R (ON THE APPLICATION OF OXTED RESIDENTIAL LTD) v SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Queen's Bench Division (Administrative Court)

Dove J: 20 February 2015

[2015] EWHC 793 (Admin); [2015] 2 P. & C.R. 16

Compliance; Core strategy; Local plans; National Planning Policy Framework; Planning authorities' powers and duties; Residential development

H1 *Core Strategy—later development plan document—objective assessment of housing need—community infrastructure levy*

H2 On 15 October 2008, Tandridge District Council (the Council) adopted the Tandridge District Core Strategy (the Core Strategy). It was proposed to be in general accordance with the South East Plan (which had now been revoked). The Core Strategy sought to make provision for the South East Plan housing requirement. Policy CPS1 of the Core Strategy provided a settlement hierarchy at the bottom of which were "Green Belt settlements". These were not specified in the policy and the policy indicated that they would be identified and their exact boundaries fixed in a Site Allocations Development Plan Documnent and accompanying Proposals Map.

H3 In June 2013, the Council consulted on the Tandridge Local Plan Part 2 (TLP2) and this was submitted to the Secretary of State in September 2013. TLP2 was headed "Detailed Policies". The document stated that it supported the adopted Core Strategy by containing a set of detailed policies to be applied locally in the assessment and determination of planning applications over the plan period. The document was accompanied by the Policies Map which illustrated geographically the application of the policies contained in all adopted Local Plan documents. The explanatory text set out that TLP2 was to be read in accordance with the Core Strategy. Policy DP8 sought to regulate the development of residential garden land. Policy DP10 identified the extent of the Green Belt which was not altered as a result of TLP2's proposals on the Proposals Map. Policy DP 11 regulated proposals in certain larger rural settlements and provided criteria for governing applications of all forms of development. Policy DP12 identified certain settlements as defined villages in the Green Belt and provided criteria against which proposals within them would be tested. Policy DP 13 provided policy to control the provision of buildings in the Green Belt.

H4 Objections were raised to TLP2, including in particular that it was not based on an up-to-date Core Strategy. Further it was contended that the policies contained within TLP2 would restrict development coming forward and that the detail of the

policies' drafting did not accord with the National Planning Policy Framework (the Framework). TLP2 was examined by an independent inspector in January 2014. In relation to the Core Strategy being out of date, he concluded that it was not the role of TLP2 to consider housing need in the district or to review the Green Belt boundaries. These were matters to be tackled in the review of the Core Strategy. The Inspector proposed main modifications to be included within TLP2 and these were publicised and consulted upon. TLP2 was adopted on 24 July 2014. Sixteen days later, on 6 August 2014, a printed copy of the comprehensive Proposals Map was produced by the Council. The comprehensive electronic version of the map was not posted on the Council's website until October 2014.

H5 In November 2013, the Council had consulted on a draft Community Infrastructure Levy (CIL) Schedule. The Council considered the proposed charges to be necessary to meet the funding gap in terms of the infrastructure required so as to facilitate the delivery of the balance of the residential development required by the Core Strategy. The Council obtained independent evidence in order to demonstrate that the setting of the CIL charges at the proposed levels would not imperil the delivery of the development within its area by adversely affecting viability to a point where development could not be brought forward. The draft CIL schedule was submitted to the Secretary of State in September 2014. Objections were made to the CIL schedule on the grounds that it was not based on an up-to-date Core Strategy and that some forms of development would not be viable if the CIL was set at the level of charging proposed. The CIL schedule was examined in March 2014. The Inspector concluded that the Core Strategy had been adopted in 2008, preceding the publication of the Framework. Some of its policies could be considered to be out of date but until replaced, it remained the principal document of the Development Plan for the district. The CIL charges proposed by the Council were based on infrastructure needs arising from the development required for the implementation of that plan. There was no legal basis to find that the submitted CIL schedule should not be approved just because it was based on a plan which would be reviewed in the near future.

H6 The claimant submitted that: (1) The findings of the Inspector and the Council (whose conclusions and decisions stood or fell together) that TLP2 was sound were flawed. The Inspector erred in failing to inquire into what was the Council's objective assessment of need (OAN) pursuant to para.47 of the Framework as part and parcel of his assessment of the soundness of TLP2. Had he done so, it would have been clear that the Core Strategy was out of date in respect of its housing requirement and measured against a properly assessed OAN the Council did not enjoy an adequate five-year supply of housing. Once this was realised then the policies which sought to suppress housing supply by controlling it would, in accordance with para.49 of the Framework, be both policies which were related to the supply of housing and also out of date as a result of failing to have a five-year housing land supply; (2) Policies DP8 and DP10-13 constrained the supply of housing and were therefore inconsistent with the Framework's objective of seeking to boost housing supply; and (3) the CIL schedule was related to the development requirements of the Core Strategy and that those development requirements and the Core Strategy as a whole were out of date.

H7 **Held,** dismissing the applications:

H8 1. The legistaion contemplated a modular structure to the Development Plan whereby it could be constructed from a series of individual elements which were

to be read together for the purposes of conducting exercises in development control. These individual parts could be developed at different times against the backdrop of different national policies for the purposes of s.19(2) of the Planning and Compulsory Purchase Act 2004. It was clear that the scope of TLP2 did not include an examination of the OAN for the Council. Considering the limited objectives of TLP2, as set out in its introductory paragraphs, the Inspector was not required to embark upon an inquiry as to what the OAN might be or whether or not the Council had a five year supply of housing, and consequentially whether the policies which were being examined were relevant to the supply of housing. The establishment of a new housing requirement for the Council's administrative area was not a task which TLP2 had set itself. The Inspector did not need to decide whether the Core Strategy was out of date or the impugned policies were relevant to the supply of housing for the purposes of para.49 of the Framework. The Inspector gave clear reasons which explained his approach in relation to this point as to the OAN and the Core Strategy being out of date. His conclusion was logical and lawful. Given the limited role of TLP2, it would remain useful and applicable irrespective of what might emerge in the review of the Core Strategy.

H9 2. The Inspector was correct to record that there was in reality no evidence to substantiate the claim that development might be severely restricted as a result of the policies in TLP2. The Framwork did not promote housing at any cost to the environment, nor at any cost to urban areas. The Framework contained policies which sought to protect design quality and also the character of existing urban areas. The Inspector expressly dealt with the question of local interpretation and the relationship which the policies had to the overarching national policy in the Framwork. His conclusion that they were sound, measured against that policy, was a conclusion which was impeachable.

H10 3. The Town and Country Planning (Local Planning) (England) Regulations 2012 did not specifically require a single Proposals Map to be furnished at the submissions stage. The definition of a "submissions policies map" did not require just one piece of paper with the whole Proposals Map, as existing and as changed, upon it. The definition encompassed what in fact the Council provided here, namely extracts or insets illustrating the areas of the existing map which were proposed to be changed and how they were proposed to be changed. Not only was this approach lawful but it had good sense on its side. When undertaken in this way it was clear where the changes were taking place. The requirement for the provision of the Proposals Map in reg.26 was "as soon as reasonably practicable". That test was passed here since, under reg.35, provision of a hard copy for inspection and also provision on the Council's website was achieved within a reasonable time so as to meet the requirements of the Regulations. There was no error of law.

H11 4. The Inspector was entitled to conclude, that although the Core Strategy was to be reviewed, nonetheless there was good reason to endorse the CIL schedule so as to support the provision of infrastructure for the existing levels of completed development. The need for the CIL Schedule to be reviewed (potentially in the context of a revision to the Core Strategy) was contemplated in his report. There was no requirement in the legislative framework which required a recently adopted plan to be in place before a CIL schedule could be adopted. Whilst the guidance to which regard had to be had in accordance with the requirements of s.221 of the Planning Act 2008 suggested charging schedules should be consistent with and supported by an up to date plan, the decision here was for the reasons which were

given by the Inspector, a departure from that policy which the Inspector was legally entitled to make, provided that he gave reasons for that departure. He provided clear and adequate reasons to justify the departure. If, as here, the plan relied upon required review then no doubt revision of the CIL schedule to align it with the reviewed plan would be a high priority, if not essential. The Inspector was alive to all of this.

H12 **Cases referred to in the judgment:**
Gallagher Homes Ltd v Solihull MBC [2014] EWCA Civ 1610; [2015] J.P.L. 713
Gladman Development Ltd v Wokingham BC [2014] EWHC 2320 (Admin); [2014] P.T.S.R. D24
Hunston Properties Ltd v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610; [2014] 1 E.G.L.R. 79; [2014] J.P.L. 599
South Northamptonshire Council v Secretary of State for Communities and Local Government [2014] EWHC 573 (Admin)
Tesco Stores Ltd v Dundee City Council [2012] UKSC 13; [2012] P.T.S.R. 983; 2012 S.C. (U.K.S.C.) 278

H13 **Legislation referred to by the Court:**
Community Infrastructure Levy Regulations 2010 (SI 2010/948)
Planning Act 2008
Planning and Compulsory Purchase Act 2004
Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012/767)
Town and Country Planning Act 1990

H14 **Application** by the claimant, Oxted Residential Ltd, under s.113 of the Planning and Compulsory Purchase Act 2004, to challenge the adoption on 24 July 2014 of the Tandridge Local Plan Pt 2. Application by the claimant for judicial review of the decision of Tandridge District Council to adopt on 24 July 2014 a community infrastructure levy schedule. The facts are as stated in the judgment of Dove J.

H15 *Jonathan Clay* for the claimant.
Rhodri Price-Lewis QC (*Mr Symes* on 20 February 2015), for the defendant

JUDGMENT

DOVE J:

Introduction

1 There are two claims before me in this case. The first claim is brought under s.113 of the Town & Country Planning Act 1990 as a challenge to the adoption of the Tandridge Local Plan Pt 2 (hereafter "TLP 2") which was adopted on 24 July 2014. The second challenge is a judicial review of the defendant's decision to adopt a Community Infrastructure Levy Schedule (hereafter "the CIL schedule") also on 24 July 2014. They were ordered to be tried together because, as will become apparent and for logistical reasons, there are common themes and common parties. It is important to note that the judicial review comes before me, as a result of earlier directions, as a rolled-up hearing.

2 I propose to deal with the facts pertaining to both of these claims together and then I shall deal separately with the law, submissions and conclusions in relation to each of the cases. In both claims the interested party, the Secretary of State, did not appear and was not represented.

The Facts

3 On 15 October 2008 the defendant adopted the Tandridge District Core Strategy. Its plan period ended in 2026. It was proposed to be in general accordance with the South East Plan which has, in all respects relevant to these proceedings, now been revoked. The Core Strategy sought to make provision for the South East Plan housing requirement. Policy CSP 1 of the Core Strategy provided a settlement hierarchy in which the settlements were categorised and development directed towards them, starting with the more sustainable settlements towards the top of the hierarchy and then in a cascade down towards those that were less sustainable. The amount of development was directed towards them in accordance with their relative sustainability. At the bottom of the hierarchy were "Green Belt settlements". They were not specified in the policy, and the policy indicated that they would be identified and their exact boundaries fixed in a Site Allocations Development Plan Document (DPD) and accompanying Proposals Map.

4 The explanatory text provided as follows:

> "6.17 The Green Belt settlements are washed over by the Green Belt but have a defined boundary within which infilling and small scale redevelopment can be permitted. The settlements to be included within this classification and their exact boundaries will be decided in the Site Allocations DPD. Housing to meet local needs may be proposed. Redevelopment and infilling will be required to be to a high standard of design and will be expected to protect the character of the settlement or part of it. Where there are Conservation Areas within the villages development will need to be of a particular quality as it will be required to preserve and enhance the area."

5 Having adopted the South East Plan housing requirement, the Core Strategy noted that the defendant was confident that the first five years of the housing requirement could be met. For the second five years reliance was again placed upon the production of a Site Allocations DPD to identify the land necessary in order to meet the housing provision. The Core Strategy sought to manage the delivery of development across the plan period through a policy mechanism which was set out in Policy CSP 3 as follows:

> **"Managing the delivery of housing**
> In accordance with Policy CSP 2 and in order to manage the delivery of housing, should the District's rolling five year housing supply figure be exceeded by more than 20%, the Council will not permit the development of unidentified residential garden land sites of 5 units and above or larger than 0.2ha (or smaller sites where these form a part of a potentially larger development proposal). Similarly where there is inadequate infrastructure or services to support a development the Council will not permit the development of unidentified sites of 5 units and above or larger than 0.2ha.
> ….

For the avoidance of doubt, residential garden land for the purpose of this policy can comprise whole curtilages or parts of curtilages."

6 In ch.15 of the Core Strategy and at para.15.9 it was noted that there were parts of the defendant's area covered by saved Local Plan policies controlling density and protecting urban character. The Core Strategy observed that it might be necessary to up-date these polices in, amongst other documents, a new DPD. As matters turned out, the defendant did not produce a Site Allocations DPD. Instead in June 2013 they consulted on TLP 2 which was submitted to the interested party, the Secretary of State, in September 2013.

7 TLP 2 was entitled "Detailed Policies". The purpose of the document was set out as follows:

> **"What is this document?**
> 1.4 The Tandridge Local Plan Part 2: Detailed Policies has been prepared by the Council under the terms of the Planning and Compulsory Purchase Act 2004. It supports the adopted Core Strategy (Part 1 of the Tandridge Local Plan) by containing a set of detailed planning policies to be applied locally in the assessment and determination of planning applications over the plan period (2014–2029). The Plan will be monitored and can be reviewed in whole or in part to respond flexibly to changing circumstances over the plan period. These detailed policies replace the remaining 'saved' policies from the 2001 Tandridge District Local Plan (see Annex 2 for table of superseded policies).
> 1.5 Accompanying this document is the Policies Map. This illustrates geographically the application of the policies contained in all adopted Local Plan documents."

8 The explanatory text sets out that TLP 2 is to be read in accordance with the Core Strategy. TLP 2 contains policies on retail, alternative use of employment sites, highway safety and design and telecom infrastructure. None of these polices is controversial in the context of this case. The policies which are controversial are polices DP 8 and DP 10 to DP 13 which are set out in full in Annex 1 to this judgment.

9 To summarise, DP 8 seeks to regulate the development of residential garden land. DP 10 identifies the extent of the Green Belt which was not altered as a result of TLP 2's proposals on the Proposals Map. DP 11 regulates proposals in the larger rural settlements of Smallfield and Lingfield and provides criteria for governing applications for all forms of development. DP 12 undertakes two tasks: first, identifying certain settlements as defined villages in the Green Belt and, secondly, providing criteria against which proposals within them would be tested. The explanatory text provides further detail in relation to the operation of that policy as follows:

> "12.4 The Core Strategy policy goes on to explain that the Green Belt Settlements and their exact boundaries will be decided in a subsequent Development Plan Document. Since the adoption of the Core Strategy in 2008 the Council has continued to treat all the existing Green Belt Settlements as suitable for infilling. However in finding the Core Strategy 'sound' the Inspector was concerned that 'some of the Green Belt Settlements … were

little more than small, isolated collections of dwellings, clearly dependent on the private car, and which would require major development initiatives to become sustainable communities'.

….

12.6 A noticeable difference between the existing Core Strategy policy and this detailed policy is the terminology used. This policy no longer refers to 'Green Belt Settlements' and instead makes reference to 'Defined Villages in the Green Belt'. The National Planning Policy Framework in the first sentence of paragraph 86 states:

> 'If it is necessary to prevent development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt villages should be included in the Green Belt'.

However paragraph 89 states that:

> 'A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions are: (5th bullet point) limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan'.

The policy which follows is a local approach suitable to the Tandridge context but also consistent with the NPPF in that the Defined Villages are included within the Green Belt but have been identified as suitable for limited infilling and limited affordable housing. The NPPF does not specify whether boundaries should or should not be drawn around the villages in the Green Belt within which infilling can occur. Therefore the sole purpose of drawing a line around these villages is to make it clear precisely where infilling can take place and where Green Belt policy will apply."

10 DP 13 provides policy to control the provision of buildings in the Green Belt. It addresses the various circumstances which might apply to such proposals, for example new residential buildings or the extension, alteration or replacement of existing buildings. Accompanying and part and parcel of this proposed DPD were the alterations and amendments to the Proposals Map which originated from the Local Plan Proposals Map, to which I have referred above. These changes to the proposals map were illustrated in the form of insets or extracts showing the changes which were directly related to TLP 2. No comprehensive or synoptic plan was produced to accompany TLP 2's consultation or submission. That did not occur until after TLP 2 had been adopted.

11 The volume of Policies Map extracts came with an introduction providing context for how these inset maps changing the extant Policies Map were to be interpreted. The introduction provided as follows:

> "This section contains maps which show how the Local Plan Policies Map will be amended to incorporate new or revised geographic representations of policies contained within what will become the adopted Development Plan. The Policies Map will carry forward other designations that are unchanged, for example the extent of the Green Belt and the extent of the Area of Outstanding Natural Beauty."

12 Objections were raised to TLP 2, including in particular that it was not based on an up-to-date Core Strategy or TLP 1. Further it was contended that the policies contained within TLP 2 would restrict development coming forward and that the detail of the policies' drafting did not accord with the National Planning Policy Framework (the Framework).

13 In November 2013 the defendant consulted on a draft CIL schedule. It proposed that in relation to the balance of residential development required to meet the Core Strategy, a charge of £120 per sq. metre should be levied. In respect of retail development, the charge was proposed to be £100 per sq. metre. These charges were considered by the defendant to be necessary to meet the funding gap in terms of the infrastructure which was required so as to facilitate the delivery of the balance of the residential development required by the Core Strategy. The defendant obtained independent viability evidence in order to demonstrate that the setting of the CIL schedule at these levels would not imperil the delivery of development within their area by adversely affecting viability to a point where development could not be brought forward. The draft CIL schedule was submitted to the interested party the Secretary of State on 9 September 2014. Objections were made to the CIL schedule on the grounds that it was not based on an up-to-date Core Strategy and that some forms of development, particularly smaller housing developments, would not be viable if the levy was set at the level of charging proposed.

14 The TLP 2 was examined by an independent inspector who held hearings on 7 and 8 January 2014. In due course he provided a report dated 21 May 2014. He concluded in relation to the contentions in respect of the Core Strategy being out of date as follows:

> "10 I accept, as do the Council, that some elements of the CS need up-dating and that is one reason why the Council has agreed to undertake a review. Indeed work has already started on what will be called the Tandridge Local Plan Part 1: Strategic Policies (LP1) and it is anticipated that Regulation 18 public consultation will be undertaken this October, with adoption of the Plan by Spring 2017.
>
> 11 The Introduction to LP2 makes it clear that its role is to support the adopted Core Strategy and that its function is to provide detailed planning policies which can be used in the determination of planning applications. It was suggested that the Council should have initiated co-operation with neighbouring local planning authorities with regard to the assessment of housing need and the formulation of policies and proposals to meet that need. Specific locations for housing development were suggested, for example at Smallfield and in the locality of Domewood. However, it is not the role of LP2 to consider housing need in the District; to allocate sites; to propose the redevelopment of existing buildings (e.g. at Redhill Aerodrome); or to review the Green Belt boundary. These are matters to be tackled in the review of the CS, should circumstances so dictate and there is no reason to doubt that the Council will undertake the duty to co-operate in an appropriate way at that time and ensure that the CS review (LP1) includes policies and proposals which are up-to-date and in compliance with national policy.
>
> 12 It was argued that the Council should withdraw LP2 and concentrate on the withdraw LP2 and concentrate on the preparation of LP1. However, I can

see no benefit in that approach. LP2 is primarily a development management tool (not an allocations document) and although I cannot predict what the LP1 may contain, it is likely that many of the policies in LP2 will remain applicable, irrespective of any land use allocations or strategic policies that might be included in LP1. Whilst it is a desirable objective, it would be unreasonable in the current circumstances, to expect all the planning documents of the Council to provide a seamless comprehensive and continuously up-to-date palette of planning policies and proposals. This will hopefully be achieved on adoption of LP1 in 2017. In the meantime the benefits of progressing with LP2 outweigh any disbenefits because the document will provide a clear suite of policies which the Council can use in the determination of planning applications."

15 In relation to Policy DP 8, the Inspector concluded as follows:

"32 With regard to the wider application of policy DP8 it has been suggested that it may severely restrict development in other urban areas of the District. No evidence was submitted to substantiate that claim and in any event the NPPF confirms that great importance must be attached to the design of the built environment and that design should respond to the identity of local surroundings. The policy still contains an element of flexibility and I am satisfied that the Council's approach, as set out in MM4, is sound and recommend it accordingly."

16 Turning to the Green Belt and the considerations raised in relation to Policies DP 10 to DP 12, it concluded as follows:

"34 The Council has reviewed the categorisation of settlements within the Green Belt and the parts of Green Belt settlements within which appropriate infilling would be acceptable. It was argued that such re-assessment was premature pending the preparation of LP1 because it may be that the Council will have to identify land in such locations for the provision of housing. It should be made clear, however, that the Council has not undertaken an assessment of the current Green Belt boundary. That would be a task that may be required as part of the preparation of LP1. The Council has only looked at the approach it takes towards infilling in a number of small settlements in the Green Belt.

35 Paragraph 86 of the NPPF relates to protecting the character of a village in the Green Belt if the character of that village makes an important contribution to the openness of the Green Belt. Paragraph 89 goes on to say that as an exception limited infilling in villages may not be inappropriate. The purpose of policy DP12 is to provide guidance on how infilling and small scale development could be satisfactorily accommodated in such villages in order to ensure that the character of those settlements, within the Green Belt context is protected.

36 In terms of the defined villages in the Green Belt, the Council has heeded the advice of the Inspector who undertook the 2008 Core Strategy Examination and has undertaken a sustainability assessment of the 14 settlements (currently designated as Green Belt settlements in the CS); concluding that only 9 of them should be identified as a 'defined village'. This conclusion has the broad support of local residents.

37 As part of this process the Council re-considered the boundaries of the 'defined villages' and for example excluded from the settlement boundaries school playing fields and open space and included land which is already developed. I consider the Council's approach to be reasonable and justified …. "

17 In respect of DP 13, the Inspector concluded as follows:

"39 The consistency between CS policy CSP 1 (location of development), policy DP13 (buildings in the Green Belt) and advice in the NPPF (for example paragraph 89) was challenged. However, although there has been a change in the terminology used, I am satisfied that the Council's Green Belt policies (and supporting text) are compatible with the aim of preventing urban sprawl by keeping land permanently open. The identification of 'defined villages' where limited infill may be appropriate provides clear guidance; without which there would be uncertainty and confusion.

….

41 Policy DP 13 does use a base date of 31 December 1968 for the definition of 'original building' in relation to dwellings (rather than 1 July 1948 as set out in the Glossary to the NPPF). The Council has decided to use the well established date as set out in saved policy RE8 of the 2001 Local Plan and for reasons of clarity and consistency I consider this to be a justified approach.

….

42 Some of the text within policy DP13, as submitted, was not fully in accordance with the advice in the NPPF and therefore the Council has proposed to up-date the wording. Although in other circumstances the up-dating may be considered to be minor in nature, in this instance the changes proposed by the Council are important to ensure that LP2 fully accords with national policy and therefore I recommend MM5."

As indicated in the text which I have just quoted, Main Modifications were proposed to be included within TLP 2 which were publicised and consulted upon. The DPD was finally adopted as set out above on 24 July 2014.

18 The CIL Schedule was examined and a hearing occurred on 11 March 2014. The Inspector reported on 19 June 2014. For reasons which will become clearer later, it should be noted that he stated in the introduction to his report that he applied the CIL guidance from the Secretary of State dated February 2014.

19 Dealing with the contention that the Core Strategy was out of date, he concluded as follows:

"10 In addition, representations to the draft Schedule made submissions that the Council's Core Strategy is out of date in the sense that it does not comply with the National Planning Policy Framework (NPPF), does not address an objectively assessed housing need, has an out of date Strategic Housing Land Availability Assessment and will have to be replaced with a new Local Plan within two years. CIL should only be introduced in conjunction with a Local Plan: a plan which will have to provide for 9,000 new dwellings, rather than the maximum 750 that are likely to be provided under the existing one. This CIL should not be approved since it is not based on an up-to-date plan, would

address infrastructure needs because no investment has been made and that result from existing development and would make, particularly smaller sites unviable which even now struggle to be economic.

11 In coming to my conclusions on these matters I will deal firstly with the arguments set out in paragraph 10 above. The Council has a Core Strategy adopted in October 2008, preceding the March 2012 publication of the NPPF by more than three years. It may be that some of its policies are capable of being considered out of date when judged against the policies of the NPPF, but until replaced it remains the principal document of the Development Plan for the district. The CIL charges proposed by the Council are based on infrastructure needs arising from the development required for the implementation of that plan. So long as there is a funding gap, and that funding is to provide for infrastructure needed to meet the costs of supporting development of the area, I see no legal basis to find that the submitted CIL Charging Schedule should not be approved just because it is based on a plan which, no doubt, will be reviewed in the near future."

20 In response to concerns about the effect of the CIL Schedule on small residential schemes, the Inspector called for post-hearing representations from both the objectors including the claimant and also the defendant bearing on this issue. His conclusions in relation to these matters were set out as follows:

"24 My overall conclusion on these matters is that I prefer the consistent approach in the Council's evidence and its reliance on standard accepted methodology. My main concern about the case put forward by Representors relates to assumed land values or land prices that have apparently actually been paid in recent times. It is fundamental to the CIL regime that a reduction in development land value is inevitable to accommodate it as a cost of development. Reported land sales values before the imposition of CIL in an area will clearly not have had to take the Levy into account. It may also be the case that there will be a period when land owners will be reluctant to see their value expectations decrease, but I do not see that as being a significant inhibitor on land coming forward for development in anything other than the short term. In the same way, the cost of development finance is a cost of development, which must be taken into account in the calculation of the price of land.

….

26 In conclusion, the evidence before me is a clear indication that general residential development will remain viable across most of the District if the proposed CIL rate is applied."

21 His overall conclusions in relation to the CIL Schedule were set out as follows:

"37 In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Tandridge District. The Council has tried to be realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding, while ensuring that a range of development remains viable across the authority's area. The Tandridge District Core Strategy was adopted in October 2008, preceding the March 2012 publication of the NPPF

by more than three years. I am told that a new Local Plan may not be adopted for some time. It may be appropriate to review the effect and effectiveness of the charge after it has been in place for 12 months."

22 Sixteen days after the adoption of LPT 2, on 6 August 2014, a printed copy of the comprehensive Proposals Map was produced by the defendant on two large sheets of paper. The comprehensive electronic version of the plan was not posted on the council's website until 10 October 2014.

TLP 2, The Law and Policy

23 Local Development Documents are defined in the Planning & Compulsory Purchase Act 2004. Section 17(3) and (6) of the 2004 Act provide as follows:

> "(3) The local planning authority's Local Development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area.
> ….
> (6) The authority must keep under review their local development documents having regard to the results of any review carried out under section 13 or 14.
> (7) Regulations under this section may prescribe –
> (za) which descriptions of documents are, or if prepared are, to be prepared as local development documents."

24 Preparation of Local Development documents is covered by s.19. That provides as follows:

> "(1) Development Plan documents must be prepared in accordance with the Local Development Scheme.
> ….
> (2) In preparing a development plan document or any of the local development document, the Local Planning Authority must have regard to –
> (a) national policies and advice contained in guidance issued by the Secretary of State;
> ….
> (h) any other Local Development document which has been adopted by the authority;
> (i) the resources likely to be available for implementing the proposals in the document;
> (j) such other matters as the Secretary of State prescribes."

25 Independent examination is addressed by s.20 of the 2004 Act as follows:

> "(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.
> (2) But the authority must not submit such a document unless –
> (a) they have complied with any relevant requirements contained in regulations under this Part, and
> (b) they think the document is ready for independent examination.
> ….

(4) The examination must be carried out by a person appointed by the Secretary of State.
(5) The purpose of an independent examination is to determine in respect of the development plan document –
(a) whether it satisfies the requirements of sections 19 and 24 (1), regulations under section 17 (7) and any regulations under section 36 relating to the preparation of development plan documents;
(b) whether it is sound; and
(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.
(6) Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.
(7) The person appointed to carry out the examination –
(a) has carried it out, and
(b) considers that, in all the circumstances, it would be reasonable to conclude –
(i) that the document satisfies the requirements mentioned in sub-section (5) (a) and is sound; and
(ii) that the local planning authority have complied with any duty imposed on the authority by section 33A in relation to the document's preparation,
the person must recommend that the document is adopted and give reasons for the recommendation.
(7A) Where the person appointed to carry out the examination—
(a) has carried it out, and
(b) is not required by sub-section (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.
(7B) Sub-section (7C) applies where the person appointed to carry out the examination—
(a) does not consider that, in all the circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in sub-section (5) (a) and is sound, but (b) does consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.
(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that—
(a) satisfies the requirements mentioned in sub-section (5) (a), and
(b) is sound."

26 Adoption of the local development document is addressed in s.23 as follows:

"(2) If the person appointed to carry out the independent examination of a development plan document recommends that it is adopted, the authority may adopt the document –
(a) as it is, or

(b) with modifications that (taken together) do not materially affect the policies set out in it.

(2A) Sub-section (3) applies if the person appointed to carry out the independent examination of a development plan document—

(a) recommends non-adoption, and

(b) under section 20 (7C) recommends modifications ('the main modifications').

(3) The authority may adopt the document –

(a) with the main modifications, or

(b) with the main modifications 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 main modifications but no other modifications."

27 Section 113 of the 2004 Act, which it is unnecessary to set out in full, provides an exclusive statutory remedy in relation to challenges to the adoption of Local Development Documents. It is under the powers provided by this section that the first claim in this case is brought.

28 The 2004 Act contains powers to make regulations in relation to making amongst other things Local Development Documents. Those regulations are the Town & Country Planning (Local Planning) (England) Regulations 2012. The Regulations contain material relevant to the claimant's argument, to which I shall turn in due course, and in particular to the legitimacy of what happened in respect of the Proposals Map. Regulation 2 of the 2012 Regulations contains a number of definitions to assist interpretation and the application of those Regulations. In particular, it provides as follows:

"'adopted policies map' means a document of the description referred to in regulation 9;

….

'submission policies map' means a map which accompanies a local plan submitted to the Secretary of State under section 20 (1) of the Act and which shows how the adopted policies map would be amended by the accompanying local plan, if it were adopted."

29 Further material about Local Development Documents is contained in reg.5:

"(1) For the purposes of section 17 (7) (za) (1) of the Act the documents which are to be prepared as local development documents are –

(a) any document prepared by a local planning authority individually or in co-operation with one or more other local planning authorities, which contains statements regarding one or more of the following –

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular type of development or use;

(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;

(b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted."

30 It will have been noted that reg.9 is alluded to in the definition of "adopted policies maps". Regulation 9 provides as follows:

"(1) The adopted policies map must be comprised of, or contain, a map of the local planning authority's area which must —

(a) be reproduced from, or be based on, an Ordnance Survey map;

(b) include an explanation of any symbol or notation which it uses; and

(c) illustrate geographically the application of the policies in the adopted development plan."

31 Further material in relation to interpretation is provided in reg.17 which provides as follows:

"…

'proposed submission documents' means the following documents—

(a) the local plan which the local planning authority propose to submit to the Secretary of State;

(b) if the adoption of the local plan would result in changes to the adopted policies map, a submission policies map."

32 Regulation 22 goes on to provide further assistance with the submission of documents and what is required is as follows:

"(1) The documents prescribed for the purposes of section 20 (3) of the Act are –

(a) the sustainability appraisal report;

(b) a submission policies map if the adoption of the local plan would result in changes to the adopted policies map."

33 Regulation 26 deals with provisions which should be made after a plan has been adopted and provides as follows:

"As soon as reasonably practicable after the local planning authority adopt a local plan they must –

(a) make available in accordance with regulation 35 –

(i) the local plan;

(ii) an adoption statement;

(iii) the sustainability appraisal report; and

(iv) details of where the local plan is available for inspection and the places and times at which the document can be inspected."

34 For completeness, reg.35 provides the following in relation to availability of documents:

"(1) A document is to be taken to be made available by a local planning authority when –

(a) made available for inspection, at their principal office and at such other places within their area as the local planning authority consider appropriate, during normal office hours, and

(b) published on the local planning authority's website."

35 It is common ground that the question of whether or not a Local Development Document passes the test of soundness required by s.20 of the 2004 Act is a question of planning judgment for the independent examiner. The planning merits of that determination are not before the court to re-determine.

36 The conclusions of the independent examiner can however be attacked on conventional public law grounds. Those grounds will include the question of whether or not planning policy has been properly interpreted and the question of its interpretation is a question of law (see *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.

37 Of relevance to the issues which are raised in this part of the case is *Gladman Development Ltd v Wokingham Borough Council* [2014] EWHC 2320 (Admin). That case concerned a challenge to a Site Allocations DPD which provided housing allocations in order to assist in meeting the housing requirements of a Core Strategy adopted on 29 February 2010 and therefore well before the publication of the Framework. That Core Strategy, like the one in the present case, had a housing requirement which was derived from the South East Plan. The claimant in that case contended that the Inspector could not find the Site Allocations DPD sound as it was not based on housing requirement which had been derived applying the Framework's policy. They could not determine the plan was sound without redetermining an Objectively Assessed Need (OAN) for housing for the administrative area covered by the plan. Lewis J was satisfied that the Inspector did not need to determine whether the Core Strategy housing requirement represented a OAN, nor did he need to endorse the Core Strategy housing requirement as such. In those circumstances was it open for the Inspector to find that the plan was sound?

38 It is worthwhile setting out the conclusions and reasons of the judge in full as follows:

"60 In my judgment, an inspector assessing the soundness of a development plan document dealing with the allocation of sites for a quantity of housing which is needed is not required to consider whether an objective assessment of housing need would disclose a need for additional housing. I reach that conclusion for the following reasons.

61 First, the statutory framework does not require such an approach. The statutory framework recognises that a development plan may be comprised of a number different development plan documents. Section 19 (2) (h) of the 2004 Act provides that a local planning authority preparing a development plan document must have regard to any other local development document (which will include a development plan document). Thus where, as here, the Defendant has an adopted development plan document in the form of a Core Strategy, it must have regard to that in preparing a subsequent development

plan document. The inspector, on examination, will need to ensure, amongst other things, that that requirement has been met (see s.20(5) a) of the 2004 Act).

62 The structure of the 2004 Act is, therefore, consistent with a situation where one development plan document is giving effect to another earlier such document. It may be that the earlier development plan document needs up dating, and may need to make further and additional provision for development in the future. There is, however, nothing in the statutory framework to suggest that a development plan document, such as the MDD here, cannot be adopted simply because another development plan document, such as the Core Strategy, may need to be updated to include additional provision, for example additional housing.

63 Secondly, the Framework properly interpreted, and read against the statutory background, does not, in my judgment, require the result contended for by the Claimant. The Framework sets out the government's policies on planning in England. It provides guidance. It is written in a way which is intended to be accessible to the reader as is clear from the foreword. The Framework offers guidance on what it describes as local plans. These are, or at least include, the development plan. The development plan is, however, comprised of a series of development plan documents adopted under the 2004 Act as the glossary to the Framework makes clear. One should, therefore, be wary about assuming that the guidance in relation to one particular development plan document necessarily applies to all other development plan documents simply because the Framework refers to 'local plans' without differentiating between different development plan documents for these purposes.

64 Where a development plan document is intended to deal with the assessment of the need for housing, then, the provisions of the Framework material to housing need will be a material consideration. A local planning authority dealing with the question of the amount of housing needed for its area will need to have regard to paragraph 47 of the Framework. The provisions governing a local plan—that is a development plan document—dealing with the assessment of housing need would have to have regard to paragraphs 158 and 159 of the Framework. Any examination of that local plan, that is that particular development document, would need to have regard in that context to paragraph 182 of the Framework.

65 Properly read, however, the Framework does not require a development plan document which is dealing with the allocation of sites for an amount of housing provision agreed to be necessary to address, also, the question of whether further housing provision will need to be made.

66 Thirdly, in my judgment, the approach advocated by the Claimant would be likely to run counter to the aims of the Framework and lead to results that were not intended. On the facts of the present case, for example, the position taken by the inspector is that a figure of at least 13,230 dwellings will be required and the MDD, with modifications, would address the allocation of that amount of housing in a sound way. On the Claimant's case, the Defendant cannot prepare, and an inspector cannot consider the soundness of, a development plan document dealing with the allocation of necessary housing until further steps are taken to identify whether additional housing is required. The process of adopting the MDD allocating sites for required housing would

have to stop while a strategic housing market assessment is carried out or equivalent data obtained. If additional housing were to be needed, then either the scope of the proposed MDD would have to be enlarged to include the larger figures and have that MDD supersede the Core Strategy figure or a development plan document dealing with changes to the Core Strategy would need to be prepared. It is difficult to see that that interpretation is consistent with the Framework which seeks to encourage the development of development plan documents and to ensure that such documents are in place to guide decisions on development.

67 Fourthly, in reality, the approach of the Claimant would involve using the perceived need to comply with the Framework as a way of compelling the Defendant to carry out a full, objective assessment of its housing needs to discover if additional housing provision were required. The Defendant is, however, already under a statutory duty to review matters which may be expected to affect the development of their area (section 13 (1) of the 2004 Act). The Defendant is also under a duty to keep the development plan documents under review having regard to the results of any such review (section 17 (6) of the 2004 Act). The Defendant in the present case is, as the evidence establishes, in the process of preparing a strategic housing market assessment which may lead to a review of the housing provision identified as necessary. The use of the Framework as a means of compelling the Defendant to carry out such reviews is not necessary. In those circumstances, the interpretation of the Framework advanced by the Claimant has less force. The Claimant's interpretation is not needed to ensure that the local planning authority performs a review of its housing need but it would prevent them from adopting a development plan document which allocates sites for housing need already established.

68 Finally, this conclusion is, in my judgment, consistent with the decision in *Gallagher Homes Ltd*. There, Hickinbottom J. was dealing with a development plan document which did involve the assessment of housing need and proposed a figure of 11,000 new dwellings in the relevant period as appears from paragraph 35 of the judgment. It was in that context that Hickinbottom J. considered that the inspector erred in his approach to the examination of that development plan document in not addressing fully the issue of what was the objectively assessed need for housing. This case is different. The inspector here was not examining a development plan document assessing housing provision. He was examining a plan which proposed site allocations for housing which, as a minimum, would contribute towards the agreed housing need of the area.

69 For those reasons, in my judgment, the inspector in the present case was not required by reason of the Framework to consider an objective assessment of housing need in order to assess whether this development plan document was sound."

39 It is necessary to briefly examine some elements of the Framework which are involved in this case, in particular so as to understand and illustrate some of the claimant's argument. Paragraph 47 of the Framework provides as follows:

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

> '• use their evidence base to ensure that their Local Plan meets the full objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
> • identify and update annually a supply of specific deliverable11 sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;'
>
> ….
>
> 49 Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

40 In *Solihull Metropolitan Borough Council v Gallagher Estates* [2014] EWCA Civ 1610, the Court of Appeal concluded, (applying the interpretation at para.47 of the Framework from *Hunston Properties v St Albans City and District Council* 2014 EWCA Civ 1610), that the Framework had effected a radical change of policy and that explicit calculation of the OAN for housing was required first before any subsequent adjustment could be made to that housing figure reflecting any policy considerations. That two-stage approach was necessary in order to derive a housing requirement which was compliant with the Framework. A requirement from earlier work related to a Regional Strategy undertaken prior to the Framework having been brought into force would not have been structured in accordance with this two-stage approach and therefore would not reflect the radical change that the court found had been effected in respect of policy for housing by the Framework.

41 The approach to para.49 and which policies are relevant policies for the supply of housing in the event of a five-year housing land supply shortfall has also been the subject of consideration by the courts. A recent consideration of that matter is to be found in the judgment of Mr Justice Ouseley in *South Northamptonshire Council v Secretary of State and Another* [2014] EWHC 573 (Admin). In relation to that phrase, the judge concluded as follows:

> "46 That phraseology is either very narrow and specific, confining itself simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.
> 47 It is my judgment that the language of the policy cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart

provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development. They may be generally applicable to all or most common forms of development, as with EV2, stating that they would not be permitted in open countryside, which as here could be very broadly defined. Such very general policies contrast with policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development.

48 However, once the Inspector has properly directed himself as to the scope of paragraph 49 NPPF as he did here, the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment … "

42 Returning to the Framework, para.53 is also pertinent to the issues in the case and provides as follows:

> "53 Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area."

43 In respect of design, the Framework provides a suite of policies but in particular in respect of the issues in this case provides as follows:

> "64 Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions."

44 Turning away from matters related to design to the Green Belt, it will be apparent from the explanatory text that I have quoted above that there were particular elements of the Framework's policy on the Green Belt that were engaged in the present case. It suffices to quote from paras 86 and 89 as follows:

> "86 If it is necessary to prevent development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt.
>
> If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.
>
> ….
>
> 89 A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:
>
> > '….
> >
> > • limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan.'"

Submissions and Conclusions on LPT 2

45 The claimant's submissions fall under two headings: first, that the findings of the Inspector and the defendant (whose conclusions and decisions stand or fall together) that the DPD was sound were flawed. Second, submissions are made as to the procedural requirements in respect of the provision of the Proposals Map.

46 In relation to the question of soundness and the allegation that the conclusions of the Inspector and the defendant's decision reliant upon them were flawed, the submission which is made breaks down, first, into an overarching submission and then, second, specific and detailed concerns. The claimant submits as an overarching point that the Inspector erred in failing to inquire into what was the defendant's OAN pursuant to para.47 as part and parcel of his assessment of the soundness of the DPD before him. Had he done so, it is contended, it would have been clear to him that the Core Strategy was out of date in respect of its housing requirement and measured against a properly assessed OAN the defendant did not enjoy an adequate five-year supply of housing. Once it was realised that the defendant did not have the five-year supply of housing then the policies (which have been set out above)—which, it is submitted, sought to suppress housing supply by controlling it—would, in accordance with para.49, be both policies which were related to the supply of housing and also out of date as soon as the ink was dry upon them as a result of failing to have a five-year housing land supply.

47 That, it was contended, was a perverse situation which could not have sensibly led the Inspector to conclude that the plan was sound. This point was further underlined by the Council commissioning of material seeking to assess the OAN which, even at a very preliminary stage, had shown that the OAN would be significantly higher than the housing requirement contained in the Core Strategy.

48 *Gladman*, (above) was distinguished in submissions made on behalf of the claimant on the basis that that case concerned an allocations document which sought to permit and therefore work towards the delivery of significant quantities of housing whereas here the policies engaged were designed to constrain the supply.

49 In detail, the submissions on behalf of the claimant were that Polices DP 8 and DP 10 to DP 13 constrain the supply of housing and are therefore inconsistent with the Framework's objectives of seeking to boost housing supply. The policies' approach to infilling was more restrictive than that which was contemplated by para.89 of the Framework.

50 Turning to the Proposals Map, it was submitted on behalf of the claimant that a policies map did not exist and, further, that the evidence showed confusion on an occasion when a hearing occurred, about which I was provided with witness evidence, when the defendant had difficulty in locating a proposals map which was able to assist the hearing as to the policy status of a particular site.

51 The defendant responded to these submissions by relying on *Gladman* to contend that the issues related to OAN and any associated questions of the five-year housing land supply including whether or not policies were policies for the supply of housing were not engaged. Even if they were, it was submitted that the policies contained in LTP 2 were not policies for the supply of housing but were policies directed towards ensuring high quality design and a good quality urban environment. They related to the character of the areas to which they applied or, alternatively, the detailed local implementation of the Framework's Green Belt policy.

52 So far as the Proposals Map points were concerned, it was submitted on behalf of the defendant that the requirements of the Regulations (set out above) were all satisfied by the steps that the Council took.

53 I start my conclusions by emphasising that it is clear, as noted by Lewis J in *Gladman*, that the legislation contemplates a modular structure to the Development Plan whereby it can be constructed from a series of individual elements which are to be read together for the purposes of conducting exercises in development control. These individual parts may be developed at different times against the backdrop of different national policies for the purposes of s.19(2)(a) of the 2004 Act.

54 One of the central questions which in my view must be considered by an independent examiner is therefore what is the scope of the DPD that I am being required to examine? Within that scope, what is it that the DPD sets out to do? Once that question has been answered it will then be possible to properly address the question as to whether or not, within that scope and within what it has set out to do, it is a document which is in fact sound. Part of that assessment must be whether, in addition to having regard to national policy, regard has been had to any other development document which has been adopted by the local authority (see s.19(2)(h) of the 2004 Act). But a complaint of inconsistency or potential inconsistency with another local development document is not the substance of the complaint which is made here.

55 In my view the scope of TLP 2 is clear from paras 1.4 and 1.5. It is clear that it did not include an examination of the OAN for the defendant. Considering the limited objectives of TLP 2, as set out in its introductory paragraphs, the Inspector was not in my view required to embark upon an inquiry as to what the OAN might be or whether or not the defendant had a five-year supply of housing, and consequentially whether the policies which were being examined were relevant to the supply of housing. The establishment of a new housing requirement for the defendant's administrative area was not a task which TLP 2 had set itself.

56 The claimant's attempts to distinguish *Gladman* were in my view entirely unconvincing. The question which has to be considered is what is the scope or purpose of the DPD being examined, not whether or not it was permissive of certain development or not. It is clear that the first, second, fourth and fifth reasons—set out by Lewis J in the paragraphs from *Gladman* set out above—apply with equal force to TLP 2 and the Inspector's task in this case. The third reason—that is to say consistency with the Framework—engages the arguments, which I shall address below, in relation to the detail of the policies.

57 Since in my view the question of or setting an OAN for the defendant did not arise and nor were questions of five-year land supply or whether para.49 of the Framework (which is in any event a paragraph directed to applications) in point, it follows that the Inspector did not need to decide whether the Core Strategy is out of date or the impugned policies are policies relevant to the supply of housing for the purposes of para.49.

58 The Inspector gave clear reasons (paras 10 and 12 of his report) which explain his approach in relation to this point as to the OAN and the Core Strategy being out of date. It was a conclusion which was, in accordance with the matters I have set out above, both logical and lawful. As he pointed out in para.11 of his report, it was not the role of TLP 2 to consider housing need or, indeed, a review of the Green Belt boundary. As he explains in para.12, given the limited role of TLP 2,

it would remain useful and applicable irrespective of what might emerge in the review of the Core Strategy and the production of TLP 1 to replace it.

59 Turning to the detailed issues which are raised, the Inspector was correct to record in para.32 that there was in reality no evidence to substantiate the claim, repeated by the claimant in this case, that development might be severely restricted as a result of the policies in TLP 2. It is right to observe that as a generality there may be less grants of planning permission when there are no policies at all than when there are policies in place to guide and, where appropriate, restrict development. The claimant is correct that the definitions of appropriate types of site provided by, for example, DP 12 may exclude some sites being considered to be suitable to accommodate residential development and may, to that extent, more strictly control development. But the answer to that contention and, indeed, the relationship between the effective control and development and the Framework is provided clearly in the Inspector's reasons in para.32 of his report. The fact is that the Framework does not promote housing at any cost to the environment, nor at any cost to the quality of urban areas. The Framework contains policies which seek to protect design quality and also the character of existing urban areas.

60 These policies which were before the Inspector were a local interpretation of the Green Belt policies from the Framework and in particular those contained in paras 86 and 89. The Inspector expressly dealt with that question of local interpretation and the relationship which the policies had to the overarching national policy in the Framework. His conclusions that they were sound, measured against that policy, is a conclusion which in my view is unimpeachable.

61 It follows that in my view the claimant's contentions in this part of the case cannot succeed.

62 I turn then to consider the issue raised in relation to the Proposals Map. It will be noted from the Regulations that they do not specifically require a single Proposals Map to be furnished at the submissions stage. The definition of a "submissions policies map" does not require just one piece of paper with the whole Proposals Map, as existing and as changed, upon it. That definition which is provided, in my view, encompasses what in fact the defendant provided here, namely extracts or insets illustrating the areas of the existing map which were proposed to be changed and how they were proposed to be changed. In my view not only was that approach lawful but it has good sense on its side. When undertaken in this way it is clear where the changes are taking place. There is no need to hunt for them amongst all of the other notations which may be present upon the Proposals Map.

63 The requirement for provision of the Proposals Map in reg.26 is "as soon as reasonably practicable". In my view that test was passed here since, under reg.35, provision of hard copy for inspection and also provision on the Council's website was achieved within a reasonable time so as to meet the requirements of the Regulations. It follows that in my view the way in which the defendant treated the production of the proposals map does not give rise to any error of law. My conclusion in that respect is not in any way affected by the anecdotal account in witness evidence about what occurred at a hearing where there may have been some difficulty in locating and furnishing the Inspector with a comprehensive copy of the proposals map.

CIL Schedule—The Law

64 Part 11 of the Planning Act 2008 contains powers for a District Council, as a charging authority, to prepare a CIL Schedule and charge the levy. This power is exercised through the publication, examination and (if endorsed) adoption of a CIL Schedule which contains charging rates. The CIL Schedule in question in this case charges by the type of development. It is common ground that that is an appropriate approach.

65 Whilst lengthy, the pertinent elements of the legal framework are as follows. Section 211 of the Planning Act 2008 provides, so far as relevant, as follows:

> "(1) A charging authority which proposes to charge CIL must issue a document (a 'charging schedule') setting rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development in its area is to be determined;
> (2) A charging authority, in setting rates or other criteria, must have regard to the extent and in the manner specified by CIL regulations, to –
> (a) actual and expected costs of infrastructure (whether by reference to lists prepared by virtue of section 216 (5) (a) or otherwise);
> (b) matters specified by CIL regulations relating to the economic viability of development (which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL);
> (c) other actual and expected sources of funding for infrastructure.
> ….
> (9) A charging authority may revise a charging schedule.
> (10) This section and sections 212, 213 and 214 (1) and (2)apply to the revision of a charging schedule as they apply to the preparation of a charging schedule."

66 In reaching conclusions on these issues, s.221 provides as follows:

> "The Secretary of State may give guidance to a charging authority or other public authority (including an examiner appointed undersection 212) about any matter connected with CIL; and the authority must have regard to the guidance."

67 Much of the detail in relation to the preparation, examination and adoption of a CIL Schedule is contained within the Community Infrastructure Levy Regulations 2010 and is uncontroversial in this case. What is of particular note for the purposes of the arguments which have been advanced by the claimant is the content of reg.14 of the 2010 Regulations which provides as follows:

> "(1) In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between –
> (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
> (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area."

Submission and Conclusions

68 The claimant's first point is the contention that the CIL Schedule was related to the development requirements of the Core Strategy and that those development requirements and indeed the Core Strategy as a whole is, the claimant says, out of date. That is important because the guidance and also the Planning Practice Guidance (which replaced it in June 2014) both provide the following in relation to how the charging schedule should be approached as follows:

> "Charging schedules should be consistent with and support the implementation of up-to-date relevant plans."

69 A point was developed on behalf of the claimant that the Inspector relied expressly in producing his report on the Secretary of State's Guidance from February 2014 when, by the time his report was produced, this had been replaced by Planning Practice Guidance in June 2014. However since the relevant phrase relied upon by the claimant is the same in both, in my view this is a submission which is essentially without content.

70 The Inspector clearly addresses the concern of whether or not he is providing a charging schedule in relation to an up-to-date plan in paras 10 and 11 of his report. He was entitled to conclude, that although the Core Strategy was to be reviewed, nonetheless there was good reason to endorse the CIL Schedule so as to support provision of infrastructure for the existing levels of completed development. The need for this CIL Schedule to be reviewed (potentially in the context of a revision to the Core Strategy) was contemplated in para.37 of his report. It will be noted that revision is part of the Statutory Framework in s.211(9) and s.211(10).

71 Thus the following points in my view need to be noted. First, there is no requirement in the legislative framework—nor is one relied upon—which requires a recently adopted plan to be in place before a CIL Schedule can be adopted. Second, whilst the Guidance to which regard must be had in accordance with the requirements of s.221 of the 2008 Act suggests charging schedules should be consistent with and supported by an up-to-date plan, the decision here was for the reasons which were given by the Inspector, a departure from that policy which the Inspector was legally entitled to make, provided he gave reasons for that departure. He provided clear and adequate reasons to justify the departure. Whilst it is no doubt the optimal position, there is no reason in law why a charging authority can only produce a CIL Schedule if it has a recently produced plan. If, like here, the plan relied upon requires review then no doubt revision of the CIL Schedule to align it with the reviewed plan would be a high priority, if not essential.

72 The Inspector was alive to all of this, as is clear from the reasons I have extracted from his report.

73 In my view, having analysed the issues, the reality is that the claimant's case in respect of this matter is unarguable. Had the matter been before me for the grant of permission only, I would have refused it. In any event, for the reasons I have given, no relief should be granted on this basis.

74 The second point raised by the claimant focuses on the question of the appropriate balance to be derived from reg.14 of the 2010 Regulations and in particular the need for the Inspector and the defendant to consider the effects of viability "across its area". The claimant relies upon para.26 of the Inspector's report where he concludes residential development will remain viable "across most of the district"

if the CIL Schedule is endorsed. If that is the conclusion, it is said, then there ought to have been differential rates for different parts of the district and thus the Inspector has not properly applied the requirements of reg.14.

75 In my view this is a wholly semantic argument and represents an over-reading of an extract chosen selectively from the report rather than standing back and reading it as a whole. The overall conclusion reached by the Inspector in para.37 shows quite clearly that he applied the correct approach and considered, having analysed all of the issues, that the rate which was proposed ensured "a range of development remains viable across the authority's area". Again, this is a point which had I been seized of an application for permission I would have refused as unarguable. It certainly is not a point which would justify the remedy which is sought.

Conclusion

76 It follows from the matters which I have set out above that the claim brought under s.113 of the 1990 Act must be dismissed. The judicial review of the defendant's decision to adopt the CIL Schedule is refused permission and also dismissed.

Janet Briscoe, Solicitor