

Grand Union Investments Limited v Dacorum Borough Council



No Substantial Judicial Treatment

Court

Queen's Bench Division (Administrative Court)

Judgment Date

12 June 2014

Case No: CO/16628/2013

High Court of Justice Queen's Bench Division Administrative Court

[2014] EWHC 1894 (Admin), 2014 WL 2558100

Before: Mr Justice Lindblom

Date: Thursday 12th June 2014

Hearing dates: 26 and 27 March 2014

Representation

Mr Christopher Katkowski Q.C. and Mr Robert Walton (instructed by Paul Winter & Co.) for the Claimant.
Mr Martin Kingston Q.C. and Ms Jenny Wigley (instructed by Attwaters Jameson Hill) for the Defendant.

Judgment

Mr Justice Lindblom:

Introduction

1. Can a local planning authority lawfully adopt its core strategy without first having assessed the full housing needs of its area and having considered whether those needs can be met, but committing itself to an early review in which that work will be done? That question arises in this case.
2. By an application under [section 113 of the Planning and Compulsory Purchase Act 2004](#) (“the 2004 Act”), the claimant, Grand Union Investments Limited (“Grand Union”), challenges the core strategy adopted by the defendant, Dacorum Borough Council (“the Council”), in September 2013.
3. Grand Union objected to the draft core strategy, seeking the allocation of its site of 35 hectares to the south of Berkhamsted for housing development. The Council resisted that proposal and others like it. But in November 2012 the inspector who had conducted the examination of the draft core strategy, Mr David Hogger, warned the Council that he was unlikely to be able to recommend its adoption unless it was modified. In his view the Council had failed to demonstrate that it had identified the “full objectively assessed housing need” in the borough and that the need for housing in the plan period could not be more fully met than it intended. Having considered what the inspector had said, the Council decided not to go ahead with the core strategy in its submitted form. But it did not abandon or suspend the process. It chose another option suggested by the inspector, which was to promote a modification to the core strategy under [section 20\(7C\)](#) of the 2004 Act – Main Modification 28 – committing itself to an early partial review. This approach was supported by the inspector in his report to the Council in

July 2013, and was reflected in the adopted core strategy. The Council says it was lawful and in the circumstances entirely reasonable; Grand Union says it was not.

The issues

4. There are two main issues:

- (1) whether, in the light of relevant government policy in the National Planning Policy Framework (“the NPPF”), it was irrational for the inspector to advise, and for the Council to conclude, that the core strategy could properly be adopted in its modified form (ground 1 of the application); and
- (2) whether it was irrational for the Council to conclude, in its Dacorum Core Strategy Post-Examination Stage Sustainability Appraisal Report Addendum of January 2013 (“the January 2013 sustainability appraisal report addendum”), that Main Modification 28 had no relevant implications, and whether, under the regime for strategic environmental assessment (“SEA”), it was obliged to assess reasonable alternatives to the early partial review promised in Main Modification 28 (ground 2).

The pre-submission draft core strategy

5. The Council published its pre-submission draft core strategy in October 2011. The plan period was 25 years, running from 2006 to 2031. Policy CS17, “New Housing”, provided for 10,750 new dwellings to be developed in the borough over the plan period, at an average of “430 net additional dwellings” each year. Policy CS19, “Affordable Housing”, stated that “35% of the new dwellings should be affordable homes”. The total number of new dwellings envisaged for the plan period was 11,320 (including windfalls). Hemel Hempstead would “continue to be the focus for higher levels of growth”. Development in the other towns and larger villages would be “geared towards meeting their locally generated needs”. There would not be enough previously developed land in urban areas to “maintain a sufficient and steady supply of housing over the lifetime of the plan”. Some undeveloped land in the urban areas would have to be developed and extensions of some settlements were planned. These local allocations would “require small-scale changes to the Green Belt boundary”.

6. At the same time the Council published its Dacorum Local Development Framework Core Strategy – Pre-Submission Sustainability Appraisal Report, dated September 2011 (“the September 2011 sustainability report addendum”). This assessed the Council's proposed strategy for housing development. It also compared that strategy with an alternative approach based on the Office of National Statistics (“ONS”) 2008 projection of 13,450 new homes over 25 years, equivalent to the provision of 538 dwellings a year. To plan for that larger number of dwellings would “result in the need for additional development on greenfield sites in the [Green Belt] over Policy CS17, with associated adverse effects on many of the environmental objectives”. In particular, there would be “a significant adverse effect against the [sustainability appraisal] objective for landscape and townscape”, and “increased waste, increased emissions to air and increased loss of tranquillity”. The “increased landtake” would also increase “the potential for adverse effects on local biodiversity and archaeology ...”. The “higher levels of new dwellings could go further towards supporting the planned job expansion in Maylands as well as the regeneration of Hemel Hempstead”. They would “result in greater provision of affordable housing than Policy CS17”. And they would “help to maintain viability of existing services whilst also encouraging the provision of new and expanded facilities”. But the “imbalance between new homes and new jobs could ... create issues relating to an under supply of jobs which may result in an increased need to commute out of the Borough for jobs”. This level of growth could result in a larger number of new dwellings being provided in the villages and countryside of the borough, but this would depend upon “policy decisions” on the distribution of development.

7. In December 2011 Grand Union's planning consultants, Savills, responded on its behalf to consultation on the draft core strategy. They argued that in the light of the 2008 household projections the core strategy should provide an annual target of 530 additional dwellings, and that the Council's planned provision of 11,320 dwellings in the plan period would fail to meet the borough's housing needs.

The examination

8. On 22 June 2012 the Council submitted the draft core strategy to the Secretary of State for independent examination, with the Dacorum Local Development Framework Core Strategy – Submission Stage Sustainability Appraisal Report Addendum (“the June 2012 sustainability appraisal report addendum”). The examination hearings were held by the inspector between 9 and 18 October 2012.

9. Savills submitted representations for Grand Union. In the light of the ONS revised sub-national population projections of March 2012 and 2011 Census data, published in July 2012, they now argued that the core strategy should provide for the development of 563 dwellings a year, and a total of 14,080 for the plan period.

10. At the examination the Council acknowledged that its housing target of 11,320 dwellings for the plan period “would not satisfy recent household projections (c.13,500 homes – CLG 2008 based household projections)”, and would not be “sufficient to deliver ... levels of housing needs identified in the Strategic Housing Market Assessment ... and subsequent local housing needs assessments”. But in his closing submissions the Council's advocate, Mr Robert Jameson, invited the inspector to confirm the figure of 11,320 dwellings “as a sound assessment of full objectively assessed needs”. If the Council had planned for the higher level of 500 or 538 dwellings a year, “it would have gone beyond objectively assessed need and into the realms of meeting unconstrained demand and would at that level also be causing unacceptable impact on policies which the NPPF affords protection such as Green Belt and AONB”.

The inspector's preliminary findings

11. The inspector produced his preliminary findings on 19 November 2012. He said he saw “a shortcoming in the document, relating to soundness” (paragraph 1). The Council should have started by identifying the “full ‘objectively assessed needs’ (paragraph 47 of [the] NPPF)”. The most recent “CLG household projections” indicated a need for 13,500 new households in the borough, which equated to about 540 dwellings a year over the plan period, and there was also a significant need for affordable housing (paragraph 3). Having identified the full need, the Council should then have established “whether or not that full need for market and affordable housing could be met, remembering that the objective is to ‘boost significantly the supply of housing’”. If the Council had done this it might have reached similar conclusions to those reflected in the draft core strategy. But without a more thorough analysis the inspector could not be sure of that (paragraph 4). He said he had two specific concerns: “the lack of a robust and comprehensive [Green Belt] review and the limited emphasis that appears to have been given to the role that neighbouring local planning authorities could play in accommodating some of Dacorum's housing needs” (paragraph 5).

12. Having expanded on those concerns, the inspector summarized his preliminary conclusions in this way:

“In summary there is insufficient substantive evidence to enable me to confidently conclude firstly that the figure of 11,320 dwellings represents full objectively assessed need; secondly that the housing needs of Dacorum up to 2031 could not be met more fully than is currently proposed without causing significant harm to interests of acknowledged importance; and thirdly that future needs (i.e. post 2031) could be satisfactorily accommodated without a review of the [Green Belt].” (paragraph 11).

13. The inspector then suggested four possible courses of action for the Council to consider. The first option was “to commit to an early partial review of the [core strategy] (by way of an appropriate [main modification]), in order to investigate ways of assessing and meeting housing need more fully (taking into account up-dated household and population projections)” (paragraph 12). The second option was for the Council to request a suspension of the examination so that it could undertake “further work”. The third was to withdraw the core strategy. And the fourth was to ask the inspector to

complete the examination on the basis of the submitted core strategy. But this, said the inspector, would carry the “significant risk” of his being unable to find the core strategy sound (paragraph 13). He invited the Council to tell him how it wished to proceed. If he was to recommend modifications to the core strategy the Council would have to follow the procedure under [section 20\(7C\)](#) of the 2004 Act (paragraph 14).

Main Modification 28

14. On 30 November 2012 the Council's Strategic Planning Team Leader wrote to the inspector, saying that the Council preferred the first of his four options – the early partial review of the core strategy. On 11 December 2012 the Council's Cabinet considered the four options and decided to recommend to the Council that when it adopted the core strategy it should approve an early partial review. On 16 January 2013 the Council resolved to accept the Cabinet's recommendation, and to promote several modifications to the core strategy. These included Main Modification 28, which said:

“29.7 A proactive monitoring system will help the Council review its planning policies and keep them up-to-date, identifying potential adjustments to policies if appropriate and/or other necessary action.

29.8 The Council is committed to a partial review of the Core Strategy (i.e. after completion of the Site Allocations and Development Management DPDs). Evidence gathering will begin in 2013. The purpose of the review is to reconsider housing need and investigate ways of meeting that need more fully.

29.9 The [Localism Act 2011](#) places a “duty to co-operate” on local authorities and other specified organisations. Dacorum's local planning framework should therefore be based on joint working and co-operation with neighbouring authorities to address larger than local issues. The obligation stretches from plan-making to implementation, and will be explained in successive Annual Monitoring Reports. The partial review of the Core Strategy will be undertaken in co-operation with neighbouring authorities, taking account of their progress with development plan documents.

29.10 Through the partial review, the Council will assess:

- (a) household projections;
- (b) the role and function of the Green Belt affecting Dacorum, including long term boundaries and the potential to identify safeguarded land beyond 2031; and more significantly,
- (c) the role that effective co-operation with local planning authorities could play in meeting any housing needs arising from Dacorum. This element will include St Albans district and relevant areas lying beyond the Green Belt.

The outcome of the review cannot be prejudged.”

On 23 January 2013 the Council published its proposed modifications to the draft core strategy, including the main modifications, and invited representations on them.

15. The modifications document was accompanied by the January 2013 sustainability appraisal report addendum, which considered the implications of the proposed modifications for the sustainability appraisal and for the Council's Habitats Regulations Assessment. Main Modification 28 was described as “Information on the partial review process” and was said to have “No implications for SA or HRA.”

16. Grand Union's objected to Main Modification 28 in representations made for them by Savills. Their essential complaint was that an inspector had “no power to find a fundamentally unsound plan “sound” on the basis of an agreement by the LPA to a recommendation of an early review”. This, said Savills, “defeats the whole objective to ensure plans are sound and comply with current planning statute and government guidance, at the point of plan adoption”.

17. On 5 April 2013 the Council provided the inspector with a report on the main issues raised in the representations on the main modifications, and copies of all the representations it had received. The report included a suggested amendment to Main Modification 28 to explain the intended timescale for the review of the core strategy. This was to add a sentence at the end of paragraph 29.9 – “The Council will aim to adopt the review by 2017/18.”

18. On 8 April 2013 the Council requested the inspector to recommend the proposed modifications to the submitted core strategy. On 1 May 2013 the inspector wrote to the Council asking whether it had thought about preparing a single local plan including both the partial review of the core strategy and its site allocations. This “integrated and comprehensive approach”, he said, “may result in a greater level of consistency and would provide a more stable foundation on which to plan for the future of the Borough”, and “might also enable the review to be undertaken more expeditiously than is currently proposed”. On 24 May 2013 the Council told the inspector that the partial review would take the form of a single local plan containing site allocations and development management policies as well as strategic policy for development in the borough. The precise timing of the “key stages of a new local plan (incorporating the partial review)” would depend on the progress of discussions with adjoining authorities about housing needs. It was unlikely that the local plan would be prepared sooner than “the 2017/18 target” referred to in Main Modification 28.

The inspector's report

19. The inspector's report on the draft core strategy was published on 9 July 2013.

20. In the Non-Technical Summary at the beginning of the report the inspector stated his conclusion that the core strategy “provides an appropriate basis for the planning of the Borough providing a number of modifications are made to the Plan.”

21. The inspector acknowledged in paragraph 1 of his report that paragraph 182 of the NPPF “advises that to be sound, a Local Plan should be positively prepared; justified; effective and consistent with national policy”. He went on to say that his report dealt with “the main modifications that are needed to make the Plan sound and legally compliant ...”. Under [section 20\(7C\)](#) of the 2004 Act the Council had requested him to “make any modifications needed to rectify matters that make the Plan unsound/not legally compliant and thus incapable of being adopted” (paragraph 3).

22. In paragraph 8 the inspector said he was satisfied that the Council had complied with its duty to co-operate with other authorities. The “issue” therefore was “whether or not that co-operation has led to the most appropriate strategy being proposed ...”.

23. In the section of his report headed “Assessment of Soundness” the inspector identified eight main issues (paragraph 10). The first of these was whether the “overall provision for housing” in the core strategy was “justified and appropriate”.

24. The inspector began his discussion of “Housing Needs and Supply” by referring to the advice in paragraph 159 of the NPPF that local planning authorities should identify the scale and mix of housing that meets household and population projections, taking account of migration and demographic change. This, he said, should be “against the background of boosting significantly the supply of housing and meeting the full objectively assessed housing needs for market and affordable housing in the housing market area (subject to compliance with other policies in the NPPF)” (paragraph 11). He said the figure of 11,320 dwellings in Table 8 of the core strategy “does not represent the full need for housing but rather is the amount of housing the Council considers could be satisfactorily accommodated in the Borough over the plan period, having taken

into account constraints such as the green belt and AONB” (paragraph 13). The CLG projection of 13,457 dwellings was the figure that in his view provided “an appropriate foundation for the initial assessment of housing provision which would then lead to the consideration of any impediments to meeting that need in a sustainable way” (paragraph 14).

25. The inspector was satisfied that the Council's up-dated housing trajectory “represents an accurate reflection of likely development rates for the short to medium term, especially when taking into account past completion rates and the pool of outstanding commitments” (paragraph 15).

26. The inspector noted that the Council had not yet undertaken a “comprehensive assessment” of the Green Belt. Its “Assessment of Alternative Growth Scenarios for Hemel Hempstead” was a “politically neutral assessment of options” but had not been balanced against “the need to accommodate somewhere in the region of 13,500 dwellings” (paragraph 20). In paragraph 21 of his report the inspector said this:

“In order to make the greatest contribution to meeting objectively assessed housing need ..., the Council has confirmed that it is undertaking a rigorous and comprehensive review of the green belt in order to ensure that a justifiable balance between meeting housing need and protecting the green belt can be secured. Without such comprehensive evidence a robust conclusion on the potential for identification of additional housing sites, either for the medium/long term (as potential sites within the urban areas decrease) or for beyond the plan period, can not be satisfactorily drawn.”

27. In his “Conclusion on Issue 1” the inspector said the Council had recognized that “difficult decisions would have to be made if housing need was to be met more fully, with consequences for the settlement strategy and/or an acceptance by a neighbouring local authority that it could accommodate some of Dacorum's growth” (paragraph 23). Given the CLG projection of 13,457 dwellings and the Council's target of 11,320, “there would currently be a shortfall in supply over the plan period of just over 2,130 dwellings or 85 a year (15%)”. The divergence between these two figures was “not overwhelming”. But there was “insufficient evidence” to enable the inspector to conclude that “at least a proportion of that shortfall could not be satisfactorily accommodated”. The evidence was “not sufficiently conclusive” on the role Hemel Hempstead could play in accommodating a higher level of growth (paragraph 24). But according to the Council's “up-dated trajectory”, and leaving aside 2017/18, the shortfall in supply – measured against the figure of 540 dwellings a year – “would not become significant until 2024/25”. The inspector then said this:

“Against this shortfall in meeting housing need over the plan period, I have balanced the potential for sustainable growth over the short to medium term and I conclude that over this period there is potential for land supply to meet a level of demand that broadly matches the 2008 projected household growth. In any event the adoption of the [core strategy] (incorporating the partial review) is timetabled for September 2017, so any potential shortfalls could be addressed in a timely fashion.” (paragraph 25).

The inspector said there was no reason to conclude that “windfall development” would not continue, “thus strengthening the conclusion that the [core strategy] provides a sound basis for the growth of the Borough in the short to medium term” (paragraph 26).

28. Having stated those conclusions, the inspector came to the Council's proposed partial review of the core strategy. He said:

“In order that the concerns identified above will be fully addressed it is recommended that a section be included in the [core strategy] entitled ‘Future Partial Review’ [MM28]. ...”(paragraph 27).

The inspector then summarized the content of Main Modification 28.

29. In paragraph 28 of his report the inspector said he had given “great weight” to the guidance on soundness in the NPPF. But he noted that paragraph 13 of the NPPF confirms that this is “guidance and not statute”, that paragraph 10 says local circumstances should be taken into account, and that paragraph 12 says it is “highly desirable that local planning authorities should have an up-to-date plan in place”. Weighing all of this in the balance, the inspector said he was “satisfied that the shortcomings in the submitted document are not of such significance to justify finding the document as a whole not sound”. The “issues” could “best be addressed by the preparation of an early review because in the short to medium term the Core Strategy will provide a sound basis on which planning decisions can be taken”.

30. The inspector referred to the concerns raised by objectors about the appropriateness of relying on an early review of the core strategy as a means of securing a sound document. In other circumstances he might well have attached more weight to those concerns. But in Dacorum, he said, there were “two important factors”:

“First the housing shortfall is about 15% and, more importantly, there would be a general over-supply of housing in the short to medium term, especially over the next three years (as identified in the up-dated Trajectory). This over-supply would broadly be the equivalent to meeting the annualised CLG projection figure of 538 dwellings. The Review of the [core strategy] would therefore deal primarily with the likely shortfall towards the end of the plan period and as such the current [core strategy] housing target would be interim in nature. In order to further encourage housing delivery the overall total currently being proposed by the Council should be seen as a minimum provision, pending the outcome of the review, although this should not be interpreted as a justification for speculative proposals in the green belt prior to the conclusion of the current partial review of the [core strategy].” (paragraph 29).

31. The inspector said the approach indicated in Main Modification 28 was “pragmatic, rational and justified”. The “alternative”, he said, “would be to find that the core strategy was not sound”. The Council would then “in effect be starting the process again which would take time and may threaten the level of house building that is anticipated in the next few years”. The inspector said the approach the Council had taken was “compatible with the Government's overall aims of securing an increase in housing supply and would broadly meet the objectives of the NPPF and in that respect the plan as modified would be sound” (paragraph 30).

32. The Council had already begun work on the partial review of the core strategy and intended to combine this with its site allocations and development management policies in a single local plan. This approach, the inspector said, “should ensure that a comprehensive framework will be in place to boost further the supply of housing and secure sustainable economic growth, particularly towards the latter part of the plan period” (paragraph 31).

33. The inspector's conclusion, therefore, was that “subject to the recommended modifications, the Council's overall approach to housing provision is sound” (paragraph 32).

34. As to the Council's approach to the provision of affordable housing, the inspector acknowledged that it would not be realistic to expect all of the need to be met, but that “the review of the [core strategy] should enable a better match between supply and need to be achieved ...” (paragraph 33).

35. In the penultimate section of his report, “Assessment of Legal Compliance”, the inspector concluded that the core strategy met all of the relevant legal requirements. The core strategy complied with national policy “except where indicated and modifications are recommended”. It also complied with the 2004 Act and the relevant regulations (paragraph 77).

36. In his “Overall Conclusion and Recommendation” the inspector said the core strategy had “a number of deficiencies in relation to soundness and/or legal compliance ...”, so that he recommended “non-adoption of it as submitted, in accordance with [Section 20\(7A\)](#) of the [2004] Act” (paragraph 78). But, he said, “with the recommended main modifications ... the Dacorum Core Strategy satisfies the requirements of [Section 20\(5\)](#) of the 2004 Act and meets the criteria for soundness in the [NPPF]” (paragraph 79).

Grand Union's objection to the Council's approach

37. On 13 September 2013, Grand Union's solicitors wrote to the Council, contending that it would be unlawful for the Council to adopt the core strategy with the amendment proposed in Main Modification 28. That amendment, they said, could not “have the effect of converting a fundamentally unsound and non-legally compliant development plan document into a sound one”. The Council had also failed to comply with the requirements of EU Directive 2001/42/EC (“the SEA Directive”) and the [Environmental Assessment of Plans and Programmes Regulations 2004](#) (“the SEA regulations”) for the evaluation of reasonable alternatives, one of which would have been to provide for the full housing needs of the borough.

The adopted core strategy

38. At its meeting on 17 September 2013 the Council's Cabinet considered the adoption of the core strategy. It was told that leading counsel had said the Council's intended approach was lawful. The officers' advice was that “a partial review rectifying weaknesses in the core strategy is a reasonable and balanced approach”. They recommended the adoption of the modified core strategy. The Cabinet accepted that recommendation. It approved the core strategy incorporating the proposed modifications and various minor changes, and the sustainability appraisal adoption statement. The Council resolved to adopt the core strategy on 25 September 2013.

39. In [section 1](#) of the core strategy, “Summary of the Strategy”, paragraph 1.1 says its purpose is “to anticipate and manage change in Dacorum over the years to 2031”. Under the heading “How much growth and change there will be within the borough” paragraph 1.4 says that an average of 430 new homes will be provided in the borough each year “for the plan period (2006 – 2031)”, equating to a total of 10,750 homes, though the “actual level of delivery is expected to be slightly higher if ‘windfall’ sites are taken into account for the whole plan period ...”. In [section 14](#), “Providing Homes”, Table 9 “Strategic Sites and Local Allocations” provides for a total of 1,550 new dwellings to be provided on two strategic sites and six local allocations. Policy CS17, “New housing”, says that “[an] average of 430 net additional dwellings will be provided each year (between 2006 and 2031) ...”, and Policy CS19, “Affordable Housing”, says that “35% of the new dwellings should be affordable homes”. [Section 29](#) deals with “Monitoring”. Main Modification 28, with the reference to the Council's aim to adopt the partial review “by 2017/18” at the end of paragraph 29.9, is incorporated there, in the four paragraphs under the heading “Review”.

40. In October 2013 the Council published its Dacorum Core Strategy Adoption Stage Sustainability Appraisal Adoption Statement (“the sustainability appraisal adoption statement”). [Section 4](#) of the sustainability appraisal adoption statement set out the reasons why the adopted core strategy was chosen “in the light of the other alternatives considered”. This section traced the history of the preparation of the core strategy. It referred to the September 2011 sustainability report addendum, and its assessment of the “scenario of taking forward the 2008 [ONS] Projections of 13,450 houses total over 25 years (equating to 538 dpa)”. It also referred to the sustainability of the main modifications to the core strategy proposed after the examination, only one of which had required a new sustainability appraisal. It concluded by saying that “[none] of the proposed main modifications made major changes to the preferred strategic options and in addition none were identified as having a significant effect on the previous findings of the sustainability appraisal or the Habitats Regulations Assessment”.

The partial review

41. Work on the partial review of the core strategy began in 2013. A report on the first stage of the Green Belt review, undertaken by consultants jointly instructed by the Council, St Albans City and District Council and Welwyn Hatfield Council, was published in November 2013. In February 2014 the Council adopted its revised local development scheme. This confirmed that the Council is committed to having the early partial review “in place by 2017/18”, and that this will take the form of a single local plan “containing site allocations and development management policies in addition to strategic policies covering the development of the Borough of Dacorum”, in which “[existing] policies and designations will be reviewed and updated as appropriate, taking into account new evidence and the outcome of discussions under the duty to co-operate”.

Issue (1)—unlawful adoption of the core strategy

42. [Section 19](#) of the 2004 Act sets out several requirements for the preparation of local development documents. [Section 19\(2\)](#) provides:

“In preparing a development plan document ... the local planning authority must have regard to –

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

...”.

43. [Section 20](#) requires the authority to submit every development plan document to the Secretary of State for independent examination by a person appointed by him. One of the three purposes of the independent examination is to determine whether the development plan document is “sound” ([section 20\(5\)\(b\)](#) of the 2004 Act). The other two purposes of the examination are to ensure that the local planning authority has met the requirements of various statutory provisions, including [section 19](#) of the 2004 Act ([subsection \(5\)\(a\)](#)) and the authority's duty under [section 33A](#) to co-operate with other authorities when preparing its development plan documents ([subsection \(5\)\(c\)](#)).

44. Under [section 20\(7\)](#) , if the person appointed to carry out the examination considers that, in all the circumstances, the document satisfies the requirements of [subsection \(5\)\(a\)](#) and is sound, and that the local planning authority has complied with its duty to co-operate under [section 33A](#) , he must recommend its adoption. [Subsection \(7A\)](#) provides that if the person appointed to carry out the examination is not required to recommend adoption he must recommend that the document is not adopted. But under [subsections \(7B\) and \(7C\)](#) if he does not consider that it would be reasonable to conclude that the document satisfies the requirements of [subsection \(5\)\(a\)](#) and is sound, but does consider that it would be reasonable to conclude that the authority has complied with its duty to co-operate, and if he is asked to do so by the local planning authority, he must recommend modifications which would make the document compliant with [subsection \(5\)\(a\)](#) and sound (see *Performance Retail Limited Partnership v Eastbourne Borough Council* [2014] EWHC 102 (Admin), at paragraph 17). Such modifications are known as main modifications. When main modifications are recommended to it, the local planning authority may only adopt the document with those main modifications ([section 23\(2A\), \(3\) and \(4\)](#)).

45. The NPPF was published by the Government in March 2102. It contains the Government's policy for planning in England.

46. Paragraph 12 of the NPPF says it is “highly desirable that local planning authorities should have an up-to-date plan in place.” Paragraph 14 says that “[at] the heart of the [NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking”. For plan-making this means two things: first, that “local planning authorities should positively seek opportunities to meet the development needs of their area”, and secondly, that local plans “should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change”, unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits ...” or specific policies in the NPPF indicate that development should be restricted. Paragraph 17 sets out 12 “core land-use planning principles”, one of which includes making “[every] effort ... objectively to identify and then meet the housing, business and other development needs of an area ...”.

47. Under the heading “Delivering a wide choice of high quality homes”, paragraph 47 of the NPPF refers to the Government's aim to “boost significantly the supply of housing”. Authorities are told that they 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”. Paragraph 47 also says that authorities must identify and keep up to date every year a supply of sites sufficient to provide “five years worth of housing against their housing requirements ...”.

48. Paragraph 83 says that once Green Belt boundaries have been established, they should only be altered in exceptional circumstances, through the preparation or review of a local plan. In such a process “authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period”. Paragraph 85 says that authorities, when defining boundaries, should “where necessary, identify in their plans areas of ‘safeguarded land’ between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period”, and should “satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period”.

49. In the section of the NPPF dealing with “Plan-making” paragraph 157 says local plans should “plan positively for the development and infrastructure required in the area to meet the objectives, principles and policies of [the NPPF]”, and should be “drawn up over an appropriate time scale, preferably a 15-year time horizon, take account of longer term requirements, and be kept up to date”. Paragraph 159 says local planning authorities “should have a clear understanding of housing needs in their area”. They should prepare two assessments: “a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries”, and “a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.”

50. On the soundness of development plan documents paragraph 182 of the NPPF states:

“... 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 and based on effective joint working on cross-boundary strategic priorities; and
- Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.”

51. The National Planning Policy Guidance issued by the Government on 6 March 2014 , says that local plans “may be found sound conditional upon a review in whole or in part within five years of the date of adoption”. It also says that local plans “can pass the test of soundness where local planning authorities have not been able to identify sites or broad locations for growth in years 11–15.”

52. The competing arguments on this issue present starkly different views of the approach adopted by the inspector and the Council.

53. The thrust of the submissions made by Mr Christopher Katkowski Q.C. for Grand Union was that Main Modification 28 did not address the basic shortcomings in the core strategy identified by the inspector in his preliminary findings and in his report. The inspector could only recommend Main Modification 28 if, in the first place, he had found the submitted core strategy unsound. He did find it unsound, and he was right to do so. But he did not explain why he thought a modification committing the Council to a review of the core strategy could remedy the substantial flaws in it. That commitment did not put right the errors the Council had made in preparing the core strategy, which went to several of the fundamentals in plan preparation. It did not change the inaccurate assessment of housing need. It did not establish the full objectively assessed need for housing in the Council’s area, for the whole plan period, as paragraph 47 of the NPPF requires. The outcome of the review is wholly unclear. In these circumstances the inspector could not reasonably conclude that the review would render an unsound plan sound. And his reasons for thinking it would are obscure.

54. For the Council Mr Martin Kingston Q.C. submitted that there was nothing irrational in the inspector's analysis and recommendation. The inspector clearly had regard to and understood government policy for plan-making in the NPPF. He referred to it both in his preliminary findings and in his report. With that policy in mind he took a pragmatic view. As he could see, although the Council had not shown that it had established the full objectively assessed need for housing in its area, any shortfall in its allocation of land for residential development was not going to cause problems until later in the plan period. By then – if the allocations turned out to be inadequate – the review to which the Council had committed itself would have been completed and the Council would have been able to amend its strategy if it had to. The Council had to bear in mind the need to have its core strategy in place as soon as it reasonably could. In taking up the inspector's suggestion that it should promote Main Modification 28, it acted entirely reasonably. There is a strong incentive for it to get on with its review of the core strategy. If it does not do so it will find it more and more difficult to rely on its adopted policies for meeting housing need when making decisions on applications for planning permission.

55. I cannot accept Mr Katkowski's argument. I think Mr Kingston's submissions are essentially correct. In my view the Council lawfully adopted the core strategy, in accordance with the relevant statutory provisions governing the preparation of development plan documents.

56. Testing the soundness of a plan is not a task for the court. It is a task that lies within the realm of planning judgment exercised under the relevant statutory scheme in the light of relevant policy and guidance. The court's jurisdiction under section 113 of the 2004 Act is limited to review on traditional public law grounds (see the judgment of Keene L.J. in *Blyth Valley Borough Council v Persimmon Homes (North East) Limited* [2008] EWCA Civ 861, at paragraph 8). The question in this case, as the parties agree, is whether the Council's adoption of the plan on the inspector's recommendation was irrational. As has been said many times, a claimant who seeks to persuade the court that a planning decision-maker has lapsed into irrationality will have to demonstrate an unusually bad error of judgment. He must show that the decision falls outside the range of judgment open to a reasonable decision-maker (see, for example, the judgment of Lord Bingham C.J., as he then was, in *R. v Secretary of State for the Home Department, ex parte Hindley* [1998] QB 751, at p. 777A).

57. The concept of the soundness of a development plan document is not defined in the 2004 Act. But the Government has supplied four criteria of soundness in paragraph 182 of the NPPF. The first of those four criteria, that the plan has been positively prepared, will be satisfied if the plan has been based on a strategy that “seeks to meet” the local planning authority's “objectively assessed” requirements for development and infrastructure. This echoes the reference in paragraph 47 of the NPPF to plans meeting the “full, objectively assessed needs ...” for housing.

58. In *R. (on the application of Hunston Properties Limited) v Secretary of State for Communities and Local Government* [2013] EWCA Civ 1610, where an inspector's decision on an appeal against the refusal of planning permission for housing development in the Green Belt was quashed because she had based it on a constrained figure for housing need, Sir David Keene said (in paragraph 6 of his judgment) that there is “no doubt” that in producing their local plans local planning authorities are required to ensure that the “full objectively assessed needs for housing are to be met”, subject to this being consistent with the policies of the NPPF. The words “as far as is consistent with the policies set out in this Framework” in paragraph 47 of the NPPF do not qualify the housing needs themselves. They qualify the extent to which the plan should go in meeting those needs.

59. But the guidance as to “soundness” in the NPPF is policy, not law, and it should not be treated as law. As Carnwath L.J., as he then was, said in *Barratt Developments Plc v The City of Wakefield Metropolitan District Council* [2010] EWCA Civ 897 (in paragraph 11 of his judgment), so long as the inspector and the local planning authority reach a conclusion on soundness which is not “irrational (meaning perverse)”, their decision cannot be questioned in the courts, and the mere fact that they have not followed relevant guidance in national policy in every respect does not make their conclusion unlawful. Soundness, he said (at paragraph 33) was “a matter to be judged by the inspector and the local planning authority, and raises no issue of law, unless their decision is shown to have been “irrational”, or they are shown to have ignored the relevant guidance or other considerations which were necessarily material in law”.

60. In this case Main Modification 28 could not have been prompted by the inspector's preliminary findings, formulated by the Council, put before the inspector for his consideration, and ultimately recommended by him to the Council, if the submitted core strategy had been sound. As the inspector said in paragraph 30 of his report, the alternative to changing the core strategy by introducing Main Modification 28 into it would be to find it was not sound. The Council had not tried to dissuade him from that view once he had made it known in his preliminary findings. It decided to promote Main Modification 28 to enable him to recommend adoption, as he had indicated he could in his preliminary findings.

61. The crucial question here, therefore, is not whether the core strategy was sound when considered in its originally submitted form at the examination, but whether in its final form, incorporating Main Modification 28, it could properly be regarded as having become sound so that it was, by then, a plan capable of being lawfully adopted.

62. To answer that question it is necessary to consider the reasons for the inspector's conclusion that the submitted core strategy was not sound, and his reasons for concluding that that unsoundness could be overcome by Main Modification 28.

63. The inspector found two flaws in the approach the Council had taken in preparing the document. The first flaw was that the Council had failed to undertake a proper assessment of the housing needs of its area, in accordance with government policy in paragraph 47 of the NPPF. It had not identified those needs in the light of the most recent household and population projections. What it had done was to decide how much development could satisfactorily be accommodated in its area without breaching other policy constraints, including the Area of Outstanding Natural Beauty and the Green Belt. Its figure of 11,320 dwellings could not therefore be taken as representing the full objectively assessed need (paragraphs 2, 3 and 11 of the inspector's preliminary findings and paragraphs 13 and 14 of his report). The second flaw was that the Council had not done what it should to establish whether and how much of the objectively assessed need for market and affordable housing could be met. It had not conducted a rigorous and comprehensive review of the Green Belt, with a view to the borough's longer term needs (paragraphs 4, 5, 6, 7, 8 and 11 of the preliminary findings and paragraphs 19 to 22 of the report). And it had not gone as far as it should have done in exploring the potential for some of the borough's needs to be met in the areas of neighbouring local planning authorities, in particular St Albans City and District Council (paragraphs 5, 9, 10 and 11 of the preliminary findings and paragraph 27 of the report).

64. As the inspector accepted, those two flaws related to the soundness of the core strategy in its submitted form. Unless they were dealt with in a satisfactory way, the core strategy could not be regarded as sound. The inspector told the Council this in his preliminary findings, and the Council acted on his conclusion in one of the ways that he had suggested, by committing itself to carrying out a partial review of the core strategy within five years of its adoption.

65. Mr Katkowski's argument relies on the inspector's judgment as to the soundness of the submitted core strategy, yet condemns the solution proposed by the inspector himself as being not merely wrong in terms of planning judgment, but irrational. That is a bold submission. It depends on the proposition that because the flaws identified by the inspector were, in essence, shortcomings in the work the Council had done in preparing the core strategy, the only reasonable way to tackle them was by doing that work in this plan-making process. By putting the work off to the partial review, to be undertaken only after the core strategy had been adopted, the Council was relying on that further process to reveal the full, objectively assessed housing needs of the borough for the period of the core strategy, and whether those needs, whatever they might be, could have been met more fully than the Council had said. Logically, Mr Katkowski argued, the core strategy could not be made sound simply by grafting into it a commitment to doing work that was a prerequisite to its soundness. This was planning to plan, which is not the same thing as actually planning.

66. The argument is simple, and it was elegantly presented. But I think it is wrong. The difficulty with it, in my view, is that it implies an unrealistic and wholly unnecessary constraint upon the inspector's judgment on the question of soundness.

67. The assessment of soundness was not an abstract exercise. It was essentially a practical one. If the core strategy as submitted was unsound, the inspector had to consider why and to what extent it was unsound, what the consequences of its unsoundness might be, and, in the light of that, whether its unsoundness could be satisfactorily remedied without the whole process having to be aborted and begun again, or at least suspended until further work had been done.

68. The inspector did that. The genesis of Main Modification 28 lay in his view that the work done in the preparation of the core strategy was not so defective, and the evidence on which it was based not so incomplete, that it had to be rejected as unsound in any event. If he had seen the potential unsoundness in the core strategy as irremediable, he would not have issued his preliminary findings suggesting, as one option for addressing that problem, the mechanism of an early partial review. By the time he came to write his report the Council's commitment to that review and the agenda for it set out in the additional text in paragraphs 29.7 to 29.10 of the core strategy were, in his view, enough to make the document sound at the point of its adoption. Though he could not be sure that the core strategy in its adopted form would provide to the fullest possible extent for the housing needs of the borough all the way through to the end of the plan period in 2031, he had enough confidence in it to be able to conclude that, as modified, it was sound.

69. Main Modification 28 was, in the inspector's judgment, a sufficient solution – a solution proportionate to the problem. I do not think this was an irrational view. On the contrary, it was entirely reasonable. The inspector described Main Modification

28 as “pragmatic, rational and justified”. That, in my opinion, would be a fair description of his own conclusions. And the reasons he gave for those conclusions were not only adequate and clear, but make perfectly good sense. Another inspector might have come to a different view. I accept that. But that does not mean that this inspector's conclusion, formed on the evidence and representations which he had heard, was bad as a matter of law. And I do not think that it was.

70. The inspector neither neglected nor misunderstood any relevant aspect of government planning policy. He plainly had regard to the principles in national policy bearing on the matters he had to consider. He referred to the relevant parts of the NPPF – including paragraphs 47, 83 and 159 – both in his preliminary findings and in his report. He began his report by acknowledging the four criteria of soundness in paragraph 182. The assessment which led him to suggest the option of a main modification started with his finding that the Council ought to have assessed the full housing needs of its area for the plan period as policy in the NPPF required. The course he suggested, which the Council followed by promoting Main Modification 28, was intended to ensure that the relevant objectives of national policy in the NPPF would be met.

71. Mr Katkowski said the inspector's conclusion, in paragraph 28 of his report, that the shortcomings in the submitted document were not of such significance to justify finding the document “as a whole not sound” was inconsistent with his conclusion that it was necessary to modify the submitted plan to make it sound, and that in any event his reasons here were obscure. I disagree. The following sentence in paragraph 28 resolves any genuine doubt. It says that the issues – the “shortcomings in the submitted document” – could best be addressed through the preparation of an early review. That is precisely what the inspector had concluded in his preliminary findings, which were concerned specifically with housing supply and the Green Belt, and not with the submitted core strategy “as a whole”.

72. Mr Katkowski also submitted that the inspector need not have feared the consequences of finding the core strategy unsound. There would be no policy vacuum and no threat to the level of house building in the borough while the core strategy process was gone through again. In the meantime the presumption in favour of sustainable development would apply, under the policy in paragraphs 14 and 49 of the NPPF. That may be so, but Mr Katkowski's submission ignores the emphasis in government policy on the plan-led system of development control, and on the importance of having an up-to-date plan in place, to which the inspector referred in paragraph 28 of his report.

73. At the heart of Mr Katkowski's argument was the submission that, in reality, Main Modification 28 changed nothing. The substance of the policies and allocations in the core strategy remained unchanged. The evidence on which it was based was the same as when the document was submitted to the Secretary of State. And the outcome of the review, if there was to be one, was also unknown.

74. There is a straightforward answer to that complaint.

75. It is clear that the inspector was well aware of the need for the Council to have a solid and durable plan in place as soon as it reasonably could, and of the need for that plan to be kept up-to-date. The Council was planning in the core strategy for a period of 25 years, ending in 2031, which is a much longer period than the 15 years that paragraph 157 of the NPPF says is preferable. In the course of that 25-year period there will be several cycles of plan-making.

76. Making his judgment on soundness in that context, the inspector could not foresee any imminent shortfall in the provision of housing in the borough. The shortfall calculated on the basis of the CLG household projection was not too large to prevent the core strategy being an appropriate basis for the delivery of new housing in the borough and for the making of decisions on applications for planning permission until 2024 or 2025, which was some 18 years after the start of the plan period in 2006, and at least six years after the partial review was due to have been completed, in 2017 or 2018. In the short to medium term, the inspector found, there would not be an over-supply of housing, matching the annual figure of 538 dwellings derived from the CLG projection. The outcome of the early partial review was uncertain. The inspector knew that. Crucially, however, he was satisfied that the review, whatever its outcome, would be able to anticipate any shortfall in housing supply arising towards the end of the plan period, so that the Council's development plan strategy could be adjusted in good time to cope with it. That judgment is not attacked in these proceedings.

77. In these circumstances I think the inspector could reasonably conclude that the approach embraced by the Council in Main Modification 28 was compatible with the aim of government policy in the NPPF to secure an increase in the supply of housing, and that in this respect the core strategy as modified would be sound. The review would enable the Council to identify the full objectively assessed needs for market and affordable housing in its area, and would assess how far those needs could be met – with the help of neighbouring authorities if this is necessary. It would also include a full review of the Green Belt boundary. The review itself would be subject to independent examination in the local plan process, and its own soundness would be put to the test. At the point of its adoption, therefore, the core strategy was a satisfactory strategy

for the whole of its period, not just for part of that period. The purpose and effect of Main Modification 28 was to include in the document a means of ensuring that any shortfall in the provision of housing would be made good before it had any practical effect, and that the Council's strategy would remain sound at least until 2031. So it cannot be said that the Council was failing to plan for the whole plan period.

78. Mr Katkowski was of course right to say that the Council's commitment to reviewing the core strategy is not legally binding. But this does not mean that it was unreasonable for the inspector to rely on the review in his assessment of soundness. As Mr Kingston accepted, the spur to the Council in getting on with the review as fast as it has said it will is the policy in paragraphs 14 and 49 of the NPPF – the policy on which Mr Katkowski relied in his submission that there would have been no policy vacuum if the core strategy had not been adopted when it was. Those two paragraphs of the NPPF give no comfort to local planning authorities who allow their plans to become stale. Paragraph 14 applies the “presumption in favour of sustainable development” when relevant policies of the development plan are out-of-date. And paragraph 49 says that relevant policies for the supply of housing should not be considered up-to-date if the authority “cannot demonstrate a five-year supply of deliverable housing sites”. Mr Kingston conceded, rightly in my view, that if the Council failed to carry out the review within the timescale given in paragraph 29.9 of the core strategy, that is to say by 2018 at the latest, it would not be able to say that the policies for housing development in the core strategy were up-to-date. The weight which could be given to those policies in a development control decision would then be greatly reduced. It would therefore have been surprising if the inspector had doubted the Council's resolve to complete the early partial review as soon as it can.

79. Finally on this issue, I do not think Mr Katkowski's argument gains anything from the decision in *D. B. Schenker Rail (U.K.) Limited v Leeds City Council* [2013] EWHC 2865 (Admin). That case turned on its own facts, which were very different from the facts of this case. It was held that a policy safeguarding sites for the handling of canal-borne or rail-borne minerals, which had been modified by inserting into it a provision for its review after five years, was unlawful because the inspector who had endorsed the modification had failed to identify any good reason for it. The case is not authority for the wider principle contended for by Mr Katkowski – that a plan which does not provide for the meeting of relevant needs “cannot be cured by the fact that it might be reviewed in the future”. The court in *Schenker* did not dismiss the concept of an authority's commitment to an early partial review of its plan justifying a finding of soundness. If there is a proper rationale for the review, which in this case there patently was, there is no reason in principle why it should not be taken into account as a consideration relevant to the soundness of the plan.

80. I therefore reject ground 1 of the application.

Issue (2) — SEA

81. The SEA Directive requires SEA to be undertaken for certain plans and programmes (article 3(1)), and that the assessment is taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (article 8).

82. The requirements of the SEA Directive are transposed into domestic law by the [SEA regulations](#) . [Regulation 5 of the SEA regulations](#) requires any plan concerning town and country planning which sets the framework for certain development consents – such as the Council's core strategy in this case – to be subjected to SEA during the preparation of the plan and before its adoption or submission to the legislative procedure. [Regulation 8](#) provides that the plan may not be adopted unless the assessment has been taken into account together with the consultation responses made in respect of it.

83. [Regulation 12\(1\) of the SEA regulations](#) provides that where SEA is required, the responsible authority “shall prepare, or secure the preparation of, an environmental report ...”. [Regulation 12\(2\)](#) requires the environmental report to “identify, describe and evaluate” the likely significant effects on the environment of “implementing the plan or programme” and “reasonable alternatives taking into account the objectives and geographical scope of the plan or programme.” [Regulation 12\(3\)](#) requires the environmental report to “include such of the information referred to in [Schedule 2](#) ... as may reasonably be required”, taking account of “(a) current knowledge and methods of assessment”, “(b) the contents and level of detail in the plan or programme”, “(c) the stage of the plan or programme in the decision-making process”, and “(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.”

84. [Paragraph 6 of Schedule 2 to the SEA regulations](#) refers to “[the] likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects ...”.

85. [Section 19\(5\)](#) of the 2004 Act requires a local planning authority to “carry out an appraisal of the sustainability of the proposals in each development plan document ...” and to prepare a report on the findings of that appraisal. Under the relevant regulations the authority must publish its sustainability appraisal report, consult upon it and submit it with the draft development plan document to the Secretary of State.

86. As the parties agree, this issue divides into two questions. The first question is whether the Council's conclusion that Main Modification 28 had no implications for its original assessment in the January 2013 sustainability appraisal report addendum was irrational. And the second is whether the Council was obliged to assess reasonable alternatives to the early partial review, such as the other options suggested by the inspector in his preliminary findings.

87. On the first question Mr Katkowski submitted that the Council failed in its duty to undertake a sustainability appraisal of the core strategy in its final form before it was adopted, and thus failed to comply with the requirements of the regime for SEA. Main Modification 28 could not reasonably be seen as having no implications for the sustainability appraisal. Its implications were, potentially, substantial and ought to have been assessed.

88. I see no force in those submissions. As Mr Kingston submitted, the core strategy was properly assessed in accordance with the [SEA regulations](#) at every stage of the process in the Council's sustainability appraisal: first in September 2011 in the sustainability report for the Council's pre-submission core strategy; secondly, in the June 2012 sustainability report addendum; thirdly, in the January 2013 sustainability appraisal report addendum; and finally, in the sustainability adoption statement of October 2013. The potential implications of the main modifications were assessed, both for the sustainability appraisal and for the assessment under the habitats regulations. Mr Katkowski did not point to any error or omission in any aspect of that assessment. I see no reason to doubt that it was undertaken lawfully, or that the likely significant environmental effects of implementing the policies and allocations in the core strategy were all properly assessed.

89. Mr Katkowski's essential point here was that the proposal for a review introduced into the core strategy by Main Modification 28 was not assessed under the [SEA regulations](#), and should have been. I think this submission sits uncomfortably with his argument on ground 1 – that the review changed nothing of substance in the core strategy and that its outcome could not be predicted. If there was nothing to assess, how could the assessment itself be lacking? It was precisely because the early partial review was not a substantive proposal but a process yet to come, whose outcome was not pre-empted or predicted by the core strategy in its final form, that there could be no meaningful SEA of it.

90. It is only on *Wednesbury* principles that an authority's judgment as to the likelihood of significant effects on the environment can be impugned (see the judgment of Beatson J., as he then was, in *Shadwell Estates Ltd. v Breckland District Council* [2013] EWHC 12 (Admin), at paragraphs 71 to 78, and the recent judgment of Sales J. in *Zurich Assurance Ltd. v Winchester City Council* [2014] EWHC 758 (Admin), at paragraphs 124 to 137). Any attempt to invoke those principles here would in my view be hopeless. The conclusion in the January 2013 sustainability appraisal report addendum report that the Council's commitment to the early partial review of the core strategy, and that process itself, would have no implications for the sustainability appraisal and the assessment under the habitats regulations was not irrational. It was inevitable. No other conclusion could sensibly have been reached. Carrying out the review will have no effects on the environment. The development plan document which will embody the policies and allocations that emerge from the review will be subject to its own sustainability appraisal in due course.

91. On the second question Mr Katkowski submitted that the Council erred by failing to assess reasonable alternatives to the promotion of Main Modification 28, such as making some change of substance to the submitted core strategy, or taking one of the other options suggested by the inspector in his preliminary findings. The fact that the outcome of the partial review was unknown at the time of adoption was, said Mr Katkowski, no excuse for the Council's failure to assess the possible implications of pursuing a different approach after it was told by the inspector that the core strategy as submitted was unsound. By omitting to do this the Council was in breach of the requirement in the SEA regime for reasonable alternatives to be assessed.

92. I do not accept those submissions, for three reasons.

93. First, as I have already said, reasonable alternatives to any proposals in the review, once it has been carried out, will have to be considered in the further SEA undertaken for the review itself. It is not possible to identify alternatives to that strategy at this stage. To attempt such an exercise now would be futile.

94. Secondly, as Mr Kingston submitted, the requirement to assess likely significant effects on the environment of reasonable alternatives is specifically a requirement to consider reasonable alternatives to the implementation of a plan, not alternatives to every modification of a plan, including modifications which do not in themselves constitute substantive proposals. It is predicated on the existence of reasonable alternatives to the preferred strategy which are capable of being assessed in the same way, whether or not to the same depth, as the preferred strategy itself (see, for example, the judgment of Ouseley J. in *Heard v Broadland District Council* [2012] EWHC 344 (Admin), at paragraphs 69 to 71). Main Modification 28 did not amount to a new policy or allocation in the core strategy, but a commitment by the Council to an early review of it. There was, therefore, nothing by way of an alternative policy or allocation to assess. The assessment of true alternatives to the implementation of the core strategy was undertaken in the course of the process leading up to the submission of the document to the Secretary of State and its examination by the inspector. Section 4 of the sustainability appraisal adoption statement accurately described the SEA process of appraisal in this case, the Council's reasons for adopting the policies and allocations in the core strategy, and the main options it had considered. These included the alternative strategy based on the 2008 ONS projection of 13,450 dwellings, which had been assessed in the September 2011 sustainability report addendum.

95. Thirdly, if one were asked to identify the reasonable alternatives to Main Modification 28 itself, one could only point to the other options mooted by the inspector in his preliminary findings – essentially either to abandon the core strategy process and start again, or to suspend it and do the work which is going to have to be done in the review. The only alternatives to that process are not substantive proposals but different approaches to the preparation of the core strategy. Like the review referred to in the modification, because they are processes rather than proposals, they would be no more capable of being assessed under the SEA regime than Main Modification 28 itself.

96. I therefore reject ground 2 of the application.

Conclusion

97. For the reasons I have given the application is dismissed.

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