CLAIM NO.

IN THE HIGH COURT OF JUSTICE
CARDIFF DISTRICT REGISTRY
ADMINISTRATIVE COURT
PLANNING COURT

PLANNING AND COMPULSORY PURCHASE ACT, 2004, SECTION 113

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

Interested Parties

CLAIMANT'S STATEMENT OF FACTS AND GROUNDS

References in the form:

- *[Core/x] are references to page (x) numbers in the Core Claim Bundle;*
- *[Supp/y] are reference to page (y) numbers in the Suppletory Claim Bundle; and*
- *[IR xx] are to paragraph numbers in the Inspector's examination report [Core/119 to 162].*

Relevant statutory extracts and a list of suggested essential reading are appended to this statement of facts and grounds.

Introduction

1. By this claim for statutory review pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), the Claimant seeks to challenge the Defendant's decision to adopt the *Mendip District Local Plan 2006-2029 Part II: Sites and Policies* ("LPP2") on 20 December 2021.

2. The Claimant is a parish council located within north-east of the Defendant's administrative area. The Claimant took part in the additional examination hearings that took place to discuss whether to modify the submission version of LPP2 to allocate 505 new dwellings within the north-east of the plan area, which included an additional allocation for 27 dwellings within the Parish of Norton St Philip, where it objected to the general approach and the specific allocations.

3. The Secretary of State is listed as an Interested Party because, whilst the decision to adopt LPP2 was not taken by him, it was nevertheless largely informed by the reasoning and decisions of his appointed inspector during the examination and in the subsequent report to the Defendant. Lochailort Investments Limited has also been listed as an Interested Party both at its own request [Core/427] and because it is currently promoting a planning application in respect of allocation NSP1.

Relevant Factual Background

Local Plan Part 1

4. On 15 December 2014, MDC adopted the *Mendip District Local Plan 2006-2029 Part I: Strategy and Policies* ("LPP1") [Core/293 to 353]. LPP1 forms part of the statutory development plan for the non-metropolitan district of Mendip in Somerset ("the District").

5. LPP1 "*sets out the long term strategic vision for the future of the District and how it will develop over the next 15 years*".[1] Sections 1-3 set out the introduction to LPP1 and the Vision for Mendip. Section 4 (Core Policies 1 – 5) sets out the Spatial Strategy. Section 5 (Core Policies 6 – 10) set out the town strategies for the principal settlements, which include strategic allocations. Section 6 then sets out local development management policies.

6. Core Policy 1 identifies the Spatial Strategy, which includes a settlement hierarchy [Core/321 to 326]. In summary, it provides that:

[1] LPP1, para. 1.1. [Core/296]

a. The majority of development will be directed towards the five principal settlements of Frome, Glastonbury, Shepton Mallet, Street and Wells.
b. In the rural parts of the District, new development that it tailored to meet local needs will be provided for in 16 Primary Villages (including Norton St Philip and Beckington) and 13 Secondary Villages.
c. In other villages, hamlets and the open countryside, new development is generally restricted unless certain policy requirements are satisfied.
d. The scale of housing development within the settlement tiers is set out within the tables associated with Core Policy 2.

7. Core Policy 2 sets out the overall housing requirement, stating that "*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*" [Core/327 to 336]. The table in the policy [Core/335 to 336] then divides the housing requirement between different settlement groups in the settlement hierarchy. It includes an additional 505 dwellings for the whole of the District, the justification for which is provided in para. 4.21 of the supporting text. This states that [Core/327]:

> "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 Future Growth Areas identified in this plan…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."

8. Paragraph 4.7 of the supporting text states that [Core/322]:

> "The towns of **Radstock** and **Midsomer Norton** lie on the norther 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. The 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…" (emphasis in original)

9. Core Policy 2 goes on to explain that housing delivery will be secured from [Core/335]:

a. Infill, conversions and redevelopments within the Development Limits defined in the Policies Map that are policy compliant.
b. Strategic Sites identified on the Key Diagrams for each principal settlement.
c. Other allocations identified through the Site Allocations process in line with:
    (i) The principle of the proportionate growth in rural settlements guided by the requirements within the supporting text to the policy.
    (ii) Informed by the 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.

Local Plan Part 2

10. As envisaged by LPP1, MDC prepared a draft *Mendip District Local Plan 2006-2029 Part II: Sites and Policies* development plan document ("LPP2") [Core/46 to 102]. Insofar as is relevant, the stated purposes of LPP2[2] were to:
    a. identify and allocate additional sites for housing to meet the requirements for affordable and market housing set out in LPP1;
    b. ensure there are sufficient sites to enable a rolling five year supply of housing land in the district; and
    c. update development limits around towns and villages.

11. LPP2 does not revisit the strategic housing and employment policies in LPP1. Instead, it "*allocates specific sites for development or for other purposes in line with the intentions of the policies in the Part I document*".[3]

12. The draft LPP2 [Core/250 to 292] was submitted for examination on 23 January 2019 with Inspector Mike Fox ("the Inspector") appointed as the examining inspector on 29 January 2019. The Claimant supported the draft LPP2 as submitted and, as a result, was not invited to participate in the initial round of examination hearings held between 23 July and 22 August 2019 by the Inspector.

[2] As set out in para. 1.2 of LPP2 at [Core/50].
[3] LPP2, para. 1.4. See, also, para. 1.5 – 1.6 on the "Relationship to other Planning Documents" [Core/50 to 51].

13. The submission version of LPP2 did not incorporate specific housing allocations aimed at meeting the need for an additional 505 dwellings arising from the roll-forward of the plan period for LPP1. Paragraph 3.33 of the submission plan explained that this was because this requirement *"has been largely met through non-Plan commitments and…does not need to be specifically addressed in Local Plan Part II"*, with further explanation provided in the Housing Background Paper. Paragraph 3.34 went on to explain why no land was proposed for allocation on the edge of the District near West Field, Midsomer Norton and Radstock [Core/262].

14. During the course of the examination, the Inspector issued a request dated 25 July 2019 (ED11) for a note from the Council *"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 LPP1 Inspector's Report"* [Supp/4 to 5].

15. The Council's response (IQ-7) stated that its view was that the relevant paragraphs of LPP1 *"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"* [Supp/6]. It also explained that LPP2 does not make additional allocations in primary and secondary villages in the north east of the district because they have "*already significantly exceeded the minimum requirement*" [Supp/7].

16. Following the initial examination hearings, the Inspector issued an Interim Note (ED20) dated 10 September 2019 setting out his post hearing advice. Paragraphs 16 – 20 deal with Land to the North-East of Mendip District. In doing so, the Inspector states that: "*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…*" (emphasis added). He went on to explain that *"it seems to me that there is a strategic expectation that allocations for development in this part of the Plan area should be considered"* and *"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"* [Core/241 to 242].

17. Appended to the Interim Note was a Draft Schedule of Main Modifications (MMs), which included MM5 regarding the additional 505 dwellings [Core/248]:

> "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".

18. MDC's approach to identifying potential additional allocations – to be effected through Main Modifications – was set out in a Background Paper (SDM44) dated January 2020 [Supp/227 to 245]. In summary, some 455 dwellings were allocated on sites adjoining Midsomer Norton and Radstock, with a further three allocations made in the Primary Villages of Beckington (28 dwellings), Norton St Philip (27 dwellings) and Rode (26 dwellings). MDC did not assess the availability or suitability of potential allocations in any of the district's principal settlements or any Primary or Secondary Villages outwith the 'north/north-east' area of search that had been identified.

19. A Second Addendum to the Sustainability Appraisal (SDM41) ("the Second SA Addendum") was also produced to consider the MMs [Supp/150 to 165].[4] The Second SA Addendum simply appraised the site options in the north-east of the District and the implications of including the additional allocations that were proposed as part of the uplift in housing growth. No consideration was given to any alternatives to MM5, either through an alternative approach to meeting the additional 505 dwellings or through consideration of alternative sites outside of the north-east.

20. A consultation on the proposed MMs was held between 21 January and 2 March 2020. Following consideration of the consultation responses, including those of the Claimant and the neighbouring local planning authority Bath and North East Somerset Council ("BANES") [Supp/17 to 34], the Inspector decided to hold further examination hearings to consider the MMs relating to development in the north-east part of the plan area.

[4] A previous SA addendum had already been produced to appraise proposed changes to the plan following pre-submission consultation, but is not relevant to this case.

Further Matters and Issues were issued on 29 June 2020 [Supp/15 to 16] and the Inspector held additional virtual hearings between 24 November and 2 December 2020.

21. The Claimant and BANES submitted hearing statements in relation to all 4 Matters [Supp/93 to 112]. These made clear that, although consideration should be given to allocations in the north-east of the District, there was no strategic expectation that the north-east should be considered in isolation and the District must be considered as a whole in accordance with the spatial strategy. Contrary to what is said at paragraph 19(c) and (g) of the Defendant's pre-action response [Core/423], the Claimant's and BANES' written representations and hearing statements during the examination also made the point that there had been a failure to consider realistic alternatives and the SA must be expanded to consider other sites [Supp/22 to 24[5], 33[6], 96 to 97[7], 109 to 110[8]].

Inspector's Report

22. The Inspector's Report ("IR") was issued on 1 September 2021 [Core/119 to 162], following further consultation on some additional MMs arising from the stage 2 examination hearings.

23. IR 5 – 10 sets out the background to the consideration of the allocation of 505 additional dwellings following the publication of the Inspector's Interim Note.

24. The additional SA work undertaken to support the additional dwellings is considered at IR 40 – 41, which state that:

> "…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…
>
> 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 [sic] a set of criteria covering key elements of sustainability."

[5] See especially paras. 4.16 and 4.25
[6] Para. 4.16
[7] Paras. 2.3 and 2.5
[8] Paras. 5 and 8

25. Under Issue 3.2, the Inspector considered whether the overall distribution of housing in the submitted Plan was sound and in accordance with LPP1. At IR 53 he explains that it is "*broadly in line with LPP1, with one significant exception*" regarding the *"additional requirement"* of 505 dwellings.

26. The Inspector went on to consider the genesis of this "additional requirement", before concluding that "*it is necessary, in the interests of soundness, to consider whether a case can be made to include housing allocations in the Plan which focus primarily on these towns on the fringe of the District*" [IR 61].

27. Despite acknowledging that the LPP1 Key Diagram [Core/324] states that these dwellings are *"to be allocated in the District"*, the Inspector stated that "*spreading any additional development generally across the District and not in the north-east of Mendip…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*" [IR 65].

28. At IR 71 that Inspector concludes that: "*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*".

29. The Inspector then considered the economic, social and housing needs evidence to justify the allocation of 505 dwellings in the north-east of the District. In doing so, he relied considerably on the findings in the SA Second Addendum to support the proposed allocations.[9]

Adoption

30. On 20 December 2021, the Council accepted the MMs recommended by the Inspector for the reasons set out in the IR and agreed to adopt LPP2 subject to those MMs and a number of additional minor modifications [Core/103 to 118].

[9] See IR 72 and 83 – 85 [Core/134 to 136].

Legal Framework

General principles regarding approach to s. 113 challenges

31. Any challenge to the adoption of a development plan document must be brought by way of statutory review under section 113 of the 2004 Act.

32. The Court's jurisdiction under s. 113 is confined to conventional public law principles for judicial review and statutory review (*Flaxby Park Ltd v Harrogate BC* [2020] EWHC 3204 (Admin), per Holgate J. at [124]).

33. Decisions of the Secretary of State and his Inspectors should be construed benevolently as a whole, in a reasonably flexible way (*St Modwen Developments Ltd v SSCLG* [2017] EWCA Civ 1643, per Lindblom LJ at [7]).

34. The proper interpretation of planning policy is ultimately a matter of law. Policies should interpreted objectively by the court in accordance with the language used and read in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

35. In *Phides Estates v SSCLG* [2015] EWHC 827 (Admin), Lindblom J (as he then was) held at [56] that where a policy is neither obscure nor ambiguous it is not necessary or appropriate to resort to other documents outside the local plan to help with the interpretation of policy:

> "I do not think it is necessary, or appropriate, to resort to other documents to help with the interpretation of Policy SS2. In the first place, the policy is neither obscure nor ambiguous. Secondly, the material on which Mr Edwards seeks to rely is not part of the core strategy. It is all extrinsic – though at least some of the documents constituting the evidence base for the core strategy are mentioned in its policies, text and appendices, and are listed in a table in Appendix 6. Thirdly, as Mr Moules and Mr Brown submit, when the court is faced with having to construe a policy in an adopted plan it cannot be expected to rove through the background documents to the plan's preparation, delving into such of their content as might seem relevant. One would not expect a landowner or a

developer or a member of the public to have to do that to gain an understanding of what the local planning authority had had in mind when it framed a particular policy in the way that it did. Unless there is a particular difficulty in construing a provision in the plan, which can only be resolved by going to another document either incorporated into the plan or explicitly referred to in it, I think one must look only to the contents of the plan itself, read fairly as a whole. To do otherwise would be to neglect what Lord Reed said in paragraph 18 of his judgment in *Tesco Stores Ltd. v Dundee City Council*: that '[the] development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it', that the plan is 'intended to guide the behaviour of developers and planning authorities', and that 'the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained'. In my view, to enlarge the task of construing a policy by requiring a multitude of other documents to be explored in the pursuit of its meaning would be inimical to the interests of clarity, certainty and consistency in the 'plan-led system'. As Lewison L.J. said in paragraph 14 of his judgment in *R. (on the application of TW Logistics Ltd.) v Tendring District Council* [2013] EWCA Civ 9, with which Mummery and Aikens L.JJ agreed, 'this kind of forensic archaeology is inappropriate to the interpretation of a document like a local plan …'. The 'public nature' of such a document is, as he said (at paragraph 15), 'of critical importance'. The public are, in principle, entitled to rely on it 'as it stands, without having to investigate its provenance and evolution'"

36. *Phides* was cited with approval by Patterson J. in *Gallagher Ltd v Cherwell District Council* [2016] EWHC 290 (Admin) at [42] – [46], which held that it was not appropriate to resort to the inspector's report to clarify the meaning of a policy.

37. In *Flaxby* at [127] Holgate J. provided the following summary of the approach that should be taken to the adequacy of reasons given in an Inspector's report on the examination of a plan:

> "The tests for the adequacy of the reasons given in an Inspector's report on the examination of a plan is that laid down in *South Bucks v Porter (No.2)* [2004] 1 WLR 1953. The crucial question is whether the Inspector's reasons give rise to a substantial doubt as to whether he has committed an error of public law. But such an inference will not readily be drawn. In a planning appeal the reasons need only refer to the main issues in dispute and not to every material consideration ([36]). Reasons are addressed to a knowledgeable audience"

familiar with the material before the examination and they may be briefly stated (*CPRE Surrey v Waverley Borough Council* [2019] EWCA Civ 1896 at [71]-[76]. In the CPRE case Lindblom LJ added at [75]:-

> "Generally at least, the reasons provided in an inspector's report on the examination of a local plan may well satisfy the required standard if they are more succinctly expressed than the reasons in the report or decision letter of an inspector in a section 78 appeal against the refusal of planning permission. As Mr Beglan submitted, it is not likely that an inspector conducting a local plan examination will have to set out the evidence given by every participant if he is to convey to the "knowledgeable audience" for his report a clear enough understanding of how he has decided the main issues before him."

38. Where the judgment is that of an expert tribunal such as a planning inspector, the threshold for irrationality is a difficult one for a claimant to surmount (*Newsmith Stainless Limited v Secretary of State for Environment, Transport and the Regions* [2001] EWHC 74 (Admin). However, it may be met where there is an error of reasoning which robs the decision of logic (*R v Parliamentary Commissioner for Administration, ex p. Balchin (No 1)* [1997] JPL 917, per Sedley J. at [27]).

Requirement for SA and SEA

39. Section 19 of the 2004 Act sets out the requirements for the preparation of local development documents. Subsection 5 provides that a local planning authority must carry out an appraisal of the sustainability of the proposals in each development plan document and prepare a report of the findings of the appraisal.

40. The preparation of a sustainability appraisal ("SA") ensures that the local planning authority satisfies the broad requirement in section 39(2) of the 2004 Act to prepare a local development document with the objective of contributing to the achievement of sustainable development.

41. The preparation of an SA also integrates the need to carry out an environmental assessment of plans and programmes, otherwise known as strategic environmental assessment ("SEA"), which is required under regulation 5 of the Environmental Assessment of Plans and Programmed Regulations 2004 ("the SEA Regulations").

Therefore, the SA must satisfy the requirements in the SEA Regulations for an "environmental report" (*Flaxby*, per Holgate J. at [26]).

42. In accordance with regulation 12(2) of the SEA Regulations, the environmental report must identify, describe and evaluate the likely significant effects of the reasonable alternatives to the plan taking into account the objectives and geographical scope of the plan.

43. The identification and treatment of reasonable alternatives is a matter of "evaluative assessment" for the authority (*Friends of the Earth* at [87]-[89] and *Ashdown Forest Economic Development LLP v Wealden District Council* [2016] PTSR 78 at [42] subject to review only on public law grounds. However, as Holgate J. observed in *Flaxby* at [129]:

> "In *Spurrier* [at 422 – 434] the Divisional Court drew 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, namely whether there are reasonable alternatives to a proposed policy, which may amount to a breach of those regulations, as opposed to issues about the non-inclusion of information on a particular topic, or the nature or level of detail of the information provided to or sought by the authority, or the nature or extent of the analysis carried out…"

44. Where there is a failure to consider reasonable alternatives, there will be a breach of the requirements of the SEA Regulations and the relevant policies should be quashed. For example:

    a. In *City and District Council of St Albans v Secretary of State for Communities and Local Government* [2009] EWHC 1280 (Admin) at [21] – [22] a number of policies in a revision to the East of England Plan were quashed on the basis that there had not been any evaluation of alternatives to those policies, which proposed an increase in the number of homes to be built around three towns.

    b. In *Heard v Broadland DC* [2012] EWHC 344 (Admin) at [58] – [70] it was found that there had been a failure to carry out an assessment of an alternative to the preferred option and no reasons had been given for rejecting the alternative or selecting the preferred option.

c. In *Ashdown Forest Economic Development LLP v SSCLG* [2015] EWCA Civ 681 at [42] the Court of Appeal upheld a challenge to a policy requiring mitigation measures from housing development located within 7km of Ashdown Forest, which was designated as an SAC and SPA, on the basis that there was no evidence of any consideration being given to reasonable alternatives to the policy.

Grounds of Challenge

Ground 1: Misinterpretation of LPP1

45. 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*"[10] or "*strategic expectation*"[11] that 505 additional dwellings should be allocated in the north-east part of the District. This misinterpretation is further reflected in the additional supporting text provided for the new allocations at NSP and Beckington, which state that "*Following examination hearings, additional allocations are 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*" (emphasis added).[12]

46. LPP1 is clear and unambiguous, and should have been interpreted having regard to the wording of its policies and the supporting text in the usual way, without the need for any recourse to external documents (*Phides* at [56]). The Inspector's approach to the Interpretation of LPP1, which sought to discover the "***genesis** of the LPP1 requirement for the allocation of an additional 505 dwellings*" (emphasis added) [IR 56], and proceeded to give detailed consideration of the LPP1 Inspector's Report was impermissible and resulted in a flawed starting point for the interpretation of LPP1 (*Gallagher* at [46]).

47. Correctly interpreted, LPP1 requires subsequent allocations to be delivered in accordance with Core Policy 1 ("CP1"), which sets out the spatial strategy, and Core

[10] IR 71 [Core/134].
[11] Para. 17 of the Interim Note (ED20) at [Core/241] and IR 58 [Core/132].
[12] See paras. 11.2.2 and 11.20.3 of LPP2 [Core/79 and 87].

Policy 2 ("CP2"), which deals with the provision of new housing. This is unsurprising and should have been uncontroversial.

48. CP2.1 states that "*provision for a minimum of 9,635 additional dwellings will be made in line with the table below*".[13] As CP1.2 explains, the table then sets out the scale of housing development within the settlement tiers. The 505 additional dwellings are distributed to the "*District*". If there was any doubt about this (which there is not), it is confirmed by a box on the Mendip Key Diagram.[14] Under the heading "*DISTRICT WIDE*" the box states that "*An additional 505 dwellings to be allocated **in the district***" (emphasis added). CP2.2 then sets out how the delivery of the identified quantum of housing will be secured. Sub-paragraph (c) is intended to guide the approach to other site allocations.

49. The Inspector's misinterpretation of CP2 is evident from IR 55, where the Inspector states that "*Core Policy 2 refers to this 'additional requirement' to be **provided in line with** paragraph 4.21 of the LPP1*" (emphasis added). However, this summary of the policy is materially incorrect. The wording does not state that the additional requirement is to be provided "in line with para. 4.21". It states that it "*will be made in line with the table below*", which (as explained above) indicates that the Additional 505 Dwellings will be provided in the District.

50. The reference to para. 4.21 in the table in Core Policy 2 is simply intended to explain where the additional requirement of 505 dwellings comes from. It is not intended to create an alternative mechanism for the delivery/ allocation of those dwellings. Nor could it given its status as supporting text to the policy. However, the Inspector relies upon his misstatement of CP2 to justify his misinterpretation that CP2 requires the 505 dwellings to be provided in accordance with paras. 4.21 and, in turn, para. 4.7, both of which he considers "*address not just housing numbers, but also **strategic and qualitative housing distribution***" (emphasis added) [IR 55].

[13] Due to a formatting error in the public version of LPP1, the text in the table at CP2.1 is selectable, but not visible [Core/335]. As such, a copy of the relevant text from the table has been included on the next page in the bundle [Core/336].
[14] See [Core/324].

51. The Inspector's misplaced focus on paras. 4.21 and 4.7 continues throughout his analysis of whether the "*intended location [for the additional 505 dwellings] is within the north-east of the District*" [IR 56]. At IR 65 the Inspector considers the wording of the box in the Mendip Key Diagram set out above. He notes that "*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, he disagrees with this analysis on the basis that it "*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*". Whilst supporting text is relevant to the interpretation of a policy, it is not policy, does not have the force of policy and cannot trump the policy (*R (Cherkley Campaign Ltd v Mole Valley DC* [2014] EWCA Civ 567 at [16]). Therefore, the supporting text in paras. 4.21 and 4.7 cannot trump the wording of CP2. Moreover, the perceived conflict which the Inspector identifies at IR 65 only arises on the basis of his misinterpretation of paragraph 4.21 (discussed below). Properly interpreted, the supporting text of LPP1 is entirely consistent with the wording of CP2, as one would expect.

52. Even if the Inspector is correct that paragraph 4.21 should somehow be elevated to the status of a policy which is intended to set the strategic direction for the allocation of the Additional 505 Dwellings, the Inspector has also misinterpreted this paragraph.

53. At IR 70 the Inspector states that "*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*" (emphasis added). On the basis of this analysis, the Inspector concludes at IR 71 that "*the strategic direction in LPP1 requires the Council to consider development allocations to meet the needs in the north-east of the District*".

54. When paragraph 4.21 is read as a whole and in its proper context (as it must be), it is clear that the reason that land in the north/north-east of the District primarily adjacent

to the towns of Radstock and Midsomer Norton is "*singled out for comment*" is because this area would not otherwise fall within the relevant tiers of the spatial strategy.[15] The last sentence of para. 4.21 simply states that allocations for the additional 505 dwellings "*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.…in accordance with paragraph 4.7 above*" (emphasis added). In other words, it is explaining that consideration may also be given to the north-east of the District (in addition to the principal settlements and identified villages) in accordance with paragraph 4.7, which states that "*The Council will consider making specific allocations [on land abutting the towns of Radstock and Midsomer Norton] 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*".

55. By focusing on the fact that the land in the north-east is the only area to be singled out for comment, the Inspector has disregarded the plain ordinary meaning of the words of paragraph 4.21 and sought to apply some hidden meaning into them. In doing so, he has misinterpreted para. 4.21 and the approach that should be taken in LPP1.

56. In the further alternative, the Inspector also misinterpreted LPP1 by treating it as including a general requirement for consideration to be given to additional allocations in the north-east of the District, as opposed to limiting this to land abutting or adjacent to the towns of Radstock and Midsomer Norton in accordance with paras. 4.7 and 4.21. There was no requirement to give special consideration to other primary or secondary villages in the north-east of the District because these already formed part of the settlement hierarchy, where development should be considered in accordance with the requirements of CP2.2(c).

57. The Defendant's pre-action response to this ground of challenge does not engage with the correct interpretation of LPP1. Instead, it seeks to characterise this ground of challenge as a challenge to the exercise of the Inspector's planning judgement. In doing so, it misses the basic point that if the Inspector's analysis of where the additional 505

[15] This land would otherwise constitute open countryside where development "will be strictly controlled" unless "exceptionally…permitted in line with the provisions set out in Core Policy 4" (per LPP1, CP1.1.c [Core/323]).

dwellings should go proceeded upon the basis of a misinterpretation of LPP1 in the first place then it will have been infected by an irrelevant consideration (*St Modwen Developments v SSCLG* [2017] EWCA Civ 1643 at [6(4)]). LPP1 must be objectively construed, and the Inspector could not make it mean whatever he would like it to mean (*Tesco Stores* at [19]). The fact that there were lengthy debates about this issue at the examination also does not assist the Defendant. It simply emphasises that the correct interpretation of LPP1 and how it expected the additional 505 dwellings to be treated was a principal important controversial issue that the Inspector needed to determine. The Inspector sought to do so under a separate sub-heading at IR 56 – 72, but he continued to misinterpret LPP1. That misinterpretation is reinforced by the Defendant's pre-action response, which notes that the purported "strategic expectation" stemmed from the LPP1 inspector's report, and the Inspector gave particular regard to the text that had been inserted as main modification.[16]

58. The reliance that is placed by the Defendant upon the judgments of the High Court[17] and Court of Appeal[18] in *Lochailort Developments Ltd v Mendip DC* at paragraph 23 of its pre-action response [Core/425] is also misplaced. The courts in this case were not directly considering the correct interpretation of LPP1 and whether or not it required the additional 505 dwellings to be located in the north-east. They were considering whether the LPP2 Inspector's (flawed) conclusion that this was the case rendered the decisions made by those examining the Claimant's neighbourhood plan unlawful, and any comments on the correct interpretation of LPP1 and CP2 were strictly *obiter*.

59. In short, the Inspector has misinterpreted LPP1 by considering that it required the additional 505 dwellings to be allocated in the north east of the District or, at the very least, set a "strategic expectation" that required primary consideration to be given to whether they could be allocated in this location rather than anywhere else in the District.

[16] See para. 14(f), at [Core/422].
[17] [2020] EWHC 1146 (Admin) at [80] – [81], [100] and [124] – [125].
[18] [2021] 2 P & CR 9 at [49] – [56].

Ground 2: Failure to consider reasonable alternatives to allocating additional 505 dwellings in the north east of the District

60. Regulation 12 of the SEA Regulations required the Council to identify, describe and evaluate the likely significant effects on the environment of implementing the plan and reasonable alternatives to it.

61. In his Interim Note, the Inspector directed that the additional element of 505 dwellings should be apportioned to sustainable settlements in the north-east part of the District. This was accompanied by proposed MM5, which required "*Allocation of 505 additional dwellings…in the north-east of the District*" [Core/241 and 248].

62. The introduction of a requirement to allocate 505 dwellings within the north-east part of the District represented a major policy change to the approach taken in the submitted plan, which did not include any specific allocations for these dwellings and did not apportion any particular quantum of dwellings to the north-east. The Inspector rightly recognised that the proposed modification would need to be subject to SA. However, the SA was confined to consideration of alternative sites *within* the north-east of the District, as the Defendant has confirmed in its pre-action response.[19] No consideration whatsoever was given in the SA to whether there were any reasonable alternatives to allocating these additional dwellings within this part of the part of the District in the first place. Instead, the Council treated the Inspector's direction as a requirement which had to be met. This is clear from the 505 Dwellings Background Paper [Supp/227 to 245], which confirms that the Council has "*interpreted*" the recommendations of para. 17 of the Interim Note and MM5 as a "*focused and not district-wide site allocation exercise*" [Supp/237]. This is reflected in the Second SA Addendum [Supp/150 to 161], which simply appraises sites adjacent to Midsomer Norton (Appendix 1) and the preferred options in Primary Villages within the north east of the District (Appendix 2).[20] As the Inspector explains at IR 41, "*The Council's 505 Dwellings Background Paper also explains that realistic alternative sites were considered around Midsomer*

[19] See para. 17(a) at [Core/423].
[20] Although a further Additional SA was carried out to appraise alternative sites within the Mendip Villages of Beckington, Norton St Philip and Rode which were not proposed for allocation, this still did not consider or appraise the primary change brought about by MM5, which was whether additional allocations should be focused in the north-east of the District.

Norton and Radstock, as well as assessing the suitability of villages ***within the north-east of the District***" (emphasis added).

63. The approach that was adopted is also confirmed in the SA Adoption Statement [Supp/113 to 120]. This explains that [Supp/120]:

> "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)

Again, this misses the point. The requirement was not to appraise alternative distribution scenarios *within* the north-east of the District, but to appraise reasonable alternatives to allocating an additional 505 dwellings in the north-east of the District as opposed to anywhere else.

64. In essence, the Inspector's proposed MM5 represented a preferred option which he had asked the Council to consider for meeting the additional requirement of 505 dwellings. However, the fact that this was suggested by the Inspector did not absolve the Council of the requirement to consider and analyse reasonable alternatives to it through an addendum to the SA. On the contrary, there was a requirement to do so to ensure that the likely significant effects of the proposed modification and all reasonable alternatives to it had been properly considered.

65. The position is analogous with the situation in *St Albans*, where policies proposing additional development in three towns around London were quashed because there had not been any consideration of alternatives to those policies. As in that case, the requirement to allocate 505 dwellings in the north-east of the District was treated as a *fait accompli* and not subject to any appraisal in the SA.

66. The Defendant's pre-action response suggests that the Claimant has misunderstood the iterative nature of SA in the plan-making process. However, this analysis appears to be based upon (and therefore reinforces) the misinterpretation of LPP1 identified under Ground 1.[21] Correctly interpreted, LPP1 did not fix the strategic location for the allocation of the additional 505 dwellings and this was not subject to SA during the preparation of the plan. Therefore, there was a requirement to appraise all reasonable alternatives to the proposed modification to the plan which would result in the allocation of 505 additional dwellings in the north-east of the District. Insofar as para. 17(g) of the Defendant's pre-action response is concerned, the adequacy of the SA is ultimately a matter for the Defendant and not the Inspector. However, it is hardly surprising that the Inspector did not raise any concerns because he (wrongly) considered that the strategic location of the additional 505 dwellings was fixed by LPP1.

67. Paragraph 18 of the Defendant's pre-action response is also misconceived. The Claimant relies upon the principles established in the authorities that have been cited, and the particular name of the DPD under consideration in each case is neither here nor there. There is (rightly) no dispute that there was a requirement to carry out an SA of the LPP2, and there was therefore a requirement to consider and appraise reasonable alternatives to the approach taken in that plan, which included (as part of the main modifications) a strategic decision to allocate an additional 505 dwellings within the north-east of the District.

68. The Defendant's statement [Core/423] that the Claimant did not challenge the approach taken or comment on the requirement to appraise alternative spatial distributions for the additional 505 dwellings is also factually incorrect. The Claimant made numerous representations on the need to appraise other sites in the wider District, including in its written representations on the MMs and its hearing statements which were expressly dealing with the adequacy of the SA [Supp/17 and 96]. The adequacy of the SA and the failure to consider appropriate alternatives to the decision to hypothecate the 505 dwellings to the north-east of the District were also raised by BANES in its submissions to the examination [Supp/32 to 33 and 109 to 110].

[21] See, in particular, para. 17(e) of the Defendant's pre-action response at [Core/423].

69. The failure to consider reasonable alternatives necessarily undermines the Inspector's analysis of the additional allocations, which relies upon the conclusions of the Second SA Addendum to conclude that the allocation of an additional 505 dwellings in the north east of the District represents a sustainable approach.

    a. At IR 68 the Inspector states that "*The sustainability doubts expressed in this paragraph [para. 3.34 of the submission plan], for example, run counter to the findings of the SA Second Addendum"*.
    b. At IR 72 the Inspector finds that "*the 505 Dwellings Background Paper and the supporting SA…present robust and convincing justification*" for the view that the 505 dwellings should be allocated in the north/north-east part of the district.
    c. Similar conclusions are also reached at IR 83, 84 and 85, all of which consider that the SA Second Addendum demonstrate that it is sustainable and appropriate for an additional 505 dwellings to be allocated within the north-east part of the District.

70. However, for the reasons set out above, the Second SA Addendum was carried in a vacuum that only considered sites in the north-east. Therefore, its findings cannot possibly inform or support the sustainability of this strategic approach. The only way to give proper consideration to whether the new approach to the 505 Dwellings represented a sustainable approach was to consider it against reasonable alternatives to allocating this additional development in the north-east of the District.

71. The failure to even consider whether there were any reasonable alternatives to MM5 resulted in a clear breach of the requirements of the SEA Regulations which renders the additional allocations made in reliance upon it unlawful. For the avoidance of any doubt, the Claimant does consider that the adoption of LPP2 was in breach of the SEA Regulations.[22] However, the Claimant only seeks a partial quashing of the plan, as is set out in the section on proposed remedies below.

[22] Cf. para. 16 of the Defendant's pre-action response at [Core/422].

Ground 3: Failure to have regard to 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

72. As is set out above, the approach which should be taken to additional site allocations proposed through LPP2 is principally set out in CP2.2(c). This states that [Core/335]:

> "Delivery of housing will be secured from:
> […]
> 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 proportionate growth in rural settlements guided by the requirements identified within the supporting 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." (emphasis added)

73. Paragraph 4.22 of the supporting text explains that "*The need to plan for proportionate levels of growth in Primary and Secondary Villages will…remain an essential consideration*" [Core/327]. Paragraphs 4.28 – 4.37 then set out the approach that will be taken to the provision of housing for rural communities, which include primary and secondary villages [Core/330 to 332]. Paragraph 4.31 explains that two broad principles should be applied in distributing new rural development. The second of these principles is that "*new development in each place should be appropriate to their existing scale and have regard to environmental constraints*". In response to this principle, the Council identified village housing requirements based on a proportionate growth equating to 15% of the existing housing stock (see paras 4.33 – 34), which are set out in the tables 8 and 9 of LPP1 [Core/331]. The Village Requirement for Norton St Philip is 45, against which there had already been existing completions / consents which totalled 73 dwellings.

74. Paragraph 4.36 then sets out a number of principles which will be followed [Core/331 to 332]. In summary, these include: (a) that in villages where the residual level of development (as set out in tables 8 and 9) is less than 15 homes the Council will assume that housing supply will be delivered from small site development within defined settlement limits; and (b) in villages where the residual level of development is in

excess of 15 homes, the Council will allocate sites and/or make adjustments to existing development limits to deliver the residual housing requirement through LPP2. In other words, the requirements referred to in CP2.2(c) indicate that allocations will only be made at villages where the residual level of development is in excess of 15 homes.

75. In accordance with the requirements of CP2, the pre-submission plan explained that to achieve a distribution of growth consistent with the spatial strategy (per Housing Objective (d)), the plan allocations "*focus on those settlements where land supply falls short of the minimum requirements*" [Core/262].[23] Further clarification regarding the approach to Primary and Secondary Villages was provided at paragraphs 3.37 and 3.38 of the pre-submission plan, which stated that [Core/262]:

> "3.37 An important part of the spatial strategy is that there should be a proportionate approach to growth in the 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 did not have a five year housing supply.
>
> 3.38 **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**." (emphasis added)

76. Therefore, in accordance with CP2 and the spatial strategy, the pre-submission version of LPP2 did not propose any allocations in Norton St Philip or Beckington [Core/272 and 285]. This was explained in the Council's response (IQ7) to the Inspector's initial query, which noted that "*settlements in the north east of [the] district have already significantly exceeded the minimum requirements*" [Supp/7].[24] This was followed by a table which shows that completions and commitments have exceeded the requirement by 251% in Norton St Philip and 196% in Beckington.

77. Despite the representations from the Claimant on this issue,[25] the Inspector completely failed to have regard to the requirements of CP2 when considering whether the additional housing allocations in the north-east of the District, and Norton St Philip and

[23] See para. 3.22.
[24] See IQ7, p. 3.
[25] See especially [Supp/22 to 25 and 95 to 96].

Beckington in particular, were appropriate and consistent with the spatial strategy. Indeed, nowhere in the IR does he engage with this essential requirement of CP2 when considering the acceptability of the proposed allocations.

78. The failure to take these requirements into account is further illustrated by the fact that inconsistencies that have arisen following the MMs to the plan. For example, paragraph 3.28 states that "*The proposed site allocations reflect this principle [of proportionate growth]* ***by not identifying allocations in villages which have already fulfilled the requirements set out in Local Plan*** *[sic]*" (emphasis added) [Core/59]. However, the plan then proceeds to make allocations at Norton St Philip and Beckington in direct contravention of this statement.[26]

79. Similar inconsistencies can also be found in the SA Adoption Statement, which wrongly advised members that "*In accordance with the strategic direction set out in LPP1, no further development was to be directed to villages which had already met their requirement*" [Supp/118].

80. In the further alternative that the Inspector did take the requirements of CP2.2(c) into account, he failed to provide any reasons explaining how the additional allocations at Norton St Philip and Beckington were consistent with these requirements or why they should be made notwithstanding their conflict with CP2, which gives rise to substantial doubt as to whether he misunderstood the policy or failed to have regard to it (*South Bucks DC v Porter* [2004] UKHL 33 at [36]). This was particularly important because regulation (8)(4) of the Town and Country Planning (Local Planning) (England) Regulations 2012 requires policies contained in a local plan to be consistent with the adopted development plan (in this case LPP1), and regulation 8(5) provides that where a local plan contains a policy that is intended to supersede another policy in the adopted development plan, it must state that fact and identify the superseded policy.

81. Consistency with CP2 and the requirement for proportionate growth in rural settlements was plainly a principal important controversial issue. Indeed, it was one of the key issues arising from the Stage 2 examination hearings [Supp/15], which were held solely to consider the proposal to allocate an additional 505 dwellings in the north east of the

[26] See Table 2 [Core/65], Policy NSP1 [Core/88 to 89], and Policy BK1 [Core/81 to 82].

District. Moreover, the Claimant has suffered prejudice as a result of the Inspector's failure to provide any reasoning on this issue because it creates considerable uncertainty as to how the requirements of CP2 will be dealt with in the future.

82. The Defendant's pre-action response relies upon the reasoning given at IR 94, with particular emphasis being placed on the reference to the proposed allocations being "*proportionate and consistent with LPP1*". However, this paragraph falls under the sub-heading "*Distribution of new homes **outside the north-east** part of the District*" (emphasis added), and is therefore not dealing with the allocations in the north-east. Moreover, Table 4a that is referred to in MM149 [Core/230] shows that no consideration was given to the development levels within individual villages and that the additional 505 dwellings were treated as a "*minimum requirement*" from CP2, again reinforcing the misinterpretation of LPP1.

Ground 4: Decision to allocate NSP1 and BK1 through main modifications to LPP2 was irrational

83. When LPP1 is properly construed and the requirements of CP2.2 are taken into account and engaged with, it was *Wednesbury* irrational to allocate NSP1 and BK1. That is especially so having regard to the following:
    a. LPP1 did not create any requirement to allocate an additional 505 dwellings within the north east of the District, and certainly not in the rural areas outside the areas on the edge of Radstock and Midsomer Norton.
    b. CP2 required allocations to be made in line with the principle of proportionate growth in rural settlements, and existing completions and commitments in Norton St Philip and Beckington already significantly exceeded the requirement for these Villages.
    c. In the submission version of LPP2, the Council (rightly) considered that further growth in Norton St Philip and Beckington would not accord with the Spatial Strategy, which continues to be reflected in the wording of supporting text to the adopted LPP2.
    d. No consideration was given, through the SA or otherwise, to whether alternative sites outside of the north east part of the District could accommodate the additional

505 dwellings in accordance with the Spatial Strategy in CP1 and the requirements of CP2.

e. The allocation at Norton St Philip would conflict with a draft Neighbourhood Plan that proposed to make additional allocations in the parish, but had been held up through delays caused by a legal challenge brought by the promoter of allocation NSP1, and therefore causes further delays to its adoption.

84. Accordingly, the decision to allocate NSP1 and BK1 through main modifications to LPP2 does not add up and robs the decision of logic (*R (Balchin) v Parliamentary Commissioner for Administration* [1995] EWHC 152 (Admin) at [27]).

85. The ground of challenge is not parasitic upon the other grounds of challenge, as the Defendant's pre-action response suggests,[27] and is a freestanding ground of challenge which is run in the alternative that the other grounds of challenge are not made out.

Appropriate Remedy

86. The Claimant ultimately seeks the partial quashing of LPP2 in accordance with the powers contained within ss. 113(7)(a) and (7C) of the 2004 Act.

87. The precise extent of any partial quashing order will turn upon the judgment of the Court and which grounds of challenge are upheld. Whilst the Claimant's principal concern relates to Policy NSP1, it is recognised that if Grounds 1 or 2 are upheld, it is likely to be necessary to quash all allocations relating to the additional 505 dwellings and any associated explanatory text. If Ground 3 is upheld, it would only be necessary to quash Policies NSP1 and BK1. The appropriate remedy in the event that Ground 4 is upheld may only require Policies NSP1 and BK1 to be quashed, but it may be broader than this depending on the judgment of the Court.

88. The Claimant also seeks an interim order suspending the operation of Policy NSP1, per the draft order at [Core/42 to 43], in accordance with the Court's powers under ss. 113(5) and (5A).

[27] See para. 23 at [Core/425].

89. The Claimant does not agree with the Defendant's contention in its pre-action response that it is not possible to consent to judgment on a narrow basis without the quashing order infecting the plan as a whole,[28] not least because the grounds of challenge are specifically concerned with amendments relating to the additional 505 dwellings that were made as main modifications to the submitted plan in the first place. The Claimant's suggested approach is entirely consistent with the usual approach that is adopted where a legal error relates to particular policies in the plan (see, for example, *Ashdown Forest Economic Development LPP v Wealden DC* [2015] EWCA Civ 681 at [60]). Nevertheless, in the alternative that the Court considers that it is not possible to quash part of LPP2, then the Claimant asks that it remit the relevant sections of the plan back to the Inspector in accordance with s. 113(7)(b) and direct that appropriate modifications are made in light of its judgment.

Aarhus Claim

90. The proposed claim is an Aarhus Convention Claim, per CPR 45.41. It is a review under statute which challenges the act of a body exercising public functions on the basis that it contravenes national law relating to the environment, including the SEA Regulations, and Parish Councils can be regarded as members of the public for the purposes of the Convention (*Crondall PC v SSHCLG* [2019] EWHC 1211 (Admin)).

91. The Defendant's pre-action response does not appear to challenge the basic principle that this is an Aarhus Convention Claim,[29] but notes that a schedule of financial resources must be filed in accordance with CPR 45.42 in order for the costs limits in CPR 45.43 to apply.

92. A schedule of financial resources is provided at [Core/432 to 437] and the Claimant submits that this demonstrates that it is appropriate for the usual costs limits to apply in the present case.

[28] See para. 25 at [Core/423].
[29] See para. 28 at [Core/426]

Conclusion

93. For the reasons set out above, the Claimant requests:
    a. Permission to proceed with all 4 grounds of challenge;
    b. An interim order suspending the operation of NSP1 whilst this claim is determined;
    c. A final order partially quashing LPP2 in accordance with the terms of the judgment of the Court;
    d. An order that the Defendant pay the Claimant's costs; and
    e. Any other order that the Court considers appropriate.

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28 January 2022

Relevant statutory extracts

Planning and Compulsory Purchase Act, 2004 c.5

113 Validity of strategies, plans and documents

(1) This section applies to–

…

(c) a development plan document;

…

(e) a revision of a document mentioned in paragraph (b), (ba), (c) or (d);

…

and anything falling within paragraphs (a) to (g) is referred to in this section as a relevant document.

(2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section.

(3) A person aggrieved by 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.

(3A) An application may not be made under subsection (3) without the leave of the High Court.

(3B) An application for leave for the purposes of subsection (3A) must be made before the end of the period of six weeks beginning with the day after the relevant date.

…

(5) The High Court may make an interim order suspending the operation of the relevant document–

(a) wholly or in part;

(b) generally or as it affects the property of the applicant.

(5A) An interim order has effect—

(a) if made on an application for leave, until the final determination of—

(i) the question of whether leave should be granted, or

(ii) where leave is granted, the proceedings on any application under this made with such leave;

(b) in any other case, until the proceedings are finally determined.

(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.

…

(9) The appropriate power is–

…

(c) Part 2 of this Act in the case of a development plan document or any revision of it;

…

(10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.

(11) References to the relevant date must be construed as follows–

…

(c) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be);

…

List of essential reading (2.5 hours)

1. Claimant's statement of facts and grounds and references therein [Core/10 to 41].
2. Acknowledgements of service and summary grounds of defence
3. Notice of adoption and adoption report [Core/44 to 45 and 103 to 118].
4. Inspector's examination report, paras. 1 – 13, 25 – 29, 38 – 43, 53 – 95 and 115 – 142 [Core/119 to 162].
5. Paragraphs 1 – 4 and 16 20 of the Inspector's Interim Note ED20 [Core/239, 241 and 242].
6. 505 Dwellings – Background Paper [Supp/227 to 272].
7. LPP1, pp. 26 – 40 [Core/321 to 336].
8. LPP2, p. 1, pp. 7 – 18 and pp. 144 – 146 [Core/50, 56 to 67 and 87 to 89].