

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/07/2017

Before:

SIR ROSS CRANSTON
(Sitting as a Judge of the High Court)

Between :

THE QUEEN
(on the application of ST ALBANS CITY AND DISTRICT
COUNCIL)

Claimant

- and -

(1) SECRETARY OF STATE FOR COMMUNITIES AND
LOCAL GOVERNMENT

Defendant

(2) DACORUM BOROUGH COUNCIL
(3) HERTSMERE BOROUGH COUNCIL
(4) THREE RIVERS DISTRICT COUNCIL
(5) WATFORD BOROUGH COUNCIL
(6) WELWYN HATFIELD BOROUGH COUNCIL
(7) HERTFORDSHIRE COUNTY COUNCIL
(8) CENTRAL BEDFORDSHIRE COUNCIL
(9) NORTH HERTFORDSHIRE DISTRICT COUNCIL

Interested Parties

MATTHEW REED QC (instructed by Legal Services, St Albans City and District council)
for the Claimant

MARK WESTMORELAND SMITH (instructed by GLD) for the Defendant

Hearing dates: 21 and 22 June 2017

Judgment Approved

Sir Ross Cranston

Introduction

1. This is a rolled-up hearing of an application for judicial review by the claimant, St Albans City and District Council (“the Council” or “St Albans”), to quash the decision of the Secretary of State for Communities and Local Government (“the Secretary of State”), made by one of his planning inspectors. A number of neighbouring local authorities are interested parties to the claim.
2. The inspector’s decision was that the Council had failed to comply with the duty to cooperate with neighbouring planning authorities contained in section 33A of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) when producing its

strategic local plan (“the plan” or “the local plan”). That duty was introduced by the Localism Act 2011 following the abolition of regional spatial strategies and the return of spatial planning powers to local planning authorities: see *Samuel Smith Old Brewery (Tadcaster) v Selby District Council* [2015] EWCA Civ 1107; [2016] PTSR 146.

3. In broad terms the issue in the case is whether the planning inspector was correct about the breach of the duty. In that regard at least two questions have arisen. Did the duty to cooperate continue when in the Council’s eyes there was an impasse between it and the neighbouring authorities on the important issue of what constituted the housing market area for its district? And in considering whether the duty was on the whole fulfilled could cooperation in one area such as economic development be balanced against its absence in another such as housing?

Background

4. The Council is the local planning authority for the St Albans District. Joint working with neighbouring authorities culminated in 2008 in a strategic housing market assessment (SHMA) for the London commuter belt west. Those neighbouring authorities included Dacorum Borough Council, Hertsmere Borough Council, Three Rivers District Council, Watford Borough Council and Welwyn Hatfield District Council.
5. Subsequently, the Council employed consultants, Housing Vision. They produced a series of reports: a Strategic Housing Market Assessment in 2013; an update to this in 2015; and a report dated May 2016. After outlining the different approach to the issue others had taken (explained below), Housing Vision’s May 2016 report reiterated its earlier approach: there was a core housing market area, basically the St Albans district; a wider housing market area, comprising the areas of neighbouring local authorities; and a peripheral housing market area, London borough areas nearest to St Albans. Essentially Housing Vision’s definition of the St Albans’ market area is that whilst there is an established market relationship with local authorities throughout Hertfordshire, St Alban’s housing market is distinctive in that demand pressures from London have a greater influence and drive up house prices and rents.
6. In 2014, four neighbouring authorities - Dacorum Borough Council, Hertsmere Borough Council, Three Rivers District Council and Watford Borough Council, known collectively as the South West Herts Group – had met to consider a joint strategic housing market assessment. They invited St Albans to join in the commissioning. It refused although it was prepared to support a “reference group”. In early 2015 the South West Herts Group informed the Council that the consultants it had engaged, G L Hearn and Regeneris, had confirmed their initial recommendation that the appropriate housing market area and functional economic market area (FEMA) included St Albans. In mid-March the Council was invited to reconsider and join with the other local planning authorities in commissioning the consultants’ work. In a short email on 30 April 2015 the Council offered to cooperate with the consultants to the South West Herts Group but again declined to become a commissioning partner.
7. Meanwhile, from 2012, the Council had been preparing its local strategic plan, as it was obliged to under sections 16 and 17 of the 2004 Act. During the process there

were meetings with Dacorum District Council, under the banner “Duty to Cooperate” in 2015 and 2016. At one of the meetings, on 12 February 2015, it was agreed that there needed to be further discussion as to whether St Albans could assist in meeting some of Dacorum’s future housing needs on the Gorhambury land (east of Hemel Hempstead).

8. On 8 January 2016 the South West Herts Group wrote to the Council, in advance of publication of St Albans’ pre-submission version of plan, seeking assurances that the Council was satisfied that it had met the requirements of national planning policy in identifying St Albans’ objectively assessed need (OAN) for housing, including consultation with neighbouring local authorities; had developed robust employment evidence, given the South West Herts Economic Study; and had taken appropriate account of what the South West Herts Group’s consultants had concluded about the appropriate housing market area and functional economic market area. Later that month St Albans replied to the South West Herts Group’s letter that it was satisfied in respect of the matters raised. The South West Herts Group published its consultants’ reports in February 2016.
9. In a letter dated 11 April 2016 the South West Herts Group requested a meeting with St Albans and the provision of detailed information so that its consultants could better understand the reasons for the differences between the two sets of consultants about the housing market. There was no reply so a follow up email was sent in early June 2016. The response came some five months later on 23 September 2016.
10. In that reply the Council wrote to the South West Herts Group stated that despite the Inspector’s letter (see below), it wished to continue the Council’s ongoing duty to consult. With that in mind it proposed a meeting. The points to be considered, including at the political level, included the specific outcomes which the group felt that the mutual duty to cooperate had failed to deliver and the solutions and way forward; the basis for the group producing studies covering some areas (including the St Albans) outside their districts, without the agreement of these other areas; the view to be taken now on the agreed joint technical work from 2008-2009; the level of political commitment and cross border agreement to deliver the growth indicated in the group’s studies; the benefits of information sharing on demographic issues; and how new technical work would be discussed in future.

Draft plan submitted and planning inspector appointed

11. In August 2016, the Council submitted its draft plan to the Secretary of State for examination. An aspect of strategy in the plan was that development in the St Albans district could be accommodated in the area west of the M1 proximate to Hemel Hempstead, Hemel Hempstead being part of Dacorum Borough Council. For housing the plan adopted the approach its consultants had recommended. A part of economic development covered in the plan was the Maylands growth corridor (“Maylands”) and the employment opportunities it would provide for both St Albans and Dacorum borough residents.
12. The Secretary of State appointed a planning inspector, Mr David Hogger (“the Inspector”), to examine the plan under section 20 of the 2004 Act. Mr Hogger had acted as the examining inspector for Dacorum Borough Council’s Core Strategy. In his report into that plan dated July 2013, he indicated a need for cooperation between

St Albans with Dacorum Borough Council in assessing how land east of Hemel Hempstead, within St Alban's district, might contribute to meeting Dacorum's needs. Dacorum's core strategy stated, inter alia, that it was to be partially reviewed after completion of the site allocations development plan, with evidence gathering for that beginning in 2013.

13. Amongst the material the Council provided to the Inspector was a document demonstrating that it had complied with its duty to consult, entitled "St Albans City and District Strategic Local Plan, Duty to Cooperate Statement of Compliance", dated August 2016. One point the document referred to was the difference between the Council and the neighbouring local authorities as regards identifying a housing market area.
14. In a document entitled "Preliminary concerns of the Inspector" dated 22 August 2016, Mr Hogger stated that he was concerned that the duty to cooperate had not been met. He added that he had decided that there should be an initial hearing session ahead of the examination into the plan to consider whether there had been compliance with the duty. In that letter the Inspector explained that his concerns arose from the representations of neighbouring local authorities which had been made at the consultation stage of the plan. Invited to attend the initial hearing session were the South West Herts Group, Welwyn Hatfield Borough Council, Hertfordshire County Council, and a number of other bodies including the Home Builders Federation.
15. In September 2016 the Inspector produced an agenda for the initial hearing session. It set out the questions intended to form the basis of the discussion. The agenda also stated that the Council should answer those questions and that written statements from other parties were not compulsory but could be produced.
16. In response to the Inspector's concerns and specific questions, the Council submitted a written statement. It asserted that the duty to cooperate had to be judged by the totality of its conduct. Thus a failure to cooperate on a matter did not of itself establish a failure to meet the duty. The Council continued that Dacorum Borough Council's complaint about a lack of cooperation was really a complaint about soundness: the Council's consultants had identified a housing market area for St Albans alone, there was therefore no role for Dacorum in deciding the overall housing target in St Alban's plan, and the issue did not have a strategic cross-boundary character. As regard the issue of its site allocation development plan, the Council added, Darcorum had acknowledged in its core strategy that it had not been completed, so that could not be taken into account in whether St Albans had complied with its duty to cooperate. The Council's representations rejected the work of the South West Herts Group's consultants as fundamentally flawed. As regards employment, the representations highlighted the cross border nature of the work in east Hemel Hempstead around the enterprise zone and Maylands. As regards housing, the Council was supported by the Home Builders Federation by way of counsel's opinion, and the Commercial Estates Group Limited, also by way of counsel's opinion.
17. There was a joint statement from the South West Herts Group dated 6 October 2016. It began by expressing the group's reluctance in making representations that St Albans had not complied meaningfully with the duty to cooperate on cross-border strategic issues. St Albans' failure properly to identify housing need, it said, would

place great pressure on them. There had been cooperation, but in 2013 St Albans had commissioned Housing Vision without any of the other authorities being asked to join in the commissioning, without consultation on methodology and the appropriate housing market area, without being asked for any technical information and without being shown draft results. The joint statement aligned itself with the views of its consultants that there was a single south west Hertfordshire housing market area and functional economic market area. The joint statement summarised the attempts to engage St Albans described earlier. What was at issue, given the clear conflicts, was the need for cooperation. But St Albans refused to do so. The joint statement acknowledged that St Albans had actively participated in the work Dacorum had initiated with the new enterprise zone and work associated with the Maylands growth corridor.

18. The initial hearing session was held on 26 October 2016. The main issue between the Council and the South West Herts Group was housing and concerned what was the relevant housing market area for St Albans district.
19. In its opening statement to the Inspector, the Council described “constant and productive engagement with cooperation bodies”, including the enterprise zone and Maylands business park. There had also been land allocation for 2500 home through green belt releases. On housing, however, there was “a diametrically opposed difference between the authorities’ positions on this point”. The invitation to the Council by the South West Herts Group to join in commissioning its consultants came late, after its own consultants had reported. Since the parties had reached an effective impasse on what comprised the housing market area, no further discussion could fruitfully be had on the issue and this bore directly on the question whether the duty to cooperate had been fulfilled.
20. There were also oral representations by the South West Herts Group, Hertfordshire County Council, Welwyn Hatfield Borough Council, the Home Builders Federation and other authorities. In the final stages of the initial session meeting, other third parties made representations objecting to St Albans’ plan on the basis of non-compliance with the duty to cooperate. Because those representations were lengthy, the Inspector suggested that there should be time for the parties to respond, an approach accepted by all parties.
21. In its response on 18 September 2016 the South West Herts Group underlined the point that the duty to cooperate should not be conflated with the tests of soundness. The duty had not been fulfilled. When issues relating to housing market needs and methodologies for determining needs were so vastly different, the outcome of the St Albans’ approach would clearly impact on the other local authorities.

Inspectors’ decision letter

22. The Inspector’s decision letter, “St Albans City and District Local Plan Duty to Cooperate (Issue 1)”, was dated 28 November 2016. The Inspector concluded that the Council had not met its duty to cooperate. The Council could either request his final report under section 22 of the 2004 Act or withdraw the plan.
23. After a preamble, the Inspector began his decision letter with an account of the legislative and policy background, including the NPPF. He was primarily considering

the duty to cooperate but noted that whether a strategic local plan is sound depends on whether it is positively prepared and effective, which “means it must be based on effective joint working on cross-boundary strategic priorities and where appropriate and sustainable, on a strategy which seeks to meet unmet requirements from neighbouring authorities”: [9]. The duty was not one to agree:

“[11]...for example, just because [the Council] does not agree with nearby Local Planning Authorities regarding the definition of the Housing Market Area, this does not, in itself, demonstrate that the [duty to cooperate] has not been met.”

24. The Inspector then turned to strategic cross-boundary matters and priorities, noting that here was no clear indication in the strategic local plan as to what the strategic priorities were, particularly those with cross-boundary implications: [15]. The Inspector recorded that at the hearing the Council confirmed that there was no specific list of strategic cross-boundary matters or priorities in the strategic local plan but that they were nevertheless implicitly reflected in its content: [17]. There was no reason to doubt that the Council was not aware of these matters, but:

“[19]...[i]t would be difficult for someone reading the [plan] to draw any firm conclusions regarding strategic cross-boundary matters and priorities and in turn they would not be able to conclude whether or not those issues had been properly addressed by the Council. On the evidence submitted I am unable to conclude that cross boundary strategic matters and priorities have been afforded appropriate weight in the plan-making process in St Albans.

[20]. Although this matter, on its own, may not be terminal in terms of making progress on the Examination, the lack of clarity regarding this issue does not provide a secure foundation from which other matters of co-operation can be assessed...”

25. Under the heading “processes undertaken”, the Inspector noted the opinions of other local planning authorities that there was no structure in place in terms of the regularity and frequency of joint meetings. Those held were broad brush, and what the Council itself described as overarching, meetings: [22]. There were quarterly reports to the planning committee about cooperation, but these were unclear about agreed outcomes: [23]. It was not a matter on which his conclusions rested but the Council’s arguments would have been more persuasive if there had been more rigorous approach to the processes of cooperation: [24].
26. Under the heading “the requirements of the duty”, the Inspector asked a number of questions. Had engagement been constructive from the outset? He said:

“[25] There has been engagement between St Albans Council and nearby local planning authorities, particularly in the earlier stages of plan-making, for example in relation to the 2008 Strategic Market Housing Assessment (SHMA) and employment work undertaken in 2009. Constructive engagement in more recent years appears to be less evident and it is difficult to conclude that the Council has approached cross-boundary priorities in a meaningful and positive way. SADC

recognises that there are ‘strong economic and spatial relationships with neighbouring towns, particularly Hemel Hempstead, Welwyn Garden City, Hatfield, Watford and Luton’. However, there is no persuasive evidence that the Council has pro-actively sought meaningful engagement with all of these and other nearby Local Planning Authorities. Meetings have been held and doubtless appropriate issues have been discussed but it needs to be demonstrated that cross-boundary issues, for example in terms of housing, employment and infrastructure provision, have been fully addressed and that opportunities to be constructive have been given appropriate consideration and where necessary have been acted upon. I acknowledge that there may be difficult issues to tackle but that is no reason to adopt a less than constructive approach throughout the plan making process.”

27. Had engagement been active? From the minutes of joint meetings, the Inspector said that he could not conclude that it had been; there should be continuing and frequent engagement, even if it was only to provide an up-date on issues of strategic relevance: [26]. The Inspector later remarked on the late publication by the Council of the minutes of these meetings: [31].
28. Had engagement been ongoing? For this question the Inspector canvassed the correspondence summarised above about meetings between the Council and the South West Herts Group and expressed concern: [28]-[29]. The issues the Council had identified in its letter of 23 September 2016 should have been addressed, he opined, much earlier: [30]. “The correspondence...demonstrates a lack of meaningful collaboration.”
29. Had engagement been collaborative? While acknowledging that there was no obligation on the Council to agree with its neighbours, the Inspector stated that without even entering fully into the debate, it was difficult to conclude that there has been collaboration: [32]. Has every effort been made to secure the necessary co-operation? To the Inspector it appeared there was little evidence that a rigorous approach has been adopted by the Council.

“[33]...The evidence provided, for example in the appendices to the Joint Statement, set out some of the efforts made across Hertfordshire to secure co-operation. However, it appears to me that [the Council] has not made every effort to become fully involved in the processes, to engage fully and to explain to other nearby LPAs its approach towards, for example, housing and employment provision and the related evidence on which the Council relies”.
30. The Inspector then referred to the Memorandum of Understanding prepared by the Hertfordshire Infrastructure and Planning Partnership in May 2013, but there was little evidence that the Council has made the necessary effort to ensure that its goals were satisfactorily achieved: [34]-[35]. The Inspector continued with a question whether engagement had been diligent, but that could not be said: [37]. Drawing together all the threads in the previous paragraphs of his decision letter, the Inspector

concluded that the evidence of co-operation on cross-boundary matters and priorities was not robust: [38]. He also stated that the Council's submissions could not be described as comprehensive ([38]), and that taking all factors into account, albeit that there was no requirement to agree, engagement had not been of mutual benefit: [39].

31. Under a separate heading "planning topics", the Inspector addressed the concerns have been raised by interested parties regarding the level of co-operation in relation to a number of planning topics, including housing, transport, gypsies and travellers, employment, the provision of infrastructure and the green belt. The Inspector would have been content to address many of these in subsequent hearing sessions, which would have considered matters of soundness, so restricted his comments to only one issue that had clear duty to cooperate implications: [41]. That was the concern of Dacorum Borough Council, which he shared, regarding the role that land to the east of Hemel Hempstead could play in terms of housing provision. He said:

"[42]... Policy SLP 13(a) states that the urban extension of Hemel Hempstead would 'meet the needs of the St Albans housing market area'. Paragraph 4.5 of the SLP confirms that 'development needs arising in the District can readily be met in this location'. This may be an appropriate approach to take but the Report into the Dacorum Core Strategy refers to meeting that Borough's housing needs 'including in neighbouring Local Planning Authority areas' (e.g. in St Albans). At the very least I would have expected a much clearer process for the consideration of the role of this land. At the end of the day the Council's decision to allocate all the land to meet the needs of St Albans may well be justified but in order to reach that conclusion there needs to have been a proper consideration of all the issues by all the interested parties and there is no substantive evidence that the appropriate level of collaboration and engagement on this matter has been sought or achieved.

[43] Although this by itself is not a matter on which my decision has turned, it adds weight to my overall conclusion and is a further indication that the level of co-operation falls short of what is expected."

Then under a heading about the effectiveness of the strategic local plan in relation to soundness, the Inspector said:

"[44] To be effective the [plan] must be based on effective joint working on cross boundary strategic priorities (for example housing provision). I understand the conclusions that the Council has drawn with regard to accommodating additional growth but those findings do not appear to be based on collaborative working or effective co-operation with other bodies. It may be that the Council's conclusions are correct, for example in terms of housing numbers and the definition of the Housing Market Area, but on the evidence before me I am unable to confirm that St Albans City and District Council has given adequate consideration to helping meet the development

needs of other nearby local planning authorities. In these circumstances the plan would not be effective and therefore it could not be found to be sound.”

32. Having taken into account all the relevant representations, the Inspector said, including those in support of the Council - for example from the Local Enterprise Partnership and the Home Builders Federation and some of the surrounding local authorities - he concluded that the evidence clearly demonstrated to him that the Council had not met its duty to cooperate by giving

“[45]...satisfactory consideration to identifying, addressing and seeking co-operation with regard to strategic cross-boundary matters and priorities. As the plan has not been based on effective joint working on strategic matters and priorities and because there is insufficient evidence to demonstrate that the [plan] has been positively prepared, there is also the significant risk that the plan could be found to be not sound”.

33. This did not mean that the Council should be expected to accommodate additional growth, but it did mean is that it should give detailed and rigorous consideration to strategic cross-boundary matters and priorities and draw robust conclusions with regards to whether or not any of those priorities could be delivered in a sustainable way within the district, bearing in mind the environmental and other constraints that existed: [47].

Legal framework

34. Sections 33A(1)-(2) and (6) of the 2004 Act provide for the duty to cooperate:

“(1) Each person who is—

- (a) a local planning authority...

must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3)...

(3) The activities within this subsection are—

- (a) the preparation of development plan documents...

so far as relating to a strategic matter.

- (4) For the purposes of subsection (3), each of the following is a “strategic matter”—
- (a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas...
- (6) The engagement required of a person by subsection (2)(a) includes, in particular—
- (a) considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3), and
 - (b) if the person is a local planning authority, considering whether to agree under section 28 to prepare joint local development documents.”
35. From section 33A(3)-(4) it is clear that the duty to cooperate applies to the production of a strategic local plan. Under section 33A(7) a person subject to the duty must have regard to any guidance given by the Secretary of State about how the duty is to be complied with.
36. In the course of his decision in *Trustees of the Barker Mill Estates v Test Valley Borough Council* [2016] EWHC 3028 (Admin); [2017] PTSR 408, Holgate J said this of the duty to cooperate:
- “[56] Issues such as what would amount to sustainable development, what would have a significant impact on two or more planning areas, what should be done to “maximise effectiveness” with regard to the preparation of a development plan, what measures of constructive engagement should take place and the nature and extent of any co-operation are all matters of judgment for the LPA. The requirement in section 33A(6) of the PCPA 2004 to consider joint approaches to strategic planning matters is also a matter of judgment for the LPA. Each of these issues is highly sensitive to the facts and circumstances of the case. The nature of these functions is such that a substantial margin of appreciation or discretion should be allowed by the court to the LPA.”
37. An inspector’s role in examining a development document is contained in section 20 of the 2004 Act. In so far as material it states:
- “(5) The purpose of an independent examination is to determine in respect of the development plan document—
- (a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;
 - (b) whether it is sound; and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

(7) Where the person appointed to carry out the examination—

(a) has carried it out, and

(b) considers that, in all the circumstances, it would be reasonable to conclude—

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation,

the person must recommend that the document is adopted and give reasons for the recommendation.”

38. What is required of a planning inspector in examining whether a local planning authority has performed its section 33A duty was spelt out by Paterson J in *R (on the application of Central Bedfordshire Council) v Secretary of State for Communities and Local Government* [2015] EWHC 2167 (Admin):

“[50] To come to a planning judgement on a duty to co-operate involves not a mechanistic acceptance of all documents submitted by the plan-making authority but a rigorous examination of those documents and the evidence received so as to enable an Inspector to reach a planning judgment on whether there has been an active and ongoing process of co-operation. The key phrase in my judgment is “active and ongoing”. By reason of finding there were gaps as the Inspector has set out, he was not satisfied that the process had been either active or ongoing”.

39. In reviewing an Inspector’s decision regarding a local planning authority’s performance of its section 33A duty, the court’s role is limited to considering whether he or she acted rationally and lawfully; it is a matter of judgment for an inspector and a more intensive review would undermine the Parliamentary intention behind the provision: see *Zurich Assurance Ltd v Winchester City Council* [2014] EWHC 758 (Admin), [114] per Sales J; *Trustees of the Barker Mill Estates v Test Valley Borough Council*, [58], per Holgate J.

40. Guidance made under section 33A (7) of the 2004 Act is contained in the National Planning Policy Framework (“NPPF”). Paragraph 156 reads:

“Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver:

- the homes and jobs needed in the area;
- the provision of retail, leisure and other commercial development;
- the provision of infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
- the provision of health, security, community and cultural infrastructure and other local facilities; and
- climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape.”

Paragraph 178 of the NPPF provides:

“Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in paragraph 156. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.”

The duty to cooperate is also dealt with in paragraph 181:

“Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position. Cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development.”

41. Examination of a local plan for soundness is covered by paragraph 182 of the NPPF. Essentially the plan is to be examined by an inspector whose role is to assess whether the plan has been prepared in accordance with the duty to cooperate, legal and procedural requirements, and whether it is sound. Whether it is sound involves consideration whether it is positively prepared (including unmet requirements from neighbouring authorities where it is reasonable and consistent with achieving sustainable development); justified; effective (the plan inter alia should be based on effective joint working on cross-boundary strategic priorities); and consistent with national policy.
42. As to housing needs, paragraph 47 provides:

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period...”

Ground 1: Failure to engage with or take into account the housing and employment issues which were engaged in the plan making process when addressing duty to cooperate

43. Under this ground the Council identified some thirteen legal issues which needed to be determined. As regards housing they boiled down to whether the Inspector failed properly to take into account its argument that there was a polarised position regarding the housing market. As regards employment, the enterprise zone and Maylands, the Council emphasised that there had been cooperation. In both cases, the Council contended, the Inspector’s consideration was defective. That fundamentally affected his judgment on whether the duty to cooperate had been satisfied.
44. The Council’s submission on housing was first, that the Inspector failed to take into account that the debate between it and the South West Herts Group on the specific issue of the housing market area for St Albans had reached an impasse, which made further discussion pointless. The impasse was a material consideration and failure to take it into account meant the Inspector was guilty of flawed logic, which under the authorities was reviewable. If the Inspector had had regard to the impasse, it would have markedly affected the extent to which it could be said that there had been non-compliance with the duty to cooperate. If ultimately the Council was right, and the housing market area was confined to the St Albans district, that meant there was no cross border aspect and under the statute the duty to cooperate did not arise. The impasse was squarely before the Inspector not least in the Council’s written responses to his questions and its opening statement at the initial hearing session on 26 October 2016. Indeed the impasse was recognised by the South West Herts Group in its post-hearing statement of 18 November 2017.
45. Secondly, as part of this analysis, the Council submitted that the Inspector failed to consider whether the Council’s case was factually correct that the parties had reached an effective impasse. He should have done this by reference to the consultants’ reports and considered whether, in the light of them, there could be further debate and whether earlier consultation would have made any difference. Instead of focusing on process, the inspector should have addressed whether any fruitful cooperation was possible given that the parties were so far apart. The Council submitted that its letter of the 23 September 2016 could in no way be read as resiling from its position that there was an impasse.
46. Further, the Council contended, the Inspector omitted to give adequate reasons about whether the Council had acted constructively and co-operatively on the housing issue. His statement at DL11, quoted earlier in the judgment, indicated his misunderstanding that the lack of agreement positively established that the duty to cooperate on housing issues had been met. There was no ongoing duty to cooperate when no purpose would be served. If the Inspector had taken the debate into account, the Council added, then his decision on the duty to cooperate was irrational.

47. In my view DL 11 cannot be read in the manner the Council suggested, especially given the well-established authorities on how decision letters should be read in a straightforward, down-to-earth way, without excessive legalism or exegetical sophistication: e.g., *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, per Sir Thomas Bingham MR at 271-272. To my mind that paragraph clearly indicates that the Inspector understood that there was a disagreement between the Council and the other local planning authorities over the housing market area. In that paragraph he also stated that the disagreement is not determinative of whether the duty to cooperate has been met, to which I return in a moment. Elsewhere as well he accepted that the duty to cooperate is not a duty to agree and that whether or not there is agreement is not determinative of the duty to cooperate. All this plainly illustrates that he fully appreciated the issue.
48. As to the notion the Inspector had to determine whether the Council was correct on the impasse, in DL44 he indicated that he was in no position to draw any conclusions. "It may be that the Council's conclusions are correct", he said, but then added that on the evidence before him he was unable to confirm that it had given adequate consideration to helping meet the development needs of other nearby local planning authorities. I cannot see that his conclusion was in any way flawed that he did not have the material before him to determine the debate and the merits of the argument on the housing market area. After all, that issue went to soundness, and the larger issue of soundness was not before him at the initial hearing session.
49. The issue before him was that of cooperation, and in my view he was entitled to reach the conclusions he did on whether it had been effective, constructive, and on-going. It is hornbook law that an inspector's reasons are written principally for parties who know what the issues between them are and what evidence and argument has been deployed; that an inspector does not need to rehearse every argument relating to each matter in every paragraph; and that because of that knowledgeable readership an inspector's reasoning must be considered against that background: *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; *R v Mendip District Council ex parte Fabre* (2000) 80 P & CR, at p.509.
50. Among the evidence on which the Inspector was entitled to draw was first, the Memorandum of Understanding, which seemed defunct until it was revived in the Council's letter of 23 September 2016. But that was after the Inspector was at work and when the searchlight was on the Council to demonstrate that it had fulfilled the duty to cooperate. Secondly, the Council commissioned its consultants, but without engaging with the other local authorities or asking them if they wished to join in the commissioning. Thirdly, the "duty to cooperate" meetings were, on the Council's own admission, "over-arching" with no evidence of agreed outcomes.
51. Further, I accept the Secretary of State's submission that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate, especially in an area such as housing markets and housing need which involve as much art as science, and in which no two experts seem to agree. As Paterson J underlined in *R (on the application of Central Bedfordshire Council) v Secretary of State for Communities and Local Government* [2015] EWHC 2167 (Admin), the duty to cooperate is active and on-going, and that to my mind means active and on-going even when discussions seem to have hit the buffers. In all the circumstances, my

conclusion is that the Inspector did not reach an illogical or irrational conclusion as regards the duty to cooperate over housing.

52. Turning to employment, the Council submitted that the Inspector erred in his approach when there was more than adequate evidence that there had been cooperation, accepted on all sides, not least over the enterprise zone and Maylands. First, he failed to consider its importance as regards whether the duty to cooperate had been met; secondly, he failed to consider the extent to which delivery of these projects were sufficient, of themselves, to lead to a conclusion that the duty had been met, irrespective of any failure to discuss other matters; and thirdly, his reasoning was inadequate that there had not been constructive engagement by the Council on employment issues. Significantly, the Council submitted, the Inspector did not balance the importance of cooperation in this area against the matters that it is said were not addressed in compliance with the duty to cooperate.
53. I do not accept these submissions. At DL25 the Inspector acknowledged that there had been co-operation on employment matters. At DL45 he stated that he took into account the representations from all sides, and that of course included the evidence from both the Council and the South West Herts Group as to cooperation on the enterprise zone and Maylands. It is trite law that he did not need to cover every matter, and that applies particularly to those where there was common ground. It is plain from his reasons that the Inspector considered cooperation along a range of dimensions and over time. He reached, as he was entitled to do, an overall judgement about compliance with the duty to cooperate.
54. In particular I reject the submission that in coming to that judgement he somehow had to balance those matters where there was cooperation against those where it was absent. Balancing is not the statutory test. Both *Zurich Assurance Ltd* and *Barker Mill Estates* lay down that what an inspector has to do is to come to a judgement, which this Inspector did, and that the court's function is limited to reviewing it for irrationality and unlawfulness. In my view the Inspector was neither irrational nor unlawful in his approach to this issue.

Ground 2: Error of approach on the relationship between the Dacorum Core Strategy and the St Albans plan

55. The Council contended that there were errors of law in the Inspector's approach regarding the relationship between the Dacorum Core Strategy and St Albans plan. With this submission the Council returned to the appropriate housing market, and the Inspector's failure to consider the Council's argument in that regard. Consideration of that when assessing the significance of the Dacorum Core Strategy (and this Inspector's report about it) would have indicated the required level of collaboration between the authorities and the Council's requirement to meet Dacorum's housing needs. If the Council were correct as regards the housing market area, it submitted, there were no such requirements. Moreover, on the Council's case the Inspector failed to consider its argument that the Dacorum Core Strategy itself did not envisage any discussions between the authorities until Dacorum had completed a site allocation development plan. If Dacorum was able to identify land in its area there would be no need for cross-authority consultation.

56. The Council's submission fails in my view to grapple with the Inspector's statement at DL43 that this issue was not determinative in his conclusions, albeit that it was one more indication of the failure to cooperate. In any event, the Inspector's concern was not whether the Council's decision that the land east of Hemel Hempstead but in its district would meet its housing need, irrespective of Dacorum's needs, but with the lack of co-operation on the Council's part over the matter. It was only if the Council took the opportunities which had been available to engage with Dacorum that it could be said that it had not pre-judged the outcome of that engagement. That it had not done both before and during the plan making process.
57. As to the point regarding Dacorum's site allocation plan, Dacorum's core strategy stated that evidence gathering for its review was to begin in 2013. Moreover, in early 2015, at a "Duty to Cooperate" meeting with Dacorum, the Council had agreed that there needed to be further discussion as to whether it could assist in meeting some of Dacorum's future housing needs on land in its district east of Hemel Hempstead. Neither point assists the Council's argument. In my view the Council's submissions about Dacorum's site allocation plan are a red herring.

Ground 3: The Inspector's conclusion on soundness

58. The Council's case was that the Inspector's conclusion on soundness at DL44, quoted earlier, was either irrational or arrived at by failing to take into account a material consideration. Again the argument revolved around the housing market, and that the guidance in paragraph 47 of the NPPF, which in the Council's submission obliged it to meet only the needs of the relevant housing market area, which on its consultant's reports did not extend to Dacorum's district. Yet without a decision on whether this was right, the Council contended, the Inspector was in no position to take any view on soundness.
59. I cannot accept the Council's submissions in this regard. First, I do not read DL44 or DL46 as being either a final judgement on soundness or a judgement on soundness based on the housing aspect alone. In any event, paragraph 47 NPPF says nothing about the duty to cooperate. Rather, the NPPF makes clear that compliance or otherwise with the duty to cooperate can feed into a judgement about effectiveness and soundness of a plan. There was nothing wrong with the Inspector expressing concerns about soundness because of the failure of the Council as regards the duty to cooperate. In other words, there was no need for him to decide on the housing market area before expressing his doubts on soundness. There was no barrier to his coming to an overall judgment on soundness based on one of its aspects, namely, the duty to cooperate. The Council's case on this ground fails.

Ground 4 - Failure to identify what matters were strategic for the purposes of section 33A

60. The Council submitted that in considering whether it had complied with the duty to cooperate, the Inspector was bound to consider whether any particular issue was a strategic matter within the meaning of that phrase in section 33A. Instead he regarded all issues which were cross-boundary as engaging the duty. That the Council is able as a matter of judgment to identify strategic matters did not inform the nature of the duty placed upon the Inspector to provide sufficient reasons for his decision. Identifying what matters were strategic in his reasoning was of particular importance to the

Council's understanding why the Inspector considered proper engagement in some matters such as employment was insufficient in overriding non-compliance with the duty on other issues.

61. The starting point in rejecting these submissions is that there is no requirement in law or policy for the Inspector to identify strategic issues. In fact it was for the Council to identify strategic matters and how to maximise the effectiveness of co-operation and constructive engagement in tackling them. Whilst the Council acknowledged the economic and spatial relationships between its district and its neighbours, it failed to do either. In his careful reasoning the Inspector concluded, as best he could in respect of these failures on the Council's part, that it had not met its duty under section 33A. In my view it simply cannot be said that the Inspector was in error.

Conclusion

62. I am just persuaded that the Council's case is arguable, but for the reasons given I dismiss this judicial review.