Claim No: CO/323/2022

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

IN THE MATTER OF AN APPLICATION FOR LEAVE TO BRING A CLAIM FOR STATUTORY REVIEW PURSUANT TO SECTION 113 PLANNING AND COMPULSORY PURCHASE ACT 2004

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

SUMMARY GROUNDS OF RESISTANCE ON BEHALF OF THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

References such as: [Core/x] are to pages in the Core Bundle; [Supp/x] are to pages in the Supplementary Bundle; [IRx] are to paragraphs in the Inspector Report [Core/119-162] under challenge; [SFG§x] are to paragraphs in the Claimant's Statement of Facts and Grounds; and [DGD x] are to paragraphs in the Defendant's Grounds of Defence.

I. INTRODUCTION AND OVERVIEW

1. The Claimant applies for leave to bring a planning statutory review pursuant to s.113 of the Planning and Compulsory Purchase Act 2004 challenging the

Defendant's adoption of the *Mendip District Local Plan 2006-2029 Part II: Sites and Policies (*"LPP2") on 20 December 2021.

2. The Secretary of State has been joined as an Interested Party on the basis that LPP2 was informed by the recommendations of the Inspector appointed by the Secretary of State to conduct the examination.

3. Given that the Claimant's grounds of challenge focus heavily on the reasoning of his Inspector – and as he considers those grounds to be misconceived – it is necessary and appropriate for the Secretary of State to respond by way of these Summary Grounds of Resistance.

4. By way of overview, it is the Secretary of State's case that the Inspector did not (even arguably) err in law:

    (1) **Ground 1: Misinterpretation of *Mendip District Local Plan 2006-2029 Part I: Strategies and Policies* ("LPP1") -** The Inspector concluded that it was "*appropriate and sustainable for an additional 505 dwellings to be allocated within the north-east part of the District, primarily centred on the towns of Radstock/Midsomer Norton"* **[IR84]** and recommended main modifications to this effect, taking account of:

        (a) the "*strategic direction"* evident from both LPP1 itself and the allied examining LPP1 Inspector's report that, as part of LPP2, the Council should "*consider development allocations"* in the north-east of the District in order to meet the 'additional requirement' for 505 dwellings **[IR59-72]**; and,

        (b) quite apart from that strategic direction, that there were a range of "*economic, social and housing need"* justifications for making additional development allocations within the north-east of the District **[IR73-84]**.

    This was a judgement which the Inspector was entitled to reach. It was <u>not</u> predicated on a misinterpretation of LPP1.

(2) **Ground 2: Failure to consider reasonable alternatives to allocating 505 dwellings in the north-east of the District** – the question of whether there were reasonable alternatives to allocating the 505 additional dwellings in the north-east of the District, and if so what those reasonable alternatives were, was an evaluative judgement for the Defendant, challengeable only on public law grounds: ***(R (Friends of the Earth) v Welsh Ministers*** **[2015] EWHC 776 (Admin)**. In light of the conclusions of the Inspector which are the subject of the Ground 1 challenge (as summarised above), it was open to the Defendant – and certainly not irrational of it – to conclude that any alternative to development allocations in the north-east of the District did not constitute a reasonable alternative.

(3) **Ground 3: Failure to have regard to Policy CP2.2(c) and the requirement for proportionate development in rural settlements and/or provide adequate reasons to explain how this had been taken into account** –there is no proper basis for alleging that the Inspector failed to have regard to this policy: he made repeated references to Policy CP2 generally, and it is clear that he was cognisant of the 'principle of proportionate growth in rural settlements' referred to in Policy CP2.2(c). The reasons he gave in respect of the allocations at Norton St Philip (NSP1) and Beckington (BK1) were plainly adequate.

(4) **Ground 4: Decision to allocate NSP1 and BK1 through main modifications to LPP2 was irrational** – this ground is entirely parasitic on the earlier grounds of challenge. The alleged irrationality stems from an allegation that LPP1 has not been properly construed (i.e. Ground 1) and the requirements of CP2.2 were not properly taken into account (i.e. Ground 3). As they are unarguable, so too is this ground.

II. FACTUAL BACKGROUND

5. The background to this claim is set out in SFG §4-29., and DGD §9-33. For the purposes of these grounds and for determining leave only, the Secretary of State is content to rely on this as a broad summary of the factual background to this claim.[1]

III. RESPONSE TO GROUNDS OF CHALLENGE

Ground 1: Alleged Misinterpretation of LPP1

6. There is no dispute that LPP1 includes an 'additional requirement' for 505 dwellings in the District to be addressed in LPP2.[2] This additional requirement arose during the preparation and examination of LPP1, as a result of slightly higher annual needs from 2011 than had originally been estimated, as well as the rolling forward of the plan period by an additional year.

7. Following significant debate on this subject during the LPP2 examination – including specific hearing sessions devoted to it - the Inspector concluded that, in order to meet this additional requirement, it was *"appropriate and sustainable for an additional 505 dwellings to be allocated within the north-east part of the District, primarily centred on the towns of Radstock/Midsomer Norton"* **[IR84]** and recommended main modifications to this effect.

8. In doing so the Inspector rejected as unsound the Defendant's original approach to this issue, which was to contend that the additional requirement had been met through 'non-Plan commitments' and therefore that no further allocations were required.[3] The Inspector concluded that this approach fell short of the *"expectations of the LPP1 Inspector and LPP1 itself"* **[IR68]**. He also pointed to the significant benefits of meeting the additional requirement through planned commitments by way of allocations, rather than by way of 'windfall' (i.e. non-planned development) **[IR66]**.

[1] There is some commentary with the Claimant's SFGs with which the Secretary of State does not agree. For instance, he does not accept the Claimant's contention (SFG§29) that that when considering the economic, social and housing needs evidence to justify the allocation of 505 dwellings in the north-east of the District that the Inspector relied 'considerably' on the findings in the SA Second Addendum.
[2] See LPP1 Core Policy 2 [Core/335] as well as para 4.21 of the supporting text [Core/327]
[3] See Pre-Submission LPP2, para 3.33-34 [Core/262]

9. His conclusion that the appropriate approach to meeting the additional 505 dwellings requirement was to make further allocations in the north-east of the District, primarily around the towns of Radstock and Midsomer Norton, was informed by two considerations set out in his report:

    (1) First, at **IR59-84**, the fact that both LPP1 itself and the LPP1 Inspector's report established a "*strategic direction*" that the Defendant Council would, as part of LPP2, "*consider making specific allocations in this area to meet the development needs of Mendip*" *(emphasis added)* **[IR69]**; and

    (2) Second, at **IR73-84**, that there were economic, social and housing needs justifications for the allocation of the additional 505 dwellings in this area. These justifications included: the significant functional links between the north-east of Mendip and the cities of Bath and Bristol **[IR74-75]**; the issues this area faced in terms of house prices, housing affordability and delivery of affordable housing **[IR76-81]**; the relatively low level of housing allocations in the north-east **[IR82]**; and the availability of sustainable sites within this area **[IR83]**.

10. The Inspector concluded that, taken together, these considerations formed a "*robust case*" that the allocation of "*505 dwellings in the north-east of the District is justified, sound and consistent with the aims and objectives of LPP1*" **[IR84]**.

11. The central allegation in this ground concerns the Inspector's first consideration.

12. The Claimant contends that the Inspector wrongly concluded that LPP1 included a requirement (or *strategic direction* or *strategic expectation*) that the 505 additional dwellings should be allocated in the north-east of the District. In other words, the Claimant alleges that the Inspector fell into error by interpreting LPP1 as though it obliged the Defendant in LPP2 to allocate the additional housing to this part of the District, when it did not. [4]

13. The short – and complete - answer to this ground is that that Inspector did no such thing. The Claimant's grounds mischaracterise the Inspector's reasoning.

[4] Claimant's SFGs, paras 45 and 59.

14. It is clear from his report that the Inspector fully understood that LPP1 only went as far as to establish a "strategic direction" that the Council would consider making allocations in the north-east part of the District as part of LPP2 (and not that it was obliged to do so):

    (1) At **IR65** the Inspector states that "*strategic thrust of paragraphs 4.21 and 4.7 in the LPP1…focus on the need to consider making specific allocations with reference to the towns of Radstock and Midsomer Norton…*" (emphasis added)

    (2) At **IR67** he accurately summarises the relevant sentence from paragraph 4.21 of LPP1, namely that allocations to meet the additional 505 dwelling requirement "*are likely to focus on sustainable locations in accordance with the strategy in core policy 1 and may include land in the north-east of the District, primarily adjacent to the towns of Radstock and Midsomer Norton*" (emphasis added).

    (3) At **IR69** the Inspector accurately summarises the relevant parts of paragraph 4.7 of LPP1 stating that this paragraph "*adds further strategic input on this issue; firstly by drawing attention to the potential for new development on the fringes of Midsomer Norton and Radstock; secondly by stating that the Council will consider making specific allocations in this area to meet the development needs of Mendip…*" (emphasis added)

    (4) Finally, at **IR71** the Inspector draws this together, concluding "*[i]t is clear to me that the strategic direction in LPP1 requires the Council to consider development allocations to meet the needs* [of the District] *in the north east of the District*" (emphasis added)

15. It is true, as the Claimant identifies[5], that the supporting text in LPP2 to the allocations at Beckington and Norton St Philip appears to suggest that Policy CP2 of LPP1 *required* the additional 505 dwellings to be located in the north-east of the District.[6] However, this sole reference cannot, even arguably, give rise to the inference that the Inspector erred in his interpretation of LPP1 in circumstances where:

[5] SFG, para 45
[6] LPP2, para 11.2.2 [Core/79] & 11.20.3 [Core/87]

(1) As demonstrated above, in his own report the Inspector correctly interpreted the approach set out in LPP1; and

(2) An accurate summary of the approach adopted in LPP1 is recorded earlier in LPP2 as follows:

> *"10.6.2 LPP1 Core Policy 2 identified an additional 505 dwellings as part of the adopted local plan requirement which was not allocated to a specific settlement. The 505 dwellings result from rolling forward the plan period to 2029 and the Review of Housing Requirements (2013) considered in the LPP1 examination. LPP1 Paragraph 4.21 explains that allocations should be in sustainable locations in accordance with the overall spatial strategy and may include land in the north/north-east of the District, primarily on land adjacent to the towns of Midsomer Norton and Radstock. LPP1 Paragraph 4.7 specifically identifies a need to consider allocations in Local Plan Part II in this part of the District to meet Mendip's development needs."* **[Core/69]**

16. It follows that the central basis on which the Claimant advances this ground of challenge is unarguable. Ground 1 of the Challenge should be rejected on this basis alone.

17. However, for completeness it is right to record that none of the remaining allegations within Ground 1 give rise to an arguable error of law:

(1) **First**, the contention that the Inspector erred in his approach by giving detailed consideration to the LPP1 Inspector's Report (SFG §46) is wholly untenable. LPP1 and LPP2 are two parts of the same Local Plan[7], with the former providing the strategic direction for the latter. It was entirely unsurprising therefore that the LPP2 Inspector would have regard to the LPP1 Inspector's report when arriving at a judgement as to where the additional 505 dwellings should be allocated. Having examined the LPP1 Inspector's report in **IR57-63**, the LPP2 Inspector concluded that it was "*the LPP1 Inspector's view…that [LPP2] should clearly consider the possibility of allocating housing sites on the edge of the towns of Midsomer Norton and Radstock*" (**IR63,** emphasis added). He then went on in **IR65-IR71** to separately consider what LPP1 established in terms of a "strategic

[7] LPP2, para 1.1 Core/50

direction": see paragraph 14 above. He referred to both (as well as to the economic, social and housing needs justifications) when arriving at his judgement as to the appropriate approach **[IR84-85]**. There was nothing unlawful about this. Contrary to the Claimant's averment (SFG§46) it did not offend the principles established in *Gallagher Ltd v Cherwell District Council* [2016] EWHC 290.

(2) **Second,** the Inspector's focus on paras 4.21 and 4.7 of LPP1 when construing policy CP2 was not "misplaced", nor did his approach elevate supporting text to the status of policy (SFG §49-52). Policy CP2 states: *"Additional requirement 2011 to 2029 as per 4.21 of the supporting text"* (emphasis added). [Core/335 & 336]. Paragraph 4.21 in turn expressly cross references para 4.7 [Core/322]. It was therefore entirely appropriate, and certainly not unlawful, for the Inspector to have regard to these paragraphs when considering what LPP1 said about addressing the 'additional requirement'. Moreover, as was recognised by the Inspector (**IR55, 67, 69**), and contrary to the Claimant's assertions, these paragraphs do more than "simply explain where the additional requirement of 505 dwellings comes from" (SFG§50): they provide some strategic direction as to how the additional requirements should be considered in LPP2 (as is explained above).

(3) **Third,** the Inspector did not, as the Claimant alleges (SFG§53-55), err by placing significance on the fact that *"nowhere else is singled out in Mendip for comment, in either the IR or LPP1 in relation to where the 505 additional dwellings requirement should be allocated"* **[IR70]**. As the Inspector had already explained [**IR56-63**], the towns of Radstock and Midsomer Norton were singled out for comment in LPP1 and by the LPP1 Inspector because they had not been considered for allocations as part of the LPP1 process. It was therefore open to the LPP2 Inspector to conclude – in agreement with the LPP1 Inspector – *"that it is necessary in the interests of soundness, to consider whether a case can be made to include housing allocations in* [LPP2] *which focus primarily on these towns on the fringe of the District"* **[IR61]**.

(4) **Fourth,** the Claimant's 'further alternative' submission (SFG§56) is hopeless. The *"strategic direction"* evident in LPP1 that the Defendant Council would, as part of LPP2, *"consider making specific allocations in this area to meet the development needs of Mendip"* **[IR69]** was not restricted to the towns of the towns of Radstock and Midsomer Norton. Para 4.21 of LPP1 provides that allocations in LPP2 to meet the additional 505 requirement *"may include land in the north/north-east of the District primarily adjacent to the towns of Radstock and Midsomer Norton"* (Core/327, emphasis added).

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

18. An environmental report is required to identify, describe and evaluate the likely significant effects on the environment of implementing a plan, and reasonable alternatives: Article 5(1) of the SEA Directive[8] and Regulation 12(2) of the SEA Regulations.[9]

19. The reasonable alternatives are to be identified *"taking into account the objectives and the geographical scope of the plan or programme"*: Article 5(1) and Regulation 12(2).

20. It is for the plan-making body to identify those reasonable alternatives. This was confirmed in ***R (Friends of the Earth) v Welsh Ministers*** [2015] EWHC 776 (Admin) by Hickinbottom J at [88]:

> *"…*
>
> *iv) "Reasonable alternatives" does not include all possible alternatives: the use of the word "reasonable" clearly and necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.*
>
> *v) Article 5(1) refers to "reasonable alternatives taking into account the objectives… of the plan or programme…". "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*

[8] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

[9] Environmental Assessment of Plans and Programmes Regulations 2004

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."

21. The courts, including at the highest level, have repeatedly held that the applicable standard of review in respect of challenges to the adequacy of environmental reports is the 'Wednesbury' standard. This principle was most recently reiterated by Lindblom LJ in ***Finch v Surrey County Council*** [2022] EWCA Civ 187 at [15].[10]

> *"(7) Establishing what information should be included in an environmental statement, and whether that information is adequate, is for the relevant planning authority, subject to the court's jurisdiction on conventional public law grounds (see the judgment of Sullivan J. in R. (on the application of Blewett) v Derbyshire County Council [2003] EWHC 2775 (Admin); [2004] Env LR 29, at paragraphs 32, 33 and 41). The applicable standard of review has consistently been held to be the "Wednesbury" standard (see the judgment of the Supreme Court in R. (on the application of Friends of the Earth Ltd.) v Heathrow Airport Ltd. [2020] UKSC 52; [2021] PTSR 190, at paragraphs 142 to 145; the judgment of the Court of Appeal in R. (on the application of Plan B Earth) v Secretary of State for Transport [2020] EWCA Civ 214; [2020] PTSR 1446, at paragraphs 136 to 144; the judgment of Coulson L.J. in Gathercole v Suffolk County Council [2020] EWCA Civ 1179; [2021] PTSR 359, at paragraphs 53 to 55; the judgment of Laws L.J. in Bowen-West, at paragraphs 27 to 46; and the judgment of Lang J. in R. (on the application of Friends of the Earth) v North Yorkshire County Council [2016] EWHC 3303 (Admin); [2017] Env LR 22 – otherwise known as Frack Free Ryedale – at paragraphs 21 to 23)…*

22. The Claimant's grounds fail at the first hurdle. They do not begin to attempt to challenge the Defendant's Sustainability Assessment ('SA') on *Wednesbury* grounds. For this reason alone Ground 2 is unarguable.

23. In any event, there is no arguable basis to contend that the Defendant acted irrationally when making the evaluative judgement as to which alternatives were reasonable.

24. For the reasons set out above, the Inspector concluded that it was appropriate for LPP2 to meet the additional requirement for 505 dwellings from LPP1 in the north-east of

[10] Although *Finch* concerned the EIA regime and the requirements of environmental statements, it drew upon case-law concerning the SEA Directive and Regulations, e.g. *Friends of the Earth*. The intensity of review is the same in EIA cases as SEA cases: see *R. (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214 at [141]-[144]

the District, primarily around Radstock and Midsomer Norton, and that modifications to the submitted plan to this effect were required for reasons of soundness.[11]

25. In light of the Inspector's conclusions, it was open to the Defendant – and certainly not irrational of them – to focus on alternative approaches to meeting the additional requirement *within* the north-east of the District. It was reasonable for them to conclude that alternatives outwith the north-east of the District would not have achieved the objective which the Inspector considered that LPP2 ought to include.

26. Moreover, this was not a case of the Defendant entirely ignoring or overlooking the need to consider reasonable alternatives. In the Second Addendum SA[12] the Defendant actively considered reasonable alternatives - in terms of different site allocations – in order to meet the proposed objective of providing 505 dwellings in the north-east of the District, primarily around Radstock and Midsomer Norton. Thus, the Claimant's reliance on Holgate J's observations in ***Flaxby Park Ltd v Harrogate BC*** [2020] EWHC 3204 at [129] (SFG§43) is entirely misplaced.

Ground 3: Failure to have regard to Policy CP2.2(c) and the requirement for proportionate development in rural settlements and/or provide adequate reasons to explain how this had been taken into account.

27. The Inspector was undoubtedly aware of, and took into account, Policy CP2 of LPP1. He made repeated references to this policy in his final report (see **IR27, 28**, **45, 46, 53, 55, 90, 91, 93, 106, 166**).

28. The Claimant, therefore, faces the uphill task of persuading the court that, although he had specific and repeated regard to Policy CP2, the Inspector somehow overlooked the 'principle of proportionate growth in rural settlements' set out within that policy (at CP2.2(c)).

29. There is no proper basis for drawing this inference. To the contrary, it is quite clear that the Inspector had the principle of proportionate growth in mind throughout his assessment.

[11] He originally expressed this view in the Interim Note, para 16-20 (ED20) [Core/241-242], albeit stressing that he had reached no final conclusions at that time (see para 2 [Core/239]). As noted above, this remained the case in his final report following the specific hearing sessions held on this subject.
[12] SB/150-165

30. **First,** he addressed the matter in his Interim Note (ED20). The principle of proportionate growth in Primary and Secondary Villages was described in paragraph 3.37 of the pre-submission version of LPP2, with paragraph 3.38 indicating that no site allocations would be made in villages which had already fulfilled the housing requirements in LPP1 [Core/262].

31. In his Interim Note, the Inspector expressed his concern that, as drafted in the pre-submission Plan, this approach was not sound, stating that:

> *"22. It is essential, however, that the Council does not place arbitrary caps on development, which would be contrary to the aim of national policy to "boost significantly the supply of housing"…the fact that a specific area has reached its housing target as set out in LPP1 should not, of itself, be a reason for placing a cap on future development within the plan period. A MM to paragraph 3.38 is therefore required to ensure the Plan accords with national policy in this regard." [Core/242]*

32. For the same reason he considered it necessary to modify the housing allocations in LPP2 – including allocations in Primary and Secondary Villages – so that they were expressed as a minimum, not a cap [Core/242].

33. It follows that the Inspector was plainly cognisant of, and engaged with, the 'principle of proportionate growth', but concluded that, in order for LPP2 to be sound, modifications were necessary so that it did not result in the artificial capping of growth.

34. **Second,** the Inspector made the similar observations in his final report (see **IR50 -51),** with **MM5** [Core/166] resulting in an amendment to that part of the supporting text of LPP2 that was concerned directly with the principle of proportionate growth in Primary and Secondary Villages (see paras 3.27-3.28 [Core/59]).

35. **Third,** in **IR94** the Inspector concluded in terms that the *"The planned housing growth for Shepton Mallet, Wells and the Primary and Secondary Villages are proportionate and consistent with LPP1…"*. Although the Claimant is correct to state (SFG§82) that this paragraph is concerned with distribution of housing outside the north-east of the District, this is nothing to the point. It demonstrates, unequivocally, that the Inspector had taken into account the 'principle of proportionate growth in rural settlements' in CP2.2(c).

36. In light of the above the Claimant's primary allegation within Ground 3 is wholly unarguable.

37. The Claimant's alternative allegation is that the Inspector failed to provide adequate reasons to justify the allocations in Norton St Philip (NSP1) and Beckington (BK1) in light of the 'principle of proportionate growth in rural settlements' set out in CP2.2(c).

38. This allegation is also unarguable.

39. The standard of reasons required of an examining Inspector is that to which Lord Brown referred in ***South Bucks District Council v Porter*** [2004] UKHL 33. An Inspector's reasons will be adequate so long as they make plain how the "principal important controversial issues" were resolved, and can be "briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision": ***CPRE Surrey v Waverley BC*** [2019] EWCA Civ 1826 at [72].

40. As a general principle "*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 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*": ***Keep Bourne End Green v Buckinghamshire Council*** [2020] EWHC 1984 (Admin) at [83].

41. The Inspector's reasons relating to the allocations Norton St Philip (NSP1) and Beckington (BK1) plainly met the requisite standard, noting in particular:

    (1) It was the responsibility of the Defendant, and not the Inspector, to identify which sites which it considered were appropriate to allocate in order to meet the additional requirement for 505 dwellings. This Inspector emphasised this division of functions in his Interim Note (ED20), para 18 **[Core/242]**.

    (2) The Defendant expressly took account of the 'principle of proportionate growth in rural settlements' when considering where to make the allocations. In the *'505 Dwellings – Background Paper'* **[Supp/227-245]** the Defendant set out a range of considerations which it took into account when assessing the sites, one of which was the "*[e]xtent of recent growth relative to*

housing stock (proportionate growth)" (para 35, **[Supp/236]**.) The considerations were "*used to come to a judgment of whether the settlement should be considered in principle as a* [sic] *suitable to accommodate part of the 505 requirement"* (para 35, **[Supp/236]**.)

(3) The Defendant's approach was to meet the vast majority of the additional requirement on sites adjacent to Midsomer Norton, with 455 dwellings being allocated in this location.

(4) By contrast, as the Inspector recognised, the allocations in Beckington (28 dwellings) and Norton St Philips (27 dwellings) "*comprise a modest but important component"* of the additional requirement **[IR142]**.

(5) Both Beckington and Norton St Philips are classified as 'Primary Villages' which, according to LPP1, are "*the first places to consider when distributing planned rural housing in the Local Plan"* (para 4.32 **[Core/330]**)

(6) In relation to both villages, the Defendant concluded the principle of proportionate growth represented an "*adverse justification for growth/allocation"* **[Supp/248]**. This appears to be on the basis that the growth in housing stock between 2006-2019 for both villages had been above 15% **[Supp/249 and Supp/254]**. Nevertheless, the Defendant came to a balanced judgement that it was appropriate, in principle, for these settlements to accommodate further growth, having regard to the other considerations which were in play.

(7) The 'principle of proportionate growth in rural settlements' in CP2.2(c) is exactly that: a principle. It is not, even in policy terms, an absolute requirement. Moreover, it was the Inspector's judgement – a judgement (rightly) not challenged in these proceedings – that the housing requirements for the Primary and Secondary Villages in LPP1 should not be treated as a cap.

(8) This much was consistent with the conclusions of the LPP1 Inspector who explained:

68…. the Council has, in Tables 8 and 9, given an indication of

the levels of growth that will be acceptable in various villages. This figure, or dwelling requirement, equates to 15% of the existing housing stock in an individual village up to an upper limit of 70 dwellings in Primary Villages and 40 dwellings in Secondary Villages….

70… Certainly the 15% figure and the upper limit figures for Primary and Secondary villages have not been arrived at on any scientific basis… the Council stressed at the hearings that it was not its intention to use the housing requirements set out in Tables 8 and 9 to micromanage development in villages. In allocating sites in the Local Plan Part II Allocations document it will take a flexible approach and if, for example, the effective planning of a site would enable somewhat higher levels of development then this would not be resisted or if a particular parish wanted more development this would not be opposed." (emphasis added)[Core/370]

(9) The LPP2 Inspector was charged with assessing whether, with proposed main modifications - including the additional allocations in the Primary Villages, LPP2 was 'sound'. In doing so he had regard to the assessments undertaken by the Defendant, including the *'505 Dwellings – Background Paper'* **[IR6,]**

(10) The Inspector considered the soundness of the additional allocations at the Primary Villages in his decision letter. Having concluded that both Norton St Philip and Beckington *"have sufficient facilities to satisfactorily accommodate the quantum of housing for each site"* **[IR116]** he examined the proposed allocations in some detail at **IR117-138** and found them to be sound (he rejected a third proposed allocation in the settlement of Rode at **IR139-141**).

(11) His assessment must, of course, be read in the context of the economic, social and housing need justifications for meeting the additional requirement in the north-east of the District which the Inspector had articulated at **IR73-83**.

42. The Inspector was not required in his report to specifically address Policy CP2.2 and/or the principle of proportionate growth in respect of the allocations at Norton St Philip and Beckington, which appears to be the Claimant's complaint. It is enough that the Inspector was (plainly) aware of the relevant principle; that the Defendant had applied that principle in their assessment of which sites to allocate; that the Inspector

took account of the Defendant's assessment; and that, having done so, he found the allocations to be sound.

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

43. Despite the Claimant's protestations (SFG§85), this ground is clearly parasitic on the earlier grounds of challenge.

44. The alleged irrationality stems from allegations that LPP1 has not been properly construed (i.e. Ground 1) and that the requirements of CP2.2 were not properly taken into account (i.e. Ground 3). As they are unarguable, so too is this ground.

45. The only freestanding allegation is that the allocation at Norton St Philip would conflict with a draft Neighbourhood Plan which had been held up due to delays caused by a legal challenge (SFG§83(e)). Even if correct, this provides no arguable basis for concluding that the allocations were irrational.

IV. INTERIM AND FINAL REMEDIES

46. The Secretary of State opposes the interim remedy sought **[Core/242]** for the following reasons:

    (1) The principle of validity is an important tenet of public law. Fidelity to this principle requires that the effect of decisions made by public bodies should not be routinely or automatically suspended simply on the bringing of statutory reviews.

    (2) The planning system in England is plan-led. There is, therefore, significant public interest in having clarity, consistency and certainty concerning the operation of policies in an adopted development plan.

    (3) No doubt aware of these considerations in ***IM Properties Development Limited v Lichfield District Council*** [2015] EWHC 1982 (Admin) gave the following guidance in relation to the exercise of section 113(5) of the Planning and Compulsory Purchase Act 2004:

> *"30. It seems to me to be plain that, as a matter of general practice, where a suspension of a local plan document is sought, the factual matters upon*

which the Claimant relies in order to obtain relief ought to be supported by evidence as to any prejudice relied upon by the Claimant if the plan (or part thereof) were not to be suspended as well as the effect of suspension upon the public interest."

(4) In this case the Claimant has not made any submissions as to why an interim order is appropriate in this case, let alone led evidence as to any prejudice they would suffer if Policy NSP1 were not suspended. Nor do they explain why the draft order is restricted to this policy only.

47. Should the need arise, the Secretary of State will make submissions on appropriate remedy once judgment is received.

IV. CONCLUSION

48. For the reasons set out above the application for leave has no arguable merit. Accordingly, the Secretary of State submits that the court should:

i. Refuse the Claimant leave to a bring a planning statutory review; and
ii. Order that the Claimant pay the Secretary of State's costs of preparing the acknowledgement of service and these Grounds of Resistance in the sum detailed on the attached costs schedule. Where leave is refused in planning statutory reviews Interested Parties are, as a matter of principle, entitled to recover the costs of the preparing the acknowledgment of service and Grounds of Resistance: ***CPRE Kent v Secretary of State for Communities and Local Government*** [2021] UKSC 36.

ROBERT WILLIAMS

CORNERSTONE BARRISTERS

21st February 2022