is not in general conformity with policies 8 and 9 of the structure plan review adopted in April 1998. If the complaint is made out, the High Court would be empowered under [section 287](#) of the 1990 Act as substituted to quash the offending passages in the document.

### Discussion

21. It is first necessary to identify with some precision the nature of the exercise which the court under [section 287](#) is being asked to undertake. As I have said [section 287](#) creates a form of statutory judicial review. That being so, (a) so far as the question whether a local plan provision is "in general conformity" with the structure plan involves any issue of statutory construction, it is the court's duty and prerogative to decide for itself what is the correct construction; but (b) so far as the question involves the application of judgment, or expert or mature opinion, to the circumstances of the case, the court's only role is to supervise the exercise of those faculties by the relevant public decision-maker (here the borough council) according to the conventional public law test of rationality, generally referred to as the *Wednesbury* principle: see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223.

22. In my judgment, issues of both kinds arise. It is therefore first necessary for the court to ascertain the correct construction of the expression "general conformity". There is then the question whether the requirement is fulfilled in the particular case. That is not itself an issue of construction, although any proper answer to it must proceed upon a correct interpretation of the relevant structure and local plan policies: as to which, in this case, there is no dispute or difficulty. The question whether there is general conformity between the plans is a matter of degree and, as it seems to me, of planning judgment. As such its resolution on the merits is confined to the relevant planning authorities, including the Secretary of State where his statutory role is invoked. As I have indicated this court's function upon this aspect of the case is limited to the application of the *Wednesbury* principle. I believe this approach to be consistent with what was said, albeit in different language, by Ouseley J in *J S Bloor Ltd v Swindon Borough Council* (2001) 5 PLR 404 \*345 which the judge below described as "the correct approach", at para 52. However, Ouseley J was dealing with a different subject matter, and I mean no disrespect if I do not set out the text. The judge also referred to the judgment of Brooke LJ in *R v Derbyshire County Council, Ex p Woods* [1997] JPL 958, who in his turn cited Auld J in *Northavon District Council v Secretary of State for the Environment* [1993] JPL 761. But the reasoning in those cases was concerned with the approach to be taken by the court to the ascertainment of the meaning of words included in a planning policy. *Ex p Woods* was referred to (though very much in passing) at para 16 of the recent judgment of this court in *R (Sainsbury's Supermarkets Ltd) v First Secretary of State* [2005] EWCA Civ 520, a transcript of which was helpfully sent to us by counsel after the hearing. In this case, as I have said, there is no dispute or difficulty as to the meaning of the respective plan policies.

23. The first of the two propositions I have set out, namely that the meaning of the term "general conformity" is a question of construction for the court, is surely beyond contention. As for the second, namely that the question whether there is general conformity between the plans is under [section 287](#) of the 1990 Act subject only to *Wednesbury* supervision, there might, I suppose, be two objections. First, this question is as much a matter of construction (and therefore of law for the court) as is the meaning of the term "general conformity". Secondly, and in the alternative, the level of supervision which the court will bring to bear on the issue is more intrusive than the *Wednesbury Corp* case [1948] 1 KB 223 allows; or even that the court should simply decide the issue for itself.

### The construction of "general conformity"

24. Before turning to these objections I will deal with the construction of "general conformity". The term is nowhere defined in the legislation. The court must therefore apply its ordinary meaning as a matter of language, taking into account, however,

the practicalities of planning control which are inherent in the statutory scheme. The question of construction is essentially as to the flexibility of the requirement of general conformity: is it relatively tight, or relatively loose? Any attempt to elicit an *exact* meaning of the term "general conformity" would, I suspect, founder on what may be called the rock of substitution- that is, one would simply be offering an alternative form of words which in its turn would call for further elucidation. We have to confront the words the legislature has chosen.

25. The practicalities of planning control to which I have referred include two features which between them must surely inform the extent to which the general conformity requirement is strict or relaxed. The first feature is that the implementation of planning policies in structure plans and local plans is very likely, in the nature of things, to be subject to long lead-times. The second is that, over such periods of time, the needs and exigencies of good planning policy are liable to change. The interpretation of the general conformity requirement has to accommodate these factors. In my judgment, they tend to militate in favour of a looser, rather than a tighter approach. Here we have a span of time between April 1998 when the county council adopted the Hertfordshire Structure Plan Review 1991-2011, and December 2004 when the borough council adopted the SLP. The borough council was bound by statute (see for example [section 36\(9\)\(a\)](#) of the 1990 Act as substituted) to have regard to changing considerations over that [\\*346](#) period. The attention paid to PPG3 provides an example of this duty's observation in practice.

26. The shape of the statutory provisions also promotes a somewhat looser approach. Here the terms of [section 46\(10\)](#) of the 1990 Act as substituted, which I have set out, are important. I repeat the subsection for convenience:

"The provisions of a local plan prevail for all purposes over any conflicting provisions in the relevant structure plan unless the local plan is one- (a) stated under section 35C not to be in general conformity with the structure plan; and (b) neither altered nor replaced after the statement was supplied."

In my judgment, it is a premise of this provision's application that there may be a conflict between the structure plan and the local plan such as to require resolution in favour of one or the other even though the two are in general conformity within the meaning of [sections 36\(4\)](#) as substituted and [43\(3\)](#) of the 1990 Act. The words- *general* conformity- seem to me to point in a like direction. The adjective "general" is there, as the judge said at para 52, "to introduce a degree of flexibility".

27. Mr Purchas for the claimants sought to neutralise the argument against him based on [section 46\(10\)](#) as substituted by pointing to [paragraph 11 of Schedule 8](#) to the 2004 Act, which I have set out. He submitted that it was implicit in this provision that, absent the use by the Secretary of State of the power there provided, the requirement of general conformity was not to be displaced by any supervening evolution of national policy; yet on the borough council's case that is precisely what has happened here. I do not accept this submission; or rather I think it misses the mark. Of course the formulation of national policy cannot justify the displacement of the requirement of general conformity. The requirement is imposed by statute. But this tells us nothing as to the reach or content of the requirement, whether it is relatively tight or relatively loose; and that is the issue in the appeal.

28. I acknowledge (as was submitted at para 26(2)(d) of the claimants' skeleton argument) that because structure and local plans together form the development plan under the 1990 Act (see [section 54](#) whose effect I have summarised), they must, broadly at least, be consistent; otherwise [section 54A](#) of the 1990 Act, which I have set out, would not be workable. I agree with the judge (para 53) that to read "general conformity" as simply meaning that the proposals of the local plan should be "in character" with the structure plan would be to accept too broad a construction. On the other hand, there are the features to which I have earlier referred- the long lead-times involved, the fact that the exigencies of planning policy may present a changing picture, and the statutory words themselves. In construing the general conformity requirement the court should, in my judgment, favour a balanced approach by which these different factors may be accommodated. I consider that on its true construction the requirement may allow considerable room for manoeuvre within the local plan in the measures taken to reflect structure plan policy, so as to meet the various and changing contingencies that can arise. In particular (for it is relevant here) measures may properly be introduced into a local plan to reflect the fact, where it arises, that some aspect of the structure plan is itself to be subject to review. [\\*347](#) This flexibility is not unlimited. Thus measures of this kind may not pre-judge the outcome of such a review. They must respect the structure plan policies as they are, while allowing for the possibility that they may be changed. I doubt whether it is possible to derive any more focused conclusion on the construction of the general conformity requirement. I agree with these observations made by the judge below, at para 53:

"While the requirement that the local plan should be in general conformity with the structure plan is an important legislative purpose, there are other purposes. The local plan is there to inform and guide local planning decisions. The guidance of the local plan is likely to be of considerable significance to local investment and to choices made about the pattern of local development and the environment. It is desirable in the public interest that the local plan should address relevant issues and do so as accurately and fully as it reasonably can. The word 'general' is likely to have been put in to make it clear that, to a degree, the need for conformity may be balanced against the need for the local plan to take account of and explain the circumstances in which the strategic policy will be given effect. In the first instance it will be for the local planning authority to decide how to strike this balance subject, of course, to the power of the Secretary of State to direct them to prepare proposals for alteration or to direct that the proposals they have prepared should be submitted to him for approval: see section 39(2) (b) as substituted and sections 44(1) and 45."

I agree also with this statement of the judge, which appears as part of his conclusion on the general conformity issue, at para 59:

"judged objectively, the words [sc "general conformity"] are wide enough to encompass a reproduction of the structure plan policy in the local plan, subject to a qualification as to justification or timing that none the less contemplates that the purpose of the strategic policy may be achieved in the plan period."

### **The application of the "general conformity" requirement- the court's role**

29. Is the court's task at this stage no more nor less than one of *Wednesbury* review? The question whether a local plan provision is in general conformity with the structure plan is not in my judgment one of statutory construction. How could it be? Let this or that interpretation of "general conformity" be accepted (and the interpretation of the relevant structure and local plans likewise). Those processes exhaust the role of statutory construction. But after our books on construction are put away, there must remain on various sets of facts a question still unanswered: is this local plan in general conformity with the structure plan or not? The proper construction of the general conformity requirement, and of the relevant plans, is a necessary step along the way to the question's answer. But it is not the final step. If it were, the exercise of interpretation or construction would *give* the answer. But plainly it does not; at least it may not. It is true that if you adopt a more or less extreme construction of "general conformity", so as (depending which extreme is chosen) either to allow or to prohibit virtually every dissonance between structure and local plan, then of course the construction exercise will, nearly always, answer the question. But if *\*348* the right interpretation of "general conformity" is, as in agreement with the judge I would hold, a balanced one, it will as I have said allow what may be a considerable degree of movement within the local plan to meet the various and changing contingencies that can arise. In that case the question whether the local plan is in general conformity with the structure plan is likely to admit of more than one reasonable answer, all of them consistent with the proper construction of the statute and of the relevant documents. In those circumstances the answer at length arrived at will be a matter of planning judgment and not of legal reasoning.

30. If that is right, the court's role in dealing under section 287 of the 1990 Act as substituted with a challenge to an authority's view of the application in a particular case of the general conformity requirement can only be supervisory. It cannot be to retake the merits decision itself; section 287 confers no jurisdiction to embark upon such matters of fact or judgment. Can the standard of review, or supervision, be anything more than *Wednesbury*? There are, of course, now familiar areas of our law in which the court's role in judicial review cases is much more intrusive than would be contemplated by the *Wednesbury* doctrine. In particular, we are accustomed to consider whether an executive decision is proportionate to a legitimate public interest aim; and it is elementary that the test of proportionality is closer to an adjudication of merits than is *Wednesbury*. But cases of that kind engage the court's duty to see to the protection of the citizen's constitutional rights (whether or not arising through the medium of the *Human Rights Act 1998*), where such a right is threatened by government action. Such instances concern the tension, the

stand-off, between individual claims of right and general claims of public interest. Nothing of that kind arises here. The stand-off here is not between citizen and state; it is between two sets of planning policy, both adopted in the public interest. There is every reason why the judgment of broad consistency between them- the application of the general conformity requirement- should rest firmly in the hands of the statutory policy-makers themselves, while the court fulfills its traditional duty (a) to see that there is no mistake of "black letter" law- no error of construction- and (b) if there is not, to see that the merits judgment as to general conformity is a reasonable one given the surrounding facts and the correct interpretation of the relevant documents.

31. This approach is, in my judgment, supported by the submission made by Mr Straker for the borough council, which I accept, that the statutory schemes under the Acts of 1990 and 2004 confer major decision-making functions on executive authority, especially the Secretary of State, in relation to issues of conformity or disconformity between structure plan and local plan. Mr Straker referred in particular to [sections 43\(4\) and 46\(4\)](#) of the 1990 Act as substituted and [section 24 and paragraph 11 of Schedule 8](#) to the 2004 Act. The argument is that the legislative intention cannot have been to require the courts to second-guess the outcome of these functions, provided they are properly and lawfully executed, by means of the jurisdiction given by [section 287](#) of the 1990 Act. That seems to me to be right.

## Conclusions

32. Did the borough council, in adopting the SLP on 8 December 2004, misconstrue the general conformity requirement? In my judgment, they [\\*349](#) plainly did not. In dealing with the construction issue I have stated that while measures may properly be introduced into a local plan to reflect the fact that some aspect of the structure plan is to be subject to review, they must not pre-judge the review's outcome. This is precisely the approach adopted by the local plan inspector at para 3.63 of his report which I have set out above (see in particular the italicised passages). It is accordingly inherent in the decision of the borough council, which accepted the inspector's recommendations, to adopt the SLP on 8 December 2004. There was, therefore, no error of statutory construction; quite the contrary.

33. Did the borough council fall foul of the *Wednesbury* principle in adopting the SLP on 8 December 2004? The claimants submitted (skeleton argument paragraph 26(4)) that the requirements set out in policies 8 and 9 for 1,000 dwellings in West Stevenage by the end of the plan period constituted an important strategic policy and were accepted as such by the local plan inspector and the borough council; policy H2 fails to deliver this strategic allocation, though it was bound to do so; and accordingly the local plan was not in general conformity with the structure plan. It is said that the effect of policy H2 and its explanatory material is to prevent the implementation of policies 8 and 9 indefinitely; and the judge was wrong (at para 57) to place reliance on the local plan inspector's view that his proposed formulation would not or should not be taken as meaning that the strategic provision might not go ahead at all in the planned period (i e to 2011).

34. First, I incline to think that the inspector's view to which I have just referred is, as it were, the fifth wheel of the coach. Whether or not he himself believed that the strategic provision would be implemented by 2011 does not, in the circumstances, colour the question whether the borough council took a perverse approach when they adopted the SLP.

35. It seems to me that on this part of the case the most that can be said for the claimants is that the inspector's recommendation, and the borough council's decision, necessarily envisaged the possibility that the strategic allocation of 1,000 dwellings west of the A1(M) to be built by 2011 might not be fulfilled. But the true genesis of that possibility was the advent of uncertainty as to the strategy itself. In my judgment, the borough council was entitled to reflect that uncertainty, without offence to the general conformity requirement, in their decision of 8 December 2004. Their decision cannot be said to fall foul of the *Wednesbury* standard. In truth the claimants' arguments on what may be called the factual side of the case run into the ground if the construction I have offered of the general conformity requirement is correct. What was done here was plainly within the range of measures open to the borough council given that construction. I should have held the decision to be right even if the court were the judge of the factual merits of the matter.

36. For all these reasons I would dismiss the appeal.

LLOYD LJ

37. On 8 December 2004 Stevenage Borough Council adopted the Stevenage District Plan Second Review 1991-2011 (the Stevenage local plan). It identifies land for housing development, for 1,000 dwellings, in an area to the west of the A1(M),

known as Stevenage West. In so doing it sought to comply with general policies set out in the Hertfordshire County Council Structure Plan Review 1991-2011, which had been adopted in April 1998 (the Hertfordshire structure plan). \*350

38. The claimants have interests in developing land at Stevenage West. They complain that the terms of the Stevenage local plan do not give proper effect to the requirements of the Hertfordshire structure plan, that it is not in general conformity with that structure plan, and that in this respect it is unlawful. They also had another complaint about the Stevenage local plan. On 18 January 2005 they commenced these proceedings, under [section 287 of the Town and Country Planning Act 1990](#) as substituted, seeking to have two parts of the local plan declared unlawful. The proceedings came before Judge David Mole QC, sitting as a High Court judge on 28 and 29 April. On 20 May he gave judgment [2005] EWHC 957 (Admin) and declared one part of the local plan unlawful, but not the other of which the claimants complained. They pursue their claim to have that other part declared unlawful by this appeal, for which permission was granted by Mummery LJ.

39. The Hertfordshire structure plan proceeded on the basis of a need for a further 65,000 dwellings in Hertfordshire by 2011, and identified Stevenage West as a suitable location for a significant contribution to this need. Part of Stevenage West is within Stevenage Borough and the rest is within North Hertfordshire District. The Hertfordshire structure plan set out policies intended to secure the provision of these dwellings, including in particular two of direct relevance to the present case, numbered 8 and 9. These are as follows:

"Policy 8: strategic locations for supplementary housing development

"Land suitable for strategic housing allocation, together with necessary associated development, will be identified in the following locations indicated on the key diagram and excluded from the Green Belt.

"District or Borough	Location	Dwellings
...		
"Stevenage	West of A1(M)	1,000
"North Hertfordshire	West of A1(M) at Stevenage	2,600

"The planning of these developments will be brought forward through the review of the relevant local plans.

"Master planning briefs will be prepared and negotiated with the developers. This shall be done by a joint local authority partnership of the relevant district and borough council where more than one is affected. In the case of the development west of the A1(M) at Stevenage, the partnership will include the county council ...

"In the case of the development west of the A1(M) at Stevenage, the master plan will provide for: (i) an initial phase of 5,000 dwellings, some of which to be completed after 2011; (ii) in the longer term, a possible second phase of a further 5,000 dwellings. Providing that 3,600 dwellings in the initial phase are planned to be built by 2011, the detailed dwellings split at this location between North Hertfordshire District and Stevenage Borough will be determined in the relevant local plans, informed by agreed master planning work to establish the most sustainable form of development.

\*351

" Policy 9: dwelling distribution 1991 to 2011

"Local plans will make provision, in accordance with the development strategy as set out in policies 6, 7 and 8, for a net increase in the period 1991 to 2011 of about 65,000 dwellings distributed as follows ...

“North Hertfordshire	10,400	includes 2,600 west of the A1(M) at Stevenage
...		
“Stevenage	5,700	includes 1,000 west of A1(M)
“Hertfordshire	65,000	of which 4,600 at strategic locations identified in policy 8

"The exact dwelling allocations for North Hertfordshire and Stevenage may be varied between these two districts, depending on the dwelling split at the location to the west of the A1(M) in accordance with the provisions of policy 8. The county council will review the need for alterations to this plan when new regional planning guidance for the South East is issued."

40. Hertfordshire County Council having adopted this revised structure plan, Stevenage Borough Council prepared a draft revision of its local plan, the first version being deposited in November 1999. This included a policy H2, as follows:

*" H2: New housing allocations*

"In order to meet the structure plan housing requirement the following sites are allocated for housing:

<i>"H2: New housing allocations</i>		
"In order to meet the structure plan housing requirement the following sites are allocated for housing:		
“Site	Area (ha.)	Estimated numbers of dwellings
“Stevenage West	93 ha.	1,000"

41. The draft also included a number of specific policies relating to Stevenage West. In the meantime work had also started on the collaborative master planning exercise called for by policy 8.

42. Stevenage Borough Council produced a further revised draft in 2001, which is before the court in a still later version incorporating changes made before the inquiry on the draft local plan. By then, in March 2000, the government had issued a new version of PPG3, emphasising the need to use brown field sites so far as possible before encroaching on the Green Belt. Stevenage Borough Council amended the draft to take account of this guidance, among other things. In this revised draft policy H2 is expressed more succinctly:

*" Policy H2: Strategic housing allocation- Stevenage West*

"In order to meet the provisions of structure plan policy 8, land at Stevenage West is allocated for the development of approximately 1,000 dwellings."

43. Under policy H1 (existing commitments) the land at Stevenage West was treated as a commitment. In the explanatory text, para 3.2.11 was as follows: **\*352**

"Structure plan policy 8 identifies land for 3,600 dwellings at Stevenage West of which approximately 1,000 dwellings are to be within the Stevenage Borough Council boundary and 2,600 dwellings are to be within the North Hertfordshire District Council boundary. The exact number is to be determined by the master plan, however, for the purposes of this plan; policy H2 allocates land at Stevenage West for 1,000 dwellings. The allocation of 3,600 dwellings forms part of an initial phase of 5,000 of which 1,400 dwellings are to be completed after 2011."

44. Hertfordshire County Council had confirmed that each successive draft of the Stevenage local plan was in general conformity with the Hertfordshire structure plan. However, at the inquiry into the Stevenage local plan, Hertfordshire County Council objected to the local plan in respect of the provision for Stevenage West, and sought to have this removed entirely from the local plan. Hertfordshire County Council had embarked on a review of its own structure plan and in July 2002 published a consultation draft which omitted any provision as regards Stevenage West, on the basis that all of the additional housing need could be met without encroaching on the Green Belt. In March 2003 this process reached the stage of a deposit draft but shortly after that, in the light of adverse comment, in particular from the Government's Regional Office, Hertfordshire County Council decided not to take the necessary further steps to progress this review.

45. The inspector rejected the argument that the Stevenage local plan could properly fail to identify land at Stevenage West, but he noted that the need for the strategic allocation of land was subject to question and was to be reviewed. He recommended that the land be identified but that its release for development should be conditional on the reconsideration of the strategic need taking place and resulting in the need being confirmed. In his judgment the judge quoted some relevant passages from the inspector's report. I will limit myself to quoting two short passages from those mentioned by the judge, parts of paras 3.60 and 3.64 of the report:

"3.60 ... At the same time, in order to reflect the current uncertainty, that identification should however be caveated by a statement that makes it clear the formal release of the land for development is dependent on completion of a strategic evaluation of the proposed development determining it continues to be needed. The necessary evaluation could be carried out as part of the preparation of the emerging review structure plan. If development of the land continues to be justified strategically, then formal release of the relevant land in the form of granting planning permission can be considered. If that justification is not confirmed, this local plan will need to be reviewed to delete the proposed development ...

"3.64 ... Secondly, there is considerable uncertainty over the strategic justification for that development, particularly given the national planning policy guidance introduced by PPG3. Given that uncertainty, the local plan should make it clear that the identified land cannot be granted planning permission for the proposed development until and if the strategic justification for it has been reconsidered and accepted. If the strategic justification for the development is not made, either in the emerging structure plan or within some other framework, then this local **\*353** plan will need to be the subject of a review to delete that part of the proposed new settlement west of the A1(M) at Stevenage or otherwise to respond to the revised strategic policy context."

46. In the light of the inspector's report Stevenage Borough Council adopted the Stevenage local plan including further revisions to the text, as recommended by the inspector. Policy H2 was expressed in different terms, and with new explanatory text:

*" Policy H2: strategic housing allocation- Stevenage West*

"In order to meet the provisions of policy 8 in the adopted structure plan, land at Stevenage west is allocated for the development of approximately 1,000 dwellings. The allocated land is safeguarded from development pending reconsideration and acceptance of its strategic justification ...

"3.2.13. The structure plan is currently being reviewed in the light of the material changes that have occurred since it was adopted in 1998, including the need to take into account the provisions of PPG3 . That exercise will reassess the justification for the strategic development west of the A1(M) at Stevenage. Only if that review of the structure plan or an alternative form of reconsideration of the strategic need for the development determines that Stevenage West is required to meet the county's development needs up to 2011 can the site be considered as allocated and available to be released for development. If the review structure plan or alternative form of reconsideration does not justify development of the land up to 2011, it will be necessary to review this local plan to take account of the revised strategic policy context."

47. The claimants object to the second sentence in the statement of the policy and to all, or at least to the third sentence, of the explanatory para 3.2.13. They contended that the inclusion of these passages has the result that the Stevenage local plan is not in general conformity with the Hertfordshire structure plan. They accepted that policy 8 is satisfied, because land is allocated for 1,000 new dwellings, but they say that effect is not given to policy 9 because the qualification to policy H2 is such that the land may not be made available for housing in time for the required 3,600 dwellings (of which 1,000 in the Stevenage Borough Council area) to be constructed by 2011.

48. Stevenage Borough Council put in a witness statement before the judge, made by Mr Bandy, their head of development and planning. At the end of his witness statement he said:

"In the borough council's view, the plan as adopted is in general conformity with the structure plan. It has allocated the land for the development of approximately 1,000 houses; and the commencement of development before 2011 is not ruled out."

49. The relevant legislation is mainly to be found in the 1990 Act. Since 24 September 2004 this has been repealed and replaced by other provisions in the [Planning and Compulsory Purchase Act 2004](#) , but this includes transitional and saving provisions.

50. The significance of the local plan arises in this way. Under [section 54a](#) of the 1990 Act: [\\*354](#)

"Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the development plan unless material considerations indicate otherwise."

51. Among the circumstances in which regard is to be had to the development plan is where a local authority is considering whether or not to grant planning permission: [section 70\(2\)](#) . The same applies if the Secretary of State calls in the application under section 76A , as inserted by [section 44](#) of the 2004 Act: see [subsection \(10\)\(a\)](#) .

52. For this purpose "development plan" is now to be interpreted in accordance with [section 38](#) of the 2004 Act and means, in the present type of case, the regional spatial strategy for the relevant region, and the development plan documents, taken as a whole, which have been adopted or approved in relation to the area: [section 38\(3\)](#) . Before the 2004 Act came into force the meaning of development plan was given by [section 54](#) of the 1990 Act. In effect it meant the relevant structure plan and local plan for the area and any alterations to either of them.

53. The relationship between the structure plan and local plans was governed by the 1990 Act. A structure plan had to contain a written statement of the authority's general policies in respect of the development and use of land in their area: [section 30\(2\)](#) . A local plan had to contain a written statement formulating the authority's detailed policies for the development and use of land in their area, and was to be in general conformity with the structure plan: [section 36\(2\) and \(4\)](#) as substituted. The authority "shall not adopt any proposals which do not conform generally to the structure plan": [section 43\(3\)](#) . Thus in an area such as Hertfordshire, the county council had to set out general policies for land in the county, by means of the structure plan, and each district and borough council within the county had to prepare a local plan by which those general policies were to be given effect.

54. The 1990 Act contains further provision as to the form and content of structure plans, and of local plans, and enables such provision to be made by regulations as well. Structure plans will contain diagrams illustrating the general policies, but these must not be map-based. Local plans by contrast must be supported by maps showing how and where the detailed policies will apply. They must also contain explanatory text giving a reasoned justification for the policies, which must be distinct from the statements of policy.

55. The borough council pointed out that an authority which is formulating detailed policies to be set out in a local plan is required to have regard, among other things, to current national policies: see [section 36\(9\)\(a\)](#) and [section 12\(6\)](#) , applied by [regulation 20 of the Town and Country Planning \(Development Plan\) \(England\) Regulations 1999](#) . That required Stevenage Borough Council to take account of the new PPG3 issued in March 2000 when revising the draft local plan thereafter, as it did.

56. The 1990 Act also provides for structure plans and local plans to be altered or replaced: [sections 32 and 39](#) . If a structure plan is altered or replaced, the responsible authority must notify all authorities responsible for local plans in their area of the adoption or approval of the proposals for the alteration or replacement of the structure plan, and must provide a [\\*355](#) statement as to whether the relevant local plan is or is not in general conformity with the new or altered structure plan: [section 35C\(1\)](#) . If an authority responsible for a local plan receives a statement that its local plan is not in general conformity with the new or altered structure plan, it is obliged to consider whether it needs to prepare proposals for the alteration or replacement of the local plan: [section 39\(2\)\(a\)](#) .

57. If an authority responsible for a local plan proposes that it be altered or replaced, it must make copies of the proposal available for public consultation: see [section 40\(2\)](#) . Before doing so, however, it must serve a copy of the proposals on the authority responsible for the structure plan for the area, and must allow a specified period to elapse. During that period the authority responsible for the structure plan is to supply the other authority with a statement as to whether the plan or proposals are or are not in general conformity with the structure plan. If the statement is to the effect that the plan or proposals are not in general conformity, this does not prevent the authority from proceeding, but it counts as an objection to the plan or the proposals: see [section 46\(1\) to \(4\)](#) .

58. In order to shorten the timescale required to proceed from proposals for alterations to a structure plan to giving effect to those, once adopted or approved, by consequential alterations to local plans, it is possible for a district or borough authority to

put forward proposals for the replacement or alteration of a local plan before the adoption of the alterations to or replacement of the structure plan. This can only happen once the proposals for the new or altered structure plan have been deposited for public comment, under [section 33](#). If it is to happen the district or borough authority must state in terms that it is making what is called the "permitted assumption", namely that the proposals in relation to the structure plan have been adopted. That procedure was not used in this case. The revised structure plan only got to the stage at which it could have been followed (the deposit draft) in March 2003, after the local plan inquiry had been held.

59. [Section 46](#) also provides for the eventuality of conflict between plans. Under [subsection \(10\)](#) the provisions of a local plan prevail for all purposes over conflicting provisions of the relevant structure plan, unless the local plan has been stated under [section 35C](#) not to be in general conformity with a new or altered structure plan, and has not been altered or replaced since then. Some cases of conflict may be unavoidable, but the fact that this is provided for does not seem to me to cast light on the requirement of general conformity. One plan may be in general conformity with another despite there being particular points of conflict. The question would be to what does the conflict relate and how important is it.

60. The Hertfordshire structure plan, adopted under the 1990 Act, continues in force under the transitional provisions of the 2004 Act ([Schedule 8](#)) until three years after the 2004 Act came into force (i.e. 28 September 2007) or, if earlier, until a new plan is adopted or approved in its place. The Stevenage local plan was not adopted until after the 2004 Act came into force, but the same transitional provisions nevertheless preserve the effect of the 1990 Act regime for the process that was already under way. The Stevenage local plan will also have effect until 28 September 2007 or until its replacement if earlier.

61. The transitional provisions in [Schedule 8](#) contain one new provision, in [paragraph 11](#). By this, if the Secretary of State thinks that the conformity [\\*356](#) requirement (namely the provisions in [section 36\(4\)](#) and [43\(3\)](#) of the 1990 Act) is likely to give rise to inconsistency between the proposals and relevant policy or guidance, and that it is necessary or expedient to avoid such inconsistency, he may direct that, to a specified extent, the conformity requirement must be ignored, and he must give reasons: [paragraph 11\(1\) to \(3\)](#). This possibility only arose on 28 September 2004. It was not used in this case.

62. The 2004 Act also contains a different provision for the resolution of conflicts between plans. By [section 38\(5\)](#) any such conflict is to be resolved in favour of the policy contained in the last document to be adopted approved or published, as the case may be.

63. It seems to me plain that there is a conflict between the Hertfordshire structure plan and the Stevenage local plan. In accordance with the Hertfordshire structure plan's requirement in policy 8, Stevenage Borough Council has allocated land at Stevenage West for 1,000 new dwellings. But the effect of the qualification imposed on policy H2 when it was adopted is that the land, though allocated, is not and cannot be made available for residential development unless and until something else happens, over which Stevenage Borough Council has no control, and nor does any developer. It is possible that the contingency to which the release of the land for development has been made subject could be satisfied soon, but it is just as possible that it will not be satisfied by 2011, or certainly not in time for the housing to be made available by 2011, as is required by policy 9, and in any event not while the Hertfordshire structure plan remains in force, for almost two more years from now. That is the conflict. Unless the conditional nature of the policy can be set aside, that conflict is to be resolved, whether under the 1990 Act or the 2004 Act, in favour of the Stevenage local plan. Thus, subject to any material considerations which might lead to a different conclusion, any planning applications must at present be determined in accordance with the Stevenage local plan. The claimants have in fact made planning applications for residential development of land at Stevenage West. Those applications have been called in by the First Secretary of State, and are being considered. That gives particular point to the need for urgency in dealing with these proceedings.

64. The long lead-time for matters concerning planning policy on the one hand and its implementation on the ground on the other are not in doubt, and form the background to this case. It is not in dispute that, if 3,600 new dwellings are to be made available at Stevenage West by 2011, it is necessary to start by now or even earlier with applications for planning permission. (Stevenage Borough Council's policy H4 in the draft revised local plan provided for 500 of the new houses to be provided in 2005 to 2008 and the remaining 500 in 2008 to 2011. This phasing was altered in the light of the inspector's recommendations, to 400 and 600 respectively.) It is also clear that the sequence of proposing and effecting alterations, first, to the structure plan and, secondly, to the local plan, in consequence, can be very long drawn out and things may change during that process. It took almost two years for the Hertfordshire structure plan to get from the stage of the deposit draft to adoption, and over five years elapsed between those stages for the Stevenage local plan.

65. The terms of the qualification, in the statement of policy H2 itself, are that "the allocated land is safeguarded from development pending [\\*357](#) reconsideration and acceptance of its strategic justification". The explanatory text referred to a

review of the Hertfordshire structure plan, or an alternative form of reconsideration of the strategic need for the development, and subjected the release of allocated land to the completion of that reconsideration. It is clear that the review of the Hertfordshire structure plan to which the inspector referred will not take place. It is altogether unclear what he meant by an alternative form of reconsideration of the strategic need for the development. That is not something which Stevenage Borough Council can undertake. It could be, but is not being, undertaken by Hertfordshire County Council, since the abandonment of its proposals to alter the structure plan. The result is that the availability of the allocated land is deferred for an indefinite period.

66. The judge said that it did not seem that the inspector thought that his qualification of the policy would result in an indefinite deferral. The inspector rejected the proposition that Stevenage West could be taken out of the local plan altogether while leaving the local plan in general conformity with the structure plan. He was aware, before he completed his task, that Hertfordshire County Council had in effect abandoned its review of the structure plan. He said that, even though this meant that the most obvious form of reconsideration of the strategic factors could not take place, it was not for him to determine or advise how, where or when the reconsideration could or should take place, and that this was a matter for the relevant authorities to decide on.

67. Both before the judge and before us there were submissions as to what is meant by "general conformity", on which assistance was sought to be derived from the judgment of Ouseley J in *J S Bloor Ltd v Swindon Borough Council* 5 PLCR 404 which was concerned with the ambit of "general policies", as distinct from detailed policies, in section 31(2) of the 1990 Act. As Laws LJ says, at para 22 of his judgment, Ouseley J was dealing with a different subject matter as to the level of detail permitted to, or conversely generality required of, a structure plan as a statement of "general policies". The facts of the case demonstrate that a structure plan may legitimately include policies at the level of detail of policies 8 and 9 in the Hertfordshire structure plan. There (as here in the Hertfordshire structure plan) the structure plan had identified not only the need for additional housing but also the area near Swindon where it should be provided. It was argued unsuccessfully that the location of the provision had to be a matter for detailed policy, and therefore properly belonged in the local plan not in the structure plan. The judge held that the location of a strategic area for new housing development could be a matter of general policy. On that basis, whether it was in fact such a matter depended on the view taken, literally as a matter of policy, by the authority in question.

68. I agree with Laws LJ that the question of the meaning of "general conformity" is one of statutory construction for the court but, as he says at para 24, not one which we should seek to define in general or abstract terms. Quite apart from the issue of statutory interpretation, of course, the issue "relatively loose or relatively tight" in its practical application may be affected by the terms of the structure plan itself. A relatively more detailed policy statement in a structure plan allows less freedom in the local plan by way of the application of that policy. I also agree with what Laws LJ says on this point at paras 25 to 27 of his judgment and at para 28, except for his **\*358** approval of the second passage from the judge's judgment quoted in that paragraph (and in para 78 below) with which, for my part, I disagree. I will say something more about the content of the requirement of general conformity later, at para 86 below.

69. How then should the court approach the question whether a local plan is in general conformity with the relevant structure plan? Clearly to answer the question involves reading and properly interpreting each plan, and doing so in the light of the relevant circumstances as they were at the date of adoption of the local plan. No doubt there is a range of possible local plans, all of which would be in general conformity with the structure plan, the width of that range depending on the level of detail in which the relevant policies are stated in the structure plan. It seems to me that the answer to the question, general conformity or no, is objective, not one which depends on a properly directed view being formed by one or other of the relevant local authorities. Either the local plan is in general conformity with the structure plan or it is not. Of course questions of policy arise when formulating each plan, and there could no doubt be a number of different versions of a local plan, each of which would satisfy the general conformity requirement. But once the two authorities have done their task, each formulating a relevant plan, it is then a question of comparison and interpretation, in the light of the relevant circumstances, to see whether one is in general conformity with the other.

70. However, Laws LJ at paras 29 and 30 of his judgment gives powerful reasons for regarding the court's role under section 287 as limited (subject to any issue as to the true construction of general conformity) to a *Wednesbury* review. Wall LJ agrees with this. I see the force of that proposition, and propose to address the question on that basis as well.

71. The use of the phrase "general conformity" leaves some scope for flexibility and even, as noted above, for some conflict. The context is that of the structure plan authority setting a general policy, which could no doubt be regarded as a strategy, for its area, leaving it to the local plan authorities within the area to implement those policies and that strategy by detailed policies. It cannot be open to a local plan authority to subvert the general policies, or to resolve that it will not give effect to a general policy within its area. It is open to such an authority to exercise some flexibility as to how the general policy is implemented,

though the degree of flexibility may depend on the nature of the general policy. It is apparent from the *Bloor case [2002] PLCR 404* that a general policy in a structure plan may be more or less detailed in its content. Policies 8 and 9 in the Hertfordshire structure plan in the present case are more rather than less detailed. As it seems to me, they leave less scope for flexibility in their implementation. That is clear from the very words of policy 9: "Local plans will make provision in accordance with the development strategy ... for a net increase in the period 1991 to 2011 of about 65,000 dwellings distributed as follows."

72. It does not seem to me that this leaves scope for a local plan to do other than make such provision, under which the relevant number of dwellings for the area of the particular district or borough will be made available by 2011.

73. The difficulty with the qualified version of policy H2 is that, though it complies with policy 8, it does not give effect to policy 9. The judge noted that the inspector did not think that the qualification would prevent the \*359 1,000 dwellings being provided by 2011, though he clearly did have in mind the possibility that, following a fundamental strategic rethink, the Stevenage local plan might have to be revised and the proposals for Stevenage West dropped altogether: see para 3.64 of his report, quoted at para 22 of the judge's judgment and in part at para 45 above. I agree with Laws LJ at para 34 of his judgment that what the inspector thought the effect would be, however, is not the point. The question is as to the true meaning and effect of the Stevenage local plan as adopted.

74. The judge commented at para 53 that events may cast doubt on a structure plan policy, but that adjustments to such a policy have to be dealt with through the process laid down for altering a structure plan. Only in that way can they be considered by the appropriate authority, with the benefit of public participation in the way that is laid down for structure plans. He observed that whatever flexibility is afforded by the phrase "general conformity" cannot extend to accommodating important adjustments to the strategic policy. I agree with him on this. Otherwise there could be different and conflicting variants of the overall policy in different local plans adopted by different authorities at borough or district level within the same county. It is not legitimate for a structure plan authority to seek to anticipate changes to a structure plan which have not yet been adopted by proposing changes to a draft local plan which is otherwise consistent with the current structure plan.

75. In the same paragraph the judge identified other legitimate purposes of a local plan:

"But not all unresolved questions are equally important or need recording in the same way. While the requirement that the local plan should be in general conformity with the structure plan is an important legislative purpose, there are other purposes. The local plan is there to inform and guide local planning decisions. The guidance of the local plan is likely to be of considerable significance to local investment and to choices made about the pattern of local development and the environment. It is desirable in the public interest that the local plan should address relevant issues and do so as accurately and fully as it reasonably can. The word 'general' is likely to have been put in to make it clear that, to a degree, the need for conformity may be balanced against the need for the local plan to take account of and explain the circumstances in which the strategic policy will be given effect. In the first instance it will be for the local planning authority to decide how to strike this balance subject, of course, to the power of the Secretary of State to direct them to prepare proposals for alteration or to direct that the proposals they have prepared should be submitted to him for approval: see section 39(2)(b) and sections 44(1) and 45."

76. I agree with those comments. He went on to consider the courses open to a district or borough council who have doubts about the policy set out in the structure plan. A drastic course (that adopted by North Hertfordshire District Council in 2001) would be to withdraw its proposals to alter the local plan to conform with the structure plan, thereby leaving an old local plan in place, even though it may have been stated not to conform with the more recent structure plan. Whether overall that is likely to be a constructive approach is another matter. He said, at para 55: \*360

"On the other hand, a local planning authority who judge that, although there is a reason for caution, it is unlikely to affect the basic correctness of the structure plan policy, may reasonably choose, it seems to me, to adopt a local policy that generally conforms with the structure plan but sets out a

particular reservation, qualification or reason for caution in respect to that policy. Which course is best will depend upon the balance, as each council sees it, between the likelihood that the structure plan policy will not prove to be soundly based and the desirability of having a local plan that sets out policies for their area in a realistic and fair way. The local plan authority that chooses to take the latter course will have to ensure that its plan is in general conformity with the structure plan. The proposition that the principle of general conformity allows the local plan nothing between a bare and misleading repetition of the structure plan policy on one hand or silence, on the other, would be unattractive."

77. Turning from the general towards the particular, he continued, at para 56:

"At one end of the range, if the local planning authority's judgment is that it is likely that further work will show that a structure plan strategic housing allocation is not justified at all, it would seem unhelpful to promote a proposed policy that said, without qualification, that land should be allocated to meet it. Equally, to allocate land for strategic housing in terms that were so qualified that it was clear that the allocation was considered unlikely to be translated into planning permissions during the plan period would not, it seems to me, be in general conformity with a structure plan policy that required allocation. In such a case silence, or the withdrawal of proposals, would probably be the only sensible course. At the other end of the range, for a council to allocate land required for a strategic housing provision within the plan period, confident in the need for it, but to add a caution that for reasons, for example, to do with the proper development of the urban land in the borough, the local planning authority would oppose development starting before a specified time into the plan period, would be in general conformity with the structure plan, in my judgment."

78. The judge rejected the claimants' contention that the qualified terms of policy H2 were such that it was not in general conformity with the Hertfordshire structure plan. He considered that it was legitimate for Stevenage Borough Council to refer to the doubts that had been raised as to whether the strategic allocation of land at Stevenage West was in fact needed, and indeed that to fail to refer to those doubts would be misleading. His conclusion appears in para 59:

"It is difficult to define the scope of the statutory phrase 'in general conformity' as a matter of universal principle; it is easier to decide whether specific policies come within it. However it seems to me that, judged objectively, the words are wide enough to encompass a reproduction of the structure plan policy in the local plan, subject to a qualification as to justification or timing that none the less contemplates that the purpose of the strategic policy may be achieved in the plan period. The way the [borough council] have worded policy H2 and its \*361 explanatory material does fall within the scope of the phrase. The application on ground 1 therefore fails."

79. I respectfully disagree with the judge on this point, and therefore with his dismissal of the claimants' claim in this respect, whether the question is approached as an objective question of construction or on the basis of a *Wednesbury* review.

80. First, it seems to me that, in relation to a policy which is an important one in the context of the structure plan, as policies 8 and 9 undoubtedly are, it is not sufficient for the local plan to make provision in the terms of the detailed policies which are such that "the purpose of the strategic policy *may* be achieved in the plan period". If the terms of the local policy were correctly summarised in that way, they would equally contemplate that the strategic purpose may not be achieved in the plan period. In

my judgment, in the case of an important strategic policy such as policies 8 and 9 it is not open to the district or borough council in its local plan to do other than provide that the purposes of the structure plan shall be implemented. There may be scope for refinement as regards the details of the timing, but much of the detail was expressly left to be dealt with in the master plan to be agreed between Hertfordshire County Council, Stevenage Borough Council and North Hertfordshire District Council. That is the proper forum for debate about details of that kind. The terms of policy 9, in particular, do not seem to me to permit anything other than direct implementation in the local plans of the affected district and borough councils.

81. Secondly, it seems to me that the judge understated the significance and effect of the qualification within the terms of policy H2 in the circumstances. He makes the point, correctly, that explanatory text, though distinct from the formal policies in a local plan, is nevertheless part of the development plan, and therefore something to which regard has to be had. For myself, though it is hypothetical, I would not agree with the judge (at para 58) that it would have been in general conformity with the structure plan, while omitting the sentence objected to in the statement of policy H2, to include an explanatory passage to the effect that Stevenage Borough Council considered that planning permission could not be granted unless and until the strategic need for Stevenage West had been reconsidered and reaffirmed. At para 56 of his judgment (quoted at para 77 above) the judge referred to a local authority being entitled to state that it would oppose an application for planning permission to take effect before a specified time. In some circumstances that might be consistent with the relevant general policy. But that is not what Stevenage Borough Council has done here: there is no specified time after which planning applications can be expected to be successful, and it is not possible to foresee when (if ever) the condition precedent in the policy will be satisfied. On the contrary, it seems to me that the effect of the conditional policy which has been adopted is the same as that which, in the second sentence of para 56, the judge said would not be in general conformity with the Hertfordshire structure plan.

82. I accept that it would be legitimate to have referred in the explanatory text to the fact that questions had been raised about the continuing need for the strategic allocation of the land, and to point out that steps might be taken, for example by the county council, which would result **\*362** in a change in the strategic policy, and that if such a change were recognised and accepted, this might be a material consideration which would militate against the grant of planning permission on the basis of policy H2. (The Hertfordshire structure plan itself contains a cautionary note about the possible review of the policy at the end of the text relating to policy 9.) Mr Straker for Stevenage Borough Council submitted that the distinction is very fine between the terms of the Stevenage local plan as adopted, on the one hand, and on the other a statement of policy H2 which in terms is unqualified but is accompanied by a cautious or qualified explanatory statement such as I have described. That may be a fair comment, though how fine the distinction is would depend on the terms of the caution or qualification in the explanatory statement. Even so, it seems to me that the difference, however fine, is real and significant. In the one case the policy is subject to an express condition such that planning permission cannot be granted in accordance with it now or in the foreseeable future, and a grant of planning permission would therefore depend on material considerations being identified which would justify departure from the recently adopted local plan. In the other case, planning permission could be granted on the basis of the local plan but the parties interested are warned that there may be circumstances in which material considerations may indicate the opposite outcome of a planning application.

83. In that context it seems to me that the course taken by Stevenage Borough Council had exactly the effect which the judge earlier (at para 53) said was not legitimate, namely to thwart the implementation of what remained the current and effective strategic policy set out in the Hertfordshire structure plan, which remains the governing policy unless and until the county council takes steps to alter it. Of course the council had embarked on such steps but, by the time that Stevenage Borough Council adopted the Stevenage local plan, the county council had abandoned that course of action.

84. It seems to me that Mr Purchas for the claimants was justified in submitting that, by adopting the Stevenage local plan with policy H2 and its supporting text in their actual terms, Stevenage Borough Council did the same as Hertfordshire County Council had proposed to do at a much earlier stage, as the judge explained in paras 3-7 of his judgment, and as mentioned by Laws LJ at paras 10 and 11 above, namely to make only a contingent allocation of land for the strategic purpose.

85. Under policy H2 as it stands, although policy 8 has been complied with by the statement as to the allocation of land at Stevenage West for 1,000 dwellings, there is currently no prospect that policy 9 will be implemented, unless and until the whole position is eventually changed under the 2004 Act, on the adoption of new policies. There is a stalemate as between the Hertfordshire structure plan, which requires that the necessary steps be taken to allow for the creation of 1,000 dwellings in the Stevenage Borough Council area at Stevenage West by 2011, and the Stevenage local plan which says that this cannot happen unless something else happens first, of which it can be said, first, that there is currently no foreseeable prospect that it will happen, secondly, that at the very least it may never happen and, thirdly, that if it does happen, no one can foresee when that will be. At best it seems to me that this makes the statement of policy H2 contingent in a way which is not legitimate by way of general conformity with policies 8 and 9. **\*363** It could also be said that the qualification contradicts policy 9 by in effect

deferring its implementation indefinitely. It is not sufficient for Stevenage Borough Council to be able to say, as Mr Bandy does in his witness statement, that the development of 1,000 houses by 2011 is not ruled out.

86. As I said at para 68 above, it is not sensible to attempt to define the statutory phrase "in general conformity with" a structure plan, and I do not propose to try. However, it seems to me that, at least, in order to be in general conformity with a structure plan, the local plan must give effect to the main policies set out in the structure plan, and must do so in a way which does not contradict or subvert their achievement. There is room for flexibility, subject to the terms in which the general policies are stated. There may be scope for variations of detail as regards timing, for example. But the local plan must not put obstacles in the way of the fulfilment of the strategic policies in the structure plan such that they will not, or may well not, be achieved as provided for in the structure plan. Otherwise the purpose of the structure plan, and the basis of the relationship between one structure plan and a series of local plans, would be altogether undermined, with the purpose behind an overall strategic policy being implemented differently and in conflicting ways in different parts of the area governed by the structure plan, and in some of those parts possibly not implemented at all.

87. If I consider the question on the basis of a *Wednesbury* review, and disregarding the conclusion which I have expressed in the last paragraph as to the basic content of the requirement of general conformity as a matter of construction, I come to the same result. In my judgment, it was perverse or irrational of Stevenage Borough Council to adopt the local plan including policy H2 in the qualified terms actually adopted. The council was obliged, by the general conformity requirement, to give effect to the Hertfordshire structure plan as it stood, with general policies stated in relatively detailed terms in respect of Stevenage West at policies 8 and 9. There had been a proposal for a review of the strategy underlying those policies, but that review had been abandoned by the date of adoption. There could, of course, always be another review, but the first articulation of such a review having been abandoned (however reluctantly) by the relevant authority, Hertfordshire County Council, it was not to be foreseen that such a review would be embarked upon again. Thus the strategy still stood and was not subject to any current formal review.

88. I therefore disagree with the proposition that it was open to Stevenage Borough Council to adopt policy H2 in its qualified terms on the basis that to do so reflected the fact that the relevant aspect of the structure plan was subject to review, but did not pre-judge the result of the review. In my judgment, the terms of the policy pre-judged the very fact of the review, let alone its outcome. They put the implementation of the policy on hold pending the outcome of a review which was not, at the time of adoption, under way in any sense of which it would be legitimate for Stevenage Borough Council to take notice. The effect of the qualification to policy H2 was to defer the implementation of policy 9 to the Greek Calends or, if not quite so long, at least until the Hertfordshire structure plan was replaced by a new plan under the 2004 Act, which might not take place until 2007. In my judgment, no reasonable borough council, considering the matter on the proper basis, could decide to adopt policy H2 in the qualified terms in which Stevenage did.

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89. The irony of the present case is that, at the local plan inquiry, Stevenage Borough Council sought to uphold its draft plan which would have included policy H2 in unqualified terms, and would clearly have given effect to policies 8 and 9 in a way which was undoubtedly in general conformity with the Hertfordshire Structure Plan. It was Hertfordshire County Council who sought to have the implementation of their own policies 8 and 9 withdrawn from the Stevenage local plan or at least qualified in the sort of way that was recommended by the inspector and eventually adopted by Stevenage Borough Council. It seems to me that the county council was thereby seeking to subvert the local plan process, and to achieve indirectly something which, by the end of the inquiry stage, they were not even seeking to do directly by an alteration of their own structure plan.

90. In my judgment, the inclusion in policy H2 of the second sentence, and in the explanatory statement of the third sentence of para 3.2.13, in the Stevenage local plan as adopted, had the result that the Stevenage local plan was not in general conformity with the Hertfordshire structure plan, and was therefore in contravention of [section 31\(4\)](#) as substituted and [section 43\(3\)](#) of the 1990 Act. I would allow this appeal.

WALL LJ

91. I have had the advantage of reading in draft the judgments of Laws and Lloyd LJ. Whilst I see the intellectual attraction of Lloyd LJ's approach, I find myself in complete agreement with both Laws LJ's analysis of the nature of the exercise which the court is required to undertake pursuant to [section 287](#) of the 1990 Act as substituted, and the conclusion to which this leads him.

92. I highlight only one point. This is a highly specialist area. Like Laws LJ, I see the question whether or not there is "general conformity" between identified plans as essentially a matter of degree, and of planning judgment. In such circumstances it seems to me entirely appropriate that the function of the court under [section 287](#) should be limited to review on *Wednesbury* principles. To hold otherwise runs the obvious danger, it seems to me, of the court being invited to retake the merits decision.

93. In my judgment, therefore, the judge adopted the right approach, and was entitled to hold that the statutory phrase "general conformity" was wide enough to encompass a reproduction of the structure plan policy in the local plan, subject to a qualification as to justification or timing that none the less contemplated that the purpose of the strategic plan may be achieved in the plan period.

94. In these circumstances I gratefully adopt Laws LJ's reasoning, and see no purpose in seeking to reproduce his clear conclusions in words of my own. I would, accordingly, dismiss the appeal for the reasons he gives.

*Appeal dismissed.*

### **Representation**

Solicitors: Davies & Partners, Gloucester ; Solicitor, Stevenage Borough Council .

*RVR*

### **Footnotes**

1 [Town and Country Planning Act 1990, s. 36\(4\)](#) as substituted: see post, para 5. [S 43\(3\)](#) : see post, para 5. [S 287](#) as substituted provides: "(1) This section applies to- (a) a simplified planning zone scheme or an alteration of such a scheme ... (2) A person aggrieved by a relevant document may make an application to the High Court ... (3B) The High Court may quash the relevant document- (a) wholly or in part; (b) generally ..."

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**Neutral Citation Number: [2007] EWHC 1601 (Admin)**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEENS BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 3 July 2007

**Before :**

**HIS HONOUR JUDGE HICKINBOTTOM**  
**(Sitting as a Deputy High Court Judge)**

**Between :**

**F H CUMMINGS** Claimant  
- and -  
**WEYMOUTH & PORTLAND BOROUGH COUNCIL** Defendant

(Transcript of the Handed Down Judgment of  
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Official Shorthand Writers to the Court)

**Suzanne Ornsby and Jeremy Pike** (instructed by **Sharpe Pritchard**) for the Claimant  
**Peter Towler and Alice Missions** (instructed by **the Borough Solicitor**) for the Defendants

Hearing dates : 28 & 29 June2007

**Judgment**  
**As Approved by the Court**

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## **Introduction**

1. This is an application under Section 287 of the Town and Country Planning Act 1990 (“the 1990 Act”) to quash aspects of the Weymouth and Portland Local Plan Review which was adopted by the Defendants (“the Council”) on 15 December 2005.
2. The Claimants are developers and builders. They own land known as “Destiny Fields” which is located to the east of Littlemoor, where it is immediately adjacent to a residential area. To the east, between the site and Preston, there is Wyke Oliver Hill. To the north, there are Tout Downs, part of the South Downs Area of Outstanding Natural Beauty (“AONB”). To the south, there is open land (Southdown Ridge).
3. The site is very broadly rectangular in shape, and for the purposes of this case it is subdivided into approximate quadrants, albeit unequal in size. The south-west quadrant is Area C: the two eastern quadrants together, Area D: and the north-west quadrant is split by a north-west to south-east diagonal, into Areas A and B. Adjacent to Area A, to the west, there is a node, Area F.
4. Area C has already been developed, the Claimants having built a residential development on it, called “Harefields”, in circumstances to which I shall return (see Paragraphs 10-11 below). As part of the development of Area C, a balancing pond was constructed in Area F (the Preston Downs Pond). This application concerns Areas A, B and D, which in aggregate comprise 5.3 hectares (“the objection site”).
5. The Council is the local planning authority responsible for the preparation and adoption of the statutory local development plan for the area. On 15 December 2005, they adopted the Weymouth and Portland Borough Local Plan Review (“the Local Plan Review”), and on 19 December 2005 they published the relevant Notice of Adoption.
6. The Local Plan Review and its Proposals Map designated the objection site as lying:

- (i) outside the Defined Development Boundary (“DDB”) of Littlemoor, where policy D1 does not allow residential development;
- (ii) within an Important Open Gap (“IOG”), where policy D2 restricts development; and
- (iii) within an Area of Local Landscape Importance (“ALLI”), where policy N13 restricts development.

These designations mean that the Claimants are unable to develop the objection site. The plan also placed another near-by site owned by a third-party to the south-west of the objection site (“the Louviers Road site”) within the DDB, and allocated it for housing development.

7. The Claimants seek to quash the Local Plan Review insofar as it made these designations. They do so on two grounds:

- (i) The Natural Justice Issue: The Council acted contrary to the rules of natural justice and Article 6 of the European Convention Human Rights in failing to give the Claimants an adequate opportunity to put their case in respect of their objections to the plan, in that their expert evidence concerning drainage issues was excluded by the Independent Inspector who recommended the designations which the Council adopted.
- (ii) The Reasons Issue: The Council have failed to give adequate reasons for making these designations. Again, because the Council merely adopted the recommendations of the Inspector (without giving any further reasons of their own), it is the Inspector’s reasons that the Claimants submit were inadequate.

8. Before I deal with these issues, it would be helpful to set out some of the relevant background.

i) The 1997 Local Plan

9. In 1997, following a lengthy inquiry by an Independent Inspector (Mr John Davies) which began on 7 February and ended on 5 December 1995 (and which culminated in Mr Davies' Report dated 1 March 1996), the Council adopted the Weymouth and Portland Local Plan. This plan was premised on the route of the proposed Weymouth Relief Road running north-south through the Destiny Fields site ("the Brown Route"), and land was reserved in the plan for that purpose.

10. The Claimants sought to develop the Destiny Fields land to the west of the Brown Route (Areas A, B and C). In the 1997 plan, Area C was designated within the DDB, and allocated for housing. Area A was also placed within the DDB, although not allocated either to Class B1 - the Claimants wished to construct a petrol filling station on the relief road - or for residential development. Areas A and B were designated as neither IOG nor ALLI, on the basis that "the housing needs of the Borough presently outweigh the objection site's existing landscape and open gap value, and the land between Littlemoor and Wyke Oliver Hill is a logical extension of the built up area" (Mr Davies's Report, Paragraph 3.40.7). Area B (with the land to the east of the Brown Route, including Area D) was designated as IOG and ALLI, and fell outside the DDB.

11. The plan was encouraging for the Claimants, who wished to develop the whole of the Destiny Fields site or as much of it as they could. Area C had all of the relevant designations to enable its residential development: and, although the Inspector's Report recommended that "the policy should require that the development of the site [i.e. Area C] does not proceed until all procedures in connection with the Brown Route have been completed and finance is available for its construction" (Report, Paragraph 3.40 Recommendation), Area C was in fact developed by the Claimants before the relief road was commenced.

12. Furthermore, Mr Davies' Report gave them some hope for the future with regard to other areas. Although he considered the areas to have some landscape and open

gap value, in considering the suitability of Areas A, B and C for housing he concluded:

- (i) The site had easy access to the schools, shops and other facilities serving the Littlemoor area and was well served by public transport and generally complies with Government policies on the location of new housing development (Paragraph 3.40.5).
- (ii) The site was well related in physical and visual terms to the existing built up area (Paragraph 2.12.6 and 3.40.7).
- (iii) The land between Littlemoor and Wyke Oliver Hill was a logical extension of the built up area (Paragraph 2.12.6 and 3.40.7).
- (iv) The site did not form a visual landscape link with the AONB to the north; the landscape link was through Wyke Oliver Hill which would not be disturbed if the site was developed (Paragraph 2.12.3).
- (v) The site was not required to maintain visual separation between Littlemoor to the west and Preston to the east as Wyke Oliver Hill is a significant landscape feature that is more than adequate in itself to separate these built up areas (Paragraph 2.12.6 and 3.40.7).
- (vi) Even if the relief road did not follow the Brown Route, the allocation of Areas A and C for housing would still be justified as at that time the need for housing outweighed the existing landscape and open gap value of the site. Without the hard boundary of the road, the boundary would have little logic in terms of physical features: but the appropriate boundary could be determined through the local plan review process (Paragraph 2.12.6 and 3.40.7).

Therefore, Mr Davies appeared to conclude that, even if the relief road did not follow the Brown Route, Area C was suitable for housing and that Area A was potentially suitable but that a different outer boundary may be required in that event.

13. As I have indicated, Mr Davies also said (Paragraph 2.12.6) that “the land between Littlemoor and Wyke Oliver Hill is in my view a logical extension of the built up area” and “consequently, its allocation for housing would be justified even if the Brown Route were not proposed, although the development boundary would then have to be drawn differently, to follow existing physical features”; but this has to be seen in the context that the objection site was restricted to Areas A, B and C. His recommendation was that the DDB be moved to include just Areas A and C: and I am unconvinced from his report that he had Area D in mind at all when making these remarks. On the wording of the report, it is unlikely that he did. Nevertheless, the Claimants were given some encouragement that they may in the future be able to develop more than Area C.

### **The Plan Review**

14. The 1997 plan was reviewed in 2001.

15. By then, Planning Policy Guidance Note No 3: Housing had been published by the Department of the Environment, Transport and the Regions (published 7 March 2001). In Paragraphs 30 and 31, this gave some guidance as to the identification of sites for housing development, as follows:

“30. In identifying sites to be allocated for housing in local plans and UDPs, local planning authorities should follow a search sequence, starting with the re-use of previously-developed land and buildings within urban areas identified by the urban housing capacity study, then urban extensions, and finally new development around nodes in good public transport corridors. They should seek only to identify sufficient land to meet the housing requirement set as a result of the RPG and strategic planning processes. In doing so they do not need to consider all the land in their area: they should not extend the search further than required to provide sufficient capacity to meet the agreed housing requirement.

31. In deciding which sites to allocate for housing in local plans and UDPs, local planning authorities should assess their potential and suitability for development against each of the following criteria:

- the availability of previously-developed sites...;
- the location and accessibility of potential development sites to jobs, shops and services by modes other than car, and the potential for improving such accessibility;
- the capacity of existing and potential infrastructure...;
- the ability to build communities...;
- the physical and environmental constraints on development of the land, including, for example, the level of contamination, stability and flood risk, taking into account that such risk may increase as a result of climate change.

In short, the Guidance required the identification and allocation of brown field sites first, before green field sites: and gave some criteria for selection between competing sites.

16. In their review, the Council considered that there were insufficient brown field sites in their area to meet their housing requirements: and consequently they proposed to identify and use green field sites (as well as available brown field sites) in the reviewed plan.

17. On 16 January 2001, the Council published the First Deposit of the Weymouth and Portland Local Plan Review. At this time, it was still proposed that the relief road followed the Brown Route. The plan identified 20 sites for housing allocation (12 brown field, 7 green field and one mixed site) including, as a green field site, the Louviers Road site. However, it designated the Destiny Fields site (other than Area C, which by now had been developed) as outside the DDB, and within the IOG and ALLI designations. These designations made the site subject to policies D1, D2 and N13 referred to above (Paragraph 6) which effectively prevent residential development of the site. It represented a change from the 1997 plan in that in the

review Area A had been excluded from the DDB, and had been designated as IOG and ALLI. Furthermore, it included the Louviers Road site as within the DDB and allocated it to housing (policy H1t), and outside the IOG and ALLI designations, which were changes from 1997. There were no other relevant changes in designations.

18. On 8 March 2001 the Claimants submitted objections to the First Deposit Draft on the basis that, if the Brown Route was abandoned in favour of an alternative that did not run through the Destiny Fields site (“the Orange Route”), then the whole of the Destiny Fields site should be (i) included within the DDB, (ii) excluded from the IOG and ALLI designations (although whether a valid objection to the ALLI designation is in issue: see Paragraphs 64 and following below) and (iii) allocated for housing. The Claimant further objected to the allocation of the Louviers Road site for housing, on the basis that, if housing requirements meant that both sites could not be allocated for housing, the Destiny Fields site was the preferable site.

19. Counter-representations by various interested parties were made to the effect that the proposal was premature pending a decision on the relief road route: and, in any event, there was objection to “impact of development on traffic, flooding, nature conservation and amenity space” (Council’s Report on Objection Sites). The Council’s officer considering the objections recommended that the Claimants’ objections be rejected, and that the Louviers Road site retain its housing allocation as it was, “More sustainable than alternative green field sites....”. That recommendation was accepted by the Council on 11 December 2001. The Claimant’s objections in relation to the IOG and ALLI designations were not specifically dealt with.

20. The issue of flooding and drainage raised by the counter representations in the 11 December 2001 report led to the Claimant entering into discussions with the Council, the details of which are sparse. However, as a result of the discussions, the Claimants say that they understood that an in principle agreement had been reached with the Council on this issue which would not prevent the development of Destiny Fields for housing. I shall return to that shortly.

21. In May 2003 the Local Plan Review Revised Deposit was published by the Council. By this time, the Orange Route had been substituted for the Brown Route as the preferred route for the relief road. This meant that the relief road was no longer proposed to run through the Destiny Fields site.

22. However, the Revised Deposit made no change to the position and status of either the objection site or the Louviers Road site. The latter was still allocated for housing, and the plan retained the exclusion of the Destiny Fields site from within the DDB and its inclusion within the IOG and ALLI designated areas. The Claimants lodged objections to the Revised Deposit on a similar basis to their objection to the First Deposit Draft. In particular, they submitted that:

- (i) In the absence of the Brown Route, the present development of Area C represented an unsatisfactory unfinished edge to the settlement and that at least Area A should be included within the DDB.
- (ii) The previous Inspector (Mr Davies) had indicated that, in the absence of the Brown Route, Wyke Oliver Hill would provide adequate separation to enable housing to take place on the site. The objection site was not required to maintain separation of Littlemoor and Preston.
- (iii) The objection site was preferable to the Louviers Road site in terms of (a) landscape, and (b) drainage/potential for flooding.

It is to be noted that submission (iii) is specifically based upon a comparison of merits of the objection site and Louviers Road, in relation to both landscape and drainage.

23. The Claimant's objections were not regarded by the Council as new, but rather the same as the objections to the first Deposit Draft which had been considered. Consequently, they did not consider these objections further.

### **The Inquiry**

24. A Local Plan Inquiry into the various objections that had been made in respect of the Review Plan Deposit - including the Claimants' objections - was held by an Independent Inspector, Mr William Cunningham ("the Inspector"). At the pre-inquiry hearing on 4 November 2003, "The Inspector encouraged those objectors who wished to present their case at the Inquiry to do so and not to be put off by the apparent formalities" (Notes of the Pre-Inquiry Meeting, Paragraph 6). Further:

"It was stated that objector's Proofs of Evidence must be submitted 6 weeks before the date of the inquiry session dealing with that matter. These deadlines are not negotiable." (Notes of the Pre-Inquiry Meeting, Paragraph 9).

25. The Claimants requested an oral hearing to consider their objections in respect of the Destiny Fields and Louviers Road sites: and one day (22 April 2004) was allocated in the inquiry timetable for these objections to be heard. They duly lodged their written evidence as required six weeks in advance, i.e. on 11 March 2004.

26. The Claimants' evidence comprised statements from Mr Andrew Patrick and Mr Will Pulling, both experts in respect of landscape issues. In particular, as the Council had come to the view that there were insufficient brown field sites to accommodate the relevant housing requirements (so that there would have to be some recourse to green field sites), the evidence particularly sought to show that, from a landscape point of view, the objection site was a preferable site for housing than the Louviers Road site which had been given a housing allocation in the proposed plan.

27. The Claimant's evidence sought to demonstrate the following:

(i) The objection site (Areas A, B and D) was sustainably located, well related to local facilities and public transport (as found by the Inspector in respect of Areas A, B and C) and whilst comparable in this respect to the Louviers Road site was in fact marginally preferable.

(ii) There would be no infrastructure problems with the development of the objection site and in particular that an in principle agreement had been obtained with the County Council in respect of a solution for surface water drainage of

the site in the event of its development for housing and that preliminary approval had been given by Environment Agency.

(iii) Indeed it was the Claimant's understanding at that time that there were no in principle infrastructure objections, including flooding and drainage, to the development of the Destiny Fields site for housing and that it was agreed between the Claimants and the Council that appropriate schemes could be developed to accommodate these issues. Indeed there is no indication in the officer's earlier recommendation that this was an issue.

(iv) In the absence of the Brown Route, the objection site was well constrained on all its boundaries and would provide a logical boundary through the use of existing physical features and landscape planting (as suggested would be required by Mr Davies); indeed the objection site provided an opportunity to provide an improved eastern boundary to Littlemoor.

(v) The development of the objection site would not prejudice the open gap between Littlemoor and Preston as Wyke Oliver Hill performed an adequate role for the purpose of separation (as found by the previous Inspector); the objection site did not therefore warrant the designation as an IOG.

(vi) The objection site did not warrant the inclusion within an ALLI and indeed to do so would reduce the true value of adjacent more attractive and valuable land.

(vii) Development of the objection site for housing would fit in with the existing and identified landscape and visual pattern of Littlemoor and not cause any harm.

(viii) In contrast to the objection site, the Louviers Road site:

(a) was not constrained to the south or east by any natural physical and/or vegetated boundaries and its development for housing would damage the landscape and visual integrity of the Southdown Ridge and

wider visual links within the area particularly to the AONB to the north;  
and

(b) broke fundamental landscape and visual guidelines for constraining new development in sensitive areas and in particular would breach the skyline of the Southdown Ridge and would generally be visually intrusive in this attractive landscape.

28. The thrust of the evidence was therefore that, on landscape grounds, the objection site should be preferred over the Louviers Road site for housing and so allocated, and the constraint designations over it should be deleted.

29. Neither Mr Patrick nor Mr Pulling purported to be expert in issues other than landscape, e.g. drainage issues. The only evidence in relation to drainage of the objection site was in one short section of Appendix G to Mr Patrick's report, which was in the form of a technical report prepared by Mr David Webb of the Claimants on 5 March 2004. Mr Patrick's own report merely asserted that "there are no flooding or drainage problems" (Paragraphs 1.6 and 5.9(e)). Section 6 of Appendix G indicated that Dorset County Council had "agreed in principle" that the Preston Downs balancing pond would be removed, and the Chalbury Close balancing pond upgraded to accommodate the additional surface water from the Orange Route relief road upgrade, the new development and the removal of the Preston Downs pond. There were no technical details as to how this was to be achieved. Therefore, although Mr Patrick's substantive report boldly says (at Paragraph 6.6), "The Technical Note at Appendix G demonstrates clearly that there would be no problems with regard to flooding, contamination and ground stability"; in truth, Appendix G did nothing of the sort.

30. It was said on behalf of the Claimants that the explanation for the absence of any cogent evidence in relation to drainage is that Mr Patrick and Mr Pulling were told by the Claimants that there was no in principle issue concerning drainage, and the only live issue concerned landscaping. Their evidence exclusively focused on that. The Claimants believed that drainage was not an in principle issue because of a meeting between Mr Webb of the Claimants and Mr Mike Read of Dorset County

Council on 27 November 2003. There is very little evidence of what was said at that meeting. The only note of the meeting is in a letter of Mr Webb dated 4 March 2004. That was written 4 months after the meeting, and the day before Mr Webb settled the technical note at Appendix G to Mr Patrick's report. The letter does not expressly refer to any in principle agreement with regard to drainage, but rather says (as "a summary of the matters discussed so far"):

"We are proposing to remove the balancing pond on Louviers Road due to its unsightly appearance and to improve the use of the land, which could be incorporated into our new development, adjacent to the Louviers Road and Littlemoor Road.

My discussions with you indicated that the Chalbury balancing pond would be upgraded due to its history of flooding.

We would be interested in a combined balancing pond at the Chalbury pond. The design of the road widening aspects and balancing pond are at present being completed by Dorset County Council Highways Department, and hence the calculations for the balancing pond is in process. Could the calculations for a combined balancing pond be incorporated into the design proposals, taking into account the removal of our balancing pond and proposed new development?"

31. Mr Towler for the Council said it was difficult to understand how this letter could have been written only the day before the technical note, which suggested there was in principle agreement in respect of drainage. I agree. However, what is very clear from the evidence as a whole submitted by the Claimants is that, for whatever reason, they did consider that there was an in principle agreement in relation to drainage. Whilst there is considerable evidence submitted on the landscape issue, there is effectively none on drainage. The consistent message in their evidence is that they did not consider that there was any issue in relation to drainage.

32. It is equally clear from the evidence submitted on behalf of the Council that this was a misunderstanding. Upon receipt of the Claimants' evidence, Dorset County Council wrote a letter to the Council (dated 29 March 2004) saying that they had

given no indication that the objection site would be acceptable “in principle”: and the Environment Agency wrote indicating that they had very real concerns about the drainage and flooding potential of the objection site (letter dated 31 March 2004). These letters were annexed to the statement of Miss Karyn Punchard (of the Council’s Planning Department) in response to the Claimant’s evidence. Miss Punchard (in her Proof Summary) said that all of the allocated sites were “sequentially preferable” to the objection site in terms of not increasing flood risk.

33. Although there is a sparsity of evidence, on the evidence I do have before me I find that:

- (i) At the time of lodging their evidence for the inspection hearing, the Claimants understood that there was no in principle issue in relation to drainage.
- (ii) That was a misunderstanding. It is clear from the Council’s evidence that the Council considered there to be significant unresolved issues in relation to drainage of the objection site. It is unclear how the Claimants’ misunderstanding arose.
- (iii) From wherever the Claimants’ misunderstanding derived, the Defendants did nothing to give rise to it. The misunderstanding was not in any way the fault of the Defendants.

34. The Council’s response to the Claimants’ evidence was also filed on time (1 April), arriving with the Claimants on 5 April 2004.

35. In response to the Claimants’ evidence, the Council produced “rebuttal” statements on planning policy (Statement of Miss Karyn Punchard), landscape (Statement of Mr Burden), and a comparison with the Louviers Road site (Statement of Mr Steven Birkinshaw). They also filed two technical rebuttal reports in respect of the flooding and drainage technical note, i.e. Appendix G to Mr Patrick’s statement (Reports of Mr Michael Lakin and Mr Mike Read). This evidence, amongst other things, compared the drainage and flood potential of the objection site with that of the

Louviers Road site (see, e.g., Appendix 6 to Mr Birkinshaw's Statement, which was prepared by Mr Lakin).

36. That evidence sought to demonstrate:

- (i) The objection site and the Louviers Road site shared similar characteristics in terms of accessibility.
- (ii) There was an in principle objection to the development of the Destiny Fields site in relation to matters of flooding and drainage: and, as indicated above, no agreement had been reached with the Council, the County Council or the Environment Agency on drainage issues. In particular technical evidence produced by the Council suggested that:
  - (a) the existing flood attenuation facilities within the locality at Chalbury and Preston Downs Ponds had no further capacity to cope with flooding if the Destiny Fields site were to be developed for housing; and
  - (b) the Claimants had not demonstrated that it was possible to create an adequate and sustainable on-site attenuation of surface water run-off for the site's development for housing. Of course, Appendix G had no supporting technical data at all: and in any event proposed part off-site attenuation.
- (iii) The Louviers Road site was preferable in drainage/flooding terms.
- (iv) The development of the objection site would adversely affect the open gap between Littlemoor and Preston and Wyke Oliver Hill.
- (v) The development of the objection site would destroy the link with the AONB to the north.
- (vi) The development of the Louviers Road site would not have the landscape effects suggested by the Claimants.

(vii) The Louviers Road site was to be preferred in terms of landscape and drainage.

37. That evidence made clear that, in relation to the Claimant's objections, there were two vital issues between the Claimant and the Council namely (i) landscaping, and (ii) drainage/flooding potential. Given that (i) the Council had accepted that some green field sites would have to be included to meet the demand for housing, and (ii) the Louviers Road site had not had any designation adverse to development and indeed had been placed within the DDB and allocated to housing, these were essentially issues of comparison between the objection site and the Louviers Road site. If the Claimants could show that the objection site was preferable to the Louviers Road site as they suggested, then their objection was good and they sought the replacement of the Destiny Fields site for Louviers Road site in terms of the DDB and housing allocation designation. If they could not show such a favourable balance, then their objection was bad. For the reasons given above, until receipt of the Council's evidence, the Claimants had understood this balancing exercise to be in respect of landscaping matters only. After the receipt of that evidence, they appreciated (for the first time) that, in addition to landscaping, the respective merits of drainage were also in issue - because there was an in principle issue of drainage in relation to the objection site but not in respect of the Louviers Road site.

38. On 13 April 2004, the Claimants instructed their own drainage expert, Mr Anthony Dilke. They did not tell either the Council or the Inspector that they intended now to rely upon such further evidence. The report was completed on 21 April - the day before the hearing of the issue - and the report was given to the Council and to the Inspector on the morning of that hearing. Mr Dilke also attended the hearing that day, prepared to give oral evidence.

39. Mr Dilke's report purported comprehensively and conclusively to answer the drainage concerns of the Council, and show:

(i) Adequate storage requirements could be effectively incorporated into the Destiny Fields site. This was supported by relevant calculations.

- (ii) The existing balancing facility at Preston Downs (Area F) could be relocated to the Destiny Fields site in order to provide adequate capacity for the existing development is served together with future development on Destiny Fields.
- (iii) Development of the Destiny Fields site would have nil effect on the Chalbury Pond facility.
- (iv) Development of the Louviers Road site could cause additional flooding at Wyke Oliver Farm.
- (v) Whilst either site could be developed without an increase of flooding, the Destiny Field site was more suited to development as it was able to incorporate desirable design features which would be more suitable in the landscape rather than the type of facility that would be required at the Louviers Road site that would give rise to significant excavations up the hill.

Again, the comparison between drainage and flooding potential for the objection site and the Louviers Road site should be noted.

40. This evidence purported to deal with all of the Council's concerns about the drainage of the objection site. It is abundantly clear that this evidence would have been relevant to one of the two vital issues arising out of the Claimants' objections: and, if accepted, almost certainly determinative on that issue. In particular, as opposed to the drainage proposed by Mr Webb in the technical note (which proposed a partially off-site solution, using a stream for drainage), Mr Dilke proposed an on-site solution using (primarily) an enhanced Chalbury Balancing Pond. The scheme was substantially different from that suggested by Mr Webb in the written evidence.

#### **The Natural Justice Issue**

41. During the course of the inquiry - including as an advocate at the pre-hearing meeting and at the inspection hearing itself - the Council were represented by

Counsel. The Claimants were represented throughout by Mr James Cleary of Pro Vision Planning and Design, a firm of non-legally qualified planning advisers. Given that the Claimants understood that the only issue was to be landscaping and the Inspector had encouraged objectors not to be put off by formality, Mr Cleary thought that there would be no “forensic type cross examination” and there was therefore no need for legal representation (Statement 31 January 2006, Paragraph 4).

42. When Mr Cleary sought to introduce Mr Dilke’s report, the Council objected: and the Inspector ruled that the evidence could not be relied upon and Mr Dilke could not be called.

43. The circumstances of and reasons for this ruling are important but unfortunately not entirely clear. Initially, there was no evidence before me as to either. Mr Towler (who was present at the objection hearing) frankly said that he could not recall a great deal about it - except that Mr Dilke’s report was handed in to the Programme Officer, and “Mr Dilke’s report was not shown to either the inspector or the Council” (Skeleton Argument, Paragraph 14). The Inspector did not look at Mr Dilke’s report at all before ruling as to whether it would be admitted.

44. Miss Ornsby initially submitted that the only reason for the Inspector refusing to admit the evidence was that it was too late. He had made it clear that the time for filing evidence was “not negotiable” (see Paragraph 24 above), and he was not prepared to countenance any further evidence being admitted whatever the circumstances. He regarded lateness as an absolute bar, and did not exercise any discretion as to whether this evidence should have been admitted in the circumstances in which it was brought forward by the Claimants.

45. Had that been the case, the Inspector would clearly have been acting improperly. Whilst case management is essentially a matter for the tribunal (whether it be judge, tribunal chairman or independent inspector) and robust case management is to be commended, where someone seeks to admit evidence then the tribunal must exercise its discretion as to whether to allow it to be adduced. If a party without good reason fails to submit evidence in accordance with unequivocal orders requiring evidence to be filed by a particular time and makes a very late application to have the evidence

admitted, he may receive an unsympathetic response. However, lateness and non-compliance with orders or directions for service of evidence by a particular date are only two factors which the tribunal will bear in mind in exercising its discretion as to whether to extend time for the evidence to be admitted. The reason for the lateness, and importance of the evidence to the determinative issues, are other important factors. For a tribunal to refuse a party permission to rely upon evidence without a proper exercise of its discretion is a procedural irregularity: and, depending upon its consequences, may be such a serious irregularity to render the hearing unfair to the party denied.

46. However, during the course of the hearing before me, Miss Punchard found and produced her hand written note of the hearing of 22 April 2004 before the Inspector. This indicated that the Inspector did not simply bar reliance on the evidence without any consideration of any other relevant factors at all. The note reads (insofar as it can be made out):

“James Cleary

Drainage - not an issue when evidence submitted. Highways not important. Was an attempt to formalise mtgs resisted. No mtg took place. Work on drainage not carried out - didn't anticipate drainage issue - some detailed work done by LPA - complete surprise/out of the blue. Instructed civil engineer → technical issue now exists - in their view. Mr Dilke & [illegible] - agree common ground in a room today.

[Mr Towler] Letter asking questions - not summarising mtg? Letter dated March.

Strongly object to new [material] on morning of hearing.

→ Insp - not sufficient time for Council to resend to it.  
Not precluding adjournment.  
Experts to see if any common ground.

Feel [?] - Need an adjournment of some weeks.

James C[leary] - innocence/naivety. EA - will be drawn out. Informal mtgs - yes - at early stages - clear impression consensus.

[Dorset County Council] not able to produce forecasts as money not available until Dec 03. They had impression drainage OK - perception. "Call it an illusion". Where is evidence?

[Insp] Will not allow new evidence today.

Concern - it will come in thro back door.

Mr Patrick can comment on proofs of [Mr Read] and [Mr Lakin].

Object - doesn't help to know something coming up on horizon.

[Therefore] no new evidence & witness."

47. From this note it appears that:

(i) The Inspector had in mind the lateness of the evidence, and the difficulties that this would make for the Council properly to respond, or at least properly to respond that day. He also no doubt had in mind his own direction that objectors' evidence must be filed at least 6 weeks before the hearing, and this was said in the direction to be "not negotiable".

(ii) He had in mind at one stage at least the possibility of an adjournment.

(iii) He was told that the Claimants had not put forward this evidence earlier because they had understood that drainage was not an in principle issue: and, although he did not read the evidence himself, he was told by Mr Cleary that Mr Dilke's report comprehensively answered the Council's concerns about drainage in the objection site.

(iv) He had in mind the possibility that Mr Dilke, Mr Read and Mr Lakin might be able to agree something, if given an opportunity.

(v) He was concerned that, even if the evidence were not admitted, it might “come through the back door”, e.g. presumably in the form of questions in cross-examination of Mr Read and Mr Lakin.

(vi) He thought that Mr Patrick could give oral evidence in response to the reports of Mr Read and Mr Lakin.

48. The Claimant’s objections were due to be heard to a conclusion in one day, i.e. 22 April 2004, the day on which the application to rely upon Mr Dilke’s report was made. Unfortunately, they were not completed that day, and the objections were heard over 4 days (22, 23 and 29 April, and 8 June 2004). As Mr Towler says in his written submissions (Paragraphs 15-16), “During that time the drainage issues were examined in some detail with extensive XXN of both Lakin and Read by Mr Cleary, presumably on the basis of Mr Dilke’s proof.... Thus, although the Inspector did not allow Mr Dilke to give evidence he did allow the issue to be explored in depth, including the landscape implications of the Claimant’s proposed balancing ponds.” The suggestion of the Claimants that the Inspector was trying unduly to rush the issue does not seem to have any substance.

49. Where an inquiry is held the holder of the inquiry is required to conduct a fair hearing, and act in accordance with the rules of natural justice. Amongst other things, although the procedure need not have the formality or rigidity of a civil court hearing, he must ensure that an objector knows the case he has to meet and is afforded an adequate opportunity to meet that case: Fairmount Investments Ltd v The Secretary of State for the Environment [1976] 1 WLR 1255. Where, as in the case before me, “a council is both proposer and judge, the obligation to deal thoroughly, conscientiously, and fairly with any objection is enhanced” (Stirk v Bridgnorth District Council (1996) 73 P&CR 439 at page 444, per Thorpe LJ). I respectfully agree with both Counsel before me that the rights of an objector to a fair trial under Article 6 of the European Convention on Human Rights are coterminous with - or at least no greater than - the right to a fair trial at common law. Usually in a human rights context this is put in terms of the right to “equality of arms” which involves striking a fair procedural

balance between the parties (see, e.g., Neumeister v Austria (1968) 1 EHRR 91, at Paragraph 22).

50. Of course, the facts of Fairmount and Stirk are very different from the facts of the case before me: and, “All cases in which the principles of natural justice are invoked must depend on the particular circumstances of the case” (Fairmount, at page 1265H, per Viscount Dilhorne). I have considered the circumstances of this case with especial care. I have considerable sympathy for the Inspector who wished to press on with his inquiry, and was faced with an application on the morning of 22 April 2004 for the expert evidence of Mr Dilke to be admitted with the possibility that this would lead to an adjournment of the Claimants’ objections and some more general disruption to the inquiry timetable. Every judge, tribunal chairman or inspector would have sympathy with him in the situation he faced.

51. However, having considered the circumstances of this case, I am afraid I have come to the conclusion that the Inspector failed to give the Claimants an adequate opportunity to make their case and to respond to the case the Council sought to make. In coming to that conclusion, I have in particular taken into account the following:

- (i) In considering whether the Claimants had a fair hearing, I have to consider the circumstances of the case as a whole. A single decision of the holder of an inquiry cannot be looked at in isolation. I have to consider whether, looking at the inquiry as a whole, the Claimants had a fair hearing.
- (ii) Mr Towler frankly accepted that, with the benefit of hindsight, the Inspector’s decision not to allow in the evidence of Mr Dilke was unfortunate. It led to increased time on the drainage issues, because Mr Cleary cross-examined Mr Read and Mr Lakin on the substance of Mr Dilke’s views without having the benefit of being able to refer directly to his report. However, the Inspector cannot be criticised for not having the benefit of hindsight. Furthermore, it is equally irrelevant that other Inspectors faced with the same dilemma might well have made a different decision on the application to admit Mr Dilke’s report. The discretion in an inspector as to what evidence to admit is

wide. The question for me is, did this inspector stray outside that wide discretion and thereby act unlawfully?

(iii) In exercising his discretion, the Inspector had to take into account the strength of the evidence sought to be admitted. First, it was clear (and must have been clear to the Inspector) that Mr Dilke's report went to one of the two determinative issues in the Claimants' objections, i.e. the drainage issue. Second, the Inspector had to consider the strength of the evidence in relation to that issue. He did not look at Mr Dilke's report before deciding not to admit it. However, Mr Cleary submitted that it emphatically and entirely answered the Council's concerns about the drainage of the objection site. He could not properly not have accepted the submission, without reading the evidence or allowing the Council to consider and respond to it. If the submission was correct, then it is difficult to see how the Inspector could properly have refused to admit evidence that was conclusive on a vital issue before him.

(iv) The Inspector had set aside one day in which to hear the Claimants' objections. Without the Council or the Inspector himself having looked at Mr Dilke's report, it was difficult to see how either of them could have come to a view as to how long it might take for the Council (and, particularly, Mr Read and Mr Lakin) to consider the evidence and respond. Although the Inspector referred to the possibility of an adjournment and the possibility of the experts considering the evidence together and trying to find some common ground, in fact he apparently proceeded to decide not to admit Mr Dilke's evidence without giving an opportunity for either: and without even giving Mr Read and Mr Lakin (who were at the hearing) time to consider Mr Dilke' evidence to come to a view as to whether it would require time to respond, and if so how long. In properly exercising his discretion, when the issue arose on 22 April bearing in mind the potential importance of the evidence the Inspector was bound to consider ways in which the evidence might be admitted without unreasonable disruption to the inquiry timetable. This he failed to do.

(v) The Inspector had hoped to deal with the Claimants' objection to a conclusion that day (22 April). When it became apparent that they were not

going to finish - they in fact went on over another three days between 23 April and 8 June - the Inspector had an opportunity to review and should have reviewed his decision not to admit Mr Dilke's report. If he had thought that he could prevent the evidence "coming through the back door", by the end of the 22 or 23 April he must have realised that he had failed. There were opportunities at least to allow the Council to consider Mr Dilke's evidence and respond. Given the length of the overall hearing - it went on into July - the Inspector should have considered more carefully and more often the possibility of rearranging the inquiry timetable to allow the Council to consider Mr Dilke's evidence with an appropriate adjournment to later in the inquiry hearing timetable if necessary. Given that Mr Cleary was not legally qualified, and he had had an application to rely on Mr Dilke's evidence turned down on the first date of the objections hearing, I do not consider he can be said to be at fault in not renewing his application. The Inspector was in charge of the management of the inquiry, and the burden of reconsidering the position of Mr Dilke's evidence fell primarily upon him.

(vi) Having refused to admit Mr Dilke's report, the Inspector did allow the lengthy cross-examination of Mr Read and Mr Lakin on the basis of his views. Mr Towler submitted that this should be taken into account in the Inspector's favour when the fairness of the hearing as a whole is considered. However, as Mr Cleary said (Statement, 31 January 2006, Paragraph 11), without referring to Mr Dilke's report, "trying to address the flooding issues raised by the Council was impossible. I did try my best to question the Council's witnesses but in the absence of being able to call Mr Dilke or rely on his report I found this impossible. My hands were tied...". There is force in this evidence.

(vii) The Claimants may have been "naïve": but they genuinely considered that drainage was not an in principle issue between them and the Council.

(viii) The Inspector clearly considered that it would be helpful to the balance of arms if Mr Patrick commented upon the evidence of Mr Read and Mr Lakin. However, this was misconceived. Mr Patrick was not a drainage expert, nor did he profess to be. He could not deal with drainage issues with any professional

expertise, experience or authority. That Mr Patrick was to give evidence was an improper matter for the Inspector to take into account in relation to this issue.

52. Therefore, the Inspector failed properly to exercise his discretion as to whether to admit Mr Dilke's evidence and in so doing he denied the Claimants the opportunity of relying upon important evidence in relation to a crucial issue. He denied the Claimants a fair crack of the procedural whip (see Fairmount at page 1266A, per Lord Russell of Killowen). In so doing he substantially prejudiced the Claimants' ability to present their case on the objections so far as a vital issue was concerned. Without the evidence of Mr Dilke, they could not have satisfied the Inspector with regard to the in principle drainage issues: because they had understood there was no such issue, they had no evidential basis upon which to do so. Nor could they have persuaded him that the objection site was preferable to the Louviers Road site, as they sought to do.

53. For all these reasons, I do not consider that the procedure as a whole was fair to the Claimants: and, in the circumstances of the case, they were not provided with an adequate opportunity to put their case or respond to that of the Council on a patently determinative issue. They were consequently substantially and unfairly prejudiced in the hearing.

54. That is sufficient to dispose of the application in the Claimants' favour. However, given I heard considerable argument on the adequacy of the Inspector's reasons I should deal briefly with this issue.

### **The Reasons Issue**

#### Introduction

55. Under Regulation 27 of the Town and Country Planning (Development Plan) (England) Regulations 1999 (SI 1999 No 3280, "the 1999 Regulations"), where a local planning authority have caused a local inquiry to be held for the purposes of considering an objection to a local plan, the authority are required to consider the report of the person holding the inquiry and to prepare a statement of the decisions

they have reached in the light of the report and any recommendations contained within it.

56. By Section 42(6) of the 1990 Act, Section 10 of the Tribunals and Inquiries Act 1992 applies to a decision taken by a local authority which effectively places a duty upon a local authority to give reasons for the decisions they reach in the light of the report and recommendations received, whether or not they decide to take any action. However, they only have a duty to give reasons in addition to those given in the inspector's report for any "decisions... which do not follow a recommendation contained in the [inspector's] report". Where they follow the recommendations (as in the case before me), they are under no duty to give further reasons. They can effectively rely upon the reasons given in the inspector's report insofar as they follow his recommendations.

57. An inspector must make findings on disputed issues which are material to the result. He must give reasons for any such findings. The absence of reasons is the subject of legitimate complaint. In making findings, the inspector must not of course take into account irrelevant considerations or leave out of account relevant ones. Where the complaint is that the reasons given are inadequate, the correct approach was set out in Save Britain's Heritage v Number 1 Poultry Ltd [1991] 1 WLR 153 (especially at pages 167C-198E per Lord Bridge), and by Lord Brown of Eaton-under-Heywood in South Bucks District Council v Porter (No 2) [2004] UKHL 33, [2004] 1 WLR 1953 at Paragraph 36. Briefly, the reasons must be intelligible, and adequate to enable a party to understand the conclusions on the "principle important controversial issues", and disclosing how those conclusions were reached. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision. The enhanced obligation on a planning authority which acts as both proposer and decision maker applies to the giving of reasons as much as to any other aspect of the duties of procedural fairness (Stirk v Bridgnorth District Council (1996) 73 P&CR 439). The planning history in relation to a site is a material planning consideration, so that where an inspector departs from an earlier conclusion reached in respect of similar issues he must give reasons which are adequate and intelligible for so doing (R v London Borough of Richmond-upon-Thames ex parte

Spencer Chisnell [2005] EWHC 134). The burden of proving the inadequacy of reasons falls upon the applicant.

58. In February 2005 the Inspector produced a report into the objections to the Local Plan. The Claimants complain that the reasons for the designations attached to both the objection site and the Louviers Road site are inadequate in a number of respects. Given my earlier findings, I need only refer to four.

#### The Drainage Issue

59. In relation to the drainage issue, the Inspector concluded that no changes should be made to the plan in response to the Claimants' objections.

60. Of course, this conclusion is undermined because of the manner in which the Inspector dealt with Mr Dilke's evidence. For the reasons given above, without the evidence of Mr Dilke, the Inspector was bound to find that the Claimants had failed to satisfy him in respect of the drainage issue. Leaving aside the scant Appendix G, the only evidence before him in relation to the downstream risk was that of Mr Read and Mr Lakin (see Paragraph 2.3.13 of his report).

61. However, I find manner in which the Inspector's dealt with the Claimants' objections on the drainage issue unsatisfactory in any event. In Paragraph 2.3.14, he said:

“A surface water balancing scheme was presented on behalf of the objector at the Inquiry. This had not been fully assessed technically by the appropriate bodies; its visual impact, including its effect on the local landscape, had not been fully considered; and it required a considerable area of land to the east of the objection site. I have concluded that although a solution to the surface water drainage constraint outlined above may be possible, in the absence of a Flood Risk Assessment carried out in accordance with Appendix F to PPG25 I have not been convinced by the evidence presented in writing and at the Inquiry that the precautionary principle promoted in PPG25 can in this case reasonably be set aside.”

62. I think it is a reflection of the confused manner in which the Inspector dealt with Mr Dilke's evidence - not admitting the report, but then effectively allowing it to be put to other witnesses - that it is unclear as to what "surface water balancing scheme" the Inspector is referring. Miss Ornsby suggested that it might be Mr Webb's scheme in Appendix G, because that was in evidence and Mr Dilke's report was not. However, if it is a reference to that scheme, it is unsurprising that the Inspector was unconvinced: as that technical note was put in at a stage when the Claimants considered drainage not to be an issue, and they wished to rely upon the different scheme proposed by Mr Dilke in the event that it was an issue. Mr Towler submitted that it was a reference to the scheme in Mr Dilke's report, which was effectively put to the witnesses in cross-examination. If that be the case - and, on balance, it seems to me probably so - then the Inspector considered a scheme that was not in evidence before him.

63. I am not sure whether on proper analysis this complaint of the Claimants can be described as one of inadequate reasons: because, once the Inspector had refused to allow in Mr Dilke's report, the Claimants' had no evidential basis for their case on the drainage issue. In my judgment, this lack of clarity on the Inspector's part is really the consequence of him dealing with the issue of the expert drainage evidence in less than an adequate way.

#### The ALLI Issue

64. The Claimants submitted that the Inspector failed to give any reasons for designating the objection site as ALLI: and in particular for designating Area A as ALLI, as it was not so designated in the 1997 Plan. The Council's primary submission was that the Claimants had never made a valid objection to the ALLI designation, and so the Inspector did not err in failing to deal with the issue (Skeleton Argument, Paragraph 10). Alternatively, Mr Towler submitted that the ALLI designation was "rolled up" with the IOG and DDB designations. The Inspector dealt with the DDB in Paragraph 2.3 of his report: and specifically with the IOG issue in Paragraphs 2.3.9-11. He makes no reference to the ALLI designation.

65. By Section 40(7) of the 1990 Act, an authority cannot adopt a local plan or review plan until they have considered any objections “made in accordance with the regulations”. “The regulations” are the 1999 Regulations, Regulation 23 of which provides that:

“Objections and representations shall be made in writing and addressed to the local planning authority in accordance with the details given in the published notice.”

66. The notice has to be by way of advertisement in Form 6 (Regulation 22). The notice in this case was placed in the London Gazette on 16 January 2001, and it merely required:

“Objections and representations should specify the matters to which they relate and the grounds on which they are made.”

They had to arrive by 13 March 2001.

67. The Claimants’ objections were lodged in time and, although there is no reference to the ALLI designation in the schedule or Council form of objections, that form is not mandatory and it is abundantly clear from the narrative that they objected to the ALLI designation given Areas A, B and D. This is perhaps clearest from the Claimants’ Plan 3 lodged as part of the objections: but also from Paragraphs 1.2, 1.3(b) and 2.3 of the narrative, as well as Mr Patrick’s evidence (especially Paragraph 2.6 of his report, but also Paragraphs 1.2, 1.3, 1.7, 2.5, 2.7 and 3.10 and also the plan attached to his report). Furthermore, the Council well understood that the Claimants were specifically objecting to the objection site being included within the ALLI designation (see Miss Punchard’s Statement, Paragraph 1.0, “Summary of Objections”: and Paragraph 2.1): and the evidence of Mr Pulling and Mr Burden deal with the ALLI designation issue.

68. There is no doubt that there was a duly made objection by the Claimants to the ALLI designation of the objection site: and they were entitled to a reasoned decision as to why their objection was not upheld.

69. Mr Towler's fall back position was similarly untenable. The Inspector did not refer to the ALLI designation at all. It cannot be said that his determination and reasons were somehow "rolled up" into the Development Boundary and IOG designations. The criteria for each are different. The Development Boundary and IOG are essentially related to the function of land: ALLI to the quality of land. The ALLI designation objection needed separate consideration, determination and reasons.

70. Again, in my view this is not really a reasons issue. In relation to this objection, the Inspector made no decision at all. The ALLI designation would have to be quashed in any event: and, because the ALLI designation may be relevant to the DDB, the designation of the objection site as falling outside that boundary would also be compromised (because whether an area is not a designated ALLI is an indicator of sustainability (Sustainability Assessment of Proposed Housing Sites: Table 1 (Indicators of Sustainability))).

#### The Landscape Issue

71. A main criticism of the Inspector's report is that (in Paragraph 5.31.6), in preferring the Louviers Road site to the objection site on landscape grounds, he relies apparently exclusively upon the Sustainability Assessment of Proposed Housing Sites produced by the Council in 2001. The Claimants' complaint is that this evidence was by then 2-3 years old, and further the assessment was "a general overview rather than a detailed in depth analysis". They submit that the Inspector should have conducted an exercise of specifically comparing the Louviers Road and objection sites, an issue with which he simply did not grapple.

72. I am not satisfied that the report would have been found wanting on this ground alone. The 2001 assessment was in evidence before the Inspector, and it contained a comparison which he was entitled to take into account. On the basis of Paragraph 5.31.6, I am unconvinced that the Inspector failed to take into account the other evidence put before him on this issue: but simply that, having done so, he found the evidence of the assessment determinative.

### Divergence from Mr Davies's Report

73. Similarly, leaving aside the Inspector's failure to deal properly with Mr. Dilke's evidence, I was not impressed by the Claimants' submission that the Inspector had failed properly to explain why he diverged from Mr Davies's Report. The only substantial difference between the reports was the designation of Area A as outside the DDB and within the IOG designation. The Inspector was entitled to take a different view on these designations, given the difference in circumstances since 1997, particularly the re-routing of the relief road. Although Mr Davies made some comments in relation to Areas A and C in his report on the basis that the Brown Route was not adopted, he made clear that no development (even of Area C) should go forward unless and until the road was routed through Destiny Fields and, if the road was re-routed, boundaries would have to be reconsidered as part of the plan review. That is what happened. The Inspector clearly had Mr Davies's Report in mind but, on all of the evidence, he came to a different conclusion with regard to the designations for Area A. The possibility of such a decision on the boundaries for the development was clearly in the mind of Mr Davies: who found that Area A had IOG and ALLI value. With regard to Area D, Mr Davies kept this outside the DDB and within the IOG and ALLI designations. His comments concerning the importance of Wyke Oliver Hill as gap land etc, were made in the context of the proposed boundary of the relief road running through Destiny Fields: as I have found (see Paragraph 13 above), the comments were not made with Area D specifically in mind.

74. Had this ground stood alone, I would not have allowed the claim.

### **Relief**

75. However, for the reasons given above I shall grant the application.

76. In relation to relief, it is agreed between the parties that, if there was a breach of rules of natural justice, the designations for Areas A, B and D should be quashed. Given that the Inspector's decision with regard to the DDB involved a comparison of the objection site and the Louviers Road site - that was how the objection was put by

the claimants and how it was contested by the Council - it seems to me inevitably to follow that the inclusion of the latter site within the DDB and the allocation of the Louviers Road site for housing under policy H1t must also be quashed, leaving both the objection site and the Louviers Road site as “white land”, without designation. However, I am sensitive to the fact that those interested in that site have not been parties to, or played any part in these proceedings, and they should be given an opportunity to make representations in respect of the relief insofar as it directly affects the site in their ownership.

77. Therefore, I propose making the following order (the plan referred to being the plan attached to the Particulars of Claim):

- (1) The Weymouth and Portland Local Plan Review adopted on 15 December 2005 be quashed in the following respects:
  - (i) the Defined Development Boundary shown on the Proposals Map shall be quashed insofar as it excludes Areas A, B and D: and insofar as it includes the Louviers Road site;
  - (ii) the Important Open Gap and Area of Local Landscape Importance shown on the Proposals Map shall be quashed insofar as it excludes Areas A, B and D: and
  - (iii) the allocation of the Louviers Road site for housing under policy H1t shall be quashed.”
- (2) Within 14 days a copy of this Order shall be sent by the Defendant Council to all persons with an interest in the Louviers Road site of which they are aware.
- (3) Those persons are given permission to apply in respect of the relief granted in Paragraph (1) hereof, conditional upon any application being made with supporting written submissions by 4 pm on 31 August 2007. The Claimants and Defendants have permission to respond in the form of written

submissions to be lodged and served within 14 days of receipt of the application. Any application is reserved to His Honour Judge Hickinbottom unless expressly released by him or Mr Justice Collins. Subject to further order, any application shall be dealt with in writing.

(4) The Defendants shall pay the Claimants' costs of the claim to be the subject of a detailed assessment on the standard basis if not agreed.

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Court of Appeal

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**\*Woodfield v JJ Gallagher Ltd and others**

[2016] EWCA Civ 1007

2016 Sept 6;  
Oct 12

Laws, Lindblom LJJ

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*Planning — Local plan — Adoption — Challenge to adoption of policy in local plan — Judge quashing policy and remitting it to Secretary of State — Whether judge empowered to order Secretary of State to appoint planning inspector who would recommend adoption of policy subject to specific modifications — Whether judge empowered to order local planning authority to adopt plan recommended by such inspector — Planning and Compulsory Purchase Act 2004 (c 5), s 113 (as amended by Planning Act 2008 (c 29), s 185)*

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Following a recommendation by a planning inspector the local planning authority adopted a local plan. Developers made an application under section 113 of the Planning and Compulsory Purchase Act 2004<sup>1</sup> challenging the plan, their challenge going to a single policy which stated that part of a particular site should be kept free from built development. The judge upheld the challenge and remitted the policy to the Secretary of State pursuant to section 113(7)(b), giving directions under section 113(7A) that (i) the Secretary of State appoint a planning inspector who would recommend adoption of the policy subject to a modification deleting the prohibition on built development on the site and (ii) the planning authority adopt the policy subject to the modification recommended by the inspector. An objector, who had appeared at the inspector's examination of the local plan but had played no part in the proceedings below, was given permission to appeal against the judge's directions.

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On the objector's appeal—

*Held*, dismissing the appeal, that the court's power under section 113(7A)(7B) of the Planning and Compulsory Purchase Act 2004 to give directions when remitting a document under section 113(7) of the 2004 Act included power to give directions requiring action to be taken (i) by a planning inspector in recommending modifications to a local plan under section 20(7C) of the Act, or (ii) by the local planning authority in adopting a local plan with modifications under section 23(3);

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<sup>1</sup> Planning and Compulsory Purchase Act 2004, s 113, as amended: "(1) This section applies to— . . . (d) a local development plan; . . . (2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section. (3) A person aggrieved by a relevant document may make an application to the High Court on the ground that— (a) the document is not within the appropriate power; (b) a procedural requirement has not been complied with . . . (6) Subsection (7) applies if the High Court is satisfied— (a) that a relevant document is to any extent outside the appropriate power; (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement. (7) The High Court may— (a) quash the relevant document; (b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval. (7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document. (7B) Directions under subsection (7A) may in particular— (a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted; (b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken; (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted); (d) require action to be taken by one person or body to depend on what action has been taken by another person or body. (7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document— (a) wholly or in part; (b) generally or as it affects the property of the applicant."

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A that there would be cases where the court could give directions under section 113(7A)(7B) requiring an inspector to recommend a modification in a particular form to reflect the conclusions in his report and there would also be cases where the court could give directions requiring a local planning authority to adopt a local plan with a particular modification or modifications; that such directions could only be made if the relevant planning judgment had already been exercised within the plan-making process itself, the relevant consequences of that judgment were plain, the directions would result in the planning judgment being given its true and intended effect and the court had confined itself to rectifying errors of law; that, in the particular circumstances of the case, the directions made by the judge had been fully justified, appropriate and necessary; and that, accordingly, her order would not be disturbed (post, paras 30–35, 47–48, 56, 57).

Decision of Patterson J [2016] EWHC 290 (Admin) affirmed.

C The following cases are referred to in the judgment of Lindblom LJ:

*R (Girling) v Parole Board* [2006] EWCA Civ 1779; [2007] QB 783; [2007] 2 WLR 782; [2007] 2 All ER 688, CA

*R (Hirst) v Secretary of State for the Home Department* [2002] EWHC 602 (Admin); [2002] 1 WLR 2929

*R (Perrett) v Secretary of State for Communities and Local Government* [2009] EWCA Civ 1365; [2010] PTSR 1280; [2010] 2 All ER 578; [2010] LGR 336, CA

D *Ryanair Holdings Ltd v Office of Fair Trading* [2011] EWCA Civ 1579; [2012] Bus LR 1903, CA

*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759; [1995] 2 All ER 636; 93 LGR 403, HL(E)

*University of Bristol v North Somerset Council* [2013] EWHC 231 (Admin)

No additional cases were cited in argument.

E **APPEAL** from Patterson J

By an application under section 113 of the Planning and Compulsory Purchase Act 2004, the developers, JJ Gallagher Ltd, London and Metropolitan International Developments Ltd and Norman Trustees, challenged the adoption by the local planning authority, Cherwell District Council, of the Cherwell Local Plan 2011–2031 Part 1, on 20 July 2015. The challenge went to a single policy in the local plan, “Policy Bicester 13: Gavray Drive”, in which a site at Gavray Drive, to the east of Bicester town centre, was allocated for housing development—300 dwellings.

G By order dated 18 February 2016 Patterson J [2016] EWHC 290 (Admin) ordered that: (1) Policy Bicester 13 adopted by the local authority on 20 July 2015 be treated as not adopted and remitted to the Secretary of State for Communities and Local Government; (2) the Secretary of State appoint a planning inspector who would recommend adoption of Policy Bicester 13 subject to a modification that deleted from the policy the words “that part of the site within the conservation target area should be kept free from built development” and (3) the local authority adopt Policy Bicester 13 subject to the modification recommended by the planning inspector appointed by the Secretary of State.

H By an appellant’s notice dated 26 April 2016, Dominic Woodfield, an objector, appealed with permission of the Court of Appeal (Lindblom LJ) granted on 15 July 2016 against paragraphs (2) and (3) of the order. The grounds of appeal were that the judge’s order (i) was not within the scope of the court’s powers under section 113 of the 2004 Act; (ii) was, in the circumstances, misconceived and (iii) was at odds with the regime for public

participation in plan-making. In particular, the objector contended that, having found that there was an error of law, the judge should have remitted the matter of the wording of Policy Bicester 13 of the Cherwell Local Plan for public re-examination; and that in directing that an order be made to revise the policy wording without remitting the matter for re-examination, the judge had made an error of principle because she exercised a planning judgement which should have been exercised by the Secretary of State's inspector and by the local authority.

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The facts are stated in the judgment of Lindblom LJ, post, paras 7–18.

*Richard Turney* (instructed by *Leigh Day*) for the objector.

*Satnam Choongh* (instructed by *Pinsent Masons LLP*) for the developers.

*Richard Kimblin QC* (instructed by *Treasury Solicitor*) for the Secretary of State.

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The local planning authority did not appear and was not represented.

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The court took time for consideration.

12 October 2016. The following judgments were handed down.

## LINDBLOM LJ

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### *Introduction*

1 In this appeal we must consider whether, in its order granting relief in these proceedings, the court below exceeded the scope of the remedies provided for in section 113 of the Planning and Compulsory Purchase Act 2004 (as amended by section 185 of the Planning Act 2008) in challenges to the adoption of a local plan.

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2 The objector Dominic Woodfield, appeals against the order of Patterson J [2016] EWHC 290 (Admin) dated 18 February 2016, by which she granted relief on an application made under section 113 by JJ Gallagher Ltd, London and Metropolitan International Developments Ltd and Norman Trustees (“Gallagher”) challenging the adoption by the first interested party, Cherwell District Council, of the Cherwell Local Plan 2011–2031 Part 1, on 20 July 2015. The challenge went to a single policy in the local plan, “Policy Bicester 13: Gavray Drive”, in which a site at Gavray Drive, to the east of Bicester town centre, was allocated for housing development—300 dwellings. An inspector appointed by the second interested party, the Secretary of State for Communities and Local Government, conducted an examination into the local plan. The examination hearings were held between 3 June and 23 December 2014. In his report dated 9 June 2015 the inspector recommended adoption of the local plan, including Policy Bicester 13. Mr Woodfield appeared at the examination as an objector to that policy. He played no part in the proceedings in the court below, but when it became clear that the council was not intending to appeal to this court against the judge’s order he launched an appeal of his own. His standing, at one stage contested by Gallagher and the Secretary of State, is now no longer in dispute. I granted permission to appeal on 15 July 2016.

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3 Both Gallagher and the Secretary of State have opposed the appeal. The council has played no part in it. On 2 August 2016 it sent a letter to the court, saying its position on the appeal was “neutral”. It confirmed that on

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A 18 May 2016 the inspector had produced an addendum report. In that addendum report he recommended the amendment to Policy Bicester 13 required in the judge's order. But the council has awaited the outcome of this appeal before proceeding to adopt the policy in that amended form.

*The order of Patterson J*

B 4 So far as is relevant in the appeal, Patterson J's order states:

“1. Policy Bicester 13 adopted by [the council] on 20 July 2015 be treated as not adopted and remitted to [the Secretary of State].

“2. [The Secretary of State] appoint a planning inspector who recommends adoption of Policy Bicester 13 subject to a modification that deletes from the policy the words ‘That part of the site within the Conservation Target Area should be kept free from built development’.

“3. [The council] adopt Policy Bicester 13 subject to the modification recommended by the planning inspector appointed by [the Secretary of State].”

*The issues in the appeal*

D 5 Mr Woodfield's appeal attacks only the relief granted by the judge: not the part of her order stating that Policy Bicester 13 was to be “treated as not adopted and remitted to [the Secretary of State]”, but the two paragraphs—2 and 3—requiring the Secretary of State to appoint an inspector who was to recommend its adoption subject to the specified “modification”, and the council to adopt it subject to that “modification”. It is a striking feature of the appeal that neither the Secretary of State nor the council seeks to upset either of those requirements. Indeed, in opposing the appeal the Secretary of State actively maintains that the judge's order should be upheld.

6 There are two grounds of appeal, succinctly stated:

“1. Having found that there was an error of law the judge should have remitted the matter of the wording of Policy Bicester 13 of the Cherwell Local Plan for public re-examination.

F “2. In directing that an order be made to revise the policy wording without remitting the matter for re-examination, the judge made an error of principle because she exercised a planning judgement which should have been exercised by [the Secretary of State's] inspector and by [the council].”

G As refined in the skeleton argument of Mr Richard Turney, who appeared for Mr Woodfield, those grounds raise three main issues: first, whether Patterson J's order is within the scope of the court's powers under section 113 of the 2004 Act; second, whether the order she made was, in the circumstances, misconceived; and third, whether the order was at odds with the regime for public participation in plan-making.

*The allocation of the site at Gavray Drive*

H 7 Patterson J provided a narrative of the plan-making process (in paras 12–27 of her judgment). I need mention only the salient detail here.

8 In August 2014 the council proposed the allocation of the site at Gavray Drive for 300 dwellings under Policy Bicester 13 in its schedule of proposed main modifications to the (Submission) Local Plan (Part 1). Much

of the site is within the River Ray conservation target area, and part of it is a local wildlife site. Gallagher supported the proposed allocation but objected to the inclusion in Policy Bicester 13 of a sentence which stated: “That part of the site within the conservation target area should be kept free from built development.”

9 Policy Bicester 13 was considered in the council’s sustainability appraisal addendum, against 19 sustainability criteria, one of which was “to conserve and enhance and create resources for the district’s biodiversity”. The assessment was on the basis that “[the] policy requires that the part of the site within the conservation target area should be kept free from built development, as well as protection of the local wildlife site and detailed consideration of ecological impacts, wildlife mitigation and the creation, restoration and enhancement of wildlife corridors to protect and enhance biodiversity”. The conclusion was that “[overall], the site is likely to have . . . mixed effects, with potential for overriding minor positive effects overall”.

10 At the examination hearing, on 16 December 2014, several parties each explained their stance on the proposed allocation. We were taken through a transcript of the discussion that took place.

11 The council contended for the retention of the sentence in Policy Bicester 13 which Gallagher sought to have deleted—the provision precluding built development in the conservation target area. Evidently with the support of a large number of local residents, it also suggested that the part of the conservation target area within the site ought to be designated as Local Green Space, to which government policy in paragraphs 76 and 77 of the National Planning Policy Framework (2012) (“the NPPF”) would apply. Its planning officer, Ms Sharon Whiting, said the reason why it was of the view that “the part of the conservation target area that does not form part of the [local wildlife site] designation needs [to] be kept free from development is . . . to make sure that there is a gap from the [local wildlife site] . . .”

12 Gallagher welcomed the council’s continued commitment to the allocation of the site for 300 dwellings, and suggested, as an approximate upper limit, 340. On a plan prepared for the examination hearing it indicated housing development spreading well into the conservation target area, but no building in the local wildlife site. Its planning consultant, Mr David Keene of David Lock Associates, said that the level of development proposed by Gallagher on the allocated site “represents an appropriate balance between development and biodiversity objectives and enhancements” and would provide funding for ecological enhancement. Referring to the plan Gallagher had prepared for the hearing, he told the inspector that “the gross area for residential development which is within the conservation target area extends to about 3.43 [hectares]”, the total area of the conservation area being 14.57 hectares. This 3.43 hectares was part of the 5.64 hectares shown on the plan as the Gavray Drive east development area. Gallagher’s ecological consultant, Dr Rowlands, said that “[in] the event that development occurs that only precludes the local wildlife site, then this development alone will contribute [about] 40% to delivery of the conservation target area targets of the River Ray conservation target area”.

13 CPRE Oxfordshire (Bicester Branch) and Langford Village Community Association contended for the Local Green Space designation to be imposed on the land to the east of Langford Brook. Mr Woodfield argued

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- A that the policy favoured by the council did not go far enough to protect the ecological interest of the site. The “crucial thing”, he said, was that “no built development in the [conservation target area] stipulation is essential if development of this site is to be of an appropriate balance . . . and crucially whether it is to comply with the NPPF objective of no net loss of biodiversity”. He also said that “the wording of Policy Bicester 13 needs amendment to clarify that the conservation target area, not just the [local wildlife site] within it, cannot be used as a dumping ground for ancillary infrastructure components such as formal recreation, kick about areas, playing areas or allotments”. These, he said, “are all uses that would be incompatible with the appropriate management to secure the nature [conservation interest] in the retained areas, and achieve no net loss”. In his view, given the various constraints on its development, the site ought not to be allocated for more than 250 dwellings.

14 As the council’s planning policy team leader, David Peckford, explains in his second witness statement, dated 12 November 2015, on 22 May 2015 a draft of the inspector’s report was sent to the council for the facts to be checked. The first sentence of para 139 of that draft report stated:

- D “Requests that the developable area shown on the policies map should be reduced to avoid any building in the whole of the River Ray conservation target area, as distinct from the smaller local wildlife site, would significantly undermine this contribution.”

In the schedule of main modifications appended to the draft report the modification recommended as Policy Bicester 13 included the contentious sentence about the exclusion of “built development” from the conservation target area. On 5 June 2015 the council sent the planning inspectorate its response to the draft report, suggesting, in the light of para 139 as drafted at that stage, that the inspector should consider “whether consequential modifications are needed to Policy 13 (MM91) to avoid inconsistency between the conclusions of the report and the current policy wording”. On 9 June 2015 the planning inspectorate sent a further draft of the inspector’s report, in which the words “as distinct from the smaller local wildlife site” were omitted from the controversial sentence in para 139. The recommended modification was unchanged. The council’s officers were still concerned about the relationship between the draft report and Policy Bicester 13. In an e-mail to the planning inspectorate on that day Mr Peckford said:

- G “We understand that the inspector does not wish to rule out all development in the conservation target area for the reasons set out and we note that main mod 91 rules out ‘built development’ . . . Could we please ask the inspector considers again whether the reference to ‘building’ in the first sentence of para 139 might be further clarified. On the understanding that the inspector does not wish to rule out recreation/open space uses etc within the conservation target area, does the inspector here mean ‘development i.e over and above built development’ and if so, could this clarification be inserted into the report?”

A further draft of the inspector’s report was sent to the council on 11 June 2015. In para 139 the words “any building” were now replaced with the words “any development”. Again, however, there was no change to the

modification itself. The disputed words remained. In para 38 of his second witness statement Mr Peckford said:

“Officers (myself included) interpreted the change to the inspector’s report to mean that the inspector’s intention was that while the bullet point requirement in Policy Bicester 13 included “built development” in the whole of the conservation target area, other forms of development should not be ruled out in that area. We had in mind development which would facilitate the provision of public open space, playspace, playing fields etc: development comprising engineering operations and material changes of use as distinct from building operations. In addition, it might also be the case that flood attenuation measures could be delivered in that area, but we did not have that in mind at the time. We concluded that the report and the policy were consistent.”

15 In the final version of his report—which, as I have said, is dated 9 June 2015—the inspector’s conclusions on Policy Bicester 13 were these:

“135. This area of largely flat land, bounded by railway lines to the north and west, the ring road to the east and residential land to the south lies to the east of Bicester town centre in a very sustainable location. Planning permission has previously been granted for new housing but that has now expired. In view of the need for additional sites to help meet OANs it is still considered suitable in principle to accommodate new development. However, the eastern part is now designated as a local wildlife site, with the central/eastern sections containing lowland meadow; a BAP priority habitat.

“136. Additionally, roughly a quarter of the site lies in flood zones 2 and 3 adjacent to the Langford Brook that runs north-south through the centre of the site. The majority also lies within the River Ray conservation target area. Nevertheless, even with these constraints, indicative layouts demonstrate that, taking into account appropriate and viable mitigation measures, the site is capable of delivering around 300 homes at a reasonable and realistic density not greatly different from that of the modern housing to the south.

“137. In addition to necessary infrastructure contributions towards education, sports provision off site, open space, community facilities and public transport improvements, a number of other specific requirements are needed under Policy Bic 13 for this proposal to be sound, in the light of current information about the site’s ecological interests and environmental features. In particular, that part of the allocation within the local wildlife site east of Langford Brook (just under ten ha) needs to be kept free from built development and downstream SSSIs protected through an ecological management plan prepared and implemented to also ensure the long term conservation of habitats and species within the site. Landscape/visual and heritage impact assessments and archaeological field evaluation are also required.

“138. There must be no new housing in flood zone 3 and the use of SUDS to address flood risks will be required. Subject to such modifications (MMs 89–91), Policy Bic 13 is sound and would enable this site to make a worthwhile contribution to new housing needs in Bicester and the district in a sustainable location. This can be achieved without

A any material harm to environmental or ecological interests locally as a result of the various protection, mitigation and enhancement measures to be included in the overall scheme.

“139. Requests that the developable area shown on the policies map should be reduced to avoid any development in the whole of the River Ray conservation target area would significantly undermine this contribution. It would also potentially render the scheme unviable or at the very least unable to deliver a meaningful number of new affordable units, as required under policy BSC 3, when all other necessary contributions are also taken into account. Moreover, it could well materially reduce the potential for the scheme to contribute to enhancement of the local wildlife site’s ecological interest as part of the total scheme, thereby effectively achieving the main objective of the conservation target area. Consequently, it would not represent a reasonable, realistic or more sustainable alternative to the proposals set out in the plan, as modified.

“140. Similarly, despite the historic interest of the parts of the site in terms of their long established field patterns and hedges, this does not amount to a justification for the retention of the whole of the land east of the Langford Brook as public open space, nor for its formal designation as Local Green Space. This is particularly so when the scheme in the plan should enable the more important LWS to be protected with funding made available for enhancement at a time when the lowland meadow habitat is otherwise likely to deteriorate further without positive action. Such an approach would be capable of ensuring no net loss of biodiversity as a minimum and also compliance with policies ESD 10 and 11 as a result.

“141. All in all the most suitable balance between the need to deliver new housing locally and to protect and enhance environmental assets hereabouts would essentially be achieved through Policy Bic 13, as modified, and the land’s allocation for 300 new homes on approximately 23 ha in total, given that the requirements of policies ESD 10 and 11, including to achieve a net gain in biodiversity arising from the scheme as a whole, can also be delivered as part of an overall package of development with appropriate mitigation measures.”

The inspector did not recommend any change to the sentence in Policy Bicester 13 which said that the “part of the site within the conservation target area should be kept free from built development”. That sentence remained in the policy when the local plan was adopted.

16 When it resolved to adopt the local plan on 20 July 2015 the council also resolved to pursue, “through the forthcoming stages of the Cherwell Local Plan Part 2 . . .”, the designation as Local Green Space of the part of the conservation target area within the Policy Bicester 13 site. When asked by Gallagher to clarify this resolution, the council’s officers said in an e-mail on 24 July 2015 that although Policy Bicester 13 prevented “built development” in the conservation target area, it did “not preclude appropriate provision of associated public open space [etc] as part of a development in the conservation target area”, and that this was also “thought to be unlikely to be inconsistent with the Local Green Space designation if this does indeed take place”.

## Policy Bicester 13 and Policy ESD 11

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17 In the adopted local plan Policy Bicester 13 states:

“Policy Bicester 13: Gavray Drive

“Development Area: 23 hectares

“Development Description: a housing site to the east of Bicester town centre. It is bounded by railway lines to the north and west and the A4421 to the east

“Housing

“• Number of homes—300 dwellings

“• Affordable Housing—30% . . .

“Key site specific design and place shaping principles . . .

“• That part of the site within the conservation target area should be kept free from built development. Development must avoid adversely impacting on the conservation target area and comply with the requirements of Policy ESD11 to secure a net biodiversity gain.

“• Protection of the local wildlife site and consideration of its relationship and interface with residential and other built development . . .

“• . . . A central area of open space either side of Langford Brook, incorporating part of the local wildlife site and with access appropriately managed to protect ecological value. No formal recreation within the local wildlife site . . .”

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The supporting text for Policy Bicester 13 acknowledges, in para C 104, that “[the] majority of the site is part of the River Ray conservation target area”; in para C 106, that there is “a risk of harming the large number of recorded protected species towards the eastern part of the site”, and “[impacts] needs to be minimised by any proposal”; and states, in para C 107, that “[although] there are a number of known constraints such as flood Zone 3, River Ray conservation target area and protected species, this could be addressed with appropriate mitigation measures by any proposal”.

18 Policy ESD 11 states:

“Policy ESD 11: Conservation target areas

“Where development is proposed within or adjacent to a conservation target area biodiversity surveys and a report will be required to identify constraints and opportunities for biodiversity enhancement. Development which would prevent the aims of a conservation target area being achieved will not be permitted. Where there is potential for development, the design and layout of the development, planning conditions or obligations will be used to secure biodiversity enhancement to help achieve the aims of the conservation target area.”

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Para B 240 in the supporting text for Policy ESD 11 says that:

“Conservation target areas represent the areas of greatest opportunity for strategic biodiversity improvement in the district and as such development will be expected to contribute to the achievement of the aims of the target areas through avoiding habitat fragmentation and enhancing biodiversity.”

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A *Patterson J's judgment*

19 Patterson J rejected the suggestion that Policy Bicester 13 was ambiguous. The Secretary of State had argued before her that the contentious words might be read as meaning that some but not all of the conservation target area may be built upon. She concluded in [2016] EWHC 290 (Admin) at [55] that Policy Bicester 13 was "clear on its face in prohibiting any built development within that part of the site which falls within the CTA [conservation target area]."

20 Gallagher contended before the judge that, in the light of the inspector's relevant reasoning in his report, his recommendation that the local plan be adopted with the contentious provision in Policy Bicester 13 was illogical and irrational. Patterson J referred to the "indicative layouts" before the inspector at the examination hearing. She noted, at para 60, that the "revised master plan" referred to by the inspector in para 136 of his report "clearly shows some built development within that part of the CTA to the east of Langford Brook but no built development in the LWS [local wildlife site] within the CTA". In paras 137–138 of the report the inspector had taken into account, and apparently relied on, Gallagher's "indicative master plan . . . the only indicative layout before him", in concluding that "the site was capable of delivering some 300 homes" (para 61). The judge continued, at para 62:

E "The inspector then turned to suggestions before him by both [the council] and members of the public that the developable area should be reduced. He discounted those suggestions in para 139 . . . the inspector understood that the policy to deliver around 300 homes was justified and sound when considered against reasonable alternatives, in this instance the alternative of no development within the CTA."

F The inspector's conclusion in para 141 was, she said, at para 64, "a matter for his planning judgment having considered and reached conclusions on all of the issues raised in the examination by the allocation of the site". His reasoning was "inimical" to the requirement in Policy Bicester 13 to keep the part of the site within the conservation target area free from built development. He had given "no reason at all to explain or justify the retention of that part of [Policy] Bicester 13 that prevented built development in the conservation target area". What he said all "pointed the other way" (para 66). He had clearly rejected the argument that the developable area should be reduced "to avoid any development in the whole of the conservation target area . . ." (para 67). He ought to have recommended the deletion of the controversial provision in Policy Bicester 13 (para 68). In the circumstances "some remedy" was "clearly appropriate" (para 71).

H 21 Gallagher had sought an order that would require the Secretary of State to appoint an inspector who would recommend the adoption of the local plan with an amendment to Policy Bicester 13 deleting the disputed words, and the council to adopt the local plan in that form (para 72). The Secretary of State supported Gallagher's proposed order (paras 79–82). The order sought by the council would have required the Secretary of State to appoint an inspector to reconsider the way in which the conservation target area was treated in Policy Bicester 13; the inspector to permit representations to be made on that issue by all interested parties, to recommend any appropriate "modification", and to provide reasons for that recommendation; and the

council to adopt Policy Bicester 13 subject to whatever “modification” the inspector then recommended to it (paras 73–78). A

22 Patterson J accepted Gallagher’s and the Secretary of State’s arguments on remedy. She explained why in paras 86–89 of her judgment:

“86. An extensive examination process has taken place into the plan as a whole. As part of that process the inspector has exercised and made clear his planning judgment on, amongst other matters, housing across the district. As part of that exercise his decision was to permit Policy Bicester 13 to proceed on the basis that it made a valuable contribution of 300 houses to the housing supply in Cherwell District Council. That conclusion was reached having heard representations from [Gallagher, the council] and the public. The representations from the public argued that there should be reduced developable areas on the allocation site and that part of the site was suitable for designation as LGS [Local Green Space]. The public, therefore, have fully participated in the planning process. The error which I have found occurred was not as a result of the public having any inadequate opportunity to participate in the examination process. B

“87. There is no statutory requirement when remitting the relevant document to the second defendant to give directions which, in effect, require a rerun of part of the examination process that has already taken place. There may be circumstances where it is appropriate to do so where, for example, there is a flaw in the hearing process but this is not one of those cases. There was a full ventilation of issues as to where development should take place within the Bicester 13 allocation site, the importance of biodiversity and the ecological interests, LGS issues and whether there should be any built development within the CTA. Those are all matters upon which the inspector delivered a clear judgment. The difficulty has arisen because he did not translate that planning judgment into an appropriately sound policy. C

“88. In those circumstances, and for those reasons, I do not consider it appropriate to accede to the directions sought by the first defendant. If the matter were to be remitted as sought by the first defendant there would be a rerun of the same issues for no good reason, without any suggestion of a material change in circumstance, and at considerable and unnecessary expenditure of time and public money. I reject the contention that a further sustainability appraisal will be required. The residual wording of the policy is such that it secures the objective of any development having a lack of adverse impact upon the CTA. D

“89. The justice of the case here is met with the order sought by the claimants and, if the policy has not been found to be ambiguous, which it has not, supported by the second defendant which gives effect to the planning judgment of the inspector.” E

#### *The inspector’s addendum report*

23 In para 2 of his addendum report of 18 May 2016, following the court’s order of 19 February 2016, the inspector said he recommended the deletion of the sentence in Policy Bicester 13 precluding “built development” in the conservation target area “in the interests of soundness, clarity and to facilitate implementation of the policy and allocation in the plan”. In its letter of 2 August 2016 to the court the council says it “has not F

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A yet re-adopted Policy Bicester 13 subject to the modification recommended by the inspector, pending completion of the current proceedings".

*Is Patterson J's order within the scope of the court's powers under section 113 of the 2004 Act?*

**24** The statutory scheme for the preparation and adoption of development plan documents is in Part 2 of the 2004 Act. Under section 20(7B) and (7C) (as inserted by section 112(2) of the Localism Act 2011), if an inspector appointed by the Secretary of State to carry out an independent examination of a development plan document, having conducted the examination, does not consider that it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but does consider that it would be reasonable to conclude that the authority has complied with the duty to co-operate in section 33A (as inserted by section 110(1) of the 2011 Act), he must, if asked to do so by the local planning authority, recommend modifications of the document that would make it one that satisfies the requirements mentioned in subsection (5)(a) and is sound. In those circumstances, under section 23(2A) and (3) (as inserted by section 112(3) of the 2011 Act), the local planning authority "may adopt" the document with the modifications recommended by the inspector under section 20(7A) (as inserted by section 112(2) of the 2011 Act)—the "main modifications"—or with the main modifications and additional modifications that do not materially affect the policies in the document; but, under section 23(4), the authority "must not adopt" the document unless it does so in accordance with section 23(3).

**25** Under section 113(7) of the 2004 Act the court may quash the "relevant document" and "remit [it] to a person or body with a function relating to its preparation, publication, adoption or approval". Subsection (7A) provides that if the court remits the "relevant document" under subsection (7)(b) it "may give directions as to the actions to be taken in relation to the document". Section 113(7B) provides:

**F** "Directions under subsection (7A) may in particular— (a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted; (b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken; (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted); (d) require action to be taken by one person or body to depend on what action has been taken by another person or body."

**G** Subsection (7C)(a) provides that those powers are "exercisable in relation to the relevant document" either "in whole or in part".

**H** **26** Subsections (7)(b) and (7A) to (7C) avoid the consequence, when a "relevant document" is quashed, of its preparation having to begin again even if the error of law in its preparation has occurred at a relatively late stage in the process. Before those provisions were introduced (by section 185 of the Planning Act 2008) the court's options as to relief were limited, under section 113(7), to quashing the relevant document

“(a) wholly or in part”, and “(b) “generally or as it affects the property of the applicant”. As Judge Robinson, sitting as a deputy judge of the Queen’s Bench Division, said in *University of Bristol v North Somerset Council* [2013] EWHC 231 (Admin) at [6]:

“Concern was frequently expressed about the lack of flexibility in the provision because . . . quashing had the effect that the local planning authority had to recommence the plan making process (in respect of the part quashed) from the beginning, see e.g. *South Northamptonshire District Council v Charles Church Developments Ltd* [2000] PLCR 46, a decision on the predecessor provision in section 287 of the Town and Country Planning Act 1990. The amendments to section 113 which include the power to remit were made by section 185 of the Planning Act 2008 the explanatory notes to which indicate that the amendments were intended to expand the court’s powers by providing an alternative remedy, see para 295.”

27 Mr Turney submitted that the judge misused the provisions of section 113(7A), (7B) and (7C). Her order required action to be taken both by an inspector and by the council as local planning authority, which, under the statutory scheme for plan-making, they would only be entitled to take having exercised their own planning judgment. Section 113 does not permit the court to substitute its own view for the authority’s on the planning issues in a plan-making process. The court may make directions as to the procedural steps involved in the making and adoption of a plan, but not decisions on the content of the plan’s policies and text (see the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780). Had Parliament intended to give the court the power to do that when remitting a development plan document under section 113, it would have done so expressly. It did not. The scope of the court’s power to give “directions” always depends on the context (see the judgment of the Court of Appeal, given by Sir Anthony Clarke MR, in *R (Girling) v Parole Board* [2007] QB 783, paras 19–23; and the judgment of Lloyd LJ in *Ryanair Holdings Ltd v Office of Fair Trading* [2012] Bus LR 1903, para 45). The context here is the statutory scheme for development plan-making in the 2004 Act, which gives the local planning authority the task of preparing and adopting a local plan. Subsection (7A) does not empower the court to mandate a particular outcome, such as the adoption of a local plan in a particular form. That would be “constitutionally improper” (see the judgment of Elias J in *R (Hirst) v Secretary of State for the Home Department* [2002] 1 WLR 2929, para 86). It would be inconsistent with the proper scope of remedies in judicial review under section 31 of the Senior Courts Act 1981 and CPR r 54.19, and under other statutory provisions providing for matters to be remitted to a decision-maker in the planning sphere—for example, sections 288 and 289 of the Town and Country Planning Act 1990 (see the decision of the Court of Appeal in *R (Perrett) v Secretary of State for Communities and Local Government* [2010] PTSR 1280).

28 Mr Satnam Choongh, for Gallagher, and Mr Richard Kimblin QC, for the Secretary of State, do not contest the proposition that the court’s power to give directions under section 113(7A) does not, and could not, enable the court to intrude upon the statutory role of the local planning authority, or the statutory remit of an inspector, in the preparation of a local

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A plan by exercising a planning judgment of its own. That is not in dispute. Nor could it be.

**29** The court's powers to grant appropriate relief under section 113(7), (7A), (7B) and (7C) are widely drawn. They afford the court an ample range of remedies to overcome unlawfulness in the various circumstances in which it may occur in a plan-making process. As was recognised by the judge in the *University of Bristol* case [2013] EWHC 231 (Admin), the provisions in subsection (7A), (7B) and (7C) were a deliberate expansion of the court's powers to grant relief where a local plan is successfully challenged under section 113. They introduce greater flexibility in the remedies the court may fashion to deal with unlawfulness, having regard to the stage of the process at which it has arisen, and avoiding—when it is possible to do so—uncertainty, expense and delay. They include a broad range of potential requirements in directions given under subsection (7A), all of which go to “the action to be taken in relation to the [relevant] document”. The four types of requirement specified in subsection (7B) are stated to be requirements which directions “may in particular” include. None of them, however, would warrant the substitution by the court of its own view as to the issues of substance in a plan-making process, or as to the substantive content of the plan—its policies and text. They do not allow the court to cross the firm boundary separating its proper function in adjudicating on statutory challenges and claims for judicial review in the planning field from the proper exercise of planning judgment by the decision-maker.

**30** The question dividing the parties here is whether the court's power under section 113(7A) to give directions when remitting a local plan—in particular its power under subsection (7B)(c) and (d) to give directions requiring the taking of “action”—broad as that power may be, extends to giving directions such as the judge gave in the particular circumstances of this case. In my view they do.

**31** Subsection (7B)(c) is broadly framed. It embraces “action” to be taken by “a person or body with a function relating to the preparation, publication, adoption or approval of the document . . .” This will include “action” to be taken by an inspector appointed by the Secretary of State to undertake an examination of a local plan, and action to be taken by the local planning authority whose responsibility it is to prepare and adopt the plan. Both the inspector and the authority perform relevant functions. The “action” itself may include action to be taken by the inspector in recommending modifications to the plan under section 20(7C), or by the authority in adopting the plan with such modifications under section 23(3).

**G** Both are functions relating to the preparation and adoption of the plan.

**32** Mr Turney was prepared to concede that in a case where an inspector's report had left no room for doubt about the outcome he was recommending and allowed no other possible outcome, but he had failed to recommend the inevitable modification to the plan, it might be appropriate for the court to grant relief under section 113(7) and (7A) with a direction requiring him to recommend that modification to the local planning authority. Mr Turney did not accept, however, that this was such a case. Nor did he accept that in those or any other circumstances the court could ever compel an authority to adopt a plan in a particular form. The statutory scheme leaves the authority with the option not to adopt the plan. When granting a remedy under section 113(7) and (7A), Mr Turney submitted, the

court may not shut out that option. So if Patterson J was right to find the inspector's conclusions in paras 135–141 of his report unambiguous and the modification required to give effect to them plain, paragraph 2 of her order might be appropriate. But paragraph 3 would not.

33 I do not think Mr Turney's submissions recognize the full extent of the court's power to give directions under section 113(7A). Such directions are, by their nature, a form of mandatory relief. They enable the court to fit the relief it grants precisely to the particular error of law, in the particular circumstances in which that has occurred. In principle, as I see it, they may be used to require the "person or body" in question to correct some obvious mistake or omission made in the course of the plan-making process, perhaps at a very late stage in the process, without upsetting the whole process by requiring its earlier stages to be gone through again. I cannot see why they should not be used, in an appropriate case, to give proper effect to a planning judgment already exercised by the "person or body" concerned—typically in the formulation of policy or text, or in the allocation of a site for development of a particular kind—or to ensure that a decision taken by that "person or body" in consequence of such an exercise of planning judgment is properly reflected in the outcome of the process. Used in this way, the court's power to give directions can overcome deficiencies in the process without its trespassing into the realm of planning judgment and without arrogating to itself the functions of the inspector who has conducted the examination of a local plan or of the local planning authority in preparing and adopting the plan.

34 There will, I think, be cases where the court can give directions requiring an inspector to recommend a modification in a particular form to reflect the conclusions in his report. In my view Mr Turney was right to accept that. But I think there will also be cases in which the court can properly give a direction under section 113(7A) requiring a local planning authority to adopt a local plan with a particular modification or modifications. Whether a direction of either kind is appropriate in a particular case will always depend on the individual circumstances of that case. In some cases it will be clear that the court can give such directions without transgressing the limits of its jurisdiction under section 113. It may only do so if the relevant planning judgment has already been lawfully exercised within the plan-making process itself, and the relevant consequences of that planning judgment are plain. The directions it gives, if crafted as they should be, will then result in the inspector's or the local planning authority's planning judgment—whichever it is—being given its true and intended effect. The court will have confined itself to rectifying the errors of law it has found, which is its proper remit in proceedings impugning the validity of an adopted local plan. And it will not have ventured into the forbidden realm of planning judgment, or usurped any function of the "person or body" whose error requires to be put right by the "action" prescribed for them under section 113(7A). There is nothing "constitutionally improper" about this, and nothing inconsistent with the ambit of remedies in public law nor with the court's powers to grant relief in claims for judicial review or under other kindred statutory provisions for challenges to planning decisions.

35 In my view therefore, the order made by the judge in this case was, in principle, an order within the scope of the court's powers under section 113.

A *Was the judge's order, in the circumstances of this case, misconceived?*

36 As Mr Turney emphasized, the inspector did not recommend the amendment of Policy Bicester 13 by the deletion of the sentence in issue, even though the council had taken pains to clarify the matter with the planning inspectorate before proceeding to adopt the local plan. It is also clear, said Mr Turney, that the council did not want that sentence to be omitted from the adopted version of Policy Bicester 13. Yet the judge's order mandates that outcome. The concept of reducing the "developable area" of the site might mean excluding all forms of development from the conservation target area or the exclusion only of "built development". The sentence in issue prevents the construction of buildings in the conservation target area. It does not prohibit other forms of development, such as the recreational facilities required in any development of housing on the site—one of several possibilities discussed at the examination. Yet the judge seems to have overlooked the distinction between a prohibition on "any development" and a prohibition only on "built development" in the conservation target area. She does not seem to have appreciated that in para 139 of his report the inspector was not addressing the council's case; he was addressing and rejecting a case put forward by third party objectors.

37 If the inspector were given the chance to consider the matter again, Mr Turney submitted, he might conclude unequivocally that no "built development", as opposed to no development at all, should take place within the conservation target area, or perhaps that the number of dwellings in the allocation should come down—maybe to the level suggested by Mr Woodfield. There are several potential outcomes. Depending on the modification recommended by the inspector, the council might decide not to change the policy, and not to adopt it. After all, when it adopted the local plan it resolved to pursue the designation of the conservation target area as Local Green Space—which would prevent built development in that part of the site. But the judge's order makes those other outcomes impossible. In effect, she exercised a planning judgment of her own, instead of leaving these questions, as she should have done, to the inspector and the council. Broad as the power to give directions in section 113(7A) may be, her order in this case went beyond it.

38 I cannot accept Mr Turney's argument here. In my view, Mr Choongh and Mr Kimblin were right in their submission that the judge's conclusions in paras 86–89 of her judgment are sound.

39 Patterson J did not engage in an exercise of planning judgment. She identified the relevant reasoning of the inspector, and stated her understanding of it. And her analysis of what he said seems to me to be correct. She recognized that the relevant planning issues had been thoroughly aired before him at the examination hearing. He heard detailed representations from the council, Gallagher and objectors on the appropriate extent of development within the allocated site, given the site's ecological interest; on the question of whether development—both built and other development—should be contemplated within the conservation target area, and, if so, whether it should be contemplated in the local wildlife site; and on the concept of designating the conservation target area as Local Green Space. It is clear from the transcript of the discussion at the examination hearing that all of these questions were very fully debated, with

the benefit of the plan produced by Gallagher showing development within the conservation target area. A

40 Before us there has been no criticism of the inspector's treatment of the planning issues he had to grapple with, or of the conclusions he reached. Nor could there be. B

41 As the judge concluded, it is clear from the relevant passage of his report—in particular, paras 135, 137 and 139–141—that the inspector saw no justification for retaining the provision in Policy Bicester 13 which referred to the part of the allocated site within the conservation target area being kept free of “built development”; that in his view that provision would work against the contribution the site should be making to the supply of housing, might render its development unviable or incapable of delivering as much affordable housing as it should, and might also frustrate the enhancement of the ecological interest in the local wildlife site and the achievement of the main objective of the conservation target area; that the designation of the land to the east of Langford Brook as Local Green Space was unjustified; that sufficient protection to biodiversity on the site was afforded by Policy ESD 10 and Policy ESD 11; and that, given the requirements of those policies, the site of approximately 23 hectares should be allocated for the development of 300 dwellings. He could see the need to keep the part of the allocated site within the local wildlife site and to the east of Langford Brook free from “built development” (para 137 of his report), but not a need to reduce the developable area of the site by preventing development elsewhere in the conservation target area (para 139). Those conclusions were reached in the light of the parties’ representations and the discussion at the examination, and expressly in reliance on Gallagher’s “indicative layouts” showing development in the conservation target area—to which the inspector referred in para 136 of his report. C

42 The relevant reasoning in the inspector’s report is, as Mr Choongh and Mr Kimblin submitted, complete and clear. It points to the conclusion that the sentence in Policy Bicester 13 precluding “built development” in the conservation target area must be removed. On a fair reading of the inspector’s relevant conclusions as a whole, and in particular those in para 139, the retention of that sentence is incompatible with them. Its deletion was therefore necessary. D

43 As was also submitted by Mr Choongh and Mr Kimblin, there is no force in Mr Turney’s argument that, upon reconsideration, the inspector might now recommend that Policy Bicester 13 be altered by reducing the number of dwellings in the allocation or adopted with a provision precluding “built development”, but not other forms of development, in the conservation target area. No support for that submission is to be found in his report. Having had all of the planning issues ventilated before him at the examination hearing and having dealt comprehensively with them in his report, he firmly endorsed the allocation of 300 dwellings on the site, concluding that it struck the best balance between housing need and the protection and enhancement of “environmental assets” and finding it consistent with the aim of securing a “net gain in biodiversity . . . from the scheme as a whole” (para 141 of his report). In reaching that conclusion he was obviously rejecting the council’s and objectors’ efforts to have some limit imposed in Policy Bicester 13 on development within the conservation target area as a whole. E

A 44 Para 139 of the report must be read together with the preceding two paragraphs. In those three paragraphs the inspector was considering whether the developable area of the allocated site should be reduced, and if it should, how and why. The only parts of the site that he considered should be subject to any restriction on development under Policy Bicester 13 were the area of just less than 10 hectares within the local wildlife site to the east of Langford Brook (para 137) and the land within flood zone 3 (para 138). He expressly rejected the “requests” that the developable area of the site be reduced by precluding development from the conservation target area as a whole (para 139). He reinforced that conclusion by dismissing the notion of the land to the east of the Langford Brook being retained as public open space or designated as Local Green Space (para 140). And he maintained it after the council had twice queried the first sentence of para 139 in his draft report. He did not seek to qualify it in any way: by differentiating between the various relevant “requests” for a reduction in the developable area presented to him at the examination hearing, or by distinguishing between development of different kinds—for example, between “built development” and other forms of development—or by stating that, in his view, only “built development” should be excluded from this part of the site.

B 45 This does not mean that a particular scheme of development in which “built development” or development of some other kind is proposed within the conservation target area would necessarily be acceptable when submitted as an application for planning permission; merely that Policy Bicester 13 did not have to rule out development in that part of the site in principle. Any scheme would, after all, still have to comply with the local plan’s policy for conservation target areas—Policy ESD 11, as well as the various criteria in Policy Bicester 13 itself. The inspector’s conclusions make this perfectly clear.

C 46 There is, in truth, nothing in the inspector’s report to suggest that he saw any justification for reducing the developable area of the allocated site by including in Policy Bicester 13 either a sentence stating that “built development” should not extend into the conservation target area or a sentence stating that “built development” was precluded in that part of the site but other forms of development were not. To read any such concept into his report would be quite wrong. On the contrary, on a fair reading of his conclusions in paras 135–141, he clearly did not accept there was a need for any reduction in the developable area of the allocated site beyond those to which he referred in paras 137–138. If he had accepted that, he would undoubtedly have said so. And he would have had to explain why. He

D would have had to identify the kinds of development which might be acceptable in the conservation target area and give reasons for excluding the rest. But he did not do that. In fact, in para 139 he set out cogent reasons for reaching the very opposite conclusion—that the developable area of the site did not have to be further reduced by excluding development of any kind from “the whole of the River Ray conservation target area”. In that paragraph he was not confining himself merely to the third party objections. He was addressing the council’s case as well. That, in my view, is clear.

E 47 Patterson J was therefore right to find the inspector’s recommendation irreconcilable with the reasoning in the relevant part of his report, and to conclude that he ought to have recommended the deletion of the contentious provision in Policy Bicester 13. In these circumstances

paragraph 2 of the judge's order was not, in my view, misconceived. On the contrary, it was fully justified, appropriate and necessary. The direction it contains was nothing more or less than was required to correct the inspector's mistake. It gave proper effect to the conclusions he had expressed in his report. It ensured that his recommendation would be consonant with his planning judgment, displayed in those conclusions. It remedied his error in a specific and proportionate way. And it did so without exceeding the court's jurisdiction under section 113(7), (7A) and (7B). A

48 That leaves paragraph 3 of the order. In the particular circumstances of this case, was the judge entitled, and right, to require the council to adopt the corrected Policy Bicester 13, as recommended by the inspector in accordance with paragraph 2 of her order? In my view she was. B

49 As I have said, although the council invited the judge, in effect, to order that the inspector be given the opportunity to reconsider his recommendation on the terms of Policy Bicester 13 after hearing the parties' further representations, it also invited her to order it to adopt whatever "modification" the inspector might then recommend. The precise form of this part of the council's draft order, which was presented to the court below by the council's solicitor, Mr Nigel Bell, as an exhibit to his witness statement dated 12 November 2015, was this—in paragraph 5: "The [council] shall adopt Policy Bicester 13 subject to whatever modification (if any) of Policy Bicester 13 is recommended by the appointed planning inspector." C

50 Two things therefore are clear. First, the council was not opposing, in principle, a mandatory order which required it ultimately to adopt Policy Bicester 13 in whatever form the inspector might recommend. This would of course include a version of Policy Bicester 13 in which the provision precluding "built development" in the conservation target area had been deleted and no restriction on development in that part of the site inserted in its place—the amendment which in my view the inspector ought to have recommended and which the judge was right to direct him to recommend. Mr Bell did not say in his witness statement that the council would, in principle, oppose an order requiring it to adopt the policy in that particular form, whether or not the inspector was required by the court to recommend that course. The council has not appealed against paragraph 3 of the judge's order, or any part of it. Nor does its letter to the court dated 2 August 2016 reveal any misgivings about the order in the light the judge's conclusions in paras 86–88 of her judgment. Secondly, before the judge the council did not seek to keep open the possibility of deciding in the end not to adopt the local plan, or at least not to adopt Policy Bicester 13 in a particular form. It was asking for an order which would effectively compel it to adopt the policy in any event. It was not saying that if the policy were remitted to the inspector and he recommended an amendment in which the provision precluding "built development" in the conservation target area was removed, it would not then—or might not—adopt the policy, or even that it would want to consider non-adoption. Even now, in its letter of 2 August 2016, the inspector having recommended the deletion of this provision in accordance with paragraph 2 of the judge's order, it has not said that. D

51 That being the council's position, I cannot accept Mr Turney's submission that paragraph 3 of the judge's order had the effect of overriding the council's discretion as to adoption under section 23 of the 2004 Act. The draft order presented to the court by the council embodies the exercise of E

A that discretion. The council had manifestly decided to exercise its power to adopt Policy Bicester 13, and to do so even if the policy did not restrict the developable area of the allocated site by precluding “built development” in the conservation target area. Again, the judge was not stepping beyond the limits of the court’s jurisdiction under section 113. Paragraph 3 of her order was not misconceived. With paragraphs 1 and 2 of the order, it provided the logical and complete remedy to the unlawfulness in the plan-making process. It ensured not only that the inspector’s recommendation accurately reflected the conclusions in his report, but also that his recommendation was translated faithfully into the adoption of Policy Bicester 13 in the form it would then have to take.

C *Was the judge’s order at odds with the regime for public participation in plan-making?*

D 52 Mr Turney submitted that the judge ought to have remitted Policy Bicester 13 to the inspector, as the council had sought, requiring him to permit further representations by interested parties on the content of the policy and its drafting. The judge’s order undermines the provisions for public participation in development plan-making under domestic, European Union and international law. It denies Mr Woodfield and others the opportunity to argue for a different outcome in the adopted Policy Bicester 13. Contrary to the statutory scheme in Part 2 of the 2004 Act and Part 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012/767), it prevents public participation in the plan-making process. Because the sustainability appraisal prepared for the local plan under Directive 2001/42/EC of the European Parliament and of the Council

E of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L197, p 30) (“the SEA Directive”) and the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633) (“the SEA Regulations”) had been undertaken on the basis that Policy Bicester 13 would preclude “built development” in the conservation target area, the adoption of the policy in a

F materially different form would be unlawful. It would, said Mr Turney, offend the provisions for effective public participation in article 6(4) and article 7 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) (“the Aarhus Convention”). Further environmental assessment would be necessary before the local plan could be adopted lawfully.

G 53 I cannot accept those submissions.

H 54 As the judge observed in paras 86–88 of her judgment, the statutory plan-making process has in this case run its full course without legal error until its penultimate and final stage, the public has participated fully in the process, the examination hearing was faultlessly conducted, interested parties have had their say, the planning issues arising from the policies in the local plan—including Policy Bicester 13—have been resolved in the light of the representations made. Mr Turney was unable to point to any provision relating to public participation in the 2004 Act and the 2012 Regulations which had not been complied with. The examination does not need to be rerun. The examination hearing does not need to be reopened. The only errors of law lie in the failure by the inspector to translate his conclusions on one aspect of one policy into the recommendation following from those

conclusions, and in the consequent failure of the council to adopt the policy in its proper form. Relief less focused on those errors of law than the order made by the judge would be needlessly wasteful of time and cost. It would be disproportionate. It might also have implications for other policies in the local plan, in particular those providing for the supply of housing in the council's area in the plan period.

55 The submission that the judge's order breaches the requirements of the SEA Directive, the SEA Regulations and the Aarhus Convention is also mistaken. The answer to it was given by the judge at the end of para 88 of her judgment. Policy Bicester 13, amended by the deletion of the provision ruling out "built development" in the conservation target area, will still provide that "[development] must avoid adversely impacting on the conservation target area and comply with the requirements of Policy ESD 11 to secure a net biodiversity gain". The counterpart provision in Policy ESD 11, which appeared in the local plan from the outset, says that "[development] which would prevent the aim of a conservation target area being achieved will not be permitted". Together, these two provisions in the local plan will operate to prevent development which would have any significant environmental effect on the conservation target area, save perhaps for a significant beneficial effect on biodiversity, which was always a prospect inherent in Policy Bicester 13. The policy also contains provisions to protect the local wildlife site and its "ecological value". The assumption on which it was considered in the sustainability appraisal addendum—that it would serve "to protect and enhance biodiversity"—was therefore valid. The inspector's consideration of the policy and the environmental effects of its implementation, in paras 135–141 of his report, was informed by an up to date sustainability appraisal, in which no "likely significant effects on the environment" were left out of account.

### *Conclusion*

56 In my view, for the reasons I have given, the judge exercised her discretion appropriately in the order she made. I see no reason to disturb paragraphs 2 and 3 of that order. I would therefore dismiss this appeal.

**LAWs LJ**

57 I agree.

*Appeal dismissed.*

ALISON SYLVESTER, Barrister

Queen's Bench Division

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## Regina (Bond) v Vale of White Horse District Council

[2019] EWHC 3080 (Admin)

2019 Oct 31;  
Nov 19

Lang J B

*Planning — Local plan — Amendment — Draft local plan adopted with modification reflecting independent examiner's conclusion that removal of certain land from Green Belt not justified — Adopted policies map erroneously showing land in question outside Green Belt — Whether local authority entitled to correct map by resolution — Whether obliged to follow statutory procedure for amending local plan — Whether breaching legitimate expectation with regard to correction — Planning and Compulsory Purchase Act 2004 (c 5) (as amended by Planning Act 2008 (c 29), s 180(2)(b), Sch 13, para 1), ss 15(2)(aa), 20(1), 23(1)(5), 26(1), 113(2) — Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012/767), regs 2(1), 5, 6, 9*

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As part of its preparations for a new local plan, the local authority carried out a review of the Green Belt and proposed that certain parcels of land be released from it, including a parcel ("the disputed land") which incorporated an area of undeveloped land to the rear of the claimant's home of which the claimant and his wife were the freehold owners. On consultation by the local authority, the claimants made representations supporting the release of the disputed land from the Green Belt. Part 1 of the local authority's draft local plan, being a "development plan document" ("DPD") within section 15(2)(aa) of the Planning and Compulsory Purchase Act 2004<sup>1</sup>, was submitted for examination as required by section 20 of the 2004 Act. The submitted draft included proposals that the disputed land and other parcels of land on the edge of settlements should be released from the Green Belt in addition to four larger parcels which were to be allocated for housing, those proposals being set out in a core policy of the plan and reflected in the submissions policies map which accompanied it. The examining inspector concluded that the exceptional circumstances necessary to justify removal from the Green Belt existed only in respect of the four strategic site allocations and that the other parcels of land, including the disputed land, should not be removed from the Green Belt. The local authority published proposed main modifications to the plan to reflect the inspector's findings and subsequently adopted the plan as modified. As a result of an administrative error the adopted policies map was not updated and continued to show the disputed land as falling outside the Green Belt. The local authority initially attempted to correct the error by including a correction in the submissions map which accompanied the submission of Part 2 of its draft local plan, but the claimant disputed the legality of that approach on the basis that the amendment did not relate to any policy in Part 2, and the authority subsequently submitted a note to the inspector indicating that

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<sup>1</sup> Planning and Compulsory Purchase Act 2004, s 15(2)(aa), as inserted: see post, para 34.

S 20(1): "The local planning authority must submit every development plan document to the Secretary of State for independent examination."

S 23(1)(5): see post, para 37.

S 26(1): see post, para 38.

S 113(2): see post, para 59.

- A it would delete the correction and revert to the Green Belt boundary shown on the current adopted policies map. Having invited representations from the claimant, the local authority resolved to make a factual correction to the adopted policies map for Part 1 of the local plan in relation to the boundary of the Green Belt. The claimant sought judicial review of that decision, contending that the 2004 Act and the Town and Country Planning (Local Planning) (England) Regulations 2012<sup>2</sup> did not confer power on the local authority to alter the adopted policies map by a simple resolution, the authority being required instead to use the statutory procedures for modifying a development plan. He further alleged a breach of a legitimate expectation arising from the promise which the local authority had made to the inspector.

On the claim—

- Held*, dismissing the claim, (1) that under the statutory scheme, DPDs were a subset of local development documents (“LDDs”) which, because of their importance, had to be submitted to the Secretary of State for inspection under section 20 of the Planning and Compulsory Purchase Act 2004 prior to adoption, in accordance with the prescribed procedures, whereas an LDD which was not a DPD was of lesser importance and did not have to be submitted for inspection; that, since Part 1 of the local plan was a DPD, and the examining inspector had not approved the proposal to remove the disputed land from the Green Belt and had recommended that Part 1 be modified by deletion of that proposal, the local authority had been required by law to modify Part 1 in accordance with his recommendation before it could adopt Part 1; that, while the amended text of the relevant core policy was capable of giving effect to the local authority’s intended policy in that regard, the adopted policies map which was cross-referenced in the text of that policy, and which was a necessary tool to assist in identifying the Green Belt boundary, was inconsistent with it because, by mistake, it placed the disputed land outside the Green Belt; that the presumption of regularity was therefore displaced; that the adopted policies map was an LDD not a DPD and, as appeared from regulations 5 and 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012, did not form part of the local plan despite the express reference to it in a core policy and its function under regulation 9 of illustrating geographically the application of the policies in the adopted development plan; that, therefore, the inspector did not have the power to recommend main modifications to it; that, however, the local authority’s general powers with regard to the adoption and revision of LDDs, in particular those in sections 23(1)(5) and 26(1) of the 2004 Act, were sufficiently wide to allow a correction to the adopted policies map where, as a result of an error, the map had been drawn up incorrectly; that the authority had not been required to proceed by way of the statutory procedure for amending a local plan, beginning with the preparation of a submission policies map in accordance with the 2012 Regulations, since, by regulation 2(1), such a map was only required to be submitted as a prescribed document alongside the submission of a draft local plan if the adopted policies map would be amended by the accompanying local plan, whereas, in the present case, the relevant local plan policy did not require amendment; that, in those circumstances, the local authority had been entitled lawfully to revise the adopted policies map outside of the process for the adoption of a local plan; and that its resolution to do so, outside the time limit prescribed by section 113 of the 2004 Act for a legal challenge to an adopted plan, was not unlawful since section 113(2) only excluded alternative forms of legal challenge and not the lawful exercise of powers by a local planning authority

<sup>2</sup> Town and Country Planning (Local Planning) (England) Regulations 2012, reg 2(1): see post, para 39.

Reg 5: see post, para 41.

Reg 6: see post, para 42.

Reg 9: see post, para 40.

under sections 23 and 26 of the 2004 Act, and, further, section 113 applied only to the documents listed in subsection (1), such as DPDs, and not to an adopted policies map (post, paras 46–50, 57–59).

(2) That the local authority had made clear representations to the inspector regarding the steps that it would take in the local plan Part 2 process to delete the correction from the accompanying map and revert to the Green Belt boundary shown on the current adopted policies map; that those representations had given rise to a substantive legitimate expectation on the part of the claimant which had been breached when the local authority failed to take those steps; that, however, the claimant had not been not disadvantaged and, in circumstances where the authority had reconsidered its position and decided on an alternative course in the lawful exercise of its powers under sections 23 and 26 of the 2004 Act, and had given the claimant an opportunity to make representations on the revised proposal, there had been no unfairness to him; and that, in circumstances where the adopted policies map was inconsistent with the Green Belt policy which the local authority had ultimately promoted in accordance with the inspector's recommendations which were binding upon it, the authority's decision to resile from its representations and take the necessary steps to correct the mistake in the map was proportionate and lawful, being justified on the grounds of overriding public interest (post, paras 63–68).

The following cases are referred to in the judgment:

*Fox Land and Property Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298, CA

*Jopling v Richmond upon Thames London Borough Council* [2019] EWHC 190 (Admin); [2019] JPL 830

*Paponette v Attorney General of Trinidad and Tobago* [2010] UKPC 32; [2012] 1 AC 1; [2011] 3 WLR 219, PC

*R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] EWCA Civ 473; [2003] QB 1397; [2003] 3 WLR 80, CA

*R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61; [2009] AC 453; [2008] 3 WLR 955; [2008] 4 All ER 1055, HL(E)

*R (Skipton Properties Ltd) v Craven District Council* [2017] EWHC 534 (Admin); [2017] JPL 825

The following additional cases were cited in argument or referred to in the skeleton arguments:

*Phides Estates (Overseas) Ltd v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin)

*R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213; [2000] 2 WLR 622; [2000] 3 All ER 850; [1999] LGR 703, CA

*R (Archway Sheet Metal Works Ltd) v Secretary of State for Communities and Local Government* [2015] EWHC 794 (Admin)

*R (Bhatt Murphy) v Independent Assessor* [2007] EWHC 1495 (Admin); [2007] ACD 75, DC

*R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363; The Times, 14 December 2005, CA

*R (Save Britain's Heritage) v Secretary of State for Communities and Local Government* [2018] EWCA Civ 2137; [2019] 1 WLR 929; [2019] 1 All ER 1117, CA

*R (TW Logistics Ltd) v Tendring District Council* [2013] EWCA Civ 9; [2013] 2 P & CR 9, CA

*R (Tait) v Secretary of State for Communities and Local Government* [2012] EWHC 643 (Admin)

**A** *Solihull Metropolitan Borough Council v Gallagher Estates Ltd* [2014] EWCA Civ 1610; [2015] JPL 713, CA  
*Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13; [2012] PTSR 983, SC(Sc)  
*United Policyholders Group v Attorney General of Trinidad and Tobago* [2016] UKPC 17; [2016] 1 WLR 3383, PC

**B** **CLAIM** for judicial review

By a claim form, and with permission granted on 4 July 2019, the claimant, Douglas Bond, sought judicial review of the decision of the defendant local authority, Vale of White Horse District Council, made on 13 February 2019 to alter the adopted policies map which accompanied Part 1 of the Vale of White Horse Local Plan 2031 so as to show certain land at North Hinksey, part of which was owned by the claimant and his wife, as falling within the Green Belt, instead of outside it, in order to correct a mistake whereby modifications which had been made to Part 1 of the plan as adopted, to give effect to the findings of the examining inspector, had not been accompanied by any corresponding alteration of the map. The grounds of challenge were: (i) that it had been unlawful for the local authority to alter the map by means of a resolution, no such power being conferred by the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012, and it should instead have used the statutory procedures for modifying a development plan; and (ii) by proceeding as it had, the local authority had breached a legitimate expectation arising from a promise which it had made to the inspector in the course of the examination of Part 2 of the local plan.

**E** The facts are stated in the judgment, post, paras 1–25.

*Michael Bedford QC* (instructed by *BDB Pitmans LLP*) for the claimant.  
*Craig Howell Williams QC* and *Caroline Daly* (instructed by *Sharpe Pritchard LLP*) for the local authority.

**F** The court took time for consideration.

19 November 2019. LANG J handed down the following judgment.

**G** 1 The claimant seeks judicial review of the decision of the defendant (“the Council”), made on 13 February 2019, to alter its adopted policies map (“the AP Map”), which accompanied the Vale of White Horse Local Plan 2031 Part 1 (December 2016) (“LPP1”), so as to show land at North Hinksey (“the Disputed Land”) as being within the Green Belt, instead of outside it.

2 Permission to apply for judicial review was granted on the papers on 4 July 2019.

*Facts*

**H** 3 The claimant is a chartered town planner and partner in a planning consultancy. The claimant and his wife are the freehold owners of a parcel of land to the rear of their home and other residential properties on a street called North Hinksey Village. Presently it is undeveloped. It forms part of the larger area of disputed land.

4 Prior to the adoption of LPP1 in December 2016, the Disputed Land was within the designated area of Green Belt, outside the settlement known as North Hinksey Village. The Green Belt around Oxford was approved by the Secretary of State for the Environment in 1975. The inner boundaries of the Green Belt were confirmed by the adoption of local plans and further structure plans confirmed the commitment to the protection of the Green Belt.

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5 By way of preparation for the draft Local Plan 2031, the Council carried out a review of the Green Belt. In the submitted draft LPP1, the Council proposed that the Disputed Land should be released from the Green Belt, along with other parcels of land on the edge of settlements. Additionally, the Council proposed the release of four larger parcels of land as strategic site allocations for housing, in Abingdon, Kennington and Radley. These proposals were referred to in the draft core policy 13 ("CP 13") and the submissions policies map which accompanied it.

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6 The claimant supported the release of the Disputed Land from the Green Belt in his consultation representations.

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7 The draft LPP1 was examined by an inspector (Mr Malcolm Rivett) on behalf of the Secretary of State. The Green Belt proposals were considered during the hearings. In his interim findings, sent in a letter to the Council dated 25 May 2016, the inspector did not support the proposed release of the Disputed Land from the Green Belt. He stated:

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“8.3 Given this situation I consider that it was appropriate for the Council to undertake a review of the Green Belt boundaries and, having regard to all that I have read, heard and seen, I conclude that the exceptional circumstances exist to justify removing from the Green Belt the sites allocated for housing in the plan to the north of Abingdon and at Radley and Kennington (sites 1, 2, 3 and 4) [footnote omitted]. I deal below with the other parcels of land at Abingdon, Radley and Kennington which are proposed for deletion from the Green Belt.

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“8.4 It is the desirability of providing for housing needs in the Abingdon-on-Thames and Oxford Fringe sub-area, in close proximity to Abingdon and Oxford City, that is fundamental to my conclusion that exceptional circumstances exist to justify removing from the Green Belt the sites indicated above. However, in addition, the plan proposes to delete from the Green Belt some 15 or so other parcels of land at Botley, Chawley, North Hinksey, Cumnor, Wootton and Appleton; land which would not be allocated for any particular use. Whilst there is interest in developing some of these parcels of land for housing it has not been argued that any could accommodate the plan’s minimum threshold of 200 dwellings. My conclusion on the appropriateness of this threshold is set out section 13 below.”

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8 After setting out his reasons in some detail, the inspector concluded that the exceptional circumstances necessary to justify removal from the Green Belt only existed in respect of the four strategic site allocations. He found that there were no exceptional circumstances which would justify removing the other proposed parcels of land from the Green Belt, including the Disputed Land at North Hinksey.

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9 The Council published proposed main modifications in July 2016, including MM16 relating to CP 13, to give effect to the inspector’s findings.

A Ms Holly Jones, planning policy manager at the Council, whose evidence I accept, summarised the relevant amendments:

“27. The Council published some proposed main modifications in July 2016 ... including ‘MM16’ relating to CP 13: The Oxford Green Belt, and proposed: ‘Modify CP 13: The Oxford Green Belt: Delete “Farmoor” from the list of inset villages. Development will be permitted in the following settlements, which are inset to the Green Belt (as shown on the adopted policies map), where the proposed development is within the existing built area of the village and in accordance with Core Policies 3 and 4: • Appleton • Botley • Cumnor • Farmoor • Kennington • NORTH HINKSEY • Radley and • Wootton.’

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“28. The reason for making the main modification to include ‘North Hinksey’ within the list of inset villages was to provide clarity and consistency as the area of North Hinksey had previously been denominated as falling within Botley. As parts of North Hinksey itself were already inset to the Green Belt, a change to the policy was put forward to ensure that development would not be precluded in the area already inset in accordance with policy CP 13. This modification bears no relation to the North Hinksey land and its status within the Green Belt.

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“29. In MM16, amendments were also proposed to the supporting text at paragraphs 5.41 and 5.42 to ‘reflect the inspector’s interim findings’ ... The modifications made clear that the plan altered the Green Belt boundary only in relation to land at ‘Abingdon, Kennington and Radley to be allocated as new strategic housing allocations, as shown in Appendix I’. Additionally, MM81 inserted a new appendix I to the local plan appendices ‘to show the changes to the green belt included in the local plan’. Appendix I is shown at figure B18 in the Schedule of Main Modifications ... The proposed sites for release are outlined in blue and shaded in red. The map shows only the four strategic housing sites at Abingdon, Radley and Kennington as those to be removed from the Green Belt.”

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10 The Council consulted on the LPP1 main modifications for eight weeks from 20 July 2016 to 14 September 2016. Having considered the representations made, the inspector published his “Report to Vale of White Horse District Council” in November 2016. At paras 76–88, the inspector set out his reasons for concluding that exceptional circumstances existed to justify removal from the Green Belt of strategic site allocation 1, 2, 3 and 4. At paras 89–102, he set out his reasons for concluding that exceptional circumstances did not exist for removal from the Green Belt of the other parcels of land originally proposed by the Council, including the Disputed Land. His conclusions were confirmed by MM13, set out in the list of main Modifications in Appendix 1 to the report.

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11 The Council adopted LPP1 on 14 December 2016.

12 CP 13 of LPP1 states:

“Oxford Green Belt area in the Vale, as amended following the local Green Belt review, will continue to be protected to maintain its openness and permanence. Development will be permitted in the following settlements, which are inset to the Green Belt (as shown on

the adopted policies map), where the proposed development is within the existing built area of the village and in accordance with core policies 3 and 4:

- Appleton
- Botley
- Cumnor
- Kennington
- North Hinksey
- Radley, and
- Wootton.”

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13 Paras 5.41 and 5.42 of the supporting text to CP13 state:

“5.41 The local Green Belt Review assessed land around inset settlements in the Vale against the purposes of the Green Belt and the considerations of the [National Planning Policy Framework]. Having regard to that assessment, and housing needs the Council concluded that the exceptional circumstances exist to justify removing from the Green Belt a number of parcels of land.

“5.42 This plan has therefore altered the Green Belt boundary to remove land from the Green Belt at Abingdon, Kennington and Radley to be allocated as new strategic housing allocations, as shown in Appendix I.”

14 Appendix I does not show the Disputed Land to be one of the sites for release from the Green Belt. However, the AP Map, which was intended to illustrate the policy in CP 13, showed the Disputed Land as part of the North Hinksey settlement, falling outside the Green Belt. Ms Jones’s explanation for the error in the AP Map was:

“45. Unfortunately, at the time LPP1 was adopted, the North Hinksey land in the adopted policies map, due to an administrative error, was not updated from the submission policies map (which showed it as falling outside of the Green Belt consistently with the Council’s then proposals for more comprehensive Green Belt release than that accepted by the inspector) to show that the land remained within the Green Belt.”

15 The Council attempted to correct the error in the AP Map by including a correction in the submissions map which accompanied the submission of the draft Local Plan 2031 Part 2 (“LPP2”). The title included the text “includes correction to Green Belt Boundary at North Hinksey Village”. A green line and green stipple delineated the extent of the Green Belt. The boundary between the Green Belt and the settlement of North Hinksey was altered so as to exclude the Disputed Land from the settlement of North Hinksey and to include it within the Green Belt. The Disputed Land was marked with green stipple.

16 The claimant made a written representation challenging the lawfulness of the Council’s approach, on the basis that the amendment did not relate to any policy in LPP2. It only related to LPP1, and the time period for challenging the lawfulness of LPP1 under section 113 of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) expired on 26 January 2017. The Council responded in its “Summary of Representations” to the consultation:

A        “The [AP Map] is updated to correct a factual error that follows the examination of the Part 1 plan. This does not relate to the Part 2 plan and no change is proposed as part of the Part 2 process. The policies map accompanying the Part 2 plan has been updated to make this clearer.”

B        17 The claimant then made a written statement to the inspector (David Reed) responsible for examining the draft LPP2, which was drafted by counsel on his behalf, submitting that the Council had no power to correct the AP Map in this manner.

B        18 On 3 July 2018, the Council submitted a note to the inspector in the following terms:

C        “NOTE FOR INSPECTOR  
“RE REPRESENTATION MADE BY MR DOUGLAS BOND  
“IN RELATION TO QUESTION 1.5 OF MATTER 1  
“3 JULY 2018  
“The Council has reviewed the written statement received from Mr Douglas Bond to inform the discussion of Matter 1, and in particular in relation to question 1.5 ‘Has the preparation of the LPP2 complied with the 2004 Planning and Compulsory Purchase Act and the relevant Regulations?’.

D        “Without prejudice, the Council propose to delete the correction as identified on the submitted ‘Draft Adopted Policies Map—Abingdon-on-Thames and Oxford Fringe Sub-Area’ (CSD06) which arose from the Part 1 process. For clarity this includes:

E        • Deleting the wording ‘Includes correction to Green Belt Boundary at North Hinksey Village’ from the title of the map; and  
• Revert the correction to the Green Belt boundary at North Hinksey village to that shown on the current Adopted Policies Map (December 2016).”

F        19 There were no further representations from the claimant or the Council regarding this matter during the LPP2 examination.

F        20 There was an exchange of e-mails between the Council and the claimant in September 2018 in which the claimant was pressing for the AP Map for LPP2 to be amended, in accordance with the Council’s note of 3 July 2018, and the Council’s planning officer confirmed that “the error will be corrected in the near future”.

G        21 On 8 November 2018, the Council’s planning officer e-mailed the claimant stating that, following a comprehensive review of the AP Map, it had been updated by officers to correct any factual errors and the AP Map would be considered by cabinet in December 2018.

H        22 On 16 November 2018, the claimant sent a pre-action protocol letter to the Council’s head of legal and democratic services stating that it would challenge any decision by the cabinet to approve an alteration to the AP Map as it was when LPP1 was adopted in December 2016.

H        23 On 19 December 2018, the inspector wrote to the Council stating, *inter alia*: “Note: The Council is reminded of the commitment to withdraw the correction to the Green Belt boundary at North Hinksey village from the policies map accompanying the LPP2.”

H        24 The Council deferred the matter until February 2019, when a report was presented to the cabinet by the head of planning recommending that

it should make a factual correction to the LPP1 AP Map in relation to the A Green Belt boundary. The report stated, at paras 2–22:

“2. The Council’s Adopted Policies Map must illustrate geographically the application of the policies in the adopted development plan. The map contains a wide range of designations, including:

- Strategic housing allocations
- Strategic employment sites
- Safeguarded land for highways improvements
- Development boundaries for the main settlements
- Green Belt boundaries
- North Wessex Downs Area of Outstanding Natural Beauty
- Special Areas of Conservation
- Sites of Special Scientific Interest
- Nature reserves, and
- Conservation areas.

“3. The Adopted Policies Map is generally updated alongside the examination of a local plan. The most recent update to the Adopted Policies Map was in December 2016, alongside the adoption of Local Plan 2031 Part 1, and included significant changes such as the allocation of strategic housing sites and amendments to the Green Belt boundary. However, as a local development document, the Adopted Policies Map may be modified or revised at any time by resolution of a local planning authority outside of the local plan process. [See section 23 and section 26 of the Planning and Compulsory Purchase Act 2004.]

“4. Since the adoption of Local Plan 2031 Part 1, a factual error has been identified on the Adopted Policies Map for the Green Belt boundary at North Hinksey Village. This error related to a proposed change to the Green Belt within the submission version of the Local Plan 2031: Part 1 that was not carried through into the final version of the plan following examination and the inspector’s final report.

“5. The Council proposed a number of changes to the Oxford Green Belt through the Part 1 plan, some of which were supported by the planning inspector presiding over the Part 1 plan, and others that were not. The inspector concluded that exceptional circumstances to justify changes to the Green Belt were demonstrated for four strategic site allocations in the Part 1 plan (north of Abingdon-on-Thames; north-west of Abingdon-on-Thames; north-west Radley; and south of Kennington, in the parish of Radley).

“6. For the remaining parcels of land that were proposed by the Council to be released from the Green Belt, the inspector concluded that exceptional circumstances did not exist, and that these parcels of land should remain within the Green Belt.

“7. Following examination of the Part 1 plan, the draft Part 1 plan and the draft Adopted Policies Map were updated to take account of the inspector’s recommendations in his report. During this process, a factual error resulted in one parcel of land at North Hinksey remaining excluded from the Green Belt on the Adopted Policies Map.

“8. The policy position regarding the Green Belt is set out at policy CP 13 (Appendix 2) and its supporting text. Policy CP 13 provides

A that the Oxford Green Belt area in the Vale 'as amended following the local Green Belt Review, will continue to be protected to maintain its openness and permanence'. Policy CP 13 also states as follows: 'Development will be permitted in the following settlements, which are inset to the Green Belt (as shown on the Adopted Policies Map), where the proposed development is within the existing built area of the village and in accordance with core policies 3 and 4:

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- Appleton
- Botley
- Cumnor
- Kennington
- North Hinksey
- Radley, and
- Wootton.'

C "9. Paras 5.41 and 5.42 of the supporting text to policy CP 13 provide further information regarding the amendments accepted by the inspector following the Green Belt Review, explaining that LPP1 had the effect of altering the Green Belt boundary to 'remove land from the Green Belt at Abingdon, Kennington and Radley to be allocated as new strategic housing allocations, as shown in Appendix I'. North Hinksey is not listed as an area subject to Green Belt release through the Part 1 plan. Appendix I does not show the land at North Hinksey denominated as one of the 'proposed sites for release' from the Green Belt (Appendix 2).

D "10. As set out above, the Adopted Policies Map incorrectly shows that the land at North Hinksey is excluded from the Green Belt and within the 'inset' settlement of North Hinksey. It is an administrative factual error that the deletion of this site from the Green Belt remained on the Adopted Policies Map.

E "11. The proposed correction to the Adopted Policies Map is shown by (Appendix 1).

F "12. The Council initially proposed to correct this error via the Part 2 plan process, through the revised version of the Adopted Policies Map that is proposed to be adopted in due course to accompany and reflect the Part 2 plan. However, a representation was received that sought to challenge the lawfulness of this approach, principally on the basis that the amendment did not relate to the Part 2 plan itself but rather was a correction relating to the map that accompanied the Part 1 plan.

G "13. In the light of the representation made, the Council made a decision to issue a statement (HEAR01.1), in the form of a hearing document, during the Part 2 plan examination, which stated that it would: 'without prejudice' 'delete the correction as identified on the submitted "Draft Adopted Policies Map—Abingdon-on-Thames and Oxford Fringe Sub Area" [CSD06: Draft Adopted Policies Map—Abingdon-on-Thames and Oxford Fringe Sub-Area (Submission Version) February 2018] which arose from the Part 1 process' (Appendix 1). The Council did not make any further statement or representation on this matter during the Part 2 plan examination.

H "14. The planning inspector presiding over the Part 2 plan has reminded the Council in his letter dated 19 December 2018: 'of the commitment to withdraw the correction of the Green Belt boundary at North Hinksey village from the policies map accompanying the LPPS

[HEAR01.1: Note for inspector re representation made by Mr Douglas Bond in relation to Question 1.5 of Matter 1. 3 July 2018] (Appendix 3).<sup>A</sup>

“Options

“15. There are two logical options; to make or not make the change to the Adopted Policies Map to correct the error.

“16. Officers consider that it is proactive and transparent to consider and make the change and correct the error now given that it has been brought to officers’ attention. To not make the change and leave the Adopted Policies Map with the error in place would result in the Adopted Policies Map not, as it should, illustrating geographically the application of policies in the local plan. Officers believe it is better to deal with the matter now and consider and determine the correction by cabinet and the Council. This matter is discussed further under the ‘Risks’ heading set out below.”<sup>B</sup>

“Risks

“20. Officers consider that there is risk of legal challenge if a decision is taken to make the correction. This is on the basis that the lawfulness of such a decision has been questioned by the owner of some of the land affected by the proposed correction, who has notified the council of a proposed claim for judicial review if the map is amended. In particular, it is claimed that there is no legal power to change the Adopted Policies Map otherwise than by the preparation of a Submission Policies Map through a local plan process in accordance with the provisions set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. It is also claimed that the Council made a ‘public promise’ that it would not pursue its earlier proposals to change the Adopted Policies Map through the Part 2 plan process and it is said that any breach of that promise would constitute a breach of the proposed claimant’s legitimate expectation and/or an abuse of the Council’s power.<sup>C</sup>

“21. As stated above, the Council has taken external legal advice on this matter, and for the reasons stated in the report it is considered that it would be both lawful and proper for the map to be corrected by the Council resolution.<sup>F</sup>

“Conclusion

“22. It is recommended that cabinet recommend to Council to confirm their agreement to make a factual correction to the Council’s Adopted Policies Map in relation to the boundary of the Green Belt at North Hinksey village. This is believed to be an appropriate and transparent approach in dealing with this administrative error.”<sup>G</sup>

25 The claimant attended the cabinet meeting on 4 February 2019 and made oral representations against the officer’s recommendation. At the Council meeting on 13 February 2019, the Council accepted the officer’s recommendation and resolved

“to agree to make a factual correction to the Council’s Adopted Local Plan Part 1 policies map in relation to the boundary of the Green Belt at North Hinksey Village, as set out in Appendix 1 to the head of planning’s report to Cabinet on 4 February 2019”.<sup>H</sup>

A 26 On 25 June 2019, Inspector Reed issued his “Report on the examination of the Vale of White House Local Plan 2031: Part Two”, which stated at para 11:

“On the submissions policies map the Council included a ‘correction’ to the Green Belt boundary at North Hinksey Village. However, this did not relate to any proposal in the LPP2 and was not therefore considered during the examination. The Council confirmed, without prejudice, that it would delete the correction on the submitted map.”

B 27 Regrettably, the Council did not inform the inspector of its decision of 13 February 2019.

C 28 The North Hinksey Parish Neighbourhood Plan 2019–2031, dated January 2019, included Map 1.2 which showed the Disputed Land within the Green Belt boundary. The claimant submitted representations to the effect that the map was incorrect, and it should be revised to reflect the AP Plan as at December 2016. An examiner was appointed by the Council and received representations from, *inter alia*, North Hinksey Parish Council and the Council, submitting that the map was correctly drawn. The examiner, in his report of 31 July 2019, determined, at para 7.99, that North Hinksey Parish Council had correctly identified the boundaries of the Green Belt in the North Hinksey Parish Neighbourhood Plan.

#### *Grounds of challenge*

##### *Ground 1*

E 29 The claimant contended that, under the PCPA 2004 and the Town and Country Planning (Local Planning) (England) Regulations 2012, the Council had no power to alter the AP Map by a simple resolution of the Council. Instead, the Council was required to use the statutory procedures for modifying a development plan, which involve public participation and independent scrutiny.

F 30 In response, the Council submitted that the AP Map mistakenly showed the Disputed Land as outside the Green Belt, which was contrary to CP 13 of LPP1. The defendant was entitled to correct the error in the AP Map by a simple resolution of the Council, pursuant to the provisions of the PCPA 2004 and the 2012 Regulations.

##### *Ground 2*

G 31 The claimant submitted that the Council’s representations, dated 3 July 2018, to the inspector during the “LPP2” gave rise to a legitimate expectation that the Council would, in the LPP2 process: (i) delete the wording “Includes correction to Green Belt Boundary at North Hinksey Village” from the title of the draft Adopted Policies Map submitted with LPP2; (ii) revert the correction to the Green Belt boundary at North Hinksey Village to that shown on the current AP Map (December 2016).

H 32 The claimant submitted that the Council failed to honour these promises, and its decision not to do so was unfair, disproportionate and not in the public interest.

33 The Council accepted that it had not altered the draft AP Map in accordance with the note of 3 July 2018. It submitted that it was justified in resiling from the representations in the note because, in law, the AP Map had

to illustrate accurately the Green Belt policies in LPP1. The Council's actions were not unfair to the claimant, and in any event, there was an overriding public interest in correcting the error and ensuring consistency. A

*Ground 1*

*(1) The statutory scheme*

34 By section 15 of the PCPA 2004 the local planning authority is required to prepare and maintain a “local development scheme”: subsection (1). Among other matters, the scheme has to specify which local development documents (“LDD”) are to be development plan documents (“DPD”): subsection (2)(aa), as inserted. B

35 Section 17 of the PCPA 2004 (as amended by section 180(3)(b)(d) of the Planning Act 2008, section 147(3) of the Housing and Planning Act 2016 and section 10 of and paragraph 9 of Schedule 2 to the Neighbourhood Planning Act 2017) provides, so far as is material: C

“(3) The local planning authority’s local development documents must (taken as a whole) set out the authority’s policies (however expressed) relating to the development and use of land in their area.” D

“(7) Regulations under this section may prescribe— (za) which descriptions of documents are, or if prepared are, to be prepared as local development documents; (a) which descriptions of local development documents are development plan documents; (b) the form and content of the local development documents; (c) the time at which any step in the preparation of any such document must be taken. E

“(8) A document is a local development document only in so far as it or any part of it— (a) is adopted by resolution of the local planning authority as a local development document; (b) is approved by the Secretary of State under section 21 or 27; (c) is approved by the Mayor of London under paragraph 2 of Schedule A1; (d) is approved by a combined authority under paragraph 6 of that Schedule; (e) is approved by an upper-tier county council (as defined in that Schedule) under paragraph 7C of that Schedule.” F

36 Section 20(1) of the PCPA 2004 provides that the local planning authority must submit every DPD to the Secretary of State for independent examination. The purposes of an independent examination are set out in subsection (5). If the examiner recommends modifications to a DPD, the local planning authority can only adopt it with the recommended modifications, or decide not to adopt the plan at all. It cannot lawfully override the views of the examiner. G

37 Section 23 of the PCPA 2004 (as amended by section 112(3) of the Localism Act 2011) provides:

“(1) The local planning authority may adopt a local development document (other than a development plan document) either as originally prepared or as modified to take account of— (a) any representations made in relation to the document; (b) any other matter they think is relevant. H

“(2) If the person appointed to carry out the independent examination of a development plan document recommends that it is

A adopted, the authority may adopt the document— (a) as it is, or (b) with modifications that (taken together) do not materially affect the policies set out in it.

“(2A) Subsection (3) applies if the person appointed to carry out the independent examination of a development plan document— (a) recommends non-adoption, and (b) under section 20(7C) recommends modifications (‘the main modifications’).

B “(3) The authority may adopt the document— (a) with the main modifications, or (b) with the main modifications and additional modifications if the additional modifications (taken together) do not materially affect the policies that would be set out in the document if it was adopted with the main modifications but no other modifications.

C “(4) The authority must not adopt a development plan document unless they do so in accordance with subsection (2) or (3).

“(5) A document is adopted for the purposes of this section if it is adopted by resolution of the authority.”

38 Section 26(1) of the PCPA 2004 provides: “(1) The local planning authority may at any time prepare a revision of a local development document.”

D 39 Regulation 2(1) of the 2012 Regulations defines adopted policies maps, submission policies map and local plans:

“‘adopted policies map’ means a document of the description referred to in regulation 9 ...”

E “‘local plan’ means any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b), and for the purposes of section 17(7)(a) of the Act these documents are prescribed as development plan documents ...”

“‘submission policies map’ means a map which accompanies a local plan submitted to the Secretary of State under section 20(1) of the Act and which shows how the adopted policies map would be amended by the accompanying local plan, if it were adopted ...”

F 40 Regulation 9 states:

“*Form and content of the adopted policies map*

G “(1) The adopted policies map must be comprised of, or contain, a map of the local planning authority’s area which must— (a) be reproduced from, or be based on, an Ordnance Survey map; (b) include an explanation of any symbol or notation which it uses; and (c) illustrate geographically the application of the policies in the adopted development plan.

“(2) Where the adopted policies map consists of text and maps, the text prevails if the map and text conflict.”

41 Regulation 5 states:

H “*Local development documents*

“(1) For the purposes of section 17(7)(za) of the Act the documents which are to be prepared as local development documents are— (a) any document prepared by a local planning authority individually or in co-operation with one or more other local planning authorities, which contains statements regarding one or more of the following— (i) the

development and use of land which the local planning authority wish to encourage during any specified period; (ii) the allocation of sites for a particular type of development or use; (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission; (b) *where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted.*

“(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are— (a) any document which— (i) relates only to part of the area of the local planning authority; (ii) identifies that area as an area of significant change or special conservation; and (iii) contains the local planning authority’s policies in relation to the area; and (b) any other document which includes a site allocation policy.” (Emphasis added.)

42 Regulation 6 provides: “*Local plans* Any document of the description referred to in regulation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b) is a local plan.”

43 Thus, the “local plan” does not include maps coming within regulation 5(1)(b), namely, an AP Map and/or a submissions policy map.

44 Regulation 17 provides:

“proposed submission documents” means the following documents— (a) the local plan which the local planning authority propose to submit to the Secretary of State, (b) if the adoption of the local plan would result in changes to the adopted policies map, a submission policies map ...”

45 Regulation 22(1) provides:

“*Submission of documents and information to the Secretary of State*”

“(1) The documents prescribed for the purposes of section 20(3) of the Act are— (a) the sustainability appraisal report; (b) a submission policies map if the adoption of the local plan would result in changes to the adopted policies map ...”

(2) *Conclusions*

46 Under the statutory scheme, DPDs (and supplementary planning documents which are not relevant to this claim) are subsets of LDDs. Because of its importance, a DPD has to be submitted to the Secretary of State for inspection under section 20 of PCPA 2004, prior to adoption, in accordance with the prescribed procedures. However, an LDD which is not a DPD does not have to be submitted for inspection under the section 20 of PCPA 2004 procedure, as it is of lesser importance. The distinction was helpfully summarised by Jay J in *R (Skipton Properties Ltd) v Craven District Council* [2017] JPL 825, paras 15–17 and 23.

47 In this case, LPP1 was a DPD, which came within the definition of a local plan, and which was submitted for inspection by the Council, in

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**A** accordance with section 20 of the PCPA 2004. The inspector did not approve the Council's proposal that the Disputed Land be removed from the Green Belt, and recommended that LPP1 be modified by deletion of this proposal. The Council was required by law to modify LPP1 in accordance with the examining inspector's recommendation before it could adopt it. There is no evidence to suggest that the Council had any intention other than to comply with the inspector's recommendation.

**B** 48 In my view, the text of policy CP 13 was capable of giving effect to the Council's intended policy because it merely referred to the settlement of North Hinksey without suggesting that it included the Disputed Land. Furthermore, the description of the amendments made to the Green Belt, in the supporting text and illustrated in red in the map at Appendix I, accurately reflected the policy only to release the four strategic site allocations from the

**C** Green Belt.

**D** 49 However, the AP Map which was cross-referenced in the text of policy CP 13, and which was a necessary tool to assist in identifying the Green Belt boundary, was inconsistent with the Council's policy because it clearly did include the Disputed Land as within the North Hinksey settlement, and outside the Green Belt, indicating an amendment to the Green Belt boundary. I accept the Council's evidence that, by mistake, the AP Map was not altered in line with the inspector's recommendation and the main modifications, prior to adoption of LPP1. There is no other plausible explanation for the inconsistency. In my view, the evidence and the inconsistency displaces the presumption of regularity, upon which the claimant relied.

**E** 50 It was common ground before me that the AP Map was an LDD, not a DPD. An AP Map does not come within the description of a DPD under the statutory provisions set out above. It is also clear from regulations 5 and 6 that the AP Map does not form part of the local plan, despite the express reference to it in policy CP 13, and despite its function to "illustrate geographically the application of the policies in the adopted development plan": regulation 9.

**F** 51 The status of an AP Map has been considered in two cases. In *Fox Land and Property v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298 the following was said in relation to AP maps, at para 28:

**G** "The Proposals Map is not itself policy, but it illustrates detailed policies, to use the term in section 36(6)(a) of the 1990 Act. In particular, it identifies the geographical areas to which the detailed policies apply. Just as the supporting text is relevant to the interpretation of a policy, so the Proposals Map is relevant to the geographical scope of application of a policy and thus to a proper understanding of the policy. One looks at the supporting text and the Proposals Map not because they are themselves policy—they are not—but because of their relevance to a proper understanding of the policies properly so-called."

**H** 52 In *Jopling v Richmond upon Thames London Borough Council* [2019] JPL 830, paras 14–15 and 20 Waksman J referred to the proper scope of an AP map:

"14. By regulation 2(1) and (9) of the 2012 Regulations, an 'adopted policies map' is a map which, among other things,

illustrates geographically the application of the policies in the adopted development plan. It follows that the adopted policies map itself is not a DPD.

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“15. The reason for this is clear, in my view. The map is simply a geographical illustration or representation of policies themselves contained in the local plan upon which it is parasitic. Any allocation or designation of a particular area of land will therefore be found in the local plan itself. It follows that if changes to the map are entailed by a change to the published local plan as contained in the final version recommended by the inspector, if the [local planning authority] adopt the plan it must make any changes to the map which are necessary to render it consistent with it.”

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“20. The fact that the inspector should not propose modifications to the map (for example to alter boundaries or demarcations or make other such changes to the details) is because there is no need; his job is to deal with the primary question of the relevant policies contained in the local plan, but those policies will include any particular designation of an area along with the criteria for achieving such a designation; that is consistent with the reference in regulation 5(1)(a)(ii) and (iv) to include site allocations.”

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53 The “Planning Inspectorate Procedural Practice in the Examination of Local Plans” gives the following guidance in relation to AP maps:

“5.24 The inspector examines the plan (including any addendum of focused changes he/she accepts ‘as submitted’. Where the inspector identifies that there may be a need for [main modifications (‘MMs’)] to the plan in order to resolve problems that would otherwise make the plan unsound or not legally compliant, the nature and likely extent of the MMs should be fully discussed at the hearings. These may consist of redrafted text, the omission of a policy or section of text (or the inclusion of a new one). It should be noted that the policies map is not a development plan document and therefore it is not appropriate for inspectors to recommend MMs to it. Rather the role of the policies map is to illustrate geographically the application of policies in the plan and it will be for LPAs to update this to ensure consistency with the adopted plan.”

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54 Consistently with the approach in these cases, the inspector’s final report, at paras 6–9, referred to the AP Map, confirming that:

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“The policies map is not defined in statute as a development plan document and so I do not have the power to recommend main modifications to it. However, a number of the main modifications to the plan’s policies which I am recommending require further corresponding changes to be made to the policies map ...”

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55 In the section of the report addressing the reasons for not removing the Disputed Land and other proposed parcels of land from the Green Belt, the inspector made the following observations about the maps:

“101. Finally in relation to the Green Belt is the issue of the clarity of the submitted plan and the extent to which I can be assured that, at the time of the ‘publication stage’ consultation, people were fully aware

**A** of the extent of revision of the Green Belt boundaries proposed. It is the case that, as submitted, the plan does not specifically list or otherwise identify the parcels of land proposed for removal from the Green Belt. However, in relation to housing allocation sites 1, 2, 3 and 4, the plan and the policies map are very clear that housing is proposed for these sites and it appears unlikely to me that anybody with an interest in the matter was unaware of this proposed change.

**B** “102. The submitted plan is much less clear about the other changes proposed to the Green Belt, many of which are extremely difficult to identify on the policies map as submitted and several of which are not even shown due to drafting errors. However, whilst I cannot be assured that all interested parties were fully aware of the extent of the changes proposed, in reality this matters little as I am recommending modification to the plan to retain the existing Green Belt boundaries other than in respect of housing allocation sites 1, 2, 3 and 4. The Council has proposed changes to the policies map (consulted on as MM81) to clearly show the changes to the boundaries of the Green Belt which would be effected by the plan, as it is proposed to be modified.”

**D** 56 In these paragraphs, the inspector acknowledged that the plan did not list the parcels of land considered under CP 13, and that the maps lacked clarity and contained drafting errors. However, he concluded that it was clear from the text in the plan and the revised AP Map that the only changes to the Green Belt were the removal of the four housing allocation sites.

**E** 57 In my judgment, Mr Howell Williams QC correctly submitted that the powers under sections 23(1), 23(5) and 26(1) of PCPA 2004 are sufficiently wide to allow a correction to the AP Map by the Council where, as a result of an error, the map has been drawn up incorrectly.

58 I do not accept the claimant’s submission that the only legal power available to the Council to correct the AP Map is by following the statutory procedure for amending a local plan, beginning with the preparation of a submission policies map in accordance with the 2012 Regulations.

**F** A submission policies map is only required to be submitted as a prescribed document alongside the submission of a draft local plan to the Secretary of State if “the adopted policies map would be amended by the accompanying local plan, if it were adopted”: regulation 2(1) of the 2012 Regulations. However, in this case, the local plan policy does not require amendment. In these circumstances, I do not consider that the Council is required to embark upon the elaborate process of amending a local plan. Instead, it may, by virtue of the general powers in sections 23(1), 23(5) and 26(1) of the PCPA 2004, lawfully revise the AP Map outside of the process for the adoption of a local plan. This was the course adopted by the Council at its meeting in February 2019, which I have concluded was lawful.

**H** 59 The claimant submitted that the resolution of February 2019 was unlawful because subsection 113(2) of the PCPA 2004 provides that an adopted local plan “must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section”. The time period for a challenge under section 113 is six weeks, which had long expired by the date of the resolution. In my judgment, subsection 113(2) excludes alternative forms of legal challenge, not the lawful exercise of powers by a local planning authority under sections 23 and 26 of the PCPA 2004.

Furthermore, section 113 of PCPA 2004 only applies to the documents listed in subsection (1), such as a DPD. It does not include an AP Map. A

*Ground 2*

*(1) The law on legitimate expectation*

60 A legitimate expectation may arise from an express promise given on behalf of a public authority, or impliedly from the existence of a regular practice which the claimant can reasonably expect to continue. B

61 In *R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] AC 453, para 60 Lord Hoffmann said:

“It is clear that in a case such as the present, a claim to a legitimate expectation can be based only upon a promise which is ‘clear, unambiguous and devoid of relevant qualification’: see Bingham LJ in *R v Inland Revenue Comrs, Ex p MFK Underwriting Agents Ltd* [1990] 1 WLR 1545, 1569. It is not essential that the applicant should have relied upon the promise to his detriment, although this is a relevant consideration in deciding whether the adoption of a policy in conflict with the promise would be an abuse of power and such a change of policy may be justified in the public interest, particularly in the area of what Laws LJ called ‘the macro-political field’: see *R v Secretary of State for Education and Employment, Ex p Begbie* [2000] 1 WLR 1115, 1131.” C

In considering whether the representations relied upon to found the legitimate expectation were “clear, unambiguous and devoid of relevant qualification”, the question is how, on a fair reading of the promise, it would have been reasonably understood to those to whom it was made: see *R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397, para 56, per Dyson LJ. D

62 In *Paponette v Attorney General of Trinidad and Tobago* [2012] 1 AC 1 Lord Dyson summarised the principles to be applied when considering the circumstances in which a public body may be entitled to frustrate a substantive legitimate expectation, at paras 34, 36–38 and 42: E

“34. The more difficult question is whether the government was entitled to frustrate the legitimate expectation that had been created by its representations. In recent years, there has been considerable case law in England and Wales in relation to the circumstances in which a public authority is entitled to frustrate a substantive legitimate expectation. Some of it was referred to by Warner JA in her judgment. The leading case is *R v North and East Devon Health Authority, Ex p Coughlan* [2001] QB 213. Lord Woolf MR, giving the judgment of the Court of Appeal said, at para 57: ‘Where the court considers that a lawful promise or practice has induced a legitimate expectation of a *benefit which is substantive*, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy.’” G

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**A** “36. The critical question in this part of the case is whether there was a sufficient public interest to override the legitimate expectation to which the representations had given rise. This raises the further question as to the burden of proof in cases of frustration of a legitimate expectation.

**B** “37. The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation. It is for the authority to identify any overriding interest on which it relies to justify the frustration of the expectation. It will then be a matter for the court to weigh the requirements of fairness against that interest.

**C** “38. If the authority does not place material before the court to justify its frustration of the expectation, it runs the risk that the court will conclude that there is no sufficient public interest and that in consequence its conduct is so unfair as to amount to an abuse of power. The Board agrees with the observation of Laws LJ in *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 at [68]: ‘The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances.’ It is for the authority to prove that its failure or refusal to honour its promises was justified in the public interest. There is no burden on the applicant to prove that the failure or refusal was not justified.”

**D** “42. It follows that, unless an authority provides evidence to explain why it has acted in breach of a representation or promise made to an applicant, it is unlikely to be able to establish any overriding public interest to defeat the applicant’s legitimate expectation. Without evidence, the court is unlikely to be willing to draw an inference in favour of the authority. This is no mere technical point. The breach of a representation or promise on which an applicant has relied often, though not necessarily, to his detriment is a serious matter. Fairness, as well as the principle of good administration, demands that it needs to be justified. Often, it is only the authority that knows why it has gone back on its promise. At the very least, the authority will always be better placed than the applicant to give the reasons for its change of position. If it wishes to justify its act by reference to some overriding public interest, it must provide the material on which it relies. In particular, it must give details of the public interest so that the court can decide how to strike the balance of fairness between the interest of the applicant and the overriding interest relied on by the authority. As Schiemann LJ put it in *R (Bibi) v Newham London Borough Council* [2002] 1 WLR 237, para 59, where an authority decides not to give effect to a legitimate expectation, it must ‘articulate its reasons so that their propriety may be tested by the court’.”

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**(2) Conclusions****A**

63 In my judgment, the note which the Council submitted to the inspector on 3 July 2018 contained two clear representations that the Council would take the following steps in the LPP2 process: (i) delete the wording “Includes correction to Green Belt Boundary at North Hinksey Village” from the title of the draft Adopted Policies Map submitted with LPP2; and (ii) revert the correction to the Green Belt boundary at North Hinksey Village to that shown on the current AP Map (December 2016).

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64 In my judgment, these representations did give rise to a substantive legitimate expectation on the part of the claimant which was breached when the Council failed to comply with them.

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65 Following the note of 3 July 2018, the Council did not pursue its attempt to correct the AP Map within the LPP2 process, and to that extent, the claimant was not disadvantaged. As the claimant himself submitted to the LPP2 inspector, such a course was not appropriate as there was no relevant policy under consideration in the LPP2 examination. The inspector had no jurisdiction in respect of the AP Map. The inspector confirmed in his report that the correction of the AP Map “did not relate to any proposal in the LPP2 and was not therefore considered during the examination”.

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66 The Council reconsidered its position and decided on an alternative course, in the lawful exercise of its powers under sections 23 and 26 of PCPA 2004. In the interests of fairness, the claimant was given an opportunity to make written and oral representations to the Council on the revised proposal.

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67 In my judgment, the Council’s decision to resile from its representations was justified, on the grounds of overriding public interest. By regulation 9 of the 2012 Regulations, the AP Map had to “illustrate geographically the application of the policies in the adopted development plan”. The AP Map was inconsistent with the Green Belt policy which the Council had ultimately promoted in the main modifications, in accordance with the inspector’s recommendations, which were binding upon the Council. In accordance with principles of good administration, members of the public ought to be able to rely upon the accuracy of published documents which set out important planning policy. If the Council had acted in accordance with its representations, the inconsistency would not have been resolved.

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68 In those circumstances, it was proportionate and lawful for the Council to resile from its representations in the note of 3 July 2018, and instead to take the necessary steps to correct the mistake in the AP Map. The Council’s reasons were evidenced in the cabinet report, and the resolution of the Council. Whilst the claimant clearly considers it is advantageous if the Disputed Land, including his parcel of land, is outside the Green Belt, I do not consider that the Council’s action in resiling from its representations has resulted in unfairness to him; alternatively, any unfairness was outweighed by the overriding public interest. Although he has expended time and effort in resisting the Council’s efforts to correct the AP Map, this has turned out to be misguided.

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*Conclusion*

**69** For the reasons set out above, the claim is dismissed.

*Claim dismissed.*

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SALLY DOBSON, Barrister

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