



Neutral Citation Number: [2025] EWHC 2742 (Admin)

Case No: AC-2025-LON-001100

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 October 2025

Before :

MRS JUSTICE LANG DBE

Between :

**SAVE GREATER MANCHESTER
GREEN BELT LIMITED**

Claimant

- and -

**(1) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT**

Defendants

**(2) GREATER MANCHESTER
COMBINED AUTHORITY**

(3) BOLTON COUNCIL

(4) BURY COUNCIL

(5) MANCHESTER CITY COUNCIL

(6) OLDHAM COUNCIL

(7) SALFORD CITY COUNCIL

(8) ROCHDALE BOROUGH COUNCIL

**(9) TAMESIDE METROPOLITAN
BOROUGH COUNCIL**

(10) TRAFFORD COUNCIL

(11) WIGAN COUNCIL

(1) WAIN ESTATES (CARRINGTON) LIMITED

Interested Parties

(2) WAIN ESTATES (LAND) LIMITED

**(3) PEEL L&P INVESTMENTS
(NORTH) LIMITED**

(4) RLUKREF NOMINEES (UK) ONE LIMITED

(5) RLUKREF NOMINEES (UK) TWO LIMITED

Jenny Wigley KC and Charles Bishop (instructed by Leigh Day) for the Claimant

Leon Glenister and Isabella Buono (instructed by the **Government Legal Department**) for the **First Defendant**

Christopher Katkowski CBE KC and Stephanie Hall (instructed by **Manchester City Council Legal Services**) for the **Second to Eleventh Defendants**

Vincent Fraser KC (instructed by **Mills & Reeve LLP**) for the **First and Second Interested Parties**

Christopher Young KC and James Corbet Burcher (instructed by **Shoosmiths LLP**) for the **Third Interested Party**

The Fourth and Fifth Interested Parties did not appear and were not represented

Hearing dates: 8 & 9 October 2025

Approved Judgment

This judgment was handed down remotely at 10.30 am on 24 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LANG DBE

Richborough

Mrs Justice Lang :

Introduction

1. The Claimant applies for statutory review, under section 113 of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”), of the adoption, on 21 March 2024, by the 3rd to 11th Defendants (“the Councils”) of a joint development plan document (“DPD”) called ‘Places for Everyone 2022 – 2039’ (“the Plan”), under section 23(1) PCPA 2004.
2. The Second Defendant (“the GMCA”) is made up of the ten Greater Manchester Councils and the Mayor of Greater Manchester. The GMCA submitted the Plan to the First Defendant (“the Secretary of State”) for examination on behalf of nine of the ten Councils.¹ The Secretary of State appointed three Inspectors to examine the Plan, who recommended that the Plan be adopted, subject to main modifications (“MMs”), in their report (“IR”) dated 14 February 2024.
3. The Claimant is the incorporated manifestation of a previously unincorporated umbrella group of concerned citizens from over 40 greenspace groups across Greater Manchester who oppose the development of housing on Green Belt land, as proposed under the Plan. The Claimant, along with about 15 groups, submitted representations to the Councils and the GMCA and were active participants during the examination of the Plan.
4. IP1 and IP2 are land owners and promoters of two sites allocated by the Plan². They participated in the Examination and made representations. Those two sites involve the release of Green Belt land, but the allocations are not the subject of challenge in this claim. IP1 and IP2 do not have any specific land interest within any of the proposed Green Belt additions which are the subject of Ground 5 of the claim. However they oppose the claim on the basis that the quashing of the Plan would undermine the allocation of their landholdings and land interests, and cause planning uncertainty and expense.
5. IP3 also opposes the claim. It is the landowner of six sites³ which were proposed for addition to the Green Belt but the proposed designations were removed by way of MMs, on the recommendation of the Inspectors. A seventh site was added to the Green Belt by the Plan (which IP3 did not resist)⁴.
6. IP4 and IP5, referred to as “Royal London”, oppose the claim, for the reasons relied upon by the Defendants. They are the largest land owner within the Temperley Wedge allocation (JPA3.2). They did not participate in the hearing before me.

¹ Stockport Metropolitan Borough Council (“Stockport MBC”) was initially involved in the Plan but withdrew in December 2020.

² New Carrington, Trafford (JPA30); Walshaw, Bury (JPA9).

³ Horwich Golf Club, Bolton, removed in part (GBA02); Crow Lumb Wood, Bury (GBA10); Nuttal West, Bury (GBA11); Nuttal East, Bury (GBA13); Broad Hey Wood North, Bury (GBA15); West Salford Greenway, Salford (GBA27).

⁴ Land West of Burgess Farm, Salford (GBA29).

The claim

7. Under the Plan, some 2,430 hectares of land is to be released from the Green Belt across Greater Manchester. GMCA's original proposal was to add 675 hectares of land to the Green Belt, to offset harm and justify the releases. 49 additional Green Belt sites were proposed in the version of the Plan submitted to the Inspectors by GMCA and the Councils. However, at hearing sessions in March 2023, the GMCA announced it had revised its approach and assessed that 32 of the 49 additions were not justified and so it only supported 17 additions. On examination, the Inspectors decided that two further additions – GBA02 (Horwich Golf Course/Knowles Farm Bolton) and GBA29 (Cowbury Green, Long Row, Carbrook, Stalybridge) – should be added, amounting to 19 additions in total. They rejected 30 of the additions originally proposed (but no longer supported) by GMCA.
8. The claim, which was issued on 30 April 2024, set out 5 grounds of challenge:
 - i) **Ground 1:** failure to consult on main modifications proposed following the cancellation of the West Midlands to Manchester leg of the HS2 railway.
 - ii) **Ground 2:** error of law in the interpretation of policy justifying Green Belt release in Timperley Wedge (JPA3.2).
 - iii) **Ground 3:** legal errors in the assessment of whether exceptional circumstances exist to justify release of Green Belt land to meet housing land requirements.
 - iv) **Ground 4:** error of law in approach to the withdrawal of Stockport MBC from the Plan.
 - v) **Ground 5:** unlawful restriction on the scope of exceptional circumstances.
9. By an order dated 8 August 2024, Eyre J. granted the Claimant permission, on the papers, to apply for statutory review on Ground 5. He considered that it was arguable that the Inspectors approached the question of Green Belt additions on the footing that there could only be exceptional circumstances if there had been a fundamental change of circumstances since the previous determination of the extent of the Green Belt. To regard such a fundamental change as the only circumstance which could be an exceptional circumstance was an error of law.
10. Eyre J. refused permission to apply for statutory review on Grounds 1 to 4. The Claimant renewed its application on those grounds at an oral hearing before Fordham J. on 12 December 2024. Fordham J. refused permission on Grounds 1 to 4 in a reserved judgment handed down on 17 December 2024, and the order was sealed on 17 February 2025.
11. Thus the claim proceeds solely on Ground 5, namely, that the Inspectors erred in law by narrowing the scope of "exceptional circumstances" said to be legally capable of justifying additions to the Green Belt, in response to submissions from the GMCA.
12. The list of issues submitted by the parties read as follows:

- i) whether the Inspectors erred in law in their approach to what was capable of constituting exceptional circumstances to justify adding sites to the Green Belt; and
- ii) if the Inspectors erred in law as above, whether this error was potentially material to the decision they reached; and if it was,
- iii) what remedy is appropriate in the circumstances?

Planning history

- 13. In January 2014, the Association of Greater Manchester Authorities (“AGMA”) agreed to bring forward a spatial framework for the Greater Manchester region, which evolved into a proposal to produce a Greater Manchester Spatial Framework (“GMSF”) joint DPD.
- 14. On 29 August 2014 the GMCA and AGMA agreed to consult on the initial evidence to inform the GMSF, which ran from 26 September to 7 November 2014.
- 15. On 28 November 2014 it was agreed each Council would approve the making of the GMSF and that the AGMA Executive Board would be appointed to prepare it.
- 16. A second consultation ran between 9 November 2015 and 11 January 2016 on strategic options for the GMSF.
- 17. The first draft GMSF joint DPD (“GMSF 2016”) was published for consultation on 31 October 2016 ending 16 January 2017 under regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”).
- 18. A revised draft GMSF was consulted on between January and March 2019 (“GMSF 2019”), also under regulation 18 of the 2012 Regulations.
- 19. In September 2020, in the light of those consultations, the AGMA Executive Board agreed that the GMSF would be progressed as a joint DPD of the 10 authorities (“GMSF 2020”) and that this version would be the Publication Plan under regulation 19 of the 2012 Regulations, with consultation to take place between 1 December 2020 and 26 January 2021. On 30 October 2020, the AGMA Executive Board recommended to the ten local authorities that they move to this process.
- 20. However, on 3 December 2020, Stockport MBC decided not to publish GMSF 2020 for consultation or submit it for examination, essentially on the basis of the impact of GMSF 2020 on the Green Belt.
- 21. On 11 December 2020, the AGMA Executive Board asked officers to report back on the implications and process of producing a joint DPD of the nine remaining districts. On 12 February 2021, it proposed continuing with this approach in a joint plan now known as “Places for Everyone 2022 - 2039” (“the Plan”). Each of the nine districts then resolved to establish the Places for Everyone Joint Committee to continue to prepare the joint Plan.

22. On 20 July 2021, the AGMA Executive Board concluded that the Plan had “substantially the same effect” on the nine remaining boroughs as the GMSF 2020 and recommended that it proceed under regulation 19 of the 2012 Regulations. The Plan was finally published for consultation under regulation 19 between 9 August 2021 and 3 October 2021.
23. Work was undertaken to prepare the documents for submission to the Secretary of State. On 14 February 2022, the Plan was formally submitted for examination. Examination hearings were held between 1 November 2022 and 5 July 2023.
24. Following the examination hearings, the GMCA proposed a schedule of proposed MMs which had been recommended by the Inspectors throughout the examination. They included the deletion of 30 of the 49 Green Belt additions proposed in the Plan. The MMs were subject to public consultation for eight weeks between 11 October and 6 December 2023.
25. On 14 February 2024, the Inspectors published the IR on the examination of the Plan which concluded that, with its recommended MMs (plus further MMs which had not been consulted upon), the Plan would be sound and legally compliant.
26. At council meetings held between 28 February and 20 March 2024, the nine local authorities resolved to approve the adoption of the Plan, subject to the MMs recommended by the Inspectors. The adoption took effect and thus the Plan became part of the statutory development plan for each of the nine authorities on 21 March 2024. It sets the spatial strategy for the region up to 2039.

Legal and policy framework

Examination of DPDs

27. Before a DPD is submitted for examination, a local planning authority (“LPA”) must “have complied with any relevant requirements contained in regulations under this part”: section 20(2)(a) PCPA 2004.
28. The purpose of the examination by Inspectors appointed by the Secretary of State is to determine whether, *inter alia*, it satisfies regulations made under section 36 relating to the preparation of DPDs (section 20(5)(a) PCPA 2004), and whether it is sound (section 20(5)(b) PCPA 2004).
29. The test of “soundness” is not defined in law but paragraph 35 of the National Planning Policy Framework (“NPPF”)⁵ provided that a plan is sound if it is:

“a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs [FN 21 Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework.]; and is informed by agreements with other authorities, so that unmet need from

⁵ The relevant edition of the NPPF is 2021.

neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.”

30. If inspectors consider after examination that, in all the circumstances, it would not be reasonable to conclude that the document satisfies the requirements mentioned in section 20(5)(a) PCPA 2004, then they must recommend non-adoption of the document and give reasons for the recommendation: section 20(7)-(7A) PCPA 2004.
31. By section 20(7C) PCPA 2004, if asked to do so by the LPA, the person appointed to carry out the examination must recommend modifications of the document that would result in it (a) satisfying the requirements mentioned in section 20(5)(a) PCPA 2004 and (b) being sound.
32. If the inspectors recommend the DPD is adopted, then the authority may adopt it as it is or with modifications that (taken together) do not materially affect the policies set out in it: section 23(2) PCPA 2004.
33. If the inspectors recommend the DPD is not adopted but make recommendations of MMs under section 20(7C) PCPA 2004, the LPA may adopt the DPD with the MMs or with the MMs and additional modifications if the additional modifications (taken together) do not materially affect the policies that would be set out in the document if it was adopted with the MMs but no other modifications: section 23(3) PCPA 2004.
34. LPAs have no power to change the MMs or to adopt the DPD if adoption is not recommended (*R (Rights Community Action Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 359 (Admin), per Lieven J. at [48]).

Challenge to a DPD

35. By section 113(2), (3) PCPA 2004, a DPD must not be questioned in any legal proceedings other than an application to the High Court on the ground that it is not within the appropriate power or a procedural requirement has not been complied with. The Court applies conventional public law principles: *Gallagher Homes Ltd v Solihull MBC* [2014] EWCA Civ 1610, per Laws LJ at [2]. The Court can only consider whether an error of law has been made; it cannot consider the merits of the Council’s proposed policy: *Keep Bourne End Green v Buckinghamshire Council* [2020] EWHC 1984 (Admin) per Holgate J. at [5].

36. The assessment of “soundness” requires an assessment of whether the plan is “positively prepared, justified, effective and consistent with national policy”. This undeniably involves a very considerable amount of planning judgment, the legality of which can only be challenged on the basis of general public law principles (*Cooper Estates Strategic Land Limited v Royal Tunbridge Wells Borough Council* [2017] EWHC 224 (Admin) per Thornton J. at [20]).
37. In *Keep Bourne End Green*, at [58], Holgate J. confirmed that the judgment made by an inspector as to whether a submitted plan with any MMs is “sound” is central to the legal ability of the authority to adopt that document as part of its development plan. In *Barratt Development Ltd v City of Wakefield MDC* [2010] EWCA Civ 897, Carnwath LJ said, at [33]:
- “soundness was a matter to be judged by the Inspector and the Council and raises no issue of law unless their decision is shown to have been irrational, or they are shown to have ignored the relevant guidance or other considerations which were necessarily material in law.”
38. It is well-established that whilst the interpretation of planning policy is a matter of law, its application is a matter of judgment falling within the exclusive jurisdiction of the planning decision-maker (subject to review only on rationality grounds). The Court has warned against the danger of ‘dressing up’ a challenge to application as one of interpretation, see *Trustees of the Barker Mill Estates v Test Valley BC and Secretary of State* [2017] PTSR 408 per Holgate J. (as he then was):
- “22. ... many policies are framed in language the application of which to a given set of facts requires the exercise of judgment. Matters of that kind fall within the jurisdiction of planning authorities as decision-makers and their exercise of judgment can only be challenged in the Courts if it is irrational or perverse... Therefore, in a case where the decision-maker has had regard to a policy which he was required to take into account, it is essential for practitioners to keep in mind the distinction between *interpretation* and *application* of policy and the very different functions of the court in each area...
83. ... Because of the critical difference between these two types of challenge as to the juridical basis upon which a court may intervene, a claimant must not dress up what is in reality a criticism of the *application* of policy as if it were a *misinterpretation* of policy.
84. Normally a claimant fails to raise a genuine case of misinterpretation of policy unless he identifies (i) the policy wording said to have been misinterpreted, (ii) the interpretation of that language adopted by the decision-maker and (iii) how that interpretation departs from the correct interpretation of the policy wording in question. A failure by the claimant to address these points, as in the present case, is likely to indicate that the

complaint is really concerned with application, rather than misinterpretation, of policy.”

39. In *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] PTSR 746, at [6] – [7], Lindblom LJ set out the principles upon which the Court will act in an application for statutory review under section 288 Town and Country Planning Act 1990. Those principles are also relevant to an application for statutory review under section 113 PCPA 2004. Lindblom LJ held:

“6. In my judgment at first instance in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) (at paragraph 19) I set out the “seven familiar principles” that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:

“(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, “provided that it does not lapse into Wednesbury irrationality” to give material considerations “whatever

weight [it] thinks fit or no weight at all” (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in *Fox Strategic Land and Property Ltd. v Secretary*

of State for Communities and Local Government [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145).”

7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasized the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraphs 22 to 26, and my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell*, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63).”

40. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] 1 WLR 1865, Lord Carnwath JSC held at [25]:

“... the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly.”

41. In *South Buckinghamshire District Council v Porter (No 2)* [2004] 1 WLR 1953, Lord Brown reviewed the authorities and gave guidance on the nature and extent of the duty to give reasons, at [36].

42. In *CPRE Surrey v Waverley BC* [2019] EWCA Civ 1826, Lindblom LJ held, at [72], that an inspector conducting a local plan examination is required to give reasons for his conclusions and recommendations. The requisite standard of reasons is that set out in the *South Bucks DC* case. He added, at [75]:

“Generally at least, the reasons provided in an inspector's report on the examination of a local plan may well satisfy the required standard if they are more succinctly expressed than the reasons in the report or decision letter of an inspector in a s.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.”

43. In *Cherwell Development Watch Alliance v Cherwell DC & Anor* [2021] EWHC 2190 (Admin), Thornton J. held:

“24. The reasons given by an Inspector on the examination of a local plan under s20 PCPA should not be assessed by unqualified application of authorities dealing with reasons on appeals against the refusal of planning permission, notably the oft-cited principles in particular in *South Bucks DC v Porter (No.2)* [2004] UKHL 33 at [36]. The public examination of a plan is not an inquiry into objections raised by individual parties. The examination is structured around the issues which the Inspector has identified as crucial for his judgment on the soundness of the plan. It alerts parties to the Inspector’s proactive and inquisitorial role; representations do not dictate the structure or focus of the examination. If contentions do not assist him to reach a judgment on the soundness of the plan, he will not spend time at the hearings on them. The hearings are only part of his examination of the soundness of the plan.

25. Accordingly, the Inspector should reach clear conclusions backed by reasoned judgments on the plan’s compliance with the PCPA 2004, including the requirement of soundness. The report does not summarise the parties’ individual cases, will avoid direct reference to specific representations and will not describe discussions at hearings. But it will explain concisely why the Inspector has reached the views he has on soundness and the compliance issues. Accordingly, reasons may be more succinctly expressed than in a decision letter on a planning appeal (*Cooper Estates Strategic Land Assessment v Royal Tunbridge Wells Borough Council* [2017] EWHC 224 (Admin) confirmed in *CPRE Surrey v Waverley Borough Council v Secretary of State for Housing Communities and Local Government* [2019] EWCA Civ 1826).”

Green Belt policy

44. The Plan was examined against the 2021 NPPF, which set out policies in relation to the Green Belt in section 13, titled “Protecting Green Belt land”, at paragraphs 137-146.
45. Paragraphs 137 and 138 described the purpose of the Green Belt as follows:

“137. The Government attaches great importance to Green Belts. The fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

138. Green Belt serves five purposes:

- (a) to check the unrestricted sprawl of large built-up areas;
- (b) to prevent neighbouring towns merging into one another;
- (c) to assist in safeguarding the countryside from encroachment; and
- (d) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

46. Paragraph 139 refers to the establishment of new Green Belts:

“139. The general extent of Green Belts across the country is already established. New Green Belts should only be established in exceptional circumstances, for example when planning for larger scale development such as new settlements or major urban extensions. Any proposals for new Green Belts should be set out in strategic policies, which should:

- a) demonstrate why normal planning and development management policies would not be adequate;
- b) set out whether any major changes in circumstances have made the adoption of this exceptional measure necessary;
- c) show what the consequences of the proposal would be for sustainable development;
- d) demonstrate the necessity for the Green Belt and its consistency with strategic policies for adjoining areas; and
- e) show how the Green Belt would meet the other objectives of the Framework.”

47. Paragraphs 140 and 141 give guidance on alterations to existing Green Belt:

“140. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through nonstrategic policies, including neighbourhood plans.

141. Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has

examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:

- a) makes as much use as possible of suitable brownfield sites and underutilised land;
- b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and
- c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground.”

48. Paragraph 142 applies to the drawing up of new Green Belt boundaries or reviewing existing boundaries. The reference to offsetting the impact of releasing land from the Green Belt is to improvements to Green Belt land, not additions of land to the Green Belt. It provides:

“142. When drawing up or reviewing Green Belt boundaries, the need to promote sustainable patterns of development should be taken into account. Strategic policy - making authorities should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt or towards locations beyond the outer Green Belt boundary. Where it has been concluded that it is necessary to release Green Belt land for development, plans should give first consideration to land which has been previously-developed and/or is well-served by public transport. They should also set out ways in which the impact of removing land from the Green Belt can be offset through compensatory improvements to the environmental quality and accessibility of remaining Green Belt land.”

49. Paragraph 143 gives guidance on defining Green Belt boundaries, as follows:

“143. When defining Green Belt boundaries, plans should:

- a) ensure consistency with the development plan’s strategy for meeting identified requirements for sustainable development;
- b) not include land which it is unnecessary to keep permanently open;

- c) where necessary, identify areas of safeguarded land between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period;
- d) make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development;
- e) be able to demonstrate that Green Belt boundaries will not need to be altered at the end of the plan period; and
- f) define boundaries clearly, using physical features that are readily recognisable and likely to be permanent.”

Ground 5

Parties’ submissions

Claimant’s submissions

- 50. The Claimant submitted that the Inspectors erred in law by narrowing the scope of “exceptional circumstances” said to be legally capable of justifying additions to the Green Belt under section 13 of the NPPF. As a result of being persuaded by GMCA, erroneously, to apply a restrictive “legal test” as to whether exceptional circumstances could be shown, the number of sites to be designated as new Green Belt was substantially reduced.
- 51. The Claimant submitted that the correct approach was set out by Ouseley J. in *Compton PC & Ors v Guildford BC & Ors* [2019] EWHC 3242 (Admin):
 - “68. There is no definition of the policy concept of “exceptional circumstances”. This itself is a deliberate policy decision, demonstrating that there is a planning judgment to be made in all the circumstances of any particular case; *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078 at [20], Jay J. It is deliberately broad, and not susceptible to dictionary definition.
 - 69. The parties agreed that whether a particular factor was capable of being an “exceptional circumstance” in any particular case was a matter of law; but whether in any particular case it was treated as such, was a matter of planning judgment. That does not take one very far, in my judgment, because a judicial decision that a factor relied on by a planning decision-maker as an “exceptional circumstance” was not in law capable of being one is likely to require some caution and judicial restraint. All that is required is that the circumstances relied on, taken together, rationally fit within the scope of “exceptional

circumstances” in this context. The breadth of the phrase and the array of circumstances which may come within it place the judicial emphasis very much more on the rationality of the judgment than on providing a definition or criteria or characteristics for that which the policy-maker has left in deliberately broad terms.”

52. The GMCA, and subsequently the Inspectors, mistakenly relied upon the Court of Appeal judgment in *Gallagher Homes Limited v Solihull MBC* [2014] EWCA Civ 1610 (“*Gallagher CA*”) as the basis for a restrictive legal test, derived from *obiter dicta* in the judgment of Simon Brown LJ in the Court of Appeal in *Copas v RB Windsor and Maidenhead* [2002] 1 P & CR 16, at [40], applicable to additions to the Green Belt. However, the ratio of *Gallagher CA*, was merely that the factor identified by the inspector, namely that the site was not suitable for housing development, was not capable, without more, of constituting exceptional circumstances which justified an addition to the Green Belt. Laws LJ did not hold that, as a matter of law, an addition to the Green Belt required a fundamental change of circumstances which falsified the basis upon which a site was previously excluded from the Green Belt. It would have been very surprising for the Court to place such a gloss on the broad policy term of exceptional circumstances.
53. The correct interpretation of the *Copas* and *Gallagher HC* and *CA* cases was set out in *IM Properties Ltd v Lichfield DC* [2015] PTSR 1536 (“*IM Properties 2015*”). Cranston J. endorsed the approach of Patterson J. in the applicant’s earlier judicial review: *R (IM Properties Development Ltd) v Lichfield District Council* [2014] PTSR 1484 (“*IM Properties 2014*”), at [90], where she rejected the “falsification principle” based on the *obiter dicta* remarks of Simon Brown LJ in *Copas*.
54. The Claimant accepted that the Inspectors’ approach would have been lawful if, as the Secretary of State submitted⁶, the factors of a “fundamental change in circumstances” and whether a change is needed to correct a boundary anomaly were merely adopted as relevant considerations and criteria for the assessment of whether or not there were exceptional circumstances within the meaning of the NPPF, and did not preclude consideration of other relevant considerations and factors. However, the Claimant submitted that was not the approach adopted by the Inspectors. Instead, they accepted the GMCA’s erroneous submission that the case law required them to proceed on the basis that a fundamental change and/or an anomalous boundary was the only way of meeting exceptional circumstances. This approach unlawfully constrained the exercise of their planning judgment because consideration of other matters was excluded.

Secretary of State’s submissions

55. The Secretary of State submitted that this was a dispute on the application of the “exceptional circumstances” Green Belt policy. There could be no doubt the Inspectors understood that the overarching test was one of “exceptional circumstances” (see IR 869), but that test is extremely broad and Inspectors have discretion in how to apply it. See *Compton*, followed in *Keep Bourne End Green*.

⁶ Secretary of State’s Detailed Grounds of Resistance, at paragraph 28.

56. Whether there are exceptional circumstances was a planning judgment which required judgment as to what were the material considerations. In this light it was lawful for a decision-maker to set up criteria to establish whether the exceptional circumstances test was met (*Keep Bourne End Green* at [156] – [157]). In this case, the Councils set up and applied the criteria as summarised in the GMCA’s Note, which the Inspectors then considered.
57. There was no dispute that whether or not there had been a fundamental change in circumstances could be a relevant consideration. Further, on the facts of the particular case, it was permissible to adopt that as the test: see *Copas*. Whilst that did not give rise to a “falsification doctrine” (see *Keep Bourne End Green* at [146(vi)]), it was a “response to the particular factual circumstances” (*IM Properties 2015*, at [52]). As such, on the facts of the case, the approach was appropriate. This was confirmed in the High Court in *Gallagher Homes Limited v Solihull MBC* [2014] EWHC 1283 (Admin) (“*Gallagher HC*”) and in *Gallagher CA*.
58. In *IM Properties 2014* and *IM Properties 2015*, the courts rejected the claimant’s submission that the inspector was required to adopt a “falsification doctrine”, based on *Copas*. But they did not find that *Copas* was wrongly decided.
59. At IR 870 - 872, the Inspectors agreed with the GMCA’s revised approach in considering whether there were exceptional circumstances based on whether (i) there had been a fundamental change in circumstances; and/or (ii) correction of an anomaly, where the existing boundary did not follow a readily recognisable physical feature. These were the two main considerations which were given the most weight in the assessment. They were very general and used in a very broad sense. As the GMCA said, they were a “proxy” for exceptional circumstances. The Claimant used the criteria in paragraph 139 of the NPPF as a guide or proxy. One of those criteria is the need to show “major changes in circumstances have made the adoption of this exceptional measure necessary” (139(b)). This is one of the criteria that the Inspectors adopted here.
60. The Secretary of State submitted (at paragraph 47 of his skeleton argument):
- “The fact that it was *open* to the Inspectors to adopt the approach they did is clear from *Copas* in which Simon Brown LJ took the view that, in the case before him, there could not be exceptional circumstances “unless some fundamental assumption which cause the land initially to be excluded from the Green Belt is thereafter clearly and permanently falsified by a later event”. There is no dispute that approach was not mandated, but there is no suggestion it is unlawful.”
61. The Secretary of State concluded that it was rational and lawful for the Inspectors to adopt the same approach as the Court of Appeal.

Submissions of the GMCA and Councils

62. The GMCA submitted that the NPPF policy test of “exceptional circumstances” needed to be read in the context of both *Copas* and *Gallagher HC and CA*, both of which

considered the principles to be applied when making additions to the Green Belt, as opposed to removals. *Copas* was binding authority on the issue; it was not merely *obiter dicta* (see *Gallagher HC* at [131]). The GMCA Note accurately summarised *Copas* and *Gallagher HC and CA*.

63. Most of the case law relates to removing land from the Green Belt as opposed to adding to it. One obvious difference between the two is that “exceptional circumstances” to remove land from the Green Belt can be found where there is a need for particular types of development (e.g. housing and / or employment development) and the land in question is considered suitable for development; whereas the opposite situation of a site being unsuitable for development “cannot be said without more to constitute an exceptional circumstance” for adding land to the Green Belt: see *Gallagher CA*, per Laws LJ at [36].
64. It was implicit in the Claimant’s case that there were no guiding principles to be applied to the test of “exceptional circumstances” and that it was simply a matter of making a planning judgment. That submission was rejected by the High Court in *Gallagher HC* (see [127] and [135]). The appeal against the Judge’s decision on this ground was rejected by the Court of Appeal.
65. The High Court in *Gallagher HC* applied the *Copas* text at [135], finding that:

“[the Inspector’s decision] falls very far short of *the stringent test* for exceptional circumstances that any revision of the Green Belt boundary must satisfy. There is nothing in this case that suggests that any of the assumptions upon which the Green Belt boundary was set has proved unfounded, nor has anything occurred since the Green Belt boundary was set that might justify the redefinition of the boundary.” (*Emphasis added*)
66. Whilst the Claimant criticised the Councils’ description in the Note of “an exacting legal test” it was hard to see anything in this criticism given the way it was described by Hickinbottom J. as a “stringent test”.
67. The proposition rejected in *IM Properties 2014* and *IM Properties 2015* was that there was a very specific doctrine of falsification and that this was the only way in which a Green Belt revision could be justified. The GMCA did not rely upon a doctrine of falsification and did not incorporate the term “falsification” in its revised approach, as set out in its Note dated 9 March 2023, submitted to the Inspectors after the first Green Belt hearing.
68. The GMCA did not assert that a fundamental change was the sole means of demonstrating exceptional circumstances. It also referred to the consideration of boundary anomalies which was derived from the requirement in paragraph 143 of the NPPF that Green Belt boundaries should be “clearly” defined in a plan, “using physical features that are readily recognisable and likely to be permanent”. The schedule to the Note identified 12 instances of boundary anomalies justifying revision, and 8 instances of fundamental change (3 of the proposed additions involved both boundary anomaly and fundamental change).

69. Moreover, the Inspectors did not consider the fundamental change principle to be the sole means of demonstrating exceptional circumstances. Although the Inspectors stated at IR 872 that they agreed with the Councils’ “revised approach based on case law”, they applied their own judgment to each proposed addition in the draft Plan submitted to them.
70. Accordingly the Inspectors, at IR 872, approached their task of reporting whether the addition of various parcels of land to the Green Belt was justified by exceptional circumstances by considering three distinct ways in which this might be so, namely:
- i) Whether there had been a fundamental change in circumstances from when the issue of the extent of the Green Belt had last been considered (i.e. one of the two approaches in the Note, in this instance derived from *Copas*, and *Gallagher HC and CA*);
 - ii) Whether there was an existing boundary anomaly where the existing Green Belt boundary does not follow a readily recognisable feature (i.e. the second of the two approaches in the Note);
 - iii) Whether “there are circumstances relating to a site that need addressing” (i.e. not one of the approaches set out in the Note).
71. If one compares the analysis in the IR with the 17 Green Belt proposed additions in the schedule to the GMCA’s Note, it is apparent that the Inspectors disagreed with the Councils in regard to GBA02 (IR 874 – 878); and GBA34 (IR 910 – 913) and recommended that the land in question in both cases should be added to the Green Belt despite neither appearing in the Councils’ list. There were also two instances where the IR explicitly discusses sites which are not on the Councils’ list and agrees with the Councils that they should not be added to the Green Belt (namely GBA27 (IR 894 – 898), and GBA42 (IR 923 – 926)).
72. It is right that the IR largely but not exclusively analyses the areas of land proposed to be added to the Green Belt in the draft Plan by applying the fundamental change and/or the anomalous boundary approaches. Most of the parcels of land they recommended should be added to the Green Belt are cases where they concluded there were anomalous boundaries.
73. The third approach (“general circumstances”) features in the Inspectors’ reasoning for eight of the parcels they explicitly considered (GBA: 26, 27, 28, 34, 37, 40, 41, 43) in their report (see IR 892, 898, 900, 911, 912, 918, 928). Thus, in relation to GBA34 the Inspectors disagreed with the Councils’ revised assessment in relation to this area, finding that there were exceptional circumstances to include the land within the Green Belt as “the exclusion of this area now appears to be somewhat anomalous” due not solely to an absence of physical features to represent the boundary but based upon changes to the land uses around the site which “significantly altered the character of the area” (see IR 911 – 913).
74. Thus, it is clear that as a matter of fact, the Inspectors did not adopt the “fundamental change” test as the sole means of justifying exceptional circumstances as alleged by the Claimant.

Submissions of the Interested Parties

75. The Interested Parties supported the submissions made by the Secretary of State, the GMCA and the Councils.
76. Mr Fraser KC, Counsel for IP1 and IP2, identified further examples of the Inspectors relying upon factors which fell into the third category of general circumstances, in addition to those identified by Mr Katkowski KC at paragraph 73 above. They were GBA19 (IR 887); GBA29 (IR 903); GBA34 (IR 911).

Conclusions

Case law on the “exceptional circumstances” test in Green Belt policies

77. The “exceptional circumstances” test has been considered in a number of authorities.
78. In *Carpets of Worth Ltd v Wyre Forest District Council* (1991) 62 P & CR 334, which concerned a successful challenge to an addition to the Green Belt, the Court of Appeal considered the guidance in Circular 14/84 that the extent of the Green Belt “should be altered only in exceptional circumstances”. Purchas LJ rejected a submission that this test did not apply to additions to the Green Belt and said, at 346:

“As it directly prejudices landowners in the otherwise proper development of their land an extension to the green belt should not be brought into effect unless it can be justified directly by those purposes for which the green belt is designed. There must there be an inhibition in extending a green belt so as to avoid sterilising unnecessarily neighbouring land just as much as reductions in the boundaries of the green belt, which would prejudice the purposes of that green belt must also only be made in exceptional circumstances. On this basis I think that the general concept of the advice in the circulars is that once a green belt has been established it must require exceptional circumstances rather than general planning concepts to justify an alteration. Whichever way the boundary is altered there must be serious prejudice one way or the other to the parties involved.”

79. Purchas LJ (at 343, 346) and Taylor LJ (at 347) held that the use of the word “altered” indicated that the same stringent test applied equally to reductions or extensions of the Green Belt.
80. In *Gallagher HC*, Hickinbottom J. endorsed the view of the Court in *Carpets of Worth* that the same approach applied to additions and removals, at [125(iii)], and added at [132]:

“.... A prime character of Green Belts is their ability to ensure through changes of such policies. For the reasons set out in *Carpets of Worth* (at page 346 per Purchas LJ) it is important that a proposal to extend a Green Belt is subject to the same, stringent regime as a proposal to diminish it, because whichever

way the boundary is altered “there must be serious prejudice one way of the other to the parties involved.”

81. In my view, based upon the passages in the judgments set out above, the same legal approach should be applied to additions to, or removal from, the Green Belt. Of course, I recognise that there are provisions in the NPPF Green Belt policies which are plainly intended to apply to removals, not additions, and the factors to be addressed are likely to differ as between removals and additions.

82. In *Copas*, which concerned a successful challenge to an addition to the Green Belt, the Court of Appeal found that the Inspector failed to apply correctly the “exceptional circumstances” test in the Planning Policy Guidance 2 (“PPG2”), paragraph 2.7, which read “existing boundaries should not be changed unless alterations to the structure plan have been approved, or other exceptional circumstances exist, which necessitate such revision”. The inspector found as follows:

“2.48 In summary, I believe that there are exceptional circumstances which necessitate a revision of the Green Belt boundary in this instance. I have not reached that conclusion lightly because I recognise the need for such boundaries to be permanent wherever possible. However, the most recent appeal decision justifies a very different perception of the site than that which prevailed when the present boundary was set. It also means, in my view, that the continued omission of the site from the Green Belt would be an incongruous anomaly.”

83. Mr Lockhart-Mummery KC, sitting as a Deputy High Court Judge, held that the inspector was entitled to reach his conclusion on the effect of the 1991 decision in which the Secretary of State was “manifestly valuing the openness of the site in two specific contexts: that of listed buildings and important or historic views” which was “clearly relevant ... to the later judgment now being made as to the importance of openness in another context”. He held that the Secretary of State’s conclusions were capable of amounting to an exceptional circumstance for the purposes of paragraph 2.7 of PPG2.

84. Simon Brown LJ held that paragraph 2.7 expressed “a single composite test: circumstances are not for this purpose exceptional unless they *do* necessitate a revision of the boundary” (at [23]). He went on to say, at [39] and [40]:

“39. It must, of course, be recognised that PPGs have no formal statutory force and are not to be construed and applied as if they had. The only statutory obligation is to have regard to them. All this was pointed out by Purchas LJ in the *Carpets of Worth* (at p.88). That said, the Guidance must be given some reasonable meaning and be properly understood by those charged with forming the relevant planning judgment.

40. I would hold that the requisite necessity in a PPG 2 paragraph 2.7 case like the present - where the revision proposed is to increase the Green Belt - cannot be adjudged to arise unless some fundamental assumption which caused the land initially to be excluded from the Green Belt is thereafter clearly and

permanently falsified by a later event. Only then could the continuing exclusion of the land from the Green Belt properly be characterised as "an incongruous anomaly". The Secretary of State's 1991 objection to development was neither sufficiently long-term nor sufficiently clearly applicable to all possible development on all parts of the site to be capable of constituting such an event, still less when it seemed of itself to demonstrate the sufficiency of existing planning controls to safeguard the various amenity interests identified."

85. In *Gallagher HC*, which concerned a successful challenge to the addition of land to the Green Belt, Hickinbottom J. reviewed the authorities on the application of the "exceptional circumstances" test, as follows:

"124. There is a considerable amount of case law on the meaning of "exceptional circumstances" in this context. I was particularly referred to *Carpets of Worth Limited v Wyre Forest District Council* (1991) 62 P & CR 334 ("*Carpets of Worth*"), *Laing Homes Limited v Avon County Council* (1993) 67 P & CR 34 ("*Laing Homes*"), *COPAS v Royal Borough of Windsor and Maidenhead* [2001] EWCA Civ 180; [2002] P & CR 16 ("*COPAS*"), and *R (Hague) v Warwick District Council* [2008] EWHC 3252 (Admin) ("*Hague*").

125. From these authorities, a number of propositions are clear and uncontroversial.

i) Planning guidance is a material consideration for planning plan-making and decision-taking. However, it does not have statutory force: the only statutory obligation is to have regard to relevant policies.

ii) The test for redefining a Green Belt boundary has not been changed by the NPPF (nor did Mr Dove suggest otherwise).

a) In *Hunston*, Sir David Keene said (at [6]) that the NPPF "seems to envisage some review in detail of Green Belt boundaries through the new Local Plan process, but states that 'the general extent of Green belts across the country is already established'". That appears to be a reference to paragraphs 83 and 84 of the NPPF. Paragraph 83 is quoted above (paragraph 109). Paragraph 84 provides:

"When drawing up or reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development..."

However, it is not arguable that the mere process of preparing a new local plan could itself be regarded as an exceptional circumstance justifying an alteration to a Green Belt boundary. National guidance has always dealt with revisions of the Green

Belt in the context of reviews of local plans (e.g. paragraph 2.7 of PPG2: paragraph 83 above), and has always required “exceptional circumstances” to justify a revision. The NPPF makes no change to this.

b) For redefinition of a Green Belt, paragraph 2.7 of PPG2 required exceptional circumstances which “necessitated” a revision of the existing boundary. However, this is a single composite test; because, for these purposes, circumstances are not exceptional unless they do necessitate a revision of the boundary (COPAS at [23] per Simon Brown LJ). Therefore, although the words requiring necessity for a boundary revision have been omitted from paragraph 83 of the NPPF, the test remains the same. Mr Dove expressly accepted that interpretation. He was right to do so.

iii) Exceptional circumstances are required for any revision of the boundary, whether the proposal is to extend or diminish the Green Belt. That is the ratio of *Carpets of Worth*.

iv) Whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if he fails to adopt a lawful approach to exceptional circumstances. Once a Green Belt has been established and approved, it requires more than general planning concepts to justify an alteration.”

86. The Claimant in this case accepted the principle of necessity for a revision as set out in [125(ii)(b)] by Hickinbottom J. and accepted by Mr Dove (as he then was).
87. Hickinbottom J. summarised the approach in *Copas* as follows:

“130.

In other words, something must have occurred subsequent to the definition of the Green Belt boundary that justifies a change. The fact that, after the definition of the Green Belt boundary, the local authority or an inspector may form a different view on where the boundary should lie, however cogent that view on planning grounds, that cannot of itself constitute an exceptional circumstance which necessitates and therefore justifies a change and so the inclusion of the land in the Green Belt (see *Hague* at [32] per Collins J. Collins J in *Hague* held that, in addition to the undoing of an assumption on which the original decision was made, a clear error in excluding land from the Green Belt is sufficient, no such error is suggested here; and I need not consider that aspect of *Hague* further.)

131. *COPAS* is, of course, binding upon me. Mr Dove said that these cases are fact-sensitive, and the facts of that case were very different from this. That is true; but, in the passage I have just quoted from Simon Brown LJ's judgment, he was clearly and deliberately determining, as a matter of principle, what "exceptional circumstances" required, as a matter of law, in a case such as this. It is expressly a holding, with which the whole court agreed. I am consequently bound by it. In any event, it seems to have been consistently applied for over ten years; and, in my respectful view, is right."

88. The Judge proceeded to apply the test to the facts of the case, at [132] – [135]. In particular, he said:

"135.the Inspector, unfortunately, did not adopt the correct approach to the proposed revision of the Green Belt boundary to include the Sites, which had previously been white, unallocated land. He performed an exercise of simply balancing the various current policy factors, and using his planning judgment, concluding that it was unlikely that either of these two sites would, under current policies, [be] likely to be found suitable for development. That, in his judgment, may now be so; but that falls very far short of the stringent test for exceptional circumstances that any revision of the Green Belt boundary must satisfy. There is nothing in this case that suggests that any of the assumptions upon which the Green Belt boundary was set has proved unfounded, nor has anything occurred since the Green Belt boundary was set that might justify the redefinition of the boundary."

89. In *Gallagher CA*, the Court of Appeal dismissed an appeal against the decision of Hickinbottom J. in the High Court, on 17 December 2014. Laws LJ rejected the submission that Simon Brown LJ's observations in *Copas* no longer applied because paragraph 83 of the NPPF omitted the requirement of necessity which was expressly stated in PPG2 paragraph 2.7. He approved Hickinbottom J.'s conclusion that Simon Brown LJ's observation at [23] in *Copas* that circumstances were not exceptional unless they necessitated a revision of the boundary continued to apply, despite the change in policy wording. Laws LJ held that the fact that a particular site was not suitable for housing development could not be said without more to constitute an exceptional circumstance. It was significant that in essence the merits or demerits of the possible use of these sites for housing had not apparently changed since 2005 when the same inspector took a view diametrically opposed to his conclusion in the present case.
90. In *IM Properties 2014*, which concerned an unsuccessful challenge to the release of Green Belt sites, Patterson J. considered the significance of Simon Brown LJ's observations in *Copas*. Her judgment was handed down on 18 July 2014, before the Court of Appeal's judgment in *Gallagher CA*. She said as follows:

"87 The claimant contends that the local authority has persistently misunderstood the approach to the revisions of the Green Belt. He relies on *Copas v Windsor and Maidenhead*

Royal Borough Council [2002] 1 P & CR 199 which dealt with previous guidance on Green Belt in PPG2. There, Simon Brown LJ made it clear that the terms of the guidance were clear so that unless there were exceptional circumstances which necessitated a revision of the Green Belt boundary a single composite test would not be satisfied. Further, from para 40 of the judgment the claimant derives a proposition which he describes as the falsification doctrine. Para 40 reads:

.....

88 From that it is said that a revision proposed to increase a Green Belt cannot arise unless the fundamental basis on which the land was originally excluded from the Green Belt was subsequently falsified. The converse must also apply when the Green Belt is to be rolled back.

89 The local authority and interested parties assert that the falsification doctrine does not exist. It is a misreading of the *Copas* case on the part of the claimant. In any event it is not the relevant test. That is whether a necessity has been established as a result of the exceptional circumstances to bring about a boundary alteration.

90 *Gallagher Homes Ltd v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin) deals with the test for redefining a Green Belt boundary since the publication of the NPPF. Paras 124—125 of the *Gallagher* case read:

.....

91 From that review it can be seen that there is no test that Green Belt land is to be released as a last resort. It is an exercise of planning judgment as to whether exceptional circumstances necessitating revision have been demonstrated.

.....

Discussion and conclusions

95 In my judgment to refer to a falsification doctrine is to take the words of Simon Brown LJ out of context. To elevate the words that he used into a doctrine is to overstate their significance.

96 What is clear from the principles distilled in the *Gallagher* case is that for revisions to the Green Belt to be made exceptional circumstances have to be demonstrated. Whether they have been is a matter of planning judgment in a local plan exercise ultimately for the inspector. It is of note that in setting out the principles in the *Gallagher* case there is no reference to a

falsification doctrine or that any release of Green Belt land has to be seen as a last resort.”

91. Thus, Patterson J. accepted that the test was whether the exceptional circumstances necessitated revision (at [91], accepting the submission at [89]). But she rejected the submission that Simon Brown LJ’s observations in *Copas* should be elevated into a falsification doctrine (at [95]). Sullivan LJ accepted her analysis when refusing permission to appeal against her decision.
92. In *IM Properties 2015*, which concerned the same sites, Cranston J. made the following observations:

“51 In *Gallagher Homes Ltd v Solihull Metropolitan Borough Council* [2014] JPL 1117, para 125, Hickinbottom J helpfully gathered together a number of the relevant principles regarding the Green Belt. Firstly, the test for redefining a Green Belt boundary has not been changed by the NPPF. Secondly, the mere process of preparing a new local plan is not in itself to be regarded as an exceptional circumstance justifying an alternative to a Green Belt boundary. Thirdly, the test for redefinition of a Green Belt under the NPPF remains what it was previously: exceptional circumstances are required which necessitate a revision of the boundary. That is a simple composite test because, for this purpose, circumstances are not exceptional unless they necessitate a revision of a boundary. Fourthly, whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if it fails to adopt a lawful approach to exceptional circumstances. Fifthly, once a Green Belt has been established and approved, it requires more than general planning concepts to justify an alteration. Hickinbottom J’s fifth point was endorsed on appeal: the *Gallagher Homes* case [2015] JPL 713, paras 33 and 36.

52 When Patterson J considered the applicant’s judicial review, *R (IM Properties Development Ltd) v Lichfield District Council* [2014] PTSR 1484, para 90, she endorsed Hickinbottom J’s enunciation of the relevant principles in the *Gallagher Homes* case. In *Calverton Parish Council v Nottingham City Council* (No 2) [2015] EWHC 1078 (Admin) at [44], Jay J considered Patterson J’s judgment where, at para 100, she considered the issue of planning judgment and slightly recast the issue as follows:

“[Whether], in the exercise of planning judgment and in the overall context of the positive statutory duty to achieve sustainable development, exceptional circumstances existed to justify the release of Green Belt.”

It will be recalled that Patterson J rejected at [2014] PTSR 1484, para 90 what the applicant had advanced as an additional principle, that to justify an alternative of the Green Belt boundary the council had to identify a basis for concluding that the assumptions on which it had been drawn had been falsified. The applicant had drawn this falsification principle from *obiter* remarks of Simon Brown LJ in *Copas v Windsor and Maidenhead Royal Borough Council* [2002] 1 P & CR 199, para 40. In refusing permission to appeal from Patterson J's judgment, Sullivan LJ said that the applicant "erroneously elevates judicial dicta which were a response to the particular factual circumstances of the Copas case into a legal principle of universal application."

53 So any submission that Mr Crean would make that the planning inspector was in error for not asking himself whether something had occurred to undo an assumption on which the Green Belt boundary had originally been drawn would fall at the first hurdle....."

93. On my reading of *Copas*, at [39] and [40], Simon Brown LJ was giving general guidance to decision-makers on the meaning and application of PPG2 paragraph 2.7. Whilst of course such guidance from the Court of Appeal carries great weight, I consider that it was technically *obiter dicta*. I agree with the Claimant that the *ratio* of the decision in *Copas* was based on the particular facts of the case, as summarised at the end of [40]. In my view, Simon Brown LJ's guidance in *Copas* in the first sentence of [40] was not essential to the decision of the court, and so was not a binding precedent. I consider that the outcome would have been the same, simply applying the wording of PPG2 paragraph 2.7, even without Simon Brown LJ's additional guidance i.e. there were no exceptional circumstances which necessitated a revision of the Green Belt boundary.
94. My conclusion that the passage relied upon was *obiter dicta*, and did not establish a binding and universal legal principle to be applied in all Green Belt addition cases, is supported by the judgments/rulings in *IP Properties 2014* (Patterson J. and Sullivan LJ) and *IP Properties 2015* (Cranston J.). The claimant's application for permission to appeal against the judgment of Cranston J. on this ground among others was dismissed by Sales LJ at an oral hearing on 25 February 2016 ([2016] EWCA Civ 257).
95. Regrettably, I am in disagreement with Hickinbottom J. in *Gallagher HC* at [131], where he concluded that the passage in *Copas* at [40] was a binding principle of law. Although his decision was upheld on appeal, I note that Laws LJ in *Gallagher CA* did not expressly endorse [131] of Hickinbottom J.'s judgment, nor address the question of whether Simon Brown LJ's guidance on PPG2 was part of the ratio of *Copas* or merely *obiter dicta*. Laws LJ's comments on *Copas* focussed on the necessity test at [23], not the falsification of an earlier fundamental assumption, as set out in [40], although I infer that he agreed with the guidance that Simon Brown LJ gave at [40].
96. In my judgment, the ratio of the decision in *Gallagher CA* was set out by Laws LJ at [36] where he held that the "fact that a particular site within a Council's area happens not to be suitable for housing development could not be said without more to constitute

an exceptional circumstance, justifying an alteration of the Green Belt by the allocation to it of the site in question”. In my view, Simon Brown LJ’s guidance in *Copas* at [40] was not essential to the decision of the Court and so was not a binding precedent. I consider that the outcome would have been the same even without Simon Brown LJ’s guidance, simply applying the words of PPG2 paragraph 2.7 i.e. there were no exceptional circumstances which necessitated a revision of the Green Belt boundary.

97. In *Compton PC & Ors v Guildford BC & Ors* [2019] EWHC 3242 (Admin), which concerned an unsuccessful challenge to a release of land from the Green Belt, Sir Duncan Ouseley, sitting as a High Court Judge, made the following observations:

“68. There is no definition of the policy concept of “exceptional circumstances”. This itself is a deliberate policy decision, demonstrating that there is a planning judgment to be made in all the circumstances of any particular case; *Calverton Parish Council v Nottingham City Council* [2015] EWHC 1078 at [20], Jay J. It is deliberately broad, and not susceptible to dictionary definition.

69. The parties agreed that whether a particular factor was capable of being an “exceptional circumstance” in any particular case was a matter of law; but whether in any particular case it was treated as such, was a matter of planning judgment. That does not take one very far, in my judgment, because a judicial decision that a factor relied on by a planning decision-maker as an “exceptional circumstance” was not in law capable of being one is likely to require some caution and judicial restraint. All that is required is that the circumstances relied on, taken together, rationally fit within the scope of “exceptional circumstances” in this context. The breadth of the phrase and the array of circumstances which may come within it place the judicial emphasis very much more on the rationality of the judgment than on providing a definition or criteria or characteristics for that which the policy-maker has left in deliberately broad terms.

70. “Exceptional circumstances” is a less demanding test than the development control test for permitting inappropriate development in the Green Belt, which requires “very special circumstances.” That difference is clear enough from the language itself and the different contexts in which they appear, but if authority were necessary, it can be found in *R(Luton BC) v Central Bedfordshire Council* [2015] EWCA Civ 537 at [56], Sales LJ. As Patterson J pointed out in *IM Properties Development Ltd v Lichfield DC* [2014] EWHC 2240 at [90-91 and 95-96], there is no requirement that Green Belt land be released as a last resort, nor was it necessary to show that assumptions upon which the Green Belt boundary had been drawn, had been falsified by subsequent events.

71. There is however a danger of the simple question of whether there are “exceptional circumstances” being judicially over-analysed. This phrase does not require at least more than one individual “exceptional circumstance”. The “exceptional circumstances” can be found in the accumulation or combination of circumstances, of varying natures, which entitle the decision-maker, in the rational exercise of a planning judgment, to say that the circumstances are sufficiently exceptional to warrant altering the Green Belt boundary.”

98. In *Keep Bourne End Green*, which concerned an unsuccessful challenge to the release of land from the Green Belt, Holgate J. summarised the legal principles to be applied at [146]:

“146. I begin by summarising principles set out by Sir Duncan Ouseley in *Compton Parish Council v Guildford Borough Council* [2020] JPL 661 at [68]-[72]:-

(i) There is no definition of the policy concept of “exceptional circumstances”. The expression is deliberately broad and not susceptible to dictionary definition. The matter is left to the judgment of the decision-maker in all the circumstances of the case;

(ii) Whether a factor is capable of being an exceptional circumstance may be a matter of law, as an issue of legal relevance. But whether it amounts to such a circumstance in any given case is a matter of planning judgment;

(iii) But the suggestion that a factor is legally incapable of amounting to an exceptional circumstance will generally require caution and judicial restraint. The breadth of the phrase and the array of circumstances which may qualify as “exceptional” indicate that judicial emphasis is very much more on the rationality of the judgment made by the decision-maker than on seeking to define what can or cannot amount to “exceptional circumstances”;

(iv) “Exceptional circumstances” is a less demanding test than the “very special circumstances” test (as explained in paragraphs 87-88 of NPPF 2012 and now paragraphs 143-144 of NPPF 2019) used in development control in the green belt;

(v) There is no requirement that green belt land may only be released as a last resort,

(vi) There is no requirement to show that the assumptions upon which a green belt boundary was originally drawn up have been falsified by subsequent events;

(vii) Exceptional circumstances may comprise one factor or a combination of factors of varying natures;

(viii) General planning needs, for example general housing, are not excluded from amounting to exceptional circumstances. The need does not have to relate to a special form of housing or to a particular level of intensity.”

99. Holgate J. added, at [153]:

“153. It should also be emphasised that what may be judged by a decision-maker to amount to exceptional circumstances” is highly fact sensitive in each individual case. It will be sensitive to a range of case-specific considerations and the varying weight given to each, including the circumstances of a particular area, the policy context, the evidence base and the arguments advanced in the consultation and examination stages. That is why Sir Duncan Ouseley was, with respect, entirely correct to place much greater emphasis upon the court’s role of determining whether a decision-maker’s judgment was irrational, and not on attempting to define “exceptionality”. Of course, claimants face a high hurdle when seeking to advance irrationality in relation to the making of a planning judgment (see [95] above).”

100. The Secretary of State particularly emphasised Holgate J.’s confirmation, at [156] – [157], that it was lawful for a decision maker to set up and apply criteria to establish whether the exceptional circumstances test was met:

“156. Before looking at the Inspector’s report, it is helpful to have in mind the approach which the Council took to the review of green belt boundaries in Part Two of its assessment. Paragraph 2.4 states:-

“The Council’s position is that, exceptional circumstances will not exist unless all four of the following requirements are satisfied:

i The location is capable of contributing to sustainable development. This means it must be a logical extension to an existing settlement in Tiers 1-4 as identified in the Settlement Hierarchy. (Settlements in these tiers include all identified transport hubs).

ii The site is capable of removal from the Green Belt. In this context, a site is considered ‘capable’ of removal from the Green Belt when its removal from the Green Belt could be acceptable having regard to a) the purposes of including land in the Green Belt, b) the general extent of the Green Belt, and c) the requirement for permanent and robust boundaries. On

its own, ‘capable’ does not mean that there are ‘exceptional circumstances’.

iii If proposed for housing, the site must also be a deliverable or developable site in the terms set out in para 47 of the NPPF (footnotes 11 and 12) – this means that it is suitable from a detailed sustainability perspective, and has a reasonable prospect of delivery within the plan period, thereby contributing to meeting the OAN. If proposed for employment, the site must similarly have realistic prospects of delivering the proposed allocation within the plan period, having regard to local market indicators and any other relevant factors.

iv The OAN is not being met from other sources of supply and the scale of unmet need balanced against the contribution a site makes to the quality and function of the Green Belt weighs in favour of release.”

157. Mr. Burton accepted that there was nothing unlawful about the criteria set down in that paragraph. Criteria (i) and (iii) related in part to paragraph 84 of the NPPF 2012 and the deliverability requirement is an obviously sensible precaution before considering changes to a green belt boundary. Criterion (iv) rightly required the scale of any unmet need to be weighed. Criterion (ii) required an assessment to be made of green belt function. Here I note Mr Burton’s acceptance that where an area of land had ceased to serve *any* green belt function that could amount to an exceptional circumstance. In my judgment, the criteria used by the Council are an example of the sort of “open-textured” approach referred to by Jay J which cannot be impugned.”

101. These judgments provide helpful guidance on the approach to adopt to Green Belt boundary revisions. Although both were concerned with releases from the Green Belt, I consider that similar principles apply by analogy to additions to the Green Belt. Ouseley J. at [70] endorsed the view of Patterson J. in *IM Properties 2014* that it was not necessary to show that assumptions upon which the Green Belt boundary had been drawn, had been falsified by subsequent events. Holgate J. confirmed this view at [146(vi)]. Thus, neither Judge endorsed the guidance of Simon Brown LJ in *Copas* at [40] in this regard.

The Examination

102. The draft Plan was submitted for examination on 14 February 2022. It included the proposed designation of 49 sites to be added to the Green Belt. The examination ran

between 1 November 2022 and 5 July 2023, with hearings on the principle of Green Belt additions on 9 March 2023 and 28 March 2023⁷.

103. In response to PQ33 of the Inspectors' Preliminary Questions, in May 2022, the GMCA answered as follows⁸:

“What are the exceptional circumstances for altering the established boundaries to justify adding 675 hectares of land to the Green Belt in 49 locations?

The exceptional circumstances are that the sites proposed to be added to the Green Belt meet at least one of the five purposes of Green Belt set out in NPPF 138 and meet all five criteria to establish new Green Belt in NPPF 139. The Green Belt Topic Paper and Case for Exceptional Circumstances to amend the Green Belt Boundary (07.01.25) provides further details. Paragraph 6.30 and 6.31 on page 35 of the topic paper outline that the ‘Contribution Assessment of Proposed 2020 GMSF Green Belt Additions’ found that all 49 sites meet at least one purpose of Green Belt and Appendix 3 of the topic paper justifies how each site meets all five criteria to establish new Green Belt.”

104. In a document entitled “IN11: Matters, Issues and Questions relating to Green Belt additions”, dated 21 July 2022, the Inspectors set out detailed site-specific questions probing the exceptional circumstances said to justify making the Green Belt additions. These included seeking more information as to “what are the major changes in circumstances since the existing Green Belt boundary was defined in this location that make the adoption of this exceptional measure necessary”, applying paragraph 139b of the NPPF. Documents were submitted by the GMCA providing detailed information answering these questions (see, for example, the document relating to Matter 25, dealing with the addition of sites in Bolton⁹).
105. However, at the hearing on 9 March 2023, the GMCA changed its position on the approach to exceptional circumstances for the Green Belt additions. This was summarised in its Note¹⁰ and explained by GMCA’s Counsel in both the hearing sessions on 9 March 2023 and 28 March 2023.¹¹ The proposed new approach was that exceptional circumstances could only be shown if it could be demonstrated that there was an “existing boundary anomaly” (based on paragraph 143f of the NPPF) or there had been “a fundamental change in circumstances since the time when the extent of the Green Belt was established previously and the land in question was not included in the Green Belt”. This was described as “an exacting legal test”. It was supported in written representations by IP3¹².

⁷ The Claimant has provided transcripts of the hearings on 9 March 2023 and 28 March 2023, which were recorded on YouTube, and made accessible to the public via the GMCA website.

⁸ Supplementary bundle/347

⁹ Supplementary bundle/486-491

¹⁰ Supplementary bundle/431-433

¹¹ See transcripts at Supplementary bundle/454-485

¹² Supplementary bundle/209-223

106. Applying its revised test, GMCA explained that it would only support 17 additions to the Green Belt, out of the originally proposed 49 sites. It suggested that it was open to others to make submissions in favour of addition of the other sites that the GMCA was no longer supporting. Some objectors were able to do so. However, objectors were placed at a disadvantage as there was little time for them to take legal advice or to dispute the newly proposed approach in time for the two hearing sessions. In my view, the objectors ought not to be criticised by the Defendants and IPs for failing to challenge the GMCA's new approach at the time. It is unfortunate that GMCA only identified the case law that it wished to rely upon at such a late stage, despite having access to legal advice. The fact that there was subsequently a consultation on the proposed MMs including the deletion of proposed Green Belt deletions (see paragraph 24 above) mitigates the prejudice to some extent, but not entirely, since by that stage the Inspectors had already formed a view.
107. On 28 March 2023, the Inspectors at an early part of the session sought further clarity and stated that their starting point was the five criteria for establishing new Green Belt in NPPF paragraph 139. This included the "major change of circumstances" test which GMCA had previously relied on in their evidence base and in written answers to the Inspectors' questions. GMCA's Counsel stated that many of the 49 sites met the "major change" test but he then drew a clear distinction between that "major change" policy test and the new and different legal test that he claimed had been formulated by the Courts:
- "the major changes test, albeit set out in the framework, and albeit set out for new Green Belts, is not the test that's been formulated by the courts for adding land to the Green Belt. And that's, it's the legal point which is the subject of our paper, which I very largely drafted which is GMCA79, a note re the Green Belt additions."¹³
108. GMCA's Counsel indicated that it was the difference between policy and what was said to be the "legal test" developed by the Courts which led GMCA to drop their case for all but 17 of the 49 sites:

"So one has an exceptional circumstances test and one wonders what that means, and were it not for the intervention of the courts, then I mean it may have, very would have been the case that we would have stuck to our guns and said 49 meet the exceptional circumstances test you know free of any case law telling you what that test means for Green Belt additions. But that's not the position we're in."

He then stated that the Courts had held that the exceptional circumstances needed to add to the Green Belt:

"cannot be adjudged to arise unless some fundamental assumption which causes the land initially to be excluded from

¹³ Supplementary bundle/470

the Green Belt is thereafter clearly and permanently falsified by a later event.

I have distilled this into the principle of fundamental change...”¹⁴

The IR

109. As the Claimant correctly submitted, the legal route by which the Inspectors were required to consider whether to add land to the Green Belt was via the assessment of soundness, as interpreted through the NPPF, namely whether it is “consistent with national policy”. The relevant part of national policy was contained in section 13 of the NPPF, at paragraphs 140 to 141. Any alterations to the Green Belt (removals or additions) are required to be justified by “exceptional circumstances” but there is no policy in the NPPF or elsewhere as to what those exceptional circumstances are required to comprise.
110. As Ouseley J. held in *Compton*, the expression “exceptional circumstances” is deliberately broad. The matter is left to the judgment of the decision-maker in all the circumstances of the case.
111. Paragraph 139 of the NPPF sets out criteria for the establishment of new Green Belts in exceptional circumstances, which were legitimately used by the GMCA as a proxy for the identification of exceptional circumstances in the version of the Plan initially submitted for examination, and this assessment was available to the Inspectors.
112. The Inspectors correctly directed themselves, in Issue 52, that the issue was whether exceptional circumstances have been fully evidenced and justified for adding a total of 675 hectares on 49 sites to the Green Belt. It is plain from the numerous references to exceptional circumstances that they had the policy test well in mind. It is safe to assume that the Inspectors had expertise in determining Green Belt policy issues arising under the NPPF.
113. The Inspectors went on to find as follows:

“869. National policy advises that, once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified through the preparation or updating of plans. The sites were added as they were considered to serve at least one Green Belt purpose set out in NPPF 138 and to meet all five criteria to establish new Green Belt in NPPF 139.

870. However, during the examination GMCA outlined a revised approach to considering whether each of the Green Belt additions made in the Plan is justified based on a Court of Appeal judgment. This approach involves considering whether there are exceptional circumstances for each Green Belt addition, based on whether there has been a fundamental change in

¹⁴ Supplementary bundle/470

circumstances since the extent of the Green Belt was established previously and/or whether a change is needed to correct an anomaly where the existing Green Belt boundary does not follow a readily recognisable physical feature.

871. GMCA applied the revised approach to each of the 49 Green Belt additions in the Plan and the findings are set out in a table in GMCA79. In summary, GMCA concluded that 17 of the additions meet the fundamental change test and/or would resolve an anomalous boundary, whereas the remaining 32 proposed additions did not meet either test.

872. We agree with the GMCA's revised approach based on case law, and therefore most of the additions are not justified or consistent with national policy. However, we set out below the specific sites where we consider the addition to be justified based on the GMCA analysis, where we disagree with the GMCA assessment, or because there are circumstances relating to a site that need addressing.

873. We, therefore, recommend that the Plan be modified to delete the following Green Belt additions as exceptional circumstances have not been fully evidenced and justified: GBA01, GBA03, GBA04, GBA06 to GBA11, GBA13, GBA15 to GBA18, GBA20 to GBA24, GBA27, GBA30, GBA33, GBA36, GBA38, GBA42, and GBA45 to GBA49 [MMApxB.1 to MMApxB.4].....”

114. The Inspectors accepted the 17 additions proposed by the GMCA and added a further two additions, making 19 in total.
115. The Inspectors, at IR 872, approached their task of deciding whether the addition of various parcels of land to the Green Belt was justified by exceptional circumstances by considering three distinct ways in which this might be so, namely:
 - i) First, whether there had been a fundamental change in circumstances from when the issue of the extent of the Green Belt had last been considered. Although the concept of a fundamental change in circumstances derived from *Copas*, the GMCA did not include the *Copas* concept of falsification in its proposed test, nor did the Inspectors apply the concept of falsification.
 - ii) Second, whether there was an existing boundary anomaly where the existing Green Belt boundary does not follow a readily recognisable feature. This was proposed by the GMCA and was derived from paragraph 143f of the NPPF.
 - iii) Third, whether “there were circumstances relating to a site that need addressing” (i.e. not one of the approaches set out in the GMCA Note).
116. It was common ground before me that whether or not there were exceptional circumstances was a planning judgment for the decision-maker to make. In order to exercise its planning judgment, the decision-maker had to identify the material

considerations. I accept the Secretary of State's submission that, in undertaking this exercise, it was lawful for the decision-maker to set up criteria to establish whether the exceptional circumstances test was met: see *Keep Bourne End Green*, per Holgate J., at [156] – [157].

117. The first criterion relied upon by the GMCA, and accepted by the Inspectors, was a fundamental change in circumstances since the extent of the Green Belt boundary was previously established. There was no dispute before me that this was a relevant consideration. In my judgment, it was at least permissible, though not mandatory, for the decision-makers to rely upon it as a criterion, in the light of *Copas* and *Gallagher HC and CA*. Importantly, neither the GMCA nor the Inspectors relied upon the restrictive falsification doctrine in *Copas*, which has been criticised by the courts.
118. The second criterion relied upon by the GMCA, and accepted by the Inspectors, was whether the existing Green Belt boundary was anomalous. It was derived from paragraph 143f of the NPPF which provides that Green Belt boundaries should be defined “....clearly, using physical features that are readily recognisable and likely to be permanent”. There was no dispute before me that this was a relevant consideration and an appropriate criterion.
119. In my judgment, the Claimant's concern that the Inspectors were unlawfully constrained in the exercise of their planning judgment by the application of these criteria, because they were presented to them by the GMCA and IP3 as a binding legal test, is not justified. It is apparent from IR 872 that, in addition to the application of the two criteria relied on by the GMCA, the Inspectors adopted a third category of their own, which they broadly labelled sites where “there were circumstances that need addressing”. In their analysis of selected sites, at IR 874 to 932, the Inspectors clearly relied upon considerations which went beyond the first and second criteria (often by reference to Green Belt policy considerations): see sites GBA: 19, 26, 27, 28, 29, 34, 37, 40, 41, 43. Furthermore, the Inspectors disagreed with the GMCA's proposed deletion of sites GBA02 and GBA34 and concluded that they should be added to the Green Belt.
120. Although there was no freestanding reasons challenge in this claim, the Claimant submitted that the absence of detailed reasons for some of the sites meant that it was not possible to judge whether their planning judgment had been unlawfully constrained.
121. I refer to the principles in *CPRE Surrey v Waverley BC* [2019] EWCA Civ 1826 and *Cherwell Development Watch Alliance v Cherwell DC & Anor* [2021] EWHC 2190 (Admin), set out at paragraphs 43 and 44 above. The Inspectors gave detailed reasons for their decisions in 21 sites, where they judged that there was a need to do so, because they were proposing additions to the Green Belt, or disagreeing with the GMCA's proposals, or there were circumstances that needed to be addressed. In regard to the rest, the Inspectors stated:

“872 We agree with the GMCA's revised approach based on case law, and therefore most of the additions are not justified or consistent with national policy.”

The Inspectors had detailed information available to them in respect of all 49 sites (see the evidence referred to at paragraphs 103 and 104 above). I am satisfied that the

Inspectors took the same approach to all 49 sites i.e. considered the GMCA criteria and any other factors that they considered relevant, having regard to Green Belt policy considerations. They were entitled to conclude that detailed reasons were not required, because the position in regard to the other sites were straightforward and did not involve any change to the existing Green Belt boundary.

122. For these reasons I conclude that the Inspectors did not err in law by adopting an unduly restrictive legal test in determining whether exceptional circumstances for designating additional Green Belt sites had been established, as alleged by the Claimant.
123. Accordingly, the claim for statutory review on Ground 5 is dismissed.

Richborough