Neutral Citation Number: [2019] EWCA Civ 1826

Case Nos: C1/2018/2826 and C1/2018/2827

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MS NATHALIE LIEVEN Q.C. (sitting as a deputy judge of the High Court)
[2018] EWHC 2969 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 October 2019

Before:

Lord Justice Patten
Sir Ernest Ryder, Senior President of Tribunals
and
Lord Justice Lindblom

- -

Between:	**C1/2018/2826**
CPRE Surrey	**Appellant**
- and -	
Waverley Borough Council	**Respondent**
- and -	
(1) Secretary of State for Housing, Communities and Local Government **(2) Dunsfold Airport Ltd.**	**Interested Parties**

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- -

Mr Ned Westaway (instructed by **Richard Buxton Solicitors**) for the **Appellant**
Mr Wayne Beglan and Mr Asitha Ranatunga (instructed by **Waverley Borough Council**) for the **Respondent**
The Interested Parties did not appear and were not represented.

And between: **C1/2018/2827**

POW Campaign Ltd. **Appellant**

- and -

(1) Waverley Borough Council
(2) Dunsfold Airport Ltd. **Respondents**

- and -

Secretary of State for Housing, Communities and Local Government **Interested Party**

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Mr Paul Stinchcombe Q.C. and Mr Richard Wald (instructed by **Richard Buxton Solicitors**) for the **Appellant**
Mr Wayne Beglan and Mr Asitha Ranatunga (instructed by **Waverley Borough Council**) for the **First Respondent**
The Second Respondent and the Interested Party did not appear and were not represented.

Hearing date: 24 June 2019

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Judgment Approved by the court for handing down (subject to editorial corrections)

Lord Justice Lindblom:

Introduction

1. The main question in these two appeals is whether a local planning authority, when preparing its local plan, made any legal error in its consideration of unmet housing need in a neighbouring authority's area. There is no new issue of law.

2. Both appellants – CPRE Surrey and POW Campaign Ltd. ("POW") – appeal against the order dated 20 November 2018 of Ms Nathalie Lieven Q.C., as she then was, sitting as a deputy judge of the High Court, by which she dismissed their applications under section 113 of the Planning and Compulsory Purchase Act 2004, challenging the adoption by the first respondent in both appeals, Waverley Borough Council, of the Waverley Borough Local Plan Part 1: Strategic Policies and Sites ("the Local Plan Part 1") on 20 February 2018. These proceedings concern several policies of the Local Plan Part 1 – including Policy ALH1, which provides for a minimum of 11,210 additional dwellings in the plan period from 2013 to 2032. The judge also dismissed an application under section 288 of the Town and Country Planning Act 1990, by which POW challenged the decision of the second respondent in the second appeal, the Secretary of State for Housing, Communities and Local Government, in a decision letter dated 29 March 2018, to grant an application for planning permission by the third respondent in that appeal, Dunsfold Airport Ltd., for the development of a new settlement at Dunsfold Aerodrome. There is no appeal against that part of the judge's order. Permission to appeal was granted by Singh L.J. on 19 February 2019.

3. In the challenges under section 113 of the 2004 Act both CPRE Surrey and POW contend that the council erred in law in adopting the Local Plan Part 1 because the inspector who carried out the examination of it under section 20, when identifying the objectively assessed need ("OAN") for housing in the borough of Waverley, took an unlawful approach to the treatment of the unmet housing need in the neighbouring borough of Woking. CPRE Surrey also complain that the relevant reasons in the inspector's report were inadequate. The crucial point, common to both appeals, concerns the inspector's recommended Main Modification 3, which the council accepted, whose effect was to increase the annual housing requirement figure in Waverley by 83 dwellings per annum – 1,575 dwellings over the whole plan period – to address unmet housing need in Woking.

The issues in the appeals

4. The grounds of appeal in the two appellant's notices raise four issues: first, whether the inspector's approach to the assessment of unmet housing need in Woking was unlawful and his conclusion unreasonable; second, whether his assessment was vitiated by a failure to seek further information; third, whether he was obliged to recommend a review of the Local Plan Part 1; and fourth, whether his reasons were inadequate.

The statutory scheme for the preparation of development plan documents

5. The statutory provisions for the preparation of local development documents are in Part 2 of the 2004 Act. Section 17(3) provides that the "local planning authority's local

development documents must (taken as a whole) set out the authority's policies … relating to the development and use of land in their area". Section 17(6) states that "[the] authority must keep under review their local development documents having regard to the results of any review carried out under section 13 or 14". Section 17(6A) empowers the Secretary of State, by regulations, to "make provision requiring a local planning authority to review a local development document at such times as may be prescribed".

6. Section 20 provides for the submission of development plan documents to the Secretary of State for independent examination. The purpose of an independent examination is to determine, among other things, whether the development plan document is "sound", and whether the local planning authority has complied with any duty imposed on by section 33A (section 20(5)). Where the person appointed to carry out the examination does not consider it would be reasonable to conclude that the document satisfies the requirements mentioned in sub-section (5)(a) and is "sound", but does consider it would be reasonable to conclude that the authority has complied with any duty under section 33A (section 20(7B)), if he is asked to do so by the authority, he "must recommend modifications of the document that would make it one that … (a) satisfies the requirements mentioned in subsection (5)(a)" and "(b) is sound" (section 20(7C)). The authority "must publish the recommendations and the reasons" (sub-section (8)).

7. Section 27 gives the Secretary of State a default power to intervene if he "thinks that a local planning authority are failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of a development plan document". Section 28(1) provides that two or more authorities "may agree to prepare one or more joint local development documents". Section 28A gives the Secretary of State power to direct the preparation by two or more authorities of a "joint development plan document" if he "considers that to do so will facilitate the more effective planning of the development … of land in the area of one or more of the … authorities in question". Section 33A requires authorities to "co-operate … in maximising the effectiveness" with which certain "activities" are undertaken (sub-section (1)), by engaging "constructively, actively and on an ongoing basis in any process …" (sub-section (2)). The "activities" include "the preparation of development plan documents" and "other local development documents" (sub-section (3)). The requisite engagement includes considering whether "to … enter into … agreements on joint approaches …" and whether "to agree under section 28 to prepare joint local development documents" (sub-section (6)).

8. Section 113(3) provides for a "relevant document" to be challenged on the ground that it is "not within the appropriate power" (see my judgment in *Woodfield v J.J. Gallagher Ltd.* [2016] 1 W.L.R. 5126, at paragraphs 29 to 39).

Government policy and guidance

9. At the relevant time, the Government's planning policy for England was in the National Planning Policy Framework ("NPPF") published in March 2012, which was amplified by the Planning Practice Guidance ("PPG").

10. In the section of the NPPF headed "Delivering a wide choice of high quality homes", paragraph 47 said that "[to] boost significantly the supply of housing, local planning authorities should … use their evidence base to ensure that their Local Plan meets the full,

objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period …".

11. In the part of the NPPF that dealt with "Plan-making", paragraph 153, under the heading "Local Plans", said that "[each] local planning authority should produce a Local Plan for its area", and that "[this] can be reviewed in whole or in part to respond flexibly to changing circumstances". Paragraph 158, under the heading "Using a proportionate evidence base", said that "[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", and that "… 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". Under the heading "Housing", paragraph 159 stated:

> "159. Local planning authorities should have a clear understanding of housing needs in their area. They should:
> - prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. …
>
> … ."

12. Policy on the examination of local plans was set out in paragraph 182, under the heading "Examining Local Plans":

> "182. The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:
> - Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
> - Justified ... ;
> - Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
> - Consistent with national policy ... ."

13. Relevant guidance in the PPG is given in the section headed "Housing and economic development needs assessments". Under the heading "The approach to assessing need", paragraph 2a-005-20140306 says "[there] is no one methodological approach or use of a particular dataset(s) that will provide a definitive assessment of development need", but "the use of this standard methodology set out in this guidance is strongly recommended because it will ensure that the assessment findings are transparently prepared". Paragraph 2a-007-20150320 says "[local] planning authorities should assess their development needs working with other local authorities in the relevant housing market area … in line with the duty to cooperate", and "[where] local plans are at different stages of production, … authorities can build upon the existing evidence base of partner local authorities in their

housing market area but should co-ordinate future housing reviews so they can take place at the same time".

14. Under the heading "Methodology: assessing housing need", paragraph 2a-014-20140306 says "[establishing] future need for housing is not an exact science", and "[no] single approach will provide a definitive answer". Paragraph 2a-015-20140306 says "[household] projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need". Paragraph 2a-016-20150227 says that "[wherever] possible, local needs assessments should be informed by the latest available information". Paragraph 2a-017-20140306 confirms that adjustments can be made to household projection-based estimates of housing need to allow for "local circumstances", but "[any] local changes would need to be clearly explained and justified on the basis of established sources of robust evidence".

15. Paragraph 12-004-20160519 in the guidance on "Local Plans", under the heading "What is the role of the examination?", says that the inspector "should work proactively with the local planning authority"; that he "should identify any fundamental concerns at the earliest possible stage in the examination and will seek to work with the local planning authority to clarify and address these"; that "where these issues cannot be resolved within the examination timetable, the potential of suspending the examination should be fully considered, with the … authority having an opportunity to assess the scope and feasibility of any work needed to remedy these issues during a period of suspension, so that this can be fully considered by the Inspector"; and that "consideration should be given to the option of the … authority making a commitment to review the plan or particular policies in the plan within an agreed period, where this would enable the Inspector to conclude that the plan is sound and meets the other legal requirements".

The Local Plan Part 1 process

16. The judge described the several stages in the preparation of the Local Plan Part 1 (in paragraphs 6 to 15 of her judgment). I gratefully adopt her narrative – but need not repeat all of it here.

17. In September 2015 the council, together with Woking Borough Council and Guildford Borough Council, published the West Surrey Strategic Housing Market Assessment ("the 2015 SHMA") for the housing market area comprising their three administrative areas. The 2015 SHMA, prepared by G.L. Hearn, was based on the 2012 housing forecasts produced by the Department for Communities and Local Government.

18. In November 2016, when the council submitted the Local Plan Part 1 for examination, the three authorities were at different stages in the preparation of their local plans. Woking Borough Council had not begun to produce a local plan taking into account the 2015 SHMA and the 2012 housing projections. Its core strategy, adopted in 2012, had been based on the now revoked South East Plan. Guildford Borough Council's local plan was well advanced in its preparation, but had not yet been submitted for examination.

19. The pre-submission draft of the Local Plan Part 1 was based on an OAN of 519 dwellings per annum, the figure in the 2015 SHMA. Under Policy SS7 a new settlement of 2,600 dwellings was allocated at Dunsfold Aerodrome. The council did not at that stage propose

to meet any of the potential unmet need for housing in Woking. Although in the 2015 SHMA the OAN for Woking was 517 dwellings per annum, the adopted core strategy had a housing requirement figure of 292 dwellings per annum. As the judge said (in paragraph 11), "[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". And as she went on to say (in paragraph 12), "[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", and this "contrasted with the approach in the OAN advanced by [the council] at the Local Plan Examination, which was based on the household projections for Waverley rather than on employment growth".

20. In a statement of common ground for the Local Plan Part 1 examination, the three local planning authorities recorded their position that unmet housing need had been considered in discharging the duty to co-operate under section 33A of the 2004 Act, and their agreement that the council was not able to meet any of the unmet housing need in Woking. The statement of common ground confirmed that "[all] three … authorities acknowledge the need to work together to ensure that as far as possible, and subject to policies in the NPPF, housing needs across the HMA as a whole are met"; and that they would "… monitor closely the delivery of housing against the requirements and focus ongoing discussion on" four questions, including "[how] to align respective evidence base studies with common methodologies and assumptions to ensure consistency" and "[when] it would be appropriate to review relevant development plans, either in part or in full, in order to address issues of unmet need".

21. POW, and others, maintained that the council's figure of 519 dwellings per annum for OAN was too high, and also that there was no need to allocate Dunsfold Aerodrome for a new settlement.

22. Responding in March 2017 to the inspector's "Initial questions and comments", in which he had asked for evidence that the council could not meet the unmet housing need arising elsewhere in the housing market area, the council stood by its assertion that it was unable to do so, largely because its area was highly constrained by national policy designations, including Green Belt and an Area of Outstanding Natural Beauty.

23. On 5 April 2017, in his "Matters and Issues for Examination", the inspector identified unmet housing need as one of the issues. The council's response confirmed its stance that it could not meet any of Woking's unmet housing need, which it quantified as 3,150 dwellings for the period from 2013 – the base date for the 2015 SHMA – to 2027 – the end of the Woking core strategy period. This was the product of multiplying by 14 the figure of 225 dwellings per annum – the difference between the OAN for Woking in the 2015 SHMA of 517 dwellings per annum and the core strategy requirement figure of 292 dwellings per annum.

24. Some participants argued that the council should provide for part or all of Woking's unmet housing need. At the pre-submission stage, for example, Wates Development Ltd., relying on a report prepared by Nathaniel Lichfield & Partners, had contended that all of that unmet need ought to be borne in the Local Plan Part 1, as did the Waverley Housing Forum in response to the inspector's "Matters and Issues for Examination", again on the strength of work done by Nathaniel Lichfield.

25. In his agenda for the session of the examination hearing at which housing need was to be discussed, under the heading "Unmet need in the HMA", the inspector said there could be "no expectation that [Woking Borough Council] will release sites to meet current unmet need, and Guildford's Local Plan does not currently contribute towards meeting unmet need, although it is at an early stage". In his view, "[having] regard to the NPPF, Waverley should meet a proportion of Woking's unmet need". He posed the question "What figure should be set?".

26. At the hearing, this issue was discussed over two days, 27 and 28 June 2017. Various views were put forward. When invited by the inspector to identify constraints apart from the Green Belt and the Surrey Hills Area of Outstanding Natural Beauty that, in its view, prevented it from meeting any of the unmet need in Woking, the council pointed to the biodiversity of the Thames Basin Heaths and the Wealden Heaths Phase 1 and Phase 2 Special Protection Areas. On 28 June the inspector stated his preliminary view that the council should be meeting 50% of the unmet housing need in Woking. He observed that the core strategy for Woking showed a significant level of under-provision, that outside its built-up areas the borough of Woking was almost entirely Green Belt, that the borough of Guildford was more constrained by the Green Belt than was Waverley, but that Guildford too could be expected to accept a proportion of Woking's unmet need. At the end of the hearing, on 6 July 2017, he repeated his view that the council should meet 50% of Woking's unmet need, that it should in due course undertake a review to consider the issue again, but that Waverley was the least constrained of the three boroughs. He adopted the council's calculation of 3,150 dwellings, of which 50% is 1,575, and divided this by 19 – the number of years in the local plan period, which would end in 2032 – to arrive at an annual requirement of 83 dwellings per annum.

27. At the inspector's request, the council prepared a schedule of the main modifications necessary to make the Local Plan Part 1 sound. Main Modification 3 raised the housing requirement figure to 590 dwellings per annum, which included the figure for unmet housing need in Woking. The main modifications were consulted upon in September and October 2017. Some consultation responses, from housebuilders, argued that they did not provide sufficiently for Woking's unmet need. Others opposed any uplift at all. CPRE Surrey, through its consultant Mr Neil McDonald, contended that the Local Plan Part 1 should not make any such provision. Mr McDonald maintained that the OAN for Woking was too high, based as it was on the 2012 projections, rather than those published by the Department for Communities and Local Government in 2014; that Woking Borough Council had made a large uplift for employment growth, which was notoriously volatile; that until Woking Borough Council produced its own local plan, the true extent of the unmet housing need could not be calculated, but it would certainly be less than the level now suggested; that in any event the council should not be required to meet half of Woking's unmet housing need; and that "the only appropriate course of action [was] not to make any addition but to remit the matter to be considered in an early review of the plans across the [housing market area]".

28. The inspector's report was published on 1 February 2018. He concluded, as POW had argued, that the OAN for Waverley should be lower, because it should be based on the 2014 household projections; but also that the Local Plan Part 1 ought to provide for a portion of the unmet housing need in Woking; and that the allocation at Dunsfold Aerodrome should be retained.

29. On "Issue 1: Whether the Plan makes adequate provision for new housing", the inspector explained that Main Modification 3 raised the housing requirement in Policy ALH1 to a minimum of 11,210 dwellings to take account of the latest household projections, "market signals", unmet need in the housing market area and the effect of London migration (paragraph 18). As for the OAN, he acknowledged that the findings of the 2015 SHMA were "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". But he said that "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 figure became "396 dpa after factoring in the SHMA-assessed vacancy rate of 4.7%" (paragraph 19). Adding an uplift of 25% for "market signals", mainly on "affordability" in Waverley, gave a figure for OAN of 495 dwellings per annum (paragraphs 20 to 25).

30. Under the heading "Meeting unmet housing need in the HMA", the inspector said (in paragraphs 26 to 29):

> "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[6].
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> 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 underprovision 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.
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> 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[8], and although the adjustment was less significant in percentage and numerical terms than at Waverley, the figures suggest that the scale of the underprovision 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[9], which would need to be added to the OAN of 495 dpa."

Footnote 6 pointed out that "[the] Woking Core Strategy Inspector did not have the benefit of the 2015 SHMA, but his report recognised that the Core Strategy would not meet the full objectively assessed needs for either market or affordable housing in the Woking element of the housing market area". Footnote 7 said:

> "[7] Re-calculating Woking's OAN in the light of the 2014 household projections is outside the scope of this examination. The SHMA figure has therefore been referred to but with a recognition that lower household projections may result in some reduction to the degree of unmet need."

Footnote 8 referred to information provided by G.L. Hearn. Footnote 9 explained that "[taking] half of Woking's annualised unmet need of 225 dpa results in an annualised figure for Waverley of 83 dpa, because the Waverley Borough Local Plan has a later termination date".

31. The inspector added a further 12 dwellings per annum to allow for the effect of migration from London (paragraph 30), which produced "an overall housing provision of a minimum of 11,210 dwellings, or 590 dpa" (paragraph 31).

32. He also concluded that the allocation of Dunsfold Aerodrome as a new settlement was "a key part of the sustainable growth strategy for the Borough" (paragraph 93).

33. The Local Plan Part 1, when adopted in February 2018, incorporated the main modifications. Under the heading "The number of new homes", the text in paragraph 6.6 says that "[in] accordance with [paragraph 47] of the NPPF as Waverley and Guildford are within the West Surrey Housing Market Area they are expected, where possible, to meet Woking's unmet housing need", and that "[meeting] half of this unmet need results in an additional 83 new dwellings a year from 2013 to 2032 for Waverley". Paragraph 6.9 says "the spatial strategy seeks to meet the objectively assessed need for housing of 507 new dwellings a year in full and half of Woking's unmet needs (83 new dwellings a year) despite the constraints set out in paragraph 6.4". Policy ALH1 states that the council "will make provision for at least 11,210 net additional homes in the period from 2013 to 2032 (equivalent to at least 590 dwellings a year)". It then sets out the numbers of new homes allocated to each settlement, and to the new settlement at Dunsfold Aerodrome.

Was the inspector's approach to the assessment of unmet housing need in Woking unlawful, and was his conclusion unreasonable?

34. On at least four previous occasions this court has considered challenges attacking a planning decision-maker's assessment of housing need: in *R. (on the application of Hunston Properties Ltd.) v City and District Council of St Albans* [2013] EWCA Civ 1610; in *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040; in *Jelson Ltd. v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council* [2018] EWCA Civ 24; and in *Hallam Land Management Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808. There are also several relevant judgments at first instance, including *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin) and *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin).

35. Some basic points emerge:

    (1) Although the cases so far have all concerned decisions on applications for planning permission and appeals under section 78 of the 1990 Act against the refusal of, or failure to determine, such an application, the court's approach to a challenge to a local plan will not be materially different. It too will be governed by the principles of public law. The court will not revisit the relevant assessment on its merits. As was emphasized in *Jelson* (at paragraphs 22 and 25), responsibility for assessing housing need lies with the decision-maker, not with the court (see also *Oadby and Wigston Borough Council*, at paragraphs 33 to 48; and *Hallam Land Management*, at paragraph 51).

    (2) In both processes – plan-making and development control – the decision-maker must have in mind the relevant policy and guidance issued by the Government, in the NPPF and the PPG. To apply such policy and guidance the decision-maker must understand it properly. The correct interpretation of planning policy is ultimately a question for the court (see the judgment of Lord in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, at paragraphs 17 to 19, and the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] 1 W.L.R. 1865, at paragraph 22). But statements of planning policy and guidance are not equivalent to statements of legal principle (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 13).

    (3) Relevant policy and guidance on the assessment of housing need is not framed in mandatory or inflexible style. No single methodology is prescribed, and no level of precision is specified. As this court said in *Jelson* (at paragraph 25) and *Hallam Land Management* (at paragraphs 50 and 53), the exercise does not lend itself to mathematical exactness. Indeed, such precision may well be misleading. While the decision-maker is expected to establish, to a reasonable level of accuracy, a level of housing need representing the "full, objectively assessed needs", this is not an "exact science" (see *Jelson*, ibid.). There may be no single right answer – especially perhaps where a housing market area embraces more than one administrative area and the preparation of local plans in the boroughs concerned is asynchronous, as often it will be (see *Oadby and Wigston Borough Council*, at paragraph 38). Where the decision-maker is considering the weight to be given to the benefit of new

housing development in an area of shortfall, the "broad magnitude of the shortfall" is likely to be one of the factors to consider, but "great arithmetical precision" is not required (see *Hallam Land Management*, at paragraphs 47 and 51 to 53).

(4) The evaluation the decision-maker must carry out will always involve an exercise of planning judgment, and the scope for reasonable planning judgment here is broad. The degree of accuracy required in establishing the "full, objectively assessed needs" for housing will depend on the circumstances, and will itself be a matter of planning judgment. The court will only interfere if some distinct error of law is shown – for example, a misinterpretation of relevant policy or guidance, or a failure by the decision-maker to apply reasonable planning judgment to the available evidence, which may well be imperfect or incomplete (see *Jelson*, ibid.). It will not be tempted into an assessment of the evidence, expressing a preference of its own for one set of data or another, or forecasts from a particular source. Nor will it engage with the arithmetic unless the decision-maker's own calculations have clearly gone wrong.

(5) Arguments contending what a decision-maker "should" or "could" or "might" have done in assessing housing need are unlikely to prevail. For a challenge to succeed, the applicant will always have to show that what was done was actually unlawful, not merely contrary to its own case at an inquiry or examination hearing. Otherwise, the proceedings are liable to be seen as an attempt to extend by other means a debate belonging only in that forum. It is at an inquiry or examination hearing that the parties have the opportunity to argue their case on housing need, not before the court.

36. The proceedings in this case are concerned with only one aspect of the assessment of housing need in a local plan process, and a comparatively narrow one: how, if at all, should the Local Plan Part 1 deal with unmet housing need in the neighbouring borough of Woking?

37. The argument on which the appellants relied in the court below was this. The inspector's conclusion that the Local Plan Part 1 should be required to provide for 83 dwellings per annum to address Woking's unmet housing need until 2032, five years beyond the end of the period of the Woking core strategy, and with the necessary allocations to be made in Local Plan Part 2, was insupportable. The evidence on unmet need in Woking on which he based his conclusion was out-of-date. The figure he adopted – 517 dwellings per annum in the 2015 SHMA – was not based on the most recent projections, was untested, and included a large uplift for employment growth. He arrived at a figure of 225 dwellings per annum by subtracting the figure of 292 dwellings per annum in the 2012 core strategy for Woking – a figure drawn from the revoked South East Plan; multiplied the figure of 225 by 14 – for the number of years remaining in the Woking core strategy period, which ran to 2027 – to reach a total figure for unmet need of 3,150 dwellings; and imposed on the Local Plan Part 1 an additional requirement of half that total figure – 1,575 dwellings to be provided in Waverley over the 19-year plan period to 2032, 83 dwellings per annum, producing a total requirement of 590 dwellings per annum – for which there was no proper justification. The path taken by the inspector, it was submitted, was unlawful; it led him to a conclusion that was "Wednesbury" unreasonable.

38. That argument was not accepted by the judge. The inspector was, she said, "placed in a difficult position". If the Local Plan Part 1 was 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". He was not, however, carrying out the examination of Woking Borough Council's local plan, and Woking Borough Council was not yet at that stage of its own plan-making process. He could not have the evidence necessary to determine what housing requirement figure Woking Borough Council would in the end produce. He was, as the judge put it, "carrying out a fundamentally different exercise from any future Woking Local Plan Inspector". His duty to take account of the "best and most up to date evidence" had to be "tested on the facts of the particular case". From the NPPF and the PPG it was clear that he "had to carry out a proportionate exercise given his specific statutory task" (paragraph 52 of the judgment). He 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". This court's analysis in *Jelson*, said the judge, "applies equally here, probably even more strongly". Determining the unmet housing need in Woking in the local plan process in Waverley was "certainly not an "exact science"; [it] was necessarily based on imperfect material and involved a very large amount of planning judgment" (paragraph 53).

39. The judge did not accept that the inspector's report betrays an "inconsistency" between his use of the household projections in establishing the OAN for Waverley and his approach to estimating the level of unmet housing need in Woking. The two analyses were being carried out in "two very different contexts". Had the inspector attempted to revise the OAN for Woking to accord with the 2014 projections, he would "also have had to consider the role of the employment growth analysis and the supply position", and this would not have involved "one simple arithmetical calculation". In the judge's view, "[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 Local Plan Part 1]" (paragraph 54).

40. It was clear, thought the judge, that the inspector had taken into account the fact that Woking's OAN was based on the 2012 household projections, and that the ultimate figure in a future local plan for that borough could be lower. It was "material in this regard that the Woking OAN in the SHMA was based in part on an employment-based growth analysis, and … to a material degree the unmet need was a product of matters unaffected by the difference between the 2012 and 2014 projections". As he had explained in his witness statement dated 31 August 2018, the council's Planning Policy Officer, Mr Graham Parrott, had calculated the effect of the different forecasts as a reduction of only 48 dwellings per annum, from 337 to 293. But he had also made it clear that the inspector did not have the necessary evidence on "affordability" and "any associated uplift", nor on the "employment projections" included in the final OAN for Woking. Though the PPG strongly encouraged the use of household projections in establishing the figure for OAN, there was, said the judge, "no suggestion that Woking could not use an employment-based analysis" (paragraph 55).

41. The judge was satisfied that the inspector had "fully appreciated" Woking's OAN might fall. He had referred to "housing opportunities", which could include sites such as Martyr's Lane coming forward more quickly. But he was "correct to say in … footnote 7 that it was not for him to re-calculate that OAN". He had taken a "sensible, pragmatic and … lawful approach that although the figure might fall, there was undoubtedly going to be a material level of unmet need in Woking", and "[some] part of that would beyond doubt have to be

met in Waverley" (paragraph 56). Though the "50% allocation" of Woking's unmet housing need to Waverley appeared "crude", the judge's view was that it "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" – as the inspector said in paragraph 27 of his report. Unless he had undertaken a detailed investigation of housing supply in Guildford, he had "no choice but to take a fairly broad brush approach". He was under "no policy obligation to carry out the kind of arithmetical exercise" contended for by the appellants. In view of the "more constrained policy position" in the other two boroughs, "it may well be that the 50% allocation was a fairly conservative figure for Waverley". If the figure of 83 dwellings per annum turned out to be "somewhat high", the "50% allocation to Waverley might well be "relatively low". As the judge saw it, "[neither] figure was amenable to any precise calculation and was fundamentally one of planning judgement" (paragraph 57).

42. Before us, the appellants' argument was essentially the same: the inspector's approach to the question of unmet housing need in Woking was, they submitted, bad in law. For CPRE Surrey, Mr Ned Westaway emphasized that the three local planning authorities had agreed they should not seek to meet each other's housing needs, as they had made clear in their statement of common ground for the Local Plan Part 1 examination, and Woking Borough Council had supported this stance in its representations in October 2016 and May 2017. The inspector had said that the task of re-calculating Woking's OAN in the light of the 2014 household projections was outside the scope of his examination (footnote 7 to paragraph 28 of his report). But if he was going to take into account unmet housing need in Woking he had to approach the assessment of that need with as much rigour as was required for the assessment of housing needs in Waverley. He did not do so. He had set out to establish what proportion of Woking's unmet need should be met through the Local Plan Part 1 without first establishing even the "broad magnitude" of that need. So it was impossible for him to know whether the 50% proportion on which he alighted was "conservative" or too high. The extent of the need could not be measured by a proportion. Not only was the outcome of this exercise a "crude" one – as the judge said (in paragraph 57 of her judgment); the exercise itself was, submitted Mr Westaway, unlawful. The inspector's approach was not merely "broad brush", as the judge described it (ibid.), but also irrational.

43. Mr Westaway submitted that the inspector ought to have used the most up-to-date evidence available to him, in accordance with policy and good practice. On that evidence it was clear that the level of unmet housing need in Woking was much lower than he concluded it was. He knew that the household projections published in 2016, based on data from 2014, were "meaningfully different from those of 2012", which had been used in the preparation of the 2015 SHMA (paragraph 19 of his report). He should have seen the danger in relying on the out-of-date 2015 SHMA. In view of the demographic considerations underlying the 2016 projections, he should have reduced the figure for unmet need by at least 44 dwellings per annum, and adjusted it to allow for the volatility of employment-based forecasts to which Mr McDonald had referred. He failed to recognize that the requirement of 292 dwellings per annum in the revoked South East Plan was out-of-date. He did not come to grips with the actual and potential supply of housing in Woking. The recent annual monitoring report, which he appears to have seen and to which the judge referred (in paragraph 48 of her judgment), indicated a surplus of 1,070 dwellings above the requirement of 292 dwellings per annum over five years, or 816 allowing for the under-supply in previous years and a 5% buffer – at least 163 dwellings per annum – which would reduce the figure for unmet need

from 517 dwellings per annum to 62. Nor did he allow for the possibility that the allocations such as the site at Martyr's Lane would come forward more quickly than had been expected.

44. Mr Westaway urged us to see the practical importance of this argument. One consequence of the inspector's conclusions on unmet housing need in Woking was that 1,575 additional dwellings – 590 dwellings per annum instead of 507 – would need to be provided in the borough of Waverley, where the constraints on further development were so severe. He did not consider what the implications would be.

45. Mr Paul Stinchcombe Q.C., for POW, made similar submissions to Mr Westaway's. Seeking to base his argument on the case law to which I have referred, he submitted that when one local planning authority's housing requirement figure is increased to accommodate the unmet housing need in another authority's area, the inspector conducting the examination must assess the OAN in both areas. The onus on him in assessing the OAN to a reasonable level of accuracy and reliability, in what is an essentially inquisitorial process, is greater than an appeal inspector's – both because he is better able to do it and also because the outcome will bind the authority in the future. The assessment itself is an inexact science, but it requires inspectors to use up-to-date projections, and the evidence available to them in annual monitoring reports. In this case, if the inspector was to make the best possible assessment of Woking's unmet housing need, he was "bound in law" to acquaint himself with all the material before him. When assessing the OAN in Waverley, he did use the up-to-date projections. But when he considered housing needs in Woking, he did not do so: an approach, Mr Stinchcombe argued, that offended the well-established principle of consistency in planning decision-making – recognized, for example, in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137 – and had the effect of inflating the result. He did not investigate the true housing supply in Woking, revealed in the annual monitoring reports. He took a housing requirement figure from a regional plan that had been revoked, which was irrelevant. He could not, rationally, overcome the uncertainties he identified by simply adding to the housing requirement for Waverley half of a wrongly calculated figure for unmet need in Woking – which is what he did.

46. I cannot accept those submissions, skilfully presented as they were. The fatal weakness in such arguments is that they draw the court beyond the line dividing the role of the judge from the role of the planning decision-maker – territory where the court will not intrude. In my view the judge's analysis is consistent with the general principles recognized and applied in the authorities. As she held, the inspector's approach to the issue of unmet housing need in Woking was lawful, and his conclusion did not exceed the range of reasonable planning judgment.

47. There is – and can be – no suggestion that the council was not entitled to plan for the meeting of a proportion of Woking's unmet housing need in the Local Plan Part 1. It is not wrong in principle, let alone unlawful, for a local planning authority to incorporate in the housing requirements set out in its local plan a proportion of the unmet housing need in another authority's area. This was not contrary to any statement of national planning policy or guidance. Although the burden of the relevant policies in the NPPF and the corresponding guidance was that a local planning authority should plan for the needs of its own area, it was clear from paragraph 47 of the NPPF that, in preparing a local plan, an authority must seek to ensure that housing needs in the "housing market area" are met; and

from paragraph 182 that a plan strategy could, and sometimes must, embrace the meeting of "unmet requirements from neighbouring authorities where it is reasonable to do so …", and that the soundness of the plan may depend on this. In the light of those policies, neither appellant argued that the inspector could not reasonably conclude that a proportion of the unmet housing need in Woking should be met in Waverley. They were right not to do so.

48. The assessment of unmet housing need in a neighbouring authority's area and the extent to which it ought to be borne in a local plan is no more an exact science, and may often be less so, than the assessment of housing needs in an authority's own area. It may be less so, because the evidence to inform it may be more limited. It is in any event a classic process of evaluation, undertaken not by the court but by a planning decision-maker, inherently imprecise, and for which there is no prescribed, uniform approach in government policy and guidance.

49. Assessing the extent of such need, and gauging the proportion of it that should be accommodated by the plan being prepared, will always involve a series of planning judgments. The scope here for a rational and lawful planning judgment is broad, and the scope for the court's intervention correspondingly narrow. This has been acknowledged in the authorities. The choice of relevant data and projections and the use made of such evidence are matters for the inspector conducting the examination and assessing the soundness of the plan, and for the local planning authority with statutory responsibility for preparing it. In a particular case there may be several reasonable decisions available to the inspector and the authority. It may be a reasonable approach, for example, to use projections that are not the very latest to have emerged, but to rely on evidence underpinning the strategy in the recently adopted local plan for a neighbouring authority's area. Some other approach may also be reasonable, and so may its outcome. Either approach may therefore be lawful.

50. In this case, both appellants took an active part in the debate on housing need – which included the question of unmet need in Woking – in the course of the examination process, before the hearing, at it, and afterwards in the main modifications stage. It is not suggested that they were unable to put their evidence and arguments before the inspector, as did other participants whose evidence and arguments were different. They cannot complain that the inspector overlooked what they had to say, or that the evidence before him was insufficient for the assessment he had to make.

51. The inspector's relevant conclusions in his report are, I think, logical, coherent and unassailable in a legal challenge. In assessing Waverley's own housing needs, he concluded that he could rely on the 2014 household projections, which he acknowledged were "meaningfully different" from the 2012 projections on which the 2015 SHMA had been based (paragraph 19 of his report). This was a defensible planning judgment.

52. As Mr Wayne Beglan submitted for the council, the same may also be said of each stage in the inspector's assessment of the level of unmet housing need in Woking that ought to be addressed in the Local Plan Part 1. It was in my view perfectly reasonable, and made obvious good sense, for the inspector to start with the figure of 517 dwellings per annum in the 2015 SHMA for Woking's OAN and to subtract from it the figure of 292 dwellings per annum in the adopted core strategy for that borough, giving a figure of 225 dwellings per annum – 3,150 in the period of that core strategy (paragraph 26 of his report). The

calculation was consistent with the one the council had produced in response to his "Matters and Issues for Examination". And the basis for it was robust.

53. The Woking core strategy had been adopted in 2012, for a period running until 2027. It had emerged as "sound" from its own statutory process. The evidence on which it was based had been found reliable at its own examination. In the circumstances, as Mr Beglan submitted, it could hardly be thought unreasonable for the inspector to draw upon that evidence in his own assessment of unmet housing need in Woking, and to give it significant weight. As the inspector said (in footnote 6), his colleague in that process – who did not have the benefit of the 2015 SHMA – had acknowledged that the Woking core strategy would not meet the full OAN in that part of the housing market area. The inspector's approach was consistent with the guidance in paragraph 2a-007-20150320 of the PPG, which says that when local plans are not at the same stage the plan-making authority "can build upon the existing evidence base of partner local authorities in their housing market area …".

54. It is not right to suggest, as the appellants do, that there was an inconsistency of the kind contemplated by Mann L.J. in *North Wiltshire District Council* (at pp.145 and 146) between the inspector's reliance on the evidence base for the Woking core strategy and the 2015 SHMA – including the 2012 household projections – when considering unmet housing need in Woking and his use of the 2014 projections as a basis for assessing the OAN in Waverley. As he understood, the context was different, and so was the available evidence. I agree with what the judge said on this point (in paragraph 54 of her judgment).

55. I do not accept the submission that the inspector unreasonably based his own assessment of unmet housing need in Woking on figures that were "out-of-date". The 2015 SHMA provided a solid evidence base; it contained the most recent comprehensive treatment of housing needs in the housing market area as a whole. The guidance in paragraph 2a-016-20150227 does not say, or imply, that an assessment of housing need becomes redundant when new household projections are issued. And as the judge said (in paragraph 55), the OAN for Woking in the 2015 SHMA was based partly on an analysis informed by employment growth, which would not be materially affected by differences between the 2012 and the 2014 projections.

56. The inspector clearly had well in mind the relevant policy in the NPPF, and in particular the policies in paragraphs 159 and 182 enjoining local planning authorities to work together to ensure that housing needs in the "housing market area", and "unmet requirements from neighbouring authorities" are met through local plans. He referred to these policies and summarized them accurately (in paragraph 27 of his report).

57. There can be no criticism of his conclusion that it would not be a "sound position" to make no allowance in Waverley for Woking's unmet housing need, given that Waverley was a "significantly less constrained" borough than both Woking and Guildford. In reaching that conclusion, he did not ignore the fact that Waverley was itself constrained by "its Green Belt and AONB" (ibid.). This was an unimpeachable planning judgment, reached in the light of evidence and debate on housing need at the examination, including the representations made by CPRE Surrey and POW.

58. The inspector was entitled to conclude as he did on the scale and urgency of the problem. This was in part a matter of fact, in part a matter of planning judgment. The

"underprovision" already existed, was "growing", and needed to be addressed. Whilst a future review of the development plan in Woking would make it possible to revisit the issue of unmet housing need with the benefit of a new calculation of OAN, two things were now clear to the inspector on the evidence before him: first, there was a "significant delivery shortfall" against housing needs in Woking, and second, the town of Woking would "very probably remain unable to accommodate a significant proportion of its OAN in future" (paragraph 28). Once again, the planning judgment informing these conclusions is beyond criticism before a court.

59. The crucial planning judgments on the amount of unmet housing need in Woking that should be met by the Local Plan Part 1 (in paragraph 29 of the report) are all legally secure. The inspector rejected the concept of Waverley being expected to accommodate the whole of the unmet housing need in Woking indicated by the figures in the 2015 SHMA. He was clearly aware of the limitations of the evidential basis for those figures. He expressly acknowledged, twice, that they were based on household projections for Woking higher than the 2014 projections (footnote 7 and paragraph 29). Thus, as he said, "the scale of the underprovision could be less than 225 dpa". He did not neglect this possibility; it was explicitly built into his assessment. But he went further. He also accepted that more housing might be delivered in Woking than was envisaged in the core strategy for that borough – because, despite the remaining shortfall, in successive years between 2013 and 2017 the delivery of new housing had exceeded the core strategy requirement. Another consideration to which he gave weight was that the local plan process in Guildford would provide an opportunity for some of Woking's unmet housing need to be absorbed there. These three factors contributed to his overall conclusion that it would be "appropriate and reasonable" to accommodate in Waverley "half of the figure for unmet need identified through the [2015 SHMA] process" – a figure of 83 dwellings per annum to be added to the OAN of 495 dwellings per annum (paragraph 29).

60. No error of law is to be found in those conclusions. They were not irrational or deficient; they were cogent and complete. They confronted the matters that needed to be dealt with in a solid assessment of the degree to which the meeting of unmet housing need in Woking should be planned for in the Local Plan Part 1. The inspector's assessment was not flawed by the absence of a definitive conclusion on the exact level of that need. He did not have to establish that with any greater precision than he did. As he said (in footnote 7), it was not a task for him, in the examination of the local plan for Waverley, to re-calculate the OAN for Woking. He was not equipped to do that, or, indeed, to calculate the OAN for Guildford. The evidence – for example, on forecast employment growth, the affordability of housing, the need for affordable housing, vacancy rates, and so forth – was not before him, nor were the competing arguments from those who might be expected to take part in the local plan processes in those two boroughs. And as he was also aware, there was nothing in the relevant policies of the NPPF, or in the guidance in the PPG, requiring him to establish the precise amount of unmet housing need in Woking, in addition to the OAN for the borough whose local plan he was examining. It was enough for him to be satisfied, as he was, that there remained "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" (paragraph 28), though, as he recognized, there were several considerations tempering that conclusion (paragraph 29).

61. In the circumstances he was entitled to conclude, as a matter of planning judgment, that it was reasonable to calculate the necessary uplift to Waverley's OAN by taking 50% of "the

figure for unmet need identified through the [2015 SHMA] process". This conclusion entailed not merely his judgment on the appropriate proportion, but, in effect, a composite judgment on both amount and proportion: hence the figure of 83 dwellings per annum. Another inspector might have reached a different conclusion on the same evidence, but this does not mean that the conclusion he did reach was legally bad. The conclusion that the appropriate proportion was 50% – rather than, say, 60% or 70% or 75% – was comfortably within the bounds of reasonable planning judgment. In judging this to be the appropriate proportion, the inspector took care not to overstate the amount of Woking's unmet need that should be met in Waverley. This was a cautious judgment, which deliberately allowed for the uncertainties to which he had referred. The ingredients of the calculation itself were clear. They had been identified at the examination, and were explained in the inspector's conclusions (paragraphs 26 and 29 and footnote 9). And the figure it produced was specific enough for its purpose. It was not unreasonably approximate.

62. It follows that on this, the principal issue in the appeals, I believe the judge was right. The appellants have failed to demonstrate any error of law in the inspector's approach, or that his conclusion was unreasonable.

Was the inspector's assessment vitiated by a failure to seek further information?

63. The judge accepted that the inspector "could have stopped the entire process and sought all the further information" it was said he should have had. But in her view there was "no legal obligation upon him to do so". There were statutory powers for the Secretary of State to intervene in the process, and to require the preparation of a joint plan (in sections 27, 28 and 28A of the 2004 Act). Had the Secretary of State thought there was a "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" (paragraph 54).

64. Mr Westaway submitted that since the material before the inspector was inadequate for the task of establishing a reliable figure for unmet housing need in Woking, he should have sought more information before imposing an inaccurate level of unmet need on the Local Plan Part 1. This, said Mr Westaway, was clear from the PPG, in particular the guidance in paragraph 12-004-20160519 encouraging inspectors to adopt a proactive approach, and to suspend an examination if necessary. It was especially so where the issue in dispute was the correct housing requirement figure in a local plan, which would remain significant for the whole plan period. As Lord Diplock said in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] A.C. 1014 (at p.1065), a decision-maker must "… take reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly" (see the judgment of Lord Carnwath in *Dover District Council v CPRE Kent* [2018] 1 W.L.R. 108, at paragraph 62). There were obvious shortcomings in the evidence before the inspector, as he accepted – acknowledging that the scale of the underprovision "could be" less (paragraph 29), that lower household projections "may result" in some reduction (footnote 7), and that it was "possible" that Woking Borough Council "might" be able to deliver more housing than its core strategy envisaged (paragraph 29). On all these points he could and should have sought further information. Both he and the council ought at least to have considered doing that. Their failure to do so could not be justified by the fact that re-calculating Woking's OAN in the light of the 2014 household projections was "outside the scope of this examination" (footnote 7).

65. I cannot accept this argument. It is, I think, unrealistic. The inspector was under no obligation in the statutory scheme to seek more information than had been provided to him at the examination. It is clearly implicit in his conclusions on the amount of unmet housing need in Woking that ought to be borne in Waverley that he regarded the evidence before him as sufficient for the task he had set himself. Otherwise, he would surely have sought more. This would have been open to him, though it would have been an abnormal step for him to take.

66. That there were uncertainties in the evidence he had, as he himself acknowledged, did not compel him to seek more if he was to calculate a dependable figure for the amount of unmet need in Woking that ought to be planned for through the Local Plan Part 1. He cautioned himself against over-reliance on the 2015 SHMA, the 2012 household projections and the relevant content of the Woking core strategy, and came to a confident view on the appropriate amount – 83 dwellings per annum – notwithstanding the uncertainties. The simple answer to Mr Westaway's argument, therefore, is that the inspector could reasonably and lawfully reach this conclusion on basis of the evidence before him, without having to ask for more. This was the judge's view (in paragraph 54 of her judgment), and I agree.

67. The judge was strengthened in her conclusion, rightly, by the fact that the Secretary of State did not intervene in the process, as he could have done under section 27 of the 2004 Act, or require the preparation of a joint plan, as he could have done under section 28A (ibid.). That would have been an exceptional course for the Secretary of State to take. Normally under the relevant policies of the NPPF, local planning authorities for housing market areas straddling two or more administrative areas were expected to prepare local plans for their own areas separately, even if this entailed one or more of them having to plan for some or all of the unmet housing need in another's area on evidence less complete or up-to-date than might be available for the assessment of housing needs in their own area. That is what happened here.

Was the inspector obliged to recommend a review?

68. Rejecting the argument put forward by CPRE Surrey that the Local Plan Part 1 ought to have provided for its own review so that the uncertainty over Woking's unmet housing need could be resolved, the judge said there was "no requirement in national policy for such a review and no error of law in the Inspector not providing for such". If the level of housing provision in the Local Plan Part 1 proved to be higher than was needed, it would be open to the council to carry out a review (paragraph 58).

69. Pointing to the policy in paragraph 153 of the NPPF and the guidance in paragraphs 2a-007-20150320 and 12-004-20160519 of the PPG, Mr Westaway submitted that the inspector should have seen the merit in a review of Local Plan Part 1. Given what the three authorities had said in the statement of common ground, stressing the benefit of a common methodology for assessing housing need and the possibility of a review of their development plans "to address issues of unmet need", he should at least have considered this. But he failed even to do that. Without provision for a review in the Local Plan Part 1, said Mr Westaway, the site allocations would continue to be based on the total housing requirement for the whole plan period. Waverley would still be meeting Woking's unmet housing need even after the development plan for Woking has been reviewed. And the

opportunity for a common methodology, common assumptions and a consistent approach between the three authorities would be lost.

70. I reject that argument. Again, I agree with the judge. There was no legal requirement for the inspector to recommend an early review of the Local Plan Part 1, and he committed no error of law by not recommending such a review. He could have done it, but he did not have to. Under section 17(6) of the 2004 Act, a local planning authority must keep its local development documents under review, and there is now a requirement in regulations made under section 17(6A) for a local plan to be reviewed every five years (regulation 10A of the Town and Country Planning (Local Planning) (England) Regulations 2012). Nor was there any such obligation in the policies of the NPPF or the guidance in the PPG on which Mr Westaway relied. Paragraph 153 of the NPPF referred to the opportunity for the review of a local plan "to respond flexibly to changing circumstances", but it did not compel inspectors to take it upon themselves to recommend such a review. In this case it was not unreasonable for the inspector to leave the timing of the first review to the council, under its statutory obligation. As Mr Beglan submitted, there was, and is, no reason to think the council will fail to carry out timely reviews of the Local Plan Part 1, and these will inevitably take into account any new assessment of housing needs in Waverley, as well as any further information relevant to the scale of unmet housing need in Woking. It is not realistic to suggest that if evidence yet to appear does not sustain the inspector's conclusions on unmet need in Woking, the Local Plan Part 1 will be left as it is for the rest of its plan period. That plainly will not be so.

Were the inspector's reasons inadequate?

71. In the light of the principles to which Lord Brown of Eaton-under-Heywood referred in *South Bucks v Porter (No.2)* [2004] UKHL 33 (at paragraph 36 of his speech), the inspector's reasons were, in the judge's view, "perfectly adequate". The report was written for a "knowledgeable audience". The context was the examination of a local plan, which "necessarily means that the reasons will be less extensive than in a major [section 78 appeal] inquiry, and not every participant's arguments will be dealt with in comprehensive terms". To require a local plan inspector to set out the level of detail one would normally see in a decision letter on an appeal would be, said the judge, to impose "an unreasonable, and ultimately unnecessary burden". What was "critical" was that the "central justification ..." for the inspector's conclusions on the housing requirement in the Local Plan Part 1 was clear. Here this was so. It was clear why the inspector had reached the figure he did on unmet housing need (paragraph 59 of the judgment).

72. The requirement for an inspector conducting a local plan examination to give reasons for his conclusions on soundness under section 20(7) and (7C) of the 2004 Act, and for the recommendations he makes, is not in doubt (see the judgment of H.H.J. Robinson, sitting as a deputy judge of the High Court, in *University of Bristol v North Somerset Council* [2013] EWHC 231 (Admin), at paragraphs 72 to 75). The requisite standard of reasons is that to which Lord Brown referred in *South Bucks District Council v Porter* (see also the judgment of Lord Carnwath in *Dover District Council v CPRE Kent*, at paragraphs 37 to 42). As Lord Brown said, "intelligible" and "adequate" reasons, so long as they make plain how the "principal important controversial issues" were resolved, can be "briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision".

73. Mr Westaway and Mr Stinchcombe submitted that the inspector's reasons were insufficient to explain why he had concluded that 50% of Woking's unmet housing need should be provided for in Waverley. They were neither adequate nor intelligible. It was impossible to understand from the inspector's report how the imposition on the Local Plan Part 1 of a level of unmet need based on out-of-date information was rationally justified. He did not explain how he reconciled his conclusion with relevant policy and guidance; or how he had dealt with the points made by the authorities and objectors – including Mr McDonald's report. He said nothing about the authorities' common position on unmet need, or the possibility of an early review. His reasons, it was submitted, do not satisfy the principles established in the case law, or the requirement in regulation 16(4)(c) of the Environmental Assessment of Plans and Programmes Regulations 2004 that local planning authorities, when adopting a local plan, produce a statement describing, among other things, how opinions expressed by consultees in response to the invitation in regulation 13(2)(d) have been taken into account. They are not supplemented by any further reasons given by the council itself.

74. Like the judge, I reject those submissions. In my view the reasons given by the inspector in paragraphs 26 to 29 of his report satisfy the requirement for reasons that are clear, adequate and intelligible. They explain to the parties, and to the wider readership of the report, why, in the exercise of his planning judgment, he concluded as he did.

75. Generally at least, the reasons provided in an inspector's report on the examination of a local plan may well satisfy the required standard if they are more succinctly expressed than the reasons in the report or decision letter of an inspector in a section 78 appeal against the refusal of planning permission. As Mr Beglan submitted, it is not likely that an inspector conducting a local plan examination will have to set out the evidence given by every participant if he is to convey to the "knowledgeable audience" for his report a clear enough understanding of how he has decided the main issues before him.

76. But the crucial point here is that the inspector explained sufficiently why he had concluded that 50% of Woking's unmet housing need should be planned for in the Local Plan Part 1. His reasons leave no room for sensible doubt on that issue. He did not have to set out the representations in which various possible conclusions – a wide range of them – were put forward, or summarize the relevant evidence. Participants in the process were familiar with the submissions and evidence. The inspector's reasons had only to set out the main parts of his assessment and the essential planning judgments in it. They did that. They described the scale of the unmet need apparent in the 2015 SHMA and the Woking core strategy (paragraph 26); referred to NPPF policy for the meeting of needs in housing market areas (paragraph 27); acknowledged the constraints on development in three authorities' areas, and the fact that Waverley was the least severely constrained (ibid.); dismissed both the suggestion that the Local Plan Part 1 should not allow for any of Woking's unmet housing need (ibid.) and the suggestion that it should allow for the full amount (paragraph 29); recognized the urgency of tackling the need, the opportunity for it to be re-assessed in a review of the Woking core strategy, but also the likelihood that it would remain "significant" (paragraph 28); took into account the fact that the 2014 household projections were lower than those on which the 2015 SHMA was based and the possibility of the underprovision being less than 225 dwellings per annum, the possibility of Woking delivering more housing than was planned for in its core strategy, and the prospect of Guildford taking some of Woking's unmet need (paragraph 29); and expressed his critical conclusion on the proportion and amount of unmet need to be met in the Local Plan Part 1 –

50% of the figure indicated by the 2015 SHMA and 83 dwellings per annum respectively (ibid.).

77. That reasoning is clear, adequate and intelligible. Nothing that ought to be there is left out. Nothing is obscure. The appellants disagree with the outcome of the inspector's assessment. But they cannot say that the reasons he gave in those four paragraphs of his report left them unable to see why he concluded as he did.

Conclusion

78. For the reasons I have given, I would dismiss these appeals.

Sir Ernest Ryder, Senior President of Tribunals

79. I agree.

Lord Justice Patten

80. I also agree.