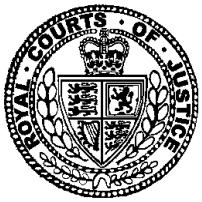

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on 8 June 2020

Neutral Citation Number: [2020] EWHC 1461 (Admin)

Case No: CO/3279/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/06/2020

Before :

MRS JUSTICE LIEVEN

- -

Between :

AIREBOROUGH NEIGHBOURHOOD DEVELOPMENT FORUM

Claimant

and

LEEDS CITY COUNCIL

Defendant

and

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT
(2) AVANT HOMES (ENGLAND) LIMITED
(3) GALLAGHER ESTATES LIMITED

Interested Parties

- -
- -

Jenny Wigley (instructed by **Town Legal LLP**) for the **Claimant**
Juan Lopez (instructed by **Leeds City Council Legal Services**) for the **Defendant**
The **First Interested Party** was **not represented** and did not attend
Charles Banner QC and Matthew Fraser (instructed by **Walker Morris LLP**) for the **Second Interested Party**
James Corbet Burcher (instructed by **Shoosmiths LLP**) for the **Third Interested Party**

Hearing dates: **4 and 5 February 2020**

- -

Approved Judgment

Mrs Justice Lieven :

1. This is an application by the Aireborough Neighbourhood Development Forum (the Claimant) to challenge the decision of Leeds City Council (the Council) to adopt the Leeds Site Allocations Plan (the SAP). The challenge is made under s.113 of the Planning and Compulsory Purchase Act 2004.

2. The Claimant is an organisation that was set up in 2012 to support the regeneration and sustainable development of the Aireborough Neighbourhood as a non-parished area within the Leeds City Council area. In 2014 the Claimant was officially designated by Leeds City Council as a Neighbourhood Forum under the Localism Act 2011 for the purposes of preparing the Aireborough Neighbourhood Plan. The Claimant applied for the statutory 5 year renewal of that designation on 13 July 2019. On 30 January 2020 the Claimant received notification from the Council that the designation had been renewed, backdated to 23 January 2020.

3. The Second and Third Interested Parties are developers with interests in land that fall within the allocations in the SAP.

4. In a judgment dated 14 January 2020, I held that the Forum had capacity to bring this claim, and I ordered a rolled up hearing of the matter.

5. The Claimant was represented by Ms Wigley; the Defendant by Mr Lopez; the Second Interested Party was represented by both Mr Banner QC and Mr Fraser; and the Third Interested Party by Mr Corbet Burcher. The First Interested Party was not represented and did not attend.

Brief Overview

6. I will set out below the factual background to this matter and the somewhat tortuous history of Leeds housing land supply. However, at the heart of this case lies the difficulty that the Council has had in establishing a housing land requirement and showing it has a five year supply of deliverable housing land for the purposes of national planning policy. The Council has faced the problem that it adopted a figure for its housing requirement in the Leeds Core Strategy 2014 (the CS) which has had to be revised downwards to accord with revised national guidance. The Site Allocations Plan, the subject of this case, is the planning document that was to set out the Council's allocations in accordance with the requirement figure in the CS. However, the Council found itself in the situation of taking forward the SAP to meet the housing requirements in the adopted CS and, at virtually the same time, the Core Strategy Selective Review (CSSR) to revise the CS requirement figure. As this case shows, that has led to considerable difficulty in the production of the Site Allocations Plan (SAP) and decisions around Green Belt release within the SAP. These difficulties lie at the heart of this challenge.

7. Leeds is the second largest planning authority outside London with a population of 784,000 people. Outside the main urban area there is an extensive rural area with a large number of discrete settlements. Two thirds of the entire area of Leeds CC is designated as Green Belt. In the Leeds Core Strategy (the CS) and the SAP the entire Council area is divided into 11 housing market characteristic areas (HMCAs) covering both urban and rural areas.

8. The CS was adopted in 2014 and allocated, in accordance with then Government guidance, a housing requirement of 70,000 (net) new dwellings in the period 2012-2028. For reasons relating to the provision of windfalls (housing on unallocated sites) the requirement which leads to allocations is only 66,000 and that figure is frequently referred to below. Policy SP6 of the CS divided that requirement figure between the 11 HMCAs, but did not allocate specific sites. It was envisaged within the CS that in order to meet the requirement figure there would have to be a significant number of dwellings on what was Green Belt land. Policy SP10 made provision for a review of the Green Belt (GB) to be carried out in order to accommodate the scale of housing in SP6. The SAP is the planning document which produces the allocation of sites within the Council area and releases the relevant sites from the Green Belt policy constraints.

9. The submission draft SAP dated May 2017 sought to meet the 66,000 requirement by allocating the necessary sites. The allocations proposed included the allocation of sites for 12,481 dwellings in the Green Belt, and more specifically 972 dwellings within the Green Belt in Aireborough HMCA.

10. At the same time as the SAP was being progressed, following the production by the Department for Communities and Local Government of a new national methodology, it became increasingly clear to the Council that the figure of 66,000 was no longer sustainable and a materially smaller number of dwellings would now need to be delivered. The problem that the Council faced was how to deal with this changing housing requirement whilst still trying to ensure that there was a development plan in place ensuring that it could be shown to have a 5 year land supply.

11. The other part of the background to this matter, as is explained in the first witness statement of Martin Elliot, the Council's Planning Manager, is that Leeds housing delivery in recent years has been disappointingly low and the Council has struggled to show it has a five year land supply as is required by national policy. This had led to a number of planning appeals (s.78 Town and Country Planning Act 1990 appeals) where the Council had been found not to have a five year land supply and therefore has lost the appeals. This background provided part of the importance to the Council of having the SAP in place so that it could plan and manage the location of new housing rather than the decisions being made through s.78 appeals.

12. The Claimant advances the following grounds of challenge to the adoption of the SAP;

    (a) A breach of the Strategic Environmental Assessment Directive (SEA Directive) and Regulations requiring the consideration of "reasonable alternatives" (Ground One);

    (b) Inadequate consultation on the Sustainability Appraisals contrary to the SEA Directive and Regulations (Ground Two);

    (c) Failure to provide adequate reasons as to the lack of need for Green Belt releases (Ground Three);

    (d) Failure to give adequate reasons for the use of the HMCAs in the site selection process (Ground Four);

(e) Breach of s.39(2) of the 2004 Act and or irrationality in proceeding with the SAP (Ground Five);

(f) Error of fact and misleading consultation on the Main Modifications (Ground Six);

(g) Failure to take into account the actual surplus in delivery to 2023 and therefore the lack of justification for GB release, and/or failure to give reasons on this issue (Ground Seven).

13. The grounds were argued in a different order, and I deal with them below in a different order, but it is useful to retain the original numbering for clarity.

The detailed factual and policy history

14. The grounds are detailed, and in order to properly understand them it is necessary to set out in considerable detail the development of the relevant policies and the various arguments that were being put over a considerable period of time. It is also necessary to consider a number of the documents that were produced through the SAP process. These are sometimes exceedingly confusingly numbered and I will try to refer to them by date in order to differentiate the documents.

The Core Strategy (CS) (2014)

15. The Leeds Core Strategy was adopted in November 2014. Policy SP10 of the Core Strategy stated that a review of the Green Belt would be needed to accommodate the scale of housing identified in Policy SP6. The most relevant policies are as follows;

SPATIAL POLICY 1: LOCATION OF DEVELOPMENT

To deliver the spatial development strategy based on the Leeds settlement hierarchy and to concentrate the majority of new development within and adjacent to urban areas, taking advantage of existing services, high levels of accessibility, priorities for urban regeneration and an appropriate balance of brownfield and greenfield land, the distribution and scale of development will be in accordance with the following principles:

(i) The largest amount of development will be located in the Main Urban Area and Major Settlements. Smaller Settlements will contribute to development needs, with the scale of growth having regard to the settlement's size, function and sustainability,

(ii) In applying (i) above, the priority for identifying land for development will be as follows:

(a) Previously developed land and buildings within the Main Urban Area/relevant settlement,

(b) Other suitable infill sites within the Main Urban Area/relevant settlement,

(c) Key locations identified as sustainable extensions to the Main Urban Area/relevant settlement….

SPATIAL POLICY 6: THE HOUSING REQUIREMENT AND ALLOCATION OF HOUSING LAND

The provision of 70,000 (net) new dwellings will be accommodated between 2012 and 2028 with a target that at least 3,660 per year should be delivered from 2012/13 to the end of 2016/17.

Delivery of 500 dwellings per annum (8,000 over the plan period) is anticipated on small and unidentified sites.

Guided by the Settlement Hierarchy, the Council will identify 66,000 dwellings gross (62,000 net) to achieve the distribution in tables H2 and H3 in Spatial Policy 7 using the following considerations:

(i) Sustainable locations (which meet standards of public transport accessibility – see the Well Connected City chapter), supported by existing or access to new local facilities and services, (including Educational and Health Infrastructure),

(ii) Preference for brownfield and regeneration sites,

(iii) The least impact on Green Belt purposes,

(iv) Opportunities to reinforce or enhance the distinctiveness of existing neighbourhoods and quality of life of local communities through the design and standard of new homes,

(v) The need for realistic lead-in-times and build-out-rates for housing construction,

(vi) The least negative and most positive impacts on green infrastructure, green corridors, green space and nature conservation,

(vi) Generally avoiding or mitigating areas of flood risk.

SPATIAL POLICY 7: DISTRIBUTION OF HOUSING LAND AND ALLOCATIONS

The distribution of housing land (excluding windfall) will be planned based on Tables 2 and 3:

…

Table 2: Housing Distribution by Settlement Hierarchy

…

Table 3:

Housing Market Characteristic Area: Aireborough

Number: 2,300
Percentage: 3%

…
SPATIAL POLICY 10: GREEN BELT

A review of the Green Belt will need to be carried out to accommodate the scale of housing and employment growth identified in Spatial Policy 6 and Spatial Policy 9, as well as an additional contingency to create new Protected Areas of Search (to replace those in the UDP which will be allocated for future development). The review will generally consider Green Belt release around:

(i) the Main Urban Area (Leeds City Centre and surrounding areas forming the main urban and suburban areas of the City),

(ii) Major Settlements of Garforth, Guiseley/Yeadon/Rawdon, Morley, Otley, Rothwell and Wetherby,

(iii) Smaller Settlements (listed in Table 1: Settlement Hierarchy),
Exceptionally, sites unrelated to the Main Urban Area, Major Settlements and Smaller Settlements, could be considered, where they will be in sustainable locations and are able to provide a full range of local facilities and services and within the context of their Housing Market Characteristic Area, are more appropriate in meeting the spatial objectives of the plan than the alternatives within the Settlement Hierarchy.

Otherwise review of the Green Belt will not be considered to ensure that its general extent is maintained.

In assessing whether sites in the Green Belt review should be allocated for development, the following criteria will be applied:

(iv) Sites will be assessed against the purposes of including land in Green Belts identified in national guidance (National Planning Policy Framework). These purposes are:

• to check the unrestricted sprawl of large built up areas,
• to prevent neighbouring towns from merging,
• to assist in safeguarding the countryside from encroachment,
• to preserve the setting and special character of historic towns and

• *to assist in urban regeneration.*

SAP Submission Draft (May 2017)

16. The submission draft of the SAP was published by the Council in May 2017. It proposed allocating 12,481 dwellings across 73 Green Belt sites thus releasing those sites from the GB (pursuant to Core Strategy Policy SP6). In accordance with the CS, the Submission Draft of the SAP sub-divided the Council's administrative area into 11 HMCAs. The allocations in the submission draft included 972 dwellings in the Aireborough HMCA across eight Green Belt sites, all proposed for release in Phase 2 of the SAP.

17. One of the numerous documents which accompanied the Submission Draft was a Green Belt Review Paper (May 2017). This had a section on Exceptional Circumstances which would justify the GB release. These were set out under two sub-headings "Geography of Leeds" and "Need for Development". Paragraph 3.2 and 3.3 on Geography state;

> *3.2 Leeds Metropolitan District is a large metropolitan authority area, where two thirds of the area of the District is designated Green Belt and the entire Main Urban Area (MUA) and all but one of its major settlements are surrounded by extensive tracts of Green Belt land. The Core Strategy makes specific reference to the fact that Green Belt land will be required to plan positively for the development and infrastructure required in the local authority Local Plan area. Core Strategy Policy SP1 notes that: "To deliver the spatial development strategy based on the Leeds settlement hierarchy and to concentrate the majority of new development within and adjacent to urban areas, taking advantage of existing services, high levels of accessibility, priorities for urban regeneration and an appropriate balance of brownfield and greenfield land, the distribution and scale of development will be in accordance with the following principles: … (viii) To undertake a review of the Green Belt (as set out in Spatial Policy 10) to direct development consistent with the overall strategy…:*
>
> *3.3 Additionally paragraph 4.1.4 (CD2/1) provides that:*
>
> *"…The focus of this strategy is to achieve opportunities for growth in sustainable locations as part of a phased approach and as a basis to meet development needs. The delivery of the strategy will entail the use of brownfield and greenfield land and in exceptional circumstances (which cannot be met elsewhere) the selective use of Green Belt land, where this offers the most sustainable option"*

18. Paragraph 3.9 the Need for Development section says;

> *3.9 The Core Strategy targets for housing and employment cannot wholly be met on land outside of the Green Belt hence the need for a Green Belt Review. The Core Strategy targets are considered therefore to constitute the exceptional circumstance for the Green belt to be reviewed via the Site Allocation Plans.*

19. In June 2017 the Council published a document entitled "Leeds Core Strategy Selective Review, Scope and Content". This set out the Council's intention to review the housing requirement in the CS. This is referred to below as the "CSSR". The evidence in that document indicates that the housing requirement was likely to be significantly lower than that in the adopted CS.

Objections (August 2017)

20. The proposed Green Belt releases in Aireborough were the subject of a number of objections to the SAP, including from the Claimant. An associated organisation, Yorkshire Green Space Alliance (YGA), made objections in August 2017 arguing that the Council had committed to undertaking a selective review of the Core Strategy and that the then estimated housing need was likely to be materially lower than in the adopted Core Strategy. It noted that the Council had acknowledged in the Core Strategy Selective Review document that *"There are sustainability disbenefits if the Core Strategy is delivering either too much or too little housing".* YGA pointed out that the housing need was at that time estimated to be reduced by around 15,000 dwellings, more than the total number of dwellings proposed to be released from the Green Belt by the SAP. YGA argued that, as a result, *"what is clear is that there is no case for demonstrating that the exceptional circumstances needed to justify the Green Belt release proposed in the SAP currently exist".*

September 2017

21. The Department for Communities and Local Government (DCLG) published for consultation *"Planning for the right homes in the right places".* This document set out the Government's proposed standardised method to calculate housing need and applying it to each local authority. The consultation figure in respect of Leeds was 2,649 p.a. (equating to 42,000 for a 16 year period), a very significantly lower figure than that which lay behind the requirement figure in the CS.

Inspectors' Questions and Responses (August-September 2017)

22. In August 2017 the SAP Inspectors (there were two joint inspectors) issued a note asking a number of questions in relation to the implications of the selective review of the Core Strategy. They asked for an urgent response. The Inspectors noted that the Council acknowledged the sustainability disbenefits of delivering too much or too little housing. Their questions to the Council included:

(a) What is the effect of the selective review of the CS on the soundness of the SAP?

(b) What are the implications, if any, of proceeding with the SAP examination now that a selective review is underway?

(c) What are the implications, if any, of not proceeding with the SAP examination now that a selective review is underway?

(d) If the selective review were to conclude that the annual housing requirement is lower going forward than set out in the adopted CS, is there potential that land may be released from the Green Belt through the SAP to meet the requirements of the adopted CS that may not have been necessary had the selective review concluded first?

(e) If so, how is this to be addressed?

(f) In the Council's view how should the release of Green Belt land through the SAP be considered in light of the selective review?

(g) Are the judgments of *Oxted Residential Ltd v Tandridge DC* [2016] EWCA Civ 414 and *Gladman Development Ltd v Wokingham BC* [2014] EWHC 2320 (Admin) relating to the examination of a subsequent or subsidiary plan and whether it can provide an opportunity to re-open or update matters that have previously been dealt [with] in the original plan (such as objective assessment of need) relevant to the consideration of the matters referred to above?

(h) What are the anticipated timescales for an up-dated SHMA to be available?

23. The Council responded on 8 September 2017. The Council set out that in its view the implications of proceeding with the SAP were modest, not least because the CSSR was at an early stage and only gave a "contextual direction of travel"; that such considerations would "crystallise" once the CSSR had been through consultation. The Council went on to set out the serious detriment that it said would result from delaying the SAP because of the need to boost housing in Leeds and ensure a five year land supply.

24. In September 2017 YGA criticised the above response from the Council and drew attention to the Government's newly published consultation document setting out a proposed simplified standard methodology for the calculation of housing need based on publicly available data. That methodology indicated that the calculated housing need for Leeds amounted to a reduction of 1,011 dwellings per annum from the adopted CS targets. Over a 16 year period (the period of the SAP) there would be a total reduction of 27,616 dwellings, which it said was significantly more than double the total number of dwellings proposed on Green Belt land (12,481). YGA submitted that this further undermined the Council's case which relied on the adopted CS targets as demonstrating the required 'exceptional circumstances' for Green Belt deletion.

Further Inspector-Council Correspondence on Revisions (September-October 2017)

25. On 29 September 2017, the Council somewhat altered its position about the inter-relationship between the SAP and the CSSR. It referred to the DCLG consultation document September 2017, referred to in paragraph 21 above, and said that taking the consultation proposed approach, the figure for Leeds would be 2,649 homes pa, equating to 42,000 for the plan period. The Council then said *"it is prudent and responsible for the City Council to consider how the implications might be addressed, so as to ensure that the submission draft SAP remains sound and that there is no needless release of Green Belt in Leeds".* The Council proposed postponing the housing related hearing sessions in order that further work on this issue be carried out.

26. On 2 October 2017, the Inspectors sent a note to the Council stating:

> *"Clearly the precise extent to (sic) any proposed revisions to the Submission Plan remain unknown. However, once this is known, the Council may wish to consider and if necessary seek legal advice on whether any revisions can reasonably take the form of 'main*

> *modifications'. [.....] I have some reservations about whether seeking to progress any revisions as main modifications is the correct approach but would welcome your views on this in due course.*
>
> *Alternatively, if the revisions more appropriately represent a change to the Council's Preferred Options it may be that a further period of consultation is necessary to ensure legal compliance. As a result of any such revisions and any consultation responses I may need to review the Matters and Issues and allow a short period for revised statements to be submitted. It may be prudent to allow for such an eventuality in provisionally setting a timetable to resume the Stage 2 hearings.*
>
> *As you are aware the purpose of main modifications is to make the plan sound and legally compliant I refer you to section 20(7C) of the 2004 Act and further guidance."*

Plan Panel reports

27. On 3 November and 21 November 2017, the Council's Development Plan Panel had reports on the SAP process and, in particular, the implications of the DCLG guidance on housing requirements figures. The reports acknowledged the difficulties posed by the lower figures and the need for careful consideration. At para 12 of the 3 November 2017 report it says;

> *12. Withdrawal of the plan would mean that Leeds would have no plan in place for the delivery of housing; leading to an increase in speculative development proposals which the SAP is helping to defend against (there is one outstanding planning appeal at Bagley Lane, Farsley under consideration by the Secretary of State, two "live" planning appeals at Thorp Arch Trading Estate and Tingley Station refused on the basis of prematurity against the SAP and submissions on other greenfield sites for determination; all of which would be more difficult to defend in the absence of an advanced SAP). Carrying on regardless with the examination, whilst within the guidelines set by the Town and Country Planning Act and in line with the Government consultation, would place the Inspector in a very difficult position with regard to the exceptional circumstances required to justify green belt loss and may ultimately result in a Plan which the Council may find very difficult to Adopt without challenge.*

28. The officers proposed revising the process and splitting GB sites into specific site allocations and broad locations. Para 3.15 of the report states;

> *3.15 The precise number and distribution of broad locations to be identified will be based on a number of different factors. These include:*
>
> *a) the analysis and assessment of Green Belt sites already part of the Site Allocations Plan submission, including phasing*
>
> *b) the contribution that Green Belt land needs to make to the Site Allocations Plan housing trajectory; particularly over the short term (i.e,*

> *up to 2022/23) so as to be in accordance with the NPPF for a supply of specifically identified sites for a 5 year forward looking period*
>
> *c) the need for the SAP to help support a five year housing land supply*
>
> *d) the need for Green Belt releases to be equally and fairly shared amongst Housing Market Characteristic Areas so as to ensure that the homes that people need are in all areas of the City and to ensure the SAP continues to be in accordance with the CS*
>
> *e) the need to identify, as broad locations both an element of housing allocations and safeguarded land, which the SAP currently proposes to remove from the Green Belt.*

29. The subsequent 21 November report deals in more detail with the treatment of HMCAs, and the approach within them, and says;

> *3.15 Green Belt release has been assessed comparatively within each HMCA in line with Policy SP7 of the Core Strategy. In order to ensure that HMCAs continue to provide housing opportunities to meet local needs as set out in the Core Strategy it is proposed that each HMCA make a pro rata contribution towards the 5,594 homes that are needed on Green Belt and thus in total help support the maintenance of the SAPs housing trajectory.*

Revised Submission SAP (January 2018)

30. In January 2018, the Council published a "Site Allocations Plan – Revised Submission Draft Amendments" ("revised submission draft"). That showed amendments to the Submission Draft to the effect that:

- Certain Green Belt allocations were now deleted and instead labelled as "Broad Locations";
- All remaining allocations were to be moved to Phase 1 for immediate release;
- In the Aireborough HMCA the effect was that there would be an immediate release of sites for 475 dwellings from the Green Belt, with a further 497 marked as "Broad Locations";
- There were four Green Belt sites in Aireborough that were to remain as specifically allocated for housing, HG2-1, HG2-2, HG2-4 and HG2-9.

31. New draft text at paragraph 2.36 of the revised submission draft stated:

> *"All identified, and allocated sites which best address the Core Strategy, are within phase 1 for immediate release, to ensure the Council has sufficient land supply to deliver the Plan's housing trajectory up until year 11 and establishes and maintains a 5 year housing land supply. For years 12 to 16 the housing trajectory shows that additional land release will be needed in order to meet the housing requirements in Policy SP6 of the Adopted Core*

> *Strategy. Following an exhaustive process of identifying suitable brownfield land and assessing the contribution from existing UDP Protected Areas of Search, such additional land can only be released from the Green Belt. In light of the Government's approach to maintaining up to date evidence on housing needs and exceptional circumstances for release of land from the Green Belt, such additional land (for years 12 to 16) is designated as Broad Locations for growth and contributes to future phases of the Plan as and when required by the need to maintain a 5 year land supply when tested against any future revised Core Strategy housing requirement. Broad Locations therefore constitute a future phase of development in line with Policy H1 of the Core Strategy."*

32. The Revised Submission Draft amended para 2.30 of the SAP so that the following text was inserted;

> *"In addition, the assessment has considered sequential preference of the release of Green Belt sites so that in most cases those with the least impact on Green Belt purposes have been released, with the remainder being designated as Broad Locations ending a further review of the Plan."*

33. Para 2.36 was amended to state;

> *"All identified, and allocated sites which best address the Core Strategy, are within phase 1 for immediate release, to ensure the Council has sufficient land supply to deliver the Plan's housing trajectory up until year 11 and establishes and maintains a 5 year housing land supply. For years 12 to 16 the housing trajectory shows that additional land release will be needed in order to meet the housing requirements in Policy SP6 of the Adopted Core Strategy. Following an exhaustive process of identifying suitable brownfield land and assessing the contribution from existing UDP Protected Areas of Search, such additional land can only be released from the Green Belt. In light of the Government's approach to maintaining up to date evidence on housing needs and exceptional circumstances for release of land from the Green Belt, such additional land (for years 12 to 16) is designated as Broad Locations for growth and contributes to future phases of the Plan as and when required by the need to maintain a 5 year land supply when tested against any future revised Core Strategy housing requirement. Broad Locations therefore constitute a future phase of development in line with Policy H1 of the Core Strategy."*

Further Consultation (January – February 2018)

34. The revised submission draft was published for consultation (from 15th January to 26th February 2018) with a Sustainability Appraisal (Addendum 1) dated January 2018 ("SA Addendum 1"). The SA Addendum 1 (at para 1.2) set out the background in terms of the lower housing needs in the CS selective review and in the Government's consultation proposals and then stated:

> *"However, revisions can be made to the SAP to ensure that the Plan is in conformity with both the Core Strategy and paragraph 47 of the National Planning Policy Framework (NPPF) to 'identify a supply of specific, deliverable sites or broad locations for growth for years 6 – 10, and where possible, for years 11 -15.' In this way the SAP remains sound when assessed against national guidance and the provisions in paragraph 83 of the NPPF relating to Green Belt release."*

35. It went on to explain (at para 1.3):

> *"Additional technical work associated with this revised approach has been undertaken by the City Council to consider the sites proposed for housing allocations and safeguarded land in order to provide the necessary housing land to satisfy the Core Strategy and paragraphs 47 and 83 of the NPPF. The Core Strategy Inspector acknowledged in paragraph 28 of his report that "Policy H1 should enable the Council to ensure that land in less sequentially preferable locations is only released when necessary to maintain a supply of housing land." This has involved considering the sites currently designated as Green Belt in order to establish which should remain as proposed housing allocations, and those which are less sequentially preferable and may become broad locations (remaining within the Green Belt for a future review of the SAP)."*

36. Under the heading 'Assessment of Options', the SA Addendum 1 states (at paras 2.2 to 2.3, page 196):

> *"As explained in paragraph 1.3, sites proposed for housing allocation which are currently designated Green Belt have been considered to identify which may be retained as allocations and which may become broad locations remaining in the Green Belt until such time that they may be considered for housing allocation in a future review of the SAP.*
>
> *Each Housing Market Characteristic Area (HMCA) has been considered in turn having regard to individual site assessments and technical work undertaken up to the Submission draft stage. This has included the site assessments (including Green Belt assessment), the sustainability appraisal results, highways and other site specific considerations."*

37. The explanation for the assessment of the options considered for each HMCA was stated to be summarised in Appendix 2 (para 2.7). Appendix 2 sets out a table for each HMCA (pages 219 to 224). The Aireborough table shows four Green Belt sites to be retained as housing allocations and moved to Phase 1 (sites HG2-1, HG2-2, HG2-4 and HG2-9), and four to be re-classified as 'Broad Locations' (sites HG2-3, HG2-5, HG2-10 and HG2-12). The stated "Explanation for Overall Options Proposed for HMCA" was as follows:

> *"The approach to the selection of sites to be retained for allocation has been guided by site specific issues given that there are no Phase 1 sites within this HMCA. In general, the preferred sites to be retained as housing allocations have less impact on the Green Belt compared to sites designated as Broad Locations. Whilst some sites score significant*

negative effects in SA terms, it is considered that these effects can be mitigated through general site specific site requirements."

Sustainability Appraisal (March 2018)

38. A further sustainability appraisal of the revised submission draft was published in March 2018 (Sustainability Appraisal Addendum 2). This was an update to include consultation responses.

Inspector Questions (April 2018)

39. In April 2018, the Inspectors sent to the Council some initial questions and comments on the revised submission plan. The Council responded on 8 May 2018 and included a table showing that the proposed allocations, including immediate Green Belt releases, would result in the CS target to 2023 being exceeded by 757 dwellings, described by the Council as a 'comfortable buffer'.

Update on Planning Permissions (June 2018)

40. The Inspectors were informed by the Council on 29 June 2018 (at EX 8a – "Update of planning permissions granted for housing and mixed-use sites") ("EX8a") that the housing supply position had changed between 1 April 2016 and 1 April 2018 as a result of amended capacities to identified sites and as a result of more up to date planning permission activity.

41. EX8a shows that permissions on identified sites had increased from 35,374 to 36,333, an increase of +959 units. Additionally, it showed that permissions had been granted on safeguarded land designations, amounting to a further increase of +823 units, and that planning permissions granted on sites that are not identified, allocated or designated 'large windfalls' amounted to an increase in supply of another +2,328 units. And in relation to this latter category, EX8a states (at footnotes 1 and 4) that these sites are above the size of the 'small windfall' category and so are "additional to the monitoring of windfall set out in the Core Strategy (i.e an average of 500 dwellings per annum, which consistently arise on sites below the SHLAA threshold of 0.4ha or <5 homes)". EX8a also shows a reduction of -138 accounted for by some reductions in capacities on allocated sites. Mr Elliot in his third witness statement says that there is a typographical error in EX8a because the footnote should have said that the large windfalls are "a part" of the monitoring of windfalls. There is a real confusion over the treatment of windfalls, which I will return to below under Ground Seven.

Sustainability Appraisal Addendum (June 2018)

42. In June 2018, at the time unknown to the Claimant and so far as I am aware, to any other member of the public, the Council produced a 'Sustainability Appraisal Addendum 3' (the "June 2018 SA Addendum"). The Council points out that the document was published on the Examination website although it had a different reference number. There was no invitation to comment upon it. Ms Wigley says that the Claimant only became aware of the document for the first time when reading the witness statement of Martin Elliot dated 10th September 2019 submitted as part of these proceedings. This document said it was to *"assess the reasonable alternative options presented to the Council as a result of the publication of 'Planning for the right homes in the right places' (Department of Communities and Local Government)."* The June

2018 SA Addendum *stated "Three options have been assessed: to retain the initial 2017 Submission Draft SAP; Withdraw the SAP; and Revise the Submission Draft SAP. The SA has therefore assessed all reasonable alternative options required by Regulation 12 (b) of the 2004 Environmental Assessment of Plans and Programmes Regulations."*

43. The June 2018 document states at para 3.4;

> *3.4 In addition to the Council's response to question 4 in Matter 1/1, the alternatives to the revised proposals included in the revised Submission Plan are considered in the Revised Submission Draft Background Paper (CDR1/4b) and in more depth in the relevant reports considered by the Council Executive Board on 13th Dec 2017 and Full Council on 10th Jan 2018 and are accompanied by the SA Addendum (CDR1/5b). Subsequent to the Revised Submission SAP, further work has been undertaken to assess the reasonable alternative options presented to the Council as a result of the publication of 'Planning for the right homes in the right places' (Department of Communities and Local Government). This is provided at Appendix 1 and as document EB8/14. Three options have been assessed: to retain the initial 2017 Submissions Draft SAP; Withdraw the SAP; and Revise the Submission Draft SAP. The SA has therefore assessed all reasonable alternative options required by Regulation 12(b) of the 2004 Environmental Assessment of Plans and Programmes Regulations.*

44. It appears to be the case that the Claimant, and probably other objectors, were not aware of this document at the time. It was not said on the Council website to be put out for consultation and it was one of such a large number of documents relating to the SAP that its importance appears to have been wholly overlooked. Given the importance of properly considering the alternative strategies, the lack of prominence of this document is surprising. I will deal with the legal issues in relation to this below. Notably, EX8A is not mentioned in the Sustainability Appraisal Addendum (Proposed Main Modifications) document dated January 2019, nor in the 'Sustainability Appraisal Adoption Statement', nor in the 'List of Sustainability Appraisal Documents to Adoption Stage'.

Further Written Representations and Hearings (July 2018)

45. The Claimant made written representations on the revised submission SAP and attended the Stage 2 hearings that were held on the revised submission SAP in July 2018.

Inspectors' Post-Hearing Note (October 2018)

46. Following the hearings, the Inspectors issued a Post-Hearing Note to the Council. This stated that it was not lawful to examine or make recommendations on what purports to be a 'revised plan' as there is no statutory basis to do so. It also acknowledged that there could be confusion as there had been explicit reference both in the Inspectors' Guidance Note and in the hearings explaining that it was the Revised SAP that was being examined. The Post-Hearing Note also set out the following on Options and then Advice;

> *"At this stage of the examination, the Inspectors are minded to agree with the Council that although the submitted SAP is intended to provide the supply of housing sought by the adopted Core Strategy (CS), the Council's emerging work on housing need identifies a lower figure. Until such time as the Core Strategy Selective Review (CSSR) examination is concluded, there is a great deal of uncertainty about what the need figure (and requirement) should be and whether the CS need figure is up to date.*
>
> *In these circumstances, given that national policy attaches great importance to the Green Belt and only envisages altering boundaries in exceptional circumstances, significant releases of land from the Green Belt would not be justified at this stage. The submitted SAP is therefore likely to be found to be unsound in this area. Nor would it be valid to retain the sites in the Green Belt as Broad Locations as suggested in the Revised Plan/MMs for the reasons set out in Appendix 1 below.*
>
> *Instead, it is suggested that only those sites necessary to make housing provision for years 1 to 11 of the plan period should be released from the Green Belt and those housing sites or parts of allocated housing / mixed use sites not required to achieve this should be deleted by way of MMs to the submitted SAP.*
>
> *In addition, the SAP should be amended, by way of a MM, to commit to a review of it to commence as soon as the CS housing requirement is established and to be submitted to the Secretary of State no late than a specific date (to be agreed) with a view towards completion of the examination and adoption no later than 31 March 2023, to bring the supply into alignment with the CSSR.*
>
> *In the meantime. the SAP would provide housing land supply for years 1 to 11 of the CS. This is considered to be a pragmatic and sound approach."*

47. The Post-Hearing Note recommended changes to be put forward to the Submitted Draft SAP as main modifications. It also required a re-assessment of the Green Belt sites and stated that consideration of reasonable alternatives should be included in the SA.

48. The Council responded to the Post-Hearing Note. It asked for clarification from the Inspectors on certain matters including whether the Council's examined approach to Sustainability Appraisal was legally compliant.

Sustainability Appraisal Addendum (November 2018)

49. In November 2018 the Council made a "Post-Hearing Addendum 5 to Sustainability Appraisal" ("November 2018 SA Addendum"). This was undertaken in response to the Inspectors' Post-Hearing Note but was not published for public consultation. Neither the Claimant nor any members of the public were invited to submit comments on it. At paragraphs 2.1 to 2.5 (pages 270-1) it addressed the question of 'reasonable alternatives' by referring back to the Submission Draft SA of May 2017 (CD1/17) and the Housing Background paper.

50. In the November 2018 SA Addendum it is clear that the sites in Aireborough were considered the most sequentially preferable compared to other reasonable alternatives within the Aireborough HMCA.

51. Neither the January 2019 SA Addendum nor the November 2018 SA Addendum make any reference to the SA Addendum 3 (the June 2018 SA Addendum) and no reference is made to the reasonable alternatives that were set out in the June 2018 SA Addendum. The consideration of reasonable alternatives is limited to other sites within the same HMCA. In Aireborough, there is a single comparison between site HG2-2 and 1255B Shaw Lane.

Inspector's Further Note (December 2018)

52. The Inspectors issued a further Note on 20 December 2018 in which they recommended Main Modifications deleting two (non Aireborough) Green Belt sites and stated that they would inform the Council separately if they had any other concerns about the site selection process for determining which other sites included in the submission SAP should or should not be released from the Green Belt to make provision to 2023.

53. In January 2019 a schedule of Main Modifications (to the submitted draft SAP and not to the revised draft SAP which had been the subject of the hearings) was put out to public consultation together with a different document dated January 2019 and titled "Sustainability Appraisal Addendum 3 – Sustainability Appraisal of the Proposed Main Modifications and Non-Technical Summary, to the Submission Draft Site Allocations Plan, May 2017" (the "January 2019 SA"). It is an unfortunate feature of this case that some of the numbering of the documents through the SAP process is extraordinarily confusing. Mr Elliot in his second witness statement refers to there being three different documents called SA Addendum 3. Although this is unfortunate, and probably confused the Claimant and other members of the public, the confusion over documents does not itself amount to an error of law.

54. The Claimant submitted final representations to the consultation in March 2019.

Inspectors' Report (June 2019)

55. The Inspectors issued their Report on the examination on 7 June 2019. The Report recommended adoption of the SAP subject to recommended Main Modifications. I will set out the critical parts of the Inspector's Report (IR) below at paragraph 63.

SAP Adoption (July 2019)

56. The Council adopted the SAP on 10 July 2019. The Council also published a 'Sustainability Appraisal (Incorporating Strategic Environmental Assessment) Adoption Statement".

57. The figure for existing supply shown in the adopted SAP at Table 1 of the SAP is 35,950. This figure is highly relevant to Ground 7. It is an increase of +576 units from the figure in the submission draft. The increase reflects the following changes only:

    (1) the increase in permissions on safeguarded sites of +823 units (as per IR 52 and as shown in table ii to EX8a);

(2) the deletion of sites with expired planning permissions that are either in the GB or no longer available resulting in a reduction of -188 units (as per IR 50);

(3) a capacity change of -59 (as per IR 217 and MM132).

58. Other changes to existing supply set out in EX8a (namely, changes to permissions on identified sites at table i; changes to permissions on allocated sites at table ii and larger windfalls at table iv) are not reflected in the existing supply figure in table 1 of the Adopted SAP (Volume 1, tab2, p.122). In Aireborough the effect is that there is an increase in existing supply of 96 between 1 April 2016 and 1 April 2018 which is not reflected in the figures.

Core Strategy Selective Review (July 2018 – September 2019)

59. Proceeding in parallel with the SAP process, the CSSR examination had been progressing. The hearing sessions before the CSSR Inspector concluded in February 2019. It should be noted that the CSSR Inspector was one of the two SAP inspectors. The Council produced a Schedule of Main Modifications in April 2019 and the Inspector confirmed in her note of April 2019 that the Schedule contained those Main Modifications necessary to achieve a sound plan. The Schedule (dated May 2019) was then consulted upon from 27th May to 28th June 2019.

60. The proposed annual housing need requirement in the Core Strategy Selective Review submission draft was not modified by the Main Modifications. From the adopted CS annual requirement (of 3,660 from 2012/13 to 2016/17 and 4,700 thereafter) the annual requirement was reduced to 3,247. This was a reduction post 2017/18 of 1,453 per year; and therefore, for the period 2017/18 to 2022/3 there was a reduction in housing requirement of 7,256 (1,453 x 5). It is important to have in mind that this figure had not changed from the submission draft of July 2018.

61. The CSSR was adopted on 11 September 2019 with the same annual requirement numbers as the CS Review Inspector had confirmed would be sound in April 2019.

62. Although the Defendant and Interested Parties argue that this analysis is overly simplistic, it can be seen that, on the figures, the reduction in housing requirement from the CS requirement to those in the CSSR up to 2023 (7,265) is significantly greater than all the GB releases in the SAP up to 2023 (3,778).

Inspectors' Report

63. The IR is a lengthy document and much of it is relevant to this challenge. I will seek to summarise the most relevant parts and set out key passages. Paragraphs in the Inspector's Report are referred to as "IRx";

> *a. IR36 – Table 1 of the SAP calculates the existing supply (identified sites) as being 35,950 dwellings leaving a residual target of 30,050 to be met through allocations in order to meet the 66,000 figure in the CS;*
>
> *b. IR 37-41;*
>
> *37. To achieve sufficient allocations to meet the residual housing requirement a number of significant site allocations are proposed on land*

that would need to be released from the Green Belt. Although the SAP is intended to provide the supply of housing sought by the adopted CS between 2012 to 2028, as stated previously, the Council's emerging work on housing need, as part of the evidence to support the CSSR, identifies a lower figure. The CSSR submitted for examination states that the Council will identify 46,352 dwellings (gross) between 2017 and 2033; substantially less than the equivalent figure of 66,000 dwellings (gross) set out in the adopted CS. Until such time as the CSSR examination is concluded, there is uncertainty about what the need figure (and requirement) should be and whether the adopted CS need figure is up to date. In these circumstances, given that national policy attaches great importance to the Green Belt and only envisages altering boundaries in exceptional circumstances, significant releases of land from the Green Belt would not be justified at this stage.

38. Paragraph 47 of the NPPF stipulates that to boost significantly the supply of housing, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirement with an additional buffer and identify a supply of specific, developable sites or broad locations for growth for years 6-10 and where possible, for years 11-15. For the reasons already set out, it is not possible to identify sites in the latter five years of the plan period that would not necessitate significant releases of land from the Green Belt. To make the SAP sound, only those Green Belt sites necessary to make housing provision for years 1-11 of the plan period (i.e. to 2023) should be released from the Green Belt at this stage [MM1, MM2, MM3, MM17]. Those housing sites or parts of allocated housing / mixed use sites in the Green Belt and not required to achieve this should be deleted [MM5]. Some non-Green Belt provision will continue beyond 2023.

39. Based on the adopted CS figure, the housing requirement for years 1-11 (2012-2023) only is calculated as 43,750. This is reflecting the lower CS Policy SP6 target of 3,660 per year to be delivered from 2012/13 to the end of 2016/17 and the stepped up SP6 target of 4,700 per year from 2017/18. A MM is necessary to ensure that both the housing requirement to 2023 is clear and that Table 1 includes expected delivery to 2023 having regard to non-Green Belt and Green Belt sites [MM6].

40. In addition, the SAP should be amended, by way of a MM, to commit to a review of it, to commence as soon as the housing requirement is established through the CSSR with a view towards completion of the examination and adopted no later than 31 March 2023, to bring the supply into alignment with any CSSR figure [MM3, MM4].

41. In the meantime, the SAP would only identify sufficient housing land that would need to be released from the Green belt to meet the housing requirement for at least years 1-11 of the plan period i.e. up to 2023. Accordingly, no phasing policies would be justified and so references to phasing will need to be deleted from the SAP [MM1 and MM10].

…

c) IR44

44. Identified sites are regarded by the Council to be appropriate for housing delivery. Examination Document EX38 details that as at 1 April 2018 there are 550 identified (Policy HG1) sites in total with a total capacity of 36,333 units. 223 of these sites have been completed since 1st April 2012, having a total capacity of 6,023. A further 120 of these 550 sites are presently under construction and will provide a further 11,033 units. This gives rise to a residual total of 207 sites. These comprise UDP allocations without permission (19 sites / 6299 dwellings); sites with detailed permission (88 sites / 7749 dwellings); sites with outline permission (10 sites / 1878 dwellings) and those with expired permission (90 sites / 3351 dwellings). All 207 sites have been subject to SA. The most up-to-date position on supply, having regard to changes reflected in MMs, is 35,950.

d) the IR then goes through a detailed exercise of deleting sites that were no longer available (IR50) and adding in sites which had gained planning permission up to 1 April 2018 (IR51)

e) IR55 states;

55. To conclude, having regard to the above MMs, the SAP allocates sufficient sites to provide the balance of housing required to meet the CS housing requirement for years 1 to 11 and therefore gives effect to and is consistent with the CS for this time period. Some allocated non-Green Belt sites will continue to deliver beyond this period. Given the shortened timeframe relating to housing provision and the reason for adopting this approach, together with the Council's commitment to a review of the SAP immediately following the adoption of the CSSR, the SAP provides sufficient flexibility to ensure it is effective in this regard.

f) at IR94 on issue 6 onwards the IR deals with whether the site allocations are justified by a robust process of site selection within the context of the CS. In the light of the argument advanced by Mr Lopez that there was a policy need to create a "fair shares" approach between HMCAs, IR97 is important;

97. The indicative numerical amounts and percentages within these tables are to be achieved over a longer period to 2028. There is therefore scope in the future SAP review to consider any notable shortfalls arising in specific geographical areas when allocating sites. Accordingly, notwithstanding CS SP7, given this plan is now only looking at a very short period to 2023 and will be subject to a review, it is not considered necessary in this examination to consider whether the distributions set out in SP7 are broadly met on a pro-rata basis for years 1 to 11.

> *g) at IR104 the Inspectors set out a long list of GB release sites which needed to be deleted because they were no longer necessary to meet the housing requirements up to 2023;*
>
> *h) IR108 on exceptional circumstances states;*
>
> *108. The Green Belt Review Background Paper helpfully provides maps of each HMCA showing the position of sites sieved out, allocated and not allocated. Some of these shown as allocated have been deleted through the various MMs to take account of the reduced timeframe for housing now being addressed. Nevertheless, these maps clearly depict how the chosen sites relates well to the MUA or settlements in each HMCA, respecting the existing pattern of development, ensuring limited sprawl and encroachment into the countryside or merging of neighbouring towns and are preferable to other discounted sites in this regard. The individual Green Belt site assessments and reasons for allocating or not allocating sites address the impact of sites on the setting and special character of historic towns. The selection of the remaining allocated sites within each HMCA that require land to be released from the Green Belt have been appropriately assessed against the purposes of including land in the Green Belt to ensure those selected will have the least impact on those purposes, whilst also reflecting the needs and characteristics of each HMCA. Unlike the housing allocations, whilst the final distribution of safeguarded land takes into consideration the CS guiding principles and Green Belt functions, there is no requirement in the CS to ensure an even distribution across HMCAs. The overall site selection assessment does not reveal any clear reasonable alternative sites that would provide preferable sustainable options to those sites selected for Green Belt release. The exceptional circumstances required have therefore been demonstrated.*

The statutory framework

64. The SAP is a development plan document within the meaning of the Planning and Compulsory Purchase Act 2004 (the "2004 Act"). Section 19 of the 2004 Act sets out several requirements for the preparation of local development documents.

65. Section 19(2) provides:

> *"In preparing a development plan document … the local planning authority must have regard to –*
>
> *(a) national policies and advice contained in guidance issued by the Secretary of State…"*

66. Section 19(5) states that the local planning authority must also –

> *"(a) carry out an appraisal of the sustainability of the proposals in each development plan document;*
>
> *(b) prepare a report of the findings of the appraisal…"*

67. Section 20 requires the authority to submit every development plan document to the Secretary of State for independent examination by a person appointed by him. One of the three purposes of the independent examination is to determine whether the development plan document is "sound" (section 20(5)(b) of the 2004 Act).

68. The term "sound" is not defined in the legislation but it is defined in paragraph 182 of the national policy issued by the Secretary of State, the National Planning Policy Framework ("NPPF" – see below).

69. The other two purposes of the examination are to ensure that the local planning authority has met the requirements of various statutory provisions, including section 19 of the 2004 Act (subsection (5)(a)) and the authority's duty under section 33A to co-operate with other authorities when preparing its development plan documents (subsection (5)(c)).

70. Under section 20(7), if the person appointed to carry out the examination considers that, in all the circumstances, the document satisfies the requirements of subsection (5)(a) and is sound, and that the local planning authority has complied with its duty to co-operate under section 33A, he must recommend its adoption. Subsection (7A) provides that if the person appointed to carry out the examination is not required to recommend adoption he must recommend that the document is not adopted. But under subsections (7B) and (7C) if he does not consider that it would be reasonable to conclude that the document satisfies the requirements of subsection (5)(a) and is sound, but does consider that it would be reasonable to conclude that the authority has complied with its duty to co-operate, and if he is asked to do so by the local planning authority, he must recommend modifications which would make the document compliant with subsection (5)(a) and sound (see *Performance Retail Limited Partnership v Eastbourne Borough Council* [2014] EWHC 102 (Admin), at paragraph 17). Such modifications are known as "Main Modifications". When Main Modifications are recommended to it, the local planning authority may only adopt the document with those Main Modifications (section 23(2A), (3) and (4)).

71. Under s.23(4) of the 2004 Act, a local planning authority is legally prohibited from adopting the development plan document with modifications additional to the Main Modifications unless those additional modifications (taken together) do not materially affect the policies set out in the document.

72. In exercising their functions in relation to the preparation of development plan documents, both the local planning authority and the person appointed to undertake the examination must do so "with the objective of contributing to the achievement of sustainable development" (s.39(2) 2004 Act).

National Policy

73. The relevant national policy is set out in the NPPF (2012 version).

74. The most relevant passages are paragraph 47, to boost significantly the supply of housing, in particular by meeting objectively assessed needs and by providing a five year supply of deliverable sites; and paragraphs 83-84 on Green Belt. Paragraph 83 states;

> *"Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term., so that they should be capable of enduring beyond the plan period."*

75. It is from this paragraph that the requirement to show exceptional circumstances before land is released from the GB is established.

Law on Strategic Environmental Assessment and Alternatives

76. Directive 2001/42/EC, "the SEA Directive", requires a strategic environmental assessment of plans such as the Local Plan. It is transposed into domestic law through section 19(5) of the 2004 Act and the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633) (the "SEA Regulations").

77. Under article 5(1) of the SEA Directive, when an environmental assessment is required under article 3(1), an environmental report must be prepared, *"in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated".* Article 6, "Consultations", states in paragraph 1 that a draft plan or programme and the environmental report prepared under article 5 *"shall be made available to the authorities referred to in paragraph 3 … and the public".* Paragraph 2 states: *"The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure."*

78. Article 8 requires that the environmental report prepared under article 5 and the opinions expressed under article 6 be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

79. Regulation 5 of the SEA Regulations requires there to be an environmental assessment, in accordance with Part 3 of the Regulations, during the preparation of the relevant plan and before its adoption. By Reg 8, a plan is not to be adopted until account has been taken of the sustainability appraisal and consultation responses. The process for undertaking the appraisal and its required contents are set out in Part 3 of the Regulations.

80. 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 ….”

81. The information referred to in Schedule 2 includes, in paragraph 8:

“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.”

82. Regulation 13 of the SEA Regulations, “Consultation procedures”, provides in paragraph (1) that every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report – “the relevant documents” – are to be made available for consultation in accordance with the provisions that follow. Paragraph (2) states:

“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.”

Paragraph (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.”

83. In *R (Friends of the Earth) v. Forest of Dean D.C.* [2015] P.T.S.R. 1460, Hickinbottom J. (as he then was) held at para 40 in respect of Article 5(1), which is transposed in regulation 12(2):

> *"(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."*

84. These dicta were restated and applied by Hickinbottom J. in *R (RLT Built Environment Ltd) v. Cornwall Council* [2017] J.P.L. 378 at paras. 40-57.

85. As to Article 5(2), in *R (Spurrier) v. Secretary of State for Transport* [2019] J.P.L. 1163, the Divisional Court (Hickinbottom LJ and Holgate J.), the Court set out the approach it should take in considering a claim founded on the basis of alleged deficiencies in the environmental report. The outcome of this case has subsequently been reversed, but not on the issue of SEA and alternatives:

> *"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."*

86. It is clear from this judgment that the Court will be slow to interfere with questions of the nature of what is a "reasonable" alternative having regard to the plan's objectives.

87. It is now well established that even where a breach of the EIA Regulations is accepted, the court retains a discretion to refuse relief if the applicant has in practice been able to exercise the rights conferred by 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]. In Champion at [58] Lord Carnwath held that this approach accorded with the CJEU decision in *Gemeinde Altrip v Land Rheinland-Pfalz* (Case C-72/12) 2014 PTSR 311.

The grounds and conclusions upon each one

88. I set out below each ground argued by Ms Wigley, the submissions and my conclusions. The order of the grounds changed from Claim Form to Skeleton, and from Skeleton to oral argument. It was also the case that, with all respect to Ms Wigley, there was considerable overlap between the grounds and some of the ordering was somewhat confusing. For example, the ground about irrationality in the approach to the HMCAs was Ground One (b) when it seemed to fall most naturally with Ground Four. I have dealt with the Grounds in the order which seeks to reflect the move from the most general to the most specific, but there is inevitably some overlap and repetition.

Ground Three – inadequate reasons in respect of the justification for Green Belt Release

89. Under paragraph 83 of the NPPF land should only be released from the GB if there are exceptional circumstances. The Claimant submitted to the Inspectors that there were no exceptional circumstances because the only matter being advanced by the Council was the level of housing need and in the light of the decreased requirement for housing emerging through the CSSR, and the supply side position, there was no longer a housing need justifying the release of GB land. It was therefore irrational to find exceptional circumstances when there was, in reality, no proper justification for release.

90. Ms Wigley accepts that the level of housing need in the local authority area, as set out in the CS, is in principle capable of amounting to exceptional circumstances. The SAP Green Belt Review Background Paper (May 2017) refers at paras 3.2-3.9 to two exceptional circumstances, the geography of Leeds and the need for development. However, it is clear from para 3.9 that it is the CS targets which are the exceptional circumstances which are said to justify the GB release.

91. Ms Wigley submits that the exceptional circumstances being advanced by the Council were the level of need for development, both housing and employment, and the fact that that need could not be met in its entirety without some GB land. She argues that the CS requirement figure had been undermined by the figures in the CSSR and the Government Guidance on the calculation of housing need. This was a principal important controversial issue in the SAP and, as such, if the Inspectors were going to continue to rely on the CS figures they had to set out clear adequate reasons for doing so.

92. Mr Lopez argues that the justification for GB release, and therefore the exceptional circumstances, related back to the spatial strategy in the CS, in particular SP1 and SP6. He referred to the settlement hierarchy and the allocation of housing within the HMCAs in SP6. Therefore, he says that exceptional circumstances did not solely turn on the absolute level of housing need, but also took into account the wider factors of spatial planning across the Leeds area.

93. Mr Lopez argues, on this and other grounds, that the justification for GB release was not simply the need figures but also the "geography" of Leeds and the principle of a "fair shares" approach to the distribution of housing. In essence, the argument is that SP1 and particularly SP7 of the Core Strategy envisaged housing spread across the HMCAs taking into account various factors and this established a fair or equitable distribution across the entire area. Further, it was important not to focus supply wholly or largely in the city and main urban area. This would be for two reasons, firstly city centre supply acts rather differently to that of the more rural areas and therefore deliverability could become a problem if supply is too dependent on city centre and main urban area sites. Secondly, the nature of the dwellings provided are different in the urban areas from the more rural areas. It is important to have a range of sites and thus dwelling types to meet the range of housing demand.

94. He also argued that the purpose of the SAP was to provide for the development set out in the CS and the Inspectors were simply following the CS. Therefore, it was not for the SAP process to question the level of housing need, that was a matter for the CSSR. It was therefore not necessary for the SAP Inspectors to consider whether the falling level of housing requirement in the CSSR meant that there were no longer exceptional circumstances. It followed that they were under no duty to give reasons in this regard. He relied on the fact that the Inspectors had accepted the need for a review of the SAP in the light of the CSSR at IR40, and therefore had fully taken into account the factual position of changing requirement figures.

95. On the duty to give reasons Mr Banner referred to the dicta of Lindblom LJ in *CPRE v Waverley DC* [2019] EWCA Civ 1826 at [72]:

> *"72. The requirement for an inspector conducting a local plan examination to give reasons for his conclusions on soundness under*

> *section 20(7) and (7C) of the 2004 Act, and for the recommendations he makes, is not in doubt (see the judgment of H.H.J. Robinson, sitting as a deputy judge of the High Court, in University of Bristol v North Somerset Council [2013] EWHC 231 (Admin), at paragraphs 72 to 75). The requisite standard of reasons is that to which Lord Brown referred in South Bucks District Council v Porter (see also the judgment of Lord Carnwath in Dover District Council v CPRE Kent, at paragraphs 37 to 42). As Lord Brown said, "intelligible" and "adequate" reasons, so long as they make plain how the "principal important controversial issues" were resolved, can be "briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision".*

96. At [75], Lindblom LJ said:

> *"75. Generally at least, the reasons provided in an inspector's report on the examination of a local plan may well satisfy the required standard if they are more succinctly expressed than the reasons in the report or decision letter of an inspector in a section 78 appeal against the refusal of planning permission. As Mr Beglan submitted, it is not likely that an inspector conducting a local plan examination will have to set out the evidence given by every participant if he is to convey to the "knowledgeable audience" for his report a clear enough understanding of how he has decided the main issues before him."*

97. Mr Banner argued that the Inspectors fully took into account the falling CSSR figures through their acceptance of the need for a review of the SAP. They sought to hold the ring until that review could take place by putting in place the SAP with its housing allocations up to 2023 and thus prevent planning by appeal decisions in the interim period before the review could take place.

Conclusions on Ground Three

98. It seems to be the case from IR38 and IR75-76 that the exceptional circumstances that the Inspectors were relying on to justify the GB release was the absolute level of housing need as set out in the CS. Although I accept Mr Lopez's argument that the CS refers to the need for land for the development planned and the geography of Leeds, the Inspectors were focusing on the absolute level of need, in particular that of housing need.

99. The matters advanced by Mr Lopez as to why a broad spread of housing would be desirable are, in my view, perfectly valid points which might as a matter of planning judgement justify the release of GB land even though there was no need for the release in terms of the crude housing supply figures. That would be a matter of planning judgement. However, it is quite clear that that is not what the Inspectors thought they were doing, and not the justification in the IR for the GB release. IR44 and IR75-76 show that the Inspectors were justifying GB release on the basis of the "identified needs" (IR76) and not issues of geographical spread and fair distribution. Further, and in any event, the Council cannot point to any document where they are asking the Inspectors to take a "fair shares" approach or to ensure deliverability by spreading the allocations across the entire area other than in passing references. Although these justifications might be valid as a matter of planning judgement, they were not being

advanced in that way by the Council. It seems to me that there is a good deal of ex post facto justification in the argument being put in order to seek to overcome the problem with the figures and the lack of reasoning as to the GB release.

100. The passages in the IR referred to above do not refer either to a policy imperative to spread development across the HMCAs (and therefore arguably into the GB in those HMCAs); nor to a need to balance the allocated sites between urban and rural land (in order to improve deliverability). These were the elements that go to what is described in shorthand as the "geography of Leeds". The matter being relied upon by the Inspectors in the IR was rather the absolute quantum of housing need. This is consistent with the CS where reference to the HMCAs and to the settlement hierarchy is not itself advanced as being a justification for GB release in those areas. The justification in the CS is related to the quantum of house required. In other words, I reject Mr Lopez's argument that underlying the Inspectors' approach was a "fair share" approach between HMCAs which in itself justified the release of GB sites even if the overall housing requirement did not need that level of release.

101. The Claimant, and others, were strongly submitting to the Inspectors that GB land should not be released because, in the light of the emerging CSSR, there was no longer a need for GB release and thus no longer exceptional circumstances. There can be no doubt that this was a principal important controversial issue before the Inspectors, indeed it was probably the most controversial issue in the SAP process. In those circumstances there was a duty on the Inspectors to explain clearly their reasons on the issue.

102. In my view the Inspectors' reasoning is very far from clear. At IR37 they say the emerging CSSR figure was 46,352 between 2017-2033, i.e. for the period including 10 years after the end of the SAP years 1-11, and this was "substantially less" than the CS equivalent figure. Yet in IR39 they take the entirety of the CS figure up to 2023, being 43,750. One way of looking at this is that the annual requirement in the CS for years 2017/18 -2022/3 is 4,700 p.a., whereas the annual requirement under the emerging CSSR was 3,247. There is no clear explanation from the Inspectors as to why, in the light of this drop in the requirement figure, they still decided there were exceptional circumstances justifying the level of GB release in the SAP.

103. I reject Mr Lopez's argument that the job of the SAP was simply to allocate for the figures in the CS, and that the Inspectors therefore did not need to, and indeed should not, have looked at any other figures. The job for the Inspectors in deciding whether there should be GB release was to apply the NPPF, and in particular para 83. They therefore had to determine whether there were exceptional circumstances to justify GB release. If the level of need in the CS was undermined in emerging policy then that was a matter that they had to take into account and give reasons in respect of. The logical outcome of Mr Lopez's argument would be that any change of circumstance which undermined the CS requirement was irrelevant to the determination of exceptional circumstances in the SAP. In my view that cannot be right. The Inspectors had to take the up to date position in respect of all material considerations and that must include the actual level of housing requirement if the policy had become out of date.

104. The CSSR was emerging and not adopted policy, and as such carried less weight. However, the Inspectors were fully aware of the position in emerging policy as is shown both in IR37 but also by the simple fact that Ms Sherratt was both the Inspector in the

CSSR and one of the two SAP Inspectors. Those figures had been brought strongly to the Inspectors' attention by objectors. As such, the figures in the emerging policy were a material consideration and were a principal important controversial issue because of the reliance being placed upon them by objectors.

105. It is possible that the Inspectors thought exceptional circumstances continued to exist because of the Leeds geography; or because they thought that housing should be shared across HMCAs in the same proportions as in the CS; or because they were concerned about deliverability over the 5 year period if there was no GB land. But if this was their reasoning they needed to explain it. Instead they set out the factual position, referred to the need for exceptional circumstances and then failed to deal with the consequences of that position.

106. It is important to note at this point that this is a reasons challenge and not an argument that it was not open to the Inspector to conclude there were exceptional circumstances. Therefore, the dicta in *Compton PC v Guildford BC* does not strictly apply. The argument under this ground is not whether the factors set out in the paragraph above might be capable of amounting to exceptional circumstances but the failure of the Inspectors to give adequate reasons on the issue. They certainly do not explain that they are seeking to merely hold the ring for a limited period, and thus to prevent planning decisions being made by appeal, as Mr Banner suggested was their rationale. Even if this could amount to exceptional circumstances for GB release, within the NPPF, it would need to be explained why GB release was justified in those circumstances.

107. In my view this was a failure to give adequate reasons within para 36 of *South Bucks v Porter (no 2)* and *CPRE v Waverley BC* [2019] EWCA Civ 1826. I entirely accept, as I did in the *Waverley* case at first instance, that a Local Planning Inspector is likely to need to give less detailed reasons than a s.78 Inspector, and that the reasons are given to parties who are likely to be very knowledgeable about the process. However, the discrepancy between the CSSR and the SAP figures and the arguable lack of justification for GB release was an absolutely central issue in the SAP process. It is simply not possible to discern why the Inspectors still thought that the level of GB release up to 2023 was justified. The Claimant was prejudiced by this failure, both by the simple fact that it is unclear what the Inspectors did consider to be the exceptional circumstances, but also by the fact that the end result is the loss of a significant quantum of GB land which on one analysis was not properly justified in terms of national policy. This amounts to an error of law.

Ground Four – inadequate reasons as to the use of HMCAs in the site selection process

108. Ground Four is closely linked to Ground Three. Ms Wigley argues that the Inspectors have failed to give adequate reasons for why sites to be removed from the GB through the SAP were assessed within each HMCA rather than carrying out an assessment across the entire Leeds area. She argues that, as set out above, the SAP necessarily involved a fundamental rethink as to the need for, scale of, and distribution of GB release in the light of the emerging CSSR figures. The Claimant and others had made representations about how the assessment process in the light of the new figures should be carried out.

109. The Council's approach, ultimately adopted by the Inspectors, was to determine the quantum of housing required, see Ground Three, and then pro rata that across HMCAs

in accordance with the percentage distribution in SP7 of the CS. Therefore, the analysis of which sites no longer to release from the GB following the reduced requirement figure for years 1 to 11 was done within each HMCA rather than by assessing sites across the entire local authority area.

110. Ms Wigley says that the Inspectors' reasoning for taking this approach is inadequate. The Inspectors' reasoning is set out at IR96-7 and IR108 under the heading of "Issue 6 – Are the site allocations justified by a robust process of site selection within the context of the CS?" It is important to note the last sentence of IR97, *"… it is not considered necessary in this examination to consider whether the distributions set out in SP7 are broadly met on a pro rata basis for years 1 to 11."* This appears to indicate that the Inspectors were not seeking to apply a pro rata approach across the HMCAs in accordance with SP7.

111. At IR108 the Inspectors say *"The overall site selection assessment does not reveal any clear reasonable alternative sites that would provide preferable sustainable options to those sites selected for Green Belt release. The exceptional circumstances required have therefore been demonstrated."* Ms Wigley argues that the Inspectors have failed to explain why they have not taken a site selection assessment across the entire area rather than within each HMCA.

112. Mr Lopez argues that there was no fundamental rethink of approach and the Council and Inspectors were simply following the CS. This is in essence the same argument as under Ground Three above. He then argues that there was no requirement on the Inspectors to consider all the HMCAs together and it was entirely open to them to adopt a selection process within the HMCAs individually. Further, he argues that this approach accorded with SP1 and SP7 and the "fair shares approach" between HMCAs was an entirely lawful one.

113. Mr Banner aligned his arguments on Ground Four with Ground 1(b) (see below) in relation to the reliance on the HMCAs. He said that the HMCA distribution in the CS was a guideline and not a rigid rule, and as such it was a matter for the Inspectors the degree to which they followed it. In practice it was not going to be practicable to rethink the distribution of housing in the SAP, and it was entirely open to the Inspectors to adopt the approach they did.

114. It seems to me that this Ground follows from Ground Three above. The Inspectors were faced with a situation where the level of housing requirement had fallen considerably. They needed to explain clearly how GB release was justified in those circumstances. Although they did not have to do that in respect of each individual site, they did need to do so in respect of the approach they were taking to release. It might well have been reasonable to say that they thought the allocations of sites should continue on the basis of the same pro rata level as in the CS to provide an equitable distribution. But they did need to explain why they were assessing GB sites within each HMCA as this was fundamental to the decision as to which sites to continue to release. The IR does not give clear and adequate reasons for the approach that they took and this again amounts to an error of law.

Grounds One and Two (breach of Strategic Environmental Assessment Regulations)

115. Ms Wigley argues that the Council breached the SEA Regulations in three respects. Under Ground One she argues (a) there was a breach by failing to consider, set out and report on "reasonable alternatives", contrary to regulation 12(2); and (b) that the Council acted irrationally in failing to assess as a reasonable alternative an unconstrained site selection process across the entire area, as opposed to only comparing sites within each HMCA. Under Ground Two she argues that there was a breach by the failure to consult on either the June 2018 SA Addendum 3, or the November 2018 SA Addendum 5.

116. These grounds are very closely related, both on the facts and the law and I will consider them together. Ms Wigley argues that the strategy set out in the SAP for GB release had fundamentally changed from the submission draft because of the falling housing requirement numbers set out in the draft CSSR. As such, the material change of circumstances needed to be addressed in the Sustainability Assessment, see *Save Historic Newmarket v Forest Heath DC* [2011] EWHC 1078 (Admin) at [30]. The Inspectors had acknowledged the importance of this change, and of the CSSR process, by their Questions of August 2017, referred to at paragraph 22 above. It was clear from these questions that one option that needed to be considered was to suspend the SAP process until the CSSR was concluded.

117. Ms Wigley therefore argues that suspending the SAP was a "reasonable alternative" to the implementation of the SAP, which fell within reg 12(2) of the SEA Regulations, and as such needed to be considered and consulted upon within the SEA process. However, she says, this alternative was not identified or appraised in the various Sustainability Appraisals which in their totality amounted to the Environmental Report for the purpose of the Regulations.

118. She argues that the document dated June 2018, sometimes described at SA/3, does not meet the terms of the regulation. Firstly, it does not set out suspending or delaying the SAP as a reasonable alternative. Secondly, it was not consulted upon. According to Ms Wigley, her client was wholly unaware of it until they saw Mr Elliot's witness statement and, in any event, even if it was somewhere on the Inquiry website, no comments were sought upon it so it did not meet the terms of regulation 12(2).

119. In the alternative on Ground One, Ms Wigley argues that the Council was irrational in November 2018 when undertaking the site selection process to determine which sites would continue to be released from the GB up to 2023. As is clear from the history set out above, the Council did this exercise as a comparative assessment within each HMCA. Ms Wigley says that it was irrational not to carry out an unconstrained site selection assessment across the entire Plan area.

120. Ms Wigley argues that the figures for the HMCAs in CS policy SP7 were indicative figures rather than being based either on need within that HMCA or a deliberate "fair share" approach. She says that this was specifically recognised in the Council's Housing Background Paper (May 2017), which was submitted with the draft SAP, and which said;

> *"4.13 Finally, it is important to note that the Core Strategy in para 4.6.13 sets out that "The SHMA 2011 was not able to identify any geographically*

> *specific need for new housing based on population growth." To that end, whilst the CS Policy SP7 splits by HMCA seek to distribute housing across the authority in line with the spatial policies of the CS the full objectively assessed needs for market and affordable housing, as required by paragraph 47 of the NPPF, are those for the Leeds MD housing market area, not individual HMCAs"*

121. Therefore, she argues that the Council, when considering whether there were reasonable alternatives, should have considered the need for GB release by looking at sites across the Plan area and not merely in each HMCA separately.

122. Mr Lopez argued in his Skeleton that there was no fundamental change in position by the Council that necessitated any consideration of reasonable alternatives to continuing with the SAP. He argued that the reduction in delivery vis a vis an "indicative" housing target under the CS, meaning the deletion of a number of GB allocations, did not amount to a fundamental change. The overall strategy and the need for GB release had not changed, albeit there was a lower level of housing. Equally, he said that the rationale underlying the CS policy in SP7 for a "fair shares" approach between HMCAs had not changed.

123. In his oral submissions he focused more on arguing that suspending the SAP process was not a reasonable alternative because it did not meet the imperative need to get the Plan adopted so that the Council could show it had a 5 year land supply. Therefore, there was no breach of the Regulations by not separately considering and consulting on this possibility.

124. Mr Banner emphasises the breadth of evaluative judgement which the local authority has in deciding what is a reasonable alternative as set out in *Friends of the Earth v Forest of Dean DC* at [40] and in *R (Spurrier) v. Secretary of State for Transport* [2019] J.P.L. 1163, the Divisional Court at [433-4]. He correctly said that the judgement is only challengeable on *Wednesbury* grounds. He argues that there was no fundamental change triggering a need to consider reasonable alternatives because the purpose of the SAP was still fundamentally to deliver the CS policies. He argues that the alternative of suspending the SAP was not a reasonable alternative because it would not have delivered the CS policies. He points to the fact that the Council did consider the alternative of withdrawing the SAP in the June 2018 document (SA/3). Mr Corbet Burcher adopts the same analysis.

125. The same arguments arise on the consultation issue. The Defendant argues that all the relevant material was published, albeit Mr Lopez accepts that the June 2018 document was not consulted upon and was confusingly one of three documents called "SA/3". Both Defendant and Interested Parties rely on *Cogent Land v Rochford DC* [2013] 1 P&CR 2 at [111-126] and *Spurrier* at [397] for the proposition that deficiencies in an EA can be cured by subsequent compliant steps.

Conclusions on Grounds One and Two

126. On the first part of Ground One, I do not accept that the significant fall in housing requirement numbers from 4,700 p.a. to 3247 p.a. was not a fundamental change that necessitated the consideration of reasonable alternatives within the SAP process. It was a drop of something like 25% for each remaining year of the SAP including, critically,

the five years up to 2023. It is plain from the Development Plans Panel reports dated 3 and 21 November 2017 that the Council saw the changing position on housing land requirement as being a significant change that required a careful response in order to meet the need for justification of GB releases.

127. I have significant sympathy with the Council trying to deal with such large amounts both of housing requirements but also so many sites across a very diverse area. However, on any analysis a drop in requirement of 25% is a very significant amount. More importantly, it translated into a very large reduction in the absolute number of units required and therefore, on any approach, a very significant impact on the GB release that would be required. In circumstances where national policy requires exceptional circumstances to be shown to justify any GB release it would, in my view be irrational to say that a fall of 25% requirement with these potential GB consequences would not be a fundamental change. On Mr Lopez's analysis the only thing that would amount to a fundamental change would be matters such as a complete withdrawal of the CS, or a total reversal of national policy, but it does not appear to me to accord with the purpose of the Regulations to have such a high hurdle before reasonable alternatives have to be considered. As I have said above, it is clear from the Council's own approach they thought the change in the requirement figures needed an assessment of different possible strategies going forward.

128. Therefore, I reject Mr Lopez's first argument.

129. The problem with his second argument is that the SA/3 (July 2018) document assesses withdrawing the SAP as one of the "reasonable alternatives", but this would self-evidently have involved a greater delay than suspending the process. Therefore, the argument that delaying the SAP was at least potentially a reasonable alternative must be a logical consequence of the Council's own thinking. I accept Mr Lopez's point that one should not be overly legalistic about the Council's use of language, and I am intensely conscious of the very difficult situation that the Council has found itself in, and the truly massive task of the SAP process. However, suspending the SAP process to get the CSSR adopted first was an obvious possibility and should in my view have been clearly and transparently consulted upon.

130. However, the fact that it was such an obvious possibility shows why in my view no prejudice was caused by the failure to consult. The Claimant (and anyone else interested) was fully aware of the possibility of delaying or suspending the SAP pending the outcome of the CSSR, and the Claimant made representations on this very point. Equally, given that the objectors were arguing that the Council should either suspend the SAP process or withdraw it, it seems to me that even if the matter had been properly consulted upon, it is inevitable that the Council would have made the same decision to press on. In the reports to the Developments Plans Panel the officers had made clear that they considered it to be of great importance to continue with the process because of the impact on deliverability and appeals. This is therefore one of those situations where it is entirely clear that the outcome would have been the same even with consultation. I therefore take the view that this is a case that properly falls within the principles in ***Champion*** and ***Walton***. I therefore decline to grant any relief in respect of these Ground one (a) and two.

131. In respect to the approach to the HMCAs, I have dealt with the background to this issue under Ground Four above. I do not accept the Claimant's argument that it was

necessarily irrational to assess the most sequentially preferential sites for GB release against reasonable alternatives within each HMCA rather than across the local authority area as a whole. This might have been a reasonable approach. Firstly, to carry out the exercise across the entire area would have been a very major undertaking, involving very significant delay to the process. Secondly, it could have been reasonable to adopt what Mr Lopez calls the "fair shares" approach. There are undoubtedly advantages in spreading GB release across the whole area and in having a variety of sites in different locations and with different characteristics in terms of speed of delivery and range of housing choice. The problem for the Council is that neither it nor the Inspectors have set out adequate reasons for this approach. However, I do not consider the principle of taking that approach to be ***Wednesbury*** irrational.

132. For these reasons I reject these Grounds.

Ground Five- breach of s.39(2) of the 2004 Act

133. Ms Wigley argues that it was a breach of the duty under s.39(2) PCPA to "contribute to the achievement of sustainable development" for the Council to continue with the SAP. The argument goes that the Council knew that the GB releases would no longer be necessary because of the CSSR figure. In those circumstances it was necessarily unsustainable to continue with a strategy that advanced extensive GB releases.

134. Mr Lopez argued that the s.39(2) duty is incorporated into the test of soundness and adds nothing to it. Further, he says that the IR when read as a whole properly included the issue of sustainability.

Conclusions on Ground Five

135. In my view this Ground is not arguable. The starting point is that what is "sustainable development" is a question of very broad planning judgement for the local authority. It can quite reasonably be argued that there are considerable sustainability benefits of proceeding as rapidly as possible with the SAP in order to get an adopted plan and thus both provide a secure 5 year land supply, a broad range of allocated housing sites, and minimise the risk of unplanned development coming forward through s.78 appeals. Although the release of GB sites has some negative sustainability impacts, it is overly simplistic to assume that releasing GB sites before other sites is necessarily contrary to the achievement of sustainability objectives.

136. I therefore reject this argument and, in my view, it is not arguable and I refuse permission.

Ground Seven – errors of fact in relation to supply

137. This is a factually complicated ground but one that is important. As is clear from the passages that I have set out above from the IR, the Inspectors went through an apparently careful exercise in assessing the requirement side of the housing equation, and then balancing that against the supply side. They then reached a conclusion as to the outstanding level of need for site allocations. This exercise was necessary in order to establish whether there were exceptional circumstances justifying GB release. I quite accept that such calculations are not an exact science with figures frequently changing and areas of planning judgement. There may have been other considerations which went

into the judgement about exceptional circumstances, but it is clear from the IR that the Inspectors themselves thought that it was necessary to have an accurate picture of the supply side in order to be able to justify GB release. There must be a degree of latitude in such a calculation because figures will frequently change and some errors (given the complexity of the process and the figures) are probably inevitable. However, errors that significantly impact on the need for GB release must be material to determining whether there has been an error of fact that gives rise to an error of law.

138. On 29 June 2018 in the document referred to as Update on Planning Permissions EX8a, (see para 40 above) the Inspector had been told that the housing supply position had changed significantly between 1st April 2016 and 1 April 2018. I note that the facts set out at para 40 above are agreed. This increase was largely, if not wholly, because of an increase in density on allocated sites and the fact that some "large" windfalls had fallen into the supply figure. The figures in that document are agreed to show an increase in supply of +2,328 units. Windfalls is a complicated topic, but in essence large windfalls are those areas of housing that come forward and which are above the SHLAA "small windfall" thresholds of 0.4ha or less than 5 units. Small windfalls are deducted from the requirement side because there is an assumption of 500 pa small windfalls which reduces the overall requirement figure in the CS.

139. The Inspectors at IR44 said that they had taken the "most up to date position on supply", and they said that the SAP "has been assessed at the date of submission incorporating any known changes up to 1 April 2018", see IR52. Thus, the calculation in the IR is supposed to be based on supply as at 1.4.18 and not the original base date on 2016.

140. However, Ms Wigley submits that despite what is said in the IR, the Inspectors appear to have misunderstood the position as at 1 April 2018 and not to have incorporated the up to date supply position. At IR44 they say that the most up to date figure is 35,950, but that does not take into account the following EX8a items:

(1) the increase of permissions on identified sites of +959 units (to 36,333);

(2) the 'large windfall' permissions of +2,328 units;

(3) the slight reduction in allocated permission of -139 units.

141. The 35,950 figure is an increase of +576 units from the figure in the submission draft (35,374 – Vol 1, tab 6 p.270) and reflects the following changes only:

(1) the increase in permissions on safeguarded sites of +823 units (as per IR 52);

(2) the deletion of sites with expired pp that are either GB or no longer available resulting in a reduction of -188 units (as per IR 50);

(3) a capacity change of -59 reflected (as per IR 217 and MM132).

142. Had the Inspectors factored in the changes in supply referenced in IR 44 and 'known changes up to 1 April 2018', the total existing supply figure would have been stated by them to be 39,098, an increase of 3,148 (2,328 + 959 - 139). This would have resulted in a surplus in performance up to 2023 of 4,058.

143. As is clear from this summary, the figures relating to this ground are complex, and in the light of Ms Wigley's submission I asked Mr Lopez to prepare a Note setting out the Council's position on the figures put forward by Ms Wigley. That note (dated 5 February 2020) does not suggest that any of the figures advanced by Ms Wigley are incorrect.

144. As I understand the Defendant and Interested Parties' response to this Ground, it is not to dispute the figures and the proposition that the Inspector recorded an incorrect supply figure, but rather to argue that there was a need for a geographical spread of sites and for flexibility. Mr Banner argued that the Inspectors at IR44 were not considering windfalls and therefore they did not take into account the 2300 units which came forward through large windfalls. Mr Corbet Burcher argued that the additional sites were all either in the City Centre or the Inner Urban Area, with only 8 units in Aireborough, and as such did not accord with the settlement hierarchy. This comes back to the arguments about distribution across the Council area, and the lack of reasoning or justification as to a fair shares approach.

Conclusions on Ground Seven

145. I do not accept that the error identified by Ms Wigley is either not material or such that the outcome, particularly in relation to the critical issue of GB release, would have been inevitably or highly likely to have been the same in any event. The level of the discrepancy is such as to wipe out the entire numerical need for the GB release in the SAP (3,778 units). Even if the error figure was somewhat less than the 3,287 identified, it would still materially diminish the need for GB release, and in pure numerical terms remove it for Aireborough, where the GB release figure was 475. Further, it is by no means necessarily the case that if the correct figures had been taken the Inspectors would have reached the same view. The arguments about fair distribution of housing and deliverability considerations between urban and rural areas are complex with arguments to be put on both sides. If that was to be the reason for GB release then the Inspectors had to grapple with those issues and explain their reasoning and it is not possible to know what conclusion they would have reached.

146. Mr Lopez did not argue that large windfalls were irrelevant and the Inspectors did not need to take them into account in their calculation. However, in any event, if the Inspectors had properly understood the figures, and the matter turned on the consideration of large windfalls, then that is not explained in the IR. On the face of the figures there was a surplus which was not taken into account. It is not clear to me why large windfalls should be ignored in any event, given that they do provide a significant level of housing.

147. For those reasons I conclude that there was a material error of fact as set out in Ground Seven and that it amounted to an error of law in the SAP.

Ground Six – error of fact in respect of Main Modifications

148. Ms Wigley argued that the surplus delivery to 2023 was wrongly reported as 810 rather than 910 to the Inspectors in the draft Main Modifications. This error was then corrected in an erratum to the Main Modifications.

149. Ms Wigley argues that this was an error of fact which amounted to an error of law and that there was an error in the consultation on the Main Modifications by reason of the error.

150. Mr Lopez argues that although there was originally a typographical error, this was corrected in the erratum and there was therefore no error of fact. In respect of consultation, he says that there was no duty to consult separately on this relatively small point.

Conclusions on Ground Six

151. In my view this ground is not arguable. Firstly, the error even if it was sufficient to amount to an error of law, was corrected and therefore the Inspector did not take into account the wrong figure. Secondly, there was in my view no duty to consult on an error of this type. In my view there was no prejudice from the fact of the error once it had been corrected.

152. I therefore refuse permission on this ground.