

Case No: CO/4055/2014

Neutral Citation Number: [2015] EWHC 370 (Admin)

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

Manchester Civil Justice Centre  
Strand, London, WC2A 2LL

Date: 19/02/2015

**Before:**

**MR JUSTICE STEWART**

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**Between:**

**Satnam Millennium Limited**  
**- and -**  
**Warrington Borough Council**

**Claimant**

**Defendant**

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**Christopher Lockhart-Mummery QC** (instructed by **King & Wood Mallets**) for the  
**Claimant**

**David Manley QC** (instructed by **DLA Piper**) for the **Defendant**

Hearing dates: 03 & 04 February 2015

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**Judgment**

**Mr Justice Stewart:**

1. The Claimant is a developer and owns some 65 hectares of land known as Peel Hall Farm (“Peel Hall”) in the designated suburban area of Warrington. The land is annotated on the Key Diagram of the adopted Local Plan.
2. The Claimant’s application is under section 113 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act). The Claimant seeks to quash/remit parts of the Local Plan Core Strategy (Local Plan) for Warrington. Depending upon my rulings on the Grounds of challenge, the parties have agreed to try to resolve precisely which parts of the Local Plan would be quashed and remitted. The Local Plan was adopted by the Defendant on 21 July 2014.
3. An outline chronology of relevant events in relation to the Local Plan is as follows:

Nov-Dec 2011	public consultation on the Council’s Pre-Publication Draft Core Strategy,
May 2012:	publication of the Council’s Submission Draft Core Strategy,
September 2012:	submission of the Submission Draft Core Strategy to the Secretary of State for Communities and Local Government for examination,
11 December 2012:	the Examination Inspector (“the Inspector”) holds an exploratory meeting,
June 2013:	the examination hearings take place,
August 2013:	consultation on proposed modifications to the draft Local Plan,
January 2014:	further period of consultation on proposed modifications to the draft Local Plan,
5 March 2014:	further examination hearing,
12 May 2014:	the Inspector issues his report,
21 July 2014:	adoption of the Local Plan,
28 August 2014:	this claim issued.
4. The Claimant, who has for some years promoted Peel Hall for residential/mixed use development, made representations throughout the evolution of the Local Plan. Their aim was that the Local Plan should provide what they submit is an appropriate level of housing development, and having Peel Hall allocated for primarily residential development or, at least, to have the status of a “Strategic Location”.
5. The summary criticisms of the Local Plan are:

- (i) That it fails to provide an appropriate level of housing development in Warrington over the plan period of 2006 – 2027.
- (ii) It does not allocate Peel Hall for residential development – at a late stage in the process it allocated the Omega site as a Strategic Location for the development of 1100 dwellings.
- (iii) It abandons previous policy CS9 which gave Peel Hall and other locations the status of Strategic Locations.

### **Statutory and Policy Materials**

6. The main relevant statutory policy and guidance materials are set out in Appendix 1 to this judgment.

### **Ground 1: Relevant Case Law**

7. Before I address the challenge under Ground 1 I shall mention certain principles which have emerged from the cases. A section 113 challenge can be brought on the basis of conventional public law principles – see Blyth Valley Borough Council v Persimmon Homes (North East) Limited<sup>1</sup>; Solihull MBC v Gallagher Estates Limited and Lioncourt Homes (“Gallagher”)<sup>2</sup>.
8. If a Local Planning Authority (LPA)/an Inspector do not properly reflect the requirements of National Policy and Guidance, then the Local Plan is open to a section 113 challenge.
9. In Gallagher the Court of Appeal upheld the High Court’s decision remitting the LPA’s Local Plan because the process failed to provide an objective assessment of full housing needs (OAN). This meant that the Inspector’s approach in relation to housing provision was neither correct nor lawful.
10. Paragraph 47 NPPF provides:

“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”.

In relation to this requirement the Court of Appeal had previously stated<sup>3</sup>:

“That qualification contained in the last clause quoted is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure.”

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<sup>1</sup> [2008] EWCA Civ. 861

<sup>2</sup> [2014] EWCA Civ. 1610

<sup>3</sup> City and District Council of St Albans v Hunston Properties Limited [2013] EWCA Civ. 1610

11. In Gallagher the Court of Appeal stated:

(Paragraph 10) "... the making of the OAN is an exercise which is prior to, and separate from, the application to that assessment of the impact of other relevant NPPF policies: the phrase "as far as is consistent with the policy set out in this Framework" "is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs"...."

(Paragraph 16) "...The NPPF indeed effected a radical change. It consisted in the two-step approach which paragraph 47 enjoined. The previous policy's methodology was essentially the striking of a balance. By contrast paragraph 47 required the OAN to be made first, and to be given effect in the Local Plan save only to the extent that that would be inconsistent with other NPPF policies...The two-step approach is by no means barren or technical. It means that housing need is clearly and cleanly ascertained.... "[h]ere, numbers matter; because the larger the need, the more pressure will or might be applied to [impinge] on other inconsistent policies."

In paragraph 18 the Court of Appeal said that the two step approach was mandatory.

### **Ground 1**

12. The Claimant summarised this Ground in the Skeleton Argument in this way:

"The Defendant and the Inspector misdirected themselves in law and policy, by failing to meet the critical requirement that the Local Plan should identify and address the full, objectively assessed needs for market and affordable housing ("OAN") in Warrington. The Defendant, aided and abetted by the Inspector, failed to have proper regard to national guidance in the National Planning Policy Framework ("NPPF") and the National Planning Policy Guidance ("PPG") in that it failed to identify the OAN for housing, including affordable housing, whether in Warrington or the housing market area."

13. In order to set the scene, it is necessary to have a little historical background:

- (i) In 2004 RPG13 (Regional Planning Guidance for the North West) became part of the statutory development plan for the area. Policy SD2 stated "In Warrington the focus should be on achieving regeneration and restructuring of the older areas and not allowing further significant outward expansion of the settlement onto open land beyond existing commitments..." Policy UR7 sought to "minimise the amount of land needed for new housing..." RPG13 had a rate of housing growth for Warrington as 380 dpa (dwellings per annum). This figure had been based on 1996 projections.

- (ii) In 2006 the Warrington Unitary Development Plan (UDP) was adopted with Policy HOU1 providing for 380 dpa in the period 2002 – 2016 with no housing development on greenfield sites; Policy HOU2 required that housing development that did not contribute to the regeneration of inner urban areas was to be refused.
- (iii) The Defendant published a Strategic Housing Market Assessment in 2007. This identified a total annual shortfall in Warrington of 1313 dpa stating “the results are driven by demand and are not constrained by any supply limitation, such as that in the draft RSS”.
- (iv) The RSS (Regional Spatial Strategy for the North West) superseded RPG13 in 2008. Policy RDF1 of the RSS said that in locations such as Warrington “development should be focused in and around the centres of the towns and cities. Development elsewhere maybe acceptable if it satisfies other policies...emphasis should be placed on addressing regeneration and housing market renewal and restructuring.”
- (v) In 2010 the DCLG (Department for Communities and Local Government) published 2008 based household projections for 2008 – 2028. The growth in households in Warrington was 840 households per annum.
- (vi) In October 2011 the Mid Mersey Strategic Housing Market Assessment (SHMA) was published. This was in respect of the boroughs of Halton, St Helens and Warrington. Applying the DCLG household projections for 2010 – 2026 a growth in households of 13,800 was projected i.e. 862 dpa. That report also identified a net annual need for affordable housing in Warrington of 477 dpa.
- (vii) In late 2011 the Defendant consulted on Proposed Policy CS2 which provided for housing growth at the rate of 500 dpa (net of clearance) between 2006 and 2027.
- (viii) In May 2012 the Defendant published its proposed Submission Draft Core Strategy, the planned provision for housing being the same as in Proposed Policy CS2. This was two months after publication of NPPF. A Housing Background Paper was also published in May 2012.

Matters appear from the Housing Background Paper which are of importance:

- (a) referring specifically to the NPPF requiring Local Plans to be informed by robust evidence and a SHMA to be used to clarify housing need and demand, and to provide an understanding of how the local housing market works, the Defendant refers back to the November 2007 study (updated in 2009) and states:

“A balanced housing market assessment resulted in a figure of 1313 dwellings per annum being required – this assessment looks at the imbalance in terms of mix and type of housing between supply and demand if the

market was totally unconstrained by Policy and local considerations and assuming all demand should be met” (paragraph 3.3).

- (b) In paragraph 3.8 reference is made to the SHMA “in the collective sense” identifying national household projections of 1560 dpa with Halton pursuing 500 dpa, St Helens 570 dpa and Warrington 500 dpa. It is said “this equates to a collective 1570 which aligns well with the national projections for the sub region.”
- (c) Three options were then considered. Option 2 was “prioritising development of Inner Warrington brownfield sites with selective release of other sites.” (para 5.12).
- (d) In para 5.17 and 5.18 the Paper says that option 2 would equate to an annualised average of 458 dwellings which would “fall slightly short of the requirement from an economic perspective (497 pa) and those set out in the SHMA which relate to national household projections (730 pa) and a completely unconstrained balancing the housing market assessment (1313 pa). *cf* Also para 5.24.
- (e) Finally, before selecting option 2 as the most appropriate option, para 5.33 states:

“Whilst the baseline option 2 position would result in an annualised average which would fall short of meeting projected housing needs, option 2 does allow for the selective release of additional sites within the plan period....a figure of 500 dwellings pa more closely aligns with projected housing needs; would meet more than “native growth”; and would align with the aspired level of new homes set out in the sub regional economic strategy.”

- (ix) In May 2012 the Defendants also published the Strategic Background Paper. That contained references to the RSS which was subsequently revoked in 2013. Amongst other matters it is stated:

- “The Core Strategy broadly continues the strategy established in the UDP, though there are some adjustments to it”<sup>4</sup>
- “The housing land requirement taken forward in the Preferred Option reflects the regional distribution established in the approved RSS...The Core Strategy continues to respect the priority afforded to regeneration in

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<sup>4</sup> Paragraph 2.18

the region and the associated strategic distribution of the development that at this point in time remains part of the approved development plan”<sup>5</sup>

- “The preferred option for the Core Strategy (Strategic Option 2) largely continues the regeneration emphasis of development established within RSS and the adopted Unitary Development Plan”<sup>6</sup>.

- (x) In October 2012 the Core Strategy (Local Plan) for St Helens was adopted.
- (xi) The Inspector held an exploratory meeting for the purposes of the examination on 11 December 2012. In January 2013 the Defendant issued a paper<sup>7</sup> which said that as at 1 April 2012, 5075 of the total planned provision of 10,500 had been delivered, leaving a residual target of some 5425 new homes to be planned for between 2012 and 2027, equating to an annualised average of 362 dpa across the remaining 15 years of the plan period.
- (xii) In January 2013 the Defendant issued Appendix A, Housing Scale and Distribution, saying that the housing provision of 500 dpa had also been derived by reference to the approach advocated by former PPS3 (paras 32 – 33). This document also stated as a Core Assumption:

“Regional priorities for investment and development in the associated distribution of housing need and demand established in RPG/RSS will be maintained as a key factor in establishing the Borough’s housing requirements.”
- (xiii) In March 2013 the Defendant issued a further Response Paper which acknowledged that Warrington’s needs were not to be considered in isolation<sup>8</sup>.
- (xiv) In April 2013 the DCLG issued its 2011 based interim<sup>9</sup> household projections for the period 2011 – 2021. The projected growth in households for Warrington was 1040 per annum.
- (xv) In April 2013 the Core Strategy (Local Plan) for Halton was adopted.
- (xvi) Otherwise, the brief chronology is set out in paragraph 3 of this judgment.

14.1 The Inspector made the following findings:

- (i) That the Mid Mersey HMA and the SHMA were “critical to the soundness of the Plan” (para 50).
- (ii) “...the Plan provision of 500 dpa would ensure that Warrington played its part in meeting the objectively assessed housing needs across the Mid Mersey sub regional housing market from 2006 to 2026” (para 61).

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<sup>5</sup> Paragraph 3.8

<sup>6</sup> Paragraph 5.8

<sup>7</sup> Examination Clarification, Housing Scale and Distribution

<sup>8</sup> See issue 1.8, paragraph 4; also paragraph 10

<sup>9</sup> Because population projections had not been determined

- (iii) “The spatial framework of the Plan takes on board the NWRSS regeneration agenda, which aligns itself with a number of the core principles in the Framework...” (para 63).
- (iv) “It is accepted that the Plan under provides housing in relation to both 2008 and the latest (2011) interim household projections, when taken in isolation. However, for the reasons already stated, I consider that Warrington’s housing provision should be assessed in relation to the projected need for the HMA as a whole”. (Para 65).
- (v) “The objective needs assessment for the HMA as a whole would be met by the provision of 500 dpa in Warrington” (para 71).
- (vi) “Although the vision of the Plan and its strategic objectives were prepared under the strategic direction and priorities of the NWRSS, it accords with the Framework (paragraph 47), which refers to meeting the housing needs in the housing market area (HMA), which for the reasons stated is the Mid Mersey sub region” (para 78).
- (vii) “The appropriate geographical unit or “building block” for assessing Warrington’s housing requirements is the Mid Mersey HMA, which has been defined objectively. It includes the Boroughs of Halton, St Helens and Warrington. The needs of the Mid Mersey HMA are some 1600 dpa over the plan period, of which Warrington should supply 500 dpa. Therefore the Plan, subject to the proposed main modifications, is consistent with meeting the full housing needs of Warrington over the plan period...” (para 86).
- (viii) “...I consider that the objectively assessed need for housing for Warrington has been considered as part of the Mid Mersey HMA; that the only permanent constraint has been the Green Belt; and that part of the support of the two neighbouring authorities in Mid Mersey HMA for a suppressed total within Warrington is predicated on the close relationship between jobs and housing within the HMA and the dominance of Warrington as the main employment area, which attracts in – commuters from the other two authorities.” (para 88).
- (ix) “The Hunston Court of Appeal Judgment stated, in essence, that Inspectors are not entitled to use a housing requirement figure derived from a revoked plan, which of course means that Local Plans cannot rely on the constrained housing requirement set out in URS. In fact, the submitted plans breached the RS housing figures by a significant margin, and at no point during examination has the Council’s housing provision case relied on the RS, either directly or as a proxy, as was the case in the Hunston judgments. In conclusion I consider that the Hunston judgments have not necessitated a radical rethink of the planned housing provision...” (paras 89 and 90).

14.2 The issue is whether the Inspector’s Report is in accordance with the law and with policy. The Claimant breaks that down into five separate issues, namely:

- Issue 1 – Does the statutory framework require a local plan to identify the social and development needs arising in its area, and plan for the same?
- Issue 2 – Do National Policy and Guidance require a Local Plan to identify the social and development needs arising in the area of the Local Planning Authority, and plan for the same?
- Issue 3 – Did the Defendant/Inspector direct themselves properly to national policy and guidance and identify full OAN at all (i.e. even in relation to the HMA)?
- Issue 4 – Did the Defendant/Inspector misdirect themselves in assuming that the housing needs of Warrington could or would be met in Halton and/or St Helens?
- Issue 5 – Did the Defendant/Inspector identify affordable housing need as part of the full OAN?

### **Ground 1 – Issue 1**

15. The central findings of the Inspector are his conclusions on Housing requirement as set out in paragraphs 86, 88 – 90 above.
- 16.1 The Claimant relies upon section 13(1), 15, 17(3)(6), 19(1A) 28, 38(3)(b) and 38(6) of the 2004 Act. They particularly emphasise:
- (i) The duties of the LPA in respect of matters affecting/relating to the development/use of land “in their area”<sup>10</sup>.
  - (ii) The requirement to specify if there are any development plan documents to be prepared jointly with any other LPAs, and the power of two or more LPAs to agree to prepare one or more joint local development documents (section 15 and 28).

Based upon this, the Claimant points out that the LPA must understand the needs of its area and plan to meet those needs. There is no joint plan or agreement to prepare a joint plan between Warrington/Halton/St Helens. On this basis, the Claimant submits that the Defendant/Inspector did not conform to the statutory framework.

- 16.2 Mention should also be made of section 19(2)(a) which requires the LPA in preparing a Local Plan to have regard to national policies and advice contained in guidance issued by the Secretary of State; also by section 20(5), the purpose of the independent examination by the Inspector is to determine whether a Local Plan is “sound”. As to this there is no further definition of “sound” and one has to have regard to paragraph 182 NPPF (see below).

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<sup>10</sup> *cf* also regulations 2(1), 6(1), 14(26) and 48(4) and (5)(a) and Regulation 48(6) and (7) of the Town and Country Planning (Local Development) (England) Regulations 2004; these were superseded by the 2012 Regulations: Regulation 2(1), Regulation 5, Regulation 6, Regulation 9, Regulation 18(2)(c), Regulation 34 and Regulation 35(1).

17. Before dealing with Issue 1, I will consider Issue 2.

### **Ground 1 – Issue 2**

18. In terms of the NPPF, reference is made to paragraphs 14, 17, 47, 153, 156, 157, 159 and 182. Paragraph 14 under the heading “Plan Making” requires LPAs positively to seek opportunities to meet the development needs “of their area”. The Claimant points throughout these paragraphs to words such as “their area”, “its area” (LPA’s area) etc.
19. Also account must be taken of paragraph 17 NPPF which requires every effort to be made objectively to identify and then meet housing development needs of an area and paragraph 47 which requires LPAs to boost significantly the supply of housing. LPAs 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 Policy set out in this Framework....”
20. NPPF paragraph 159, requires LPAs to have a clear understanding of housing needs in their area and to “prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where the housing market areas cross administrative boundaries...” The SHMA has to identify the scale and needs of housing and the range of tenures that the local population is likely to need over the planned period which: “...addresses the need for all types of housing, including affordable housing....”
21. Finally paragraph 182 requires the LPA to submit a plan which it considers “sound” namely, “positively 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...”
22. Reference is also made by the parties to the Guidance under the PPG, relevant extracts from which are set out at Appendix 1.

### **Ground 1: Issues 1 & 2 – Discussion**

23. The relevant HMA in the present case covers the Warrington/Halton/St Helens areas. Therefore, the HMA, not unusually, does not coincide with administrative boundaries<sup>11</sup>. These three areas comprise the Mid Mersey sub regional housing market, a grouping established since the days of the North West RSS and reaffirmed most recently through the Mid Mersey SHMA (October 2011).
24. According to the Defendant’s documents, paragraph 47 NPPF makes clear that the OAN for housing is to be identified by reference to the relevant HMA.<sup>12</sup> The Claimant, on the other hand, points to the statutory references to the LPA’s “area” together with other references to the LPA’s area in the PPG<sup>13</sup>. As to the references to

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<sup>11</sup> See the Defendant’s Hearing Statement WBC – C (S10 – LDF118) in response to the Inspector’s issue 1.7; also paragraph 12 of the statement of Michael Bell dated 3 October 2014

<sup>12</sup> The Defendant relies also in this regard to the NPPG’s references to the HMA in the section “Housing and Economic Development Needs Assessment” paragraph 003 – 007 and paragraph 008.

<sup>13</sup> See NPPG “local plans” paragraph 002 and 003

the HMA the Claimant says (i) that National Policy and Guidance recognises that most administrative areas are not self contained in relation to their development needs and those needs are sensibly considered in the context of the needs and development capacity of proximate administrative areas. (ii) Re paragraph 47 NPPF that an LPA has to assess the needs in its own area, but then has to use its evidence base to ensure that Local Plan meets the full OAN in the housing market area, which may/may not cross administrative boundaries. (iii) In relation to paragraph 159 NPPF, that the SHMA is to assess “their” (ie. the LPA’s) full housing needs, working with the neighbouring authorities where HMAs cross boundaries. This, they say, is consistent with their general proposition. The Claimant contends that the Defendant’s submission, based on certain Policy extracts, that approaching development needs solely on the basis of a HMA which crosses the administrative boundaries, contravenes the statutory framework.

25. The authorities do not yet deal with whether the OAN must be of the individual LPA or the HMA, if the HMA crosses administrative boundaries. In my judgment, as a matter of principle, the law in relation to Issue 1 and Issue 2 ie. the Statutory Framework and the National Policy and Guidance can be distilled in this way:

- (i) The 2004 Act, in relation to the sections cited, refers to the LPA’s “area”. The LPA’s statutory duty is and must be in relation to their area. Thus, the primary duty of the LPA is, to assess the needs of the LPA area. The question remains as to how this is achieved.
- (ii) Para 47 NPPF requires the Local Plan to meet the full OAN in the HMA. That much is clear.
- (iii) Paragraph 159 NPPF is helpful in clarifying this. It is to be noted that it deals particularly with housing. It begins by requiring LPAs to have a clear understanding of housing needs “in their area”. It then proceeds to require LPAs to prepare a SHMA to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. In other words, the LPA has to have the clear understanding of their area housing needs, but in assessing these needs, is required to prepare an SHMA which may cross boundaries.
- (iv) The PPG Local Plan provisions, paragraphs 002 and 003, refer to the LPA’s “area” and do not sit easily with this analysis. Nor do they sit easily, however, with the specific Housing etc needs assessment PPG paragraphs, 003, 007 and 008, which emphasise the needs assessment in the context of the HMA; this part of the PPG states on its face that the related Policy is paragraph 159 NPPF.
- (v) Insofar as the general provisions in paragraph 14 and the plan making provisions in paragraphs 153 and 157 NPPF refer to the “area”, that is to be read as above.
- (vi) Under section 28 of the 2004 Act, two or more LPAs may agree to prepare one or more joint Local Development documents. Para 179 NPPF requires LPAs to work collaboratively with other bodies. The Local Planning section of the NPPG (paragraph 007) reemphasises the duty to cooperate between LPAs and other public bodies when preparing the plan “where there are matters that would

have a significant impact on the areas of two or more authorities.” Paragraph 007 points out that the joint Local Plan “is one means of achieving this”, stating “Less formal mechanisms can also be used.”<sup>14</sup>

### **Ground 1: Issue 3**

26. Against that Statutory/Policy/Guidance background, what is the actual position in the present case? Issue 3 is in two parts. I shall deal firstly with the second part, namely whether the Defendant/Inspector identified a full OAN at all, even in relation to the HMA.
27. The starting point for the assessment of OAN is the publication by DCLG of its household projections.<sup>15</sup> These are prepared by reference to administrative areas.
28. I have already stated that LPAs should have a clear understanding of housing needs in their own area. Did the Defendant have such a “clear understanding”? The Defendant’s submission is that they did and that that figure was 862 dpa. The Claimant contests this and says that this figure was never assessed by the Defendant (nor by the Inspector). I find that it was so assessed by the Defendant and by the Inspector. In summary:
  - (i) It was assessed as an integral part of the SHMA. Paragraph 4.24 of that document relies on the 2008 DCLG projections. Figure 4.14 then provides a figure for all three Boroughs. The figure for Warrington equates to the 862 dpa. The figure for the Mid Mersey region equates to 1560 dpa.
  - (ii) In the March 2013 Response Paper “Issues: 1.8 Housing Requirements” the Defendant referred to the Housing Background Paper (May 2012) which identified varying levels of annualised needs ranging between 434 and 1313 and continued (paragraph 8) that the Defendant considered an appropriate benchmark for objectively assessed housing need was provided by way of the 2008 DCLG Household projections. This is clearly adopting the same benchmark as in the SHMA, namely 862<sup>16</sup>
  - (iii) In January 2013 Appendix A, Housing Scale and Distribution document, reference is made to the fact that St Helens and Halton Core Strategies had been examined and found sound. Figure 4.14 SHMA is reproduced with the following statement “The Warrington element of the total planned requirement for the Mid Mersey area is less than indicated by the LA based Household projection as indicated in figure 4.14 – Warrington’s need is in the region of c860.” This again clearly adopts a Warrington needs figure of around 862 dpa while commenting that their residual delivery under the SHMA, taking into account St Helens and Halton’s contribution, was 490 dpa.
  - (iv) The Claimant relies heavily on the Housing Background Paper of May 2012. That Paper refers to the SHMAs without highlighting the 862 dpa figure. It

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<sup>14</sup> I do not read para 010 if the Housing etc part of the NPPF as stating that a joint plan is the only permissible way to prepare an OAN across boundaries.

<sup>15</sup> *cf* the Gallagher case in the High Court [2014] EWHC 1283 (Admin) para 37(ii).

<sup>16</sup> In fact the DCLG figure was 840 but that is within reasonable tolerance levels

refers to the 1313 dpa being the figure “If the market was totally unconstrained with Policy and local considerations and assuming all demand should be met. The assessment took no account of future additions to the stock from new build”<sup>17</sup> This Paper discusses household projections and promotes option 2 by reference to its consistency with the residual figure of some 500 dpa. It does not of itself specifically identify the 862 dpa for Warrington, before taking into account the affect of the other Boroughs.

(v) Turning to the Inspector’s report, paragraphs 61 – 79 are under the heading “Has Warrington’s Full Housing Requirements Been Identified?” He specifically notes<sup>18</sup> the 2008 DCLG Household projections indicating Warrington’s figure of 850 dpa. In paragraph 65 he points out that it is accepted that the Plan under provides housing in relation to that figure.<sup>19</sup> It is clear at this point that he appreciates from the 2008 figures there will be under provision but says that he considers that Warrington’s housing provision should be assessed in relation the projected need for the HMA as a whole. In his conclusion on the housing requirement he says in paragraph 86 “The needs of Mid Mersey HMA are some 1600 dpa over the planned period, of which Warrington should supply 500 dpa.” This figure i.e. the 1600 is specifically stated to be from the SHMA. It is clearly a reference to figure 4.14, the breakdown of which shows 862 dpa for Warrington.

(vi) Therefore the Inspector said that the needs for the Mid Mersey HMA were some 1600 dpa over the plan period. This, with its analysis to be found in the Mid Mersey HMA, was the OAN of the HMA. This, though it could have been more clearly stated, was in my judgment sufficient compliance with the Statute/Policy/Guidance and with the requirement to assess fully and objectively the housing need.<sup>20</sup>

29. The remaining issue remaining part of Issue 3 is whether the Defendant/Inspector failed to direct themselves properly to national policy and guidance. Criticism is levelled against the Defendant and the Inspector on the basis that the figure of 500 dpa first appeared in November/December 2011 and was never changed. This is factually accurate. It is also true that this was originally determined by reference to now revoked policies and guidance in the UDP, the RSS and PPS3. The Claimant’s case is that it remained contaminated by these policies which progressively became out of date, at the latest by May 2013.

30. It is unsurprising given the timeframe that the outdated policies were part of the evolving process. I do not accept the Claimant’s criticism. The Inspector clearly took it on board as a point in paragraphs 89 and 90 of his Report. He rejected it. It is correct that in the earlier document of January 2013, namely Appendix A, Housing Scale and Distribution, reference was made to the fact that the figure of 500 dpa “has also been derived by way of reference to the other considerations listed and hence approach advocated by the former PPS3”. Nevertheless, this was the secondary basis.

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<sup>17</sup> Paragraph 3.3;

<sup>18</sup> Sub paragraph 64(i)

<sup>19</sup> He also recognises the 2011 interim household projections which were higher but which he determines to be unreliable in paragraphs 67 – 69 of the Report.

<sup>20</sup> cf Gallagher [2014] EWHC 1283 (Admin), para 99; Gallagher Court of Appeal paragraphs 10 and 16.

Totally independently and in my judgment lawfully, the earlier part of the document referred to the SHMA, referred to the HMA's need as 1560 dpa and to Warrington's need being in the region of 860 dpa, and adopted the approach of the St Helens and Halton Core Strategies having been found sound and, on their housing requirement provision figures, leaving a residual 490 units for Warrington to deliver.

31. I do not find any criticism of the Defendant or the Inspector on this Ground to be valid. It was consistent with Policy to reduce the starting figure of 862 for Warrington to reflect the SHMA provision as a whole as part of the OAN process. As paragraph 88 of the Inspector's report makes abundantly clear the OAN for housing for Warrington, considered as part of the Mid Mersey HMA, was then reduced to a "suppressed total" "predicated on the close relationship between jobs and housing within the HMA and the dominance of Warrington as the main employment area, which attracts in-commuters from the other two authorities."
- 32.1 The Claimant also submitted that there was no evidence that the 1560 dpa for the HMA is an NPPF compliant figure. However there was no specific development of this theme in the argument. I note in this regard that the Halton and St Helens plans have been adopted and have been found to be sound. That finding, in conjunction with the Inspector's Report which I am considering, is sufficient to dispose of that criticism.
- 32.2 The PPG<sup>21</sup> requires that the starting point number i.e. that suggested by household projections, should be adjusted to reflect appropriate market signals. These are set out in full in Appendix 1. The Claimant says that the Inspector's Report is silent on the topic and therefore there was an unlawful failure to have regard to the material considerations in the Guidance which is made in relation to NPPF, paragraph 17. The difficulty with this submission is that on the basis of the evidence before the Court, it is wholly unclear that any party to the process, including the Claimant and other developers, suggested market signals might modify the DCLG housing projections. In an ideal world the Defendant and the Inspector should have specifically noted this, but there was nothing before the Court to suggest that the outcome would have been in any way affected. In any event, in the circumstances it would seem to be a pointless exercise to remit on this basis.

#### **Ground 1: Issue 4**

33. The Claimant further says that there was a mis-direction by assuming that Warrington's needs could/would be met by Halton/St Helens.
34. The Inspector states in paragraph 66 of his report:
- "It is clear from the SHMA and the evidence provided by the Halton and St Helens Councils, that there is an understanding between the three Mid Mersey Local Authorities that the HMA growth of 1560 dpa is intended to meet the needs of all three authorities, despite the lack of formal agreement to this effect, and that there is a need to ensure a consistent approach across the Mid Mersey HMA..."

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<sup>21</sup> Housing and Economic Development Needs Assessment, paragraphs 019 And 020

35. The Claimant says that not only is there no agreement, there is not even a memorandum of understanding; the Local Plan for St Helens says the provision of 570 dpa is in order to meet “its growth aspirations” and the adopted Local Plan for Halton states that the provision of the 500 dpa meet the need of Halton.
36. Nevertheless, the evidence is clear that the Inspector was right that there is an understanding between the three local authorities. In particular the first joint statement by Halton BC and St Helens Council, at paragraph 1.7 under the SHMA heading, references to the fact that “Para 4.25 of the Mid Mersey SHMA states that taking account of the 570 in St Helens and 500 in HBC, there is a residual 490 dwellings left over for Warrington to meet the 2008 based HH projections for the entire Mid Mersey HMA of 1560 dwellings pa.” It is also stated “we consider that an approach where Warrington seeks solely to have regard to its geographic area alone without any regard to the wider housing market area is similarly not supported by the evidence base raising questions of soundness.”
37. I do not regard the wording of the Local Plans for St Helens/Halton to be in conflict with this.
38. For those reasons I do not consider there is any illegality in the approach of the Defendants/the Inspector on issue 4.

#### **Ground 1: Issue 5**

39. Paragraphs 47 and 159 NPPF require respectively that the Local Plan meets the full OAN for affordable housing in the HMA and that the SHMA addresses the need for all types of housing, including affordable housing.
40. The Claimant submits:
- (i) That the assessed need for affordable housing is 477 dpa
  - (ii) The Defendant/Inspector unlawfully failed to identify this need
  - (iii) The NPPF requires full affordable housing needs to be identified as part of the OAN so that the figure can be subject, if appropriate, to the paragraph 14 NPPF constraints.
41. In his report the Inspector said:
- “Affordable Housing
- 102 Policy SN2 sets the framework for securing a mix of housing type. It requires all developments of five or more dwellings to 20% provision for affordable housing (AH), with the proportion rising to 30% on developments of 15 or more dwellings on sites outside the town centre and Inner Warrington, and 30% on all Greenfield sites. The policy was tested by a *Viability Assessment* in September 2010 and an *Additional Note* in January 2013 in response to my request for clarification. The *Additional Note* included sensitivity testing

of a wide range of development scenarios, covering schemes from 5 – 100 dwellings, with varying dwelling mixes, a range of AH proportions (10 – 40%), and the application of these scenarios to indicative locations within the borough.

103. This viability work supports Policy SN2's AH target and demonstrates that the Plans requirements as a whole do not threaten the deliverability of the Plans AH provisions. The potential number of AH units could be exceeded on certain sites, such as those with low existing use values and/or where grant contributions would be forthcoming. The Policy requires demonstration of lack of viability where developers claim that the proportion of AH sought by the Council would not be achievable, and it gives a clear steer on the proportion of social rented and intermediate housing being sought by the Council.

104. The Council's Housing Service supports the AH targets and thresholds in Policy SN2, whilst stressing the importance of negotiation and ensuring a reasonable ongoing provision rather than placing an undue focus on trying to meet the same fixed parameters on every site. The Council's main modification to clarify the need for flexibility in negotiating precise dwelling types on a site by site basis, linked to locally identified needs with reference to the most up to date SHMA..., is required on the grounds of effectiveness.”

42. Mr Bell's statement deals with the affordable housing need at paragraph 23 – 27. He points out that the 2011 SHMA identified a net annual need for affordable housing in Warrington of 477 dpa and 2593 dpa across the sub region. He said that the resulting numbers in calculating affordable housing will typically exceed what can realistically be delivered in practice and therefore, in accordance with paragraph 47 NPPF, total affordable housing need should be considered in the context of its likely delivery as a proportion of mixed market and affordable housing development. He also points to Policy SN2 of the Local Plan which sets out means whereby the Defendant will seek positively to maximise the supply of affordable housing through the planning system consistent with NPPF.
43. The question is whether there has been compliance with Policy. I find that there has not been compliance. The reasons are as follows:
- (i) The assessed need for affordable housing was 477 dpa.
  - (ii) This assessed need was never expressed or included as part of the OAN.
  - (iii) Under the “Housing Requirements” section of the Report the Inspector does not deal with affordable housing. Paragraphs 102 – 104 set out above is under a section entitled “Other Housing Needs”. This is in the context

of Policy SN2 which relates to the percentage of housing developments that should incorporate affordable housing.

- (iv) No is there anything in Mr Bell's statement which suggests that the proper exercise was undertaken. This exercise is:
  - (a) having identified the OAN for affordable housing, that should then be considered in the context of its likely delivery as a proportion of mixed market/affordable housing development; an increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes<sup>22</sup>;
  - (b) the Local Plan should then meet the OAN for affordable housing, subject only to the constraints referred to in NPPF, paragraphs 14 and 47.

### **Ground 2 and 3**

- 44. Ground 2 is that the Defendant failed to carry out Strategic Environmental Assessment/Sustainability Appraisal (SEA/SA)<sup>23</sup> in accordance with the requirements of European and Domestic Law.
- 45. Ground 3 is that the Defendant and the Inspector unlawfully predetermined the outcome of the Local Plan process prior to proper and systematic SEA/SA.
- 46. After setting out some background, I will deal first with Ground 3.
- 47. SEA Directive 2001/42/EC requires SEA to be undertaken at every stage of the preparation of the Local Plan. The Directive is transposed into English law in the Environmental Assessment of Plans and Programmes Regulations 2004 ("the 2004 Regulations"). It is common ground that:
  - (a) the SEA must be carried out at all stages of the production of a Development Plan Document;
  - (b) all reasonable alternatives under consideration must be assessed;
  - (c) defects in the process can be rectified but not as a bolt-on consideration of an already chosen preference.<sup>24</sup> In this regard Beatson LJ in Chalfont St Peter Parish Council v Chiltern DC etc<sup>25</sup> said "It is clear from the Directive and the Regulations that a sustainability appraisal must be carried out at each stage of the development of the Core Strategy and... that "reasonable alternatives to the challenged policies be identified, described and evaluated before the choice [is] made"."

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<sup>22</sup> PPG Housing and Economic Development Needs Assessments, paragraph 029

<sup>23</sup> The only reference in statute to the SA is in S19(5) of the 2004. In reality the challenge is re the SEA.

<sup>24</sup> See Cogent Land LLP v Rochford DC [2012] EWHC 2542 (Admin)

<sup>25</sup> [2014] EWCA Civ. 1393 (para 75)

48. It is agreed that prior to the SA Report Addendum January 2014 the proposed modifications had not been prepared in the light of an SEA assessment that dealt with reasonable alternatives. The Defendant published for consultation Post Submission Proposed Modifications on 19 August 2013, including modification reference MMO5 with regard to an identified level of housing provision at a particular strategic site (Omega), allocated under Policy CS7 of the Local Plan and modification MM08 deleting draft policy CS9. The Defendant concedes that the August 2013 document did not include a consideration of reasonable alternatives<sup>26</sup>. Therefore, the further exercise in sustainability appraisal had to be performed. URS Environment and Infrastructure UK Ltd (URS) were commissioned as external consultants to undertake this exercise and their report, dated January 2014, is the SA Report Addendum.
49. The Inspector's report recommended a strategic housing proposal at Omega and Lingleymere (Omega) and the deletion of the CS9 sites which included Peel Hall. The Claimant's case is that there is no clearer example of the later SEA being a "bolt-on consideration of an already chosen preference". In support of that the Claimant refers to the following:
- (i) By 30 July 2013 the Inspector issued his report to the Defendant for fact check purposes. Paragraph 56 of that report mirrors paragraph 92 of final May 2014 Report in recommending the Omega allocation and the deletion of the CS9 sites<sup>27</sup>.
  - (ii) In an email dated 7 August 2013 the Defendant's planning officer indicated the proposal to subject Policy CS7 (Omega) and other policies to SEA. He wrote "we do not consider that the modifications result in a departure from the overarching strategic option pursued, and see no reason to reassess options at a strategic level. At the more localised policy level however, we are proposing to reassess the impact of policies CS7...upon the SA objectives, but initial work suggests the changes would result in further positive effects only..." This approach was endorsed by the Inspector in an email dated 8 August 2013.
  - (iii) On 19 August 2013 the Defendant published its Post Submission Proposed Modifications to the Local Plan Core Strategy. In a sustainability appraisal update report is the incorrect statement that it "had incorporated the statutory requirements to undertake a Strategic Environmental Assessment (SEA).
50. In addition to the above the Claimant relies upon the Defendant's Officer (a) on 18 October 2013 stating that Defendant Council saw no need to consider reasonable alternatives before asking URS for the "independent option" and (b) on 12 November 2013 referring to the fact that the Defendant has resolved to progress with "remedial" SA work in accordance with the recommendations provided by URS. Therefore, according to the Claimant, the Defendant and

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<sup>26</sup> This is despite the document stating on its face that it "has incorporated the statutory requirements to undertake a Strategic Environmental Assessment (SEA)"

<sup>27</sup> The Claimant had suspected that this was the case and sought unsuccessfully over a number of months to obtain the earlier Inspector's report. It was finally released by the Inspectorate pursuant to an application under CPR 31.17.

Inspector had predetermined their position in relation to Omega/Peel Hall by August 2013 without lawful consideration of reasonable alternatives; the SEA process commenced some months later was in effect a “bolt on”.

51. There is a witness statement from Ian McCluskey dated 4 October 2014. Mr McCluskey is a Senior Consultant working for URS. He sets out the background to the Defendant undertaking SA and then responds to the Claimant’s points.
52. As regards the allegation that there was a bolt on exercise to justify a predetermined strategy, he accepts<sup>28</sup> that although in the period of June to August 2013 the Defendant considered there were no reasonable alternative approaches to the proposed modifications that needed to be assessed as part of the process of updating the Report, the Defendant did not make its rationale in these matters clear in the Report of August 2013. Therefore, at that stage the proposed modifications had not been prepared in the light of a transparent assessment of any reasonable alternatives. He says that when URS were commissioned in late 2013 by the Defendant, they were not made aware of the July 2013 Inspector’s Fact Check report and that report formed no part of their assessment of the SEA work that the Defendant had undertaken or the subsequent discussion of reasonable alternatives in the SA Report Addendum Report that URS produced.<sup>29</sup> The Inspector requested details of the Defendant commissioning instructions to URS to be submitted to the EiP at the time of the final hearing session in March 2014<sup>30</sup>. For these reasons his witness statement, signed with a statement of truth, says that the URS work was undertaken independently and without bias and was not a bolt-on consideration of an already chosen preference. This was accepted by the Inspector. The Claimant does not challenge Mr McCluskey’s *bona fides*.
53. I pause at this stage to assess and determine the position at August 2013 and whether, in accordance with ground 3, what finally emerged was essentially a bolt-on justifying a predetermined strategy. My decision is that as of August 2013, had nothing further taken place, then the proposed modifications had not been prepared in the light of a lawful SEA. The Inspector in the Final Report held that the URS initiative and subsequent developments in early 2014 were not confirming a predetermined position. Although one can understand the Claimant’s scepticism and their request to invite the court to “reflect on the reality”, I do not accept their submissions. I am impressed by the evidence of Mr McCluskey and the detail which he sets out in his statement as to the lack of awareness by URS of the Inspector’s Fact Check report of July 2013 and that the URS work was undertaken independently and without bias.
54. I appreciate that the Claimant says that the determination was made by the Defendant Council and the Inspector, both of whom reached essentially the same decision as at July 2013. I also appreciate that there is no evidence from the Officers of the Defendant Council. Nevertheless, I am not persuaded that Ground 3 is made out.

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<sup>28</sup> Paragraph 9

<sup>29</sup> Paragraph 14

<sup>30</sup> Paragraph 16

55. That leaves Ground 2. The Claimant alleges that the SEA in the January 2014 Addendum still failed to comply with European and Domestic Law. The simplest way into this issue is via the 2004 Regulations. By Regulations 5, 8(2), 8(3)(a) and 12(1) – (3) a report has to contain the matters in schedule 2. These Regulations and schedule 2 (the relevant paragraphs) are to be found in Appendix 1. Certain key matters are agreed, namely: there was no compliance by the Defendant with paragraphs 4, 7, 9 and 10. As to paragraphs 6(b), (d), (e), (j) and (m), the Defendant accepts that there were omissions. In relation to the paragraph 6 omissions, the Defendant submits that they were covered by page 46 of the URS Report which stated:

“Where Policies and amendments would have no impact on a particular sustainability theme, then these are not included in the discussion and it should be assumed that the impact is negligible.”<sup>31</sup>

56. The Guidance under Directive 2001/42 requires that each 10 paragraphs of the Annex, which is reproduced in Appendix 2 to the 2004 Regulations, is to be examined in the light of the requirements in Article 5. (Paragraph 5.19). Paragraph 5.30 of the Guidance makes it clear that the purpose of the non-technical summary is to make the key issues and findings of the Environmental Report accessible and easily understood by the general public as well as by the decision makers.

57. My finding is that there was substantial non-compliance with the requirements of schedule 2 to the 2004 Regulations in respect of all the paragraphs which I have set out above. I do not accept that the conclusions on page 55 of the URS Report can be said to be a mere procedural defect. The Defendant submitted that the deficiencies were more of form than substance. Therefore, that I should exercise my discretion not to quash on these grounds. In relation to this submission, I have considered the principles in Walton v Scottish Ministers [2012] UKSC 44<sup>32</sup> and the case of Seaport Investments Ltd.<sup>33</sup> I determine that it would be wholly wrong to exercise my discretion to refuse to quash on those grounds.

58. For completeness I briefly deal with the final issue under Ground 2, namely was it lawful for the Defendant/Inspector to fail to consider alternative options for housing growth in Warrington reflecting the needs of Warrington on the basis that “I do not consider options for Warrington in isolation to be reasonable alternatives for the SA to appraise.” The Defendant concedes that if it lost on Ground 1 then it must fail on this basis also. The converse was not accepted by the Claimant who submitted that the starting point according to Government Guidance, namely the DCLG projections, must be a reasonable alternative; in addition, one then factors in the alternative housing figures. Therefore, according to the Claimant, the Defendant had to consider figures in the region of

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<sup>31</sup> Further, the Defendant says that although some of the particular headings in paragraph 6 were not specifically followed, they were incorporated under different generic headings in subsequent pages of the URS Report and in Appendix 2 to that Report.

<sup>32</sup> Paras 125, 126, 129 – 140

<sup>33</sup> [2007] NIQB 62, paras 27, 34

862 – 1040 dpa. The Claimant's response was based on Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government and others<sup>34</sup>. In paragraph 90 the judge said that the LPA has a substantial area of discretion as to the extent of the enquiries which need to be carried out to identify the reasonable alternatives which should then be examined in greater detail. I do not need to determine this point in the light of the fact that I have decided that Ground 2 is made out by the Claimant in any event.

### **Summary**

59. Under Ground 1, the Claim succeeds on Issue 5 only.

- The Claim succeeds on Ground 2
- The Claim fails on Ground 3.

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<sup>34</sup> [2014] EWHC 406 (Admin)

## APPENDIX 1

# Planning and Compulsory Purchase Act 2004

### 13 Survey of area

(1) The local planning authority must keep under review the matters which may be expected to affect the development of their area or the planning of its development

(2) These matters include—

- (a) the principal physical, economic, social and environmental characteristics of the area of the authority;
- (b) the principal purposes for which land is used in the area;
- (c) the size, composition and distribution of the population of the area;
- (d) the communications, transport system and traffic of the area;
- (e) any other considerations which may be expected to affect those matters;
- (f) such other matters as may be prescribed or as the Secretary of State (in a particular case) may direct.....

### 15 Local development scheme

(1) The local planning authority must prepare and maintain a scheme to be known as their local development scheme.

(2) The scheme must specify—

- (a) the documents which are to be local development documents;
- (b) the subject matter and geographical area to which each document is to relate;
- (c) which documents are to be development plan documents;
- (d) which documents (if any) are to be prepared jointly with one or more other local planning authorities;
- (e) any matter or area in respect of which the authority have agreed (or propose to agree) to the constitution of a joint committee under section 29.....

### 17 Local development documents

(1) Documents which must be specified in the local development scheme as local development documents are—

- (a) documents of such descriptions as are prescribed;
- (b) the local planning authority's statement of community involvement.

(2) The local planning authority may also specify in the scheme such other documents as they think are appropriate.

(3) The local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area....

(6) The authority must keep under review their local development documents having regard to the results of any review carried out under section 13 or 14.

(7) Regulations under this section may prescribe—

- (a) which descriptions of local development documents are development plan documents;
- (b) the form and content of the local development documents;
- (c) the time at which any step in the preparation of any such document must be taken.

### 19 Preparation of local development documents

.....

(1A) Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change....

(2) In preparing a local development document the local planning authority must have regard to—

(a) national policies and advice contained in guidance issued by the Secretary of State;

.....

(f) the community strategy prepared by the authority;

(5) The local planning authority must also—

(a) carry out an appraisal of the sustainability of the proposals in each document;

(b) prepare a report of the findings of the appraisal.

## 20 Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.....

(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.

## 28 Joint local development documents

(1) Two or more local planning authorities may agree to prepare one or more joint local development documents.

(2) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document

(3) For the purposes of subsection (2) anything which must be done by or in relation to a local planning authority in connection with a local development document must be done by or in relation to each of the authorities mentioned in subsection (1) in connection with a joint local development document.

## 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.....

### 37 Interpretation

.....

(3) A development plan document is a document which—

- (a) is a local development document, and
- (b) forms part of the development plan.....

### 38 Development plan

....

(3) For the purposes of any other area in England the development plan is—

.....

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area.

.....

(6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

### 113 Validity of strategies, plans and documents

(1) This section applies to—

.....

(c) a development plan document;

.....

and anything falling within paragraphs (a) to (g) is referred to in this section as a relevant document.

.....

(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.

.....

(7) The High Court may quash the relevant document—

- (a) wholly or in part;
- (b) generally or as it affects the property of the applicant.

(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

(8)An interim order has effect until the proceedings are finally determined.

(9)The appropriate power is—

(a)Part 1 of this Act in the case of a revision of the regional spatial strategy;

(b)section 60 above in the case of the Wales Spatial Plan or any revision of it;

(c)Part 2 of this Act in the case of a development plan document or any revision of it;

(d)sections 62 to 78 above in the case of a local development plan or any revision of it;

(e)sections 334 to 343 of the Greater London Authority Act 1999 (c. 29) in the case of the spatial development strategy or any alteration or replacement of it.

(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.

.....

## National Planning Policy Framework

14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.

For **plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.....

## Core planning principles

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which

decisions on planning applications can be made with a high degree of predictability and efficiency;.....

- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;.....

## 6. Delivering a wide choice of high quality homes

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 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 sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;

## Plan-making

### Local Plans

153. Each local planning authority should produce a Local Plan for its area....

.....

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

- the homes and jobs needed in the area;...

157. Crucially, Local Plans should:

- plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of this Framework;

.....

indicate broad locations for strategic development on a key diagram and land-use designations on a proposals map;.....

### **Housing**

159. Local planning authorities should have a clear understanding of housing needs in their area. 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. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
  - meets household and population projections, taking account of migration and demographic change;
  - addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and
  - caters for housing demand and the scale of housing supply necessary to meet this demand;.....

## 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 coordinated 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.

## 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;.....

## **NPPG**

# **Housing and economic development needs assessments**

### ***The approach to assessing need***

.....

Paragraph: 003 Reference ID: 2a-003-20140306

### ***What is the definition of need?***

Need for housing in the context of the guidance refers to the scale and mix of housing and the range of tenures that is likely to be needed in the housing market area over the plan period – and should cater for the housing demand of the area and identify the scale of housing supply necessary to meet that demand.....

Assessing development needs should be proportionate and does not require local councils to consider purely hypothetical future scenarios, only future scenarios that could be reasonably expected to occur.

Paragraph: 004 Reference ID: 2a-004-20140306

Can local planning authorities apply constraints to the assessment of development needs?

The assessment of development needs is an objective assessment of need based on facts and unbiased evidence. Plan makers should not apply constraints to the overall assessment of need, such as limitations imposed by the supply of land for new development, historic under performance, viability, infrastructure or environmental constraints. However, these considerations will need to be addressed when bringing evidence bases together to identify specific policies within development plans.

.....

Paragraph: 007 Reference ID: 2a-007-20140306

### ***With whom do local planning authorities need to work?***

Local planning authorities should assess their development needs working with the other local authorities in the relevant housing market area or functional economic market area in line with the [duty to cooperate](#). This is because such needs are rarely constrained precisely by local authority administrative boundaries.....

.....

### ***Scope of assessments***

Paragraph: 008 Reference ID: 2a-008-20140306

### ***What areas should be assessed?***

Needs should be assessed in relation to the relevant functional area, ie housing market area, functional economic area in relation to economic uses, or area of trade draw in relation to main [town centre](#) uses.....

Paragraph: 010 Reference ID: 2a-010-20140306

### ***What is a housing market area?***

.....

Where there is a joint plan, housing requirements and the need to identify a five year supply of sites can apply across the joint plan area. The approach being taken should be set out clearly in the plan.

.....

Paragraph: 015 Reference ID: 2a-015-20140306

### ***What is the starting point to establish the need for housing?***

Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.

The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies,

changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends.

Paragraph: 015 Reference ID: 2a-015-20140306

### ***What is the starting point to establish the need for housing?***

.....

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends.....

Paragraph: 019 Reference ID: 2a-019-20140306

### ***How should market signals be taken into account?***

The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:

- **Land Prices** Land values are determined by the demand for land in particular uses, relative to the supply of land in those uses. The allocation of land supply designated for each different use, independently of price, can result in substantial price discontinuities for adjoining parcels of land (or land with otherwise similar characteristics). Price premiums provide direct information on the shortage of land in any locality for any particular use.
- **House Prices** Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices. Longer term changes may indicate an imbalance between the demand for and the supply of housing. The Office for National Statistics publishes a monthly House Price Index at regional level. The Land Registry also publishes a House Price Index and Price Paid data at local authority level.
- **Rents** Rents provide an indication of the cost of consuming housing in a market area. Mixed adjusted rent information (adjusted to allow for the different types of properties rented in each period) shows changes in housing costs over time. Longer term changes may indicate an imbalance between demand

for and supply of housing. The Office for National Statistics publishes a monthly Private Rental Index.

- **Affordability** Assessing affordability involves comparing house costs against the ability to pay. The ratio between lower quartile house prices and the lower quartile income or earnings can be used to assess the relative affordability of housing. The Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.
- **Rate of Development** Local planning authorities monitor the stock and flows of land allocated, permissions granted, and take-up of those permissions in terms of completions. Supply indicators may include the flow of new permissions expressed as a number of units per year relative to the planned number and the flow of actual completions per year relative to the planned number. A meaningful period should be used to measure supply. If the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. The Department for Communities and Local Government publishes quarterly planning application statistics.
- **Overcrowding** Indicators on overcrowding, concealed and sharing households, homelessness and the numbers in temporary accommodation demonstrate un-met need for housing. Longer term increase in the number of such households may be a signal to consider increasing planned housing numbers. The number of households accepted as homeless and in temporary accommodation is published in the quarterly Statutory Homelessness release.

Revision date: 06 03 2014

Paragraph: 020 Reference ID: 2a-020-20140306

### ***How should plan makers respond to market signals?***

Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections. Volatility in some indicators requires care to be taken: in these cases rolling average comparisons may be helpful to identify persistent changes and trends.

In areas where an upward adjustment is required, plan makers should set this adjustment at a level that is reasonable. The more significant the affordability constraints (as reflected in rising prices and rents, and worsening affordability

ratio) and the stronger other indicators of high demand (eg the differential between land prices), the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be.

Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

The list of indicators above is not exhaustive. Other indicators, including those at lower spatial levels, are available and may be useful in coming to a full assessment of prevailing market conditions. In broad terms, the assessment should take account both of indicators relating to price (such as house prices, rents, affordability ratios) and quantity (such as overcrowding and rates of development).

Revision date: 06 03 2014

Paragraph: 029 Reference ID: 2a-029-20140306

### ***What is the total need for affordable housing?***

The total need for affordable housing should be converted into annual flows by calculating the total net need (subtract total available stock from total gross need) and converting total net need into an annual flow.

The total affordable housing need should then be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, given the probable percentage of affordable housing to be delivered by market housing led developments. An increase in the total housing figures included in the local plan should be considered where it could help deliver the required number of affordable homes.

<http://planningguidance.planningportal.gov.uk/blog/guidance/housing-and-economic-development-needs-assessments/methodology-assessing-housing-need/> - paragraph\_029  
Revision date: 06 03 2014

## **Local Plans**

### ***Local Plans – Key Issues***

.....

Paragraph: 002 Reference ID: 12-002-20140306

## ***What should a Local Plan contain?***

.....

The Local Plan should aim to meet the objectively assessed development and infrastructure needs of the area, including unmet needs of neighbouring areas where this is consistent with policies in the National Planning Policy Framework as a whole. Local Plans should recognise the contribution that Neighbourhood Plans can make in planning to meet development and infrastructure needs.

Paragraph: 003 Reference ID: 12-003-20140306

## ***How is a Local Plan produced?***

Local planning authorities develop a Local Plan by assessing the future needs and opportunities of their area, developing options for addressing these and then identifying a preferred approach.....

Paragraph: 007 Reference ID: 12-007-20140306

## ***Can a local planning authority produce a joint Local Plan with another authority or authorities?***

Section 28 of the [Planning and Compulsory Purchase Act 2004](#) enables two or more local planning authorities to agree to prepare a joint Local Plan, which can be an effective means of addressing cross-boundary issues, sharing specialist resources and reducing costs (e.g. through the formation of a joint planning unit).

The [duty to cooperate](#) requires local planning authorities and certain other public bodies to cooperate with each other in preparing a Local Plan, where there are matters that would have a significant impact on the areas of two or more authorities. A joint Local Plan is one means of achieving this [and those preparing Joint Plans will wish to consider a joint evidence base and assessment of development needs](#). Less formal mechanisms can also be used. In particular, local planning authorities should consider the opportunities for aligning plan timetables and policies, as well as for sharing plan-making resources.

## **The Environmental Assessment of Plans and Programmes**

### **Regulations 2004**

.....

## PART 2

### ENVIRONMENTAL ASSESSMENT FOR PLANS AND PROGRAMMES

#### **Environmental assessment for plans and programmes: first formal preparatory act on or after 21st July 2004**

**5.**—(1) Subject to paragraphs (5) and (6) and regulation 7, where—

(a) the first formal preparatory act of a plan or programme is on or after 21st July 2004; and

(b) the plan or programme is of the description set out in either paragraph (2) or paragraph (3), the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, in accordance with Part 3 of these Regulations, during the preparation of that plan or programme and before its adoption or submission to the legislative procedure.....

#### **Restriction on adoption or submission of plans, programmes and modifications**

**8**

.....

(2) A plan or programme for which an environmental assessment is required by any provision of this Part shall not be adopted or submitted to the legislative procedure for the purpose of its adoption before—

.....

(b) in any other case, the requirements of paragraph (3) below, and such requirements of Part 3 as apply in relation to the plan or programme, have been met.

(3) The requirements of this paragraph are that account shall be taken of—

(a) the environmental report for the plan or programme;.....

.....

## PART 3

### ENVIRONMENTAL REPORTS AND CONSULTATION PROCEDURES

#### **Preparation of environmental report**

**12.**—(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.

.....

## SCHEDULE 2

Regulation 12(3)

### INFORMATION FOR ENVIRONMENTAL REPORTS

.....

**4.** 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 Council Directive 79/409/EEC on the conservation of wild birds and the Habitats Directive.

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[http://planningguidance.planningportal.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/ - paragraph\\_007](http://planningguidance.planningportal.gov.uk/blog/guidance/local-plans/preparing-a-local-plan/-paragraph_007)

**6.** The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as—

- (a) biodiversity;
- (b) population;
- (c) human health;
- (d) fauna;
- (e) flora;
- (f) soil;
- (g) water;
- (h) air;
- (i) climatic factors;
- (j) material assets;
- (k) cultural heritage, including architectural and archaeological heritage;
- (l) landscape; and
- (m) the inter-relationship between the issues referred to in sub-paragraphs (a) to (l).

**7.** 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.

.....

**9.** A description of the measures envisaged concerning monitoring in accordance with regulation 17.

**10.** A non-technical summary of the information provided under paragraphs 1 to 9.