



Neutral Citation Number: [2022] EWHC 3432 (Admin)

Case No: CO/323/2022

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/12/2022

Before :

**THE HON. MR JUSTICE HOLGATE**

Between :

**Norton St. Philip Parish Council**

**Claimant**

- and -

**Mendip District Council**

**Defendant**

-and-

**(1) Secretary of State for Levelling Up, Housing and  
Communities**

**(2) Lochailort Investments Limited**

**Interested**

**(3) Redrow Homes Limited**

**Parties**

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**Alexander Greaves** (instructed by **DLA Piper UK LLP**) for the **Claimant**  
**Hashi Mohamed** (instructed by **Mendip District Council**) for the **Defendant**  
**Robert Williams** (instructed by the **Government Legal Department**) for **1<sup>st</sup> Interested Party**  
**James Findlay KC and Ben Du Feu** for (instructed by **Town Legal**) for **Second and Third  
Interested Parties**

Hearing dates: 18 and 19 October 2022

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**JUDGMENT APPROVED**

This judgment was handed down remotely at 10.30am on 16 December 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

## **The Hon. Mr Justice Holgate :**

### **Introduction**

1. This is a challenge brought by Norton St. Philip Parish Council under s.113 of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) against the decision by the defendant, Mendip District Council (“MDC”) on 20 December 2021 to adopt the Mendip District Local Plan 2006-2029 Part II: Sites and Policies (“LPP2”). This Plan complements the Mendip District Local Plan 2006-2029 Part I: Strategy and Policies (“LPP1”). They form part of the statutory development plan for the district of Mendip in Somerset.
2. At the heart of the challenge lie Core Policies 1 and 2 (“CP1” and “CP2”) of LPP1. Policy CP1 sets out the spatial strategy for the District, distributing development between its hierarchy of settlements, directing the “majority of development” towards the five principal settlements, the towns of Frome, Glastonbury, Shepton Mallet, Street and Wells. Policy CP2 sets the District’s overall housing requirement at 9,635 homes over the plan period. Largely as the result of a decision to extend that period from 2028 to 2029 that figure included an additional 505 homes, but no work was carried out at that stage to identify where in the District that development should be located. That was left to be considered in LPP2.
3. There are two central issues in this challenge. First, whether the Inspector who conducted the independent examination of LPP2 under the PCPA 2004 and/or MDC misinterpreted LPP1 as requiring all of the 505 dwellings to be located in the north-east of the District, rather than considering their distribution across the District in accordance with the spatial strategy. Second, did MDC fail to comply with regulation 12(2)(b) of the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633) (the “2004 Regulations”) by failing to consider through their sustainability appraisal any alternative locations to allocating the 505 dwellings in the north-east of the District?
4. The towns of Midsomer Norton and Radstock straddle the north-eastern boundary of Mendip District with the District of Bath and North East Somerset Council (“BANES”). They mainly lie within the area of BANES. The upshot of the examination of LPP2 was that the Plan was modified so as to allocate land for 455 dwellings on the fringes of Midsomer Norton through policies MN1, MN2 and MN3. The largest of these sites, land at White Post, would provide 250 homes (Policy MN1). In addition LPP2 allocates land off Mackley Lane, Norton St. Philip for 27 dwellings (Policy NSP1) and land off Great Dunns Close, Beckington for 28 dwellings (Policy BK1). Overall, LPP2 allocates land for 510 dwellings to satisfy the requirement for 505 units. The claimant and BANES objected to these allocations in the examination process.
5. The claimant seeks relief by way of an order for remittal in respect of Policies MN1, MN2, MN3, NSP1 and BK1 and related text. No other part of LPP2 would be affected.

6. The Secretary of State for Levelling Up, Housing and Communities has been joined as the first interested party because of the criticisms made by the claimant of the Inspector who conducted the examination of LPP2.
7. The second and third interested parties (“the developers”) were represented jointly. Lochailort Investments Ltd owns the site allocated by Policy NSP1. Redrow Homes Limited has an option to acquire the site allocated by Policy BK1. Both participated in the examination process.
8. I am grateful to all counsel for their written and oral submissions.

### **Legal Framework for development plans and statutory review.**

9. The legal framework for the preparation, examination and adoption of development plans and for legal challenges under s. 11 of the PCPA 2004 has been set out in many authorities and need not be repeated here (see for example *Aireborough Neighbourhood Development Forum v Leeds City Council* [2020] EWHC 1461 (Admin) at [64]-[72]; *Keep Bourne End Green v Buckinghamshire Council* [2021] JPLI 81 at [42]-[58]; *Flaxby Park Limited v Harrogate Borough Council* [2021] JPL 833 at [21]-[38] and [124]-[127]).
10. As part of the preparation of a development plan, s.19(5) of the PCPA 2004 requires the local planning authority to carry out an appraisal of the sustainability of the proposals in the plan and to prepare a report of the findings of that appraisal (a sustainability appraisal or “SA”). Section 19(5) integrates the requirements for Strategic Environmental Assessment (“SEA”) and the preparation of an environmental report under the 2004 Regulations (transposing Directive 2001/42/EC) with the statutory process under the PCPA 2004 for the preparation, examination and adoption of a development plan. In practice, a sustainability appraisal will be prepared under s.19(5) so as to satisfy the requirement in the 2004 Regulations for an “environmental report” (*Flaxby* at [26]). One of the purposes of the examination is to determine whether the requirements of s. 19 of the PCPA 2004, and hence of the 2004 Regulations, have been met (s. 20(5)(a)). It is well established that a breach of those Regulations is a potential ground of challenge under s. 113.
11. A further purpose of the examination is to determine whether the plan is “sound” (s. 20(5)(b)). A plan cannot be adopted unless it is determined by the Inspector to be sound (s. 20(7A) and s. 23(2)). If an Inspector is minded to conclude that a plan is unsound in one or more respects, then, if asked to do so by the local planning authority, he must recommend “main modifications” of the plan so as to make it sound (s. 20(7C)). The authority is then empowered to adopt the plan with those modifications (s. 23(3)). Accordingly, the judgment made by an Inspector as to whether a submitted plan (with any “main modifications”) is sound is crucial to the legal ability of the local authority to adopt that document as part of its development plan (*Keep Bourne End Green* at [58]).
12. The legislation does not define the concept of “soundness”. However, paragraph 35 of the NPPF provides guidance on the subject. A plan is sound if it is, *inter alia* :-

“a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet needs from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;”

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

c) ..... ; and

d) .....

13. The examining Inspector is obliged to give reasons for his conclusions on soundness and for the recommendations made (see s. 20(7) and (7A) and, in relation to s. 20(7C), see *University of Bristol v North Somerset Council* [2013] JPL 940 at [72]-[75] and *CPRE Surrey v Waverley Borough Council v Secretary of State for Housing, Communities and Local Government* [2020] JPL 505 at [72]). The legal standards for the duty to give reasons are set out in *Save Britain’s Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153 and *South Bucks District Council v Porter (No.2)* [2004] 1 WLR 1953.
14. In the *CPRE* case the Court of Appeal stated that the reasons given by an Inspector on the examination of a local plan may be more succinctly expressed than in a decision letter on a planning appeal. It is unlikely that he will need to set out the evidence of every participant. It will be sufficient if he conveys to a “knowledgeable audience” how he has decided the main issues before him. He may only need to set out the main parts of his assessment and the essential planning judgements he has made ([75]-[76]).
15. Neither an Inspector’s report nor the decision of the authority should be subjected to “hypercritical scrutiny”. They should be read with reasonable benevolence and in a reasonably flexible way (*St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2018] PTSR 746 at [6]-[7] and *R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452 at [41]-[42]).
16. The court’s jurisdiction under s. 113 is confined to the conventional public law principles of judicial review and statutory review (*Flaxby* at [124]).
17. The principles governing the interpretation of planning policy are well established. They were summarised in *Keep Bourne End Green* at [77]-[78].

## **The policies of LPP1 and LPP2 and the process followed**

### *LPP1*

18. LPP1 was adopted on 15 December 2014. The Plan set out an overall spatial strategy for the District, specific policies for each of the five towns in the District and broad principles to direct how development will take place across

the rural areas. The Plan also contained strategic allocations of land for development and identified Future Growth Areas. LPP2 was to deal with the non-strategic allocation of land and more detailed development control policies.

19. The draft plan had been submitted for independent examination on 9 December 2013. Examination hearings took place between 31 March and 14 April 2014. The Inspector produced his report on the examination (“IR”) on 2 October 2014.
20. On MDC’s assessment of housing needs, the Inspector accepted that commuting and migration patterns showed links with neighbouring areas, particularly between the north-east of the District and BANES (IR 6). But he concluded that it had been reasonable for MDC to treat the District as a fairly self-contained housing market area and to base the assessment of housing need on the District (IR 9). Neighbouring local authorities were not seeking to meet any of their housing needs in Mendip and MDC was not relying upon neighbouring areas to meet the housing needs of its District (IR 11).
21. The Inspector then went on to assess the “soundness” of the LPP1 under ten main issues. Issue 1 considered whether the spatial strategy was sound. Three sub-issues had been raised, the first of which was that no consideration had been given to the alternative of developing land at Radstock and Midsomer Norton (IR 20).
22. The Inspector acknowledged that Radstock and Midsomer Norton are comparable in size with the main towns of Mendip, they have a similar range of services and have close functional links with settlements in the northern part of the District (IR 21). However, the Inspector considered that planning for those towns was primarily the responsibility of BANES, whose Plan did not see them as particularly sustainable locations for growth. He concluded that large scale, strategic allocations at Radstock and Midsomer Norton would not have been a reasonable alternative to MDC’s strategy (IR 22). As one of the main modifications to make LPP1 sound, the Inspector recommended Main Modification 16 (“MM16”), which deleted references to Mendip meeting the needs of Radstock and Midsomer Norton.
23. However, the Inspector went on to deal with the issue of whether LPP2 should consider making local, rather than strategic, allocations at Radstock and Midsomer Norton, in the context of meeting Mendip’s needs, particularly the need for about 500 additional homes. IR 23 to IR 25 should be read in full:-

“23. What the Plan does not deal with, however, is whether such sites should be considered through the Local Plan Part II Allocations document as a way of meeting Mendip’s own development needs. This is particularly relevant as, largely as a result of the decision to extend the end date of the Plan to 2029, the Local Plan Part II Allocations document will need to find sites for an additional 500 or so sites across the District. *No substantial evidence has been put forward to suggest that sites on the edge of these towns should be ruled out as possible alternatives for such local, as opposed to strategic, allocations.* However, such allocations would need to be considered in

conjunction with B&NES and local communities and arrangements would need to be made to deal with any impact they might have on infrastructure in B&NES. The Plan is therefore, unjustified, and hence unsound in this respect. The Council proposes to remedy this element of unsoundness by making specific reference to the role that these towns play in Mendip and to *the possibility that sites on the edge of them will be considered for allocation* in order to meet Mendip's housing needs. (MM14, MM16, MM23 & MM26).

24. *No substantial evidence has been put forward which would justify going further than this and including a reference in Core Policy 1 which would commit the Council to directing some development towards Radstock and Midsomer Norton. Indeed, on a similar point, no substantial evidence has been put forward to support suggestions that the Council should specify in more detail where the additional 500 houses will go. On the basis of the information available I consider that the Council is correct to take the approach that it does in the Plan and simply state in general terms that these houses will be located in accordance with the Plan's spatial strategy as set out in Core Policy 1 and that this could include land adjacent to Radstock and Midsomer Norton.*

25. I am satisfied, therefore, that there was no necessity for the Council to have fully appraised the alternative of allocating a strategic site or sites at Radstock or Midsomer Norton and that the Plan, as proposed to be modified, provides an adequate framework within which *the possibility of allocating sites at these towns* could be appraised in the future." (emphasis added)

24. Under issue 3 the Inspector considered whether MDC had justified the distribution of housing in Policy CP1 between the settlements of the District. Concerns had been raised about the housing numbers indicated for individual villages. These had been based upon allowing a 15% increase in the existing housing stock of a village, subject to an upper limit. But it was recognised that a flexible approach to allocation would be taken in LPP2 (see IR 65 to IR 70).

25. The Inspector returned to the subject of the additional 500 houses at IR 101:-

*"The point is made earlier in this report (paragraphs 23 and 24) that the decision to extend the end date of the Plan means that the Part II Local Plan Allocations document will need to find sites for an additional 500 or so houses. Various proposals as to how these houses could be distributed have been put forward by representors. However there is no substantial evidence at this time to indicate that these houses should be directed towards one or another location. The approach taken in the Plan, which is to indicate that these houses will be distributed in accordance with the Plan's spatial strategy, is, therefore, sound."* (emphasis added)

26. Policy CP1 of the adopted LPP1 sets out the spatial strategy for Mendip. The policy provides that to enable the most sustainable pattern of growth for the District:
- (i) The majority of development will be directed towards the five principal settlements, the towns of Frome, Glastonbury, Shepton Mallet, Street and Wells to reinforce their roles as market towns. Specific policies for each town were set out in Core Policies 6 to 10;
  - (ii) In the rural parts of the District new development to meet local needs will be provided in :-
    - i) Sixteen “primary villages”, including Beckington and Norton St. Philip. These villages offer key community facilities and some employment opportunities, making them best placed to accommodate more new rural development;
    - ii) Thirteen “secondary villages”. These villages offer some services making them appropriate for development to meet more localised housing, business and service needs;
    - iii) In other villages and hamlets, development in line with Policy CP4 to meet specifically identified local needs.
  - (iii) Development in the open countryside will be strictly controlled, but may exceptionally be permitted in accordance with Policy CP 4.
27. The scale of housing development within the settlement hierarchy is set out in Policy CP2. This provides for 9,635 new houses, of which 7,350 are to be located in the five towns and 1,780 in the primary, secondary and other villages. Lastly there is a requirement to provide 505 additional houses in the District in accordance with para. 4.21 of the explanatory text.
28. The Inspector’s MM 23 inserted into the explanatory text of LPP1 a new paragraph 4.21:-
- “The Review of Housing Requirements (2013) and the rolling forward of the plan period to 2029 will result in an additional requirement for 505 dwellings in the District. This will be addressed in Local Plan Part II: Site Allocations which will include a review of the Future Growth Areas identified in this plan. The Site Allocations document will also be able to take account of issues in emerging Neighbourhood Plans, updated housing delivery, revised housing market areas and housing needs identified through cross boundary working. Allocations from this roll-forward are likely *to focus on sustainable locations in accordance with the Plan’s overall spatial strategy as set out in Core Policy 1 and may*

*include land in the north/north-east of the District primarily adjacent to the towns of Radstock and Midsomer Norton in accordance with paragraph 4.7 above.” (emphasis added)*

29. Paragraph 4.7 of LPP1, as amended by the Inspector’s MM16, reads as follows:-

“The towns of Radstock and Midsomer Norton lie on the northern fringe of Mendip district. The main built extent of these towns lie in Bath and North East Somerset; but some built development exists within Mendip and other built and permitted development immediately abuts the administrative boundary. This Local Plan, whilst taking into account development opportunities on land abutting the towns, does not make any specific allocations for development, particularly for housing. *The Council will consider making specific allocations as part of the Local Plan Part II Site Allocations to meet the development needs of Mendip which have not been specifically allocated to any particular location in this Part I Local Plan.* In the event that such allocations are considered, this will be undertaken in consultation with B&NES and local communities. Any impact on infrastructure in B&NES such as education, transport or community facilities, will be addressed either through s.106 contributions or through CIL arising from new development in Mendip.” (emphasis added)

30. Consistent with Policy CP2 and paras. 4.7 and 4.21, the Key Diagram of LPP1 stated under the heading “District Wide”: “an additional 505 dwellings to be allocated in the district”.

31. Policy CP2(2)(c) set out principles for allocating housing land in addition to the strategic allocations, a process to be undertaken in LPP2:-

“c. Other allocations of land for housing and, where appropriate, mixed use development, outside of Development Limits through the Site Allocations process in line with:

(i) the principle of the proportionate growth in rural settlements guided by the requirements identified in the text above;

(ii) informed views of the local community;

(iii) The contribution of development since 2006 towards identified requirements in each place, development with planning consent and capacity within existing Development Limits.”

The “proportionate growth” criterion in Policy CP2 (2)(c)(i) is the subject of the claimant’s challenge in ground 3.



32. Paragraphs 4.31 to 4.36 of the explanatory text set out more fully MDC's approach to the allocation of housing land in the rural part of the District. They aim to meet housing needs as locally as possible. One of the two broad principles on distribution was that new development in each place should be appropriate to its existing scale and have regard to environmental constraints. That led to a village housing requirement for each settlement that has been based upon proportionate growth equating to 15% of the existing housing stock. Where more than 15 units remained to be provided in order to meet the necessary housing requirement for a particular village, the land would be allocated in LPP2.

### *LPP2*

33. In October 2015 MDC began consultation on an Issues and Options document for LPP2. In January 2018 a pre-submission draft of LPP2 was published for consultation. That was accompanied by MDC's first SA report dated December 2017. Paragraph 6.4 of the SA explained that no allocations were proposed for any settlement where its housing requirement figure in LPP1 had already been exceeded (see also para. 7.4). That was the case for all the villages in the north-east part of the District. Accordingly, the drafts of LPP2 did not select any sites in that area.
34. The SA assessed only two options in relation to the provision of housing. Option 1 was simply for the delivery of the housing targets in LPP1. Option 2 went further by increasing development in the towns of Frome, Glastonbury, Street and Wells, in addition to meeting the requirements identified in LPP1 for villages. MDC decided in favour of Option 2, despite it having greater negative impacts, because of the need to deliver more housing than the minimum requirement figures in LPP1.
35. Paragraph 3.10 of the pre-submission draft of LPP2 (January 2018) set out the five objectives of the Plan for housing supply. They included "(a) to address the minimum requirements specified in Local Plan Part I" and "(d) to achieve a distribution of growth consistent with the spatial strategy housing supply objectives of the Plan". Paragraph 3.11 said those five objectives could be addressed through LPP2 and without needing "a complete review of the spatial strategy". Paragraph 3.12 stated that LPP2 relied upon a site-based approach which relied upon "assessing available and sustainable sites to address these objectives rather than revising district and settlement housing requirements". Paragraphs 3.13 to 3.36 then set out how the policies in LPP2 proposed to meet those objectives.
36. Paragraphs 3.21 to 3.34 explained MDC's policy approach for satisfying objective (d). Paragraph 3.33 referred to the need identified by Policy CP2 of LPP1 to distribute a further 505 dwellings and to para. 4.21 of that Plan. MDC considered that that need had largely been met by "non-Plan commitments", that is by the grant of planning permissions, so that LPP2 need not make any allocation of land to fulfil that particular need. Against that background, para. 3.34 then addressed the possibility of allocations at Midsomer Norton and Radstock:-

“3.34 Outside the five main towns, Local Plan Part 1 indicates (in para. 4.7) that land promoted on the edge of the district near Westfield, Midsomer Norton and Radstock could be identified to meet housing need in Mendip. No land is allocated in these locations as there are sufficient sites in Mendip settlements which are better placed to fulfil the district’s housing and employment needs. In addition, the adopted development plans for Bath and NE Somerset and recently published West of England Joint Spatial Strategy do not consider this area as a suitable location for additional housing growth.”

37. Paragraph 3.38 of the January 2018 draft of LPP1 explained that no additional allocations would be made for villages which had exceeded their LPP1 requirements, applying the principle of proportionate growth in Policy CP2(c)(i) of LPP1.
38. Thus, the policies prepared in accordance with Option 2 in the SA and objective (d) of the January 2018 draft of LPP1 proposed no housing allocations for any part of the north-east of the District.
39. In January 2019 the submission version of LPP2 was sent for examination by an Inspector. The first set of examination hearings took place between July and August 2019.
40. On 25 July 2019 the Inspector issued a Request for Further Statements (document ED 11). Paragraph 7 sought information from MDC on meeting the need identified in LPP1 for an additional 505 dwellings:-

“MDC to write Note on the status of the 505 dwellings which are identified in Core Policy 2 taking into account the references in LPP1 paragraphs 4.5, 4.21 and paragraph 23 of the LPP1 Inspector’s Report. In particular, does LPP1 provide for, or anticipate in LPP2, allocations within the north-eastern part of Mendip – eg sites adjacent to Midsomer Norton and Radstock and sustainable villages in that area?”

41. During August 2019, MDC responded in a document referred to as IQ7. The Council stated that in its view the text in LPP1 and the Inspector’s report of the examination “do not direct [LPP2] to address a specific quantum of planned growth or create a specific requirement for this to be located adjacent to Midsomer Norton and Radstock”. MDC added that it did not accept that those settlements should be regarded as the District’s “sixth town”.
42. On the subject of “direction of growth” the Council stated in IQ7:-

“While it is accepted that while these locations are not exempted from consideration in LPP2, para. 4.21 only states that this ‘may include’ land in the north/ north east of the District. The council dispute the interpretation with other parties that the phrase “that the council will consider making specific allocations” amounts to a direction in LPP1 to explicitly allocate sites. Subject to the

specific concerns raised around sustainability appraisal, the council's view is that it has 'considered' sites in this location in the emerging LPP2. This is summarised in appendix 1"

43. As to villages in the north-east of the District the Council stated in IQ7:-

"LPP1 paras. 4.28 – 4.27 set out the rationale and principles of site allocations in villages based on proportionate growth (see para. 4.32). LPP2 does not make additional allocations in primary and secondary villages in the north east of the district. LPP2 Para 3.22 explains that the Plan focuses on those settlements where land supply falls short of the minimum requirements. Table 1 demonstrates that settlements in the north east of district have already significantly exceeded minimum requirements"

44. Appendix 1 to IQ7 summarised the various documents in which MDC had considered whether to allocate sites in the north-east of the District and concluded that no such allocations should be made applying the spatial strategy. Table 1 showed that commitments completed between 2006 and 2018 had already provided 196% and 251% of the requirements set out in LPP1 for Beckington and Norton St. Philip respectively.

45. On 13 August 2019 MDC requested the Inspector to recommend "main modifications" to LPP2, thus triggering s. 20(7C) of the PCPA 2004.

46. On 10 September 2019 the Inspector issued an "Interim Note" (document ED20) following the first round of examination hearings. He stated that LPP2 "could be found sound, subject to the main modifications .... below" (para. 2). However, he emphasised that he had not reached any final conclusions at that stage. The modifications would need to be the subject of consultation and SEA.

47. In relation to the requirement for 505 additional dwellings the Inspector said:-

"16. Land to the North-East of Mendip District: The overall distribution of development proposed in the Plan broadly conforms with the relevant policies in LPP1, with one exception. The table in policy CP2 of LPP1 makes specific reference to an additional figure of 505 dwellings; furthermore, paragraph 4.21 in LPP1 refers to the requirement *to address the housing needs of the north-eastern part of the District*, including land adjacent to the towns of Radstock and Midsomer Norton. These two towns are located just over the Mendip border in the local planning authority (LPA) of Bath and North-East Somerset (BANES).

17. From my reading of the LPP1 Inspector's Report and LPP1 itself, and from the discussion at the Hearing sessions, it seems to me that there *is a strategic expectation that allocations for development in this part of the Plan area should be considered*. I consider that in these circumstances it is

appropriate for this additional element of 505 dwellings to be apportioned to sustainable settlements *in the north-east part of the District*, both on sites adjacent to the two aforementioned towns within BANES, and possibly also within other settlements which lie within the District, which could lead to other sustainable benefits, for example to provide additional pupils to assist schools with decreasing complements, or where the future existence of these schools within the plan period is at risk.” (emphasis added)

48. The note was accompanied by a draft schedule of main modifications which included MM5:-

“Allocation of 505 additional dwellings (with reference to the table in core policy CP2 and para. 4.21 of the supporting text) in *the north-east of the District*, at sites adjacent to Midsomer Norton and Radstock, and on sustainable sites at primary and secondary villages within this part of the District. All the sites considered for possible allocations, including those identified in Note IQ-3, will be subject to Sustainability Appraisal.” (emphasis added)

49. On 23 September 2019 MDC sent a letter to the Inspector seeking clarification of whether the Interim Note had been intended to identify an area of search for the Council to use and, if so, to clarify that area. The letter was accompanied by a draft “505 dwellings – Background Paper”. That set out MDC’s understanding of the Interim note, namely that the Inspector had directed the Council to assess the capacity and deliverability of sites adjacent to Midsomer Norton and Radstock and to review the sustainable settlements in the north-east of the District for allocations.
50. The Inspector responded on 25 September 2019 (document ED26) that the area of search should include the edges of Midsomer Norton and Radstock within the District, “as well as considering the possibility of land for new homes within the primary villages which are located to the North of Frome.” It is agreed that that last phrase referred to Norton St. Philip, Beckington and Rode. The area of search was to be confined to the north-east of the District.
51. On 21 January 2020 MDC published “505 Dwellings – Background Paper” and the Second Addendum to the SA for public consultation.
52. MDC’s Background Paper referred to MM5 in the same terms as the modification identified by the Inspector in his Interim Note ED20 (see [48] above). MDC explained that they were treating MM5 as a requirement to *allocate* 505 additional dwellings. Windfalls and unplanned development could not be counted towards that figure. Consequentially, a criteria-based policy or identification of a “broad location” were considered to be inappropriate alternatives (para. 19). MDC also considered and rejected deferral of the allocation of 505 dwellings to the next review of the local plan (paras. 20-22).

53. As for the area of search, the Background Paper assessed sites on the edge of Midsomer Norton and Radstock and all primary and secondary villages in the north-east quadrant of the District. MDC “interpreted” the Interim Note and MM5 as not referring to allocations across the District (p.11). Accordingly, MDC did not consider possible allocations outside the north-east quadrant.
54. BANES objected to the Interim Note and the proposed allocations. They said that the policy in LPP1 was for the 505 dwellings to meet the wider needs of the District, was not specific to the north or north-east sector, and would be better met in more sustainable locations in accordance with the spatial strategy in Policy CP1 of LPP1.
55. Appendix 3 to MDC’s Background Paper shows the growth which had taken place in the villages in the north/north-east of the District. Norton St Philip and Beckington have experienced the greatest rates of growth in housing stock between 2006 and 2019, 34.4% and 30.6% respectively. That level of growth had already exceeded the minimum requirements stated in LPP1 for additional development in each village by 233.3% and 196.4% respectively.
56. The Second Addendum to the SA re-assessed MDC’s Option 2 Strategy after the proposed main modifications. Those modifications included the 5 allocations which eventually formed part of the adopted version of LPP2, plus one other draft allocation of land for 26 homes at Rode (draft policy RD1). MDC did not review its previous assessment of Option 1 (para. 16).
57. During the consultation BANES made representations objecting to the approach taken by the Inspector and to MM5. The authority considered that they were both based upon a misinterpretation of LPP1. The requirement for 505 dwellings did not relate to the north/north-east of the District. The figures derived from a district-wide, numerical shortfall. BANES explained that incremental housing growth in Midsomer Norton and Radstock had resulted in an imbalance with jobs, so that more employment land needed to be allocated in its Core Strategy. MDC’s proposed allocations in those settlements would worsen that imbalance, impact on infrastructure and increase out-commuting. The policies proposed for extensions to Midsomer Norton were contrary to the Core Strategy for BANES. LPP1 referred to a requirement for 505 additional dwellings in the District. “Therefore, reasonable alternative sites should be district-wide.”
58. The claimant (together with Beckington and Rode Parish Councils) made representations through their solicitors DLA Piper. They also submitted that the Inspector’s reading of the policy in LPP1 for 505 additional dwellings was incorrect. This was to be a contribution towards meeting district-wide housing needs and not the particular needs of the north-east of the District. They even went so far as to describe the Inspector’s interpretation as perverse. They relied upon paras. 23-24 of the Inspector’s Report on the examination of LPP1, along with the text of that Plan, to support their position. LPP1 required the additional dwellings to be distributed in accordance with the spatial strategy. The proposed allocations failed to comply with that approach or, indeed, with Policy CP2. MDC had failed to consider locating the additional allocations in the five towns of the District. The proposed allocations in Norton St. Philip, Rode and

Beckington did not respect the principle of proportionate growth. Furthermore, MDC had failed to consider the relative underprovision of housing in the towns and six primary villages in other parts of the District which would not meet their LPP1 requirements.

- 59. Following the consultation exercise, on 3 April 2020 the Inspector stated that a second set of examination hearings would take place solely to address the 505 dwellings issue and the proposed allocations.
- 60. On 29 June 2020 the Inspector issued his note on Suggested Matters, Issues and Questions for that part of the examination, which included the following:

**“Matter 1 – Overall Housing Provision for Mendip**

(i) .....

(ii) Is there a ‘strategic expectation’, based on LPP1, for allocating 505 additional dwellings in the north-east part of the District, and if so, what is the evidence to support it?

(iii) Assuming that the additional 505 dwellings are part of the LPP1 total of 9,635, is the ‘strategic expectation’ for allocating these dwellings in the north-east part of the District still justified and sustainable?

(iv) Is the definition of the North/Northeast ..... of the District ..... justified?

(v) Is there a justified and sustainable case for spreading the allocation for the additional 505 dwellings out across the entire District?

.....

**Matter 3 – Selection of settlements to accommodate growth**

(i) What is the justification for the selection of specific settlements to be the basis of the allocations of the 505 additional dwellings?”

.....

**Matter 4**

.....

**4.3 Other sites within the north-east of the District:**

In the light of the consideration of the sites identified in sections 4.1 and 4.2 above, are there any other sites, either on the edge of Midsomer Norton/ Radstock, or within the three Primary Villages identified above, or in any other settlements in the

north-east of the District, which are considered to be more sustainable for the allocation of new development to meet the additional 505 dwellings total? If so, what is the evidence?”

61. The second set of examination hearings took place between 24 November and 3 December 2020. In its hearing statement the claimant reiterated its objections and pointed out that the Second Addendum to the SA erroneously limited its area of search to the north-east sector. In its statement BANES continued to challenge the Inspector’s interpretation of LPP1. The requirement for 505 dwellings came from a district-wide, numerical shortfall, and not a shortfall in provision in the north-east of the District. LPP1 did not create any “strategic expectation” that the 505 dwellings would be allocated in the north-east part of the District.
62. In its hearing statement on matter 1, MDC stated that it did not consider a further district-wide site allocation exercise would address the concerns over soundness raised by the Inspector in his Interim Note (ED 20). Furthermore, a wide area of search “is neither appropriate nor proportional given the pressing commitment to update LPP1” (paras. 13 and 14).
63. In relation to the Second Addendum to the SA, MDC said this at para. 6 of their hearing statement on Matter 2:-

“The SA for the allocation of sites for 505 dwellings in the *north-east of Mendip District* is complementary to the original SA undertaken for LPP2 (SD11, SD12 and SD13). Since the spatial strategy has already been established in the adopted LPP1, it is the Council’s view that there is no further requirement for the LPP2 SA to establish alternative distribution scenarios *in the north east of the district*. The Council has sought to meet the need in accordance with the adopted spatial strategy *as directed by the examining Inspector with reference to ED20*. In accordance with the locational directions set out within LPP2 Core Policy CP2 and the supporting text, land to accommodate 505 dwellings was sought in the north east of the district including sites adjacent to Midsomer Norton and Radstock.” (emphasis added)

64. In its hearing statement on Matter 3, MDC stated at para. 3 that “the justification” for the selection of specific settlements to meet the need for 505 dwellings was drawn from a number of documents: the Inspector’s advice at paras. 17 and 18 of ED20, the “clarification” in ED26, the Inspector’s Main Modification MM5, and Policy CP2 and paras. 4.7 and 4.21 of LPP1.
65. In paras. 4, 5 and 11 of its hearing statement on Matter 3 MDC stated:-

“4. The Inspector has advised the Council that, in order for LPP2 to be considered sound, it is necessary for an additional 505 dwellings to be allocated. It is clear from the Inspector’s advice as set out in ED20 and ED26, that the *location of these allocations is expected to be within the north-eastern area of the*

*district* and specifically adjacent to Midsomer Norton or Radstock and the villages to the north of Frome. However, there is no specific locational direction set out within Policy CP2 of LPP1. Paragraph 4.21 of LPP1 notes that, “Allocations...are likely to focus on sustainable locations in accordance with the Plan’s overall spatial strategy...and may include land in the north/north-east of the District primarily adjacent to the towns of Radstock and Midsomer Norton...”

5. The Council’s position is that all sustainable locations within the north-eastern area of the district should be considered to accommodate the 505 additional dwellings required. *It is clear from ED20, ED26 and the pertinent sections of LPP1 that distribution of these dwellings across other sustainable locations in the district would not satisfy the Inspector’s interpretation of Policy CP2.* Housing delivery and allocations across the District are already expected to exceed LPP1 plan period requirements. The additional dwellings are sought to address the specific north-eastern requirement and the exercise undertaken has sought to achieve that specific aim in a timely manner. The commitment to early review of the plan as evidenced through MM01 is intended to satisfy any general changes to the district housing requirement; this is considered to be outside the remit of LPP2.

11. It is the Council’s position that *the justification for the allocation of the 505 additional dwellings to the north east of Mendip District is based on the Inspectors’ interpretation of LPP1 CP2 as set out in ED20 and ED26. The Council have therefore undertaken additional sustainability appraisal to support the achievement of this aim; not to assess alternative levels of provision across the rest of Mendip District.*” (emphasis added)

66. The Inspector’s report on the examination of LPP2 was published on 1 September 2021. Under his assessment of the soundness of LPP2 the Inspector identified seven main issues.
67. In relation to the second issue, which dealt with *inter alia* the SA, the Inspector said at IR 40 – IR 41:-

“40. As part of its response to my Interim Note, the Council commissioned further SA19 and HRA work as part of the consultation on the MMs, in relation to considering provision for an additional 505 dwellings in the north-east part of the District (see Issue 3). These documents considered the sustainability and ecological impacts of all the additional sites proposed for development and they conclude that the ‘preferred option’ sites are sustainable, subject to certain mitigation measures, set out in the MMs.



41. The Council's 505 Dwellings Background Paper also explains that realistic alternative sites were considered around Midsomer Norton and Radstock, as well as assessing the suitability of villages within the north-east of the District, based a set of criteria covering key elements of sustainability."

He concluded that the SA was "justified".

68. At IR 53 the Inspector considered that the overall distribution of housing in the submitted draft of LPP2 was broadly in line with LPP1 with one significant exception, namely meeting the requirement in Policy CP2 for an additional 505 dwellings. He said in IR 55 that policy CP2 states that this additional requirement is to be provided in line with para. 4.21 of LPP2, which refers in turn to para. 4.7 Both of these paragraphs address not only housing numbers but also strategic distribution.
69. At IR 66 the Inspector explained why the additional 505 dwellings should be provided as planned allocations, not windfalls. The claimant does not challenge that conclusion.
70. At IR 59 to IR 62 the Inspector referred to conclusions in para. 23 of the Report of the Inspector who conducted the examination of LPP1, but he did not refer to para. 24 (see [23] above). At IR 63 the Inspector said:-

"It therefore seems to me that the LPP1 Inspector's view was that this Plan should clearly consider the possibility of allocating housing sites on the edge of the towns of Midsomer Norton and Radstock, which implies they should have been assessed by SA/HRA. This has not happened in the preparation emerging Plan, that is until the Council's response to my invitation to consider doing so, as set out in document ED 20. This document precipitated firstly, a Background Paper from the Council, which assesses the potential for additional housing at sites around Midsomer Norton and Radstock (and elsewhere within the north/north-east of the District), together with site assessments for additional allocations in addendums to the SA and HRA."

71. The Inspector's views on the interpretation of LPP1 are to be found within IR 65 to IR 72. It is necessary to quote these paragraphs in full:-

"65. The 505 dwellings provision appears in a box in the LPP1 Key Diagram, which refers to this quantum of additional housing "to be allocated in the District". This was raised by representors in support of spreading any additional development generally across the District, and not in the north-east of Mendip. *However, this would be contrary to the strategic thrust of paragraphs 4.21 and 4.7 in the LPP1, which focus on the need to consider making specific allocations with reference to the towns of Radstock and Midsomer Norton rather than distributing the additional development generally across the District.*

66. Others argued that the additional 505 dwellings should be provided through windfalls. However, there is no mention in either the IR or LPP1 of windfalls as appropriate for this purpose. I consider there are two reasons for this. Firstly, allocations, unlike windfalls, represent a planned commitment to make LPP2 positively prepared, with a reasonable certainty of delivery; and secondly, many windfalls, by their nature, are small sites, below the threshold for securing a proportion of AH, which is a critical issue for Mendip, which I explain later in my report.

67. LPP1 (para. 4.21) states that the allocations for the additional 505 dwellings, to be addressed in LPP2, are likely to focus on sustainable locations in accordance with the strategy in core policy 1 and may include land in the north-east of the District, primarily adjacent to the towns of Radstock and Midsomer Norton.

68. However, this is not reflected in this Plan. The Plan's treatment of the potential options for development in paragraph 3.34, page 12, falls short of what I consider to be the expectations of the LPP1 Inspector and LPP1 itself. The sustainability doubts expressed in this paragraph, for example, run counter to the findings of the SA Second Addendum.

69. In fact, paragraph 4.7 adds further strategic input on this issue; firstly by drawing attention to the potential for new development on the fringes of Midsomer Norton and Radstock; secondly by stating that the Council will consider making specific allocations in this area to meet the development needs of Mendip; thirdly by stating that any development in this area will be undertaken in consultation with B&NES Council; and fourthly by raising the issue of addressing the impact on infrastructure in B&NES, such as education, transport and community facilities.

70. Although paragraph 4.21 states that the additional 505 dwellings 'may' rather than 'will' include allocations in the north-east of the District, I consider it significant that nowhere else in Mendip is singled out for comment, in either the IR or in LPP1, in relation to where the 505 additional dwellings requirement should be allocated.

71. *It is clear to me that the strategic direction in LPP1 requires the Council to consider development allocations to meet the needs in the north-east of the District; that this development is to be carried out in consultation with B&NES and is to be located primarily on the edge of Midsomer Norton (but not necessarily in partnership with B&NES); and that key infrastructure decisions need to be faced.*

72. The Council has now acted *on this strategic steer* by responding positively in response to document ED20, that the 505 dwellings should be allocated in the north/ north-east part of the District. Its subsequent documentation in the 505 Dwellings Background Paper and the supporting SA and HRA addenda, present robust and convincing justification for its view.” (emphasis added)

72. At IR 73 to IR 84 the Inspector addressed a separate question: the economic, social and housing needs evidence to justify the allocation of 505 dwellings in the north-east of Mendip District. Here the Inspector assessed the planning merits of the proposed distribution of the 505 dwellings and concluded that it was sound and consistent with the objectives of LPP1. The claimant, understandably, raises no legal challenge to this part of the Inspector’s report.

73. In IR 85 to IR 86 the Inspector provided a “summary of the strategic reasons for increasing the total housing provision in Mendip by 505 dwellings”. At IR 85 he said:-

“In response to the key question expressed in paragraph 58 above, there is a robust case, both in relation to the IR and LPP1, and supported by the economic, social and housing needs evidence set out above, that it is appropriate and sustainable for an additional 505 dwellings to be allocated within the north-east part of the District, primarily centred on the towns of Radstock/Midsomer Norton. This view is supported by the recent work undertaken by the Council in its 505 Dwellings Paper and its addendums to the SA and HRA. I therefore conclude that the decision to allocated 505 dwellings in the north-east of the District is justified, sound and consistent with the aims and objectives of LPP1.”

It is common ground that the Inspector’s key conclusion in this paragraph, agreeing with MDC’s decision to allocate the additional housing in the north-east of the District, was not based solely on his assessment of the planning merits. It was also based upon his interpretation at IR 59 to IR 72 of both LPP1 and the Inspector’s Report in 2014 on the examination of that Plan. The reasoning in IR 86 does not alter that analysis.

74. A report on the adoption of LPP2 was made to the meeting of the Full Council on 20 December 2021. MDC noted the Inspector’s report, accepted the Main Modifications considered necessary to make LPP2 sound and agreed that the Plan as amended be adopted. The report referred to the Inspector’s Interim note dated 10 September 2019 (ED 20) and stated that for the Council “the main area of work was to respond to the requirement for additional housing sites for 505 homes in the north/north-east of the District”.

75. The Inspector had recommended against the inclusion in LPP2 of the proposed allocation at Rode and so the adopted plan contained only the three allocations at Midsomer Norton and the allocations at Norton St Philip and Beckington.

76. Paragraphs 1.4 and 1.6 of the adopted LPP2 state that the Plan allocates specific sites for development in line with the objectives and policies of LPP1.
77. Table 4a of LPP2 sets out the uplift from the requirement figures for settlements given in Policy CP2 of LPP1. Whereas CP2 had set out an additional requirement of 505 dwellings in relation to “the District”, Table 4a of LPP2 stated that this figure related to “NE Mendip District”.
78. The SA Adoption Statement for LPP2 says at page 8:-

“During the examination of the plan, the Council were advised by the Inspector to seek allocations for a further 505 dwellings in the north/north east of the District. Since the spatial strategy had already been established in LPP1, there was no further requirement for the LPP2 SA to establish alternative distribution scenarios in the north east of the district. *Instead, the Council sought to meet the need in accordance with the adopted spatial strategy as directed by the Inspector.*

*In accordance with the locational directions set out within LPP2 Core Policy CP2 and the supporting text, land to accommodate 505 dwellings was sought in the north east of the district including sites adjacent to Midsomer Norton and Radstock. The SA undertaken was consequently a site assessment process. ....”*  
(emphasis added)

79. In the section of LPP2 dealing with Beckington and Norton St. Philip, paras. 11.2.2 and 11.20.3 (derived from MM 66 and MM 111) state that the allocations were necessary to make the Plan sound, specifically to address *the requirement in policy CP2 of LPP1* to provide 505 dwellings adjacent to Midsomer Norton and Radstock and in settlements in the north/north-east of the District. In the section dealing with Midsomer Norton and Radstock, para. 10.6.2 (derived from MM 58) summarises paras. 4.7 and 4.21 of LPP1.

### **A summary of the grounds of challenge**

80. The claimant advances the following grounds of challenge:-

Ground 1: Misinterpretation of the LPP1 by considering that it required an additional 505 dwellings to be allocated in the north-east of the district through LPP2; or, at the very least, set a “strategic expectation” that required primary consideration to be given to allocations within this location.

Ground 2: In breach of regulation 12(2)(b) of the 2004 Regulations, failure to consider any reasonable alternatives to allocating the additional 505 dwellings within the north-east of the District through the sustainability appraisal.

Ground 3: Failure to have regard to Policy CP2.2(c) and the requirement for proportionate development in rural settlements

and/or provide adequate reasons to explain how this had been taken into account.

Ground 4: the decision to allocate sites in Norton St Philip (NSP1) and Beckington (BK1) through modifications to LPP2 was irrational.

## **Ground 1**

81. There are two preliminary points which are not in dispute. First, the approach taken to the allocation of the additional 505 dwellings in LPP2 was that their distribution should accord with Policies CP1 and CP2 of LPP1. Neither the Inspector nor MDC sought to justify allocations in Midsomer Norton, Beckington and Norton St Philip on a basis which departed from the spatial strategy laid down in those policies. If a departure had been intended, MDC and/or the Inspector would have been expected to say so in explicit terms and to explain why that course was being taken. But they did not do so.
82. As noted in [73] above, the Inspector's endorsement of the allocations was not based solely on his appraisal of the planning merits at IR 73 to IR 84. It was also based upon his understanding of LPP1 and the Report of the Inspector's examination of that plan.
83. Accordingly, there are four issues which the court needs to consider:-
  - (i) What is the correct understanding of the Report on the examination of LPP1 in relation to the 505 dwellings issue?
  - (ii) What is the correct understanding of the adopted LPP1 on that matter?
  - (iii) Did the Inspector who conducted the examination of LPP2 misunderstand (i) and/or (ii)?
  - (iv) Did MDC misunderstand (i) and/or (ii)?
84. Ordinarily a development plan should be interpreted as it stands, given that it is a public document. It is inappropriate to investigate its provenance and evolution (see *R (on the application of TW Logistics Limited v Tendring District Council* [2013] 2 P. & C.R. 9 at [13]-[15]). In this case, however, both MDC and the Inspector who examined LPP2 relied upon the 2014 Report of the examination of LPP1 in order to inform their understanding of the relevant policies in LPP1. BANES and other objectors to the draft allocations made strong representations that the 2014 Report and LPP1 had been misunderstood. That was a substantial issue in the second examination which the Inspector addressed. No one has suggested that he should not have done so because the views of the Inspector who examined LPP1 were legally irrelevant.
85. Mr. Williams, on behalf of the Secretary of State, emphasised the observations of Lord Carnwath JSC in *Hopkins Homes Limited v Secretary of State for Communities and Local Government* [2017] 1 WLR 407 at [25]-[26]. A

development plan contains statements of policy. It is not a statutory text. The courts should respect the expertise of specialist Planning Inspectors and start from the presumption that they will have understood the policy framework correctly. They have primary responsibility for resolving disputes between local planning authorities, developers and others over the practical application of policies, both national and local. The courts must exercise caution against undue intervention in policy judgments within the areas of specialist competence of the Inspectors. A distinction must be drawn between interpretation of policy, appropriate for judicial analysis, and issues of judgment in the application of that policy.

86. Similarly, there is no dispute that it is for the courts to resolve a genuine issue about the meaning of what an Inspector has said in a decision letter or report. But Mr. Williams rightly emphasised that legal inadequacy of reasoning depends on whether there is a genuine, rather than a forensic, doubt as to what an Inspector concluded and why, or whether the reasoning raises a substantial doubt that a public law error has been made. An adverse inference of that kind will not readily be drawn (*South Bucks District Council v Porter (No. 2)* [2004] 1 WLR 1953 at [31]-[36]).

*(i) What is the correct understanding of the Report on the examination of LPP1?*

87. The Inspector proceeded on the basis that MDC was not seeking in LPP1 to meet any of its housing needs in neighbouring districts nor were neighbouring authorities seeking to meet any of their needs in Mendip ([20] above).
88. The Inspector had to consider representations by developers that MDC had failed to consider development at Midsomer Norton and Radstock as an alternative option. He concluded that it was unreasonable to seek “large scale, strategic allocations” at those two towns and that a main modification was required deleting references to the needs of those settlements being met in Mendip ([22] above).
89. The Inspector then went on to conclude that LPP1 had failed to consider the making of local, as opposed to strategic, allocations at Midsomer Norton and Radstock. This was particularly relevant in the context of the need to find sites for the additional 505 dwellings and so LPP1 was “unsound” in this respect. To remedy that issue, main modifications were necessary so that the Plan referred to the “possibility that sites on the edge of [Midsomer Norton and Radstock] will be considered for allocation in order to meet Mendip’s housing needs” (IR 23).
90. The following points in the Inspector’s report on LPP1 are crystal clear:-
- (i) There was no justification for including in LPP1 any statement which would commit MDC to directing some development towards Midsomer Norton and Radstock. There was no justification for going any further than requiring MDC to *consider* making allocations in LPP2 on the edge of those settlements (IR 23 and IR 24);

- (ii) That is entirely consistent with the nature of the criticism which the Inspector identified and dealt with. MDC had failed to *consider* whether some development should take place in Midsomer Norton and Radstock. There was no evidence to justify ruling out any such consideration (IR 20 and IR 23);
- (iii) Allocating additional land for housing at Midsomer Norton and Radstock was no more than a “possibility” (IR 23 and IR 25);
- (iv) The object of any such allocation would be to meet the housing needs of Mendip District, not the needs of Midsomer Norton or Radstock. In LPP2 MDC would need to find land “across the District” for an additional 505 dwellings. The Inspector therefore did not say that the relevant area of search for meeting that need was confined to the north-east of the District (IR 23);
- (v) LPP1 should simply state that the additional 505 dwellings will be located in accordance with the Plan’s spatial strategy in Policy CP1 and this “could include” land adjacent to Midsomer Norton and Radstock (IR 24).

No other reading of the Inspector’s report is possible.

- 91. In IR 101 (see [25] above) the Inspector reinforced points (iv) and (v). Participants in the examination had put forward various proposals as to how the additional 505 dwellings could be distributed. The court was told that they included development at Midsomer Norton and Radstock. But the Inspector unequivocally stated that there was no substantial evidence to indicate that “these houses should be directed towards one or another location”. The upshot was that this housing was to be distributed in accordance with LPP1’s spatial strategy. It is difficult to see how the Inspector who examined LPP1 could have set out these points any more clearly.
- 92. One other conclusion is self-evident. The SEA for LPP1 did not address the relative advantages and disadvantages of locating all or some of the additional 505 dwellings in the north-east of the District as against other parts of the District, or across the District as a whole.

(ii) *What is the correct understanding of LPP1?*

- 93. The text of LPP1 is entirely consistent with points (i) to (v) in [90] above. That is hardly surprising, given that important passages in the adopted Plan were the result of main modifications recommended by the Inspector.
- 94. Policy CP2 para. 1 states that a minimum of 9,635 additional dwellings is to be provided in accordance with the table set out in the policy. The five main towns in the District are to provide 7,350 dwellings and the primary, secondary and other villages are to provide 1,780 dwellings. There is then a requirement for an additional 505 dwellings in the “District” in accordance with para. 4.21 of the supporting text. Likewise, the Key Diagram refers to this as a “district-wide” requirement.

95. Paragraph 4.21 refers to a need for 505 additional dwellings “in the District”. Allocations would be likely to focus on sustainable locations in accordance with the spatial strategy in CP1 and *may* include land in the north/north-east of the District, primarily adjacent to Midsomer Norton and Radstock in accordance with para. 4.7. The latter indicated that MDC would *consider* making specific allocations in those settlements as part of the exercise to be carried out in LPP2 to meet the needs of the District.
96. The spatial strategy in CP1 directs the majority of new development to the five principal towns in the District and then provides for development in the primary villages to meet local needs. As Mr. Williams pointed out, CP1 does not refer to Midsomer Norton or Radstock and so those settlements needed to be mentioned in paras. 4.7 and 4.21 of the explanatory text. But those paragraphs go no further than to require consideration to be given to making allocations in Midsomer Norton and Radstock, as part of an exercise to distribute the additional 505 dwellings in accordance with the spatial strategy in CP1. There is nothing in LPP1 to suggest that the Plan directs any development towards those settlements or to the north-east of the District, or expresses a preference for those locations over other parts of the District. There was no “strategic thrust” in that direction. There is nothing to suggest that the 505 dwellings were required to meet needs arising in the north-east of the District. Instead, those needs were said to be district-wide. Similarly, in their representations to the examination of LPP2, BANES stated that the figure of 505 dwellings had been derived from a quantitative shortfall across the district as a whole (see e.g. [57] above). That statement has not been contradicted.

*(iii) Did the Inspector who examined LPP2 misunderstand LPP1 and/or the Report of the Inspector who examined LPP1?*

97. As we have seen, in the submission version of LPP2 MDC had taken the view that there was no need to make any allocations of land to meet the requirement for 505 additional dwellings, because of planning permissions which had already been granted. No allocations were proposed for the north-east of the District ([35] to [38] above).
98. While the first set of examination hearings was still taking place, the Inspector issued document ED11, asking for MDC’s views on whether LPP1 provided for allocations in the north-east of the District. He referred to IR 23 of the first Inspector’s Report but not to IR 24 or IR 25. In its reply (document IQ7) MDC gave its interpretation of LPP1 as *not* directing allocations to be made in the north-east of the District, disputing the contrary view which some parties had advanced ([40] to [43] above).
99. In his Interim Note issued on 10 September 2019 (ED 20) the Inspector stated that the overall distribution of housing in LPP2 accorded with LPP1 save in one respect, namely compliance with para 4.21 of that plan. The Inspector considered that para. 4.21 contained a requirement to address the housing needs of the north-east of the District and the Inspector’s Report on LPP1 contained a “strategic expectation” that allocations in that area should be considered. This note was accompanied by draft main modifications. Draft MM5 required 505



dwellings to be allocated in the north-east of the District in order for the plan to satisfy the test of “soundness” (see [46]-[48] above).

100. In its response MDC said that they had understood the Inspector as directing them to consider settlements in the north-east of the District, and not in any other part of the District. The Inspector did not disabuse the authority of that notion (see [49] to [50] above).
101. The Inspector’s Report explains what then took place. On 21 January 2020 MDC published the Second Addendum to the SA, the “505 Dwellings - Background Paper” and proposed main modifications allocating six sites in the north-east of the District. Public consultation took place between 21 January and 2 March 2022 (IR 6). This generated a considerable response from the public, many of whom said that they had been denied the opportunity to deal with the principle of allocating 505 additional dwellings as well as the six new allocations (IR7). Accordingly, the second set of hearings were arranged to enable those matters to be addressed.
102. I accept Mr. Williams’s submission that the Inspector’s documents to which I have referred set out only provisional views and were subject to the examination process. The Inspector was careful to make that clear. Accordingly, what matters is how those issues were dealt with in the Inspector’s Report.
103. Nevertheless, it is also plain that the Inspector’s provisional statements relied upon his interpretation of both LPP1 and the first Inspector’s report to support his view that the requirement for 505 additional dwellings was to meet needs in the north-east of the District and that MDC should consider allocations in that area. His notes did not address the requirement in LPP1 that the additional dwellings be distributed in accordance with the spatial strategy in CP1 for the whole District.
104. The interpretation of LPP1 adopted by the Inspector resulted in MDC changing its approach to that subject. That interpretation was roundly criticised by BANES, the claimant and others during the examination (see [57] to [58] and [61] above). For its part, MDC proceeded on the basis that it should only consider allocations in the north-east of the District and not in sustainable settlements in other parts of the District. This was because of the Inspector’s interpretation of LPP1 and his directions to MDC in the context of the “soundness” of the Plan. The authority also referred to the pressing need to update LPP1 through the second part of the Local Plan (see [62] to [65] above).
105. On any view, these differences in the interpretation of LPP1 and also the 2014 Report, were “principal important controversial issues” engaging the legal duty to give reasons. If the Inspector felt that MDC, BANES and objectors had misunderstood what he had said about the interpretation of LPP1 and the first Inspector’s Report, then he ought to have said so in clear terms. The Report of the examination of LPP1 had been pellucid. The five points summarised in [90] above were unequivocal. The policies in LPP1 proceeded on that basis. If the second Inspector in his Report and/or MDC intended to depart from LPP1 in relation to those points then, at the very least, they were duty bound to say so and the local plan process would have been conducted on that footing. But we

do not find any such reasoning in the Report on the examination of LPP2 or in MDC's decision-making documents, or any other documentation. The Inspector's examination, and MDC's adoption, of LPP2, took place on the basis that the distribution of the 505 dwellings in that plan should accord with LPP1.

106. Counsel for the defendant and the interested parties point out that in his note "Suggested Matters, Issues and Questions" the Inspector had posed for the examination this question: "is there a justified and sustained case for spreading the allocation for the 505 dwellings out across the entire District?". That involved a consideration of the planning merits of the approach he had set out in ED 20 which resulted in the Inspector's evaluation in IR 73 to IR 84. But, as we have seen, the Inspector's overall conclusions on the allocations in the main modifications did not rest solely on those paragraphs. They also relied materially upon IR 56 to IR 72, which included his interpretation of LPP1 and of the 2014 Report on the examination of that Plan.
107. There is no doubt that in some parts of his Report the second Inspector used language which accurately reflected the 2014 Report and parts of LPP1. For example, in IR 63 he said that the 2014 Report had said that LPP2 should consider the "possibility" of allocating sites on the edge of Midsomer Norton and Radstock. In IR 67 the Inspector accurately referred to the last sentence of para. 4.21 of LPP1. But the problem is that the Inspector did not stop there. It is, of course, necessary to read his Report as a whole.
108. In IR 56 the Inspector posed the question whether "the intended location" of the additional housing is within the north-east of the District. That can only be understood as referring to a location intended by LPP1.
109. At IR 59 to IR 62 the second Inspector went through the reasoning of the first Inspector in IR 23 of the 2014 Report. However, the second Inspector still did not address IR 24 of the 2014 Report, where the first Inspector explicitly stated that there was no justification for MDC to be committed in LPP1 to directing development towards Midsomer Norton and Radstock. Nor did the second Inspector address IR 101 where the first Inspector had said that there was no evidence to indicate that the additional housing should be directed towards one location or another. Instead, distribution of the housing by LPP2 should be left to the district-wide spatial strategy in Policy CP1. Those omissions are significant.
110. In IR 65 the Inspector discounted the statement in the Key Diagram under the heading "District-Wide" that the 505 dwellings should be allocated in the district. He treated that as contrary to "the strategic thrust" of paras. 4.21 and 4.7 of LPP1 "which focus on the need to consider making specific allocations with reference to the towns of Radstock and Midsomer Norton *rather than distributing the additional development generally across the District*". Neither that antithesis, nor that "focus", are to be found in paras 4.7 or 4.21 of LPP1. There is no such "strategic thrust" in LPP1. Instead, "allocations ... are likely *to focus* on sustainable locations in accordance with the Plan's overall spatial strategy as set out in Core Policy 1 and *may include* land in the north/north-east of the District ...". That marked shift in the language used by the Inspector from that actually used in LPP1 demonstrates his incorrect interpretation of the Plan.

It is also inconsistent with IR 24 of the 2014 Report. Moreover, Policy CP2 of LPP1 expressly states that there is a requirement to provide 505 additional houses in the District, without any preference, let alone exclusivity, for the north-east.

111. The discussion in IR 67 to IR 69 of the 2021 Report involves a criticism of the submission version of LPP2 for failing to consider sites in the north-east of the District, contrary to paras. 4.7 and 4.21 of LPP1. That is not the point now in issue.
112. In IR 70 the Inspector acknowledged that para. 4.21 of LPP1 stated that the allocation of the 505 dwellings “may” rather than “will” include land in the north-east of the District, but he considered it significant that nowhere else in Mendip had been singled out for comment, whether in the 2014 Report or in LPP1. With respect, no significance could properly have been attached to that last point. First, it completely overlooks IR 24 and IR 101 of the 2014 Report. Second, it provides no rational basis for discounting the use of the word “may”. It is plain from the 2014 Report and LPP1 that the word “may” was chosen deliberately.
113. IR 70 appears to have been included as part of the reasoning leading to IR 71, where the Inspector referred to the “strategic direction” in LPP1 requiring MDC to consider allocations to meet “the needs in the north-east of the District.” Even if, as Mr. Williams submitted, IR 71 is to be read in the context of IR 69 so that “the needs” in IR 71 refer to “the needs of the District,” there is no “strategic direction” in LPP1, nor a “strategic steer” supporting allocations in the north / north-east of the District, as IR 72 claims. The language used in LPP1 (and in the 2014 Report) cannot be read in the manner relied upon by the second Inspector. Instead, those earlier documents required a failure by MDC to consider allocations in the north/north-east of the District to be remedied in LPP2 by being considered as part of the application of the spatial strategy in CP1 of LPP1, but not restricted to the north/north-east of the District as happened here.
114. I am left in no doubt that the Inspector who examined LPP2 misinterpreted LPP1 and also the 2014 Report in the material respects identified above.
115. In my judgment the legal errors I have identified above are sufficient for this claim to be allowed under ground 1. The decision of MDC to adopt LPP2 was dependent upon the Inspector reaching the conclusion that the Plan was sound (ss. 20(7) and 23(2) and (4) of the PCPA 2004). That in turn was dependent upon the main modifications he recommended to make the Plan sound, including the modifications the subject of this challenge (ss. 20(7B) and (7C) and 23(2A) and (3)). That recommendation was vitiated by the errors identified above and so MDC’s decision to adopt LPP2 with Policies MN1, MN2, MN3, NSP1 and BK1 cannot stand.

(iv) Did MDC misunderstand LPP1 and/or the Report of the Inspector who examined LPP1?

116. As we have seen, MDC participated in the examination of the main modifications of LPP2 on the basis that the second Inspector's interpretation of LPP1 and of the 2014 Report was correct. It appears from the documents before the court, including the witness statement of Mr. Andre Sestini, a Principal Planning Officer of MDC, that before ED 20 and the draft MM5 were issued, the authority had treated LPP1 as not requiring it to make additional allocations to meet the requirement 505 dwellings, whether in the north-east of the District or anywhere else. MDC had not previously accepted that there was any "strategic thrust" or "steer" or requirement in LPP1 for additional housing in the north east.
117. MDC would have been well aware of the controversy between other participants in the examination regarding the proper interpretation of LPP1. It was open to MDC to ask the Inspector to reconsider the interpretation of LPP1 he had put forward, in particular that there was a requirement for the additional housing to be located in the north-east of the District. If the Inspector's view had remained unchanged, MDC could have considered applying for judicial review to seek an urgent ruling from the High Court on the interpretation of LPP1 (see e.g. *R (CK Properties (Theydon Bois) Limited v Epping Forest District Council* [2019] PTSR 183). Instead, it accepted the Inspector's interpretation of LPP1.
118. At the adoption stage MDC considered the Inspector's Report on the examination of LPP2. The council was advised to accept all of the main modifications recommended by the Inspector which he considered necessary to make the plan "sound" in accordance with the PCPA 2004 (see also [74] above). At no stage did MDC disagree with the Inspector's interpretation of LPP1 or of the 2014 Report. The report on the adoption of LPP2 and the SA Adoption Statement are consistent with that understanding. Furthermore, the language of the explanatory text of the adopted LPP2, read fairly and as a whole, does not displace that misinterpretation. For this additional reason, MDC's decision to adopt LPP2 with the five policy allocations under challenge was unlawful.
119. There is no basis for the Court to refuse relief, applying the test in *Simplex GE (Holdings) Limited v Secretary of State for the Environment* [2017] PTSR 104.
120. Accordingly, ground 1 must be upheld.

## **Ground 2**

121. By regulation 12(1) of the 2004 Regulations, where SEA is required in relation to a plan the "responsible authority", here MDC, is required to prepare an "environmental report" in accordance with regulation 12(2) and (3) of the 2004 Regulations. Regulation 12(2) and (3) provide:-

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

- (a) implementing the plan or programme; and

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

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

(a) current knowledge and methods of assessment;

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

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

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

122. The information which may reasonably be required includes in para. 8 of schedule 2:-

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

123. The environmental report is required to undergo the process of consultation laid down by regulation 13. Regulation 13(1) provides:-

“Every draft plan or programme for which an environmental report has been prepared in accordance with regulation 12 and its accompanying environmental report (“the relevant documents”) shall be made available for the purposes of consultation in accordance with the following provisions of this regulation.”

Under regulation 13(2) the plan-making authority is obliged to consult on its environmental report with “consultation bodies” (which include Natural England, the Environment Agency and Historic England) and “public consultees”, that is persons who, in the authority’s opinion, are affected or likely to be affected by, or have an interest in decisions on, the adoption of the plan. The consultees must have an “effective opportunity” to express their opinions on the environmental report as well as the plan (regulation 13(3)). If the plan is adopted the authority must publish a statement giving particulars of how they have taken into account the environmental report and the opinions expressed in the consultation exercise (regulation 16(2), (3) and (4)).

124. In *R (Spurrier) v Secretary of State for Transport* [2020] PTSR 240 the Divisional Court analysed the statutory framework established by Directive 2001/42/EC and the 2004 Regulations at [378]-[400]. That was endorsed by the

Supreme Court in *R (Friends of the Earth Limited and another) v Secretary of State for Transport* [2021] PTSR 190 at [48]-[69].

125. The Supreme Court accepted that SEA may properly involve an iterative process, so that a legal defect in the adequacy of an environmental report may be cured by the production of supplementary material by the plan-making authority, subject to complying with the statutory requirements for consultation on that material ([66]-[67]).
126. The Supreme Court also confirmed that the legislation confers a broad discretion on the plan-making authority as to the information to be included in the environmental report and that judgment may only be challenged by applying the *Wednesbury* standard of review ([142]-[148]).
127. Similarly, in *Ashdown Forest Economic Development LLP v Wealden District Council* [2016] PTSR 78 the Court of Appeal held at [42] that the identification of reasonable alternatives is a matter of evaluative assessment for the local planning authority. But the corollary is that the authority must at least apply its mind to that question.
128. In *Spurrier*, the Divisional Court stated that there is a distinction between the failure by an authority to give any consideration at all to a matter which it is expressly required by the 2004 Regulations to address, for example, whether there are reasonable alternatives to a proposed policy, as opposed to criticisms about the non-inclusion of information on a particular topic, or the nature and level of detail of the information provided by the authority, or the nature and extent of the analysis carried out. That distinction derives from the court's analysis of *St Albans District Council v Secretary of State for Communities and Local Government* [2010] JPL 70, *Save Historic Newmarket Limited v Forest Heath District Council* [2011] JPL 1233, *Heard v Broadland District Council* [2012] Env.L.R. 23, *Re Seaport Investment Ltd's Application for Judicial Review* [2008] Env.L.R. 23, *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12 (Admin), and *R (Gladman Developments Limited) v Aylesbury Vale District Council* [2015] JPL 656 (see [424]-[434]). That analysis need not be repeated here. Suffice to say that, as Mr. Greaves rightly pointed out, the Court has intervened in some cases where the plan-making authority gave no consideration to alternative locations to that put forward in a proposed policy (see e.g. *St Albans* and *Heard*).
129. If at one stage in the plan process reasonable alternatives are consulted upon and considered, but certain options are then discarded, there is generally no requirement for those options to be revisited at a later stage in the process (*Heard* at [67]). But, of course, in that situation there is no issue about those alternatives having been consulted upon and considered at some earlier point in the process.
130. In *R (Friends of the Earth) v Welsh Ministers* [2016] Env. L.R. 1 at [88] Hickinbottom J (as he then was) stated:-
  - (iv) "Reasonable alternatives does not include all possible alternatives: the use of the word "reasonable" clearly and

necessarily imports an evaluative judgment as to which alternatives should be included. That evaluation is a matter primarily for the decision-making authority, subject to challenge only on conventional public law grounds.

(v) Article 5(1) refers to “reasonable alternatives *taking into account the objectives ... of the plan or programme...*” (emphasis added). “Reasonableness” in this context is informed by the objectives sought to be achieved. An option which does not achieve the objectives, even if it can properly be called an “alternative” to the preferred plan, is not a “reasonable alternative”. An option which will, or sensibly may, achieve the objectives is a “reasonable alternative”. The SEA Directive admits to the possibility of there being no such alternatives in a particular case: if only one option is assessed as meeting the objectives, there will be no “reasonable alternatives” to it.”

131. The claimant contends that MDC failed to comply with regulation 12(2) of the 2004 Regulations because reasonable alternatives to the allocation of the additional 505 dwellings in the north-east of the District were not considered. That option had not previously been considered in the LPP1 process because that Plan did not consider where the housing should be located. The upshot of the examination of LPP1 was that the distribution of the dwellings was to be considered in LPP2 in accordance with the spatial strategy in Policy CP1 (see also para. 4.21 of LPP1). The work undertaken by MDC up to and including the submission draft of LPP2 did not consider how allocations to meet the additional requirement of 505 dwellings should be distributed across the District in accordance with CP1, because MDC took the view at that stage that there was no need to make any allocations for that purpose. MDC only addressed the issue of allocations when the Second Inspector directed them to do so during the examination of LPP2. At that stage MDC issued an Addendum to the SA which only considered sites in the north-east of the District. They explained that they had taken that course because of the Inspector’s interpretation of LPP1, as set out in documents ED20 and ED26. At that point MDC ought to have published an Addendum to the SA which considered alternative allocations to those being considered in the north-east and consultation should then have taken place on that assessment before LPP2 could lawfully be adopted containing policies MN1, MN2, MN3, BK1 and NSP1.
132. In my judgment the various arguments advanced by the defendant and interested parties come nowhere near refuting ground 2.
133. It was correctly accepted by the Inspector and by MDC that an SA Addendum had to be carried out so that there would be an assessment compliant with the 2004 Regulations in relation to the proposed allocations and relevant modifications. They represented new, additional policy proposals in LPP2 which had not previously been the subject of SEA.
134. In the present case MDC’s decision to confine the location of reasonable alternatives to the north/north east of the district cannot be characterised as simply an evaluative judgment. It is plain from *inter alia* MDC’s hearing

statements on matters 2 and 3, that a substantial justification for the authority to have considered only the north-east of the District, and not *any* sites elsewhere in the District, was what it took to have been the second Inspector's interpretation of LPP1. MDC misinterpreted LPP1 and the 2014 Report. Those documents provided for the 505 dwellings to be distributed across the District in accordance with the spatial strategy. They did not require (or even give a steer) that the dwellings be provided in the north/north-east (see ground 1 above). That self-misdirection applied from the stage when the Inspector issued draft MM5 and his Interim Note through to the adoption of LPP2. It is clear that that error of law materially influenced MDC's decision not to consider in the SEA process sites outside the north/north-east of the District. Accordingly, that decision was unlawful.

135. In order to overcome that flaw the defendant and interested parties sought to rely upon what they submitted were the objectives of LPP2 in order to justify the exclusion of sites outside the north-east of the District from the SEA process (see [130] above).
136. Objective (d) was to achieve a distribution of growth consistent with the spatial strategy. The following paragraphs explained how MDC's policies sought to meet that objective. Paragraph 3.34 of the submission version of LPP2 explained that no land had been allocated in Midsomer Norton or Radstock because MDC considered there were sufficient sites in other settlements in Mendip better placed to meet the District's needs. Furthermore, other development plans did not consider this area to be a suitable location for growth. I do not see how para. 3.34 of LPP1 can be treated as an objective of that Plan.
137. But the defendant and interested parties relied upon the fact that in the adopted LPP2 paragraph 3.34 was altered to read as follows:

“3.28 Outside the five main towns, Local Plan Part I indicates (in para 4.7) that land on the edge of the district near Westfield, Midsomer Norton and Radstock could be identified to meet housing need in Mendip. This has resulted in additional allocations around Midsomer Norton (see section 10.6) and in Primary villages in the north/northeast of the district.”

They suggested that para. 3.28 of LPP2 should be treated by the court as a revised “objective” of LPP2, so that there was no legal requirement for the SA to consider as “reasonable alternatives” the allocation of sites in the remainder of the District, simply because they were not located in the north-east.

138. A decision as to what are the objectives or aims of plan is a matter for the judgment of the plan-making authority (see *Welsh Ministers* at [88(ii)]). Assuming that MDC did adopt the approach for which the defendant and the interested parties contend, I am in no doubt that this involves a further freestanding error of law on which ground 2 must succeed. There are several flaws in the argument.
139. First, it confuses “ends and means”, or objectives and policies. The function of para 3.28 of the adopted LPP2 is not materially different from para. 3.34 of the



earlier draft version of the Plan. They both describe means (or policies) rather than ends (or objectives).

140. Second, the first sentence of paragraph 3.28 of LPP2 merely repeated the established policy in LPP1 that the application of the spatial strategy in CP1 to the distribution of the 505 additional dwellings could include land in the north/north-east of the District (which was set out in para. 4.21 rather than para. 4.7 of LPP1). If that first sentence were to be treated as an objective of LPP2, it would not have the legal consequence of excluding sites falling outside the north-east. Instead, it allows for the allocation of sites across the District.
141. Third, the second sentence of para. 3.28 of LPP2 merely summarised the decisions on allocations taken by MDC in order to meet objective (d). It did not purport to define an additional “objective” delimiting what could be considered under the 2004 Regulations as a reasonable alternative. Treating ordinary site allocation policies as “objectives” of a plan would render ineffectual the requirement of the Regulations for reasonable alternatives to those proposed policies to be assessed in the environmental report and included in the subsequent consultation. That approach would largely, if not wholly, defeat the purpose of that requirement.
142. Fourth, treating the second sentence of para.3.28 as an “objective” of LPP2, the effect of which was to limit what might be considered as a reasonable alternative, is inconsistent with the first sentence of that paragraph which does not restrict the allocation of sites to the north/north-east of the District.
143. Obviously, it is no answer to the various legal flaws identified above to point to the fact that MDC considered alternative locations *within* the north-east of the District.
144. It is also no answer to ground 2 to point out that MDC assessed other alternatives to making further allocations for the provision of the additional 505 dwellings, such as a criteria-based policy and the deferral of any allocations to the next review of the Local Plan. MDC now accepts, and there is no dispute in these proceedings, that the effect of LPP1 was to require allocations to be made. Accordingly, the issue was where those allocations should go, but alternative allocations to sites in the north-east of the District were not considered at any stage in the local plan process.
145. However, the defendant and interested parties submit that, applying the principles in *R (Champion) v North Norfolk District Council* [2015] 1 WLR 3710, the court should nevertheless refuse to grant relief under ground 2. It is said that the claimant has in practice been able to enjoy the rights conferred by the 2004 Regulations and cannot demonstrate substantial prejudice. There were 6 days of hearings on the distribution of the 505 dwellings. The claimant took part in those sessions. The hearings considered whether allocations should be made in the district as a whole. The claimant would have been able to rely upon its own local knowledge of the District to advance an alternative distribution to that proposed in the draft main modifications. Sites had been considered across the District in the original SA for LPP1. The Inspector considered the proposed allocations in detail.

146. In my judgment, these arguments have no merit. The original SA did not consider alternative sites across the district for the purposes of the allocations to be made in LPP2, or in particular the allocation of the additional 505 dwellings. The SEA process proceeded on the basis that further work by way of an Addendum to the SA and public consultation was required. Furthermore, as Mr Greaves pointed out, in the original SA a number of villages were excluded because the relevant “village requirement” figure had already been exceeded. The claimant contends that a number of settlements would have had capacity to accommodate more housing. But the SEA for LPP2 did not consider sites outside the north/north-east of the District.
147. It was for MDC to produce a legally-compliant environmental report upon which consultation could take place with statutory consultees and the public. On the material before the court, contributions made by the claimant and others at the hearing were no substitute for a proper appraisal of housing distribution by the local planning authority followed by consultation (see e.g. [125] above). Worse still in the present case, it is apparent from the evidence that MDC’s approach to SEA for the 505 dwellings issue was influenced by the Inspector’s misreading of LPP1 documentation. The authority stated that one of the reasons why it did not wish to undertake a district-wide exercise was because that would not address the Inspector’s concerns on “soundness”. The court cannot assume that MDC’s approach might not have been significantly different if that had not been a constraining factor. The contemporaneous documents show MDC firmly stating that it was following the “direction” given by the Inspector.
148. I should make it clear that in dealing with the discretion point I am assuming, without deciding, that the *Champion* approach, rather than the stricter *Simplex* approach, should be applied. It is unnecessary in this case to resolve the arguments on that issue. Accordingly, ground 2 must be upheld.

### **Grounds 3 and 4**

149. These grounds differ from grounds 1 and 2 in that they could only justify intervention by the court in relation to the allocations at Beckington and Norton St Philip. They would not justify the grant of relief in relation to the Midsomer Norton allocations. That is common ground between the parties.
150. There is no merit in either ground 3 or ground 4. They can be dealt with briefly.
151. Under ground 3 the claimant contends that in relation to the allocations at Beckington and Norton St. Philip the Inspector failed to apply the principle of “proportionate growth” in Policy CP2(2)(c)(ii) of LPP1, as further explained in paras. 4.33 to 4.34 of the Plan. The claimant says that the Inspector explicitly applied this criterion in relation to other allocations, but not in the case of NSP1 or BK1. This is said to be important because of the high exceedance of the village housing requirements which had already been achieved in both Norton St. Philip and Beckington as presented to the Inspector (see IQ7 and Appendix 3 to MDC’s “505 Dwellings – Background Paper”).
152. Mr. Williams rightly pointed out that the Inspector required modifications to be made so that the village requirements operate as a minimum figure, not a cap.

153. More importantly, it is clear that the Inspector did apply the proportionate growth criteria by referring to the percentage increases involved for a number of settlements. However, it cannot properly be inferred that he did not take that criterion into account in relation to Beckington and Norton St. Philip simply because he did not mention the percentages which were before him, and of which he must have been well aware, when dealing with those two settlements. There is no positive indication in the Report that the Inspector disregarded the proportionate growth criterion in that respect (see e.g. *R (Goesa Limited) v Eastleigh Borough Council* [2022] PTSR 1473 at [154]). IR 116 shows that the Inspector had the criterion in mind.
154. Accordingly, ground 3 must be rejected.
155. Under ground 4 the claimant contends that it was irrational for MDC to allocate BK1 and NSP1 through the main modifications to LPP2, having regard to LPP1 correctly interpreted, the absence of any consideration of alternative sites outside the north-east of the District and the proportionate growth criterion in Policy CP2 (see para. 78 of the claimant's skeleton). I agree with Mr. Findlay KC and Mr. Du Feu that ground 4 adds nothing to grounds 1 to 3. Furthermore, the arguments presented by Mr Greaves for the claimant come nowhere near overcoming the high hurdle for establishing irrationality (*R (Newsmith Stainless Limited) v Secretary of State for the Environment, Transport and the Regions* [2017] PTSR 1126).
156. Accordingly, ground 4 must be rejected.

### **Conclusions**

157. For the reasons set out above, the challenge to policies MN1, MN2, MN3, NSP1 and BK1 of LPP2 succeeds solely on grounds 1 and 2.