CLAIM NO: CO/323/2022

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

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

DEFENDANT'S GROUNDS OF DEFENCE

References to

- *[Core / x] are references to page (x) numbers in the Core Claim Bundle*
- *[Supp / x] are references to page (x) numbers in the Supplementary Bundle*

Reading time: 3.5 hours

Essential Reading

1) The Claimant's Statement of Facts and Grounds dated 28 January 2022;
2) These Grounds of Defence dated 16 February 2022;
3) Chronology and timeline of events (as attached);
4) The witness statement by Mr Andre Sestini dated 15 February 2022;
5) The Report on the Examination of the Mendip District Local Plan Part 2 (Core / 119 – 162) paras 4-11, 25-29, 38-43, 53-95.

Introduction

1. This is a response to the claim for statutory review pursuant to Section 113 of the Planning and Compulsory Purchase Act 2004 ("**the 2004 Act**"). The challenge is to the recently adopted Mendip District Local Plan 2006-2029 Part II: Sites and Policies ("**LPP2**") which was approved by the Full Council on 20 December 2021.

2. LPP2 is a sister complimentary document to Local Plan Part 1 adopted in December 2014 ("**LPP1")** which seeks to give expression to how the housing requirements contained in LPP1, by also identifying sufficient sites to maintain the five year housing land supply.

3. These Grounds of Defence should be read alongside the chronology and timeline of events, as well as the witness statement of Mr Andre Sestini dated 15 February 2022.

4. To put in sharp context, this challenge to LPP2 attacks the understanding of the strategic aims and objectives of LPP1. As adopted, LPP2 identifies **30 additional development sites**, it updates **3 existing** development allocation and clarifies Future Growth Areas identified in Local Plan Part 1. It also includes policies on existing employment land and rural housing.

5. The Claimant seeks to challenge the allocation of **2 development sites**.

6. The Claim is highly specific and focused around the approach taken by the LPP2 Inspector in relation to the interpretation of LPP1, and specifically as to how 505 additional dwellings are to be distributed through the site allocations plan, LPP2, which is the substance of the challenge before the Court.

7. In all other senses, the Claim does not challenge the soundness of the plan, it does not seek to suggest that there are other deficiencies to the plan. It will become plainly obvious that this is nothing more than a grievance on the part of a Claimant aggrieved by more housing being allocated in its Parish.

8. The Second Interested Party is represented and these Grounds of Defence does not seek to duplicate the points made by them.

Brief Background

9. Local Plan Part 1 was adopted in on **15 December 2014**.[1] In this document, the role of Radstock / Midsomer Norton are discussed, and where the additional 500 dwellings are to go in the District through LPP2. At paragraph 101 of his Examination Report, the LPP1 Inspector adds,

"101. The point is made earlier in the 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]

10. Core Policy 1 ("**CP1**") of LPP1 seeks to deliver growth for Mendip district in the most sustainable pattern by directing development towards the five main towns. Beyond this, for the rural parts of the district, they are broken down into three categories; primary and secondary villages, and then the more minor villages and hamlets.[2]

11. The two allocations in this challenge, are in Beckington and Norton St Philip which are classified as primary villages. They make up two amongst the **16 classified as such** on the basis that they offer key community facilities, including the best available public transport services, and some employment opportunities.

12. The supporting text to LPP1 assists in explaining the approach to the 'top down' distribution of the 9,635 additional dwellings. First to the main towns and then to the

[1] Core / 354-394, see paragraphs 21-25, and 101
[2] Core / 321-326

primary and secondary villages.[3] Table 9 in LPP1 sets out the requirement for each village over the 2006-29 period, with the maximum requirement clearly set out. For Beckington, there is a shortfall 43, with only 12 dwellings being completed against a requirement of 55. For Norton St Philip, the requirement has been exceeded.

13. The same supporting text to CP1 is also important to the understanding and interpretation of the same. The following is worth reciting in full.

"4.21 The Review of Housing Requirements (2013) and the rolling forward of the plan period to 2029 will result in an additional requirement of 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)

14. Core Policy 2 ("**CP2**") of LPP1 assists us in understanding the scale of any housing to be provided within the various villages, together with a table for guidance. Table 9 sets out how each settlement will make the required contribution to meet requirement through further allocations.[4] Crucially, based on the principle of 'proportionate growth'. Over the plan period of 2006-2029, CP2 provides for a minimum of **9,635** additional dwellings in the district, some **420 dwellings** per annum (dpa).

15. Core Policy 4 (**"CP4**") of LPP1 provides that housing within rural settlements should be at a scale commensurate with the existing housing stock in line with CP1 and CP2.[5]

[3] Core / 327-330, see paragraphs 4.18-4.34
[4] Core / 331, see table 9
[5] Core / 344

16. In **2015**, work began on LPP2 which led to an issues and options consultation. Further consultations, local exhibitions and written comments followed and fed into the pre-submission process. Further consultations were undertaken with Town and Parish Councils in 2016 and 2017. A pre-submission Sustainability Appraisal report followed in December 2017, with a draft LPP2 being published in January 2018.[6]

17. Between **December 2018 – August 2019**, after the Council submitted the LPP2 with approved changes for examination, a six week consultation on the proposed changes ahead of the hearings took place. Following which Inspector Fox published the Matters and Issues document. The first set of examination hearings were then conducted.

18. Following the hearings, between **July – September 2019,** the Inspector specifically asked for representations on **the additional 505 dwellings** and where they are to go. There were 'without prejudice' exchanges made by the Council with a view to assisting the Inspector understand the Council's position. This then culminated in the Inspector's Interim Note dated **10 September 2019**.

19. The Inspector examining LPP2 expressed concerns around the Council's approach of discounting the sites around Midsomer Norton when considering where the 505 dwellings ought to go. The Council was asked for an explanation. The Inspector was keen to understand in the hearings the meaning of paragraphs **LPP1 4.7 and 4.21**, the 505 dwellings, and the significance of his colleague in LPP1 inserting a main modification in order to ensure the soundness of LPP1 on adoption.

20. Throughout this period the Council's position was not to allocate additional development in the village of NSP, a position the Claimant supported. The Inspector had heard from the Claimant and in particular in relation to what was their central interest at that time, the allocation of local green spaces. The same issue involved a dispute with the second Interested Party, a matter tested all the way up to the Court of Appeal.[7]

[6] Core 250 onwards; see also witness statement from Mr Andre Sestini on the detail of the background.
[7] R (oao) Lochailort Investments Ltd v Mendip DC & Norton St Philip Parish Council [2020] EWCA Civ 1259

21. The LPP2 Inspector, keen to satisfy himself on the direction of travel, made a number of requests around the issue of the 505 dwellings and where they ought to go. Additional evidence and a statement of common ground were submitted to address the requirement for a Sustainability Appraisal of Sites around Midsomer Norton.

22. The Inspector then reflected on all of the above in his Interim Note dated 10.9.2019.[8]

Inspector's Interim Note dated 10 September 2019

23. The Interim Note was issued by the LPP2 examining Inspector following two weeks of examination hearing sessions, with several parties contributing. In it he makes clear that he has not reached any final conclusions and that the Main Modifications would still be subject to consultation (2). The Inspector says the following in relation to the Council's position then (in agreement with the Claimant).[9]

> *"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 refence to an additional figure of 505 dwellings; furthermore, paragraph 4.21 in LPP1 refers to the requirements to address the housing needs of the north-eastern part of the District****, including land adjacent to the towns of Radstock and Midsomer Norton….*
>
> *"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 in BANES, and possibly also within other settlements which lie within the District…"* (emphasis added)

24. The Inspector makes clear he is not prescribing *where* these additional 505 dwellings should be allocated (18). He further explains that there would be a requirement for a

[8] Core / 239-249
[9] See paragraphs 16-24 of the Interim Note

Sustainability Appraisal ("**SA**") in relation to these additional sites put forward, which would require a consultation (19). Crucially, the Inspector makes clear that no arbitrary caps are placed on development, contrary to the objectives of the Framework, including if an area has reached its housing target as set out in LPP1(22). Here, he was clearly making reference to NSP reaching its housing target (as set out above).

25. It is against this backdrop that the Inspector then offers the Main Modifications, and particularly MM5. Here, the Inspector does two things; (1) he explains his reasoning by reference to the supporting text of LPP1; and (2) he acknowledges that all the sites now considered for possible allocations (beyond those already consulted upon) ought to be subject to a fresh Sustainability Appraisal.[10]

The 505 Dwellings Background Paper[11]

26. In response to the Inspector's Interim Note, the Council undertook a focused site allocations exercise informed by the note and the Main Modifications. This culminated in the 505 Dwellings Background Paper. The document should be read as a whole, but the following assists in understanding how the Council interpreted MM5.

> "*…the Council have:*
>
> - *Interpreted this as focused and not district wide site allocation exercise*
> - *Assessed the sites adjacent Midsomer Norton / Radstock which* ***were not addressed in the plan process to date***
> - *Adopted a broad 'area of search' and considerations in terms of settlements in the north/northeast part of the district.*
> - *The assessment of settlements has sought to take account of their overall suitability to take additional growth and sustainability of individual sites promoted through the LPP2."* (emphasis added)

27. Guided by the Inspector's Interim Note, in January 2020, the Council undertook an assessment and sustainability appraisal of sites in the vicinity of Midsomer Norton

[10] Core / 248, 'MM5'
[11] Supp / 227

and Radstock.[12] Table 1 provides details of the new housing sites added through the Main Modification process and being assessed as part of the second SA process. Following representations received, on 3 April 2020, the Inspector advised that there would be a need for additional examination hearings solely to cover the 505 dwellings and the proposed site allocations. In the end, the Inspector allocated six hearing days to cover the 505 dwellings issue, together with understanding the role of LPP1 and the northeast of the district accommodating this.[13]

28. In December 2020, the Inspector undertook accompanied site visits, including to the very sites being challenged as part of this claim. Further main modifications unrelated to this claim were consulted upon in Feb/March 2021. The final report was received by the Council on 1 September 2021, and subsequently reported to Mendip Cabinet.[14]

Local Plan Part 2[15]

29. Local Plan Part 2 ("**LPP2**") was adopted in December 2021 following almost three years of examination, evidence and hearings. The Claimant has engaged consistently with the process since the beginning.

30. LPP2 is a sister document to LPP1; it does not seek to review the strategic policies as set out in LPP1. It has identified additional housing sites to meet its **minimum** requirements, and to support housing land supply with a view to enabling an uplift in housing growing. In this context, it is worth noting that as at December 2019, LPP1 became *five years old* and was in urgent need of review (as required by NPPF 33) and crucially, the adoption of LPP2 became even more urgent.

31. As to the background process, discussions, changes and the Inspector's considerations are captured well in his final report (4-11). The Inspector faithfully and accurately summarises his understanding of the strategic aims and objectives contained in LPP1 (26-31). The Inspector's description in relation to the change in position as to the

[12] Supp / 150
[13] See more in the statement from Andre Sestini
[14] This was done on 4 October 2021, and subsequently adopted by full Council on 20 December 2021
[15] Core 119-162, paragraphs paras 4-11, 25-29, 38-43, 53-95

housing provision is reflected in Table 4a of LPP2.[16] It provides for an uplift from the 9,635 (LPP1) to 12,755 dwellings now needed over the plan period of 2006-2029. Taking **420 dpa** up to **555 dpa.**

32. The figure contained within CP2 had been increased by some 32% which would also assist with the updated position on 5 Year Housing Land Supply for the future. Within this you have the uplift of 43% from the CP2 position for villages & rural areas, excluding the two sites under challenge here. For them, there is the allocation of NSP1 (27) and BK1 (28) totalling 55 dwellings, an increase of 1%.[17]

33. The heart of the reasoning leading to the adopted plan is contained in the Inspector's Report at paragraphs 56-95, the result of many discussions and hearings, evidence and deliberations over many years. How he has approached this matter in his report is a direct answer to the first ground of challenge, from which all others flow and rely.

Legal Framework

34. Legal challenges to development plan documents are governed under s113 of the Planning and Compulsory Purchase Act 2004 and are termed "statutory review" (i.e. an analogous process to "judicial review").

35. It is necessary to consider the following key principles/issues governing challenges to development plan documents, derived from the extensive case law in this area:

    (1) Grounds for Challenge
    (2) The Duty to Give Reasons
    (3) Soundness (including Policy Interpretation)
    (4) Sustainability Appraisal

[16] Core / 67
[17] Core /65-67

(1) Grounds for Challenge

36. Following adoption, a challenge by way of statutory review can only be brought on the basis that the Local Plan is (a) "not within the appropriate power" or (b) "a procedural requirement has not been complied with": Sections 113(3)(a)-(b).

37. A challenge on the basis of s113 is effectively akin to conventional judicial review. The Section 113(3)(a)"appropriate power" limb encompasses a failure to take into account a material consideration, including a failure correctly to interpret national planning policy. There have been many cases setting out the relevant principles. These are collected in ***Keep Bourne End Green v Buckinghamshire Council (formerly Wycombe BC)*** **[2020] EWHC 1984 (Admin),** which are referred to further a number of times below.

38. A procedural challenge under Section 113(3)(b) would need to demonstrate that the claimant's interests have been "substantially prejudiced" by that failure of procedure: s 113(6)(b). Challenges under this ground are extremely rare, but applying the same principles observed above, such challenges can only be brought post-adoption: i.e. when the whole procedure has been completed. As matters stand, the Claimant has not specified precisely which elements of s113 the claim relies on.

(2) The Duty to Give Reasons

39. An Inspector is required to give reasons for their recommendation (s. 20(7), (7A) and (7C) PCPA 2004). This duty is completed only when the final Report has been produced. Every statutory review challenge will require scrutiny of the actual reasons given. However, s113 challenges have been rendered even more complex in recent years by a trend in the courts' decisions away from imposing too high a standard for reasons. In *Keep Bourne End Green* Holgate J observed at [83]:

> *83. The Inspector's statutory obligation was to give reasons for her recommendations, whether under s.20(7), (7A) or (7C) . The legal standard for the giving of reasons was set out in South Bucks District Council v Porter (No. 2) [2004] 1 WLR 1953 . In particular, the claimant must demonstrate that there is a substantial doubt as to whether the*

Inspector's reasoning was vitiated by a public law error ([36]). In the CPRE case the Court of Appeal stated that ***the reasons given by an Inspector on the examination of a local plan may be more succinctly expressed than in a decision letter on a planning appeal.*** *It is unlikely that he or she will need to set out the evidence of every participant. It will be sufficient if he conveys to a "knowledgeable audience****" how he has decided the main issues before him. He may only need to set out the main parts of his assessment and the essential planning judgments he has made*** *([75] to [76]).*

(3) Soundness

40. The Court of Appeal has applied a strong health warning against legal challenges to findings on soundness, noting that such challenges "*seldom succeed*", given that soundness is quintessentially a matter of planning judgment: ***Oxted Residential v Tandridge DC*** **[2016] EWCA Civ 414 at [27].**

41. The courts are astute to restrict the scope for claimants to pursue planning merits points before the court. In *Keep Bourne End Green*, the Court noted in particular at [56]: "*it is not an opportunity for parties to re-run the planning merits on an issue.*"

42. This applies with particular force to challenges on the basis of errors in interpretation. *In Keep Bourne End Green*, Holgate J observed:

> *76. The interpretation of policy is an objective question of law for determination by the court, in so far as the meaning of a particular policy or phrase can properly be said to be justiciable.* ***However, the application of policy is a matter for the judgment of the decision-maker and may only be reviewed on public law grounds, primarily that of irrationality.*** *A contention that the decision-maker failed to take into account a material consideration cannot succeed unless the claimant establishes not only that that consideration was legally relevant but also that he was obliged as a matter of law (or policy) to take it into account, or that it was irrational not to have done so, because it was "obviously material" (Oxton Farm v Harrogate Borough Council [2020] EWCA Civ 805 at [8]).*
>
> …

79. There have been many attempts in the last few years to entice the courts into making pronouncements on the methods used to assess OAHN. ***Repeatedly the response has been that this is a matter of planning judgment for the decision-maker and not for the courts.***

43. The court emphasised the following principles from Lindblom LJ **in CPRE Surrey v Waverley Borough Council [2019] J.P.L 505 [35(3)-(5)]**

(3) Relevant policy and guidance on the assessment of housing need is not framed in mandatory or inflexible style. No single methodology is prescribed, and no level of precision is specified. As this court said in Jelson (at paragraph 25) and Hallam Land Management (at paragraphs 50 and 53), the exercise does not lend itself to mathematical exactness. Indeed, such precision may well be misleading. While the decision-maker is expected to establish, to a reasonable level of accuracy, a level of housing need representing the "full, objectively assessed needs", this is not an "exact science" (see Jelson , ibid.). There may be no single right answer – especially perhaps where a housing market area embraces more than one administrative area and the preparation of local plans in the boroughs concerned is asynchronous, as often it will be (see Oadby and Wigston Borough Council , at paragraph 38). Where the decision-maker is considering the weight to be given to the benefit of new housing development in an area of shortfall, the "broad magnitude of the shortfall" is likely to be one of the factors to consider, but "great arithmetical precision" is not required (see Hallam Land Management , at paragraphs 47 and 51 to 53).

(4) The evaluation the decision-maker must carry out will always involve an exercise of planning judgment, and the scope for reasonable planning judgment here is broad. The degree of accuracy required in establishing the "full, objectively assessed needs" for housing will depend on the circumstances, and will itself be a matter of planning judgment. The court will only interfere if some distinct error of law is shown – for example, a misinterpretation of relevant policy or guidance, or a failure by the decision-maker to apply reasonable planning judgment to the available evidence, which may well be imperfect or incomplete (see Jelson , ibid.). It will not be tempted into an assessment of the evidence, expressing a preference of its own for one set of data or another, or forecasts from a particular source. Nor will it engage with the arithmetic unless the decision-maker's own calculations have clearly gone wrong.

(5) Arguments contending what a decision-maker "should" or "could" or "might" have done in assessing housing need are unlikely to prevail. For a challenge to succeed, the applicant will always have to show that what was done was actually unlawful, not merely contrary to its own case at an inquiry or examination hearing. Otherwise, the proceedings are liable to be seen as an attempt to extend by other means a debate belonging only in that forum. It is at an inquiry or examination hearing that the parties have the opportunity to argue their case on housing need, not before the court."

44. On the facts in *Keep Bourne End Green*, following a number of earlier authorities, the High Court dismissed the challenge for a "*legalistic, overly forensic, approach to policy guidance, particularly guidance addressed to practitioners, which the courts have repeatedly sought to discourage*" [98].

45. The fundamental principle for present purposes is that the courts will not permit a challenge on grounds of an error of interpretation which is in reality a challenge to application of the applicable policy. This is highly relevant in this case.

(4) Sustainability Appraisal

46. There have been many challenges on the basis of unlawfulness in respect of Strategic Environmental Assessment (SEA) in the past 17 years. With certain very few exceptions, SEA grounds have been regularly dismissed, with the courts applying a very similar restrictive approach. The following principles are collected in ***Aireborough Neighbourhood Development Forum v Leeds City Council*** **[2020] EWHC 1461 (Admin),** a key example of a recent decision where the court rejected a challenge on SEA grounds (although the challenge was upheld on separate grounds).

47. A challenge on the basis of the content of an environmental report and the overall SEA procedure will focus upon **Regulation 12 and 13 of the Environmental Assessment of Plans and Programmes Regulations 2004 ("SEA Regulations").**

48. Regulation 12 provides:

"*Preparation of environmental report*

(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of –

(a) implementing the plan or programme; and

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

(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required …."

49. Schedule 2, paragraph 8 provides that the Report should include:

"*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.*"

50. Regulation 13 provides in respect of "Consultation procedures", that every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (i.e. "the relevant documents" - are to be made available for consultation in accordance with the provisions that follow:

"*(2) As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority shall –*

(a) send a copy of those documents to each consultation body [as defined in regulation 4];

(b) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the persons who, in the authority's opinion, are affected or

likely to be affected by, or have an interest in the decisions involved in the assessment and adoption of the plan or programme concerned, required under [the SEA Directive] ("the public consultees");

(c) inform the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained; and (d) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent."

51. Regulation 12(3) states that the period referred to in paragraph (2)(d) "*must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.*"

52. It is now very well-established that a local planning authority can submit an addendum to an SEA environmental report during the course of an examination: ***Cogent Land v Rochford DC*** **[2013] 1 P & CR 2**. The judgment merits full citation:

> *111. Under ground (4) the claimant relies, first, upon the language of Regulation 13 , which requires "every draft plan… and its accompanying environmental report" (prepared in accordance with the Regulations) to be made available for the purposes of consultation by informing the public "as soon as reasonably practicable" of where the documents may be viewed. <u>However, in my judgement, this does not have the effect contended for by the claimant, that the Addendum was incapable as a matter of law of curing any earlier defects in the process. It means simply that the draft plan, and any accompanying environmental report there happens to be, must be available for public consultation as soon as reasonably practicable</u>. This is a timing provision. It does not prescribe the content of the report. <u>Still less does it have the effect that if, for some reason, the accompanying report is not wholly adequate at that time, it cannot be supplemented or improved later before adoption of the plan, for example by way of the Addendum in the present case.</u>*
>
> *112. I prefer the submissions that were made by the defendant and Bellway. <u>First, it should be noted that "Strategic Environmental Assessment" is not a single document</u>, still less is it the same thing as the Environmental Report: it is a process , in the course*

of which the Directive and the Regulations require production of an "Environmental Report". Hence, Article 2(b) of the SEA Directive defines "environmental assessment" as:

"the preparation of the environmental report, carrying out consultations, the taking into account of the environmental report and the results of the consultations in the decision making and the provision of information on the decision in accordance with Articles 4 to 9".

113. Furthermore, although Articles 4 and 8 of the Directive require an "environmental assessment" to be carried out and taken into account "during the preparation of the plan", neither Article stipulates when in the process this must occur, other than to say that it must be "before [the plan's] adoption". Similarly, while Article 6(2) requires the public to be given an "early and effective opportunity … to express their opinion on the draft plan or programme and the accompanying environmental report", Article 6(2) does not prescribe what is meant by "early", other than to stipulate that it must be before adoption of the plan. The Regulations are to similar effect: Regulation 8 provides that a plan shall not be adopted before account has been taken of the environmental report for the plan and the consultation responses.

114. The claimant relied upon several authorities said to support its submissions under ground (4).

115. The first case is a decision of the High Court in Northern Ireland, Re Seaport Investments Limited [2008] Env LR 23 , a decision of Weatherup J on equivalent regulations in Northern Ireland which implemented, or purported to implement, the SEA Directive . The applicants in that case contended that the regulations had failed to transpose the Directive correctly in a number of respects. The applicants also contended that there had been a breach of the Regulations and the Directive on the facts of the case.

116. Weatherup J accepted the applicants' argument in relation to what he called the second transposition issue: see paras. 19 – 23 of the judgment. He then turned to whether there had been a failure to comply with the requirements of the Regulations and Directive.

117. At para. 47 he said:

> *"The schseme of the Directive and the Regulations clearly envisages the parallel development of the Environmental report and the draft plan with the former impacting on the development of the latter throughout the periods before, during and after the public consultation. In the period before public consultation the developing Environmental Report will influence the developing plan and there will be engagement with the consultation body on the contents of the report. Where the latter becomes largely settled, even though as a draft plan, before the development of the former, then the fulfilment of the scheme of the Directive and the Regulations may be placed in jeopardy. The later public consultation on the Environmental Report and draft plan may not be capable of exerting the appropriate influence on the contents of the draft plan." [Emphasis added]*

118. The claimant emphasised in particular the phrase "parallel development." However, it is important to read the passage as a whole, in particular the words I have emphasised towards the end of it: they indicate that Weatherup J did not intend to lay down a general and absolute rule but was in truth stressing that whether or not the scheme of the Regulations and Directive is in fact breached will depend on the facts of each case.

119. At para. 49 Weatherup J said:

> *"Once again the Environmental Report and the draft plan operate together and the consultees consider each in the light of the other. This must occur at a stage that is sufficiently 'early' to avoid in effect a settled outcome having been reached and to enable the responses to be capable of influencing the final form. Further this must also be 'effective' in that it does in the event actually influence the final form. While the scheme of the Directive and the Regulations does not demand simultaneous publication of the draft plan and the Environmental Report it clearly contemplates the opportunity for concurrent consultation on both documents ." [Emphasis added]*

120. At para. 51 Weatherup J concluded on the facts of that case that:

"When the development of the draft plan had reached an advanced stage before the Environmental Report had been commenced there was no opportunity for the latter to inform the development of the former. This was not in accordance with the scheme of Articles 4 and 6 of the Directive and the Regulations." [Emphasis added]

121. I accept the defendant's submission that, in Seaport , Weatherup J confirmed that as regards the requirement for a ER to "accompany" a draft plan, the Directive and Regulations do not require "simultaneous" publication of a draft plan and the ER.

122. The claimant also relied upon the decisions of Ouseley J in Heard (to which I have already made reference) and Collins J in Save Historic Newmarket Limited and other v Forest Heath District Council , the case which prompted the production of the Addendum. At para. 7 Collins J said:

> *"The challenge is brought on two grounds. First it is said that there was a failure to comply with the relevant EU Directive and the Regulations made to implement it that the Strategic Environmental Assessment (SEA) did not contain all that it should have contained. This if established would render the policy made in breach unlawful whether or not the omission could in fact have made any difference. That, as is common ground, is made clear by the decision of the House of Lords in Berkeley …. Although Berkeley concerned an EIA, the same principle applies to a SEA. To uphold a planning permission granted contrary to the provisions of that Directive would be inconsistent with the Courts obligations under European Law to enforce Community Rights. The same would apply to policies in a plan."*

123. However, it is important to note what the actual decision in that case was, and the basis for it. At para. 40, Collins J, in accepting the claimant's first ground of challenge in that case, said:

> *"In my judgement, Mr Elvin is correct to submit that the final report accompanying the proposed Core Strategy to be put to the inspector was flawed. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The*

previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified in the final report . There was thus a failure to comply with the requirements of the Directive …" [Emphasis added]

124. I accept Bellway's submission that the claimant's primary argument seeks to extend the principles in Forest Heath and Heard beyond their proper limit. Those were both cases where the Court was satisfied that no adequate assessment of alternatives had been produced ***prior to adoption*** *of the plans in those cases. Although they comment (understandably) on the desirability of producing an Environmental Report in tandem with the draft plan, as does Seaport , neither is authority for the proposition that alleged defects in an Environmental Report cannot be cured by a later document.*

125. I also consider, in agreement with the submissions by both the defendant and Bellway, that the claimant's approach would lead to absurdity, because a defect in the development plan process could never be cured. The absurdity of the claimant's position is illustrated by considering what would now happen if the present application were to succeed, with the result that policies H1, H2 and H3 were to be quashed. In those circumstances, if the claimant is correct, it is difficult to see how the defendant could ever proceed with a Core Strategy which preferred West Rochford over East. Even if the defendant were to turn the clock back four years to the Preferred Options stage, and support a new Preferred Options Draft with an SA which was in similar form to the Addendum, the claimant would, if its main submission is correct, contend that this was simply a continuation of the alleged "ex post facto rationalisation" of a choice which the defendant had already made. Yet if that choice is on its merits the correct one or the best one, it must be possible for the planning authority to justify it, albeit by reference to a document which comes at a later stage of the process.

126. As both the defendant and Bellway submit, an analogy can be drawn with the process of Environmental Impact Assessment where it is settled that it is an:
"unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain 'the full information' about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so

that the resulting 'environmental information' provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations … but they are likely to be few and far between."

See Sullivan J. in R(Blewett) v. Derbyshire County Council [2004] Env LR 29 at para. 41, approved by the House of Lords in R (Edwards) v. Environment Agency [2008] Env LR 34 at paras. 38 and 61.

127. Accordingly, I reject the claimant's ground (4) and conclude that the Addendum was capable, as a matter of law, of curing any defects in the earlier stages of the process.

53. The approach to the assessment of "*reasonable alternatives*" has itself been the subject of repeated challenge, often unsuccessful challenge. The leading cases in this respect are ***R (Friends of the Earth) v. Forest of Dean DC*** [2015] P.T.S.R. 1460 and the Heathrow Airport litigation (Divisional Court: *R (Spurrier) v. Secretary of State for Transport* [2019] J.P.L. 1163, as upheld in Court of Appeal: *Plan B Earth v SST* [2020] P.T.S.R. 1446 and Supreme Court: *R(Friends of the Earth) v SST* [2021] P.T.S.R. 190)

54. In ***R (Friends of the Earth) v. Forest of Dean DC*** [2015] P.T.S.R. 1460, Hickinbottom J observed of Article 5(1) of the SEA Directive (ie. the provision transposed by Regulation 12 of the SEA Regulations:

"(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.

(vi) The question of whether an option will achieve the objectives is also essentially a matter for the evaluative judgment of the authority, subject of course to challenge on

conventional public law grounds. If the authority rationally determines that a particular option will not meet the objectives, that option is not a reasonable alternative and it does not have to be included in the SEA Report or process."

55. In *Spurrier*, the Divisional Court (Hickinbottom LJ and Holgate J) held in respect of any claim founded on the basis of alleged deficiencies in an environmental report would face a high threshold:

> "*433. The information in article 5(1) and Annex I which is to be included in an environmental report is that which "may reasonably be required" (article 5(2)). That connotes a judgment on the part of the authority responsible for preparing the plan or programme. Such a judgment is a matter for the evaluative assessment of the authority subject only to review on normal public law principles, including Wednesbury unreasonableness.*
>
> *434. Where an authority fails to give any consideration at all to a matter which it is explicitly required by the SEA Directive to address, such as whether there are reasonable alternatives to the proposed policy, the court may conclude that there has been non-compliance with the Directive. Otherwise, decisions on the inclusion or non-inclusion in the environmental report of information on a particular subject, or the nature or level of detail of that information, or the nature or extent of the analysis carried out, are matters of judgment for the plan-making authority. Where a legal challenge relates to issues of this kind, there is an analogy with judicial review of compliance with a decision-maker's obligation to take reasonable steps to obtain information relevant to his decision, or of his omission to take into account a consideration which is legally relevant but one which he is not required (e.g. by legislation) to take into account (Secretary of State for Education and Science v Tameside Metropolitan Borough Council [1977] AC 1014 at page 1065B; CREEDNZ Inc v Governor-General [1981] NZLR 172 ; In re Findlay [1985] AC 318 at page 334; R (Hurst) v HM Coroner for Northern District London [2007] UKHL 13; [2007] AC 189 at [57]). The established principle is that the decision-maker's judgment in such circumstances can only be challenged on the grounds of irrationality (see also R (Khatun) v Newham London Borough Council [2004] EWCA Civ 55; [2005] QB 37 at [35]; R (France) v Royal London Borough of Kensington and Chelsea [2017] EWCA Civ 429; [2017] 1 WLR 3206 at [103]; and Flintshire County Council v Jeyes [2018] EWCA*

Civ 1089; [2018] ELR 416 at [14]). The "Blewett approach" is simply an application of this public law principle.

435. As we have described (in paragraphs 147 and following above), where a legal challenge of the kind described in the preceding paragraph is brought, the question whether the decision-maker has acted irrationally, be they a local planning authority or a Minister, demands the intensity of review appropriate for those particular circumstances."

56. This part of the judgment was not interfered with by the Court of Appeal or Supreme Court decisions.

57. The principles identified above mean that the courts are generally slow to interfere with questions of the nature of what is a "reasonable" alternative having regard to the plan's objectives: see *Aireborough Neighbourhood Development Forum v Leeds City Council* [2020] EWHC 1461 (Admin), [86]-[87].

58. Finally, where the court does identify a breach of the EIA Regulations is accepted, the court retains a discretion to refuse relief if the claimant has in practice been able to exercise the rights under European legislation and there has been no substantial prejudice: see *Walton v Scottish Ministers* [2013] PTSR 51 at [139 and 155] and *R (Champion) v North Norfolk DC* [2015] 1 WLR 3710 at [54], citing at [58] Lord the CJEU decision in ***Gemeinde Altrip v Land Rheinland-Pfalz*** (Case C-72/12) 2014 PTSR 311.

Ground 1: Purported misinterpretation of LPP1

59. This ground of challenge attacks the LPP2 Inspector's approach to the additional 505 dwellings, and in particular where to allocate further development to accommodate the same, based on the interpretation of what the LPP1 Inspector found. This is the only ground from which the whole claim relies; should it be dismissed, the other following three grounds stand and fall with the first. The following is said in response.

60. **First,** the Courts have repeatedly stated that parties should not be using the statutory review process to re-run arguments heard and addressed. To this end, given the first ground's ultimate conclusion is that the additional dwellings should not have been

allocated in the north-east part of the Mendip district, it is worth reciting in full what the Inspector's report stated at paragraph 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."*

61. From the above passage alone, it is obvious that what is being brought as part of this challenge is nothing more than a re-run of the same arguments heard by the Inspector.

62. **Second,** it seems utterly bizarre to accuse the Inspector of having erred, simply, by considering precisely how the LPP1 sought to explain the role of LPP2 in the future, and particularly how an Inspector may approach the issue of additional dwellings. To understand the 'genesis' of the LPP1 requirement, in circumstances where differing views about it were being expressed at the hearings, and where there is a need for an Inspector to exercise judgement on the matter having heard from representors, is an entirely reasonable approach. He did not go off on a solo foraging exercise to discover what it meant, and in the document where he is attempting to explain his reasoning, the Claimant seeks to apply the 'legalistic, overly forensic' approach that the courts have repeatedly sought to discourage.

63. **Third,** that the 505 additional dwellings are to be distributed 'to the District' is really plainly obvious. Where precisely in the District this is to be done is a question left open by the Inspector considering LPP1. This is left to the LPP2 examining Inspector to consider in detail as he has clearly done so. The Claimant just do not like the answer.

64. **Fourth,** the Claimant seeks to mischaracterise one paragraph in the IR (55) and give it a status it simply does not deserve. The Courts have discouraged repeatedly this approach and the IR should be read as a whole. In response, the following is said:

a) Core Policy 2 (@ Core / 335) does not actually specifically refer to 'additional requirement' as quoted both at IR 55, and as seems to be interpreted as a 'material error' in the SfG (49 & 50); this reference in CP2 is actually 'additional dwellings will be made in line with the table below'.

b) At the table (@ Core / 336) there *is* an explicit mention of the 'additional requirement 2011 to 2029 as per 4.21 of the supporting text,' and it is acknowledged that the additional 505 is placed under the heading of 'District';

c) The explicit mention of 4.21 is material in these circumstances; it helps guide the LPP2 to understand where these additional dwellings are to be placed, where the pressures are in the District, and what the Inspector is required to do in order to make the plan sound;

d) There is explicit mention also of a certain part of the District in 4.21; namely the north/north-east, with again explicit reference to two towns; furthermore, the logic follows through to 4.7. To say that 4.21 only serves to explain where the additional dwellings come from, but has **nothing** to do with how and where they ought to be allocated through LPP2 is to misunderstand it fundamentally;

e) To ignore these facts with a view to essentially starting a new District wide exercise would not be logical, nor would it make any rational sense as to what was meant by the LPP1 Inspector;

f) The Inspector's reading of LPP1 is not in isolation; it is read alongside the previous Inspector's Report, and the outcome complained of here is also subject to the multiple discussions had and judgement reached;

g) The Claimant's proposition here fundamentally distorts the relationship between LPP1 and LPP2 in such a way as to couch its arguments to suggest that the former and the Inspector's Report that preceded it, were external documents which should not have formed part of the Inspector's analysis and judgement. There is a clear, functional and critical connection between these two documents, which then make a whole. One sets the scene for the other, but

it does not determine once and for all what is to happen in it; this is why reliance on the *Cherkley Campaign* authority is misplaced for present purposes;

h) When the Inspector attempts to understand why '*nowhere else in Mendip is singled out for comment in either the IR or LPP1'* (IR 70) he is fundamentally correct that this is what was done. In fact, to have failed to even grapple with this point would have been a material failure on this part. The Inspector then draws his own conclusions as to the significance of this; guided by the documents and representations made by parties, including the Claimant. The conclusions cannot be said to be irrational simply because the Claimant is aggrieved by the decision reached.

i) The meaning sought to be attached this by the Claimant (§ 53-55) makes no sense. Settlements in the north were those identified in LPP1 as under pressure for future growth, hence why a further look through LPP2 in the future would be necessary and required. Again, to have failed to understand this would have meant that the Inspector failed to address a critical question;

j) Further to this, had the Inspector failed to grapple with (still less highlight) the singling out of the role played by the north/north east part of the District, there would be similar accusations to be made of failure to take into account material considerations; though this time probably from other parties; and

k) The simple reality is that the result of reading the policy fully, understanding how LPP1 came together, what that Inspector intended, and what the text in 4.21 points to, all lead to the judgement of allocating a site in the Claimant's Parish, as well as other sites, a decision with which they remain aggrieved. The guiding principles are around giving the Council the flexibility they need through the plan period by allocating these 505 dwellings.

65. Nothing actually turns on what the Inspector says in IR 55 alone, or any other paragraph of the report on its own. The document should be read as a whole.

66. LPP1 is a document which leaves a significant task for LPP2 to resolve; namely how the housing requirement is to be addressed, and the need to identify sufficient sites to maintain the moving picture of the 5YHLS. A significant time period had elapsed between the two. The Claimant's understanding appears to be that the task for the LPP2 Inspector was a static one, a strict approach to be taken by a complimentary document designed to be part of a whole picture for Mendip District.

67. For the Claimant to succeed, the Court would have to accept that;

a) LPP1, its supporting text, and LPP2 examination process ought to be treated as though they are two separate and unrelated events / documents;

b) The LPP2 examining Inspector's role was limited in how his exercise / discretion was to be exercised; that he ought to have almost interpreted CP1 and/or CP2, the supporting text as a statute, with little flexibility and judgement to be applied;

c) The Inspector explicitly ignored all the points being run through this challenge, as made at the time, as heard through a disproportionately extensive extension of examination hearings dealing with this very point alone;

d) LPP1 and the Inspector's report leading up to it do not form part of the picture of how LPP2 should be carried forward, but that they represent wholly separate extrinsic documents – the reading together of which would be to contaminate; and

e) The overly legalistic reading of the Inspector's conclusion (drawing strength predominantly from a couple of passages) is appropriate.

68. **Finally**, it is noteworthy that the Claimant does not challenge the following.

a) There is no suggestion that the Inspector has allocated in either an unsustainable location or allocated too much / not enough housing in a particular location;

b) There is no suggestion that the allocations cause any material harm to the natural environment or historic environment; or any other harm for that matter;

c) The Claimant does not explain what an alternative or different interpretation of LPP1 in its highly specific attack would have looked like; the point being here is that they made their arguments, the Inspector disagreed, and he explained his reasoning for doing so.

69. **In sum,** the interconnected relationship between LPP1 and LPP2 must be properly understood. Where the additional 505 dwellings ought to go was a matter which required policy interpretation with afforded flexibility, and an Inspector judgement following multiple hearings and site visits. There is nothing irrational or unlawful about the Inspector's approach when his report, deliberations, interim note, evidence heard and conclusions reached are read carefully together.

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

70. This ground is self-evidently parasitic on Ground 1 succeeding. Should the Court accept that there has been a material misinterpretation of LPP1, then it follows that the steps taken by the Inspector following this could not have been correct. The Claimant does not couch this argument in the alternative either. This ground should be easily rejected once the first ground is dismissed. The following is still worth noting.

71. **First,** for the aforementioned reasons, the Inspector's approach to the requirement to allocate 505 dwellings within the north-east part of the District was a rational approach to take. It was based on a sound understanding of how LPP1 and LPP2 sit together to make up the Mendip District Local Plan. It did not represent, contrary to the Claimant's submissions, a 'major policy change' in any way at all.

72. **Second,** the Inspector had recognised (as explained through his Interim Note) that there was not a need to re-start the SA process from the start again. That there was a need for a proportionate and focused site allocations exercised.

73. **Third,** what the Claimant still fails to accept is that, in the circumstances, the exercise set out in the 505 dwellings background paper[18], the Second SA Addendum[19] and the response generally to the Interim Note, was to undertake an exercise which sought to build on the site selection process and sustainability appraisal undertaken to submission.

74. **Fourth,** in the context of what is set out above, and what is stated in the witness statement from Mr Andre Sestini, a wider assessment of other villages in the rest of the District would not have been a logical approach to take.[20] This is the 'evaluative judgement of the authority' as he has explained and as endorsed by the Courts. (*See Friends of the Earth above)*

75. **Fifth,** some points made in the pre-action response are worth repeating briefly.

    a) No deficiency has been identified in relation to the SEA regulations in so far as it relates to the plan as a whole;

    b) LPP2 is focused on dealing with site specific matters and policies; for the aforementioned reasons there was no reasonable reason to undertake a district-wide analysis;

    c) The requirement to appraise the area pursuant to the 505 allocation was not narrowly defined, again for the reasons set out above.

[18] Supp / 231-232, paragraphs 15-22
[19] Supp / 268-272
[20] See paragraphs 17-22 of Mr Sestini's witness statement

76. **Finally,** even in the event the Court were to identify a breach (which is not accepted) then it retains the discretion to refuse relief. For all these reasons, this second ground of challenge should also be dismissed.

Ground 3: Purported 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.

77. This is yet another ground which requires Ground 1 to succeed. The salient elements of the complaint relate to the passage below relating to Core Policy 2.2 (c) which provides,

"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 within 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."

78. Perhaps the most obvious example of a ground of challenge blatantly attacking an Inspector's judgement, it is this one. This ground will be also be rejected. In response, we state the following.

a) It is acknowledged that the pre-submission and submission version of the LPP2 did not seek allocations in Norton St Philip or Beckington. It is also correct to highlight that the 505 background paper and the Council's own evidence has consistently acknowledged that there has been a significant levels of development in NSP and other villages;

b) Notwithstanding this, the Inspector is entitled to form his own view, exercising his judgement, mindful of the picture not only in these two settlements but the wider District as a whole. Crucially, being mindful also of the plan period as a whole too. 'Proportionate Growth' is not defined in any numerical terms, but it does require a level of judgement to be exercised in the circumstances, something the Inspector did having regard to all the evidence before him. This ground is a simple disagreement with the Inspector;

c) Further, 'proportionate growth' was not the ***only*** factor to be taken into account when selecting the preferred options for consultation;

d) The arguments advanced by the Proposed Claimant were made to the Inspector and he clearly didn't agree with them in his conclusions; the ground clearly acknowledges that these same representations were made;

e) Settlement requirements are of course a ***minimum*** and this was a specific main modification of the LPP1 Inspector. There is no specific provision, policy interpretation or legal principle identified by the Claimant that suggests they ought to be treated as a cap or a maximum;

f) Far from just putting more housing allocations in NSP that could be disproportionate, by way of example, in his report he explains his reasoning for deducting some 26 dwellings by rejecting Site RD1. This is yet another example of the Inspector exercising his judgement;

g) It is ultimately a matter for the Inspector, having heard all the evidence to reach his own judgement, and he did so whilst giving plenty of reasons, mindful of proportionality and consistency with LPP1 throughout the process including,

"*94. The planned housing growth for Shepton Mallet, Wells and the Primary and Secondary Villages* ***are proportionate and consistent with LPP1****, as can be seen in Table 4a in MM149.* (emphasis added)

95. On the basis of the above considerations, and subject to the above modifications, I conclude that the overall distribution of housing in the Plan is sound and in accordance with LPP1."

h) The above passage does not relate to allocations in the north-east *per se*, it is acknowledged, but the point is about the Inspector's approach *as a whole;* again beyond the narrow interests of the Claimant. This was illustrated by when looking at **NSP1**, his reasoning and conclusions culminating in paragraph 142,

*142.**The two village allocations in Beckington and Norton St Philip comprise a modest but important component of the additional 505 dwellings** required for the north-east of the District. Development of both sites are also subject to habitat replacement, as set out in MMs 69 and 114.*

79. This ground is nothing more than a mere disagreement with the Inspector.

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

80. This ground is parasitic on the success of the other grounds cited above. It is similarly without merit and should be rejected by the Court. Contrary to what is being claimed in the grounds, the Claimant needs to succeed on its first ground for this ground to succeed. The following points are added by way of succinct summary.

81. **First,** for the aforementioned reasons, it was clearly open to the Inspector to interpret the requirement to allocate an additional 505 dwellings as a strategic expectation which stemmed from LPP2, in consultative process involving his examination.

82. The Inspector's judgement has been applied to this matter and he has reached a view with which clearly the Proposed Claimant disagreed.

83. It is even worth recalling what the Court of Appeal said about this in passing;

52. Following comments made by the inspector charged with the examination of the emerging local plan (LLP2), Mendip appreciated that policy CP2 did require the allocation of housing in the north east of the district, and that it was to be satisfied in the primary villages, of which Norton St Philip is one. Mendip therefore found a site in Norton St Philip on which 27 dwellings could be built. That site is, coincidentally, owned by Lochailort but it is not one of the LGSs.[21]

a) This interpretation given to the Court of Appeal in relation to a separate matter was also accepted by the High Court. The point here is it was showing, in real-time, the Council appreciating and acting on different elements of LLP1. Nevertheless, it does not tally up with the Claimant's interpretation;

b) To exceed a requirement is not to have a shield against all future development; plainly, there is a strategic objective of ensuring that the District is on top of how development will be spread across the plan period.

c) The Council's position in the submission document is neither here nor there. No Council would be judged based on what it **submitted** to be examined; all Council would be judged based on what an Inspector has **examined**, applied his judgement and ultimately found **sound**;

d) The alternative points have been addressed above, they're not repeated here;

e) The Claimant still fails to understand what a spatial strategy is about; it is more to do with the hierarchy of towns and primary / secondary villages. The allocations which are distributed taking account of the strategy does not alter the status of the sites as either primary or secondary villages.

84. This ground should be roundly rejected.

[21] R (oao) Lochailort Investments Ltd v Mendip DC & Norton St Philip Parish Council [2020] EWCA Civ 1259

Appropriate Remedy

85. The Council cannot see how this purported partial quashing sought can be sustainable. It is the Council's position that, should the Court accept the Claimant's case – particularly on Ground 1 – it would undermine the understanding of LPP1. Further, it would also attack the integrity of how the Inspector approached the allocation of additional dwellings in relation to the 505, which will undoubtedly contaminate his reasoning on other allocations. The Claimant accepts as much (see paragraph 87).

86. In short, the Claimant's position as to what the Court ought to do remains completely opaque. The Defendant also resists any interim order seeking to suspend policies in the now adopted LPP2. This would undermine the full weighting to be applied by decision makers at the Council and/or any forthcoming appeals.

87. The Council reserves its position to see how this ground develops.

Aarhus Claim

88. The Council initially reserved its position on whether to accept that the claim is an Aarhus Convention Claim (CPR 45.41). The Council now accepts that this is Aarhus Convention Claim within the meaning of the Civil Procedure Rules.

89. The Council has also since examined the Schedule of Claimant's Financial Resources, and does not take any point on them. The Court is invited to consider them for itself.

Conclusion

90. For all the reasons set out above, the Court is invited to refuse permission fully.

91. In the event that the Court is minded to grant permission, only Ground 1 has any arguable merit worth any consideration from the Court.

92. The Court should not entertain the argument of seeking to suspend elements or parts of a newly adopted Local Plan. This step has no precedent known to the Council and would undermine the Plan as a whole.

93. The Claimant do pay the Defendant's costs to be assessed if not agreed.

Hashi Mohamed

No5 Chambers, London

16 February 2022