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Case No: CO/1337/2018;
CO/1344/2018; CO/1763/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 November 2018

Before :

NATHALIE LIEVEN QC
(Sitting as a Deputy High Court Judge)

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Between :

(1) CPRE SURREY **(2) POWCAMPAIGN LIMITED**	**Claimants**
- and -	
(1) WAVERLEY BOROUGH COUNCIL **(2) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT** **(3) DUNSFOLD AIRPORT LIMITED**	**Defendants/ Interested Parties**

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(1) Ned Westaway (2) Paul Stinchcombe QC, Richard Wald and **Victoria Hutton**
(instructed by **Richard Buxton Environmental and Public Law**) for the **Claimants**
Wayne Beglan and **Asitha Ranatunga**
(instructed by **Waverley Borough Council**) for the **First Defendant**
Clare Perry (instructed by **Government Legal Department**) for the **Second Defendant**
David Elvin QC and **Richard Turney**
(instructed by **Mills and Reeve)** for the **Interested Party**

Hearing dates: 9-10 October 2018

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Approved Judgment

Nathalie Lieven QC :

1. These are three closely linked claims concerning the same site and largely the same issue. The claims are:

   i) Two challenges under s. 113 Planning and Compulsory Purchase Act 2004 ("**PCPA**") to the decision of Waverley Borough Council "WBC" to adopt policies ALH1, SS7 and SS7A of the Waverley Borough Local Plan Part One (LPP1); brought by CPRE Surrey ("**CPRE**") challenging only ALH1 and POW Campaign Limited ("**POW**") challenging all three policies;

   ii) A challenge under s.288 Town and Country Planning Act 1990 to the decision of the Secretary of State for Housing, Communities and Local Government ("**SoS**") dated 29 March 2018 to grant planning permission for a new settlement at Dunsfold Aerodrome, brought by POW. That decision was taken after the adoption of LPP1 and relied in part on the policies in it.

2. POW is a campaigning organisation representing a large number of local residents both in the Dunsfold area, but also across other parts of Waverley. CPRE Surrey is the Surrey Branch of the Campaign for the Protection of Rural England.

3. Dunsfold Airport Limited ("**DAL**") owns or has a leasehold interest in a substantial part of the land allocated for development at Dunsfold Aerodrome in LPP1, and for which planning permission was granted by the SoS. DAL was joined as a party to the s 113 claims by consent, and named as an interested party in the s 288 claim.

4. Permission was granted by Lewis J. on 12 July 2018 on limited grounds.

The issues

5. The issues are as follows;

   i) Under the s.113 challenges POW and CPRE argue that WBC erred in law in adopting LPP1 because the Local Plan Inspector (Inspector Bore) should not have allocated 83 dwellings per annum (dpa) to WBC's Objectively Assessed Need (OAN). The arguments all turn on the approach the Inspector took to Woking Borough Council's (the neighbouring local planning authority) unmet housing need. The POW challenge focuses on policies ALH1 and SS7 and SS7A of LPP1;

   ii) CPRE take the same point in respect of ALH1 and part of policy RE2, their concern is not specifically the allocation of the Dunsfold site to the other implications of taking the higher housing need figure in the LPP1;

   iii) CPRE raise a reasons challenge in respect of the adoption of those policies in LPP1;

   iv) The s.288 challenge is parasitic upon the s.113 challenge, and falls away if that is rejected. However, if the s.113 challenge is accepted there is then a further issue as to the legal consequences of an error of law in the Local Plan process, for the SoS's decision on the planning application. POW's case is that the grant of planning permission in reliance on LPP1 is undermined by the alleged

unlawfulness of the adoption of LPP1 and therefore the s.77 decision should be quashed pursuant to s.288.

The background

6. Dunsfold Aerodrome has been under consideration as a large scale housing site for a number of years. In 2008 WBC had refused planning permission for a residential led development on the site, and the SoS had rejected the subsequent appeal. The SoS's position, and that of WBC at that time, was that Dunsfold was an inherently unsustainable location.

7. This case concerns the more recent processes by which WBC has brought forward the LPP1 including the allocation of Dunsfold Aerodrome for a new settlement, and DAL has applied for planning permission at Dunsfold.

8. When WBC began to prepare its Local Plan in 2008 there was no housing allocation at Dunsfold Aerodrome. However, in 2013 that draft Plan was withdrawn, the Local Plan Inspector having indicated to WBC that there was inadequate housing provision.

9. In 2015 WBC together with Woking Borough Council and Guildford Borough Council published the West Surrey Strategic Housing Market Assessment (SHMA). These three local authorities comprise one housing market area, for the purposes of the national guidance, and therefore produced a joint SHMA. The SHMA was produced by GL Hearn, a well-known planning consultancy. At para 10.4 it found; "*the definition of a Guildford centric core HMA covering these three authorities to be appropriate"*. The SHMA found an objectively assessed need (OAN) for housing in the period 2013-2033 of 693 dwellings per annum (dpa) in Guildford; 519 dpa in Waverley and 517 dpa in Woking. The figures in the SHMA all used the 2012 housing forecasts produced by the Department for Communities and Local Government (DCLG), which were the most up to date figures at that time.

10. Guildford, Woking and Waverley are all at different stages of their Local Plan production. As at the date that WBC submitted its Local Plan Part 1 (**LPP1)** for examination in November 2016 Woking's housing requirement was as set out in its Core Strategy adopted in 2012, which itself was based on the revoked South East Plan (SEP). I am told that Woking have taken no steps in producing a new Local Plan taking into account the 2015 SHMA and the more recent housing projections. Guildford had reached a relatively advanced stage in the preparation of its Local Plan but had not yet submitted it for examination at that time.

11. In the submission draft LPP1 (November 2016) WBC set out its OAN as 519 dpa, thus adopting the figure in the SHMA. The Submission Draft included policies for the allocation of Dunsfold Aerodrome as a new settlement. WBC did not propose in the Submission Draft to meet any of the potential unmet need for housing from Woking. Woking had an annual requirement in its Core Strategy (2012) of 292 dpa. However, as set out above, the OAN for Woking set out in the 2015 SHMA was 517 dpa. The disparity between these two figures alone indicates that there was likely to be a level of unmet need in Woking, i.e. that Woking was not going to bring forward 517 dpa without some policy change.

12. There are different methods of determining an OAN for a particular area. I will refer to the national policy guidance below, but a local planning authority will have to exercise its own planning judgement as to how to calculate its OAN. Mr Parrott, WBC's planning policy manager, sets out a table where he explains how the Woking OAN in the SHMA was arrived at. Importantly, the Woking OAN was based to a significant degree on predictions as to employment growth in and around Woking, and not simply on the household projection figures. This contrasted with the approach in the OAN advanced by WBC at the Local Plan Examination, which was based on the household projections for Waverley rather than on employment growth.

13. The relevant policies in the submission draft of LPP1 were;

    i) ALH1, which set out the figure of 519 dpa;

    ii) SS7, which allocated the new settlement at Dunsfold Aerodrome for 2,600 homes; and

    iii) SS7A, which set out the Dunsfold Aerodrome design strategy. This policy was introduced by the Main Modifications.

14. The issue of unmet need within the HMA, and how it was to be met, was raised by various parties in the Local Plan process and in a series of documents from the Local Plan Inspector (Inspector Bore) from the date when the Local Plan was submitted. The position of the three local planning authorities, as recorded in a Statement of Common Ground for the Local Plan inquiry, was that unmet need had been considered through the Duty to Co-Operate process, and that they all agreed that WBC was not in a position to meet any of Woking's unmet need. I note that it is one of the potential difficulties of the current system that it is open to neighbouring authorities to agree together in this way thus potentially leaving housing need unmet, and it is one of the functions of the Inspector at the Local Plan Examination to test out whether the Local Plan in issue is meeting the full OAN, taking into account any unmet need and relevant policy constraints.

15. The Council's figure of 519 dpa as its own OAN was itself a contentious issue. The 2015 SHMA had been based, inter alia, on 2012-based household projections. The Joint Parish Councils commissioned a review of the SHMA by Mr McDonald of NMSS, another consultancy. NMSS took the latest 2014 based DCLG projections and reached a demographic-led projection of WBC's OAN at between 370-430 dpa. Accordingly, POW and others objected to the Draft Policies ALH1 and SS7 of the draft Plan on the basis that the housing allocation in Waverley was too high and Dunsfold Aerodrome should not be allocated for housing because, inter alia, it was not needed.

16. On 6 February 2017 Inspector Bore issued some initial questions and comments. The first question asked for the evidence that WBC could not meet the unmet need which arose elsewhere in the HMA. WBC responded to that question on 10 March 2017 explaining why in its view it could not meet any of Woking's need. In summary, WBC's position was that it was in an area highly constrained by national policy designations, in particular Green Belt and Area of Outstanding National Beauty (AONB).

17. On 5 April 2018 the Inspector issued his "Matters and Issues for Examination", which again at Issue 2 raised unmet need. WBC responded on 12 April, again reiterating that it was not in a position to meet any of Woking's unmet needs. That response also quantified the level of the Woking unmet needs, and set it at 3150 for the period 2013 to 2027. The basis of this calculation was the difference between the SHMA figure of 517 dpa, and the Core Strategy requirement of 292 dpa, giving a gap or unmet need of 225 dpa. WBC then multiplied that by the 14 years between 2013 (the SHMA base date) and 2027 (the end of the Woking Core Strategy). This gave a total of 3,150 (14 x225).

18. A number of the other participants in the process, housing developers and their consultants, also again suggested that WBC should be providing for some or all of Woking's unmet needs.

19. The Local Plan Examination hearings took place between 27 June and 6 July 2017. The Inspector produced a detailed Agenda before the scheduled hearing on housing numbers on 27 and 28 June. In relation to "Unmet need in the HMA", he said that "there can be no expectation that it [Woking] will release sites to meet current unmet need, and Guildford's Local Plan does not currently contribute towards meeting unmet need, although it is an early stage. Having regard to the NPPF, Waverley should meet a proportion of Woking's unmet need. What figure should be set?"

20. At the hearing WBC, through Mr Parrott the Planning Policy Manager, explained the constraints that WBC faced including the various planning designations, such as Green Belt, that limited WBC's ability to allocate land for housing. However, the Inspector reached a preliminary view, which he expressed orally at the hearing, that WBC should be making a contribution to meet 50% of Woking's unmet need. He used the same calculation of the scale of the unmet need as had WBC, i.e. 3150, of which 50% is 1575. This was then divided across the Waverley Local plan period up to 2032 (i.e. 19 years) to give an annual requirement of 83 dpa.

21. The Inspector asked WBC to submit a headline list of proposed modifications to deal with the changes he had identified to be necessary to make the Plan sound. A schedule of main modifications was then agreed with the Inspector, as is the normal course, before consultation on these in September/October 2017.

22. There were consultation responses, again from housebuilders, that the Main Modifications did not provide for sufficient amounts of Woking's unmet need. Mr McDonald on behalf of CPRE submitted a written response arguing strongly that the LPP1 should not provide for Woking's unmet need. He argued that Woking's OAN was itself too high because it was based on the 2012 DCLG projections and not the most recent 2014 DCLG figures; he pointed to the fact that Woking had made a large uplift for employment growth that was notoriously volatile; and that regard should be had to the draft DCLG Guidance on the calculation of housing requirements. He argued that until Woking produced its own Local Plan it would not be possible to calculate the gap, but it would certainly be smaller than the current figures suggested. He also argued that WBC should not be required to meet half of Woking's unmet need. His ultimate conclusion was that "*the only appropriate course of action is not to make any addition but to remit the matter to be considered in an early review of the plans across the HMA".*

23. Inspector Bore produced his report on 1 February 2018. The relevant sections for the purposes of this challenge are in three parts. He effectively accepted POW's argument that WBC's OAN should be lower because it should be based on the 2014 not 2012 household projections; he found that the Local Plan should provide for a portion of Woking's unmet need; and he found that the allocation at Dunsfold Aerodrome was sound. The key parts, for these purposes are as follows;

    i) *"19. The SHMA findings are based on the 2012 Household Projections which indicated a demographic need for 1,352 dpa across the HMA of which 493 were apportioned to Waverley Borough. However, the 2014 CLG household projections, published in 2016, are meaningfully different from those of 2012 and indicate a lower demographically-based figure for Waverley of 378 dpa. This becomes 396 dpa after factoring in the SHMA-assessed vacancy rate of 4.7%."*

    ii) He then added a 25% uplift to reflect market signals, in particular the affordability position in Waverley, which was the third worst in England outside London. . This gave a total OAN of 495 dpa.

24. Inspector Bore then went on to consider the issue of unmet housing need in the HMA.

> *"**Meeting unmet housing need in the HMA***
>
> *26. The West Surrey HMA also includes Woking and Guildford Borough Councils. The SHMA calculates Woking's OAN to be 517 dpa, but Woking's adopted Core Strategy 2010-2027 only makes provision for 292 dpa over its plan period, leaving unmet housing need against the SHMA figure of 225 dpa, or 3,150 dwellings.*
>
> *27. The submitted Waverley Borough Local Plan makes no provision for Woking's unmet housing need. However, the NPPF states that local planning authorities should meet the objectively assessed need within their housing market areas. This requires cooperation between the authorities in the HMA to ensure that the need is met. Almost all the land outside Woking's built up area, and most of the land outside Guildford's built up area, is in the Green Belt. Waverley, even allowing for its Green Belt and AONB, and the European sites nearby, is significantly less constrained. Making no allowance in Waverley for Woking's unmet housing need is therefore not a sound position.*
>
> *28. The under-provision exists now and has been growing from the start of Woking's plan period; it needs to be addressed. It is true that any future review of Woking's local plan will provide an opportunity to re-examine housing opportunities and adjust its assessment of unmet need against a new OAN calculation (7), but it is very clear from Woking Borough Council's evidence to the hearing and from the obvious constraints imposed by the ring of Green Belt around Woking, that there*

> *remains a significant delivery shortfall against housing needs in Woking, and that the town will very probably remain unable to accommodate a significant proportion of its OAN in future.*
>
> *29. That said, Waverley should not be expected to accommodate the full amount of Woking's unmet need indicated by the SHMA figures. The 2014 household projections for Woking were lower than those on which the SHMA were based, and although the adjustment was less significant in percentage and numerical terms than at Waverley, the figures suggest that the scale of the under-provision could be less than 225 dpa. It is also possible that Woking might be able to deliver more housing than envisaged by its plan because, although there is still a running shortfall from the start of its plan period, housing delivery in 2013-14, 2015-16 and 2016-17 was ahead of the Core Strategy housing requirement. Moreover, Guildford is going through the plan preparation process, and the potential for Guildford to meet a proportion of Woking's unmet housing need will need to be tested through its own local plan examination. It would therefore be appropriate and reasonable for Waverley to accommodate half of the figure for unmet need identified through the SHMA process. The relevant figure annualised over Waverley's plan period amounts to 83 dpa, which would need to be added to the OAN of 495 dpa."*
>
> *[footnote] "(7) Re calculating Woking's OAN in the light of the 2014 household projections is outside the scope of this examination. The SHMA figurer has therefore been referred to but with a recognition that lower household projections may result in some reduction to the degree of unmet need".*

25. At paragraphs 77-93 Inspector Bore supported the allocation of Dunsfold Aerodrome for a new settlement.

26. WBC adopted the LPP1 with the Main Modifications on 20 February 2018.

27. I turn now to the factual background specifically relating to Dunsfold Aerodrome site.

28. WBC's reasons for changing its position in respect of housing development at Dunsfold are set out in the Local Plan at paras 5.22- 5.24. The key factors were changes in national policy as to the requirement to provide more housing, and a view that with the appropriate infrastructure in place it could be made a more acceptable site despite its relatively isolated location.

29. At the same time as the Local Plan was progressing, DAL was pursuing its planning application. The application was made on 16 December 2015. On 14 December 2016 it was reported by WBC officers to the Planning Committee with a recommendation for approval. The resolution to grant was made on the same day. POW requested the SoS to call-in the application under s.77 TCPA, and the SoS agreed to do so on 8 March 2017.

30. A planning inquiry under s.77 was held between 18 July and 3 August 2017 heard by Inspector Philip Major. POW participated at the inquiry as a rule 6 party. On 12 October 2017 Inspector Major sent his report to the SoS recommending that planning permission should be granted. As is the normal process, the parties did not see the Report until the SoS issued his decision.

31. On 13 February 2018 a letter was sent on behalf of the SoS to the parties to the Inquiry stating that the SoS was considering Inspector Major's Report; he had noted that Inspector Bore's report was to be published shortly; considered that it was of potential relevance to the Inquiry and had decided to delay any such decision until the parties had the opportunity comment on Inspector Bore's report.

32. On 15 February POW wrote to the SoS with its comments on Inspector Bore's Report. POW stated that the Inspector had misdirected himself with regard to Housing Need and the SoS should attach little if any weight to the Report as it was susceptible to legal challenge.

33. On 29 March the SoS issued his decision letter granting planning permission for the application. The details of Inspector Major's Report and the SoS's decision letter are not material to the challenge, save that the SoS relied on the fact that the Inspector Bore had strongly supported the development of the site, see DL17; and LPP1 allocated the broader Dunsfold Aerodrome site for 2,600 dwellings and the application was in accordance with policy SS7 of LPP1.

The law

34. The principles to be applied in a planning challenge were set out by Lindblom J in *Bloor Homes East Midlands v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) at para 19. This was a challenge under s.288 but the principles are largely if not wholly transferable to a s.113;

> *"19 The relevant law is not controversial. It comprises seven familiar principles:*
>
> *(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph": see the judgment of Forbes J in Seddon Properties Ltd v Secretary of State for the Environment (1978) 42 P & CR 26, 28.*
>
> *(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by*

misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration: see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council v Porter (No 2) [2004] 1 WLR 1953 , 1964B–G.

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" (see Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223) to give material considerations "whatever weight [it] thinks fit or no weight at all": see the speech of Lord Hoffmann in Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 , 780F–H. And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision: see the judgment of Sullivan J in Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions (Practice Note) [2001] EWHC Admin 74 at [6]; [2017] PTSR 1126, para 5 (renumbered).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration: see the judgment of Lord Reed JSC in Tesco Stores Ltd v Dundee City Council (Asda Stores Ltd intervening) [2012] PTSR 983 , paras 17–22.

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question: see the judgment of Hoffmann LJ in South Somerset District Council v Secretary of State for the Environment (Practice Note) [2017] PTSR 1075, 1076–1077; (1992) 66 P & CR 83 , 85.

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision

letter does not necessarily mean that it has been ignored: see, for example, the judgment of Lang J in Sea & Land Power & Energy Ltd v Secretary of State for Communities and Local Government [2012] EWHC 1419 (QB) at [58].

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in ****1292*** *the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises: see, for example, the judgment of Pill LJ Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government [2013] 1 P & CR 6 , paras 12–14, citing the judgment of Mann LJ in North Wiltshire District Council v Secretary of State for the Environment (1992) 65 P & CR 137 , 145.*

35. Section 113 PCPA provides as follows:

"(1) This section applies to–

...

(d) a local development plan;

...

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

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

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

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

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

...

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

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

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

(7) The High Court may—

(a) quash the relevant document;

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

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

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

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

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

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

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

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—

(a) wholly or in part;

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

...

(9) The appropriate power is–

...

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

...

(10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order

> *made under that power which relates to the adoption, publication or approval of a relevant document. …"*

36. In *Woodfield v JJ Gallagher Ltd* [2016] 1 WLR 5126, the Court of Appeal considered the powers of the Court under subsections (7) to (7C) above. Lindblom LJ held:

> "[29] The court's powers to grant appropriate relief under section 113(7), (7A), (7B) and (7C) are widely drawn. They afford the court an ample range of remedies to overcome unlawfulness in the various circumstances in which it may occur in a plan-making process. As was recognised by the judge in the *University of Bristol* case [2013] EWHC 231 (Admin), the provisions in subsection (7A), (7B) and (7C) were a deliberate expansion of the court's powers to grant relief where a local plan is successfully challenged under section 113. They introduce greater flexibility in the remedies the court may fashion to deal with unlawfulness, having regard to the stage of the process at which it has arisen, and avoiding—when it is possible to do so—uncertainty, expense and delay. They include a broad range of potential requirements in directions given under subsection (7A), all of which go to "the action to be taken in relation to the [relevant] document". The four types of requirement specified in subsection (7B) are stated to be requirements which directions "may in particular" include. None of them, however, would warrant the substitution by the court of its own view as to the issues of substance in a plan-making process, or as to the substantive content of the plan—its policies and text. They do not allow the court to cross the firm boundary separating its proper function in adjudicating on statutory challenges and claims for judicial review in the planning field from the proper exercise of planning judgment by the decision-maker."

37. Lindblom LJ further explained that directions under s 113(7A) -

> "… enable the court to fit the relief it grants precisely to the particular error of law, in the particular circumstances in which that has occurred. In principle, as I see it, they may be used to require the "person or body" in question to correct some obvious mistake or omission made in the course of the plan-making process, perhaps at a very late stage in the process, without upsetting the whole process by requiring its earlier stages to be gone through again. I cannot see why they should not be used, in an appropriate case, to give proper effect to a planning judgment already exercised by the "person or body" concerned—typically in the formulation of policy or text, or in the allocation of a site for development of a particular kind—or to ensure that a decision taken by that "person or body" in consequence of such an exercise of planning judgment is properly reflected in the outcome of the process. Used in this way, the court's power to give directions can overcome

> deficiencies in the process without its trespassing into the realm of planning judgment and without arrogating to itself the functions of the inspector who has conducted the examination of a local plan or of the local planning authority in preparing and adopting the plan."

38. In *Jelson v SSCLG* 2018 JPL 790 the Court of Appeal was dealing with an argument in a s.288 challenge, that the Inspector had erred in law in her analysis of Objectively Assessed Need ("OAN") for the purposes of establishing whether there was a five-year land supply. At para 25 Lindblom LJ said;

> "[25] Responsibility for the assessment of housing need lies with the decision-maker, and is no part of the court's role in reviewing the decision. Although the decision-maker is clearly expected to establish, at least to a reasonable level of accuracy and reliability, a level of housing need that represents the "full, objectively assessed needs" as a basis for determining whether a five-year supply exists, this is not an "exact science" (the expression used in paragraph 2a-014-20140306 of the PPG). It is an evaluation that involves the decision-makers exercise of planning judgment on the available material, which may not be perfect or complete… The scope for a reasonable and lawful planning judgment here is broad… Often there may be no single correct figure representing the "full, objectively assessed needs" for housing in the relevant area. More than one figure may be reasonable to use. It may well be sensible to adopt a range, rather than trying to identify a single figure. Unless relevant policy in the NPPF or guidance in the PPG has plainly been misunderstood or misapplied, the crucial question will always be whether planning judgment has been exercised lawfully, on the relevant material, in assessing housing need in the relevant area… A legalistic approach is more likely to obscure the answer to this question than reveal it…"

39. In *St Albans CC v Hunston Properties* 2014 JPL 599 at para 26 Keene LJ said;

> *"26. Moreover, I accept Mr Stinchcombe QC's submissions for Hunston that it is not for an inspector on a s.78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. An inspector in that situation is not in a position to carry out such an exercise in a proper fashion, since it is impossible for any rounded assessment similar to the local plan process to be done. That process is an elaborate one involving many parties who are not present at or involved in the s.78 appeal. I appreciate that the inspector here was indeed using the figure from the revoked East of England Plan merely as a proxy, but the Government has expressly moved away from a "top-down" approach of the kind which led to the figure of 360 housing units required per annum. I have some sympathy for the inspector, who was seeking to interpret policies which*

> *were at best ambiguous when dealing with the situation which existed here, but it seems to me to have been mistaken to use a figure for housing requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure"*

40. The standard of reasoning applicable to statutory planning challenges is well known. In *South Bucks DC v Porter (No.2)* [2005] 1 P&CR 6, Lord Brown provided a broad summary of the authorities governing the proper approach to a reasons challenge in the planning context (as relevant):

> *"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law of fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission ... Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he had genuinely been substantially prejudiced by the failure to provide an adequately reasons decision." (para. 36 per Lord Brown)*

Relevant policy

41. National policy in this regard was at the time set out in the NPPF 2012 and in the national Planning Practice Guidance. The key paragraphs in the NPPF were as follows;

    i) Para 153 places the obligation on the LPA to produce a local plan;

    > "Each local planning authority should produce a Local Plan for its area. This can be reviewed in whole or in part to respond flexibly to changing circumstances. Any additional development plan documents should only be used where clearly justified. Supplementary planning documents should be used where they can help applicants make successful applications or aid infrastructure delivery, and should not be used to add unnecessarily to the financial burdens on development".

ii) Para 158 under the heading of "Using a proportionate evidence base" says;

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

iii) Para 159, under "Housing" says;

> "Local planning authorities should have a clear understanding of housing needs in their area. They should:
>
> - prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment [Plan-making | 39] should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
>
> — meets household and population projections, taking account of migration and demographic change;
>
> — addresses the need for all types of housing, including affordable

iv) Para 182 first two bullets say;

> "The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
>
> - **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
>
> - **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
>
> - **Effective** – the plan should be deliverable over its period".

42. The PPG deals in more detail with how to produce the Local Plan. In the section headed "Housing and Economic Development Needs Assessments" the following are the key paragraphs;

    i) Para 005, which states that there is no one methodological approach, "But the use of this standard methodology set out in this guidance is strongly recommended…."

    ii) Para 007, which states that LPAs should assess their development needs working together;

    iii) Para 014, which states that assessing future housing need is not an exact science;

    iv) Para 015 which refers to the DCLG housing projections and says these should "provide the starting point estimate of overall housing need."

    v) Para 016, which refers to the housing projections being updated and that "Wherever possible, local needs assessments should be informed by the latest available information."

    vi) Para 017 which refers to the DCLG projections but does say local plan makers may consider local circumstances.

43. I also note that the SoS has the power to direct a joint local plan under s.28A of the PCPA if he is concerned that the authorities have become seriously out of step in their plan making. He also has the power to intervene in a local plan under s.27, which would be another method of ensuring that needs were being met across a wider area.

Submissions

44. Mr Stinchcombe's submissions and those of Mr Westaway largely overlap, although at points with different emphasis. I will deal with them together, save where there is an important distinction. The overarching complaint is that Inspector Bore did not take the correct approach to Woking's unmet need and he erred in law in his approach both to the overall figure and to the apportionment in respect of Waverley. On POW's case this then had the consequence of him supporting the Dunsfold allocation, when in fact he should not have done so.

45. The principal argument relates to the use of DCLG's housing forecasts. As set out above the Inspector had rejected the SHMA findings based on the 2012 projections in respect of the Waverley OAN (see IR19). He said that the 2014 figures were meaningfully different and therefore should be used. However, as Mr Stinchcombe says, the Inspector had relied on the SHMA OAN figure for Woking at IR 26 in his calculation of Woking's unmet need and the housing projections in that figure were therefore the 2012 ones. It is argued that this approach involved an error in law by either taking into account an irrelevant consideration, or an unlawful inconsistency of approach, contrary to the very well-known principle in *North Wiltshire DC v SoS for the Environment* [1992] 65 P&CR 137 as set out by Lindblom J in *Bloor Homes v SSCLG* [2014] EWHC 754.

46. It is argued that in the same way that like cases should be decided alike, a like approach should be taken across the HMA to the evidential material. Therefore, if the Inspector rejected the 2012 forecasts in respect of Waverley's need, he was obliged to do the same for Woking's need, unless he fully explained why he was not doing so.

47. It is further argued that the Inspector did not properly consider whether Woking itself could meet a greater proportion of its own need. Woking had strongly asserted that it would not (and reasonably could not) allocated land for housing beyond the Core Strategy requirement. However there was at least one large site, Martyr's Lane, which was apparently being held as "safeguarded land" and which might have been capable of being brought forward to meet some of the existing but unmet need.

48. It is also argued that there was evidence that Woking were actually delivering considerably more than the Core Strategy requirement of 293 dpa. This was a very dated figure (going back to the SEP) and the Inspector failed to take into account the higher delivery rate, as set out in the Annual Monitoring Report (AMR), which would necessarily reduce the level of unmet need. The additional supply figure in the AMR was in the region of 816 dwellings above the requirement in the Woking Core Strategy. Further Mr Stinchcombe and Mr Westaway argued that the Inspector should not have included in the WBC requirement the five years after the Woking Core strategy will have expired, i.e. between 2027 and 2032.

49. Overall the Claimants say that the Inspector's approach at footnote 7 of the IR, that it was not his remit to recalculate Woking's unmet need, was wrong in law in that he had to properly investigate the correct level of that unmet need. Mr Stinchcombe argues that the Inspector should have calculated the Woking need figure, then the supply figure and then considered the timing of that supply. Mr Stinchcombe and Mr Westaway both rely on the fact that Mr McDonald had raised these issues, albeit in slightly different ways, in his representations. Mr Stinchcombe relies upon the *Tameside* duty to carry out a proper investigation into the factual position before reaching a conclusion on the level of Woking's unmet need.

50. They also further say that the apportionment of 50% of the unmet need to Waverley was neither properly explained nor principled. Mr Westaway takes an overall reasons challenge to the Inspector's approach to the unmet need.

51. In terms of the correct approach Mr Stinchcombe accepts that the dicta in ***Jelson*** is relevant, but he points to the fact that that was a s.288 challenge to an individual decision. In that context when the Inspector is considering whether there is a 5 year land supply, he accepts that taking a range may be appropriate. He argues that in a Local Plan context the dicta from a s.288 challenge cannot simply be applied because the burden on the Local Plan inspector must be greater. It is his case that the Inspector was looking at Woking's needs as part of the need that had to go into the LPP1, and he therefore had to investigate that need fully.

Consideration

52. Largely for the reasons advanced by Mr Beglan for WBC, and Mr Elvin QC for DAL, I reject the Claimants' arguments. The Inspector was placed in a difficult position. For the Plan to be sound he had to establish a figure for the OAN in Waverley, and ensure the Plan sought to meet that OAN and unmet need in the HMA, see NPPF para 182.

However, he was not carrying out the Woking Local Plan examination and indeed Woking is very far off any such stage of its plan making process. He did not, and realistically could not have had, all the evidence which would have been necessary to determine whatever Local Plan housing requirement figure Woking will ultimately bring forward. The Inspector was carrying out a fundamentally different exercise from any future Woking Local Plan Inspector. Mr Stinchcombe says that the Inspector was under a duty to take into account the "best and most up to date evidence", but that has to be tested on the facts of the particular case. The NPPF and NPPG are clear that the Inspector had to carry out a proportionate exercise given his specific statutory task.

53. Although the case of ***Jelson*** concerned a s.78 inquiry, in my view Lindblom LJ's analysis applies equally here, probably even more strongly. The WBC Inspector was necessarily going to have limited material in respect of Woking's OAN; how the SHMA figure should be varied; and how the identified need could be met. The determination of Woking's unmet need in the context of the WBC Local Plan, and how it was to be apportioned to Waverley, was certainly not an "exact science"; was necessarily based on imperfect material and involved a very large amount of planning judgment.

54. The argument that there was an inconsistency of approach between the Inspector's approach to the DCLG housing projections in the context of Waverley's own OAN, and the level of Woking's unmet needs, ignores the fact that these two analyses were being carried out in two very different contexts. If the Inspector had gone down the line of trying to update the Woking OAN in line with the 2014 projections he would also have had to consider the role of the employment growth analysis and the supply position. This was not a case of doing one simple arithmetical calculation. To do this exercise for the Woking OAN was clearly outside his remit, as well as necessarily involving very significant delay in bringing forward the WBC Local Plan. He could have stopped the entire process and sought all the further information that the Claimants say he should have had. But in my view, there was no legal obligation upon him to do so. It is relevant in this regard that the SoS now has powers to require a joint plan, and to intervene in the process. Ultimately, if the SoS had thought that there was danger of a serious level of over provision, or that the various authorities were not carrying out their plan making functions appropriately, he could have stepped in.

55. Contrary to Mr Stinchcombe's submissions it is clear that the Inspector did take into account the fact that Woking's OAN was based on the 2012 projections and that the ultimate figure in a future Woking Local Plan, could be lower. It is material in this regard that the Woking OAN in the SHMA was based in part on an employment-based growth analysis, and as such to a material degree the unmet need was a product of matters unaffected by the difference between the 2012 and 2014 projections. Mr Parrott calculates that the impact of the different forecasts was only 48 dpa (from 337 dpa to 293 dpa) but makes clear that the Inspector did not have the necessary evidence on affordability issues and any associated uplift, or the employment projections which were included in the final Woking OAN. I appreciate that the NPPG strongly encouraged the use of household projections in the creation of the OAN figure, but there was no suggestion that Woking could not use an employment-based analysis.

56. The Inspector at IR28-29 fully appreciated that Woking's OAN might fall, and expressly referred to "housing opportunities" which might come forward. This could

include sites such as Martyrs Lane coming forward more quickly. However, he was correct to say in the footnote 7 that it was not for him to re-calculate that OAN. He took a sensible, pragmatic and in my view lawful approach that although the figure might fall, there was undoubtedly going to be a material level of unmet need in Woking. Some part of that would beyond doubt have to be met in Waverley.

57. The 50% allocation to Waverley does appear to be a crude one but cannot possibly be said to be outside a reasonable planning judgement, given that Waverley is undoubtedly considerably less constrained in terms of Green Belt and AONB than is Guildford or Woking, see IR27. Again, unless the Inspector had carried out a detailed investigation of Guildford's housing supply situation he had no choice but to take a fairly broad brush approach. There was no policy obligation to carry out the kind of arithmetical exercise that the Claimants require. Given the more constrained policy position in the other two authorities it may well be that the 50% allocation was a fairly conservative figure for Waverley. I do not accept Mr Stinchcombe's argument that there is no nexus between the 83dpa figure and the 50% allocation. As I have said the Inspector was carrying out a fairly broad brush analysis. If the figure of 83dpa was found in the future to be somewhat high, the 50% allocation to Waverley might well be relatively low. Neither figure was amenable to any precise calculation and was fundamentally one of planning judgement.

58. Mr Westaway also argues that the Local Plan should have provided for its own review, in order to deal with the element of uncertainty around Woking's unmet need. There is no requirement in national policy for such a review and no error of law in the Inspector not providing for such. If it turns out that the level of provision within the Waverley Local Plan is higher than it appears there is a need for in future years, then it is open to WBC to review the Plan.

59. In respect of the reasons challenge, I think the Inspector's reasons were perfectly adequate, considering the factors set out by Lord Brown in *South Bucks v Porter*. The IR was primarily written to a knowledgeable audience, certainly in respect of the Claimants and their supporters. It is also relevant that it is a report written for a Local Plan examination, not an s.78, and that context necessarily means that the reasons will be less extensive than in a major s.78 inquiry, and not every participant's arguments will be dealt with in comprehensive terms. This is virtually always the case and can be seen in the contrast between Inspector Bore's report and that of Inspector Major. To place a requirement on a Local Plan inspector to set out the level of detail which is normally in a s.78 decision would be to impose an unreasonable, and ultimately unnecessary burden. The critical point is that the central justification or reasons for the Inspector's conclusions are clear on the level of housing requirement in the LPP1. In my view they are here – it is clear why he reached the figure he did on unmet need.

60. For these reasons I do not think that the Inspector and Waverley Borough Council erred in law in the adoption of the LPP1, and I reject the s.113 challenges.

61. In the light of these conclusions it is strictly speaking unnecessary for this judgment to go any further. However, in the light of the fact other issues were fully argued I will deal with the argument that even if there was an error of law in respect to Woking's unmet need, the allocation of Dunsfold Aerodrome in the Plan should not be quashed.

62. Mr Elvin argues that even if there was an error of law in the unmet need figure it would have made no difference to the allocation of Dunsfold Aerodrome. He argues that neither the principle of the allocation at Dunsfold nor the quantum of the allocation was impacted by the Woking unmet need figure. Policy SS7 allocated Dunsfold for up to 2,600 in the submission draft, before the Woking unmet need was included in the LPP1. He points to the Addendum Sustainability Report which had explained how the options for meeting the housing requirement had been considered and the reasons for seeking the allocation at Dunsfold.

63. In my view Mr Elvin's submissions on this point are correct. Dunsfold was not merely allocated before the Woking unmet need was added, but also at a point where the overall housing requirement was lower than that ultimately adopted. That appears to me to be a very clear indication that the allocation was fully justified separately from the level of the unmet need. It needs to be borne in mind that neither Mr Stinchcombe nor Mr Westaway dispute that there is unmet need in Woking, and it is inevitable that a significant proportion of that will have to be met in Waverley. I therefore think that in any event it would have been wrong to quash the allocation in respect of Dunsfold Aerodrome (policies SS7 and SS7A).

64. In respect of ALH1 I have again reached the conclusion that the policy should not be quashed in any event. The contribution of the unmet need is only a relatively small part of the overall housing requirement. Further, as I have explained above it is inevitable, on whatever analysis is undertaken that Waverley is going to have to provide for a proportion, and probably a significant proportion of Woking's undisputed level of unmet need. I would therefore have exercised my discretion not to quash ALH1 in any event.

Section 288 claim

65. The SoS granted planning permission for a new settlement at Dunsfold Aerodrome including 1800 homes. The SoS had called-in the application after WBC had resolved to grant permission. The Inspector (Inspector Major) recommended the grant of permission.

66. The only challenge to the SoS's decision is on the grounds that he relied upon the Local Plan policies that are the subject of the s.113 challenge. Therefore the s.288 challenge is entirely parasitic upon the s.113 and if the s.113 challenge is dismissed the s.288 challenge necessarily falls away. As set out above I have dismissed the s.113 and therefore the s.288 challenge cannot succeed.

67. Ms Parry for the SoS, and Mr Elvin, argue that the SoS's decision cannot be challenged on the grounds of the unlawfulness of the Local Plan policies because of the privative provision in s.113 (2) PCPA. This states that no document covered by the section, which would undoubtedly cover the LPP1, can be questioned other than under s.113. This has the effect, they say, that even if I were to quash the Local Plan policies, because it had been made as at the date of the SoS's decision, it could not be questioned in the s.288 proceedings. The issue is a complex one, because it involves the question as to what happens in law to a decision when part of its rationale is subsequently quashed, and the way in which the principles set out inter alia in *Boddington v British Transport Police* 1999 2 AC 143 should be applied where there is a statutory privative provision.

68. I have decided after some consideration that I should not express a view on this point. As I have said above anything I said would necessarily be obiter. It is a complex issue which requires detailed analysis; and I am conscious that in the case of *Capel DC v Guildford DC* [2009] EWHC 350 (Admin) on a similar factual nexus, the local planning authority conceded that if the Local Plan policy was quashed under s.113 the related s.288 should succeed. I have decided that it would be better not to express a view on the point but leave it for a case where the issue actually arose.

69. For the reasons set out above I will dismiss all the applications before me.