Neutral Citation Number: [2014] EWHC 758 (Admin)

Case No: CO/5057/2013

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 18th March 2014

Before :

THE HONOURABLE MR JUSTICE SALES

- -

Between :

Zurich Assurance Limited	**Claimant**
- and -	
(1) Winchester City Council **(2) South Downs National Park Authority**	**Defendants**

(Transcript of the Handed Down Judgment of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street, London EC4A 2DY
Tel No: 020 7404 1400, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Jeremy Cahill QC & James Corbet Burcher (instructed by **Shoosmiths LLP**) for the **Claimant**
Michael Bedford & Emma Dring (instructed by **Winchester City Council**) for the **Defendants**

Hearing dates: 11/2/14-12/2/14

Judgment
As Approved by the Court

Crown copyright©

Mr Justice Sales:

Introduction

1. This is an application pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 for an order that parts of the Winchester District Local Plan Part 1 – Joint Core Strategy ("the Core Strategy"), jointly adopted by the Defendants with effect on 20 March 2013, be quashed or remitted for further examination. I refer to the Defendants as "WCC" and "SDNPA", respectively.

2. WCC had the principal role in developing the Core Strategy for adoption. The Core Strategy provides policy at a strategic level for the development of its area. Amongst other things, the Core Strategy sets a figure for the amount of new housing provision to be delivered in WCC's area over a 20 year period and guidance as to where it is to be provided. The Core Strategy sets an overall requirement of 12,500 new homes to be provided in WCC's area in the period 2011-2031.

3. The Core Strategy was developed and adopted against the background of another plan, the regional strategy for the South East adopted in 2009, known as the South East Plan. The South East Plan set a regional requirement for new housing for the period 2006-2026, of which a requirement of 12,240 was allocated to WCC's area.

4. The importance of the Core Strategy is not in doubt. It forms part of the local development plan for WCC's area under the 2004 Act, and applications for residential and other development will be assessed against its policy provisions and will be expected to comply with it, absent good reason not to: see section 38(6) of the 2004 Act and section 70(2) of the Town and Country Planning Act 1990. It also sets the framework for development by WCC of more detailed development plan documents below the strategic level, which will themselves form part of the local development plan for WCC's area.

5. The Claimant ("Zurich") owns a substantial area of land in WCC's area, at Micheldever Station. It hopes at some stage to be able to develop that land by building houses on it. However, Micheldever Station is not an area designated for development in the Core Strategy.

6. Zurich's challenge to the Core Strategy was brought within time, but there is a dispute between the parties whether Zurich qualifies as "a person aggrieved by" the Core Strategy, as required by section 113(3) of the 2004 Act in order to be entitled to make this application. In the course of development of and consultation on the Core Strategy, including its examination by an Inspector (Mr Nigel Payne) appointed by the Secretary of State, Zurich did not itself participate or make representations about the Core Strategy. Instead, a firm of planning consultants, Barton Willmore, participated and made representations. It has now emerged that they did so in order to promote the interests of their client, Zurich, but that was not evident at the time.

7. A developed draft of the Core Strategy was submitted to the Secretary of State for independent examination by the Inspector under section 20 of the 2004 Act. The Inspector approved the Core Strategy for adoption. He found the Core Strategy (with modifications proposed by him) to be "in general conformity" with the relevant regional strategy in place at the time, the South East Plan, as required by section

20(5)(a) and section 24(1)(a) of the 2004 Act; he found the Core Strategy (as modified) to be "sound", as required by section 20(5)(b) of the 2004 Act; he found that WCC had complied with the duty to co-operate with other relevant authorities in relation to planning of sustainable development set out in section 33A of the 2004 Act, as required by section 20(5)(c) of the 2004 Act; and he found that an adequate Sustainability Appraisal had been carried out. In particular, the Inspector reviewed the figure for new residential development proposed by WCC (11,000 new homes) and required that it be increased to 12,500 in the final version of the Core Strategy, in the form in which it was to be adopted.

8. Zurich's challenge to the Core Strategy is made on three Grounds (or, more accurately, groups of grounds):

   i) Ground One: The Inspector made a methodological error in his assessment of the proposed housing requirement, by failing to have regard to an existing shortfall against the housing requirements in the South East Plan. He therefore failed to assess the Core Strategy correctly as required under section 20(5) of the 2004 Act and with proper regard to the National Planning Policy Framework promulgated in March 2012 ("the NPPF"). The Inspector also failed to give adequate reasons for his decision. WCC erred in law by adopting the Core Strategy, following the Inspector's error;

   ii) Ground Two: The Inspector erred in concluding that WCC had complied with the duty of co-operation in section 33A of the 2004 Act. The Inspector also failed to give adequate reasons for his decision. WCC therefore erred in law by adopting the Core Strategy, which had been approved by the Inspector on an unlawful basis; and

   iii) Ground Three: Both WCC and the Inspector erred in concluding that the Sustainability Appraisal which accompanied the submission version of the Core Strategy complied with the requirements of the Strategic Environmental Assessment Directive 2001/42/EC ("the SEA Directive") and the Environmental Assessment of Plans and Programmes Regulations 2004 ("the Environmental Assessment Regulations") which implement it. The Inspector should have required further environmental assessment to be carried out before the Core Strategy could be adopted.

9. Although some of the Grounds of challenge are directed to criticism of the Inspector, it was common ground that the Claimant could rely upon any unlawfulness it could establish in relation to what the Inspector did in order to attack the lawfulness of the adoption by WCC and SDNPA of the Core Strategy. Although the Secretary of State was not joined as a party, Zurich had notified him of its claim and served him with the papers, as required under CPR Part 8 and paras. 22.4-22.5 of PD8A. The Secretary of State did not seek to be joined as a party.

Legal and Planning Framework

(i) The 2004 Act

10. The Core Strategy qualifies as a "development plan document" for the purposes of the 2004 Act. Once such a core strategy is adopted by a local planning authority, it

becomes part of the statutory development plan of that authority, with the results indicated above.

11. At the time when the Core Strategy was drawn up, subjected to examination in public and adopted, the 2004 Act required a local planning authority to have regard to the regional strategy for its area in drawing up its own development plan documents: section 19(2)(b). Section 24(1)(a) provided that such local development documents "must be in general conformity with" the regional strategy.

12. The regional strategy for WCC's area was the South East Plan. This had been adopted in 2009 after an elaborate process of evidence gathering and consultation. The estimates of the regional requirement for new housing included in the South East Plan included an allocation of 12,240 new dwellings to WCC's area for the period 2006-2026. The estimates in the South East Plan were based on demographic and other evidence dating from about 2003, which was very dated by the time the Core Strategy was developed, consulted upon, examined and then adopted in 2012/2013.

13. In mid-2010 the Coalition Government announced that the layer of regional strategy planning was to be abolished, and it became clear that the South East Plan would be revoked. However, it was not until 25 March 2013 (a few days after adoption of the Core Strategy) that the South East Plan was in fact formally revoked. The obligation for the Core Strategy to be in general conformity with the South East Plan remained in place down to the adoption of the Core Strategy.

14. The notion of "general conformity" of local development plans with a regional strategy imports a limited degree of latitude for local plans to depart from what is set out in a regional strategy: see *Persimmon Homes (Thames Valley) Ltd v Stevenage BC* [2005] EWCA Civ 1365; [2006] 1 WLR 334.

15. Section 20 of the 2004 Act provides for independent examination of development plan documents. A local planning authority must submit every development plan document, when it believes it is ready, to the Secretary of State for independent examination. The examination is carried out by an inspector appointed by the Secretary of State. Section 20(5) provides as follows:

> "(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."

16. There is no presumption as to soundness of a development plan document: *Blyth Valley BC v Persimmon Homes (North East) Ltd* [2008] EWCA Civ 861; [2009] JPL

335, at [40] per Keene LJ. Pursuant to an examination under section 20, the inspector may make recommendations for modifications to a development plan document to make it sound.

17. The Secretary of State has given policy guidance in relation to this process in the NPPF, which replaced a range of previous policy guidance documents. The proper interpretation of this policy guidance is a matter for the court: compare *Tesco plc v Dundee City Council* [2012] UKSC 13.

18. The NPPF includes a presumption in favour of sustainable development (paragraph 14). Paragraph 156 requires local planning authorities to set out the strategic priorities for their area in the Local Plan (i.e. the set of development plan documents adopted under the 2004 Act), including strategic policies to deliver the homes needed in the area and to meet infrastructure needs. Paragraph 157 states, among other things, that Local Plans should be based on co-operation with neighbouring authorities. Paragraph 159 requires local planning authorities to have a clear understanding of housing needs in their area, and states that they "should prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries."

19. Paragraphs 178-181 of the NPPF deal further with the topic of co-operative working by planning authorities, as follows:

> "*Planning strategically across local boundaries*
>
> 178. Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the **strategic priorities** set out in paragraph 156. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.
>
> 179. Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual Local Plans. Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework. As part of this process, they should consider producing joint planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.
>
> 180. Local planning authorities should take account of different geographic areas, including travel-to-work areas. In two tier areas, county and district authorities should cooperate with each other on relevant issues. Local planning authorities should work collaboratively on strategic planning priorities to enable delivery of sustainable development in consultation with Local

> Enterprise Partnerships and Local Nature Partnerships. Local planning authorities should also work collaboratively with private sector bodies, utility and infrastructure providers.
>
> 181. Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position. Cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development."

20. Paragraph 158 of the NPPF gives guidance in relation to use of evidence:

> "*Using a proportionate evidence base*
>
> 158. Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals

21. Paragraph 47 of the NPPF deals with the issue of delivery of a wide choice of high quality homes. It states:

> "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 deliverable[11] 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;

- identify a supply of specific, developable[12] sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;

- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and

- set out their own approach to housing density to reflect local circumstances."

22. Footnotes 11 and 12 state:

> "11. To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans.
>
> 12. To be considered developable, sites should be in a suitable location for housing development and there should be a reasonable prospect that the site is available and could be viably developed at the point envisaged."

23. Paragraph 182 of the NPPF gives guidance for inspectors examining Local Plans such as the Core Strategy regarding the question whether a plan should be found to be "sound" for the purposes of section 20(5) of the 2004 Act:

> "*Examining Local Plans*
>
> 182. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
>
> - *Positively prepared* – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements

from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

- *Justified* – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;

- *Effective* – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities;

- *Consistent with national policy* – the plan should enable the delivery of sustainable development in accordance with the policies in the [NPPF]. …"

24. Section 33A of the 2004 Act came into effect on 15 November 2011. It provides in relevant part as follows:

"33A Duty to co-operate in relation to planning of sustainable development

(1) Each person who is—

(a) a local planning authority

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description,

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

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

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

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

(3) The activities within this subsection are—

(a) the preparation of development plan documents …

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c),

so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a "strategic matter"—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, …

(6) The engagement required of a person by subsection (2)(a) includes, in particular—

(a) considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3) …

(7) A person subject to the duty under subsection (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with. …"

25. Section 113 of the 2004 Act provides in relevant part as follows:

"113 Validity of strategies, plans and documents

(1) This section applies to–

…

(c) a development plan document; …

(2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section.

(3) A person aggrieved by a relevant document may make an application to the High Court on the ground that–

(a) the document is not within the appropriate power;

(b) a procedural requirement has not been complied with.

(4) But the application must be made not later than the end of the period of six weeks starting with the relevant date.

(5) The High Court may make an interim order suspending the operation of the relevant document–

(a) wholly or in part;

(b) generally or as it affects the property of the applicant.

(6) Subsection (7) applies if the High Court is satisfied–

(a) that a relevant document is to any extent outside the appropriate power;

(b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement.

(7) The High Court may—

(a) quash the relevant document;

(b) remit the relevant document to a person or body with a function relating to its preparation, publication, adoption or approval.

(7A) If the High Court remits the relevant document under subsection (7)(b) it may give directions as to the action to be taken in relation to the document.

(7B) Directions under subsection (7A) may in particular—

(a) require the relevant document to be treated (generally or for specified purposes) as not having been approved or adopted;

(b) require specified steps in the process that has resulted in the approval or adoption of the relevant document to be treated (generally or for specified purposes) as having been taken or as not having been taken;

(c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);

(d) require action to be taken by one person or body to depend on what action has been taken by another person or body.

> (7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—
>
> (a) wholly or in part;
>
> (b) generally or as it affects the property of the applicant.
>
> …
>
> (10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.
>
> (11) References to the relevant date must be construed as follows–
>
> …
>
> (c) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be); …"

(ii) The SEA Directive and the Environmental Assessment Regulations

26. The SEA Directive was promulgated to supplement and extend effective protection of the environment beyond that achieved by the Environmental Impact Assessment ("EIA") Directive (Directive 85/337/EEC). The SEA Directive, requiring environmental assessment of strategic development plans, is designed to ensure that there is an environmental assessment in relation to adoption of such plans, that is to say, at a planning stage before site specific applications are made and decided in the context of constraints which may be imposed as a result of such strategic plans. As the European Commission has pointed out, the EIA Directive and the SEA Directive "are to a large extent complementary: the SEA is 'up-stream' and identifies the best options at an early planning stage, and the EIA is 'down-stream' and refers to the projects that are coming through at a later stage" (*Report on the Effectiveness of the Directive on Strategic Environmental* Assessment, 2009, section 4.1).

27. The recitals in the SEA Directive include the following:

> "Whereas:
>
> (1) Article 174 of the Treaty provides that Community policy on the environment is to contribute to, *inter alia*, the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it is to be based on the precautionary principle. Article 6 of the Treaty provides that environmental protection requirements are to be integrated into the definition of

Community policies and activities, in particular with a view to promoting sustainable development. …

(4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

(5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.

(6) The different environmental assessment systems operating within Member States should contain a set of common procedural requirements necessary to contribute to a high level of protection of the environment. …

(9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna, are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level or are minor modifications to the above plans or programmes, they should be assessed only where Member States determine that they are likely to have significant effects on the environment. …

(14) Where an assessment is required by this Directive, an environmental report should be prepared containing relevant information as set out in this Directive, identifying, describing and evaluating the likely significant environmental effects of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme. Member States should communicate to the Commission any measures they take concerning the quality of environmental reports

(15) In order to contribute to more transparent decision making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion. …

(17) The environmental report and the opinions expressed by the relevant authorities and the public, as well as the results of any transboundary consultation, should be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

(18) Member States should ensure that, when a plan or programme is adopted, the relevant authorities and the public are informed and relevant information is made available to them. …"

28. The operative part of the SEA Directive includes the following provisions:

"Article 1

Objectives

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

Article 2

Definitions

For the purposes of this Directive:

(a) ‘plans and programmes’ shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government and

- which are required by legislative, regulatory or administrative provisions;

(b) ‘environmental assessment’ shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

(c) ‘environmental report’ shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

(d) ‘The public’ shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

Article 3

Scope

…

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC. …

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive. …

7. Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public. …

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. …

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I. …

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying

environmental report before the adoption of the plan or programme or its submission to the legislative procedure. …

Article 9

Information on the decision

1. Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and

(c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States. …"

29. Annex I to the SEA Directive, which sets out the information to be included in the environmental report, provides as follows:

"The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the content, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental

importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;

(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings."

30. A purposive approach is to be taken to the interpretation of the SEA Directive: *Walton v Scottish Ministers* [2012] UKSC 44; [2013] PTSR 51 at [20]-[21] per Lord Reed JSC. The Directive is implemented in domestic law by the Environmental Assessment Regulations. The Regulations closely follow the drafting of the SEA Directive and are to be interpreted in conformity with it, in accordance with usual *Marleasing* principles (Case 10/89 *Marleasing SA v La Commercial Internacional de Alimentacion SA* [1992] 2 CMLR 305).

31. Regulation 8 lays down procedures to be followed with respect to strategic environmental assessment before a plan is adopted. Regulation 12 corresponds to Article 5 of the Directive. It provides in relevant part as follows:

"**12.— Preparation of environmental report**

(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of–

(a) implementing the plan or programme; and

(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–

(a) current knowledge and methods of assessment;

(b) the contents and level of detail in the plan or programme;

(c) the stage of the plan or programme in the decision-making process; and

(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

…"

32. Schedule 2 to the Environmental Assessment Regulations is in material respects in the same terms as Annex I to the Directive.

33. Regulation 13(1) corresponds to Article 6 of the Directive. It provides that every relevant draft plan prepared pursuant to regulation 12 "and its accompanying environmental report" shall be made available for the purposes of consultation. The Sustainability Appraisal in respect of the Core Strategy constituted the relevant environmental report.

34. Regulation 16 makes provision in relation to the procedures to be followed after a plan has been adopted. It corresponds to Article 9 of the Directive. It requires publication of the plan as adopted, its accompanying environmental report and various information.

Factual Background

35. In May 2009, the South East Plan was adopted. It included as Policy H1: Regional Housing Provision 2006-2026, new housing requirement figures for the region for that period, with an allocation of a total of 12,240 to WCC's area for the period, as shown in Table H1b, at an "annual average" of 612 new homes per year. Policy H1 stated, "Local planning authorities will prepare plans, strategies and programmes to ensure the delivery of the annual average net additional dwelling requirement as set out in Table H1b".

36. In mid-2010 the Government announced that regional strategies such as the South East Plan would be revoked. In light of this, WCC decided that it should review its housing needs and make an assessment of current evidence regarding those needs.

37. To that end, in June 2011 WCC issued a "Housing Technical Paper" to consult on housing needs to be reflected in the Core Strategy which it would develop for adoption in 2012/2013. It noted that the Core Strategy would need to reflect household projections for the period 2011-2031, assessed by reference to up-to-date projections to be based on evidence such as the current and future census figures. The Paper discussed the evidence base and four particular scenarios regarding future housing needs in WCC's area: Scenario 1 (from government projections drawn from modelling using 2008-based Office of National Statistics sub-national population projections), Scenario 2 (based on an assumption of zero net migration into the area), Scenario 3 (an "economic-led projection", based on calculating the housing needed to cater for job growth predicted in a 2007 study) and Scenario 4 (an "affordable housing-led" projection, based on estimating the level of new housing needed to meet affordable housing needs projected in the up-to-date Strategic Housing Market Assessment for WCC's area, assuming that 30%-40% of new housing would be required to be affordable).

38. The Housing Technical Paper noted the figures in the South East Plan, and produced a graph showing that the actual completions of housing developments achieved between 2006 and 2011 showed a shortfall as against the average figures indicated for those years in the South East Plan, assuming a straight line allocation of new housing supply throughout the 2006-2026 period covered by the Plan at 612 new homes per year. Making that assumption, for the five year period ending 31 March 2011, the South East Plan requirement was 3,060 as against net completions of new homes in that period of 2,206, a difference of 854.

39. Mr Cahill QC for Zurich described that difference between those figures as a "shortfall" against the requirements of the South East Plan. Under Ground One, it is this shortfall which Mr Cahill says the Inspector failed properly to take into account in reaching his conclusion that the Core Strategy was sound, in general conformity with the South East Plan and could properly be adopted.

40. As a preliminary point, however, it should be noted that the alleged shortfall is an artefact of making the assumption referred to. That assumption was not itself a requirement of the South East Plan. As set out above, the requirement in the South East Plan was for provision of 12,240 new homes in WCC's area by 2026, and the annual rate of 612 new homes was simply stated as the "annual average." It was not itself a required target for WCC year by year. (I observe in passing that this point is unaffected by an argument by Mr Cahill based on sub-paragraph (viii) in policy H2 in the South East Plan, for reasons given by Mr Bedford for WCC in answer to it and also because the wording of policy H2 does not affect the clear statement in policy H1 that the 612 rate was only an "annual average"). Accordingly, there would be no breach of the South East Plan requirements in relation to WCC if a period of completions in the early phase of the 2006-2026 period below the 612 p.a. average figure were made up by a later phase of completions in that period above the 612 p.a. figure, provided that on average 612 new homes per year were completed throughout the period. It is inaccurate and inappropriate in the present context to describe the 854 figure relied upon by Mr Cahill as a "shortfall" against the South East Plan requirements.

41. On 15 November 2011, the duty of co-operation under section 33A of the 2004 Act came into force.

42. In March 2012, the NPPF was issued.

43. In May 2012 WCC issued its sustainability appraisal conducted in relation to the Housing Technical Paper ("the HTPSA"). In the HTPSA, WCC stated that a high level approach was appropriate for the appraisal, in view of the nature of the scenarios in the Housing Technical Paper which required assessment, which were not site specific as to where the general housing requirement might be met over the period of the Core Strategy. The HTPSA included a detailed explanation why Scenario 1 was chosen to provide the housing figure for the Core Strategy in preference to the other Scenarios in the Housing Technical Paper.

44. On 18 June 2012, WCC submitted the draft Core Strategy to the Secretary of State for independent examination pursuant to section 20 of the 2004 Act. The draft Core Strategy included a proposed new housing requirement of 11,000 for the period 2011-2013 (an average of 550 new homes per year). Appendix F to the draft Core Strategy ("Appendix F") set out WCC's estimated projection of the rate and sources of supply for new housing provision for 11,000 dwellings in the period 2011-2031.

45. In view of the emphasis which Mr Cahill sought to place on Appendix F in the context of his submission that there is a defect in the Core Strategy as regards its compliance with paragraph 47 of the NPPF (see below), it should be noted here that Appendix F simply set out a table of expected sources of supply and rates of supply of completed new homes year by year from 2011 to 2031 in order to show how the overall requirement of 11,000 new homes could in practice be met in that period. It did not purport to set out calculations of any buffer, whether of 5% or 20%, of supply in the early period, of the kind contemplated by the second bullet point of paragraph 47 of the NPPF (para. 21 above). It is clear that WCC did not put forward the Core Strategy and Appendix F as the elements of its Local Plan which would meet the requirement of the NPPF in that bullet point. Nor did the Inspector think that WCC was seeking to rely on the Core Strategy and Appendix F as documents which met its obligations in that regard. Accordingly, he did not attempt in his Report to assess whether the Core Strategy and Appendix F themselves satisfied the requirements of the second bullet point of paragraph 47. It was not being maintained by WCC that they did. Both WCC and the Inspector contemplated that those requirements would in due course be met by further development plan documents to be adopted by WCC (referred to as the Local Plan Part 2 at certain points in the documentation), below the level of the strategic plan in the Core Strategy.

46. As Mr Bedford for WCC submitted, WCC put forward the Core Strategy as a document which would form the part of its Local Plan which would satisfy the requirements of the first bullet point in paragraph 47 of the NPPF, but it was not required to produce and did not attempt to produce a Core Strategy that itself satisfied all the other requirements of paragraph 47. Under paragraph 47 of the NPPF, WCC had a choice about how to satisfy those other requirements within the various development plan documents it would eventually adopt. It could, if it chose, include measures to satisfy those requirements in a core strategy document; but it could also choose to include them in other plan documents which would also be components of the Local Plan. In this case, WCC was expecting to produce other development plan documents below the level of strategic planning in the Core Strategy, which would have more detail and which would be developed to meet the further requirements in paragraph 47 of the NPPF. In my view, that was entirely proper and WCC's choice

not to include such measures in the Core Strategy did not involve any failure to comply with paragraph 47 of the NPPF.

47. The point of including Appendix F in the Core Strategy and in explaining and expanding upon it in other documents issued by WCC was to provide assurance that a figure of 11,000 new homes in the period 2011-2031 was indeed realistic and deliverable and also to provide comfort to the Inspector that there was a realistic prospect that if the Core Strategy were adopted WCC would then also be able to develop and adopt other plan documents which would indeed meet the requirements of the second bullet point of paragraph 47 of the NPPF, as explained further below. If, contrary to this, the Inspector had thought that the Core Strategy included policies which would be incompatible with development of further policies at the level below it to meet those requirements, that would have been a basis on which he might have rejected the Core Strategy as unsound.

48. The draft Core Strategy was accompanied by a number of other documents issued by WCC in support of it. These included WCC's "Sustainability Appraisal/Strategic Environmental Assessment" (the Sustainability Appraisal referred to above, which incorporated the HTPSA), "Background Paper 1: Housing Provision, Distribution and Delivery" and WCC's "Duty to Co-operate Statement".

49. Background Paper 1 explained the choice of a figure of 11,000 new homes for the period of the Core Strategy, 2011-2013. It reviewed the information in the Housing Technical Paper and drew on evidence and representations received in consultation pursuant to that Paper, noting that "The amount and location of housing development in the District is a key topic" which had generated many comments, reflecting a range of different interests, with little consensus.

50. Background Paper 1 noted that Scenarios 2 and 4 in the Housing Technical Paper had been rejected as flawed for different reasons. Scenario 3 produced a high housing requirement due to the need to generate a workforce to match the expected growth in jobs, but the projections of that growth pre-dated the recession. Scenario 1, with a figure of 11,000 new homes for 2011-2013, was assessed to be realistic in terms of the changed economic climate and achievable in terms of typical development rates and market demand in WCC's area over many years.

51. Background Paper 1 reviewed representations which had been received. In particular, it noted representations and evidence regarding housing need put forward by Barton Willmore (describing them simply as a large planning consultancy with knowledge of issues in the area). Barton Willmore submitted a modelling study called Open House which confirmed that a requirement of 11,000 was a reasonable projection of demographic needs, albeit subject to certain caveats and making alternative proposals which were reviewed in Background Paper 1 and rejected on their merits for reasons which Zurich do not seek to challenge as irrational or unlawful (paras. 4.23-4.38).

52. Chapter 6 of Background Paper 1 reviewed housing land supply and delivery in detail. It explained the background to the estimates of the sources and rate of supply of new homes set out in Appendix F. It explained that Appendix F showed a conservative ("cautious") set of estimates of rates of delivery from the identified sources of supply, in order to emphasise the deliverability of the overall 11,000 homes requirement over 2011-2031 as required by the proposed Core Strategy. In WCC's assessment, the

trajectory of supply shown in Appendix F would be likely to be exceeded, and in Appendix D to the Paper ("Appendix D") it provided a more optimistic "stronger market conditions" trajectory which it regarded as more realistic.

53. Chapter 6 also included a discussion of the requirements of paragraph 47 of the NPPF in relation to land supply over 5 year periods and the buffer of supply over estimated annual average rates of new housing requirements over the period covered by the Core Strategy (11,000 new homes in the period 2011-2031 at the annual average rate of 550 per year). Previously, at para. 4.17, WCC noted that clarification had been provided about the interpretation of the second bullet point of paragraph 47: the 5% or 20% buffer is intended to relate to the amount of housing brought forward into the earlier part of the plan period, not to the overall housing requirement for 20 years set in out in the plan. At paras. 6.51-6.56, under the heading "5 Year Land Supply", WCC included a detailed discussion in relation to that bullet point, as follows:

> "<u>5 Year Land Supply</u>
>
> 6.51. A requirement of the NPPF is to identify a supply of specific deliverable sites sufficient to provide five years' worth of housing against 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. Authorities with a *'record of persistent under delivery of housing'* should increase the buffer to 20%.
>
> 6.52. The requirements for 5-year land supply relate to the short-term monitoring of housing delivery, not to the setting of the overall Plan housing target, so it is not necessary or appropriate to increase the overall housing target by 5% or 20%. This has been confirmed by the recent Inspectorate advisory visit (see paragraph 4.17 above).
>
> 6.53. Nevertheless, various respondents argue that housing provision will not be adequate to maintain a 5-year land supply and the Council has addressed this point in the tables below. These use the information in the trajectories at Appendices C and D [Appendix C was what I have referred to as Appendix F, as it was labelled when included as an appendix to the Core Strategy] to produce a 'rolling' 5-year land supply analysis. Based on the Local Plan Part 1 Trajectory (Appendix C) it can be seen that, apart from a problem in 2011/2012 (and no 'buffer' in 2012/2013) a five year land supply can be maintained in every year for the whole Plan period up until 2026. After 2026 there are not 5 years of the Plan period left, but the small housing requirement remaining (if any) is also met.
>
> 6.54. For the 'Stronger Market Conditions' Trajectory table (Appendix D) it can be seen that there is the same short-term problem in 2011/12, after which a five year land supply can be

> maintained in every year for the whole Plan period up until 2024/5. After 2024/5 the housing requirement is met and there is no 5-year requirement.
>
> 6.55. Therefore, an adequate land supply, whether using a 5% or 20% 'buffer' (equating to 5.25 or 6.0 years' supply respectively), can be maintained in each year except at the very start of the Plan period. The 'shortfalls' in the later part of the Plan period are because the remaining requirement is less than 5 years, so the necessary supply is also reduced, or the requirement is already met. At the beginning of the Plan period, the shortfall is caused by the fact that the strategic allocations will take some time to achieve higher levels of delivery, but it is clear that this is only a short-term issue and that it is soon overcome. This 'problem' is reduced under the 'stronger market conditions' scenario, where very substantial land supply exists until the housing requirement is met in 2024/25.
>
> 6.56. It is, therefore, concluded that there are various sources of land supply which are deliverable and reliable and will adequately meet the Local Plan's housing requirement. It is not appropriate or necessary for the Local Plan Part 1, which is a strategic document, to identify in detail each source of housing provision over the next 20 years. The key issue to be examined is whether the policy framework provided will enable an adequate level and distribution of housing to be provided. The detailed split between different sources of provision is a matter for Local Plan Part 2 to examine, but for the purposes of Local Plan Part 1, it is clear that there is ample scope for the Local Plan's housing requirements to be met from the sources discussed."

54. The tables referred to in para. 6.53 then followed. As mentioned in para. 6.53, the first table, drawn from the information in Appendix F, showed that if one started in 2011/12 (i.e. the year to 31 March 2012), there would be less than the 5 year supply of homes referred to in paragraph 47 of the NPPF in the first 5 years covered by the Core Strategy; but in the 5 year period starting in 2012/13 there would be sufficient to meet the 5 year supply of homes referred to in paragraph 47 (albeit without a buffer above that); and in the 5 year period starting in 2013/2014 there would be sufficient to meet the requirement in paragraph 47 and any relevant buffer (whether at 5% or 20% - albeit WCC did not accept that the 20% figure was appropriate in its case); and the anticipated level of supply improved still further in the following 5 year periods until tailing off from 2027/28 at the end of the overall period covered by the Core Strategy, when paragraph 47 would not require a continuing 5 year plus supply of homes.

55. Three points may be made about this: (i) by the time of the independent examination of the Core Strategy in late 2012, one was already close to the period when the requirements of the second bullet point in paragraph 47 would clearly be satisfied; (ii) the table was only provided by way of background information and evidence for the

Inspector, and not as part of the Core Strategy (i.e. it was again clear from this part of Background Paper 1 and the tables contained in it, as from the terms of the Core Strategy and Appendix F, that the Core Strategy itself was not being put forward by WCC as the relevant part of its Local Plan to meet the requirements of the second bullet point in paragraph 47 of the NPPF: see para. 21 above); and (iii) the table was based on conservative estimates of land supply, so there was a real prospect that in fact a better coverage of the Core Strategy figures by rate of supply would be achieved (and it should be noted that paragraph 47 of the NPPF was itself only policy guidance, not an absolute rule, so WCC could still lawfully have adopted a plan showing a slight shortfall in the first period if that was more than compensated for in the periods immediately following, as the table showed).

56. The next table was drawn from the housing supply information contained in Appendix D (the stronger market conditions trajectory), which WCC assessed as being more realistic. This table showed that if one started a 5 year period in 2011/12 there was less than a full 5 year supply as required by para. 47 of the NPPF, but that in the 5 year period commencing in 2012/13 there was the equivalent of 5.7 years of supply anticipated (i.e. well above the requirement of the NPPF including a buffer of 5%, and not far short of a buffer of 20%), in the 5 year period commencing in 2013/14 there was the equivalent of 7.4 years of supply anticipated (i.e. well above the NPPF requirement, including a buffer of either 5% or 20%) and the oversupply figures became even stronger in successive periods until again they tailed off right at the end of the Core Strategy period, after the requirements of the second bullet point in paragraph 47 of the NPPF had been satisfied.

57. At the end of his independent examination, the Inspector accepted WCC's case that Appendix D (as slightly modified at the examination in public) represented a better prediction of housing supply than Appendix F and required that Appendix D (as modified and with an increase in the overall housing figure from 11,000 to 12,500) be substituted for Appendix F in the final approved version of the Core Strategy.

58. Chapter 7 of Background Paper 1 set out WCC's conclusions. WCC noted that it was not necessary for its Local Plan Part 1 (i.e. the Core Strategy) to identify and prove the deliverability of every development opportunity for the next 20 years, since that was not its function (para. 7.5: see para. 53 above). WCC assessed that there was currently a very short-term housing land supply issue which would be overcome once the Core Strategy was adopted and strategic allocations could be brought forward (para. 7.6). The next plan document (Local Plan Part 2) or other development plan documents would provide the opportunity to review progress and make any necessary smaller-scale allocations (i.e. could be used to fulfil the requirements of the second bullet point in paragraph 47 of the NPPF) (para. 7.7). Therefore, WCC maintained that the new housing figure in the Core Strategy was realistic, deliverable and could be implemented in conformity with the NPPF, and should be found to be sound and should be approved by the Inspector.

59. As a result of his review in the course of the independent examination, the Inspector found that the figure in the Core Strategy for new homes should be increased from 11,000 to 12,500. He referred to evidence to show that this was a reasonable and deliverable figure. In my view, on the basis of the information provided by WCC, Appendix D and the table in Background Paper 1 drawn from Appendix D, the Inspector was plainly entitled to consider that there was sound evidence giving

reasonable assurance that even at an overall figure of 12,500 new homes in the Core Strategy, WCC would be able to satisfy the requirements of the second bullet point of paragraph 47 in its further development plan documents to be drawn up in the future, under the framework provided by the Core Strategy.

60. The Duty to Co-operate Statement issued by WCC described the co-operative working with other authorities which underlay WCC's work on the Core Strategy, to comply with its duty under section 33A. This included, among a wide range of co-operative working arrangements, participation in meetings held by the Partnership for Urban South Hampshire ("PUSH"), a co-operative partnership between eleven local authorities designed to address issues of common concern. Paragraphs 4.2 to 4.5 of the Statement explained the way in which strategic housing needs had been assessed. PUSH had been involved in development of the housing requirement figure in the South East Plan for that part of WCC's area covered by the PUSH arrangement (6,740 dwellings). The balance of the requirement for WCC's area in the South East Plan (5,500) was in a predominantly rural area in relation to which there were "no cross boundary issues relating to major housing development, nor any need to develop a sub-regional growth strategy"; therefore the cross-boundary issues were limited and no need had ever been identified to establish a formal committee or other arrangements (para. 4.4; also see paras. 3.11-3.13). Nevertheless, most authorities in the area had participated in an informal Central Hampshire and New Forest group in relation to the South East Plan (para. 4.4). Other authorities had been consulted on WCC's proposed housing figure during the pre-submission consultation on the Core Strategy (para. 4.5).

61. The Statement also explained, in chapter 5, the co-operative work which had been done in relation to the three proposed strategic allocations for new housing in the Core Strategy: West of Waterlooville (in relation to which there had been co-operative working with the neighbouring authority, Havant BC, over many years), North Whiteley (in relation to which co-operative working arrangements had been put in place with the neighbouring authorities, Fareham BC and Eastleigh BC) and the Barton Farm site north of Winchester. Chapter 6 contained a discussion of co-operative working arrangements in relation to large scale developments in neighbouring authorities.

62. The Inspector held a pre-inquiry meeting on 12 September 2012 to discuss issues to be focused on at the examination in public in relation to the Core Strategy.

63. In September 2012 WCC issued an updated paper which provided further discussion of the housing issues discussed in Background Paper 1 and updated statistics on housing completions and supply. The housing completions for the first year of the Core Strategy period were at 317, above the figure of 261 for that year shown in Appendix F. An up-dated land supply trajectory was supplied (the final version of Appendix D). The conclusion was that the expectations of land availability described in Background Paper 1 remained broadly accurate and that WCC considered the Core Strategy to be "sound" and in compliance with the NPPF.

64. The examination in public was conducted at hearings between 30 October 2012 and 9 November 2012. Barton Willmore appeared and made representations. They pressed for higher figures for new homes to be included in the Core Strategy to meet what they maintained would be the future needs of the population in WCC's area.

65. On 11 February 2013 the Inspector published his Report on WCC's proposed Core Strategy. He approved the Core Strategy subject to certain recommended modifications. After examination of the evidence in relation to the need for new housing, he required the figure for new homes in WCC's area over 2011-2031 to be increased from 11,000 to 12,500 and for that new figure to be included in Policy CP1 (Housing Provision) in the Core Strategy. With that and certain other modifications, the Inspector found the Core Strategy to be sound. He also found it to be in general conformity with the relevant regional strategy, the South East Plan. He found that the Sustainability Appraisal for the Core Strategy, as modified, was adequate.

66. WCC and SDNPA accepted his modifications and adopted the Core Strategy with effect on 20 March 2013.

The Inspector's Report

67. The Inspector included the following discussion of housing requirements in WCC's area in his Report:

> "**Issue 3 – Housing General**
>
> *Policies CP1, WT1 and SH1*
>
> 47. The extant SE Plan [the South East Plan] (POL1) (2009) has a requirement of 12,240 new dwellings for the district from 2006 to 2026 to meet housing needs. Notwithstanding the impending revocation, this plan has to remain in general conformity with that expectation, as well as addressing the objectively assessed local need for new housing in accord with the NPPF (para 17). In particular, the Council's most up date figures relating to affordable housing (EB124) (2012) indicate a requirement of around 370 units per year in the district.
>
> 48. Albeit somewhat dated, the extensive technical evidence underlying the SE Plan requirements remains relevant and reinforces the conclusion that residential development pressures are only likely to increase in adjoining areas if Winchester district does not fully address its own needs. Providing suitable and available capacity can be identified, without compromising other important objectives of the NPPF, such as the protection of the SDNP, there is no justification for any under-provision of new housing over the plan period.
>
> 49. The SE Plan figure is equivalent to 612 new houses per year. Albeit rolled forward 5 years from 2026 to 2031, a district total of 11,000, as submitted, would deliver an average of only 550 annually; effectively a reduction of about 10%. Although 550 a year would be materially greater than the recent average from 2000 to 2011, of about 486, based on the Council's affordable housing requirement figures (EB124) (2012) a total

of 11,000 new homes would not provide appropriately for objectively assessed local needs.

50. Fortunately, the Council's work to date has identified potential capacity for at least 2,500 new houses in the MTRA [the Market Towns and Rural Areas part of WCC's district] by 2031 (see issue 8 below), rather than just the range of 1,500 to 2,500 units in the submitted plan. The higher figure has also been taken into account in the strategic level SA/SEA [Sustainability Appraisal] through the plan process so far. Given that all the larger settlements to which the main figures in policy MTRA 2 would apply are outside the SDNP, there should be no great difficulty in securing more than sufficient new housing land allocations to readily meet that higher figure over the plan period through the LP2 process [the process to develop the Local Plan 2, the next development plan document to be adopted by WCC] to which the Council is committed.

51. Moreover, the Council has acknowledged that the final total capacity of the proposed strategic site at North Whiteley, where a new town centre is nearing completion, is very likely to be more than the 3,000 units referred to in the submitted plan. Importantly, this would be so without needing to extend the site area already identified and assessed. It is also fully endorsed by the assembled consortium of experienced developers that stands ready to deliver the scheme and their professional advisors. Subject to suitable avoidance and mitigation measures being included to secure environmental/nature conservation interests, as required in policy SH3, a higher total of about 3,500 new houses is realistically deliverable by 2031.

52. Significantly, plan modifications to reflect these facts would not directly affect the new housing figure for Winchester itself. Nor would they result in an imbalance in growth between the three spatial areas set out in the plan, bearing in mind the total numbers involved, and that the plan's overall strategy would not be altered to any significant degree. For example, the percentage of new housing in Winchester would only reduce from around 36%, coincidentally almost exactly the same as its current percentage of the district's population, to around 32% or one third of the district total. Furthermore, all the available evidence indicates that infrastructure provisions would also be adequate or can be made so economically in connection with growth, for these somewhat higher numbers, as would other services, including water supply.

53. A total of 12,500 and an average rate of new housing delivery of 625 over the plan period would represent the positive approach to sustainable development required by the NPPF as it would reflect objectively assessed local needs for affordable housing. Moreover, the additional 2% or so would

> allow for a limited buffer of new housing land supply, as recommended in the NPPF (para 47). It would also help to take into account the likely upward movement of household growth in the medium to longer term if the economy improves from its present low base. A revised total of 6,000 new units in the two main site allocations outside Winchester (not 5,500) would also be closer to the implied housing target for the PUSH growth area of the district in the most recent South Hampshire Strategy document (OD28) (October 2012). …
>
> 54. The population projections used by representors to justify higher housing figures for the district (up to about 15,000 by 2031) essentially rely on a specific level of future job growth being required. They are essentially based on the premise that the only way of meeting that job growth over the plan period is through increased in-migration that would require extra housing. In contrast, demographic based projections, largely based on ONS and DCLG [Department for Communities and Local Government] methods, as used by Hampshire County Council for the Council, are less dependent on job forecasts and labour force projections that are inherently difficult to produce and affected by many uncertainties in the longer term.
>
> 55. This applies not least in respect of the performance of the local and national economy over time, compared to births and deaths, for example. Moreover, new jobs do not necessarily have to be filled by in migrants, given alternative sources such as lower local unemployment, later retirement and increased activity rates, including amongst the elderly/recently retired, as well as improved skills and training.
>
> 56. Therefore, a total new dwelling target of 12,500 across the district from 2011 to 2031, with a delivery rate of 625 per year on average, is considered to be realistic, as well as positive in terms of the economic growth of the district. This is so not only in relation to past delivery rates locally, albeit a material "step change" upwards, but also the reasonably assessed capacities of the main three strategic sites allocated in the plan and their realistic implementation prospects, including in respect of economic viability. Moreover, it would be generally consistent with the Council's "stronger housing market" scenario considered in Appendix D of the Housing Background Paper (BP1) (June 2012)."

68. In this part of the Inspector's Report, the Inspector assessed the evidence which had been presented by different parties in relation to how to estimate the future population of WCC's area and hence the new homes requirement to be included in the Core Strategy to meet the needs of that population. WCC argued for future population figures based on up-to-date census data and projections based on modelling methods promoted by the Office for National Statistics, the Department for Communities and Local Government, as in Scenario 1, and in support of a new housing requirement of

11,000. Other parties, including Barton Willmore, argued for higher figures for population and for a higher figure for new homes, of up to 15,000. This was done primarily by reference to work commissioned by them (e.g. by Open House) using up-to-date census figures and other evidence, rather than by reference to the former estimates (based on earlier evidence which was, as the Inspector observed, "somewhat dated") used to support the figure for housing need for the period 2006-2026 in the South East Plan (albeit that part of the argument proceeded by reference to the earlier estimates). Whilst focusing on the rival estimates of future need based on up-to-date evidence, the Inspector took the earlier estimates into account as a cross-check: he referred to them in para. 48 as being relevant and as reinforcing his overall conclusions. The Inspector's focus on the up-to-date evidence was in line with what paragraphs 158 and 182 of the NPPF required.

69. The Inspector found that a figure of 12,500 new homes would be appropriate to address what he assessed would be the need for new homes. In other words, he found that there were reasons why WCC's figure should be regarded as too low and reasons why the objectors' figure should be regarded as too high. His weighing of the evidence presented on each side and the evidence relevant to the figure in the South East Plan and his conclusion in light of that evidence cannot be impugned as irrational or unlawful in any way. It involved a classic exercise of planning judgment by the Inspector, having proper regard to the available evidence before him – both the recent evidence from WCC and the objectors and the somewhat dated technical evidence available at the time of preparation of the South East Plan.

70. It is fair to say that I found the second sentence of para. 53 of the Inspector's Report, set out above, puzzling when I first read it. I think Mr Bedford is right in his explanation of the "additional 2%" referred to, as being a reference to the increase in the figure proposed by the Inspector for a 20 year period (12,500, averaging 625 units p.a.) compared with that in the South East Plan (12,400, averaging 612 units p.a.). As an initial impression, because of use of the word "Moreover", I thought the Inspector might be taken to be saying that adopting his figure of 12,500 would mean that there was more scope for accommodating the buffer required by the second bullet point in paragraph 47 of the NPPF. But that would clearly not be the effect of taking the higher figure, since the level of housing supply required to provide the percentage buffer element referred to in paragraph 47 would also go up with the adoption of the higher housing figure to be used in the Core Strategy. When one understands the context of the Inspector's statement, I think it is clear that what he means is that even with the increased housing figure he has chosen, there would still be a good prospect that the rate of housing supply available in WCC's area would allow it to produce further development plan documents in due course which would provide appropriate housing supply coverage to comply with paragraph 47 of the NPPF. As I have explained above, I consider that the Inspector was clearly entitled to come to this conclusion on the evidence before him.

71. I also consider that the Inspector gave sufficiently clear reasons explaining how he had come to the figure of 12,500.

72. It is relevant to observe that the Inspector did not think it necessary to make any finding whether a 5% buffer or a 20% buffer would be required under paragraph 47 of the NPPF in WCC's case, nor did he think it necessary in his Report to review the detail of WCC's housing supply estimates against the second bullet point of paragraph

47, nor to require that housing supply figures be written into the Core Strategy to make that Strategy, by its own terms, meet the requirements of that bullet point. This is all because the Inspector correctly understood that WCC was not maintaining a case that the requirements in this bullet point would be met by the terms of the Core Strategy, and appreciated that WCC proposed to satisfy those requirements in subsequent, lower level development plan documents.

73. The Inspector saw nothing wrong in this, and nor do I. He did not consider that the absence of such a housing supply policy from the Core Strategy meant that the Core Strategy failed to comply with the policy guidance in paragraph 47 of the NPPF so as to affect the soundness of the Strategy under section 20(5) of the 2004 Act and paragraph 182 of the NPPF. I agree with him. As explained above, paragraph 47 of the NPPF does not have the effect that the requirements in its second bullet point *must* be dealt with in a core strategy document dealing with the requirements in its first bullet point, such as the Core Strategy in this case. They can be addressed, as WCC was proposing to address them, in other development plan documents.

74. Later in the Inspector's Report, the Inspector dealt with a number of local issues which are relevant to Ground Two in these proceedings. In paras. 72-75 he dealt with the area West of Waterlooville, where WCC's area bordered that of Havant BC. The Inspector considered that it was reasonable to conclude that housing delivery would proceed according to WCC's estimates in Appendix F and that WCC would meet the needs of its area by such development.

75. In paras. 76-98 the Inspector dealt with North Whiteley, an area for development close to the districts of Fareham BC and Eastleigh BC. He found that the North Whiteley development could accommodate 3,500 new homes, rather than just 3,000 as referred to in the Core Strategy, and that this identified increase in housing supply would not require any further Sustainability Appraisal since it was covered by the appraisal work already carried out (see, in particular, para. 90). He found that the work carried out to date was "sufficient to demonstrate a very strong likelihood that all the necessary transport elements of the overall scheme would be practically and economically deliverable" (para. 79). He noted a dispute regarding whether a by-pass around Botley village should be built, as a result of increased road traffic associated with the North Whiteley development (as Fareham BC and Eastleigh BC argued), which Hampshire County Council (the highway authority) opposed as not sufficient to justify the expense involved of about £30m (paras. 80-81). He found the case for the by-pass not to be made out on the evidence before him, but recommended that WCC take steps to keep the option open to build one should later transport assessment indicate it was required (para. 82).

76. At paras. 5 and 6 of the Inspector's Report, the Inspector gave his assessment that WCC had complied with its duty of co-operation under section 33A. In para. 6 he said this:

> "6. In the Duty to Co-operate Statement (SD9) and elsewhere the Council has satisfactorily documented where and when co-operation has taken place, with whom and on what basis, as well as confirming that such positive engagement will continue. This includes with all the authorities in the Partnerships for

> Urban South Hampshire (PUSH) area and particularly with Fareham BC and Havant BC in relation to the strategic land allocations at North of Whiteley and West of Waterlooville, as well as North of Fareham, the importance of which cannot be overstated in terms of new housing delivery. In the absence of any indication to the contrary, I am satisfied that the duty to co-operate has been met."

Discussion

Person Aggrieved

77. WCC disputes that Zurich qualifies as "a person aggrieved" by the Core Strategy for the purposes of section 113 of the 2004 Act, because Zurich did not directly participate in the consultation on and examination of the Core Strategy. Barton Willmore participated in both stages and made representations which were not adopted by WCC or the Inspector. It has now emerged that they did so acting for the benefit of their client, Zurich, but they did not explain that to WCC or the Inspector.

78. Zurich says that Barton Willmore had been involved in 2008 in making representations to WCC about the Micheldever Station site on behalf of a company associated with Zurich, so WCC should have appreciated that they were again acting for the Zurich group in 2012 and 2013. I do not accept this suggestion. There is no reason why WCC should have been expected to draw any conclusion about Barton Willmore's status in relation to the Core Strategy by reference to this history in relation to a quite distinct planning review several years previously.

79. Barton Willmore wrote to WCC on 5 September 2012, stating that it did so "on behalf of clients" (without identifying them), to make preliminary comments on the Core Strategy.

80. Under cover of a letter to WCC dated 12 March 2013, Barton Willmore also filed a pre-submission stage representation form with WCC to comment on the proposed Core Strategy. The covering letter referred to the representations in the form as "Our response" and referred to Barton Willmore's objections to the Core Strategy. The form itself had a space for "Personal details" and a further space for "Agent's details". There was a note in relation to the "Personal details" section which directed that "if an agent is appointed" limited personal details had to be provided, but full details of the agent should be provided. Barton Willmore completed the "Agent's details" section but left the "Personal details" section completely blank. In the body of the form Barton Willmore set out representations in respect of the Core Strategy, which it appeared to present as their own: "Barton Willmore's main objection to the [Core Strategy] is …"; "We consider that Barton Willmore has legitimate concerns …".

81. Since the position was unclear, at the examination in public in October 2012 Mr Steven Opacic for WCC commented that Barton Willmore had not stated whom, if anyone, they were acting for. Mr Robin Shepherd of Barton Willmore said that they were representing "a consortium of developers". He did not identify Zurich nor explain that Zurich's interest was as a major landowner in WCC's area.

82. The test to identify a "person aggrieved" (which is a concept with a lengthy history in planning legislation) is open-textured. Factors relevant to the assessment whether a person who objects to a planning decision qualifies as a "person aggrieved" by that decision include the nature of the decision and the directness of its impact on him, the grounds on which he claims to be aggrieved, whether he had a fair opportunity to participate in the relevant decision-making process to raise such grounds of objection and whether he did in fact make use of such opportunity to make those objections before the decision was taken. The approach to be adopted was explained by the Court of Appeal in *Ashton v Secretary of State for Communities and Local Government* [2010] EWCA Civ 600, at [53].

83. As the Lord President (Lord Rodger) explained in *Lardner v Renfrew DC*, 1997 SC 104 (Inner House), at 108:

> "The particular circumstances of any case require to be considered and the question must always be whether the appellant can properly be said to be aggrieved by what has happened. In deciding that question it will usually be a relevant factor that, through no fault of the council, the appellant has failed to state his objection at the appropriate stage of the procedure laid down by Parliament since that procedure is designed to allow objections and problems to be aired and a decision then to be reached by the council. The nature of the grounds on which the appellant claims to be aggrieved may also be relevant. We express no view on the merits of those advanced by the appellant, but we observe that they all relate to matters which he could have put, or endeavoured to put, to the council or to the reporter at the inquiry. Had he done so, his objections could have been considered at the due time. Instead of that, the appellant now seeks to have these issues reopened after the decision has been taken in accordance with the prescribed procedure. In these circumstances, having regard both to the nature of his interest in the site and to his failure to take the necessary steps to state these objections at the due time, the appellant cannot properly be regarded as 'a person aggrieved' in terms of [the relevant statutory provision]."

84. These observations have particular force in the present context. The Core Strategy is a plan document which operates at a high level of abstraction, with general impact across the whole of WCC's area. It is intended to provide a settled framework within which other, lower order development plan documents can be drawn up. An elaborate procedure of consultation and examination in public has been adopted to ensure that all relevant views on a core strategy document are brought into account and considered and weighed together, first by the plan-maker (here, WCC) and then by the Inspector: compare *Ashton* at [55]-[56]. The effectiveness and fairness of that system and the overall efficiency of the plan making process would be undermined if persons in the relevant area could come forward with new points raised only after a core strategy has been adopted, and seek to compel review of the core strategy on the basis of those new points. A person who has stood aside from the plan-making process but later seeks to challenge a core strategy by way of application under

section 113 to raise objections which could have been raised in the course of that process will not usually be able to show that he is "a person aggrieved" for the purposes of that provision.

85. However, as a matter of substance, it can be said that the basic object of the plan-making procedure has been met in this case, in that the main grounds of objection to the Core Strategy for Zurich were raised by Barton Willmore as its agents (albeit without explaining that Zurich was its client) at the appropriate time in the course of the plan-making procedure. WCC has not argued that in the course of the plan-making process there was insufficient notice of issues now raised in these proceedings, only that the issues were presented by Barton Willmore rather than Zurich.

86. The main question on this issue in the present case, therefore, is whether, as WCC submits, the failure of Zurich to identify itself as a person seeking to make representations in the course of that process and the failure of Barton Willmore to identify Zurich as their client for the purposes of the representations made by them means that Zurich cannot be regarded as "a person aggrieved" with an entitlement to challenge the Core Strategy.

87. Mr Bedford relied in particular on the Town and Country Planning (Local Planning) England Regulations 2012 governing who has a right to appear to be heard at an examination in public (which would have included Barton Willmore, who made pre-submission representations, but not, he said, Zurich) and on *Ashton v Secretary of State for Communities and Local Government*. In that case, the claimant, who was a local resident who objected to a particular development near his home, had decided not to make representations himself to the local planning authority or at the public inquiry to consider whether planning permission should be given. Instead, he asked a local residents' group of which he was a member to make representations on his behalf. The residents' group decided not to challenge the grant of permission, so the claimant sought to do so under section 288 of the Town and Country Planning Act 1990. The Court of Appeal held that he did not qualify as "a person aggrieved" under that provision: [53]-[57]. In the same way, Mr Bedford submits, Zurich cannot qualify as "a person aggrieved" in the present case.

88. I do not accept this submission. In my judgment, there is a significant distinction between the two cases. In *Ashton* it appears that the residents' group made representations on its own behalf, as principal, and did not purport to act on behalf of the claimant (although he asked them to raise points for him in the course of the inquiry). In the present case, by contrast, despite the opaque way in which Barton Willmore presented their position, it is clear from Barton Willmore's letter of 5 September 2012 and from what happened at the examination in public that WCC and the Inspector appreciated that they were acting on behalf of someone else, even though they were not told whom. In fact, they were acting at the time on behalf of Zurich.

89. I consider that in these circumstances there was sufficient participation by Zurich in the plan-making process which, combined with Zurich's interest in the contents of the Core Strategy as a major landholder in WCC's area potentially affected in a substantial way by the policies to be contained in that Strategy, justify the conclusion that Zurich does qualify as "a person aggrieved" by the Core Strategy for the purposes

of section 113. Zurich therefore has standing to make the present application to challenge the Core Strategy.

90. The technical position under the regulations regarding the right of attendance at an examination in public does not preclude this conclusion. In my view, the "person aggrieved" test looks to the justice and substance of the matter, and does not turn on the technical points which Mr Bedford sought to make on the regulations. Barton Willmore participated in the plan-making process and had a right, acknowledged by the Inspector, to be heard at the examination in public. As I have explained, they exercised that right for the benefit of Zurich and it is all the circumstances regarding Zurich's position which leads to the conclusion that Zurich is "a person aggrieved" for the purposes of the 2004 Act.

91. Although I have reached this conclusion, it is right to observe that no good explanation was given why Barton Willmore did not complete the pre-submission stage representation form to set out that they were acting as agent for Zurich, nor why Mr Shepherd did not frankly say at the examination in public that he was acting for Zurich. The court deprecates the failure to explain exactly on whose behalf, as principal, Barton Willmore's representations were being made. The source of representations in the course of the processes for making a plan such as the Core Strategy may be relevant to an assessment of their weight and force, and the source ought to be made known. However, I consider that it would be disproportionate and inappropriate to find that Zurich was disabled from being regarded as "a person aggrieved" in the circumstances of this case by reason of this part of the factual background.

Ground One: Methodological error by the Inspector in his assessment of the proposed housing requirement

92. In my judgment, this criticism of the Inspector is unsustainable. It is, in fact, highly contrived and unmeritorious.

93. The Core Strategy needed to include a figure for new homes to be provided in the period 2011-2031. WCC proposed such a figure based on up-to-date evidence and modelling of population growth for the period 2011-2031 which post-dated the evidence base and modelling for the South East Plan estimated figure for the period 2006-2026. The Inspector took account of that evidence and of evidence from others, including Barton Willmore and Open House, similarly based on up-to-date evidence and modelling.

94. Contrary to Zurich's case, there was no methodological error in the way these competing estimates for the period 2011-2031 were drawn up by reason of the notional "shortfall" in housing delivery between 2006 and 2011 by comparison with the average annual figure for additional housing indicated in the South East Plan. Contrary to Mr Cahill's argument, there was no reason whatever for a person in 2011 seeking to draw up a current estimate of population growth and housing requirements looking into the future from that date to 2031 and using up-to-date evidence to do so, to add on to the estimated figures any shortfall against what had been estimated to be needed in the first phase of the previously modelled period included in the South East Plan.

95. According to Mr Cahill's suggestion, the modellers in 2011 should have begun by saying that there was a shortfall of 854 homes against a previous estimate and then should have added that on to their own modelled estimates for new homes for 2011-2031 to produce the relevant total figure. In fact, none of them proceeded in that way, and rightly so. In my view, they would clearly have been wrong if they had tried to do so. Their own modelling for 2011-2031 is self-contained, with its own evidence base, and would have been badly distorted by trying to add in a figure derived from a different estimate using a different evidence base. That would have involved mixing apples and oranges in an unjustifiable way.

96. Since this is not a proper criticism of the approach adopted by the modellers who provided evidence to the Inspector (including those who compiled Barton Willmore's own Open House model, relied on by Zurich), still less is it a valid criticism of the Inspector. He was entitled to rely on the evidence as presented to him by expert modellers on each side, which did not include the arbitrary add-on of 854 homes proposed by Mr Cahill. Indeed, I think there would have been strong grounds for saying that the Inspector would have been open to attack on rationality grounds had he ventured to depart from the methodology they had employed and done what Mr Cahill suggested he should have done.

97. In my judgment, the Inspector proceeded in a perfectly rational and lawful way in making his assessment of the evidence in relation to the new housing requirement for 2011-2031, as set out above. In fact, as explained in his Report, he did take the South East Plan forecasts and evidence base properly into account, as material bearing on his assessment of the modelled forecasts for 2011-2031 presented by WCC and objectors. He was not obliged by any methodological logic to go further and make the arithmetical addition proposed by Mr Cahill.

98. The Inspector was entitled to find that the housing requirement figure in the Core Strategy was sound. He examined whether it was deliverable and in conformity with NPPF guidance and satisfied himself, on a rational and lawful basis, that it was. He was also entitled to find that it was in general conformity with the South East Plan, since the housing completions trajectory figures which he accepted (Appendix D) allowed for delivery of new housing at a rate that would have fulfilled the requirement for 2006-2026 stated in the South East Plan.

99. Mr Cahill also complained about the adequacy of the reasons given by the Inspector in his Report in relation to his selection of the relevant housing requirement for 2011-2031 which he found should be included in the Core Strategy. The test here is the familiar one stated by Lord Brown in *South Buckinghamshire District Council v Porter (No. 2)* [2004] UKHL 33 at [36]:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for

> example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

100. In my judgment, it is clear that the part of the Inspector's Report which deals with the question of the housing requirement figure to be included in the Core Strategy satisfies this standard. One can read the Report (see above) and understand clearly why the Inspector determined that the figure should be 12,500. His reasoning does not include any methodological error, as alleged.

101. The Inspector was not required to deal distinctly with Mr Cahill's "shortfall" point, because it was not raised as a "principal important controversial issue" in the plan-making process. The shortfall was briefly mentioned in Barton Willmore's letter of 12 March 2012 and in their pre-submission representations form, but was not mentioned in the detailed evidence submitted by Barton Willmore in support of its representations. I accept the submission of Mr Bedford that the main thrust of that evidence and of the further representations made by Barton Willmore in the examination in public was that the housing projection proposed by WCC needed to be increased to achieve a better match with economic growth predictions. That was the issue which the Inspector addressed in his Report, and nothing further was required. I was not taken to any other evidence about issues raised for argument before the Inspector which indicated that the shortfall point was advanced as a matter of any significance.

102. I would add, however, that in my view the Inspector's reasoning, focused as it was on the forward projections from 2011 which were being advanced on various sides, necessarily subsumed and implicitly answered such argument as there might be that some exercise should be done to identify a shortfall by reference to projections from 2006 and then add that on. Thus, even if, contrary to my view above, Mr Cahill's shortfall point had been raised as a "principal important controversial issue", I consider that for an informed reader the Inspector's reasons adequately dealt with the point.

103. The Inspector found in terms that the Core Strategy was in general conformity with the South East Plan. He clearly had the housing requirement figure in the South East Plan well in mind, because he referred to it in the context of his discussion about the housing requirement figure to be included in the Core Strategy. The Inspector's Report also makes clear that the Inspector understood that the annual figures which he

was comparing in the South East Plan and the draft Core Strategy were averages, not in themselves binding annual requirements (see, in particular, paras. 49, 53 and 56 of the Report, set out above). The housing supply trajectory figures he discussed and accepted as valid had the effect that the Core Strategy would be carried into effect in a way which fully met the housing requirement figure for 2006-2026 in the South East Plan. In these circumstances, the Inspector was plainly entitled to make the finding of general conformity which he did and his Report, read as a whole, explains to the informed reader the basis for that finding in respect of the housing requirement figures. Again, I accept Mr Bedford's submission that this met the standard for giving reasons set out in *Porter (No. 2).*

104. I therefore reject all aspects of this Ground of challenge, both on the merits and on the adequacy of the reasons given.

105. In argument, in particular in his written submissions in reply lodged after the close of the oral hearing, Mr Cahill sought to develop a further ground of objection to the Core Strategy. He said that it failed to comply with paragraph 47 of the NPPF, in particular the second bullet point. In fact, this was not part of Zurich's pleaded case (see paras. 60-63 of Zurich's Grounds of Challenge), nor was it set out in Zurich's skeleton argument (see para. 29, where a different point on paragraph 47 is made, and paras. 38-42). Mr Cahill did not seek permission to amend at the hearing, nor in his written reply, but only in a further document which sought to reply to a short document put in by WCC with the permission of the court to respond to matters arising from Mr Cahill's written reply. That was far too late for the application to amend to be made. Moreover, as WCC pointed out, further evidence would have been required to deal with this new ground of objection to the Core Strategy. In the circumstances, it would not be just or appropriate to entertain this additional ground.

106. However, in light of such debate as there was about this, I should add that I consider there is nothing in the point, for reasons which I have sought to explain in the course of setting out the facts. Paragraph 47 of the NPPF did not have the effect that the Core Strategy should itself deal with the requirements in the second bullet point; the Core Strategy was not being relied upon by WCC as the plan which complied with that bullet point (it was to produce a further development plan document, its Local Plan Part 2, which would do that); and the Inspector understood this to be the position and made no error in finding that the Core Strategy was sound and in compliance with the NPPF.

Ground Two: Duty of co-operation under section 33A

107. Under this Ground of challenge, Mr Cahill submitted that the Inspector erred in concluding that WCC had complied with its duty to co-operate with other authorities, under section 33A of the 2004 Act. He submitted that it appears from the way in which the Inspector set out his assessment of WCC's compliance with its duty under section 33A at para. 6 of his Report (in particular, in the last sentence: "In the absence of any indication to the contrary, I am satisfied that the duty to co-operate has been met") that the Inspector proceeded on the basis of an erroneous presumption that there had been compliance with that duty, and hence on the basis of an erroneous presumption (contrary to the guidance in *Persimmon Homes (North East) Ltd v Blyth Valley BC*) that the Core Strategy could be regarded as sound. Mr Cahill also

submitted that the Inspector had again failed to give adequate reasons for his decision, contrary to the requirement explained in *Porter (No. 2)*.

108. I do not accept any of these submissions. I deal first with the substance of the obligation imposed by section 33A and the appropriate standard of review to be applied.

109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents "so far as relating to a strategic matter" (subsection (3)), as defined in subsection (4) ("sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]"). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.

110. The obligation (see subsection (1)) is to co-operate in "maximising the effectiveness" with which plan documents can be prepared, including an obligation "to engage constructively [etc]" (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111. The engagement required under subsection (2) includes, in particular, "considering" adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).

113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether "it would be reasonable to conclude" that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.

114. Further, in *Barratt Developments plc v Wakefield MBC* [2010] EWCA Civ 897 it was held that an inspector's duty under section 20(5)(b) of the 2004 Act to determine whether a plan was "sound" was a matter of planning judgment for the inspector, and that judicial scrutiny of his decision was limited accordingly. In my view, the incorporation of review of compliance with the duty to co-operate as a further facet of review by an inspector under section 20(5) points to the same limited standard of review of an inspector's decision in that regard.

115. In this case, of course, the Inspector found that WCC had complied with its duty under section 33A. In my view, his conclusion on this cannot be impugned as irrational or unlawful. It follows from the analysis above that WCC's own conduct likewise cannot be impugned as unlawful.

116. As set out in the Duty to Co-operate Statement, WCC identified those respects in which the Core Strategy could have a significant impact on neighbouring planning areas and properly engaged with neighbouring authorities on a co-operative basis in such cases. It fully complied with its duties in that regard. It was not obliged to produce joint plans with other authorities and consult on them, only to consider whether that should be done (see also paragraph 179 of the NPPF). The authorities in question similarly did not consider that they should produce joint plans.

117. Where there were cross-boundary planning issues relating to any "strategic matter", WCC actively engaged in appropriate co-operative working and structures with the relevant neighbouring authorities. These were explained in the Duty to Co-operate Statement and included participation in the PUSH joint working arrangements.

118. Where, in particular in relation to Central Hampshire and the area to the north of WCC's district, there were assessed to be no significant cross-boundary planning issues, I consider that the assessment made was lawful and no obligation of co-operative working arose. Even there, WCC engaged in informal co-operative work, and so did more than it was obliged to do.

119. In all these respects, WCC's approach complied with the guidance on co-operative working given in the NPPF: see paragraphs 178 to 181. WCC's Duty to Co-operate Statement, in particular, provided evidence of effective co-operation for issues with cross-boundary impacts: see para. 181 of the NPPF. The Inspector so found and I agree with him.

120. Mr Cahill focused in his submissions on the positions adopted by Fareham BC, Eastleigh BC and Havant BC and also on the fact that WCC had itself made representations to Basingstoke & Deane BC during consultation on its own proposed core strategy. I deal with these points in turn:

    i) Fareham BC and Eastleigh BC did raise concerns in relation to infrastructure provision at North Whiteley, which was close to their areas. In its pre-submission stage representations, Fareham BC maintained that WCC had not had due regard to the duty to co-operate. WCC addressed these concerns in the course of the examination in public. The Inspector concluded that those concerns were adequately addressed in the Core Strategy: see, in particular, paras. 77-79 and 80-82 of the Inspector's Report. As WCC submits, Fareham BC's concern as a matter of substance was not that there had been a failure by

WCC to engage with it over matters of joint concern – WCC clearly had so engaged, as explained in the Duty to Co-operate Statement and again in its evidence in these proceedings – but rather that its concerns had not been accepted by WCC. The position was similar in relation to Eastleigh BC. But the duty to co-operate does not require that actual agreement should be achieved, only that proper efforts are made to address issues in a co-operative way. Indeed, it may often be the case that ultimate agreement cannot be reached, particularly where there are strong competing local interests between two or more authorities. In fact, in relation to infrastructure provision in respect of North Whiteley, Hampshire CC as the highway authority was in dispute with other authorities regarding the need for a by-pass around Botley and general agreement between all relevant authorities could not be achieved. What is important, however, is that the Inspector found that WCC had complied with its duty under section 33A and also that the Core Strategy was sound. Amongst other co-operative working arrangements, all these authorities engaged with each other through the PUSH arrangement. Neither WCC's conduct nor the Inspector's conclusions in relation to co-operation with Fareham BC or Eastleigh BC can be impugned as unlawful;

ii) In its pre-submission stage representations, Havant BC (another authority within PUSH) did not complain that WCC had failed to comply with the duty to co-operate, but did raise certain strategic issues which it argued should be accommodated within WCC's Core Strategy and made the point that WCC should make sure that it could accommodate all its additional housing needs within its own area, as Havant BC's area was subject to its own constraints. The Inspector considered the cross-boundary issues affecting Havant BC in the section of his Report dealing with the area West of Waterlooville (see, in particular, paras. 72-75), and again found that there had been compliance with the duty to co-operate and that the Core Strategy was sound. He also found, as set out in the Report (see, in particular, para. 59), that WCC's additional housing needs would be met within its own area, so Havant BC's further concern had been met. Again, neither WCC's conduct nor the Inspector's conclusions in relation to co-operation with Havant BC can be impugned as unlawful;

iii) Basingstoke & Deane BC did not object to the proposed Core Strategy. In fact, in its representations it indicated that it was happy with it. It did not consider that the Core Strategy had any significant negative impact in relation to its area. It did not suggest that there had been any failure by WCC to comply with its duty to co-operate. Accordingly, Basingstoke & Deane BC did not raise any concerns which required to be distinctly addressed by the Inspector in his Report. Instead, Mr Cahill relies on the fact that in March 2012 WCC made an objection to the additional housing requirement figure included in the proposed core strategy promulgated and consulted on by Basingstoke & Deane BC in relation to its own area. However, this objection does not show that there had been any failure of co-operation by WCC in drawing up the Core Strategy. As Mr Bedford submitted, if each local authority, in accordance with the approach they had agreed in the course of earlier co-operative work between them, made adequate provision for additional housing to meet the needs of its own area (and did not try to displace its housing requirements into

the other's area) there would be no "strategic matters" with cross-boundary implications, so the duty to co-operate would not arise in relation to adoption of a development plan such as the Core Strategy which reflected that approach. For the purposes of consideration of WCC's Core Strategy, Basingstoke & Deane BC did not suggest that it would need to seek provision in the Core Strategy to meet its own additional housing needs nor that there was any strategic matter which arose to engage that duty. By contrast, if Basingstoke & Deane BC made under-provision for its own housing needs in its own core strategy and sought to have those needs met by WCC, such issues could arise in relation to the development of Basingstoke & Deane BC's core strategy. It was because WCC was concerned that Basingstoke & Deane BC might be making such an under-provision in its core strategy that WCC made representations in relation to that core strategy to object to it. There was no inconsistency in WCC's position. The duty to co-operate under section 33A potentially arose in relation to Basingstoke & Deane BC and its consideration of that core strategy. However, since both Basingstoke & Deane BC and WCC were agreed in relation to consideration of WCC's Core Strategy that Basingstoke & Deane BC would not seek to displace its own housing requirements into WCC's area, I do not consider that WCC acted unlawfully in any way in making the assessment that it did that no further engagement with Basingstoke & Deane BC was required under section 33A in relation to the preparation of WCC's own relevant development plan document, the Core Strategy. That was also the evidence of Basingstoke & Deane BC's position before the Inspector. The Inspector reviewed WCC's Duty to Co-operate Statement, which covered all co-operative working arrangements with neighbouring authorities, and concluded that WCC had complied with its duty. Again, neither his conclusion nor WCC's underlying conduct can be impugned as unlawful.

121. I do not accept Mr Cahill's further submission that the Inspector applied a presumption in favour of finding compliance with the duty to co-operate and of finding the Core Strategy to be sound. The Inspector's Report contained detailed consideration of the relevant cross-boundary issues, in particular West of Waterlooville and at North Whiteley. Paragraph 6 of the Report, set out above, has to be read in the context of the whole Report, including the passages dealing with those issues. Moreover, in para. 6 the Inspector specifically referred to the evidence adduced by WCC of what it had done to comply with section 33A. The final sentence of para. 6 needs to be read in that context. In my view, on a fair reading of the Report, in para. 6 the Inspector was not indicating that he was applying any such presumption as Mr Cahill alleged, but only that the evidence he had received and considered in the Report was not outweighed by any contrary indication, so that he could positively conclude that the duty to co-operate had been satisfied.

122. On the same basis, on this reading of the Report there has been no failure by the Inspector to give adequate reasons for his conclusion. The reasons he gave met the requirements indicated in *Porter (No. 2)*.

123. For these reasons, the various aspects of this Ground of challenge all fail.

Ground Three: Failure to comply with the SEA Directive and the Environmental Assessment Regulations

124. The authorities regarding the proper approach to a legal challenge to a development plan document were helpfully reviewed by Beatson J (as he then was) in *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), at [71]-[78]. Review of the adequacy of environmental appraisals is on conventional *Wednesbury* grounds, with due allowance for a degree of latitude in judgments involving assessment of the planning merits and a focus on whether as a matter of substance the relevant issues have been addressed. I follow the approach explained by Beatson J.

125. The Sustainability Appraisal (which incorporated the HTPSA as Appendix X) submitted with the proposed Core Strategy for independent review constituted the relevant environmental report for the purposes of the SEA Directive and the Environmental Assessment Regulations. The HTPSA included an appraisal of the four different options for growth identified in the Housing Technical Paper. The Inspector found that the relevant strategic environmental assessment process had been properly carried out at each stage, "including the realistic consideration of reasonable alternatives" (see, in particular, paras. 15 and 17 of the Inspector's Report). He concluded at para. 151 of the Report, "[Sustainability appraisal] has been carried out and is adequate".

126. As set out above, the Inspector increased the additional housing requirement to be included in the Core Strategy from 11,000 (as proposed by WCC) to 12,500. He found that 1,000 extra dwellings could be located in the MTRA and a further 500 extra dwellings in the development at North Whiteley.

127. In relation to the increase in the MTRA, the Inspector found that WCC's work to the date of his Report had identified that additional capacity. He also found that this increased capacity had been taken into account for the purposes of sustainability review in the strategic environmental assessment work through the plan process (i.e. including the Sustainability Appraisal/environmental report): paras. 50 and 106 of the Inspector's Report.

128. In relation to the increase at North Whiteley, the Inspector found that 3,500 units could be situated within the same site as was designated in the draft Core Strategy for "at least 3,000" new units: paras. 51 and 90 of the Inspector's Report. He also found (see, in particular, para. 90) that with suitable mitigation measures which were "unlikely to vary greatly in scale, extent and/or cost" if 3,500 rather than 3,000 units were built on the site, this increase in development would comply with the SEA Directive and the Environmental Assessment Regulations and that no further sustainability appraisal was required.

129. Whether the HTPSA's and Sustainability Appraisal's selection of alternatives to be assessed constituted a proper set of "reasonable alternatives" for the purposes of the SEA Directive and the Environmental Assessment Regulations was a matter for the planning judgment of WCC and the Inspector. Similarly, whether the review of these matters in the Sustainability Appraisal was adequate to meet the requirements of the Directive and Regulations was a matter for the planning judgment of WCC and the Inspector.

130. Zurich criticises the selection of alternatives in the HTPSA and Sustainability Appraisal because it did not include assessment of a scenario that projected the housing requirement in the South East Plan forward from beyond the period in that Plan (ending in 2026) to the end of the Core Strategy period (in 2031) with an assumed ongoing annual requirement of 612 dwellings p.a.. However, there was no proposal to include this as an alternative brought forward at the time when WCC consulted on possible alternative scenarios for the Housing Technical Paper. The main scenarios which were considered were based on up-to-date census information and modelling, and it is far from clear that the alternative scenario now proposed by Zurich, based on the out-of-date work for the South East Plan (which did not even cover the period between 2026 and 2031), would have made very much sense. Certainly, it was not an alternative which was so obvious that WCC and the Inspector can be said to have acted irrationally or in any way unlawfully in failing to select it as an additional scenario for assessment. Neither WCC nor the Inspector can be said to have made an irrational or unlawful assessment in relation to these matters.

131. Zurich also criticises the examination of alternatives in the HTPSA because it says WCC treated Scenario 3 as leading to the same housing requirement figure as Scenario 1 and so did not properly consider Scenario 3 as an alternative. However, the HTPSA dealt with two different situations in relation to Scenario 3: (i) the position in relation to Scenario 3 as it stood at the time of the Housing Technical Paper itself (June 2011), with projections of future dwellings higher than those in Scenario 1 - this was in fact the main version of Scenario 3 considered and rejected in the HTPSA as a foundation for the figure to be included in the Core Strategy, and (ii) the position as it stood in May 2012, in relation to which the HTPSA stated "Further studies reduced employment (& population) figures down to similar numbers of dwellings as to the preferred Scenario 1".

132. In my view, therefore, this criticism of the HTPSA also fails, for two reasons. First, even at the earlier, higher Scenario 3 figure, the appraisal in the HTSPA explained why Scenario 3 should be rejected as the foundation for the Core Strategy, in favour of Scenario 1. There is no good argument for Zurich that this assessment was irrational or unlawful. Secondly, by the time of the HTSPA and the Sustainability Appraisal, there was a further reason why Scenario 3 did not offer a reasonable alternative housing figure to that in Scenario 1, namely that the further assessment work done by consultants for WCC indicated that an employment-led Scenario 3 would not generate housing numbers significantly different from those in Scenario 1. On neither point could WCC's assessment be said to be irrational or unlawful.

133. Another criticism which Zurich makes is that the HTPSA did not consider what the comparative impact would be of mitigating for a larger demand for housing in WCC's area nor assess whether Scenario 1 would be more expensive to mitigate due to the requirement to import workers into its area due to the resultant housing shortage. In my judgment, this criticism too is unsustainable. The Scenarios in the Housing Technical Paper were directed to assessing what the additional housing needs of WCC's area would be, projecting forward. Scenario 1 was selected as the most realistic projection. The object of choosing between the four Scenarios was, in part, to seek to ensure that WCC would be able to meet its own housing needs without a requirement to import workers. Accordingly, WCC did not need to consider mitigation in relation to a higher housing requirement or in relation to importing

workers because of a housing shortage, since WCC planned to meets its own housing requirements in full. Mr Cahill did not spend much time developing this point, and in my view it takes Zurich nowhere.

134. The question whether the modifications to the Core Strategy by the inclusion of the additional housing requirement of 1,500 dwellings required by the Inspector and adopted by WCC and SDNPA would require further sustainability or strategic environmental appraisal beyond that which had already been carried out for the Sustainability Appraisal depended on whether the modifications would be likely to have any significant additional environmental effects than those which had already been the subject of adequate appraisal. This also was a matter for the planning judgment of, first, the Inspector and then WCC and SDNPA. For the reasons that the Inspector explained (see above), the Inspector and the two authorities were well entitled to assess that the modifications required would not be likely to have any significant additional environmental effects, and that no further strategic environmental assessment was required under the Directive or the Regulations. Again, the assessment made could not be said to be irrational or unlawful.

135. On the basis of this assessment, the Sustainability Appraisal prepared by WCC was appropriate and sufficient as the environmental report for the Core Strategy as finally adopted. WCC and SDNPA were entitled to adopt and proceed on the basis of the Inspector's assessment that the Sustainability Appraisal was adequate in relation to the Core Strategy to be adopted. They were not required under regulation 16 of the Environmental Assessment Regulations to produce another one.

136. For completeness, I mention a final point made in Mr Cahill's skeleton argument, that there was no consideration of the housing allocation for WCC in a further document, the PUSH South Hampshire Strategy. This does not assist Zurich. As Mr Cahill himself acknowledged, it was agreed that little weight should be given to this document. There is no good basis on which it could be said that the omission to refer to it as a reasonable alternative requiring sustainability appraisal was irrational or in any way unlawful.

137. For these reasons, the various aspects of the third Ground of challenge also fail.

Conclusion

138. For the reasons set out above, the challenge by Zurich to the Core Strategy is dismissed.