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Case Nos: CO/2173,2174,2175/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/12/2019

Before :

SIR DUNCAN OUSELEY
Sitting as a High Court Judge

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Between :

COMPTON PARISH COUNCIL (2173) **JULIAN CRANWELL (2174)** **OCKHAM PARISH COUNCIL (2175)**	**Claimants**
- and -	
GUILDFORD BOROUGH COUNCIL **SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT**	**Defendants**
-and-	
WISLEY PROPERTY INVESTMENTS LTD **BLACKWELL PARK LTD** **MARTIN GRANT HOMES LTD** **CATESBY ESTATES PLC**	**Interested Parties**

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Richard Kimblin QC (instructed by **Richard Buxton & Co**) for **Compton Parish Council**
Richard Kimblin QC and Richard Harwood QC (instructed by **Richard Buxton & Co**) for **Julian Cranwell**
Richard Harwood QC (instructed by **Richard Buxton & Co**) for **Ockham Parish Council**

James Findlay QC and **Robert Williams** (instructed by the solicitor to Guildford Borough Council) for the **First Defendant**
Richard Honey (instructed by the Government Legal Department**)** for the **Second Defendant**

James Maurici QC and Heather Sargent (instructed by Herbert Smith Freehills LLP **)** for the **First Interested Party**
Richard Turney (instructed by Mills & Reeve LLP) for the **Second Interested Party**
Andrew Parkinson (instructed by Cripps Pemberton Greenish LLP) for the **Third Interested Party**
Christopher Young QC and James Corbet Burcher (instructed by Eversheds Sutherland LLP) for the **Fourth Interested Party (in 2174)**

Hearing dates: 5,6 and 7 November 2019

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Approved Judgment

Sir Duncan Ouseley:

1. Guildford Borough Council submitted its amended proposed "Local Plan: Strategy and Sites (2015-2034)" to the Secretary of State for Housing, Communities and Local Government on 13 December 2017. It did so after public consultation on the 2016 version of the Plan and later on the amendments to it in the 2017 version, as eventually submitted. This submission was for the purpose of a Public Examination, PE, of the Plan, pursuant to s20 of the Planning and Compulsory Purchase Act 2004, by an Inspector appointed by the Secretary of State. The Inspector held the PE in June and July 2018. Guildford BC published the Main Modifications which it proposed asking the Inspector to make to the submitted Plan to make it sound; there was public consultation upon those proposed Main Modifications in September to October 2018. The publication in September 2018 of revised household projections, and the effect which that also had in reducing the need for housing in Guildford BC's area to meet needs from the neighbouring Woking BC area, caused Guildford BC to make representations to the Inspector about the housing requirements in the submitted Plan and its Proposed Modifications. In February 2019, the Inspector resumed the PE for two days to consider this issue. On 28 March 2019, the Inspector published his report. The Plan, with the Main Modifications he required, was adopted by Guildford BC on 25 April 2019. I shall refer to the adopted Local Plan as the LPSS.

2. The Claimants were all participants in the PE, Mr Cranwell as a member of Guildford Green Belt Group. They opposed the principle and extent of land which the submitted Plan proposed to release from the Green Belt, as well as the allocation for development of specific sites proposed for release from the Green Belt. The four Interested Parties were also participants at the PE, supporting the release of Green Belt sites in which they were interested, as well as contending that Guildford BC was proposing to make insufficient provision for housing needs.

3. The three Claimants have brought these challenges to the adoption of the LPSS, under s113 of the 2004 Act. The language of s113(3) is in familiar terms; a challenge can be brought on the grounds that the local plan is not within the appropriate powers or that a procedural requirement has not been complied with. The three claims were heard together, with argument and evidence produced for one being admissible and applicable in all three.

4. All Claimants challenge, with degrees of difference but on wide bases, the release of sites from the Green Belt and their allocation for development, with Mr Cranwell's contentions ranging the widest. His case was argued by Mr Kimblin QC and Mr Harwood QC in conjunction with the various points they were making on behalf of the Parish Council each represented; Mr Cranwell's advocate of choice was not available on the dates fixed for the hearing, but he was not let down by his substitutes. Compton Parish Council, represented by Mr Kimblin, in addition to the general arguments about the release of land from the Green Belt, focused on the removal from the Green Belt of the site known as Blackwell Farm, just west of Guildford town. Mr Harwood for Ockham Parish Council, likewise, focused on the former Wisley airfield site, its removal from the Green Belt and its allocation for a new settlement.

5. Mr Findlay QC for Guildford BC defended the LPSS from the challenges, supported by Mr Honey for the Secretary of State, taking a more active role than is common. They were supported by Mr Maurici QC for Wisley Property Investments Ltd which

was promoting the allocation of the former Wisley airfield for development, Mr Turney for Blackwell Park Ltd, a company owned by the University of Surrey which was promoting the allocation of the Blackwell Farm site for residential and research park use, Mr Parkinson for Martin Grant Homes Ltd which was promoting the allocation of a site at Gosden Hill Farm for residential purposes, and Mr Young QC for Catesby Estates Ltd which was promoting the allocation of a site for residential purposes north of Horsley railway station. The site specific oral arguments focussed on Wisley and Blackwell Farm. The Interested Parties' advocates adopted the submissions of Mr Findlay and Mr Honey, which were themselves in harmony if not unison, with limited additions.

6. I am grateful to all the parties for the way in which they agreed the statement of facts, and in effect agreed chronologies, and legal propositions, and in argument adhered to the case timetable so that it was completed within the allotted three days. The various grounds of claim were usefully distilled into issues.

7. The main general issue (numbered 2 in the list used by the parties) was whether the Inspector had erred in law in his approach to what constituted the "exceptional circumstances" required for the redrawing of Green Belt boundaries on a local plan review. This had a number of aspects, including whether he had treated the normal as exceptional, and had failed to consider rationally, or with adequate reasons, why Green Belt boundaries should be redrawn so as to allow for some 4000 more houses to be built than Guildford BC objectively needed. The scale of the buffer did not result, it was said, from any consideration of why a buffer of such a scale was required but was simply the sum of the site capacities of the previously allocated sites. There were two other general issues (1) and (7): (1) had the Inspector considered lawfully or provided adequate reasoning for not reducing the housing requirement, leaving some needs unmet to reflect the Green Belt policy constraints faced by Guildford BC? (7) Did Guildford BC breach the Environmental Assessment of Plans and Programmes Regulations 2004 SI No.1633, in deciding not to reconsider what might be reasonable alternatives to the proposed Plan when, in 2018, the objectively assessed housing needs figure was reduced from 12,426 to 10,678, with housing land supply allocations totalling 14,602. It was submitted that it ought to have considered alternatives such as removing the development allocation in the Green Belt from one or more of the contentious large sites.

8. The site specific considerations at the former Wisley airfield and at Blackwell Farm formed part of the attack on the Inspector's general approach to the release of land from the Green Belt.

9. But there were also site specific grounds of challenge. The first site specific issue, (4), relating to the former Wisley airfield, was the adequacy of reasons given by the Inspector in his report on the PE for reaching conclusions which, it was said, were inconsistent with the views expressed by an Inspector, accepted by the Secretary of State, on an appeal against the refusal of planning permission for a major residential development at the former Wisley airfield, taking up most of the Local Plan allocation there. The appeal Inquiry began before the PE and the decision emerged in the course of the PE. The second site specific issue at Wisley, (5a), concerned the extent of land removed from the Green Belt yet not allocated for development, termed "white land"; issue (5b) concerned the lawfulness and effect of the submission of the 2017 version of the Plan, when the further consultation on it was restricted to the 2017 changes, and

did not encompass unchanged aspects of the 2016 version, upon which there had already been consultation in 2016. The third issue, (8), concerned the lawfulness of the approach by the Inspector to the air quality impact of the Wisley allocation on the Thames Basin Heaths Special Protection Area, the SPA. It was initially said that the Conservation of Habitats and Species Regulations 2017 SI No.2012 required the decision-maker to leave mitigation and avoidance measures out of account; but the argument was refined so that it attacked the assessment that there would be no adverse effects, on the basis that there would still be exceedances of critical thresholds, even though the baseline levels of pollution would have reduced.

10. The site-specific issues raised in respect of the Blackwell Farm allocation were, (3), that the local exceptional circumstances relied on by the Inspector were not legally capable of being regarded as "exceptional", and that strategic and local "exceptional circumstances" overlapped, leading to double counting of exceptional circumstances. The other issue at Blackwell Farm was, (6), whether the Inspector erred in law in the way he considered the new access road. This would have to climb the escarpment to link to the A31, and a section of which would pass through the part of the Surrey Hills Area of Outstanding Natural Beauty, the AONB, which lay to the north of the A31. Should he have concluded that this would be "major development" in the AONB and so face a policy obstacle to its approval which could put the allocation at risk, or even prevent its being delivered? He should at least have taken this risk into account.

The legal framework for the public examination

11. The statutory functions of the PE, Inspector and plan-making authority are set out in s20 of the 2004 Act. The lawfulness of the steps taken before the PE were not generally at issue, but one earlier provision became relevant to issue (5b) and another to issue 7. I shall pick up those provisions when I come to those issues, and including the Town and Country Planning (Local Planning) (England) Regulations 2012 SI No.767, the 2012 Regulations.

12. S20(1) requires the local planning authority to submit every development plan document for examination, but (2), not to do so unless it considers that the relevant requirements have been complied with and that the document is ready for independent examination. That has a bearing on issue 5(b).

13. By s20(5), the purpose of the independent examination is to determine (a) whether the submitted Plan satisfies various statutory requirements, including having regard to national planning policies, (b) whether it is "sound", a term which has no statutory definition, but which is explained in the National Planning Policy Framework, NPPF, as set out later, and (c) whether any duty in s33A had been complied with. This is the duty of co-operation between local planning authorities "in maximising the effectiveness" with which local plans are prepared in relation to "strategic matters", that is "sustainable development… of land…which would have a significant impact on at least two planning areas...." This duty has superseded the provision of housing numbers for planning authorities through regional strategies.

14. There are provisions for those who make representations to be heard, and enabling the Secretary of State to consider particular matters and to control procedure. S20(7) requires the Inspector, if satisfied that the Plan is sound and that legal requirements have been met, to recommend that the Plan is adopted and "to give reasons for the

recommendation." If not so satisfied, he must recommend that the Plan is not adopted and give reasons for the recommendation; s20 (7A). S20(7B and C) applied here. If the Inspector does not consider that the Plan is "sound", as it stands, or that the various legal requirements of s20(5)(a) have been met, but that the duty to co-operate has been complied with by the local planning authority, he must recommend modifications to the document which would make it sound, and satisfy the requirements of s20(5)(a), if the submitting authority asks him to do so. These are known as Main Modifications.

15. If that course is followed, the reasons obligation in s20(7) applies to the final recommendation. The recommendation and reasons must be published. Minor modifications can be made by the submitting authority; they do not need to go through that Main Modifications process.

16. In fact, after the initial 12 days of hearings, Guildford BC prepared a schedule of Main Modifications which it was to ask the Inspector to recommend to it. These were the subject of public consultation; the responses were provided to the Inspector, before the resumed PE hearing in February 2019.

17. The NPPF provides an explanation of soundness, which Inspectors routinely apply. I set it out from [182] of the applicable 2012 version, in view of the debate before the Inspector, and before me about the release of Green Belt land to meet Guildford BC's own housing needs, and a portion of those from Woking BC's area:

> "**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 proportional evidence;
>
> **Effective** - the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
>
> **Consistent** with national policy - the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."

18. The judgment as to whether a plan is sound or not is plainly a planning judgment, unlawful only on the basis of general public law principles. A plan is not to be judged unsound by an Inspector simply because there might be a better way of dealing with an issue, or because the Inspector would have preferred a different approach, after hearing representations.

19. I described the inquisitorial nature of the process of the public examination, and its significance for the reasons which an Inspector has to give, in *Cooper Estates Strategic Land Ltd v Royal Tonbridge Wells BC* [2017] EWHC 224 (Admin) at [26-

29]. A similar issue on reasons was also considered in *CPRE Surrey v Waverley BC* [2019] EWCA Civ 1826 in [71-72], observing the distinction between the task of an Inspector on a public examination, considering soundness, the duty to co-operate and legal compliance, and on an appeal.

20. The conduct of this PE, including the number of participants and the preparation by the Inspector of question papers and agendas, amply bear out these different functions.

21. Before turning to the issues before me, it is necessary to set out some of the Inspector's Report.

The Inspector's Report

22. The first issue addressed in the Inspector's Report, IR, was whether the Plan made adequate provision for new housing, an issue which was at the heart of the need for Green Belt releases and of almost all the issues before me. The calculation of the objectively assessed housing need, the first topic under that heading, was not itself controversial before me. The variations in those figures over time were more relevant to the justification for the degree of "headroom" between the need figure and the capacity of the sites allocated to meet the need.

23. The Inspector's task was to judge the soundness of the Guildford BC's calculation of its Objectively Assessed Housing Needs, the OAN or OAHN. The outcome, after allowing for the change in September 2018 through the 2016-based household projections, was a requirement of 562 dwellings per annum, dpa, or 10678 dwellings during the Plan period; IR24. He decided not to make a further upwards adjustment for affordability, though recognising that there was a pressing affordability problem, as the figure of 562 dpa was already a 79% uplift over the demographic starting point of 313 dpa, and a significant increase above historic delivery rates. That uplift could be expected to improve affordability and to boost the supply of housing; IR 30.

24. He also decided not to increase the 562 dpa figure further by way of allowance for further affordable housing. Meeting the need for such housing of 517 dpa would require 1300 dpa, if 40% of every site were affordable housing. That level of housing would not be practicable, nor would an increase above 562 dpa be appropriate, IR31, "but it is further evidence of a pressing housing need and it lends strong support to the figure of 562 dpa rather than a lower requirement." The wider context supported 562 dpa; he referred to the importance of Guildford, its University, the successful science park and the "significant incursion" of students into the housing market, IR 33: "These factors, together with a seriously poor and deteriorating housing affordability and the very high level of need for affordable housing make a compelling case for a supply of housing significantly above historic rates."

25. The Inspector also saw 562 dpa as realistic in comparison with the housing requirements of the two other authorities in the West Surrey Strategic Housing Market Area, SHMA, Woking and Waverley BCs. He was well aware of their circumstances, having been the Inspector in the Waverley Local Plan PE, which found its way to the Court of Appeal on the challenge by CPRE Surrey, above.

26. He continued in IR 35, that the 562 dpa OAN figure was consistent with the characteristics of Guildford, its district and the wider context. A lower housing requirement, such as the 361 dpa put forward by some local participants:

> "would not have regard to the reality of Guildford's characteristics or its context, would pose a risk to local economic prospects and plans, would not adequately address housing affordability or the availability of affordable housing, would potentially increase the rate of commuting, and would be inconsistent with the assessed housing need of the other authorities in the housing market area. A higher requirement would imply a scale of uplift which would start to become divorced from the demographic starting point and from the context of the housing market area described above."

27. Although the Inspector is here considering the first stage in the assessment of the housing requirement, that is what the need figure is before the application of any policy constraints, the so-called "policy-off" figure, and is using those factors to support the soundness of 562 dpa, those factors are also relevant when he comes to consider whether a policy constraint should be applied, the so-called "policy-on" stage, to reduce the housing requirement figure, leaving an unmet need.

28. Finally, the Inspector analysed the unmet need from Woking BC's area. Various allowances had been made for it over the evolution of the Plan, including an allowance of 42 dpa in a proposed Main Modification. Although, after September 2018, Woking BC no longer claimed an unmet need, the Inspector considered that there probably was still an ongoing unmet need from Woking, not all of which would be accommodated by the allowance in Waverley. But it was unnecessary to make a specific allowance in Guildford's housing requirement on that account because the likely residual amount of unmet need could be accommodated within the Plan's "headroom", that is the difference between the requirement of 562 dpa, (10,678), and the number of dwellings that could be delivered from all sources over the life of the Plan, (14602).

29. The second topic which the Inspector had to consider in his Issue 1 concerned the delivery of an adequate supply of homes, providing a rolling five-year housing land supply throughout the Plan period. Guildford BC had accumulated a significant shortfall, amounting to some 66 dpa if spread evenly over the Plan period. This had to be met. NPPF [47], seeking to "boost significantly the supply of housing", required local planning authorities to:

> "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."

30. The housing trajectory is important; it is required by NPPF [47] to illustrate the expected rate of housing delivery, showing when sites may come on stream, how much each is expected to produce each year of production, and when they are

expected to cease production. This enables a planning authority to show whether it has or lacks a five-year housing land supply, what sites may be brought forward to cope with any shortfall, and how the rolling 5 year supply can be maintained over the plan period. This is concerned therefore with the delivery of the housing requirement. In the case of Guildford BC, its persistent shortfall in meeting housing needs meant that its five-year housing land requirement, together with the accumulated shortfall of 66 dpa, was increased by 20%, under the NPPF, for the purposes of calculating whether it had a five-year housing land supply.

31. The difference between the OAN of 10,678 homes over the plan period, and the potential to deliver 14,602 homes over that period was a central topic which the Inspector addressed under his Issue 5. But he introduced the need for that level of housing in IR 42-46. I set it out:

> "42. The housing trajectory indicates that there is potential to deliver 14,602 homes over the plan period. The difference between this and the total housing requirement of 10,678 homes has been raised during the examination in the context of whether there are exceptional circumstances to release land from the Green Belt. This is dealt with in more detail under Issue 5. But purely in terms of housing supply, there is enough headroom to ensure that the Plan remains robust in the event that there is slippage in the delivery of housing from the allocated or committed sites, avoiding the need to allocate reserve sites; and enough headroom to provide for the anticipated level of unmet need from Woking, bearing in mind that there would be a continuing level of undersupply over the period of Woking's newly reviewed plan. The overall plan provision would also provide more affordable housing and go further to address serious and deteriorating housing affordability.
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> 43. The reduced housing requirement in MM2 enables the plan to proceed without the [4] additional sites allocated by [Main Modifications], but it is not of an order that would justify the deletion of any of the strategic sites which, in addition to their substantial housing contributions, bring other significant benefits to the Borough through their critical mass and well-chosen locations. Again, this is discussed in more detail under Issue 5.
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> 44. No further sustainability appraisal is required in respect of the requirement of 562 dpa because the overall housing delivery figure of 14,602 homes falls within the range of eight delivery scenarios that were considered as reasonable alternatives, ranging from 13,600 homes to 15,680 homes and the housing allocations remain the same as in the submitted Plan except for [one].
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> 45. The trajectory indicates a 5 year housing land supply on adoption of 5.93 years rising to 6.74 years in year 5. The 5 year

> supply calculation includes a 20% buffer for past persistent under-delivery and uses the Liverpool method [spreading the catchup evenly over the plan period] in recognition of the contribution made by the strategic locations which typically have a longer lead-in time. These are the Council's figures and it is recognised that slippage could reduce this supply, but there is enough flexibility built in to the trajectory to maintain a rolling 5 year housing land supply.
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> 46. In conclusion, whilst the submitted plan's figure of 654 dpa is not sound because it does not reflect the most recent evidence, the Council's calculated housing requirement of 562 dpa, or 10,678 dwellings over the life of the plan, as set out in the revised version of MM 2 is sound. It reflects the latest evidence and is based on sound analysis. The overall level of housing delivery, currently calculated at 14,602 homes, will ensure that an adequate 5 year supply of land will be maintained and will ensure that the plan is robust; it will deliver sufficient housing to help address the pressing issues of affordability and affordable housing need, and contribute towards addressing unmet housing need in the housing market area."

32. Mr Findlay put considerable weight upon the housing trajectory, appended to the IR. This showed that the sequentially less preferred housing allocations around villages, to the north and west of West Horsley, near to Horsley Railway Station, at Send, Send Marsh/Burnt Common, and amounting to 945 dwellings, were required in the early part of the Plan period, in the first five years from adoption. They could not be omitted without Guildford BC failing to provide for the five year housing supply with the 20% buffer for past underperformance, and the 66 dpa contribution to meeting the shortfall. The larger contentious Green Belt sites, at the former Wisley airfield, Gosden Hill Farm and Blackwell Farm, were all required for their contribution to supply after the initial 3 or so years from adoption. They came on stream together, at a low rate, building up over the next five years, and increasing markedly in years 11-15, i.e.2029/30-2033/34, and continuing beyond the plan period in the case of the latter two.

33. The reasoned justification to Policy S2, the spatial strategy for 562 dpa and "at least" 10678 new homes, as modified, states at 4.1.11, in the language of the Inspector's Main Modifications:

> "National policies require that we meet objectively assessed housing needs, including any unmet needs from neighbouring authorities, where it is practical to do so and consistent with achieving sustainable development. Guildford's objectively assessed housing need has been based on a consideration of the latest 2016-based population and household projections. Applied to this demographic housing need is a necessary uplift to take account of market signals and affordable housing need, assumptions of future economic growth, and an increase growth in student population."

34. The total supply over the plan period amounted to 14,602 dwellings. The reasoned justification at 4.1.14, as modified, identified the national policy requirement for a demonstrable rolling 5 year housing land supply from the date of adoption, taking account of the accrued deficit with a 20% buffer. The expected phasing of sites was set out in the housing trajectory, in the form in which it had been appended to the IR.

35. The Inspector's Issue 2 concerned whether the Plan adequately addressed the identified housing needs "of all the community." The strategic housing allocation policies mattered in this context because the needs of gypsies, travellers and travelling showmen was to be addressed on sites of 500 homes or more.

36. His Issue 3 dealt with employment and business. This issue is relevant to these challenges because the Inspector said, IR60, that the larger residential-led allocated sites in the Green Belt "make substantial contributions towards meeting employment needs," including Gosden Hill Farm (10,000 sq.ms), Blackwell Farm (about 30,000 sq.ms of B1 use as an extension to the Surrey Research Park), and the former Wisley airfield (4,300 sq.ms). For some, including Gosden Hill Farm and former Wisley airfield, "the amounts of employment floorspace are an integral part of these residential-led mixed schemes. They are necessary to create balanced, sustainable development." Blackwell Farm contained a much larger business component, of a nature encouraged by the NPPF, and, he said at IR61: "Building on the success of the existing Research Park by allocating further land close to it for similar uses represents the best opportunity in the Borough to meet these objectives."

37. I have referred to those two issues because Mr Findlay was at pains to emphasise that the exceptional circumstances for the contentious Green Belt allocations included not just the provision of housing but provision for other uses as well, and that that was how the Inspector saw them, as I shall come to.

38. Issue 5 raised by the Inspector is critical to the challenges. It was entitled "Whether at the strategic level there are exceptional circumstances which justify altering Green Belt boundaries to meet development needs and whether the Plan's Green Belt policy is sound."

39. Before turning to the IR, I need to set out what the NPPF said about this subject since it provides the frame of reference for the Inspector's approach. NPPF [14] contains the presumption in favour of "sustainable development." This means that, in plan-making, 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:…specific policies in this Framework indicate development should be restricted." Designated Green Belt is one such restricting policy, in footnote 9. It is a core planning principle, NPPF [17], that planning should make every effort objectively to identify:

> "and then meet the housing, business and other development needs of an area….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."

40. The NPPF in section 9 set out the Green Belt policies. The fundamental aim was to prevent urban sprawl by keeping land permanently open; "the essential characteristics of Green Belts are their openness and their permanence." It identified in [80] the familiar five purposes of the Green Belt, pointing out that their general extent was already established. At [83] and following, it said:

> "83. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to the intended permanence in the long term, so that they should be capable of enduring beyond the plan period.
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> 84.When… reviewing Green Belt boundaries local planning authorities should take account of the need to promote sustainable patterns of development. They should consider the consequences for sustainable development of channelling development towards urban areas inside the Green Belt boundary, towards towns and villages inset within the Green Belt boundary or towards locations beyond the outer Green Belt boundary.
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> 85. When defining boundaries, local planning authorities should … define boundaries clearly, using physical features that are readily recognisable and likely to be permanent."

41. The Inspector set his consideration of his Issue 5 firmly in the context of whether exceptional circumstances existed, as required. Under the subheading "The need for housing" he said at IR79:

> "This has already been discussed under Issues 1 and 2. Guildford has a pressing housing need, severe and deteriorating housing affordability and a very serious shortfall in the provision of affordable homes. There is additional unmet housing need from Woking. There is no scope to export Guildford's housing need to another district; the neighbouring authorities in the housing market area are significantly constrained in terms of Green Belt and other designations and both have their own significant development needs. The overall level of provision will address serious and deteriorating housing affordability and will provide more affordable homes. The headroom can also accommodate the likely residual level of unmet need from Woking."

42. Likewise, at IR80, the Inspector found that land available for additional business development in the Guildford urban area was very limited, and it was unrealistic that much extra capacity could be obtained on existing sites such as the existing Surrey Research Park:

> "The ability to meet the identified business needs therefore depends on making suitable new land available and there is no

> realistic alternative to releasing land from the Green Belt. Exceptional circumstances therefore arise at the strategic level to alter Green Belt boundaries to accommodate business and employment needs."

43. The Inspector also concluded, at IR81, that it was not possible to rely on increasing the supply of housing within the urban areas so as to obviate alterations to the Green Belt boundary. Development opportunities in those areas had been thoroughly investigated and assessed; he referred to the identified constraints in the urban areas. Having canvassed various possibilities, he concluded that any extra yield from such sites "would fall a long way short of making the scale of contribution towards meeting overall development needs that would enable the allocated sites in the Green Belt to be taken out of the Plan."

44. The fourth subheading went to the heart of the issue underlying the argument before me: "Whether the difference between potential supply of 14,602 dwellings in the latest MM2 housing requirement of 10,678 implies that the plan should allocate fewer sites and release less Green Belt land." I need to set out almost all of it, in view of the Claimants' submissions. The passage is relevant to local exceptional circumstances and to the spatial distribution strategy which underlay the choice of sites.

> "83. The first point here is that the plan must be considered as a whole; it contains an integrated set of proposals that work together. As is discussed below in Issue 6, the strategic locations operate to deliver a range of benefits which cannot be achieved by smaller dispersed sites. A25 *Gosden Hill* provides a park and ride facility and part of the sustainable movement corridor and contributes towards a new railway station; A26 *Blackwell Farm* provides land to enable the expansion of an important research park, together with part of the sustainable movement corridor and it contributes towards a new railway station. They work together to provide housing, employment and sustainable movement across Guildford. Site A35 *Former Wisley airfield* provides the A3 slip roads and bus services and cycle network that benefit the allocations at Send, Send Marsh/Burnt Common and Ripley and feed into local stations; in turn, Burnt Common provides an employment facility for the Borough. The large sites also make an important contribution towards meeting the needs of gypsies, travellers and travelling showpeople. The sites all work in concert to deliver a sound, integrated approach to the proper planning the area.
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> 84. Secondly, the plan needs to be robust and capable of meeting unexpected contingencies such as delivery failure or slippage on one or more sites. It needs to be borne in mind that the housing requirement is a minimum figure, not a target. A robust strategy is particularly relevant for Guildford where longer term housing delivery is largely by means of large strategic housing sites. There is also uncertainty about the timing of the A3 RIS [road improvement strategy] scheme…; The headroom provides some flexibility over timing and

> ensures that if a degree of slippage does occur, the Plan is not vulnerable. The amount of headroom between potential housing provision and the housing requirement means it is not necessary to create safeguarded land which would have to be removed from the Green Belt to meet longer term development needs, or to identify reserve sites to be brought forward should sites fail to deliver as expected. In any case, if it had been necessary to identify reserve sites, they would almost certainly have had to be on land removed from the Green Belt.
>
> 85. Thirdly, that Plan needs to be effective over its life and have regard to potential changes in circumstances. To that end it contains a balance of short- and long-term sites. This can be seen in the housing trajectory…; The permitted and commenced sites and smaller allocations deliver the 5 year supply. These include for example the allocations at West Horsley, Send, Send Marsh/ Burnt Common and Ripley and on land at the inset villages. Land needs to be released from the Green Belt to allow these sites to be developed, in order to meet housing needs in the first 5 year of the Plan. When delivery from these sites starts to diminish, that from the strategic sites builds up. But large strategic sites have long lead-in times and development periods - their timespan may cover a number of plan reviews and housing requirement re-calculations. Circumstances may change, and new strategic sites cannot be brought forward quickly to meet revised housing requirements; they have to be planned well in advance. Therefore, by making the allocations now, the Council have aimed to future proof the Plan. This is in accordance with the NPPF which says that plans should have sufficient flexibility to adapt to rapid change. The Plan clearly demonstrates a flexible, integrated and forward-looking approach towards meeting present and future needs in the Borough and towards encouraging more sustainable modes of travel. Removing one or more sites would significantly diminish the Plan's ability to meet these objectives."

45. IR86 specifically dealt with whether development should be restricted having regard to the Green Belt, as raised by footnote 9 to NPPF [14]. The Inspector said:

> "86. Subject to the proposed Green Belt alterations, the Plan is capable of meeting objectively assessed needs with adequate flexibility. The alterations to the Green Belt boundary would have relatively limited impacts on openness as discussed in Issues 10 and 11 and would not cause severe or widespread harm to the purposes of the Green Belt. The allocations at A25 *Gosden Hill Farm* and A26 *Blackwell Farm* would be planned urban extensions rather than sprawl. Site A25 together with the allocations at Send and Burnt Common/Send Marsh would be visually and physically separate, as discussed in Issue 7 and

> would not add to sprawl or coalescence. A35 *Former Wisley airfield* would include a substantial amount of previously developed land and is separate in character from its wider Green Belt surroundings. The other Green Belt sites would be adjacent to settlements and would have very localised effects on openness. There is therefore no justification for applying a restriction on the quantity of development. Considerations in respect of the Surrey Hills Area of Outstanding Natural Beauty (AONB) and the Thames Basin Heaths Special Protection Area (SPA) do not alter this conclusion; see issue 7."

46. All this, concluded the Inspector in IR 89, amounted "to strategic-level exceptional circumstances to alter the Green Belt boundary to meet development needs in the interests of the proper long-term planning of the Borough." Local-level exceptional circumstances were considered later.

47. The soundness of the Plan's overall distribution of development was relevant to the Green Belt issues, and to "exceptional circumstances". The Inspector considered this next under Issue 6. At IR91 onwards, the Inspector accepted that the urban areas, inset villages and identified Green Belt villages could accommodate 4600 houses but not all Guildford BC's development needs. Land had therefore been identified for development beyond the Green Belt, in urban extensions to Guildford, in a new settlement at the former Wisley airfield, and in development around villages. Strategic and non-strategic sites were spread across the middle of the Borough, constrained by the SPA to the north and the AONB to the south. Five strategic sites, including Gosden Hill Farm and Blackwell Farm, both extensions to Guildford, and the freestanding Wisley site close to the junction of the A3 and M25, delivered a significant proportion of the housing and employment land needed. Gosden Hill Farm and the Wisley site were residential-led mixed-use allocations supporting a range of housing types and employment, social and community facilities, which would help provide improved highway and sustainable transport links. Blackwell Farm would deliver a large number of homes and a large employment allocation next to the Surrey Research Park.

48. At IR95, the Inspector summarised the "considerable advantages" of this spatial strategy:

> "Firstly, it allocates the largest amounts of development to the most sustainable locations, or those which can be made sustainable; secondly, it achieves a satisfactory spatial balance in a variety of locations and types of site; and thirdly, the strategic sites will accommodate a significant amount of the Borough's housing and employment needs whilst at the same time meeting their own social needs and contributing towards transport improvements that have wider benefits. The advantages of the last of these points is recognised by the Sustainability Appraisal and it justifies the inclusion of the larger sites including Gosden Hill Farm, Blackwell Farm and the former Wisley airfield."

49. Allocating more sites to the villages would risk eroding their character without achieving the social and transport benefits of the larger sites; further development beyond the Green Belt would risk creating a sprawl and could exacerbate highway problems. The inclusion of the strategic sites made for an effective plan meeting the sustainable needs of the Borough, IR97:

> "Their size facilitates the delivery of social, transport and other facilities that would be more difficult to achieve by spreading the same amount of development around on smaller sites. They serve housing, employment and social needs in different parts of the Borough, yet are well positioned in relation to Guildford. They are in locations where they do not significantly affect areas important for landscape and diversity."

50. The Inspector continued his analysis of the spatial strategy by considering, among other matters, the allocation of sites for growth in villages such as East and West Horsley, Send, Send Marsh/Burnt Common, and Ripley. He regarded the allocations as proportionate extensions to these medium-sized villages, with access to their facilities, and with the opportunity to assist or take advantage of transport or highway improvements associated with the strategic sites. They would make an important contribution towards the delivery of sites in the early years of the Plan. Subject to the Main Modifications, the Inspector concluded that the overall spatial development strategy was sound in every respect.

51. Issue 10 concerned whether various strategic allocations including Gosden Hill Farm, Blackwell Farm and the former Wisley airfield, were sound; and relates to the extent of housing allocations above the OAN figure of 10678. The Inspector had dealt with the justification for the location of the strategic sites and the strategic level exceptional circumstances for moving the Green Belt boundaries when dealing with the Spatial Strategy. Issue 10 concerned the local impacts of the larger allocations and the effectiveness of these specific policies for their development. The Inspector was here considering local "exceptional circumstances".

52. The Inspector considered Gosden Hill Farm at IR156 onwards. He introduced the issues in this way:

> "Policy A25 [the site] is located in the submitted Plan for a residential-led mixed-use development delivering about 2000 homes with a minimum of 1700 homes during the plan period, as well as gypsy and traveller pitches, retail and service facilities and primary and secondary schools. The delivery trajectory for the site is consistent with the assumed delivery of A3 improvements, but MM35 reduces the overall site capacity to about 1800 dwellings based on more recent master planning with a consequent reduction in the number of gypsy and traveller pitches to 6. The key issues are whether there are local-level exceptional circumstances to alter Green Belt boundaries, and whether the allocation is acceptable in terms of highway impact."

53. He made the following points about the Green Belt at IR 157:

> "…the site is adjacent to the built-up area of Guildford and its development would appear as a natural urban extension rather than a major incursion into the Green Belt. The Green Belt and Countryside study considered it to be a medium sensitivity land parcel. The landscape is not subject to any designation and is not crossed by any public right of way. The local topography and tree cover ensure that the site is not widely prominent, and it would be possible to establish a new defensible Green Belt boundary. As discussed above under Issue 7, in respect of openness and countryside impact, the cumulative impact of this allocation in combination with allocations to the east of Guildford is acceptable. MM35 responds to concerns about the visual impact by including a new requirement for increased landscaped buffer/ strategic planting with frontage development set back from the A3 and other measures to mitigate the visual impact. The selection of this site is therefore appropriate on the basis of its local characteristics, and exceptional circumstances exist at the Local-level to alter the Green Belt boundaries to facilitate the allocation."

54. Measures to cater for the increased traffic, including that brought about by the necessary improvements to the A3 junction, would promote sustainable travel options, including a new park-and-ride facility, plus assistance with the proposed Sustainable Movement Corridor, and a contribution towards a new railway station. Having considered other matters, the Inspector concluded that the allocation was sound.

55. The Inspector then turned at IR 164, to Blackwell Farm. This too was a residential-led mixed use allocation, for about 1800 homes of which all but 300 would be delivered in the plan period. A Main Modification raised the B1 floorspace extension to the Surrey Research Park to 35,000sm, of which 30,000 would be delivered in the plan period. There would be specialist and self build plots, 6 gypsy and traveller pitches, a primary and a secondary school, retail and community uses. "The key issues are whether there are local-level exceptional circumstances to alter Green Belt boundaries, the effect on the Surrey Hills AONB and the Area of Great Landscape Value, and whether the allocation is acceptable in terms of highway impact." He dealt with the Local-level exceptional circumstances as follows, at IR165:

> "As regards the local circumstances, the Green Belt and Countryside study identifies the site as a potential development area. It is on gently sloping land on the edge of Guildford adjacent to the Research Park and is well-enclosed by woodland and hedgerows which visually separate the allocation from the more open land to the west and would form good defensible boundaries. The site is well separated from the historic centre of Guildford by extensive development and does not contribute to the setting of the Cathedral or its historic core. It would appear as a logical addition to Guildford rather than an obtrusive extension into the wider Green Belt. It would make an important contribution towards meeting housing, employment and educational needs and has obvious locational

> advantages, firstly in terms of its position immediately adjacent to the Research Park presenting a unique opportunity to further enhance this already successful business cluster, and secondly in its ability to contribute towards sustainable transport including a new station. There are therefore exceptional circumstances at the Local-level to justify moving the Green Belt boundary to accommodate this site allocation."

56. I deal with what the Inspector said about the AONB, the access to the A31 and "major development," when I come to that ground. The Inspector considered other issues, including transport sustainability, before concluding that, subject to certain main modifications, the allocation was sound.

57. Next, the former Wisley airfield, Ockham; Policy A35. This was a residential-led development for about 2000 homes, plus about 100 sheltered or extra care homes, gypsy and traveller pitches, employment land, retail facilities services, community uses and a new primary and secondary school. The Inspector identified the key issues as being whether there were Local-level exceptional circumstances to alter the Green Belt boundary to accommodate the allocation, transport impacts and the effect on biodiversity.

58. The PE Inspector first dealt with the decision of the Secretary of State, accepting the recommendation of the appeal Inspector, dismissing the developer's appeal against the refusal of planning permission for up to 2068 dwellings on land included in the allocation, but which was not as extensive as the allocation. I set out what the PE Inspector had to say about it here, as objectors to the allocation understandably exploited its conclusions. The Inspector said, IR 181:

> "The principal reasons for refusal concerned Green Belt, the strategic road network and the character and appearance of the area. Many other issues were examined during the course of the inquiry, including the effect on the Thames Basin Heaths Special Protection Area, the local road network and air quality, but were not cited as reasons for refusal. The harm to heritage assets was considered less than substantial and was outweighed by the public benefits. It is important to note that this appeal decision was made in the context of the background of the saved policies of the Guildford Borough Local Plan 2003, against which the scheme was unlikely to be considered anything other than inappropriate development in the Green Belt and development affecting the character of the countryside. However the conclusion of this report is that there are compelling strategic-level exceptional circumstances to make significant alterations to the Green Belt boundary to accommodate the Borough's assessed housing, employment and other needs to 2034."

59. The Inspector then turned to the local-level exceptional circumstances at IR182, saying:

> "…the Green Belt and Countryside Study considered the site to be of medium Green Belt sensitivity. It shares little of the character of the countryside around it; most of the site is flat, rather featureless, contains a runway and hard surfacing and can be regarded in part as previously developed land. It is separated from much of Ockham by a valley and a small knoll. Development here would be fairly self-contained visually and would not add to the appearance of sprawl.
>
> 183. The allocation has the ability to deliver a significant contribution towards the Borough's housing requirement, helping to meet a pressing housing need as well as providing homes to meet the needs of particular groups. Its size means that it can support a suitable range of facilities to meet the needs of the new residents, creating the character of an integrated large new village with its own employment, schools, shops and community facilities, and it can support sustainable transport modes. This would avoid putting pressure on other areas of the Green Belt of greater sensitivity, and would avoid pressure on other communities too, because alternative smaller sites would be less able to deliver such a comprehensive range of facilities to serve the development. For all the above reasons there are exceptional circumstances at the Local-level to alter Green Belt boundaries to accommodate this allocation."

60. He noted that, at the time of the appeal, Natural England had been satisfied that the appeal proposal would not have a significant effect on the SPA, and it had confirmed that it had no objection in principle to the larger allocation site as there was sufficient land available to create additional Suitable Alternative Natural Greenspace, SANG. Then he concluded, after considering other topics, that the allocation was sound.

61. Next, transport. The transport impacts of the development strategy were relevant both to the selection of the sites and the overall extent of the allocations. The assumption behind the Plan had been that the A3 Guildford Road Investment Strategy (RIS) scheme would be delivered. The Inspector, IR 128, pointed out that planned development in the later stages of the plan period could be affected by the delivery of the A3 improvement scheme, which had implications for the delivery rates at Gosden Hill Farm, Blackwell Farm and one other major site.

62. There was also a link between additional A3 slip roads to deal with the development at Wisley airfield, which would relieve Ripley of some through traffic, and would also serve development at Send, Send Marsh and Burnt Common. New Guildford stations, as part of broader rail network improvements were to be funded by development contributions including from Gosden Hill Farm and Blackwell Farm; IR 137. Those two, and other site allocations, contained measures contributing to the provision of sections of the multi-modal Sustainable Movement Corridor; IR138. This Corridor linked new sites, new rail stations, a new park and ride site at Gosden Hill Farm, Guildford railway station, and town centre and Surrey University. Gosden Hill Farm, Blackwell Farm and Wisley airfield all had to provide a significant bus network.

Issue 1: did the Inspector consider and provide legally adequate reasons for his conclusion that the objectively assessed need for 10678 dwellings should be met in full, notwithstanding the consequent need for the release of land from the Green Belt?

63. Mr Kimblin submitted that the two stage process of establishing the housing requirement figure had not been followed. The first stage was the establishment of the objectively assessed housing needs without the application of any policy constraint. The second stage was to consider whether policy constraints, of which Green Belt was the one principally deployed here, required a housing requirement figure below those needs to be adopted. 89% of the area of Guildford Borough was covered by Green Belt policy.

64. The Inspector had only asked whether there should be a restriction on the 14602 figure. His task was to consider whether soundness required releases from the Green Belt for housing, bearing in mind that the NPPF itself recognised that the Green Belt was one of those constraints, applicable at the second, or policy-on, stage. Its application could mean that the OAN would not be met. The Inspector's approach, in any event, did not identify lawfully, or with adequate reasoning, the "exceptional circumstances" warranting release of land from the Green Belt to meet housing needs.

65. In addition to the large sites removed from the Green Belt, Mr Cranwell challenged the removal of other sites under this head. They included land north of Keens Lane (150 dwellings and a 60-bed care home within 400m of the SPA), the various sites making up the 945 dwellings in allocations around villages such as Send, Send Marsh/Burnt Common, the Horsleys, and land for new north facing slip roads to the A3 at Send Marsh. The challenge to them all is based on the general contention that there were no exceptional circumstances to warrant releasing land from the Green Belt generally, even if the application of that policy restraint meant that Guildford BC housing needs, as expressed in the OAN, would be unmet.

66. I accept that the two stage process, "policy-off" and "policy-on", is well known and applicable; the analysis comes from *St Albans CC v Hunston Properties Ltd* [2013] EWCA Civ 1610, and *Gallagher Estates v Solihull MBC* [2014] EWCA Civ 1610.

67. The NPPF itself recognises that the OAN at the policy-off stage may not be met by the conclusion of the policy-on stage. NPPF [47], set out above, accepts that the OAN is to be met "so far as is consistent with the policies set out in this Framework." NPPF [14] puts it slightly differently but to the same effect: those needs should be met "unless specific policies in the Framework indicate that development should be restricted." Those include Green Belt policies. But importantly for Local Plans, NPPF [83] recognises that the preparation or review of a Local Plan is the mechanism whereby Green Belt boundaries can be altered in "exceptional circumstances," and, as altered, should be capable of enduring beyond the plan period.

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

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

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

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

72. General planning needs, such as ordinary housing, are not precluded from its scope; indeed, meeting such needs is often part of the judgment that "exceptional circumstances" exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need. I accept that it is clearly implicit in the stage 2 process that restraint may mean that the OAN is not met. But that is not the same as saying that the unmet need is irrelevant to the existence of "exceptional circumstances", or that it cannot weigh heavily or decisively; it is simply not necessarily sufficient of itself. These factors do not exist in a vacuum or by themselves: there will almost inevitably be an analysis of the nature and degree of the need, allied to consideration of why the need cannot be met in locations which are sequentially preferable for such developments, an analysis of the impact on the functioning of the Green Belt and its purpose, and what other advantages the proposed locations, released from the Green Belt, might bring, for example, in terms of a sound spatial distribution strategy. The analysis in *Calverton PC* of how the issue should be approached was described by Jay J as perhaps a counsel of perfection; but it is not exhaustive or a checklist. The points may not all matter in any particular case, and others may be important especially the overall distribution of development, and the scope for other uses to be provided for along with sustainable infrastructure.

73. Mr Kimblin put forward Mr Cranwell's contention that the supply of land for ordinary housing, even with the combination of circumstances found here to constitute exceptional circumstances by the Inspector, could not in law amount to "exceptional circumstances." I cannot accept that, and I regard it as obviously wrong. These judgments were very much on the planning judgment side of the line; I do not see how they could be excluded from the scope of that phrase as a matter of law. This contention involves a considerably erroneous appreciation of the whole concept of "exceptional circumstances" and the role of the Inspector's planning judgment. Mr Kimblin accepted in oral argument that he might be putting it too high, but he said there still had to be something exceptional about the need.

74. It is of a piece with Mr Cranwell's further contention that the Inspector had ducked the issue of why the circumstances he found to be "exceptional" were "exceptional". The phrase "exceptional circumstances" should be considered as a whole, and in its context, which is to judge whether Green Belt boundaries should be altered in a Local Plan review. It is not necessary to explain why each factor or the combination is itself "exceptional". It does not mean that they have to be unlikely to recur in a similar fashion elsewhere. It is sufficient reasoning to spell out what those factors are, and to reach the judgment. There is a limit to the extent to which such a judgment can or should be elaborated.

75. I do not accept Mr Kimblin's further submissions on the way in which the Inspector considered the issue and reasoned his conclusions.

76. The order of magnitude of unmet need which these submissions contemplate is worth setting out, first. If there were to be no releases of land from the Green Belt in respect of any of those sites contentious to the Claimants in these proceedings, sites with a capacity for 6295 dwellings would not have been allocated; so on any view there would have been a shortfall against Guildford BC's OAN, of 10678, of over 2300, taking 6295 from 14602. The figure of 6295 includes the 945 sites in developments around villages without which the initial rolling 5 years supply could not be achieved, on the housing trajectory approved by the Inspector. If those under challenge were removed, there would have been a shortfall in supply at the end of 5 years. Here too the housing trajectory was essential to understanding the total picture.

77. There were in addition a further 447 dwellings on Green Belt sites which the Claimants in these proceedings did not challenge, but they still have to be deducted from the allocations for proper consideration of this issue. They all require exceptional circumstances to be shown; the distinction drawn by the Claimants between those which they make contentious and other releases from the Green Belt for housing is artificial. The deficit thus rises to over 2700 out of 10678. Mr Findlay did not agree either with the Claimants' calculation that none of the other sites were Green Belt developments; he said that at least 90 and more were Green Belt sites. I do not need to resolve that, because neither the Inspector nor Guildford BC's approach depended on the precise figure and the order of magnitude of need which would be unmet suffices to illustrate the point. Mr Findlay also pointed out that the Claimants' exercise ignored the other uses and infrastructure contributions which were an important part of the thinking behind the allocations; he said that such exercises as the Claimants had furnished me with had been a commonplace of the PE, and were simply grist to the mill of the planning judgment which it was for the Inspector to make. I agree.

78. Second, this issue did not arise at the PE without prior and careful consideration by Guildford BC. I shall deal with Sustainability Appraisals,SA, later but the approach contended for by Mr Cranwell was one of the alternatives addressed in SAs before the PE.

79. In the SA with the 2016 version of the submitted Plan, the options or reasonable alternatives discussed excluded expressly any potential for Guildford "to justifiably undersupply", i.e. provide for housing below the OAN figure. The option for providing no buffer was rejected as it would risk Guildford's OAN not being met in practice. The options with a buffer to help ensure that the OAN was met in practice ranged from OAN + 3% to OAN +14%, the latter including Wisley airfield. Higher buffers would enable some of Woking's needs to be met but the highest buffer considered was OAN+34%. The underlying figures differed from those in the adopted Plan but the question, whether the OAN should or should not be met, was considered.

80. In the 2017 version of the SA provision of housing below OAN was rejected again. I regard it as clear that the Inspector was to accept the soundness of this approach in his Report. It said:

> "Guildford Borough Council is committed to delivering its OAHN figure, having established that there is no potential to justifiably 'under-deliver' and rely on neighbouring authorities to meet the shortfall (under the Duty to Cooperate). Whilst Guildford Borough is heavily constrained environment, it does not *stand-out* as relatively constrained in the sub-regional context. This conclusion is reached on the basis of Duty to Cooperate discussions, past SA work (notably spatial strategy alternatives appraisal in 2013/14 …), an understanding of precedents being set elsewhere, and other sources of evidence. It is evidently the case that under-supplying in Guildford would lead to a range of socio-economic problems, given that Woking is already under-supplying within the HMA…. There is an argument for under-supplying to be preferable from an environmental perspective; however, this argument is far from clear-cut given an assumption that unmet needs would have to be met elsewhere within the HMA (i.e. within Waverley, which is heavily constrained) or elsewhere within a constrained sub-region. For these outline reasons, lower growth options- i.e. options that would involve planning for a level of growth below that necessary to meet OAHN - were determined to be unreasonable."

81. The Inspector, third, was satisfied that the duty to co-operate had been met; he had also been so satisfied when considering the Waverley Local Plan. The strategic housing market assessment, SHMA, involved the three Councils. Woking BC had insufficient capacity to meet its own needs, its boundaries tightly constraining the urban area. The duty to co-operate included consideration of Waverley and Guildford BCs providing part of the strategic housing area land supply for Woking BC's needs. There was no question of the duty to co-operate being invoked to ask either of those to meet Guildford BC's needs. There was no challenge to the lawfulness of his conclusion on the duty to co-operate.

82. Fourth, the Inspector's Report concludes that the allocations, involving releases from the Green Belt, taking the total supply of land up to 14602, with headroom over the 10678 OAN of 4000 dwellings, are justified by exceptional circumstances, strategic and local. Mr Kimblin accepted that, were I to conclude, as I explain later I do, that the challenge, under Issue 2, to the lawfulness of that later conclusion failed, it was inevitable that that lawful conclusion would also constitute a lawful and adequate explanation for why the OAN had not been restrained at the policy-on stage.

83. However, fifth, specific consideration was also given to that point by the Inspector; it was not just all swept up in the larger justification for the overall level of allocations. It was evident from the PE agenda that it was specifically identified as an issue, and was considered over a whole day. It was also related to the Inspector's Issue 9, the spatial strategy and whether there were exceptional circumstances for the amount of Green Belt releases, which was considered about two weeks later. As Mr Findlay and Mr Honey submitted, consideration of exceptional circumstances for the release of Green Belt land necessarily involves consideration of the application of restraint policies at the policy-on stage.

84. IR 22-38 are essentially dealing with the objective assessment of housing needs, stage 1, policy-off. But IR 35 is relevant to both stages. The policy-on stage was clearly considered in IR35. It also sets out why the OAN needs to be met by Guildford BC, apart only from the question of any contribution towards meeting unmet needs from Woking BC. The circumstances point clearly to the serious problems which would arise from a lower housing figure, such as 361dpa.That is the first reason why the policy restraint was not applied; there was a significant need which had to be met. The implication of Mr Kimblin's submission was that the Inspector ought to have explained why needs from Guildford BC could not simply be left unmet, to be picked up if at all in some unspecified place yet further afield than the Strategic Housing Market Area. But that is what IR35 explains.

85. IR79 is also relevant; it describes the pressing housing needs; the absence of scope to "export Guildford's housing need to another district". The "overall level of provision", 14602, "will address serious and deteriorating housing affordability and will provide more affordable homes." If that is true for 14602, it is obvious that the Inspector considered that a lesser figure would not address those pressing needs. IR 42 and 46, and 83-85 also address the need for flexibility above the OAN.

86. Mr Kimblin submitted that IR86 was irrelevant to this Issue because he submitted that it dealt only with the headroom. I disagree. IR86 addressed the question of "Whether the quantity of development should be restricted having regard to Footnote 9 of the NPPF", one of the passages in the NPPF in which the role of restraint policies, such as the Green Belt, is recognised to be a basis upon which the OAN might not be met in full. On the face of it the paragraph, even if also relevant to another purpose, covers the very point Mr Kimblin raised. The Inspector, in this section of the Report, is considering the strategic case for altering any of the Green Belt boundaries, and not just for strategic sites, nor just to the extent necessary to accommodate the headroom over 10678, or even the 10678. It is dealing with the very point which the "policy-on" stage raises. In my judgment, it is directly to the point.

87. The Inspector has already considered the pressing needs, and the consequence of them not being met. Here he considers whether the consequence of those needs being met,

through releases of Green Belt land, mean that they should nonetheless not be met. His conclusion is clear: there is no justification for applying a restriction on the quantity of development. His reasoning is clear and adequate: land can be found within the Green Belt, through boundary changes, with relatively limited impacts on openness, elaborated elsewhere in the Report, and without causing severe or widespread harm to its purposes. He also considered whether further land could be made available in the urban areas; IR 81-2; these had been thoroughly investigated; significant constraints existed; any extra yield from sites which could have potential not yet earmarked, "would fall a long way short of making the scale of contribution towards meeting overall development needs that would enable the allocated sites in the Green Belt to be taken out of the Plan."

88. I reject the Claimants' first ground of challenge. This issue and whether a policy restraint should be applied to the OAN was considered and the Inspector's conclusion that there should be no restraint below OAN was supported by ample reasoning.

Issue 2: Was the conclusion that there were exceptional circumstances justifying the allocations of housing land, released from the Green Belt, to provide headroom of over 4000 dwellings above the 10678 OAN lawful, and adequately reasoned?

89. This is the major issue in the challenge and permeates most of the grounds. I have already dealt with some general propositions about "exceptional circumstances".

90. The gravamen of Mr Kimblin's and Mr Harwood's submissions on this ground concerned the headroom of 4000 dwellings or "excess" over OAN as they put it. The matters relied on by the Inspector in that respect were said not to be exceptional. As the argument developed, led on this point by Mr Harwood, and the more so in reply, it became clear that the attack was not on the fact that there was some supply beyond the 10678, but concerned the extent of the headroom. Mr Harwood recognised that the delivery of the initial and the rolling 5 year housing land supply would require provision for a 20% buffer, at least initially. Land had to be allocated which could be brought forward throughout the plan period. He acknowledged that this was reflected in two of the strategic level factors behind the Inspector's acceptance that the strategic sites, which created the headroom, should be released from the Green Belt; IR 84-5.

91. However, in my judgment, once meeting the OAN is accepted as a strategic level factor contributing to "exceptional circumstances", as it has to be for the purpose of this Issue in the light of my conclusions on Issue 1, it follows that the provision of headroom against slippage and for flexibility to meet changes, "future-proofing" the Plan, as the Inspector put it, would also contribute to such circumstances. The challenge is to the scale of the headroom which it is said goes beyond that level; the headroom should have been judged to be sufficient at some lower level, between 10678 and 14602, enabling fewer Green Belt releases.

92. An impression of where the submissions go can be gleaned from adding 20% to the 10678, to give a rough idea of what in reality is contentious in this Issue. This issue comes down in practice to the inclusion of one or more of the three large strategic sites in the allocations. It is one or two of the former Wisley airfield site, and the sites at Gosden Hill Farm or Blackwell Farm which are at stake in this challenge. (The housing trajectory shows that the 945 dwellings on land around the villages are needed for the early years of the adopted Plan.) I accept that the unquantified unmet

need from Woking BC would not be more than a small component of the total headroom, in view of the way the Inspector expressed himself in IR38 and 79. It could have been added to the OAN, but providing for it in the headroom is reasonable, and either way meeting that need is equally capable of being an exceptional circumstance.

93. The housing trajectory showed that the largest Green Belt contributors are the three large sites to which I have referred, and which come on stream after the initial years from Plan adoption and build up over time. The Inspector considered whether that should be reduced, but did not reduce it, although the reduced OAN, after September 2018, meant that four additional sites in the proposed Main Modifications were deleted following the February 2019 resumed hearing.

94. Mr Kimblin challenged the logic of the exceptional circumstances relied on by the Inspector for the release of land from the Green Belt to supply land for 4000 dwellings over OAN. The housing land supply figures, during the Plan period, were the sum of the allocations, in so far as they are judged to produce dwellings during the Plan period. This leads to the figure of 14602. They were not allocated in order to provide a figure of 14602, because headroom of 4000 had been judged to be necessary by some form of assessment outside of the allocations. The precise headroom, though not the principle that there should be some, was the product of the specific allocations. This was said to be circular reasoning. The quantification of the need for the releases was calculated by reference to the releases to meet the quantified need.

95. Both advocates for the Claimants pointed to the way in which the headroom had varied, but had not reached 37% until the final adopted version of the Plan: 2016: 15,844 supply for 13,860 OAN; 2017: 14191 for 12,426; 2018: 15107 for 12,600; 2019: 14602 for 10,678.

96. First, I see nothing illogical in the Inspector's thought process, requiring a buffer of some significance and treating the total of the allocated sites as creating an appropriate buffer. There was no need to calculate a spuriously precise headroom figure, and then match it with sites. Sites do not present themselves or come forward in precisely matching dwelling numbers either. The headroom figure was a judgment based on the sites which were available to meet a requirement figure somewhat over 10678, and to do so in such a way that, over the initial and subsequent years of the plan, the rolling five year housing supply, with a 20% buffer for some years, would be maintained. The three would provide assurance that the requirement would be met, not just in total, but over the five year rolling periods. As the IR showed, the scale of the headroom was in part required because the sites to be released were themselves large, and could face delays on that account.

97. The Inspector asked, as part of the soundness judgment, whether those sites provided, not just the housing required, but did so with a good balance of location, size, meeting other needs such as for employment land, creating a coherent spatial distribution strategy. He asked whether there were significant advantages if more housing was provided than the OAN, in view of the pressing housing needs in Guildford, in terms of affordability and affordable housing. The way in which the buffer can meet the needs matters. The larger sites permitted other needs to be catered for, without peppering the area with Green Belt releases, or releases in more sensitive areas. The

question that then arose, in view of the extent of the headroom which those sites created, was whether there should be a reduction in release. This was specifically addressed in the IR. That is a logical approach.

98. The IR's analysis of the need to release land from the Green Belt considered the need for housing, IR79, the need for land for business uses which could not be met other than by Green Belt releases, IR80, the lack of scope for increasing housing on land within the urban areas, IR82, the need for a sound and integrated approach to the proper planning of the area, IR83, and the need for flexibility, IR84-5, along with the Local-level exceptional circumstances in relation to the major sites and issues. The question was then asked whether that was too much and one or more sites should be removed from the allocations. It was not a simple question of defining a need and then deciding where to meet it; the process was in reality more iterative. The number of dwellings for which land supply was allocated, was determined in the first place by the OAN, but in addition a buffer had to be provided and a satisfactory delivery trajectory provided for; the selection of sites was affected by where the needs could best be met, with least impact on the Green Belt, catering for other needs, and making a coherent strategy; the land thus allocated yielded the total supply, adjudged to be a sufficient buffer but not so much larger as to require the removal of sites from the allocations. In all of this, the Inspector would obviously have been aware of the function of the Green Belt, and the importance of keeping land permanently open and free from development. That permeates his whole consideration of exceptional circumstances; it is why he is considering them.

99. Second, having read the strategic and Local-level exceptional circumstances, which have to be taken together, I had no sense of having read something illogical or irrational, or which strained the true meaning of "exceptional circumstances." I can see that a different approach to the quantity of headroom might have commended itself, but that was plainly a matter of planning judgment.

100. I now turn to the specific points made by Mr Harwood in relation to IR83-89, headed "Whether the difference between potential supply of 14602 dwellings and the latest MM2 housing requirement of 10678 implies that the plan should allocate fewer sites and release less Green Belt land." IR 83 said that the plan had to be considered as a whole as it contained an integrated set of proposals which worked together, with strategic allocations delivering a range of benefits which could not be achieved by smaller dispersed sites. This was not in principle said to be irrational, and it could not be so described. This latter point was also foreshadowed in IR43.

101. It was however, irrational, submitted Mr Harwood in relation to Wisley airfield: Wisley's allocation helped with A3 slip roads, bus services and cycle network which benefited allocations around villages such as Send and Send Marsh/Burnt Common; Burnt Common provided an employment facility for the Borough. Most of this was to mitigate the impact of the allocation and so could not itself help justify it. The sites around the villages were sequentially less preferable than Wisley itself; facilitating unnecessary schemes could not be exceptional circumstances. Put in that way, Mr Harwood has a point on both fronts. But that way of putting it, is not the whole picture. The fact that mitigation at Wisley assists the development of other sites, that is to say, it functions beyond mitigation at Wisley, goes to the important point in the context of this topic, that the allocations work together as an integrated whole. The contention that the sites benefited were unnecessary anyway, rather depends on the

case for their release, accepted by the Inspector. The Inspector considered these village site releases in the context of the housing trajectory. They may be sequentially less preferable than the strategic sites, but they were necessary allocations in order to provide the initial five year housing land supply, as the trajectory showed, and as the Inspector was entitled to conclude. So, benefiting their development was a further aspect of the integration of the allocations. I do not accept Mr Harwood's submission. Mr Kimblin made a similar point in relation to Blackwell Farm which I consider under Issue 3, but a railway station is relevant in an area of transport difficulties.

102. Nor do I accept Mr Harwood's submission that business needs were not relevant to exceptional circumstances at the former Wisley airfield, because it was not an employment-led site. The employment land there served a variety of purposes: the allocation itself, advancing the sustainability of the new settlement, both on the site and as part of a sound strategic distribution of new employment land. I also accept Mr Findlay's point about the extent of Green Belt and AONB constraining development opportunities, the restrictions on further development in the urban areas, and the need for work to the A3, an important road for infrastructure in Guildford BC.

103. He next attacked IR84: the Inspector erred in law in saying, in the Green Belt context, that the housing requirement figure was a "minimum not a target." Policy S2 expressed it as a requirement for "at least" 10678 dwellings. The error of law was that an opportunity to provide more than the requirement was not a "need", such as was required to constitute "exceptional circumstances." There was nothing "exceptional" about a desire to provide housing additional to any need. The NPPF did not call for the requirement to be exceeded at the expense of the Green Belt.

104. Again, I do not think that Mr Harwood is grappling with IR84 read as a whole, in which context that particular sentence has to be read. The real thrust of IR84 is that the Plan has to be robust and capable of meeting unexpected contingencies: reliance on large sites made that particularly important, and there were various uncertainties about them. In those circumstances, the Plan ought to provide more than the bare minimum of supply in allocations; if that led to more than the minimum, that was not a reason not to make the provision; see also IR79. Besides the headroom meant that safeguarded or reserve land did not have to be provided; its provision would still have meant that land would "almost certainly" have been removed from the Green Belt. I do not accept that submission of Mr Harwood either.

105. Moreover, the prospect that a level of housing in excess of the OAN might be achieved can contribute to exceptional circumstances. I have set out under Issue 1, the pressing nature of the housing problems in Guildford BC. This is not just a question of totals. There would plainly be significant benefits, as the Inspector was well aware in this context, in terms of affordability, and affordable housing if more were provided. Taken as part of the whole group array of exceptional circumstances, there is nothing unlawful about that being seen as a useful even significant advantage, in line with NPPF housing policy, and as a contributor to exceptional circumstances. I accept that the OAN figure makes some allowance for those problems, but recognises that the problems are of a degree and scale that they cannot be resolved to a large extent. However, that does not mean that the advantage of a higher level of housing supply cannot contribute to exceptional circumstances. Once land is to be removed from the Green Belt for housing allocations, and a suitable buffer, the exceptional

circumstances for their capacity can include the planning soundness of choosing sites which contribute most to the other requirements of the Plan.

106. Mr Harwood's third point relied upon reading IR85 as envisaging that the allocations would endure well beyond the plan period, perhaps for decades. The reference to the timespan of the larger sites covering a number of plan reviews is, in context, a reference to the reviews during the plan period rather than to the review towards the end of or after the plan period. This trajectory also shows that the larger sites were expected to be built out within a couple of years of the end of the plan period.

107. Accordingly, I reject the Claimants' submission on Issue 2.

Issue 7 Sustainability Appraisal.

108. I take this issue here, because it concerns the overall approach to the housing allocations. The essence of the point is closely related to Issue 2. The Claimants contended, through Mr Harwood, that once the OAN was reduced from 12426 to 10678 as a result of the publication in September 2018 of the 2016 household projections, there should have been a further SA examining reasonable alternatives which matched allocations to the OAN figure of 10678, with the Wisley airfield allocation in mind in particular however. There was no challenge to any aspect of the SAs which actually were carried out.

109. SAs are governed by the Environmental Assessment of Plans and Programmes Regulations 2004. SAs include the Strategic Environmental Assessment which those Regulations require. An environmental report is required for an environmental assessment, by Regulation 12. By Reg 12(2), the report has to:

> "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."

110. There are various consultation obligations. There is no specific provision dealing with when an updated SA is required, or when material changes of circumstances require an update. The question will always be whether the likely significant effects on the environment of the adopted Plan had been evaluated, and whether reasonable alternatives have been evaluated. Whether the work done is sufficient is for the reasonable judgment of the decision-maker, here Guildford BC; that judgment is reviewable on normal public law grounds, and indeed was also assessed by the Inspector.

111. By the time of the SA with the original submission local plan of 2016, the former airfield at Wisley had featured in five of the eight options for meeting a range of OAN between 13844 and 18594, brought in, when considering an OAN of 15844, or more, as a key supply variable. In the 2017 version of the SA, submitted to the Secretary of State, Wisley airfield was present in all eight options, with OANs ranging from 13,600 to 15680 dwellings. There was an Addendum Report SA in 2018, produced to deal with the fact that it was then thought that sites for a further circa 550 homes would be required to meet needs in the first five years of the plan after adoption.

112. In the 2017 SA, with the 2017 submitted version of the Plan, various plan objectives were set out: these included sufficient sustainable development to meet all identified needs, expressed later as providing sufficient housing of a suitable mix taking into account local housing need, affordability, deliverability, the needs of the economy and travel patterns. The plan objectives were described similarly in the 2018 SA update.

113. The 2017 SA also described how the spatial strategy alternatives were arrived at in 2016. The 2016 growth quantum options were considered: the OAN for the Borough was increased by the need to plan for a buffer, and the possibility of planning to meet Woking's unmet needs was considered. The distribution options were then considered, using a ten tier hierarchy of places with the most suitable, Guildford town centre at the top and development around Green Belt villages at the bottom. From that work, the eight reasonable spatial strategy alternatives were arrived at, leading to the 2016 preferred option, 4, OAN plus buffer, with high growth at Wisley airfield, enabling low growth elsewhere, 15844 dwellings.

114. The possibility of meeting unmet need from Woking was considered. The reasonable alternatives ranged from 13,600 – 15680, which all represented OAN+ buffer, ranging from 9.4% to 26.2%. The unreasonable options rejected were any lower or higher figure outside that range, at each end. An option involving no Green Belt release would be unreasonable as it would involve very low growth. While a smaller buffer than in the 2016 SA was reasonable at the lower end, as the delivery assumptions for two large sites had been revised downwards, any lower option would be too small. The preferred option then emerged, Option 1: 13,600, OAN +9.4% buffer. This had been described in the SA as "a reasonable low growth option." A buffer needed to be planned for "given the likelihood of some sites (particularly large sites) not delivering or delivering at a slower rate than anticipated." The advantages and drawbacks of Option 1 were then discussed at some length.

115. I do not need to deal with the 2018 SA update which was undertaken to deal with the anticipated release of four further sites to meet the then increase anticipated in OAN.

116. The Inspector's December 2018 Note for the resumed PE in February 2019, following publication of the 2016-household projections, and Woking BC's acceptance that it now had no unmet need, identified five issues which needed to be addressed. These included the overall housing requirement in the housing trajectory. But the Inspector noted that he would not be discussing the spatial strategy, strategic sites and constraints, which had already been thoroughly discussed.

117. His January 2019 Note, accompanying the Agenda, reiterated that consideration of the merits of allocated sites was not being reopened. The sole purpose was to look at whether there should be a change to the OAN or to the housing requirement. He had however read all the material submitted for the hearing.

118. Guildford BC opened its comments at the resumed hearing by pointing out that it accepted there was a genuine housing crisis in the Borough. It had not sought to reduce the number of sites originally proposed, "notwithstanding ostensible changes in circumstances which might have given scope for such an approach. It has not advocated the necessary minimum approach."

119. Guildford BC produced a Note ("Initial Submission Whether Further Consultation and Sustainability Appraisal Is Necessary") for the second day of the resumed hearings of the PE. Guildford BC's position was that the OAN should be reduced to 10,678 and that the additional Green Belt sites in the proposed main modifications to assist with early delivery were no longer required. It disavowed a reduction in overall housing supply. It asserted that the buffer remained necessary to take account of the need for flexibility to adapt to rapid change, "to boost significantly the supply of housing", uncertainty as to the future position in relation to Woking's need, the need for infrastructure improvements because of development, ensuring the longevity of the plan, and other factors. It concluded that no further consultation was required, because all those affected by the reduction in OAN or the deletion of the four additional sites had had every opportunity to make representations as part of the additional hearing sessions. That specific point is not at issue.

120. The Note also expressed Guildford BC's view that no update to the SA was required. It referred to Planning Practice Guidance, PPG, from the Department for Housing, Communities and Local Government, which advised that SAs should only focus on assessing likely significant effects of a plan. An update was to be considered only "where appropriate and proportionate to the level of change being made to the Local Plan." A change to the plan was only likely to be significant, if it involved a substantial alteration to the plan, or was likely to have significant effects, or if the changes had not previously been assessed and were likely to have significant effects. Changes that were not significant would not usually require further SA work.

121. The Note stated:

> "GBC has not considered further alternatives, but has maintained the approach of providing OAN with a "buffer". Whilst the size of that "buffer" has varied throughout the process (SA2017 9.4%, 14% at submission and at 26% on main mods in respect of which the Inspector was content but now at 37%) that does not constitute a different alternative. Our understanding of the Inspector's comments [informally made at the end of the summer and on the first day of the resumed PE] (and in GBC's view) it would not be sound or reasonable to have a buffer that was materially lower. GBC are not advocating any growth option. We are maintaining the approach of meeting OAN with an appropriate buffer."

122. The changes, reducing the housing requirement figure and deleting proposed additional Green Belt sites, could not give rise to likely significant effects which had not already been considered. Eight different housing delivery scenarios had been considered as reasonable alternatives catering for the range of 13,600 to 15,680 dwellings over the plan period; the likely significant effects of each been evaluated. It would be inappropriate and disproportionate for further SA to be undertaken.

123. Mr Findlay also pointed out that participants such as Compton PC and Guildford Green Belt Group had made further written representations to the Inspector, among those responding to his specific questions for the resumed hearings in February 2019, to the effect that one or more strategic sites released from the Green Belt could be omitted from the allocations.

124. The Inspector, in the final section of his Report, assessed the legal compliance of the Plan. One issue was compliance with the legal requirements for SA. He concluded that what had been done was adequate. No further SA was required in relation to MM2, since the level of housing provision was within the range of options already tested by the SA, and the housing sites were the same as those in the submitted Plan; IR219. MM2 was the modification providing for 10,678 new homes during the plan period 2015-34, or 562 dpa, reduced from 12,426 in the 2017 submitted version of the Plan. The allocations to provide a supply of 14,602 dwellings were not reduced, although a modification, proposed before the 2016 household formation figures became available in September 2018, and introducing a further 4 sites with a capacity of 550 dwellings, was not proceeded with. I have set out IR 44 above in which the issue is also considered.

125. Mr Harwood submitted those paragraphs in the IR were wrong, although the error that mattered was that of Guildford BC. It was required by the Regulations to assess reasonable alternatives to the plan, taking into account the objectives of the plan, which by the time of adoption included 10678 dwellings. Alternatives which it was obviously reasonable to have considered were meeting that need and no more, and meeting a lesser need than 14602. The reasonable alternatives were not only in the range of 13600 to 15680 dwellings, with the supply figure in the middle. Reasonable alternatives to the 14602 figure had to be considered, since the dwellings requirement was 4000 fewer. There had also been material changes in circumstance, with Woking BC announcing that it had no unmet need, and Waverley taking some 82 dpa of Woking's need. In 2017, the option preferred by Guildford BC had provided headroom 9.4% above the then OAN, but it was now 37% above the present and final OAN. It was not possible to say what the outcome of an assessment of reasonable alternatives might have been. Indeed, he went so far as to submit that there had been no SA of the requirement finally adopted, 10,678, or anything like that number, or of an "overprovision", as he put it of 4000. Guildford BC and the Inspector had simply refused to consider a housing figure at or near 10678, which refusal had fed into the decision that no further SA was required.

126. I cannot accept these arguments. No complaint is made of the SA process before the effect of the 2016 household projections was considered. First, the objectives of the Plan had not changed; the objective was not the provision of 10,678 dwellings; it was not simply the provision of the OAN plus an appropriate buffer. I have set out how the objective was phrased in the earlier versions of the SA. An updated SA, confining itself to the provision of 10,678 dwellings, omitting any buffer, would not have been a reasonable alternative, as previous SAs concluded, and would have been for an objective other than that of the Plan.

127. The judgment that an OAN without any buffer was not a reasonable alternative, was a reasonable judgment for Guildford BC to make. It could only be attacked on rationality grounds; see *Spurrier and Others v Secretary of State for Transport and Others* [2019] EWHC 1070 (Admin) at [434]. That would be untenable.

128. Second, whether the effective increase in the headroom or buffer, but without change to the level of housing allocation, was a significant change or one likely to have significant effects was a matter for the judgment of Guildford BC, as the decision-maker. It is clear that the overall level of housing supply was within the range already considered. All the housing allocations had already been evaluated. The judgment that

the change was not significant or likely to have significant effects which had not already been considered, was reasonable.

129. Third, the only point in considering further alternatives would have been whether one or two large sites should be removed from the allocations. The smaller, sequentially less preferable Green Belt releases around villages, totalling 945 dwellings, could not have been omitted from any reduced buffer because of their importance in meeting the five-year housing supply in the early years of the Plan after adoption. Guildford BC and the Inspector did in fact consider whether the increased level of buffer in the same total supply, with a reduced OAN, was appropriate. They each concluded that it was, and that no large Green Belt site allocation should be now omitted. The arguments for deleting one or more of the 3 large sites were raised; indeed there was an obvious issue about whether that would be an appropriate response. Guildford BC and the Inspector considered it. Guildford BC was entitled to conclude that a further round of SA was quite unnecessary. The Inspector agreed, in his Report. There was no misdirection as to the law; it was for Guildford BC to judge whether there had been a change in circumstances or in the plan which warranted a further SA. This judgment can only be challenged on public law grounds; the only one available would be irrationality. There was no irrationality in the decision.

130. The history of the extensive SAs and updates make it impossible to say that there had been no SA of the effect of the allocations, or of the OAN plus buffer. There were no further reasonable alternatives to be discovered; the alternatives would have involved the omission of one or more of the three large sites released from the Green Belt. In reality it had already been considered.

131. Even if there had been an error, and assuming that the omission of one or two of the large sites would have been a reasonable alternative to consider, it is perfectly obvious that the allocations in the adopted plan would have been the preferred choice. That issue was considered by both Guildford BC and by the Inspector. Omission of a further SA would have been a procedural error causing no prejudice, let alone substantial prejudice to anyone. Even if one going to vires, I would have exercised my residual discretion to take no action, given that it is perfectly obvious that it could have had not the slightest effect on the outcome of the Plan.

132. I reject this basis of challenge.

Issue 3: unlawful finding that exceptional circumstances existed.

133. Mr Kimblin submitted, focussing on Blackwell Farm, but making a wider point, that at IR165, the Inspector had included the "important contribution towards meeting housing, employment and educational needs" that the site would make, among the Local-level exceptional circumstances justifying the release of the site from the Green Belt. Mr Kimblin submitted that as any residential allocation anywhere would meet housing needs, meeting them could not be an exceptional circumstance. This is wrong. This was not an example of a site being released simply because it was suitable for housing. First, as I have already explained, meeting a general housing need by the release of land from the Green Belt, is not legally irrelevant to the concept of "exceptional circumstances." Second, meeting any housing needs beyond a figure somewhat below the OAN would entail the release of land from the Green Belt. Third, the release would be an effective contribution to meeting that housing need, but

it would do so in a way which enabled other needs to be met, creating a sustainable pattern of development. This supports both meeting the need, and meeting it through the release of that particular allocation.

134. Mr Kimblin also submitted that housing needs were counted both in the strategic and Local-level exceptional circumstances, which he contended was illegitimate double counting. It is not surprising that, given the way in which the Inspector considered the strategic level exceptional circumstances and the local-level exceptional circumstances, both of which he needed to consider, that housing need would be referred to in both. The former focused on the strategic level need but the Inspector also had to consider the overall impact of the various Green Belt releases as a matter of strategy; the Local-level circumstances dealt with the practical nature of the contribution to housing and other needs which such a site allocation would yield, and the spatial distribution of development which the particular sites allocate would achieve. I cannot see that there is some flaw in logic, or that he has counted a factor twice in such a way that he has given the same factor, in reality but unconsciously, weight twice over.

135. In so far as the "double-counting" alleged was of the existence of a need, and the ability of a site to meet that need, they are different though related aspects of the "exceptional circumstances." The way in which a site can meet the need, not just in numbers but in location, and as part of a sound spatial distribution, with other uses, and help bring forward infrastructure, can all fall within the concept of "exceptional circumstances."

136. Mr Kimblin also took issue with IR165 over the inclusion, as part of the exceptional circumstances which Blackwell Farm offered, of its contribution to sustainable transport, including a new station. He submitted that these financial contributions were "necessary to meet the impact" of development, and legally irrelevant; contributions necessary to make a development acceptable were either immaterial or not exceptional. This echoes the earlier argument I dealt with in relation to the contributions which development at Wisley airfield would make to sustainability at other sites. In principle, I accept that mitigation measures are not a reason for granting permission, and would not be factors adding to the exceptional circumstances favouring the release of land from the Green Belt, other than as a means of choosing between competing sites where the potential for mitigation affected the choice. That can be important where, as here, Guildford BC and the Inspector had to undertake a comparative exercise in choosing which combination of allocations would constitute a sound spatial distribution of development, contributing also to more widely beneficial infrastructure.

137. In my judgment, Mr Kimblin's submission has not fully taken on board the significance of the contribution to the infrastructure. This is clearer from IR137. As with other forms of infrastructure, the contribution assists the achievement of a facility, here a new station, which is obviously of wider importance than simply providing for the allocation site users. It can provide for existing users in its vicinity. That wider aspect is plainly material. But there is a more general point: this is a sustainable site on which various needs can be met. The overall qualities of the site can contribute to local exceptional circumstances.

138. I do not know if Mr Kimblin is right to say that the contribution would be seen as "necessary" to make the development acceptable, but the contribution would still be a material consideration favouring development, even if it were not necessary for acceptability. His point is not made out in relation to this Plan; he is substantially taking issue with a reasonable and lawful planning judgment.

139. I turn now to the grounds relating to the individual sites, starting with the former Wisley airfield.

Issue 4: the Wisley airfield appeal decision and the way in which the Inspector dealt with it.

140. I have set out above what the Local Plan, LP, Inspector said about this decision. Mr Harwood contended that, although Guildford BC had refused permission for the development on the former airfield, on a site smaller than the allocation, and had opposed the appeal, it had sought to do so in a way which protected its allocation, but in reality has failed. The refusal had been on the grounds that there were no "very special circumstances" to justify this inappropriate development in the Green Belt, even though Guildford BC lacked a 5 year housing land supply, and there would be harm to the character of areas to the north and south of the site. This, Guildford BC had contended, would be avoided by the inclusion of the areas in the allocation which lay to the south of the appeal site, but which were not part of the appeal site. There was no strategic highways objection.

141. The Inquiry lasted 21 days in 2017; the decision was dated 13 June 2018, coming out during the PE. Mr Harwwod submitted that the appeal Inspector's conclusions and recommendations, and the Secretary of State's decision accepting them, went rather wider than the issues raised at the appeal by Guildford BC. His submissions to me were very similar to those sent to the Secretary of State dated 18 April 2019, by Ockham PC after publication of the LP Inspector's Report. Ockham PC asked the Secretary of State to prevent Guildford BC adopting the Plan until he had been able to decide whether to call in the Plan or to direct its modification. The letter complained in strong terms about the extent of land removed from the Green Belt. It contended that the Plan reversed key findings made in the appeal, without recognising it was doing so, or providing any reason for doing so. The decision, it was said, condemned, in reality, not just the appeal proposal but also the allocation.

142. The Secretary of State refused either that request, or more probably another request to the same effect, in a short letter to the Leader of Guildford BC. The Secretary of State said that the LP Inspector "has taken the issues raised into account when considering the allocation of the former Wisley Airfield site for development, and that the plan provides appropriate mitigation of the impacts of development on this site." He was pleased that the Plan contained a requirement for a master plan for the site; he would also consider calling in applications in relation to the development of Wisley airfield, on their individual merits.

143. The appeal Decision Letter, DL, agreed that the development was inappropriate for the Green Belt and that it could only be permitted in very special circumstances. It would conflict with two of the five purposes of the Green Belt: it would not assist in safeguarding the countryside from encroachment nor in the regeneration of urban land. It would reduce the openness of this part of the Green Belt. The harm to the

Green Belt would be "very considerable", in conflict with the development plan and paragraph 79 of the NPPF. The DL went on to consider whether there were very special circumstances which clearly outweighed the harm.

144. The DL gave limited weight to the Wisley airfield allocation in the emerging Local Plan. It was the development plan policies which were of most relevance. Significant weight was given to the significant shortfall in the 5 year housing land supply, which then amounted to only 2.36 years. Significant weight was also given to the affordable housing, 40% of the proposed total.

145. The DL agreed that a suitable quantity and quality of SANG would be provided, and that subject to conditions and a planning agreement, "the development would not have an unacceptably likely significant effect on the SPA." There would be a severe and harmful strategic highway impact to which significant adverse weight was given, although unacceptable harm to the local road network was unlikely, with certain works being undertaken. On transport sustainability, the DL agreed that "…overall, the proposals go a long way towards making the location more sustainable…[but] the proposal would not be in full accord with [the] emerging Policy A35… as it would fail to provide the required cycling improvements…" Limited weight was given to that, as it was to the concerns of the local education authority that the site was not suitable for an all-through school for the wider community. Although some of the harmful impacts on the appearance of the area could be partially mitigated by extensive landscaping, "this would not disguise the basic fact that a new settlement in a rural area would, inevitably, cause substantial harm to both its character and its appearance." This would be irreversible, contrary to development plan policy, and carried significant adverse weight. Other factors were considered as well. The Secretary of State agreed that many of the purported benefits were little more than mitigation, while the benefits for the wider community, outside the appeal site, were rather more limited. The loss of some 44ha of best and most versatile agricultural land was accorded considerable weight. The harm to heritage assets was less than substantial.

146. On 13 June 2018, the Secretary of State rejected a request from Wisley Property Investments Ltd to delay issuing his decision on the appeal, concluding that:

> "in view of the range of factors remaining to be resolved, the most satisfactory approach is to decide this appeal in the context of the current development plan. This reduces the uncertainty for all parties and leaves the way open for further applications to be considered (by the Council in the first instance) once there is an up-to-date planning framework for the Borough."

147. Mr Maurici QC for Wisley Property Investments Ltd submitted that this showed that the Secretary of State did not regard the appeal decision is ruling out the allocation or a further application. That is true, but its significance can be overstated. He also drew my attention to the decision of the Inspector, accepted by the Secretary of State, to refuse an application for costs against the developer after the appeal. The application was made on the grounds that the pursuit of the appeal was unreasonable in view of the absence of any solution to the highways issues, and the unmet housing need was "unlikely" to outweigh harm to the Green Belt and provide very special

circumstances. The emerging local plan could not add sufficient weight to amount to very special circumstances. The appeal Inspector found that the appellant had always intended to pursue a plan-led scheme, and had done so in the reasonable expectation that the emerging Local Plan would have been adopted in July 2016 in time for the decision on the application lodged in December 2014. But it had been delayed; the allocation boundaries had varied. The highways issue turned on the slip roads; it was not an objection in principle but went to whether they could in fact be provided. On Green Belt, the appeal Inspector said that the lack of suitable housing sites remained acute and some land would probably need to be released from the Green Belt to meet any identified need. He continued:

> "I do not consider that it is inevitable that this appeal would fail on Green Belt grounds or that its location within the Green Belt, in advance of any determination on whether it should be taken out of the Green Belt, made the appeal hopeless. The Appellant put forward a credible case for the development in the Green Belt including a raft of matters that were, when taken together, considered to comprise the necessary VSC."

148. It is worth noting, in the context of the arguments which I have heard, that neither the appeal Inspector nor the Secretary of State regarded the scope of "very special circumstances" as limited to individual circumstances which were, taken by themselves, not very special, in the sort of language which Mr Kimblin deployed in relation to the concept of "exceptional circumstances." The need for general housing was capable of contributing to those circumstances.

149. I note these further points from the appeal Inspector's Report, AIR. Guildford BC's Green Belt and Countryside Study, part of its Local Plan preparatory work, recognised that any large non-urban site in a Borough where 89% of the land lay within the Green Belt, would conflict with the Green Belt purpose of assisting in the regeneration of urban land; and it was only being contemplated because there was insufficient suitable urban land within the Borough. At 20.71, AIR, the appeal Inspector considered transport sustainability. Without changes, the appeal site was not in a sustainable location, with little public transport in the immediate vicinity, and narrow winding lanes, without footways or lighting, which were not conducive to walking or cycling. The proximity of the A3 and the strategic road network would encourage travelling by car. Various significant interventions were proposed to deal with this. The maintenance of the level and cost of the bus services would be "quite challenging", but would go "some way to improving the public transport options." The off-site cycle network required, by the emerging Local Plan, to key destinations including railway stations at Ripley and Byfleet was not provided; the roads were of insufficient width and rather demonstrated that they were not conducive to cycling other than by experienced and confident cyclists. The long linear shape of the site did not assist sustainability as buses would be needed by some residents to reach the village centre, notably from the housing which could be up to 1500m, as the crow flies, from the centre. The scheme failed to meet even the minimum requirements for cycling in the emerging Local Plan. However, AIR20.81, the proposals went a long way towards making the location more sustainable but fell short of the full cycling improvements required by the emerging Local Plan. Weight would be given to that

shortfall because that was the plan which Guildford BC intended to submit for examination.

150. The appeal Inspector accepted, AIR20.87, that some landscape and visual harm was inevitable with development in the countryside: the character and appearance of the site would change significantly; the character of the wider area would also be affected. Guildford BC accepted some harm was inevitable, wherever new housing was provided in the Borough, given the severe constraints it faced. But there would still be a very substantial change to the character of the area; the form of the proposed settlement would be wholly at odds with the loose, informal nature of the settlements that had grown up organically in the area over the years. The site was on a long east-west ridge, rising to the east, so "any development on the site would inevitably stand out in the surrounding landscape making it prominent and potentially dominating." The inclusion of the additional land in the allocation to the south of the appeal site, with the same amount of development, "would allow a less dense and linear development, as envisaged in the eLP." As it was, AIR 20.94, all the development was squeezed from the north, by the SPA, and the south:

> "forcing the development upwards and resulting in a highly urban character this is partly a consequence of the site being considerably smaller than the site that GBC intends to allocate in eLP Policy A35. While any development of this scale on this site would appear out of keeping with its surroundings, the additional constraint imposed by a smaller site seems to exacerbate the harm to the character of the area."

151. The overall impact "would result in substantial harm to the character of the immediate area", eroding the historic pattern of the settlements to the detriment of their character. He agreed with residents that this impact "would be catastrophic on their rural way of life."

152. The impact on the appearance of the area would be rather less severe than on its character, as much of the site was quite well screened from off-site public viewpoints. The existing runway was a stark concrete feature that failed to make a positive contribution to the appearance of the area; but there would be a harmful impact on public rights of way. There would be a change from travel through an open largely agricultural landscape to an urban walk, with urban sights and activity. Off-site views would be fairly long distance as the site was quite well screened by existing trees and, from nearby, but the ridge would be visible from as far afield as the AONB. It would appear as a linear, urban feature, although careful use of materials would soften its visual impact. Its impact would be exacerbated by its village location, with 3- to 5-story buildings along the central spine road making the full 2.4km of the development visible from highly sensitive locations on public rights of way in the AONB. In time, some of the impacts on the appearance of the area could be mitigated by extensive landscaping.

153. The appeal Inspector also considered nitrogen and nitrous oxide levels in the SPA. He rejected the extreme position put forward by Wisley Action Group and Ockham Parish Council, for whom Mr Harwood appeared at the appeal Inquiry, that because the critical level for NOx and the critical load for nitrogen were already being exceeded, not one single vehicle movement could be generated without infringement

of EU law, so planning permission would have to be refused. He summarised the detailed assessment carried out by the Appellant, AIR 20.140:

> "This shows that the part of the SPA where the 1% increase is exceeded is limited to strips of land adjacent to the A3 and M25….Surveys show that beyond 200m there is no discernible effect; the impacts are thought to be greatest within the first 50-100m but the area where the appeal scheme makes a greater than 1% contribution is much more limited. …20.141 [M]ost of the SPA that falls within even 200m of the A3 and M25 comprises woodland; there are only small areas of heath. It also shows that by 2031 none of the heathland would fall within an area exceeding critical levels for NOx with the appeal scheme and other future development….This woodland provides a shelter belt and possibly nesting opportunities for the Woodlark but does not offer ground nesting sites. This type of buffer is advocated in DBRM as best practice. The evidence, which was not challenged, shows that some Nightjar territories have been within the 200m distance but none within the 140m distance from these roads."

154. Natural England had raised no objections on air quality grounds. There was no evidence demonstrating that changes in air quality, individually or in combination with other developments, were likely to have significant effects or undermine the conservation objectives for the SPA; an Appropriate Assessment was not required.

155. The appeal Inspector accepted that the runway and hard standings, amounting to almost 30ha, was the largest area of previously developed land in the Green Belt in the Borough, and its beneficial reuse contributed to very special circumstances, and to Guildford BC's justification for seeking to release it from the Green Belt. This had to be tempered by the fact that a larger area of agricultural land including well over 40ha of the best and most versatile would be lost.

156. In his overall conclusions, the appeal Inspector said that the proposals were "largely, but not completely, in accordance with the eLP but, for the reasons set out above, it carries only limited weight as there are unresolved objections to the relevant policies. The unresolved objections are significant in content and quantity and this limits the weight that can be accorded to the eLP." He understood the frustration of the Appellant who could reasonably have expected the eLP to be more advanced and therefore weightier than it was.

157. The proposals did not fully accord with the eLP, seeking to accommodate roughly the same amount of development as sought by the eLP, on a smaller site. Other requirements in Policy A35, such as the provision of an off-site cycle network to key destinations and sensitive design at site boundaries would only be partly met by the appeal scheme. The failure to provide adequate infrastructure, in the form of north facing slip roads at Burnt Common, was a major and fatal failing of the scheme. The proposals would not protect or enhance the natural, built or historic environment and could result in a high level of car-dependency. The inevitable harm from such development in a rural setting would be particularly noticeable in the midst of a cluster of hamlets. Its linear form, in part a consequence of the smaller site, and its

location on a ridge meant that there would be longer views of the proposals; from the AONB, the new settlement would be seen to impose itself on the landscape without regard to the established settlement pattern or form.

158. Mr Kimblin's contention was that the LP Inspector had not grappled with the thrust of the reasons which led the Secretary of State to accept the appeal Inspector's recommendations for the dismissal of the appeal. They reached different decisions on the same issues, and it was not possible to understand why he differed from the appeal decision. Mr Kimblin highlighted the contrasting language about the harm to the Green Belt, the loss of best and most versatile agricultural land, the degree of prominence and visual self-containment, the sustainability of the location, including the provision of bus services and the difficulty of accommodating facilities for the average cyclist.

159. Mr Kimblin made some complaint, without alleging any separate error of law, that the Inspector had sought a note from Guildford BC on the appeal Decision but had refused to accept written representations from other participants, on whatever side of the Wisley airfield allocation debate. The Note pointed out that an appeal decision and the decision on a Local Plan allocation were decisions of a different nature, with different statutory tests. The approach to development in the Green Belt necessarily differed. It has always been the intention of Guildford BC that the site should come forward via the plan-making process. There would be no substantial harm to the Green Belt if the site were removed from it. The important highways objection had largely been resolved and Highways England expected to be able to withdraw its objection. The harm alleged to the character and appearance of the landscape had been considered, in that process, in the context of longer -term housing need, and where else the need could be met with less harm. The allocation in the emerging Local Plan had been given limited weight. The residue of the allocation outside the appeal site, could have come forward for further housing, had the appeal succeeded. The appeal Inspector accepted that the difference between the allocation and the appeal site had exacerbated the harm caused by the development.

160. First, in my judgment, this issue is different from some cases where an appeal decision has been prayed in aid of an objection to an allocation, but has not been dealt with by the LP Inspector. This appeal decision concerned the larger part of an allocated site, rather than a calculation of some more generally applicable nature, or some unallocated site. It was contemporaneous. Here, the LP Inspector did treat the appeal Decision as relevant in considering the soundness of the allocation, as it obviously was; and he set out to deal expressly with its significance for his Report. If he had not done so, there could have been a lively debate as to whether he ought to have done so, but that is not the case here.

161. Second, the decision on the appeal was not a decision on the soundness of the allocation, nor vice versa. It would not have been for the appeal Inspector to trespass on the functions of the LP Inspector and the former, and the Secretary of State, would have been well aware of the need not to do so. The framework for the respective decisions was markedly different, as IR 181, the subsequent discussion, and the earlier discussion of strategic Green Belt exceptional circumstances in IR86, showed.

162. The appeal was concerned with whether the proposal was consistent with the existing development plan; the PE was concerned with whether the emerging Local Plan was

sound, in making changes to the Green Belt boundary, and in making housing provision for the period to 2034. "Very special circumstances" had to be shown for this inappropriate development in the Green Belt, as opposed to "exceptional circumstances", a lesser test, for varying Green Belt boundaries.

163. Third, the Local Plan was emerging but the appeal Inspector was aware of the objections to the Wisley allocation and did not afford it much weight on that account; the LP Inspector had the task of judging its soundness, and not its weight as an emerging Plan. The LP Inspector also had not just the immediate housing land supply shortfall, but also the future allocations to meet the OAN with a buffer to deal with. He had to deal with a long-term plan, covering the whole of Guildford BC's area, so that a coherent strategy for that period was provided, within which development control and infrastructure decisions could be made. He necessarily had to consider whether there were any non-Green Belt sites which could be released instead, and, if Green Belt sites were to be released, which were the best locations overall, including not just their effects on the Green Belt, but also their ability to form a coherent spatial distribution strategy, meeting other needs, and being made sustainable, as a whole. This was a comparative exercise, and not a decision about a single site. This was all part of the LP Inspector's consideration of "soundness". The consideration of "soundness" was no part of how the appeal Inspector had to approach his Report, and the Secretary of State, his decision.

164. Fourthly, there were also more development/allocation specific considerations: one of the most important was the sustained highways objection to the absence of practical solution to the necessary north-facing A3 slips, which was sufficiently resolved by the time of the LP IR for that major objection not to be a factor against the allocation's soundness. The second was the difference between the appeal site and the allocation, with the implications which that had, whether for further development on the residue of the allocation, or on the way in which the height of the buildings, particularly with the ridge running west-east, would make development prominent. Necessarily, the detail of the boundary treatment would be different. These are all part of IR186, and the way in which the allocation is analysed by the LP Inspector.

165. I do not consider that it was necessary for the LP Inspector to take the AIR and analyse all its views against his views on the various topics. There is perhaps a difference in emphasis in the LP IR comments on the Green Belt releases in general "relatively limited impacts on openness" and their not causing "severe or widespread harm", and the AIR comment that there would be "very considerable harm" to the Green Belt from the Wisley allocation. However, as IR 182 makes clear, on a comparative basis, the Wisley site was of medium sensitivity. Its development would avoid putting pressure on other Green Belt areas of greater sensitivity. This comparative exercise, underpinned by the Green Belt and Countryside Study, was not a task which the appeal Inspector could undertake or attempted to undertake; but was essential for the LP Inspector. The same applies to the assessment of the degree of visual prominence: the LP IR comments on the allocation as "fairly self-contained visually," being on a plateau and not prominent, whereas the AIR thought it visible along its length to highly sensitive receptors, though quite well screened in certain respects. But the sites they consider differed in an important respect and with an adverse effect for the appeal scheme. It is obvious from the AIR that the narrowness of the appeal site exacerbated the prominence of the appeal development. The LP

Inspector also considered that specific design objectives, should be in the Plan, via a Main Modification, Policy A35.The effect on the character of the area is referred to in IR 181, but is a factor outweighed by the compelling strategic-level exceptional circumstances. The LP Inspector obviously considered the appeal decision, but found the circumstances he had to deal with, compelling.

166. At the strategic level, the allocation can support sustainable modes of travel. It was not necessary for the LP Inspector to point out how the comments of the appeal Inspector in relation to the cycle network in the appeal scheme could be varied so as to provide what the allocation envisaged. The Secretary of State had already agreed that the appeal proposals went a long way towards making the location sustainable. The appeal Decision could not and did not conclude that the cycle network could not be provided or provided with a larger site, or that the bus services could not be provided. The shortcoming was only given limited weight. The LP Inspector was not required to deal with best and most versatile agricultural land explicitly in order for adequate reasons to have been given for his conclusion on the soundness of the allocation of this site; limited weight was given to that aspect by the Secretary of State.

167. Accordingly, I reject the contention that it is not possible to see why the LP Inspector reached the conclusion he did, having considered, as he obviously did, what the AIR and Secretary of State had to say. In the circumstances known to all participants about the differing tasks, the reasons are sufficient. There was no need to identify, issue by issue, where the LP Inspector did or did not, to some degree, agree or disagree with the appeal Inspector. Such differences as there may be are explained by the different focus of their tasks and the different cases they were considering. I have referred earlier to the authorities on reasons which are most to the point. The instant case calls for no further elaboration of the law. I add *Dylon 2 Ltd v Bromley LBC* [2019] EWHC 2366 (Admin) to the authorities on reasons, already referred to because it deals with reasons and their relationship to earlier appeal decisions, though in a different set of circumstances.

Issue 5A: the "white land" at the former Wisley airfield

168. This relates to the allocation at the former Wisley airfield. There are three areas where land around the allocation was taken out of the Green Belt but left unallocated, termed "white land". That expression is convenient in this context even though other policies applied to restrict development on the areas in question, and it is not reserved or safeguarded for future development, as would normally be the purpose of "white land". The major area of white land lies between the Wisley allocation and the new Green Belt boundary to the north along the SPA; it is part of the buffer zone for the SPA. The second is to the south with allocated land on three sides. The third is at the south-east corner of the allocated site, and was removed from the Green Belt in the 2017 changes to the Plan.

169. Mr Kimblin submitted that, once it had been accepted by the Inspector that there was no need for land to be safeguarded for development or treated as reserve land, there was no need for land to have been removed from the Green Belt, and left as white land. His complaint was that the Inspector, though no longer it appeared Guildford BC, had provided no justification for those areas to have been removed from the Green Belt.

170. The reasons for exclusion from the Green Belt of the area north of the allocation were the establishment of new defensible Green Belt boundaries, and because some development, such as small car parks, board walks and the like, which would or could be inappropriate in the Green Belt, was proposed in connection with the new SANG, as essential mitigation for the development on the allocation, as agreed with Natural England. It was not included in the area allocated because it was not suitable for development in general. The need for that land to be excluded from the Green Belt so as to create a suitable Green Belt boundary was raised in the Green Belt and Countryside Study, part of the evidence base for the Local Plan. IR115 referred to the buffer between residential development and the SPA boundary. Policy P5 resisted a net increase in residential units within 400m of the SPA boundary and sought avoidance and mitigation in respect of residential development between 400m and 5km from the boundary.

171. The test of "exceptional circumstances" cannot simply be applied to the whole of the area of change to the Green Belt boundary without acknowledging that the new boundary has to follow defensible lines. The rather wavy line bounding the north of the Wisley allocation was plainly not as defensible a boundary as that adopted. It is not necessary for separate exceptional circumstances to be shown. The necessary exceptional circumstances justify the Wisley allocation; defensible boundaries to the Green Belt may not always align with the allocation boundary, but defensible boundaries have to be provided as a necessary consequence; see NPPF 85, above.

172. The second area was near the Bridge End Farm. This was not available for development so it was not allocated. But the need for defensible boundaries to the Green Belt make its exclusion from the Green Belt clear. This was also explained in the Green Belt and Countryside Study.

173. The third area, at the south east corner of the site, was not included in the allocation because it is not available; the owner is opposed to the allocation. Yet the boundary of the Green Belt, if it followed the allocation boundary hereabouts would not follow defensible features. The previously redrawn boundary followed the airfield boundary and a field boundary. It was now to follow the two roads, Ockham Lane and Old Lane, which bounded the south-east corner site on the south and east sides. This was explained in the "Summary of key changes to the Proposed Submission Local Plan: strategy and sites (2017)". The airfield is no more; defensible boundaries are permanent hard features, of which roads are a paradigm. Field boundaries are not so permanent. This is a simple matter of planning judgment.

174. The explanations by Guildford BC are sufficient. This is a matter of planning judgment for Guildford BC. It was not necessary for the Inspector to address each area where the proposed new Green Belt boundary was contentious between Guildford BC and others making representations. He had the local authority evidence base. He had to consider the allocations for soundness, but not their precise boundaries, unless in some way a boundary issue itself went to the major issues on soundness, legal compliance and policy consistency. That is not alleged here. As I have said, there was no further test of "exceptional circumstances", at least not normally, to be applied to such areas of land as might lie between an allocation and a defensible new Green Belt boundary, where they are not reserved or safeguarded sites and simply result from a sensible boundary drawing exercise. The exceptional circumstances come from the very allocation of the site.

Issue 5B and the consultation on the 2017 version of the submitted Plan

175. This point is of no real moment according to Mr Harwood who fashioned it: it was a technical but readily correctable error, on his analysis. The 2017 changes to the allocation area and Green Belt deletions could not be made without the Inspector determining that the 2016 plan was unsound if they were not made, which he did not do. So, there was no power to make them on the part of either Guildford BC or the Inspector.

176. This is how his argument proceeds. The 2016 proposed submission version of the Plan was published for representations to be made under Regulation 19 of the 2012 Regulations. Representations were received in large number. That version was not however submitted to the Secretary of State. The 2016 version proposed the removal of the Wisley allocation from the Green Belt, along with the land to the north of the allocation which was a buffer to the SPA, and the southern part of the unallocated land.

177. The Plan was altered in 2017. So far as the Wisley area was concerned, three fields towards the south-east of the centre of the allocation were included for the first time, and the area to the south-east corner was removed from the Green Belt but not placed in the allocation.

178. A further round of representations was sought, but this was confined to the changes from the 2016 version, and it was only representations on the 2017 Plan about the changes which would be passed on to the Inspector. He would however also receive all the representations on the 2016 version. General comments about the changes could be made, and Guildford BC was also seeking specific comments on legal compliance, the duty to cooperate and soundness. Guildford BC described this as a "targeted Regulation 19 consultation".

179. The 2017 version was submitted to the Secretary of State and was the subject of the PE, and proposed modifications. None of the changes to the 2017 version from the 2016 version were themselves the subject of any modification proposed by Guildford BC to the Inspector or by him directly.

180. Mr Harwood submitted that regulation 19 required the consultation in 2017 to have been on the whole plan and not just on the changes. Regulation 19 states:

> "Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must-(a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35….

181. By regulation 20(1): "Any person may make representations to a local planning authority about a local plan which the local planning authority propose to submit to the Secretary of State." It is those representations which have to be submitted to the Secretary of State. "Proposed submission documents" are defined in regulation 17: they include "(a) the local plan which the local planning authority propose to submit to the Secretary of State." By s20(2) of the 2004 Act, no development plan document can be submitted by a local authority to the Secretary of State, unless the requirements

of various regulations have been complied with, and the submitting authority thinks that the document is ready for independent examination for, amongst other matters, its soundness. The examining Inspector must recommend that a plan that is not sound or which does not satisfy statutory requirements should not be adopted, unless he considers that there are modifications that would make it sound and satisfy the statutory requirements, provided that the duty to cooperate has been met, and the submitting authority asks the examining Inspector to make the necessary modifications.

182. The powers of the Court under s113 of the 2004 Act extend beyond a quashing of the document, and by s113(7A) and (7B), permit it to remit the document to the planning authority with directions as to the action to be taken. Directions may require specific steps in the process to be treated as having been taken or not taken, and require action of unspecified scope to be taken by the plan-making body. Those powers can be exercised in relation to the whole plan or part of it.

183. Mr Harwood submitted, as had the Wisley Action Group in its response to the 2017 submission draft, that the plan intended to be submitted was the 2016 version; the changes in the 2017 version could not lawfully be made until the Inspector had found that the Local Plan was unsound without them, and modifications had been sought by the Council or recommended by the Inspector to make the plan sound. The 2017 changes were no different in law from any other changes intended to remedy unsoundness; this was all because there had not been consultation on the 2017 plan as a whole. He submitted however that the consequence was that it was only the inclusion of the changes made in the 2017 draft which were unlawfully included in the Plan.

184. I did not find this persuasive at all. I note that Planning Practice Guidance, PPG, contemplates that there can be such a targeted consultation, though that cannot be determinative of the law. The PPG states that the Inspector should consider whether the changes resulted in changes to the plan's strategy, whether there had been public consultation and a SA where necessary. If those points were satisfied, the addendum could be considered as part of the submitted plan. If not, he would usually treat those proposed changes as any other proposed main modifications, which would need to satisfy the statutory terms of s20(7B) and (7C). I regard that as practical advice, which does not assist Mr Harwood's rather technical legal submission. But I do not necessarily accept that the PPG is a complete statement of the circumstances in which, before submission, modifications can be made, with a targeted consultation, to a plan which had already been consulted on. It may not be necessary for the plan to be regarded as unsound before the changes can be made, in view of the obligation to submit what the local authority considers to be a sound plan.

185. It starts with Regulation 19. I see nothing in that Regulation on its own or with Regulation 20 which prevents a Local Plan being amended before submission so that in the judgment of the local planning authority it is sound when submitted. The contrary is not contended. There has to be consultation on the submitted Plan, and all the representations have to be submitted to the Secretary of State. All aspects of the Plan submitted in 2017 were the subject of consultation and all the representations were submitted. That is all that the language requires. The authority must submit a plan which it believes is sound. If it considers that changes are necessary after consultation but before submission, Mr Harwood would require that the whole Plan is

subject to further consultation. I cannot suppose that all those who had previously made representations would realise that they had to repeat them, even if they merited no change, for them to be forwarded to the Secretary of State, or would have the stamina to do so. Were they not to repeat themselves, it is hard to see on what basis their consultation responses to an earlier plan should be forwarded to the Secretary of State.

186. I cannot see what language or purpose of the Regulations means that amendments cannot be the subject of a targeted or restricted consultation at all. The opportunity to provide further comments would be pointless. I can see that if a further round of consultation was limited in its scope with the result that an aspect of the Plan, or some interaction between the various parts or some discontinuity arising from the fact that the alterations came later in time, was not consulted upon, that would be a breach of the Regulations, but that is not contended here. Mr Harwood was unable to point to an aspect of the 2016 Plan which was affected by the alterations in 2017 from which further representations were excluded. His point had no substantive contention behind it. If it did, he would have been able to argue that the Regulations had been breached, not because of form but because of the substance of the consultation.

187. If Mr Harwood is right about a breach of a procedural requirement, falling short of the submission of the wrong plan, it is difficult to see what useful remedy there should be. The alleged breach of a procedural requirement prejudiced no one and had no effect on the Plan at all. I could require the consultation step to be treated as having been taken in relation to the whole plan, but that is not the purpose of his argument. I was unable to follow his submission that, if a procedural remedy were required, some limited solution confining itself to the Wisley allocation would suffice.

188. I agree with Mr Findlay that the essence of Mr Harwood's argument is that the consultation requirement was breached, and unless it is repeated on the Plan as a whole, and the 2017 version recognised as not having been submitted and examined, no useful remedy can be granted. If the consultation process had to be repeated, the flaw could not be remedied without a repeat of the whole consultation exercise, with updated representations and the whole PE starting again. Yet that was what Mr Harwood disavowed.

189. I find it impossible to see how Mr Harwood's submission that it was in fact the 2016 version which was must be treated as having been submitted to the Secretary of State for examination can possibly be right. But, if right, I can see no sensible basis upon which the whole Plan could avoid reversion to a pre-submission stage. Mr Harwood, understandably, did not wish to go so far. It rather illustrated the lack of merit in this whole submission.

190. I reject this ground of challenge.

Issue 8: The air quality impact of the allocation at the former Wisley airfield

191. The Inspector considered this issue under Issue 7, sub-heading "Biodiversity." The SPA consisted of fragments of dry and wet heath, deciduous wood land, gorse scrub, acid grassland and mire, and conifer plantations. The public had access to about 75% of it, as common land or designated open country. It supported populations of European importance of nightjar, woodlark and Dartford warbler during the breeding

season. These species nested on or near the ground, which made them susceptible to predation and disturbance. A Special Area of Conservation, SAC, overlapped the SPA, but did not feature separately in the submissions to me.

192. Regulation 105 of the Conservation of Habitats and Species Regulations 2017 SI No.2012 requires an appropriate assessment to be made of the implications of a land-use plan, on its own or in combination with other projects or plans, "likely to have a significant effect" on an SPA. The assessment examines the implications for an SPA in view of its conservation objectives. The appropriate nature conservation body, in this case Natural England, had to be consulted, and the opinion of the general public was also to be taken. However, the land-use plan could only be given effect in the light of the assessment, if the authority had ascertained that the plan would "not adversely affect the integrity of the" SPA. Were it to do so, the plan could only be given effect, if there were no alternative solutions and there were "imperative reasons of overriding public interest;" reg. 107.

193. Guildford BC's Local Plan Habitats Regulations Assessment, HRA, in November 2017, and updated in June 2018, considered first the likely significant effects of the Plan on the SPA, and then carried out an appropriate assessment, at which stage mitigation was considered. The "pathways of impact" included air quality. This approach accorded with the later CJEU judgment in *"People over Wind v Coillete Teoranta* C323/17 [2018] PTSR 1668*"*, the *"Sweetman"* case. The 2018 HRA was updated specifically to address this case. This case held that mitigation should only be taken into account at the appropriate assessment stage, and not at the earlier stage of considering whether the plan was likely to have significant environmental effects; the approach of the November 2017 HRA update had in fact accorded with the law as pronounced in the *Sweetman* case. Certain of the language of that update, in relation to appropriate assessment, had been made more precise but without changes in substance.

194. The guideline annual mean level of NOx concentrations, for the protection of vegetation, is 30 ug/m3 (micrograms per cubic metre), the Critical Level. Above that level, nitrogen deposition should be investigated. Appendix D to the 2018 update to the HRA, taking 2033 as the year for comparing the positions with and without the Local Plan development, showed that that Critical Level would be exceeded with development somewhere in the range of between 1 and 50 m from the M25, (the range of concentrations was from 40.5 reducing to 23.4 over that distance). The Local Plan development would have contributed between an additional 2.5ug/m3 and 1 ug/ms to that figure again reducing over that distance. With or without the Local Plan development, there would be an exceedance for part of the band within that distance; the width of the area of land in which there was an exceedance would be increased with Local Plan development. On the A3 link, the levels of NOx concentrations, with Local Plan development, reduced from 29.7 to 20.2 over 1 to 50m from the road, and the increase brought about by Local Plan development, was between 2.5-1ug/ms, so that there would be an exceedance over part of that band with the Local Plan development.

195. The annual mean deposition Critical Load for nitrogen, which varies with the habitat at issue, in (kN/ha/yr-(kilos of nitrogen per hectare per year) was 10. That figure was exceeded with Local Plan development in 2033 in the area 1-50 m back from the edge of the M25, at levels of 10.42 reducing with distance to 9.64. Without the Local Plan

development, there would still have been more than 10 kN/ha/yr close to the M25. The position on the A3 was similar though the exceedances were a little less.

196. The assessment in the 2018 update said:

> "10.4.4. Within 50m of the M25 NOx concentrations are still forecast to be above the critical level 'in combination' (the only link for which this is forecast to be the case) but the main role of NOx is as a source of nitrogen and the improvement compared to the baseline is forecast to be substantial enough to bring nitrogen deposition rates down by 5kgN/ha/yr even with the Local Plan in place. Since nitrogen deposition rates are predicted to decline to the critical load, NOx concentrations in themselves are less important because the primary role of NOx is as a source of nitrogen. As NOx exceedances alone is unlikely to result in a significant adverse effect on vascular plants except possibly at very high annual average concentrations of 100 ugm3 or more, which is not predicted by the end of the plan period along any link."

197. In reality a substantial improvement in NOx concentrations and nitrogen deposition rates was expected by 2033, which would be barely affected by the development proposed in the Plan. Even where slowing down of improvement was at its highest, within 50m of the M25, nitrogen deposition rates would still be considerably better than now.

198. Guildford BC produced an Addendum HRA in January 2019 in the light of the CJEU rulings in November 2018 in *Holohan v An Bord Pleanala C-46/17*, and in *Cooperatie Mobilisation for the Environment and others v College van gedeputeerde staten van Limburg* C293/17, C294/17, the *Dutch Nitrogen* case. It had been submitted by Mr Harwood that reliance on anticipated reductions in background air quality was wrong in principle because those improvements were entirely independent of the Local Plan. It was not in the end at issue but that improvements to the baseline against which likely significant or adverse effects would be measured were relevant, if sufficiently certain. Those later CJEU decisions made that clear. The Addendum HRA demonstrated why there was sufficient certainty for the baseline to be adjusted, along with the April 2019 response updated HRA.

199. The 2019 Addendum described the specific habitats required by woodlark, nightjar and Dartford warbler. Their foraging areas were close to their nesting territories. Key habitats were heathland and early stage planation, not dense bracken, mature plantation or permanent deciduous woodland. All three species were highly sensitive to disturbance. Surveys indicated that the nearest SPA bird territories to the M25 and A3 were approximately 300m from the roadside. Even where suitable habitat was present, Dartford warbler territories were not found within 70m of the motorway; nightjar and woodlark territories were even more distant, the closest were 200m away, with the majority more than 500m away, even when ample suitable habitat existed much closer. The 2019 Addendum continued:

> "3.1.3 There is therefore strong reason to conclude that nightjar, woodlark and Dartford warbler (particularly the first

> two species) would be unlikely to successfully establish nesting territories, will undertake much foraging activity, within at least 50m of either the A3 dual carriageway or M 25 motorway. This is probably partly a function of habitat distribution (since the majority of the habitat within 200m of the A3/M25 junction is mature plantation, bracken and permanent deciduous woodland which are generally unsuitable for nesting or foraging) and partly a noise -related displacement effect of the very large volume of traffic movements in this area meaning that the birds settle in more tranquil locations.
>
> 3.1.4 The parts of the SPA closest to the A3/M25 junction still serve an important function through buffering and protecting those areas of the SPA which do support bird territories and foraging habitat. However, the low likelihood of SPA birds actually using the area closest to the dual carriageway and motorway is clearly an important factor when determining the likelihood of roadside atmospheric pollution negatively affecting the ability of the SPA to support the relevant bird species and thus the integrity of the SPA. The modelling undertaken for the Local Plan in 2016 clearly indicates that the area that will be most subject to elevated nitrogen deposition due to the presence of the A3 and M25 is also the area least likely to be used for nesting or foraging by the birds for which the SPA is designated....
>
> 3.1.7 Even with RHS Wisley included therefore, the modelling forecasts total nitrogen deposition rates to have fallen to the critical load at the roadside and below the critical load by15-30m from the roadside by the end of the plan period. This would mean that the atmospheric nitrogen (irrespective of source) would cease having an influence on vegetation composition/structure except possibly within a narrow band along both the A3 and M25 which, as has been established, is the area of the SPA least likely to be functionally used by SPA birds. Moreover, the NOx critical levels and nitrogen critical loads are based primarily on protecting floristic vegetation characteristics such as species-richness and percentage grass cover. The ability of the…SPA to support nightjar, woodlark and Dartford warbler is based far more on habitat structure and appropriate management. It is the broad structure of the vegetation that is relevant to the ability of the area to support SPA birds…."

200. The presence of heathland and traditionally managed plantation within and beyond the SPA boundary was important as nesting and foraging habitat for the birds species which had led to the designation of the SPA. It had not been designated for the habitats in their own right. The impact of the allocation on those habitats was considered but as none of the proposed development sites would cause the loss of

significant areas of those habitats outside the SPA and no adverse effect on integrity was expected, the *Holohan* case required no change to the HRA.

201. This Addendum was criticised by Ockham PC and Wisley Action Group. They contended that the HRA was deficient because any additional nitrogen deposition above the critical load should inevitably lead to a conclusion that there were adverse effects on the integrity of the SPA, a contention no longer pursued. It was also contended that the foraging value of roadside habitat to SPA birds had been ignored.

202. It was clear that Guildford BC had not simply relied on the reduction of nitrogen deposition, with and without the Local Plan development, to support the conclusion that there would no adverse effect on the integrity of the SPA. Its response to the further contentions was to point to [3.1.7], from the 2019 Addendum, which I have set out above. It commented:

> "The information in [3.1.7] is fundamental to the overall conclusion of no adverse effects on integrity because it indicates that a) the critical load for heathland is not projected to be breached and b) even if the improving trends in nitrogen deposition were slower than predicted in [the] modelling (such that deposition rates at the roadside remained above the critical load for heathland) the affected area consists almost entirely of common and widespread habitats of low value to the SPA birds for nesting or foraging, and this is highly likely to remain the case.
>
> 3.1.7 …the strip of habitat within 15-30m of the roadside of the A3/M25 junction will <u>not</u> be of high significance as foraging habitat [for SPA birds] because … it consists primarily of habitat that is of relatively low foraging value for the three species…and which is abundant in the wider area within and outside the SPA… Moreover, it is very unlikely to be reverted to heathland as this would remove the useful buffer the woodland currently provides between the A3 and M25 and the SPA. Therefore this band of vegetation is of very limited significance to sustaining or increasing the SPA population… Invertebrate diversity and abundance… is certainly not expected to decline. As such, it is considered that effects in this 15 to 30m zone will not 'affect the ecological situation of the sites concerned' (in the words of the European Court of Justice) or materially retard the ability of the SPA to achieve its conservation objectives. This is reflected in the fact that Natural England has never objected to the Local Plan or its HRA."

203. The Inspector concluded that the Plan was based on a lawful and adequate HRA and Appropriate Assessment. The Inspector set out the air quality position in IR113:

> "The air quality modelling shows that NOx concentration and nitrogen deposition rates within 200m of the…SPA are expected to be better at the end of the plan period than they are at the moment, due to expected improvements in vehicle

> emissions and Government initiatives to improve background air quality. The Design Manual for Roads and Bridges [DMRB] guidance for air quality assessments recommends reducing nitrogen deposition rates by 2% each year between the base year and assessment year. [The Inspector then set out the actual annual average rate of improvement over the 10 years to 2014]. This reduction occurred despite increased housing and employment development and traffic growth, and is most likely to be attributable to improvements in emissions technology in the vehicle fleet. Consequently, allowing only a 2% year improvement in nitrogen deposition rates represents a precautionary approach. The approach taken towards improvements in baseline NOx concentrations and nitrogen deposition rates is in line with [DMRB] guidance for air quality assessment and does not conflict with the "Dutch Nitrogen" CJEU ruling. "

204. Mr Harwood did not pursue his original contention that the HRA was unlawful because it relied on improvements to the background level of emissions, and did so although the outcome with development would be worse than if there were no development. It was rightly pointed out that what Guildford BC and the Inspector were considering was not related to mitigation of the Local Plan development but related to the accurate and soundly based future changes to the baseline against which the impact of the development had to be considered. The scientific reliability of the future emission reductions was not at issue.

205. Instead Mr Harwood relied on the fact that the development would add to exceedances of critical levels which meant, therefore, that the development was bound to have an adverse effect on the integrity of the SPA. A contrary conclusion, as reached by Guildford BC and the Inspector, was unlawful. He submitted that the LP Inspector had relied on the benefit of anticipated reductions in vehicle emissions to offset those from additional traffic generated by development. This was wrong in principle because it ignored the fact that the outcome would still be worse with the development than without. There was no headroom for further development, because there would still be exceedances of the critical level and load for NOx and nitrogen respectively. The increase would still be harmful.

206. Mr Harwood also submitted that as the critical level for NOx emissions, and the critical load for nitrogen deposition, would still be exceeded at the SPA, Guildford BC and the Inspector ought to have but failed to consider whether the effect of the increased pollution due to the development comprised in the Local Plan would, individually or in combination with other sources, have no adverse effect on the integrity of the SPA.

207. It is perfectly clear, in my judgment, that Guildford BC, whose task it was to undertake the HRA, did consider whether significant adverse effects were likely from the development proposed in the Local Plan; it then undertook an appropriate assessment to see whether there would be no adverse effect on the SPA. That could not be answered, one way or the other, by simply considering whether there were exceedances of critical loads or levels, albeit rather lower than currently. What was required was an assessment of the significance of the exceedances for the SPA birds

and their habitats. Guildford BC did not just treat reductions in the baseline emissions or the fact that with Plan development, emissions would still be much lower than at present, as showing that there would be no adverse effect from the Plan development. The absence of adverse effect was established by reference to where the exceedances of NOx and nitrogen deposition would occur, albeit reduced, and a survey based understanding of how significant those areas were for foraging and nesting by the SPA birds. The approach and conclusion show no error by reference to the Regulations or CJEU jurisprudence. I have set out the 2019 HRAs at some length. The judgment is one for the decision-maker, as to whether it is satisfied that the plan would not adversely affect the integrity of the site concerned; the assessment must be appropriate to the task. Its conclusions had to be based on "complete precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effect of the proposed works on the protected site concerned"; *People Over Wind*. But absolute certainty that there would be no adverse effects was not required; a competent authority could be certain that there would be no adverse effects even though, objectively, absolute certainty was not proved; *R (Champion) v North Norfolk District Council* [2015] UKSC 52 at [41], and *Smyth v Secretary of State for Communities and Local Government* [2015] EWCA Civ 174 at [78]. The same approach applies, following the *Dutch Nitrogen* case, to taking account of the expected benefits of measures not directly related to the plan being appropriately assessed.

208. This is how it was approached. Guildford BC's conclusion was reasonable, and was based on a lawful approach. Both the 2019 update and response were considered by Guildford BC before the Plan was adopted. I reject this ground of challenge.

Issue 6: T**he access road at Blackwell Farm and major development in the AONB**

209. NPPF [116] states:

> "Planning permission should be refused for major developments in [AONB] except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of: the need for the development, including…the impact of permitting it, or refusing it, upon the local economy; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

210. The PPG, applicable with the 2012 NPPF, offered this help: whether or not a development was "major development" was for the decision-maker, taking into account the proposal and the local context. Great weight had to be given to conserving the landscape and scenic beauty of AONB, whether development was "major development" or not. The 2019 version of the NPPF added that the nature of a development, its scale, setting and the significance of its impact on the purposes of the designation as AONB were relevant. I do not read *R(JH and FW Green Ltd v South Downs National Park Authority* [2018] EWHC 604 (Admin) at [27] as supporting a proposition that whether development was "major" should be determined solely by its

degree of impact on the qualities of the AONB. That is obviously an important factor, and it may be decisive. But the PPG and 2019 version of the NPPF are correct in their approach to the meaning of "major development.".

211. It was not disputed but that NPPF [116] only applied in terms to development control decisions, but Mr Kimblin submitted that that did not mean that it had no ramifications in plan-making when assessing the deliverability of allocations. The soundness of the Plan required the allocations to be deliverable. The Inspector needed to recognise that Guildford BC or the Secretary of State might take the view that the access road was "major development" and conclude that the harm did not warrant the road or therefore the development allocation. Mr Kimblin pointed to the £20m cost of the link, what he described as the "very challenging topography" which the road had to cross; it was not simply a development access road but was intended to provide relief to the A31/A3 junction. (Perhaps this was an example of the wider benefits of the infrastructure brought by the allocations).

212. The issue before me was whether the Inspector reached a conclusion on whether the access road was "major development" in the AONB, to which NPPF [116] applied; a contrary conclusion was said to be irrational. If he had reached no conclusion, he ought to have considered the risk to the allocation, and hence to its deliverability, which would arise when a planning application was made, and a decision could be reached that it was indeed "major development", with all the weight, adverse to the development, which would have to be given to such a conclusion.

213. The Inspector expressed some of his views under Issue 7 headed "Whether the Plan's approach towards the protection of landscape and countryside, biodiversity, flood risk and groundwater protection is sound." At IR107, he referred to the Blackwell Farm site's proposed access "which passes through a small part of the AONB… But the allocation would not have a significant impact on [this area]." Policy P1 aims to conserve the AONB, "and contains a presumption against major development within it except in exceptional circumstances where it can be demonstrated to be in the public interest." Subject to a modification, immaterial for these purposes, "the plan's approach to the AONB is sound." The spatial strategy successfully accommodated substantial development whilst avoiding significant landscape harm; the impacts in relation to the needs met did not justify accepting a lower level of development. Indeed Policy P1 adopts the language of NPPF [116]. Its reasoned justification at 4.3.6 adopts as relevant factors the essence of those in NPPF [116].

214. He elaborated on the access when dealing with the site-specific allocation under Issue 10. There was no issue before me about the effect of the development itself, because the Inspector had concluded that it would have very little impact on the character of the AONB or its setting. He said at IR167:

> "However, the access road from the site to the A31 would pass up the hill through part of the AONB. Cutting and grading together with junction and vehicle lighting would have some visual impact. With carefully designed alignment, profiling and landscaping, the effect is capable of mitigation, but the submitted Plan does not allow for adequate land to find the best road alignment in highways and landscape terms or to mitigate its impact through landscaping. [Accordingly, Main

> Modification 37 was required, which introduced a new allocation for the access road; Policy 26a.] This is a site allocation which seeks the best landscape and design solution, taking into account the topography, the existing trees, the need for additional landscaping, and the needs of all users, including walkers and cyclists as well as vehicles entering and leaving the site. It also requires mitigation measures to reduce the landscape impact including sensitive lighting and buffer planting. This modification allows for an appropriate design solution to be developed. Subject to MM37, the scenic beauty of the AONB would be conserved."

215. I reject this ground of challenge.

216. I can see the force in the argument from Mr Findlay and Mr Turney that the Inspector has in substance concluded that, with the Main Modifications, the means have been provided for the access road to be constructed in such a way that it would not constitute "major development." However, he has not expressly so concluded, and it would not have been for him to express the decisive view on the point, or to do so in advance of the detailed design of the road. He has reached the view that the road would not inevitably be "major development", and that it could be designed and landscaped so that the risk of a significant hurdle to the delivery of the allocation is minimised. I do not consider that he needed to go further. In effect, the degree of risk, with the modification, was not such that it made him find the allocation to be unsound. He considered the issue; his language makes his view clear that he sees no significant risk, and is adequately reasoned.

217. But it cannot be ignored that he has included an extent of headroom, complained of by the Claimants, in part because he recognised the difficulties which larger sites face. This issue was not expressly part of his consideration of the justification for the headroom, but hurdles and delays in the way of approving infrastructure would have been well within his contemplation of the sort of problems which larger sites face.

Overall conclusion

218. I reject all the grounds of challenge. The three claims are dismissed.