Leicester City Council's response to Questions for the Examination into the proposed Leicester Community Infrastructure Levy.

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Legal and Procedural

1. **Have the procedural requirements of the Planning Act 2008 (as amended) and the Community Infrastructure Regulations 2010 (as amended) been complied with during the preparation of the draft charging schedule?**

   The Council is confident that it has met the requirements of the Planning Act 2008 (as amended) and the Community Infrastructure Regulations 2010 (as amended) when preparing the draft charging schedule. Further information about how the council has complied with the mentioned legislation is contained in the statement of submission as well as the draft charging schedule itself.

General Approach

2. **Has appropriate available evidence been used?**

   The council has used the Leicester & Leicestershire Growth Infrastructure Assessment[1] which is the key infrastructure assessment for the adopted Leicester Core Strategy. The council has also supplemented this with CIL viability evidence prepared jointly with the combined Leicestershire authorities[2] as well as a local Leicester viability assessment update[3] both prepared by SDH Planning and development Ltd.

3. **Should the introduction of CIL be delayed in order to coordinate it with the forthcoming local plan which will replace the Leicester City Core Strategy (2014)?**

   Due to the changes to the section 106 regulations brought in April this year, in order for Leicester to carry on being able to provide the infrastructure needed to support development, implementation of CIL is needed within the short term. This would be in line with Government encouragement to local authorities to progress CIL. The constraints of restrictions on pooling of contributions, if extended until the adoption of the new Local Plan would lead to an unacceptable reduction in the amount and type of significant projects

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[1] Leicester and Leicestershire HMA Authorities Growth Infrastructure Assessment – Roger Tym and Partners & URS – 2009 - http://www.leicester.gov.uk/media/179824/leicester-and-leicestershire-growth-infrastructure-assessment.pdf

[2] Leicester, Leicestershire and Rutland CIL Viability Study – SDH Planning & Development Ltd – January 2013 - http://www.leicester.gov.uk/media/179913/leicester-leicestershire-and-rutland-cil-viability-study-january-2013.pdf

[3] Leicester City Council CIL Viability Study Update – SDH Planning & Development Ltd – December 2014 - http://www.leicester.gov.uk/media/179822/updated-viability-study-december-2014.pdf

which are required to support the development currently being delivered in the City. Also it is considered extremely unlikely that the key elements and coverage of the growth strategy for Leicester will change significantly in the new local plan compared to the adopted Core Strategy.

Also the council would like to direct the inspector to the recent high court decision - Oxted Residential Ltd v Tandridge District Council[4] . The full judgment can be found attached as an appendix to this statement.

Mr Justice Dove in his ruling on the challenge to the adoption of the Tandridge District Council CIL, stated the following in regards the need for a recently prepared development plan & the preparation of a CIL: -

"(The Core Strategy) until replaced it remains the principal document of the Development Plan for the district. The CIL charges proposed by the Council are based on infrastructure needs arising from the development required for the implementation of that plan. So long as there is a funding gap, and that funding is to provide for infrastructure needed to meet the costs of supporting development of the area, I see no legal basis to find that the submitted CIL Charging Schedule should not be approved just because it is based on a plan which, no doubt, will be reviewed in the near future."

"First, there is no requirement in the legislative framework - nor is one relied upon - which requires a recently adopted plan to be in place before a CIL Schedule can be adopted."

"Whilst it is no doubt the optimal position, there is no reason in law why a charging authority can only produce a CIL Schedule if it has a recently produced plan. If, like here, the plan relied upon requires review then no doubt revision of the CIL Schedule to align it with the reviewed plan would be a high priority, if not essential."

The council would obviously look to reviewing its CIL schedule once the new Leicester Local plan is adopted, so in light of the above Leicester City Council is confident that adopting a CIL is both required and legally sound.

Viability Evidence

4. Was the Leicester, Leicestershire and Rutland Viability Study (January 2013) carried out in accordance with an appropriate methodology?

The Viability Study was undertaken in 2012 by HDH Planning and Development Ltd who are specialists in this field. The work has been carried out following best practice, as well as being fully in line with the requirements of the CIL Regulations, the NPPF and the PPG. The full methodology is set out in Chapters 2 and 3 of the report. In summary:

The PPG says:

[4] The Queen on The Application of Oxted Residential Ltd V Secretary of State for Communities & Local Government - [2015] EWHC 793 – attached as Appendix 1 to this statement.

A charging authority must use 'appropriate available evidence' (as defined in the Planning Act 2008 section 211(7A)) to inform their draft charging schedule. The Government recognises that the available data is unlikely to be fully comprehensive. Charging authorities need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. This will require support from local developers. The exercise should focus on strategic sites on which the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London)] relies, and those sites where the impact of the levy on economic viability is likely to be most significant (such as brownfield sites).

The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making.

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This is the approach that has been taken is fully in line with this, being based on a sample of sites across the whole of Leicestershire and Rutland and specifically in Leicester. The Council is not reliant on Strategic Sites, so specific sites have not been considered separately.

The PPG does not prescribe a single approach for assessing viability. The NPPF and the PPG both set out the policy principles relating to viability assessments. The PPG rightly acknowledges that a 'range of sector led guidance on viability methodologies in plan making and decision taking is widely available'.

> *There is no standard answer to questions of viability, nor is there a single approach for assessing viability. The National Planning Policy Framework, informed by this Guidance, sets out the policy principles relating to viability assessment. A range of sector led guidance on viability methodologies in plan making and decision taking is widely available.*
> *PPG 10-002-20140306.*

There are several sources of guidance and appeal decisions that support the methodology used. The study has followed the *Viability Testing in Local Plans – Advice for planning practitioners* (LGA/HBF – Sir John Harman) June 2012[5] (known as the Harman Guidance) and *Financial viability in planning*, *RICS guidance note, 1st edition* (GN 94/2012) which was published during August 2012 (known as the RICS Guidance) set out the principles of viability testing. Additionally, the Planning Advisory Service (PAS)[6] provide viability guidance and manuals for local authorities.

[5] Viability Testing in Local Plans has been endorsed by the Local Government Association and forms the basis of advice given by the, CLG funded, Planning Advisory Service (PAS).

[6] PAS is funded directly by DCLG to provide consultancy and peer support, learning events and online resources to help local authorities understand and respond to planning reform. (Note: Much of the most recent advice has been co-authored by HDH and URS/AECOM).

The CIL Guidance requires stakeholder engagement – particularly with members of the development industry. This formed an important part of the process. HDH met with met with housing officers invited from across the study area (not all Councils were represented) to get a proper understanding of the actual affordable housing requirements of each council and their delivery mechanisms on 28th June 2012.

On the 5th July a more formal consultation event was held in Hinckley. Residential and non-residential developers (including housing associations), landowners and planning professionals were invited.

A second formal consultation event was held 11th December 2012 for landowners, developers and agents from both the public and private sectors. This event was used to present the findings of this viability study with a particular emphasis on the changes made following the first consultation event.

5. Was it appropriate to update certain data in the viability study in 2014, whilst leaving other inputs to the model unchanged?

The CIL Viability Study was updated in September 2014 for several reasons:

Changes in the CIL Regulations and publication of the PPG

A number of changes have been made to the CIL Regulations and the PPG was published after the completion of the Viability Study. It was felt prudent to review the evidence in light of these changes.
For the purpose of the viability assessment the changes to CIL Regulation 14 were most significant.
Whilst the PPG was published after the viability study, it only confirmed best practice and provided some useful further advice. It was felt prudent to review the evidence in the light of the PPG.

Changes in costs, changes in value and adjustments to the modelling

There are two principal aspects to the modelling. The first is the typologies on which it is based – it is important that theses really are representative of development that will come forward. The second are the value and cost assumptions.

The typologies on which the Viability Study was based are set out in Table 3.7 of the Viability Update, with an estimate of the amount of development that relates to each. It was felt that there were two gaps in the modelling (relating to brownfield sites) and that these should be filled. In addition, several of the typologies relate to schemes more commonly found in the wider Leicestershire area and these could be removed. The revised typologies are set out in Table 3.8 of the Viability Update and are reflective of future development in the City.

When modelling development, the principle drivers of the Residual Value, and therefore viability, are the value of the scheme and the construction costs. Most of the other costs are derived from these. For example the disposal costs of a project (agents and legal fees) are calculated as a percentage of GDV, or on the costs side the professional fees, the extra costs of brownfield site remediation and competitive return are calculated as a percentage of the development costs.

At the time of the Viability Update it was noted (3.4 of the Viability Update) that the Land Registry had reported an increase in house prices of just over 5% but build costs had increased by just under 10% (3.12 of the Viability Update). This divergence was the principal catalyst behind the Viability Update as it would imply worsening viability.

The Viability Update involved reviewing the modelling and cost and price assumptions, and a comprehensive re-run of the model. Many some core assumptions changed, but most of the peripheral ones had not. This was a proportionate approach to the ensuring that the viability evidence remains up to date and robust.

6. Are the proposed charging rates informed by, and consistent with, the viability evidence?

Yes. The principal types of development that are expected to come forward have been subject to viability testing. Where viable rates were recommended and have been adopted that are consistent with the viability evidence. Those uses (such as employment uses) that are not found to be viable will not be subject to CIL.

Infrastructure Evidence

7. Does the Infrastructure Project List accurately estimate the infrastructure likely to be required to deliver the core strategy?

The infrastructure project list is entirely based on the Leicester and Leicester Growth Infrastructure Assessment which was the key infrastructure evidence base for the adopted Core Strategy. This list of infrastructure was assessed as part of the Core Strategy examination and was found to adequately support the delivery of the Core Strategy.

8. Has the total cost of infrastructure required to support the development of the area been appropriately estimated based on evidence?

The cost of highways infrastructure is based on actual capital cost to deliver the described schemes. The rest of the infrastructure is based on estimated costs from the Leicester and Leicestershire Growth Infrastructure Assessment based on the expected level of growth as defined by the adopted Core Strategy. This evidence was tested at two examinations in publics (the initial Core Strategy and then the review of the Core Strategy) and in both cases has been shown to be an adequate basis for infrastructure requirements for Leicester.

9. Have all actual and expected funding sources, including financial contributions through planning obligations, for the required infrastructure been appropriately estimated?

The developer contribution data has been taken from Leicester City Council's internal developer contributions database and has been 'cross checked' by looking at the amount of developer contributions actually received into the council's accounts.
The expected sources of funding were drawn up following internal discussions with the Councils finance teams as well as the sections responsible for delivery of the various areas of infrastructure.

10. Does the draft Regulation 123 list clearly set out what will be funded by CIL and provide a clear basis to ensure that there should be no double counting with financial contributions from planning obligations, such that it helps to provide evidence of a funding gap?

It is the opinion of Leicester City Council based on the previous responses to the other questions in this section as well as the other evidence contained within the PDCS & DCS and the associated descriptions within the regulation 123 list itself that the regulation 123 list does indeed clearly set out an appropriate basis about what is to be funded by CIL.

11. Does the evidence demonstrate that a funding gap exists?

Based on the responses to the above and other evidence contained such as the Growth Infrastructure Assessment, the table titled Total Costs and Funding Gap Summary in the draft charging schedule shows that there is a £94.44 million funding gap- this is based on the best available evidence. This would be reduced to between £87.8m to £90m depending on yearly CIL income.

Appropriate Balance?

12. Has an appropriate balance been struck between the desirability of using CIL to contribute towards closing the funding gap and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the area, such that there will be an overall positive economic effect?

It is recognised by the Council that development in some areas of the City can be challenging and the viability varies site by site and depending of the specific circumstances of that site. Through considering the effect of CIL on viability as required by CIL Regulation 14 the Viability Update shows that CIL will neither threaten development as a whole (as required by the PPG) or put the Development Plan at serious risk (as required by the NPPF).

To deliver the Core Strategy extensive infrastructure is required as shown in the Leicester & Leicestershire Growth Impact Assessment and funding will be needed. Some of this supporting infrastructure has already been delivered such as junction improvements to Sanvey Gate to help deliver regeneration

at waterside, and the new Haymarket bus station which is currently being constructed to help meet the increased demand for bus travel from the new urban extensions. However these schemes have been delivered via either government funding or the council's own capital funding. The places where S106 has been, and is still being used is provision of supporting infrastructure such as critical local highway improvements, education provision and supporting green spaces such as parks and other local facilities. Due to the changes to tariff based s106 since April this year, the opportunities to collect developer contributions for these required infrastructure have been significantly reduced. While on the bigger strategic schemes 'the rule of 5' still allows on site provision, elsewhere CIL will be needed even if it will only contribute £500,000 to £600,000 a year to ensure this critical infrastructure is provided.

Residential Charging Rates

13. The core strategy states that 54% of the 25,600 new dwellings in the City over the period 2006 to 2026 will take place in the Strategic Regeneration Area; 21% on sustainable urban locations at Ashton Green and Hamilton; and the remaining 25% elsewhere in the City. Which of the 16 residential development typologies modelled in the Viability Study and Update are likely to take place in each of these three locations?

Typologies 3, 4 and 6 are most likely in the Strategic Regeneration Area, typology 1 at Ashton Green and Hamilton, and typologies 2,6 and 13 elsewhere in the city.

The table below shows the percentage of all future identified supply split into the three areas and the 13 typologies (as set out in the viability update report).

		Strategic Regeneration Area	Ashton Green and Hamilton	Rest of City
1	SUE1	0	17	0
2	Greenfield1	0	1	8
3	Brownfield Redev	22	0	0
4	Urban Flats	12	0	0
5	Brownfield Redev M	0	0	0
6	Medium Brownfield	16	0	7
7	Medium Greenfield	0	0	2
8	Urban Edge	0	0	3
9	Town Centre Flats	3	0	1
10	Ex Garage Site	0	0	0
11	Town Infill	0	0	0
12	Brownfield Redev 2	0	0	0

13	Brownfield Redev M 2	3	0	5

14. What is the justification for excluding the Ashton Green zone from the CIL chargeable area?

Ashton Green is a major strategic urban extension which has been already given outline consent it would be expected that most if not all of the infrastructure would be delivered by S106 rather than CIL.

The Schedule of Charging Rates does not say this is a zero rate – but the map does. The Schedule is correct. We have not offered any evidence to support a zero rate here.

15. Is the boundary of the zero rate area, which is based on the core strategy Strategic Regeneration Area, justified by the viability evidence?

It is necessary to take a pragmatic approach to defining CIL zones. It is quite clear that development values do not follow predetermined boundaries or lines on a plan. They tend to be 'fuzzy' and are influenced by a wide range of factors, not least the design of any scheme coming forward.
It is however possible to generalise development in a way that is proportionate and appropriate to the CIL setting process. One of the principal characteristics of development that may come forward in the Regeneration area is that it will be higher density schemes – as this is what is most appropriate within the central city area, and is supported through local planning policy.
The typologies that are representative of development in this area are numbers 3 and 4. As shown in Table 4.3 of the Viability Update these are unviable.
The evidence therefore supports a zero rate in this area.

16. What is the justification for charging a zero rate for all forms of residential development in the strategic regeneration area?

One of the principal characteristics of development that may come forward in the Regeneration area is that it will be higher density schemes – as this is what is most appropriate within the central city area, and is supported through local planning policy.
The typologies that are representative of development in this area are numbers 3 and 4. As shown in Table 4.3 of the Viability Update these are unviable.

17. Is there evidence to indicate that differential rates should be applied to other parts of the City to reflect variations in house prices as suggested by B Line Housing?

From the outset, in line with best practice and the then extant guidance there was a wish to keep and CIL simple and without undue complexity. It was felt that complexity in itself could be a deterrent to development. Having said this it was clear from the evidence that the Regeneration area is distinctly different to the wider City area (hence its designation) and should be treated differently.
Consideration was given to a further zone covering the south east quarter of the City being where values where somewhat higher that the remainder. Very little development (less than 5% and on small sites) is anticipated in this area and on investigation it was felt that such approach would amount to looking at individual sites and such an approach was not appropriate.

18. Having regard to the answer to question 13 above, and the indicative proportion of unconsented dwellings expected in each of the residential development typologies set out in Table 3.7 of the Viability Study Update, how much CIL income is likely to be generated by each of the residential development typologies?

		Maximum Amount of potential CIL over plan period
1	SUE1	0
2	Greenfield1	£3,706,000
3	Brownfield Redev	0
4	Urban Flats	0
5	Brownfield Redev M	£200,000
6	Medium Brownfield	£2,740,000
7	Medium Greenfield	£618,000
8	Urban Edge	£1,100,000
9	Town Centre Flats	£414,000
10	Ex Garage Site	£162,000
11	Town Infill	£100,000
12	Brownfield Redev 2	0
13	Brownfield Redev M 2	£2,425,000

19. What percentage of the maximum potential rate ("additional profit") identified in the Viability Study, amended if appropriate to take account of the Viability Update, would the proposed charge of £25 represent for each of the 16 residential development typologies?

This has not been calculated. We assume that the reasoning behind this question is to ensure that CIL is not being set at the limits of viability and the extent of the 'cushion' or 'buffer'.
This is well illustrated in Tables 4.3 and 4.5 of the Viability Update. In Table 4.3 it can be seen that there is a substantial margin between the viability thresholds and the Residual Value. The following table is a copy of Table 4.3

with an additional column that shows the Residual Value a percentage of the Viability Threshold.

			Alternative Use Value	Viability Threshold	Residual Value	RV as % of VT
			£/ha	£/ha	£/ha	
Site 1	SUE1	20% Affordable	25,000	280,000	776,695	177%
Site 2	Greenfield1	20% Affordable	25,000	280,000	760,878	172%
Site 3	Brownfield Redev	15% Affordable	440,000	528,000	476,754	
Site 4	Urban Flats	15% Affordable	440,000	528,000	-1,898,762	
Site 5	Brownfield Redev M	30% Affordable	440,000	528,000	1,374,655	160%
Site 6	Medium Brownfield	20% Affordable	440,000	528,000	1,106,228	110%
Site 7	Medium Greenfield	20% Affordable	50,000	310,000	435,413	40%
Site 8	Urban Edge	Below Threshold	50,000	310,000	1,497,041	383%
Site 9	Town Centre Flats	Below Threshold	440,000	528,000	470,684	
Site 10	Ex Garage Site	Below Threshold	440,000	528,000	903,724	71%
Site 11	Town Infill	Below Threshold	25,000	330,000	1,596,143	384%
Site 12	Brownfield Redev 2	20% Affordable	440,000	528,000	838,043	59%
Site 13	Brownfield Redev M 2	20% Affordable	440,000	528,000	1,107,133	110%

20. Approximately what percentages of total residential development cost and development value would the proposed residential rate represent for each of the residential development typologies?

CIL as a percentage of development value is shown as in Table 4.5 of Viability Update. We have included this and CIL as a percentage of costs in the following table:

			CIL	GDV		Cost	
1	SUE1	20% Affordable	597,529	56,560,783	1.06%	54,437,002	1.10%
2	Greenfield1	20% Affordable	299,127	27,286,369	1.10%	26,053,828	1.15%
3	Brownfield Redev	15% Affordable	167,344	12,955,766	1.29%	12,483,148	1.34%
4	Urban Flats	15% Affordable	82,875	6,367,950	1.30%	6,280,646	1.32%
5	Brownfield Redev M	30% Affordable	59,063	5,951,330	0.99%	5,709,665	1.03%
6	Medium Brownfield	20% Affordable	40,272	3,934,524	1.02%	3,769,314	1.07%
7	Medium Greenfield	20% Affordable	40,272	3,442,709	1.17%	3,307,822	1.22%
8	Urban Edge	Below Threshold	25,170	2,240,130	1.12%	2,129,653	1.18%
9	Town Centre Flats	Below Threshold	20,975	1,531,175	1.37%	1,472,920	1.42%
10	Ex Garage Site	Below Threshold	13,542	1,056,250	1.28%	1,012,630	1.34%
11	Town Infill	Below Threshold	13,167	1,053,333	1.25%	1,006,640	1.31%
12	Brownfield Redev 2	20% Affordable	156,088	14,914,182	1.05%	14,327,153	1.09%
13	Brownfield Redev M2	20% Affordable	79,000	6,794,257	1.16%	6,534,560	1.21%

21. What evidence is there to support the assumption that the Existing Use Value of "greenfield 1" and "medium greenfield" residential development typologies should be based on (a) agricultural use (£25,000 per hectare) or (b) paddock use (£50,000 per hectare)?

These values were confirmed through the consultation process. The VOA report (2011) sets out agricultural values in Leicestershire of £20,995/ha. Since then prices have moved on somewhat, with Savills reporting an average of £10,000/acre, equating to £25,000/ha in February 2015.

It is clear that smaller parcels of land have an alternative use value – a value that they can be put to without the requirement of a planning consent. This was discussed at the two consultation events and it was agreed that these vary tremendously form situation to situation, but a value of £50,000/ha recognised the premium a residential neighbour may pay for an amenity use.

22. What evidence is there to support the build cost assumptions used in the Viability Study Update, or to support alternative build cost assumptions?

The build cost assumptions are based on BCIS costs – in line with the Harman Guidance. This approach was confirmed through the consultation process. A small adjustment has been made to reflect the increasing cost of higher standards.

LCC's current policy requirement is that homes are built to the basic Building Regulation Part L 2010 Standards. However, in the initial work, an adjustment was made to the BCIS build costs, increasing them by 6% to cover the costs of anticipated increase in mandatory environmental standards. Since then the Government has clarified what will be required in this regard.

Following an industry wide review undertaken by the Local Housing Delivery Group, the Government has consulted on a Review of Housing Standard. The Review was intended to address a perceived proliferation of standards for local housebuilding resulting from the adoption of standards in individual local plan policies by LPAs (explicitly permitted under the Planning & Energy Act 2008) and by other public agencies. Examples would be space and accessibility requirements, higher Code for Sustainable Homes (CfSH) Levels, or adoption of a 'Merton rule' setting a renewable energy target in new developments.

The Review considered what the appropriate balance should be between a single set of national standards, and a variety of local standards designed to address local needs and priorities, in terms of the impact upon housing delivery.

This is a major initiative which would have significant impacts upon the specification of housing to be built in future. Some commentators have expressed the view that, if implemented in full, the proposals would mean

that much, or most of the CfSH's requirements apart from energy efficiency will have been shelved at national level, with the local discretion to seek them all but removed.

Since the Code for Sustainable Homes was published, CLG has published three successive assessments of the cost of meeting its requirements. The most recent, published in August 2011, is now a little historic as it mainly reflects work carried out in late 2010.

The study used a combination of homebuilder consultations, and modelling of alternative development scenarios. These ranged in size from small brownfield (20 dwellings) to large edge of town (3,300 dwellings) and in density from 40 to 160 dwellings per ha. The consultation enabled optimum technologies to be identified to achieve the individual elements of the Code at each Level for each development scenario. These were than costed in order to provide an estimate of the total additional cost of meeting each Level of the Code and formed the basis of the assumptions used in the Viability Study.

The published revisions to 2013 Building Regulations seek a significantly lower degree of improvement compared to the 2006 Code trajectory. They accordingly have more modest cost implications. The revisions were published in August 2013 and no further guidance had been produced showing the additional build costs. The accompanying Impact Assessment document, whilst considering and quantifying total overall impacts, did not state explicitly what extra over costs were assumed. However in addressing the question of small builder impact, Table 4.3 provided some clues and is reproduced below.

Small Builder Costs									
	Mid terrace			End terrace			Detached		
	large builder	small builder	% diff	large builder	small builder	% diff	large builder	small builder	% diff
2010 Base Cost Model (£)	78,049	92,683	18.8 %	80,000	95,610	19. 5%	106.34 1	125,85 4	18. 3%
Estimated Cost of 2013 Recipe (£ rounded)	146	170	16.0 %	467	521	11. 4%	1,447	1,783	23. 3%
2013 Total Cost (£ rounded)	78,195	92,853	18.7 %	80,467	96,131	19. 5%	107,78 8	127,63 7	18. 4%
Percentage	0.19%	0.18%		0.58%	0.54%		1.36%	1.42%	

Source: Changes to Part L of the Building Regulations 2013: Impact Assessment (Table 4.3)

The table suggests that the costs over and above the 2010 Part L base are well under 1% for mid and end terrace properties, and only a little over 1% for detached homes, with their greater area of external wall requiring attention. These figures suggests that, to allow for the new requirement, an

allowance of very much less than the 6% used in the initial work for moving from 2010 Part L to full CfSH Level 4, would be appropriate. In the Viability Update an allowance of 1.5% over and above the BCIS base cost to cover the additional environmental standards was assumed.
Since undertaking the Viability Update a further Ministerial Statement was made, further restricting local authorities' ability to introduce local standards for development.

23. What evidence is there to support the assumption used in the Viability Study Update that planning obligations will be likely to result in an average cost of £500 per dwelling, or to support alternative planning obligation assumptions?

On the whole strategic infrastructure and mitigation measures in the City will be subject to the restrictions set out in CIL Regulations 122 and 123, so, on the whole, the Council will not be able to request s106 contributions (as illustrated through the Draft 123 List). A modest £500/unit has been allowed for site specific mitigation items, illustrating the cautious approach taken.

24. What evidence is there to support the assumptions about the value of residential development used in the Viability Study, or to support alternative assumptions?

The Viability Study and the Viability Update drew on a wide range of sources of information. These include secondary data sources (such as the Land Registry), sales data (such as Zoopla and Rightmove), and primary research of new homes for sale in the City. This is set out in detail in Chapter 4 of the Viability Study and the first part of Chapter 3 of the Viability Update.
The evidence was confirmed through the consultation process.

25. What evidence is there to support any other alternative assumptions about the costs and value of residential development?

The price assumptions used in the viability study are robust and transparent – and have been tested through the consultation process.

26. If the alternative assumptions about build costs, planning obligations and development value set out in Savills' representation were deemed to be appropriate, does the Council agree with the outcome of the alternative viability appraisals relating to "greenfield 1" sites?

Savills have provided no evidence that the price assumptions used in the viability study overstate values. It is wrong to say that they are based on asking prices – they draw on a wide range of sources, including asking prices, but as set out in the viability Study regard has been had to the fact that asking prices are not sale prices.

We have no reason to doubt Savills appraisals in terms of methodology and process, but do not accept that the values used in the study are anything other than the right ones.

27. Further to question 26 above, what would be the implications for the viability of the other residential development typologies?

If prices, across the study area are overstated by 5% - we do not believe that they are - viability would be less good. The appraisals have been re-run on this basis and the results are set out below:

			Alternative Use Value	Viability Threshold	Residual Value
			£/ha	£/ha	£/ha
1	SUE1	20% Affordable	25,000	280,000	585,286
2	Greenfield1	20% Affordable	25,000	280,000	539,645
3	Brownfield Redev	15% Affordable	440,000	528,000	186,956
4	Urban Flats	15% Affordable	440,000	528,000	-2,263,381
5	Brownfield Redev M	30% Affordable	440,000	528,000	926,594
6	Medium Brownfield	20% Affordable	440,000	528,000	786,064
7	Medium Greenfield	20% Affordable	50,000	310,000	253,502
8	Urban Edge	Below Threshold	50,000	310,000	1,253,993
9	Town Centre Flats	Below Threshold	440,000	528,000	212,569
10	Ex Garage Site	Below Threshold	440,000	528,000	606,965
11	Town Infill	Below Threshold	25,000	330,000	1,250,000
12	Brownfield Redev 2	20% Affordable	440,000	528,000	510,342
13	Brownfield Redev M2	20% Affordable	440,000	528,000	591,920

28. If you consider that the proposed residential charging rate would put at risk the overall development of the area, what specific modification are you seeking and what appropriate available evidence is there to support it?

The proposed residential CIL rate is at a level the council feels would allow any site outside of the SRA to still be viable. However the council also accepts that if this level of CIL could be proven by specific site viability evidence that the set rate of CIL will make a particular key residential site unviable then the council would be happy to propose a modification for this site to reduce the amount of CIL charged but only for that site. It would however then by expected that the applicant could prove that the required infrastructure can be delivered by 'on site' Section 106 or Section 278s in line with the amended CIL tests for developer contributions.

Student Accommodation

29. What is the definition of "student accommodation" as intended by the Draft Charging Schedule?

"Accommodation built, or converted, with the specific intent of being occupied by students – either individual en-suite units or sharing facilities."

This is the definition of purpose-built student accommodation included in Appendix E: Glossary of the Council's Student Housing SPD (2012), which is used to help implement Policy CS6 of our adopted Core Strategy.

30. Is "student accommodation" a "use" that can be distinguished from other forms of residential development?

Yes. The City Council usually interprets student accommodation, as defined above, as falling outside of any use class (sui generis). Any approvals for new student accommodation also include a standard condition limiting occupancy to students. A change of use from student accommodation to another use would therefore require planning permission.

This distinguishes student accommodation from C3 residential development, and also allows for different policy requirements to be applied (for example student accommodation has more relaxed parking standards and is exempt from affordable housing contributions).

31. Is it the intention that "student accommodation" development taking place in the strategic regeneration area would be subject to a charge of £100 or zero?

Yes it is the intention that student accommodation development taking in place in the SRA is subject to £100 charge. This is because the viability evidence supports this rate, and that only about 10% of approved student housing is located outside of the SRA. Student accommodation is largely of a similar form and value across the City. There is no evidence to support a differential rate.

32. Approximately what quantity of student accommodation development is likely to take place in the period to 2026 by (a) universities and (b) the private sector?

The Council's latest Strategic Housing Land Availability Assessment (SHLAA, 2014) suggests there is enough deliverable or developable sites in the city to provide a further 2879 student dwellings up to 2029. This is nearly 15% of the total housing capacity (which follows a similar pattern to historical completions in the city, as during the period 2004/2005 to 2013/2014, 20% of total housing completions were student dwellings). 250 of the student dwellings contained in the SHLAA are proposed on land owned by the University of Leicester and the other 2629 student dwellings on land owned by the private sector.

There could also be further student housing developed as part of the De Montfort University campus masterplan. This currently has outline planning permission for a mix of uses including residential (included in the SHLAA as general housing), but an as yet unknown proportion of this could be student accommodation.

In addition, based on trends over the past decade, we would expect other as yet unidentified sites to be brought forward for student accommodation as

they become available, particularly in areas near the universities/city centre, and the University of Leicester in particular.

33. What percentage of the maximum potential rate ("additional profit") identified in the Viability Study, amended if appropriate to take account of the Viability Update, does the proposed rate of £100 represent for student accommodation?

58%

34. Approximately what percentage of total development cost and development value would the proposed rate of £100 represent for student accommodation?

CIL at £100/m2 would be about 4.5% of GDV and about 4.9% of total development cost.

35. Does the Viability Study make appropriate assumptions for student accommodation development, carried out by both universities and the private sector, about:

a) Land costs.
b) Development costs.
c) Developer profits.
d) Development value.

In terms of product developed, design cost and value there is no practical difference in terms of product developed and viability the between student housing developed by the private of public sector.

There are a wide range of models and options for the delivery of and development of Student Housing. These include, amongst others:

- The direct development by an educational institution and letting to their own students.
- PFI type deals where the development is financed and developed by the private sector but under a formal arrangement whereby the developer receives a predetermined annual payment for a period of years before the building reverts to the full control of the institution. These come in numerous permutations and structures.
- Joint Venture arrangements whereby the developer builds and finances a project, but the building remains in the control of the institution.
- Private sector led arrangements whereby a development is built by a developer and then let as a block to an institution, but remains owned by the developer.
- Pure private sector projects whereby student housing is developed speculatively by a developer and then let, by the developer, to local students. The students could be from a range of institutions.

When setting CIL it is necessary to take a high level approach and make some general assumptions.

The Viability Study was subject to extensive consultation and the approach and main assumptions were agreed. The viability evidence in relation to student housing has not been challenged.
Land costs are as for industrial land at £440,000/ha. To allow a competitive return for the 'willing landowner' a 20% uplift was allows for to give a viability threshold of £572,000/ha.

Development costs are based on the BCIS costs, as advised by the Harman Guidance and confirmed through the consultation process.
Developer profits are assessed at 20% of development costs. This is at the top end of expectations of the normal range on non-residential development of this type.

Development value assumptions were checked at the time of the Viability Update (in Chapter 8). The assumption used in the appraisal is at the lower end of the expected range.

36. If you consider that the proposed charging rate for student accommodation would put at risk the overall development of the area, what specific modification are you seeking and what appropriate available evidence is there to support it?

No alternative evidence has been provided in this regard.

Distribution and Retail Charging Rates

37. What percentage of the maximum potential rates ("additional profit") identified in the Viability Study, amended if appropriate to take account of the Viability Update, do the proposed rates for distribution uses, supermarkets and retail warehouses represent?

	Brownfield	Greenfield
Distribution	12%	6%
Large Retail Supermarkets	63%	24%
Large Retail Warehouses	45%	25%

38. Approximately what percentages of total development cost and development value would the proposed rates for distribution uses, supermarkets and retail warehouses represent?

Greenfield

Distribution

CIL at £10/m2 would be about 1.2% of GDV and about 1.5% of total development cost.

Large Retail Supermarkets

CIL at £150/m2 would be about 5.8% of GDV and about 7.6% of total development cost.

Large Retail Warehouses

CIL at £150/m2 would be about 8.6% of GDV and about 13.2% of total development cost.

Brownfield

Distribution

CIL at £10/m2 would be about 1.2% of GDV and about 1.6% of total development cost.

Large Retail Supermarkets

CIL at £150/m2 would be about 5.8% of GDV and about 6.3% of total development cost.

Large Retail Warehouses

CIL at £150/m2 would be about 8.6% of GDV and about 11% of total development cost.

39. Does the Viability Study make appropriate assumptions for distribution uses, supermarkets and retail warehouses about:

a) Land costs.
b) Development costs.
c) Developer profits.
d) Development value.

The Viability Study was subject to extensive consultation and the approach and main assumptions were agreed. The viability evidence in relation to these uses has not been challenged.

The majority development of these uses is likely to be on brownfield sites. The land costs are as for industrial land at £440,000/ha. To allow a competitive return for the 'willing landowner' a 20% uplift was allows for to give a viability threshold of £572,000/ha. The exception is in relation to central Leicester where an assumption of £4,000,000/ha has been used (viability threshold of £4,800,000). This was based on the Councils first-hand knowledge of the local market through their holdings in the area. Development costs are based on the BCIS costs, as advised by the Harman Guidance and confirmed through the consultation process.

Developer profits are assessed at 20% of development costs. This is at the top end of expectations of the normal range on non-residential development of this type.

Development value assumptions are based on a survey of local prices (as set out in Appendix 4 of the Viability Study). These were subject to the consultation process and are clearly evidenced.

40. If you consider that the proposed charging rates for distribution uses, supermarkets or retail warehouses would put at risk the overall development of the area as proposed in the core strategy, what specific modification are you seeking and what appropriate available evidence is there to support it?

Distribution uses

The City Council does not consider that the proposed CIL charging rates for distribution uses of £10, would put at risk the overall development of the area as proposed in the core strategy.

Firstly this is because the amount of £10 that is proposed has been evidenced by the viability study.

Secondly , because there is proportionally very little land available within the City for future B8 distribution development, so the adjoining authorities have therefore allocated additional employment land, to provide for the City's need, which would not be affected by the City Council's CIL charge.

In terms of the level of B8 distribution development that the core strategy identifies, Core Strategy Policy CS10 (paragraph on General Employment Land) confirms that existing employment land will be retained for B8 / B1c /B2 uses. Table 4 of the Core Strategy confirms that there was only around 14ha of unused allocated employment land. This figure will now have decreased further. Table 5 of the Core Strategy shows up to 10 ha of new land was to be allocated which was suitable for B8 use, but this has already been built out by the new Samworths' factory at Ashton Green, so is no longer available.

There are two studies which provide the evidence behind this policy:-

- The 2012 HMA employment Land Study

  The 2012 HMA employment Land Study[7] highlights that Leicester has a shortage of employment land, which it cannot meet. We therefore have been working with the Local authorities adjacent to us, who are providing additional employment land close to the boundary with Leicester (in the Principal Urban Area) but outside our boundaries, in order to provide sufficient land for Leicester City. Again this is

[7]Leicester and Leicestershire HMA Employment Land Study - Lambert Smith Hampton, PACEC, and Warwick Business Management Ltd – March 2013 http://archive.leicester.gov.uk/your-council-services/ep/planning/plansandguidance/ldf/ldfevidence-base/hma-employment-land-study/

confirmed in Core Strategy Policy CS10 (paragraph on Strategic Employment sites outside the City).

The extent of the shortage is highlighted in two tables in the 2012 HMA employment Land Study.
Table 4.8 anticipates a City shortage of 32 ha. This is for a combination of small B8 uses in with both Light Industrial (B1c) as well as B2 General Industrial demand. This is because those 3 uses have the potential to be provided as alternatives on the same sites. (Many planning permission are for a combination or mixed of use between B8 / B1c /B2).

Table 4.9 in the 2012 HMA employment Land Study refers to large scale B8 uses over 10,00sqm in size. (This is because the pattern of demand for these large scale distribution development is very different from small B8). Table 4.9 anticipates a City shortage of 19 ha for large scale B8 uses.

These both then feed into the tables for the Principal Urban Area (PUA) table 4.114 and 4.115, in the 2012 HMA employment Land Study, which demonstrate that there is adequate land for small scale B8 / B1c /B2 uses but more land would be need to be allocated for Large B8 (over 10,00sqm) in size and that further research would be required to address this.

- Leicester and Leicestershire Strategic Distribution Sector Study

In order to address this potential shortage, in November 2014 the Leicester and Leicestershire Strategic Distribution Sector Study[8] was prepared. It suggested Key Areas Of Opportunity for largescale B8 use. All of these were outside of Leicester's boundary and would not be affected by the City Council's CIL charge.

Supermarkets

The Core Strategy identified an area of search on the western side of the City where there was an identified need for an additional large format foodstore. (Paragraph 4.4.78 and Diagram 11). A large food store in this area has since been delivered. This is the Tesco Metro foodstore in Narborough Road District Centre, which opened in July 2012 and has approximately 4,100sqm gross floorspace.

In the last five years the following major retail development has come forward in the City:-

(20141404) 217 to 219 Fosse Road North - 1063sqm net - under construction

[8] Leicester and Leicestershire Strategic Distribution Sector Study – MDS Transmodal Ltd & Savills November 2014
http://www.harborough.gov.uk/directory_record/726/leicester_and_leicestershire_strategic_distribution_sector_study_-_november_2014

(20111711) Asda, 1 Exploration Drive - 6,486 sqm gross floorspace - opened June 2014

(20120416) Sainsbury's - 501 Melton Road - 11,894 sqm gross floorspace - opened November 2013

(20101687) Tesco Metro - Narborough Road Retail Park - 4,100 sqm gross floorspace - opened July 2012.

(20100029) Aldi - 577 Aylestone Road - 1,461 sqm gross floorspace - opened March 2011

There are also a number of extant permissions.

Emerging evidence from an updated Retail Capacity Study indicates that the City is well provided for in respect of supermarket provision. Although this study is still in draft form it is at a fairly advanced stage. It indicates that there is not likely to be a requirement for additional convenience floorspace until 2025 and even then it only equates to a min of 2,300 sqm net or a max. of 4,200sqm net.

In summary

The proposed Cil rate for supermarket would not put the delivery of the Core Strategy at risk as the identified need in the Core Strategy has been met. In addition, a few other significant supermarket developments have come forward. Leicester is well provided for in terms of supermarket provision. Emerging evidence in the retail capacity study confirms this and indicates that there is not a requirement for additional convenience floorspace until 2025.

Retail Warehouses

The Core Strategy does not specifically address the issue of retail warehouses. This is because there it is not a strong demand for this type of development in the City and it was therefore not identified as an issue in the Core Strategy. Accordingly, we do not receive many applications at all for this type of development.

The City has areas of land identified as "Other Retail" on the 2006 Proposals Map. "Other Retail" allocations were generally intended to meet the need of retail warehouses and offer space for large floorspace in out-of-centre locations with plenty of parking. Generally the demand for retail warehouses in the City is met in these existing out-of-centre retail areas as units become available, when another retailer vacates. Demand from these retailers (DIY, furniture, electrical goods etc.) is also met within department stores within the City Centre.

There are also prominent out-of-centre locations and facilities just beyond the City's administrative boundary such as Fosse Park out of centre shopping park in Blaby and a large B&Q DIY store in Oadby and Wigston.

In Summary

Leicester City does not consider that the proposed charging rate for retail warehouses would put at risk the overall development of the area as proposed in the core strategy because there is very little demand for this type of facility as demand is met through natural churn of existing facilities rather than new retail warehouse units.

The Proposed Zero Rate for All Other Development

41. Is a zero rate for all other types of development justified by the evidence?

The PPG requires the use of 'existing available evidence' (as set out in the response to 3 above) and the NPPF requires that viability evidence is 'proportionate' (paragraph 174). The approach taken has been to review the types of development that are anticipated over the plan period and to tailor the viability assessment at those. The main employment uses of industrial and office development and hotel development were found to be unviable. This is reflective of the reality on the ground where little such development is currently forthcoming.

It would not be proportionate to consider all other possible types of development. Little other development is anticipated under the current Plan. The Council has recently commenced a Plan review. Should the nature of development anticipated under the new plan be significantly different, it would be appropriate and necessary to revisit CIL as the Plan is being developed and finalised.

Police Infrastructure

42. Are any changes to the draft charging schedule required to address issues raised in the representations made by Leicestershire Police?

Leicester City Council is happy that the Draft Charging Schedule adequately reflects the infrastructure needs required to support development. In regards specifically to Police Infrastructure, the Leicester and Leicester GIA identifies Ashton Green where the infrastructure is being delivered by Section 106 agreement and Mansfield Street which is listed in the infrastructure list.

Appendix 1

CO/4138/2014

Neutral Citation Number: [2015] EWHC 793 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday 20 February 2015

B e f o r e:

MR JUSTICE DOVE

Between:
THE QUEEN ON THE APPLICATION OF OXTED RESIDENTIAL LTD
Claimant

v

SECRETARY OF STATE FOR COMMUNITIES & LOCAL GOVERNMENT
Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr Jonathan Clay appeared on behalf of the Claimant
Mr Rhodri Price Lewis QC - Mr Symes appeared on 20 February 2015 - appeared on behalf of the Defendant

J U D G M E N T
(Approved)

MR JUSTICE DOVE:

Introduction

1. There are two claims before me in this case. The first claim is brought under Section 113 of the Town & Country Planning Act 1990 as a challenge to the adoption of the Tandridge Local Plan Part 2 (hereafter "TLP 2") which was adopted on 24 July 2014. The second challenge is a judicial review of the defendant's decision to adopt a Community Infrastructure Levy Schedule (hereafter "the CIL schedule") also on 24 July 2014. They were ordered to be tried together because, as will become apparent and for logistical reasons, there are common themes and common parties. It is important to note that the judicial review comes before me, as a result of earlier directions, as a rolled-up hearing.

2. I propose to deal with the facts pertaining to both of these claims together and then I shall deal separately with the law, submissions and conclusions in relation to each of the cases. In both claims the interested party, the Secretary of State, did not appear and was not represented.

The Facts

3. On 15 October 2008 the defendant adopted the Tandridge District Core Strategy. Its plan period ended in 2026. It was proposed to be in general accordance with the South East Plan which has, in all respects relevant to these proceedings, now been revoked. The Core Strategy sought to make provision for the South East Plan housing requirement. Policy CSP 1 of the Core Strategy provided a settlement hierarchy in which the settlements were categorised and development directed towards them, starting with the more sustainable settlements towards the top of the hierarchy and then in a cascade down towards those that were less sustainable. The amount of development was directed towards them in accordance with their relative sustainability. At the bottom of the hierarchy were "Green Belt settlements". They were not specified in the policy, and the policy indicated that they would be identified and their exact boundaries fixed in a Site Allocations Development Plan Document ("DPD") and accompanying Proposals Map.

4. The explanatory text provided as follows:

> "6.17 The Green Belt settlements are washed over by the Green Belt but have a defined boundary within which infilling and small scale redevelopment can be permitted. The settlements to be included within this classification and their exact boundaries will be decided in the Site Allocations DPD. Housing to meet local needs may be proposed. Redevelopment and infilling will be required to be to a high standard of design and will be expected to protect the character of the settlement or part of it. Where there are Conservation Areas within the villages development will need to be of a particular quality as it will be required to preserve and enhance the area."

5. Having adopted the South East Plan housing requirement, the Core Strategy noted that the defendant was confident that the first five years of the housing requirement could be met. For the second five years reliance was again placed upon the production of a Site Allocations DPD to identify the land necessary in order to meet the housing provision. The Core Strategy sought to manage the delivery of development across the plan period through a policy mechanism which was set out in Policy CSP 3 as follows:

> "Managing the delivery of housing
>
> In accordance with Policy CSP 2 and in order to manage the delivery of housing, should the District's rolling five year housing supply figure be exceeded by more than 20%, the Council will not permit the development of unidentified residential garden land sites of 5 units and above or larger than 0.2ha (or smaller sites where these form a part of a potentially larger development proposal). Similarly where there is inadequate infrastructure or services to support a development the Council will not permit the development of unidentified sites of 5 units and above or larger than 0.2ha.
>
> .....
>
> For the avoidance of doubt, residential garden land for the purpose of this policy can comprise whole curtilages or parts of curtilages."

6. In chapter 15 of the Core Strategy and at paragraph 15.9 it was noted that there were parts of the defendant's area covered by saved Local Plan policies controlling density and protecting urban character. The Core Strategy observed that it might be necessary to up-date these polices in, amongst other documents, a new DPD. As matters turned out, the defendant did not produce a Site Allocations DPD. Instead in June 2013 they consulted on TLP 2 which was submitted to the interested party, the Secretary of State, in September 2013.

7. TLP 2 was entitled "Detailed Policies". The purpose of the document was set out as follows:

> "What is this document?
>
> 1.4 The Tandridge Local Plan Part 2: Detailed Policies has been prepared by the Council under the terms of the Planning and Compulsory Purchase Act 2004. It supports the adopted Core Strategy (Part 1 of the Tandridge Local Plan) by containing a set of detailed planning policies to be applied locally in the assessment and determination of planning applications over the plan period (2014-2029). The Plan will be monitored and can be reviewed in whole or in part to respond flexibly to changing circumstances over the plan period. These detailed policies replace the remaining 'saved' policies from the 2001 Tandridge District Local Plan (see Annex 2 for table of superseded policies).
>
> 1.5 Accompanying this document is the Policies Map. This illustrates

geographically the application of the policies contained in all adopted Local Plan documents."

8. The explanatory text sets out that TLP 2 is to be read in accordance with the Core Strategy. TLP 2 contains policies on retail, alternative use of employment sites, highway safety and design and telecom infrastructure. None of these polices is controversial in the context of this case. The policies which are controversial are polices DP 8 and DP 10 to DP 13 which are set out in full in Annex 1 to this judgment.

9. To summarise, DP 8 seeks to regulate the development of residential garden land. DP 10 identifies the extent of the Green Belt which was not altered as a result of TLP 2's proposals on the Proposals Map. DP 11 regulates proposals in the larger rural settlements of Smallfield and Lingfield and provides criteria for governing applications for all forms of development. DP 12 undertakes two tasks: first, identifying certain settlements as defined villages in the Green Belt and, secondly, providing criteria against which proposals within them would be tested. The explanatory text provides further detail in relation to the operation of that policy as follows:

> "12.4 The Core Strategy policy goes on to explain that the Green Belt Settlements and their exact boundaries will be decided in a subsequent Development Plan Document. Since the adoption of the Core Strategy in 2008 the Council has continued to treat all the existing Green Belt Settlements as suitable for infilling. However in finding the Core Strategy 'sound' the Inspector was concerned that 'some of the Green Belt Settlements ..... were little more than small, isolated collections of dwellings, clearly dependent on the private car, and which would require major development initiatives to become sustainable communities'.
>
> .....
>
> 12.6 A noticeable difference between the existing Core Strategy policy and this detailed policy is the terminology used. This policy no longer refers to 'Green Belt Settlements' and instead makes reference to 'Defined Villages in the Green Belt'. The National Planning Policy Framework in the first sentence of paragraph 86 states:
>
> 'If it is necessary to prevent development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt villages should be included in the Green Belt'.
>
> However paragraph 89 states that:
>
> 'A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions are: (5th bullet point) limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan'.
>
> The policy which follows is a local approach suitable to the Tandridge

> context but also consistent with the NPPF in that the Defined Villages are included within the Green Belt but have been identified as suitable for limited infilling and limited affordable housing. The NPPF does not specify whether boundaries should or should not be drawn around the villages in the Green Belt within which infilling can occur. Therefore the sole purpose of drawing a line around these villages is to make it clear precisely where infilling can take place and where Green Belt policy will apply."

10. DP 13 provides policy to control the provision of buildings in the Green Belt. It addresses the various circumstances which might apply to such proposals, for example new residential buildings or the extension, alteration or replacement of existing buildings. Accompanying and part and parcel of this proposed DPD were the alterations and amendments to the Proposals Map which originated from the Local Plan Proposals Map, to which I have referred above. These changes to the proposals map were illustrated in the form of insets or extracts showing the changes which were directly related to TLP 2. No comprehensive or synoptic plan was produced to accompany TLP 2's consultation or submission. That did not occur until after TLP 2 had been adopted.

11. The volume of Policies Map extracts came with an introduction providing context for how these inset maps changing the extant Policies Map were to be interpreted. The introduction provided as follows:

> "This section contains maps which show how the Local Plan Policies Map will be amended to incorporate new or revised geographic representations of policies contained within what will become the adopted Development Plan. The Policies Map will carry forward other designations that are unchanged, for example the extent of the Green Belt and the extent of the Area of Outstanding Natural Beauty."

12. Objections were raised to TLP 2, including in particular that it was not based on an up-to-date Core Strategy or TLP 1. Further it was contended that the policies contained within TLP 2 would restrict development coming forward and that the detail of the policies' drafting did not accord with the National Planning Policy Framework ("the Framework").

13. In November 2013 the defendant consulted on a draft CIL schedule. It proposed that in relation to the balance of residential development required to meet the Core Strategy, a charge of £120 per sq. metre should be levied. In respect of retail development, the charge was proposed to be £100 per sq. metre. These charges were considered by the defendant to be necessary to meet the funding gap in terms of the infrastructure which was required so as to facilitate the delivery of the balance of the residential development required by the Core Strategy. The defendant obtained independent viability evidence in order to demonstrate that the setting of the CIL schedule at these levels would not imperil the delivery of development within their area by adversely affecting viability to a point where development could not be brought forward. The draft CIL schedule was submitted to the interested party the Secretary of State on 9

September 2014. Objections were made to the CIL schedule on the grounds that it was not based on an up-to-date Core Strategy and that some forms of development, particularly smaller housing developments, would not be viable if the levy was set at the level of charging proposed.

14. The TLP 2 was examined by an independent inspector who held hearings on 7 and 8 January 2014. In due course he provided a report dated 21 May 2014. He concluded in relation to the contentions in respect of the Core Strategy being out of date as follows:

> "10 I accept, as do the Council, that some elements of the CS need up-dating and that is one reason why the Council has agreed to undertake a review. Indeed work has already started on what will be called the Tandridge Local Plan Part 1: Strategic Policies (LP1) and it is anticipated that Regulation 18 public consultation will be undertaken this October, with adoption of the Plan by Spring 2017.
>
> 11 The Introduction to LP2 makes it clear that its role is to support the adopted Core Strategy and that its function is to provide detailed planning policies which can be used in the determination of planning applications. It was suggested that the Council should have initiated co-operation with neighbouring local planning authorities with regard to the assessment of housing need and the formulation of policies and proposals to meet that need.
>
> Specific locations for housing development were suggested, for example at Smallfield and in the locality of Domewood. However, it is not the role of LP2 to consider housing need in the District; to allocate sites; to propose the redevelopment of existing buildings (e.g. at Redhill Aerodrome); or to review the Green Belt boundary. These are matters to be tackled in the review of the CS, should circumstances so dictate and there is no reason to doubt that the Council will undertake the duty to co-operate in an appropriate way at that time and ensure that the CS review (LP1) includes policies and proposals which are up-to-date and in compliance with national policy.
>
> 12 It was argued that the Council should withdraw LP2 and concentrate on the withdraw LP2 and concentrate on the preparation of LP1. However, I can see no benefit in that approach. LP2 is primarily a development management tool (not an allocations document) and although I cannot predict what the LP1 may contain, it is likely that many of the policies in LP2 will remain applicable, irrespective of any land use allocations or strategic policies that might be included in LP1. Whilst it is a desirable objective, it would be unreasonable in the current circumstances, to expect all the planning documents of the Council to provide a seamless comprehensive and continuously up-to-date palette of planning policies and proposals. This will hopefully be achieved on adoption of LP1 in 2017. In the meantime the benefits of progressing with LP2 outweigh any disbenefits because the document will provide a

clear suite of policies which the Council can use in the determination of planning applications."

15. In relation to Policy DP 8, the Inspector concluded as follows:

> "32 With regard to the wider application of policy DP8 it has been suggested that it may severely restrict development in other urban areas of the District. No evidence was submitted to substantiate that claim and in any event the NPPF confirms that great importance must be attached to the design of the built environment and that design should respond to the identity of local surroundings. The policy still contains an element of flexibility and I am satisfied that the Council's approach, as set out in MM4, is sound and recommend it accordingly."

16. Turning to the Green Belt and the considerations raised in relation to Policies DP 10 to DP 12, it concluded as follows:

> "34 The Council has reviewed the categorisation of settlements within the Green Belt and the parts of Green Belt settlements within which appropriate infilling would be acceptable. It was argued that such re-assessment was premature pending the preparation of LP1 because it may be that the Council will have to identify land in such locations for the provision of housing. It should be made clear, however, that the Council has not undertaken an assessment of the current Green Belt boundary. That would be a task that may be required as part of the preparation of LP1. The Council has only looked at the approach it takes towards infilling in a number of small settlements in the Green Belt.
>
> 35 Paragraph 86 of the NPPF relates to protecting the character of a village in the Green Belt if the character of that village makes an important contribution to the openness of the Green Belt. Paragraph 89 goes on to say that as an exception limited infilling in villages may not be inappropriate. The purpose of policy DP12 is to provide guidance on how infilling and small scale
>
> development could be satisfactorily accommodated in such villages in order to ensure that the character of those settlements, within the Green Belt context
>
> is protected.
>
> 36 In terms of the defined villages in the Green Belt, the Council has heeded the advice of the Inspector who undertook the 2008 Core Strategy Examination and has undertaken a sustainability assessment of the 14 settlements (currently designated as Green Belt settlements in the CS); concluding that only 9 of them should be identified as a 'defined village'. This conclusion has the broad support of local residents.
>
> 37 As part of this process the Council re-considered the boundaries of the

'defined villages' and for example excluded from the settlement boundaries school playing fields and open space and included land which is already developed. I consider the Council's approach to be reasonable and justified ..... "

17. In respect of DP 13, the Inspector concluded as follows:

"39 The consistency between CS policy CSP 1 (location of development), policy DP13 (buildings in the Green Belt) and advice in the NPPF (for example paragraph 89) was challenged. However, although there has been a change in the terminology used, I am satisfied that the Council's Green Belt policies (and supporting text) are compatible with the aim of preventing urban sprawl by keeping land permanently open. The identification of 'defined villages' where limited infill may be appropriate provides clear guidance; without which there would be uncertainty and confusion.

.....

41 Policy DP 13 does use a base date of 31 December 1968 for the definition of 'original building' in relation to dwellings (rather than 1 July 1948 as set out in the Glossary to the NPPF). The Council has decided to use the well established date as set out in saved policy RE8 of the 2001 Local Plan and for reasons of clarity and consistency I consider this to be a justified approach.

.....

42 Some of the text within policy DP13, as submitted, was not fully in accordance with the advice in the NPPF and therefore the Council has proposed to up-date the wording. Although in other circumstances the up-dating may be considered to be minor in nature, in this instance the changes proposed by the Council are important to ensure that LP2 fully accords with national policy and

therefore I recommend MM5."

As indicated in the text which I have just quoted, Main Modifications were proposed to be included within TLP 2 which were publicised and consulted upon. The DPD was finally adopted as set out above on 24 July 2014.

18. The CIL Schedule was examined and a hearing occurred on 11 March 2014. The Inspector reported on 19 June 2014. For reasons which will become clearer later, it should be noted that he stated in the introduction to his report that he applied the CIL guidance from the Secretary of State dated February 2014.

19. Dealing with the contention that the Core Strategy was out of date, he concluded as follows:

"10 In addition, representations to the draft Schedule made submissions that the Council's Core Strategy is out of date in the sense that it does not comply with the National Planning Policy Framework (NPPF), does not address an objectively assessed housing need, has an out of date Strategic Housing Land Availability Assessment and will have to be replaced with a new Local Plan within two years. CIL should only be introduced in conjunction with a Local Plan: a plan which will have to provide for 9,000 new dwellings, rather than the maximum 750 that are likely to be provided under the existing one. This CIL should not be approved since it is not based on an up-to-date plan, would address infrastructure needs because no investment has been made and that result from existing development and would make, particularly smaller sites unviable which even now struggle to be economic.

11 In coming to my conclusions on these matters I will deal firstly with the arguments set out in paragraph 10 above. The Council has a Core Strategy adopted in October 2008, preceding the March 2012 publication of the NPPF by more than three years. It may be that some of its policies are capable of being considered out of date when judged against the policies of the NPPF, but until replaced it remains the principal document of the Development Plan for the district. The CIL charges proposed by the Council are based on infrastructure needs arising from the development required for the implementation of that plan. So long as there is a funding gap, and that funding is to provide for infrastructure needed to meet the costs of supporting development of the area, I see no legal basis to find that the submitted CIL Charging Schedule should not be approved just because it is based on a plan which, no doubt, will be reviewed in the near future."

20. In response to concerns about the effect of the CIL Schedule on small residential schemes, the Inspector called for post-hearing representations from both the objectors including the claimant and also the defendant bearing on this issue. His conclusions in relation to these matters were set out as follows:

"24 My overall conclusion on these matters is that I prefer the consistent approach in the Council's evidence and its reliance on standard accepted methodology. My main concern about the case put forward by Representors relates to assumed land values or land prices that have apparently actually been paid in recent times. It is fundamental to the CIL regime that a reduction in development land value is inevitable to accommodate it as a cost of development. Reported land sales values before the imposition of CIL in an area will clearly not have had to take the Levy into account. It may also be the case that there will be a period when land owners will be reluctant to see their value expectations decrease, but I do not see that as being a significant inhibitor on land coming forward for development in anything other than the short term. In the same way, the cost of development finance is a cost of development, which must be taken into account in the calculation of the price of land.

.....

26 In conclusion, the evidence before me is a clear indication that general residential development will remain viable across most of the District if the proposed CIL rate is applied."

21. His overall conclusions in relation to the CIL Schedule were set out as follows:

"37 In setting the CIL charging rate the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in Tandridge District. The Council has tried to be realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding, while ensuring that a range of development remains viable across the authority's area. The Tandridge District Core Strategy was adopted in October 2008, preceding the March 2012 publication of the NPPF by more than three years. I am told that a new Local Plan may not be adopted for some time. It may be appropriate to review the effect and effectiveness of the charge after it has been in place for 12 months."

22. Sixteen days after the adoption of LPT 2, on 6 August 2014, a printed copy of the comprehensive Proposals Map was produced by the defendant on two large sheets of paper. The comprehensive electronic version of the plan was not posted on the council's website until 10 October 2014.

TLP 2, The Law and Policy

23. Local Development Documents are defined in the Planning & Compulsory Purchase Act 2004. Section 17 (3) and Section 17 (6) of the 2004 Act provide as follows:

"(3) The local planning authority's Local Development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area.

.....

(6) 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.

(7) Regulations under this section may prescribe -

(za) which descriptions of documents are, or if prepared are, to be prepared as local development documents."

24. Preparation of Local Development documents is covered by Section 19. That provides as follows:

(1) Development Plan documents must be prepared in accordance with

the Local Development Scheme.

.....

(2) In preparing a development plan document or any of the local development document, the Local Planning Authority must have regard to -

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

.....

(h) any other Local Development document which has been adopted by the authority;

(i) the resources likely to be available for implementing the proposals in the document;

(j) such other matters as the Secretary of State prescribes."

25. Independent examination is addressed by Section 20 of the 2004 Act as follows:

"(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless -

(a) they have complied with any relevant requirements contained in regulations under this Part, and

(b) they think the document is ready for independent examination.

.....

(4) The examination must be carried out by a person appointed by the Secretary of State.

(5) The purpose of an independent examination is to determine in respect of the development plan document -

(a) whether it satisfies the requirements of sections 19 and 24 (1), regulations under section 17 (7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound; and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

(6) Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.

(7) The person appointed to carry out the examination -

(a) has carried it out, and

(b) considers that, in all the circumstances, it would be reasonable to conclude -

(i) that the document satisfies the requirements mentioned in sub-section (5) (a) and is sound; and

(ii) that the local planning authority have complied with any duty imposed on the authority by section 33A in relation to the document's preparation,

the person must recommend that the document is adopted and give reasons for the recommendation.

(7A) Where the person appointed to carry out the examination -

(a) has carried it out, and

(b) is not required by sub-section (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

(7B) Sub-section (7C) applies where the person appointed to carry out the examination -

(a) does not consider that, in all the circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in sub-section (5) (a) and is sound, but (b) does consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that -

(a) satisfies the requirements mentioned in sub-section (5) (a), and

(b) is sound."

26. Adoption of the local development document is addressed in Section 23 as follows:

"(2) If the person appointed to carry out the independent examination of a development plan document recommends that it is adopted, the authority may adopt the document -

(a) as it is, or

(b) with modifications that (taken together) do not materially affect the policies set out in it.

(2A) Sub-section (3) applies if the person appointed to carry out the independent examination of a development plan document -

(a) recommends non-adoption, and

(b) under section 20 (7C) recommends modifications ('the main modifications').

(3) The authority may adopt the document -

(a) with the main modifications, or

(b) with the main modifications and additional modifications if the additional modifications (taken together) do not materially affect the policies that would be set out in the document if it was adopted with the main modifications but no other modifications."

27. Section 113 of the 2004 Act, which it is unnecessary to set out in full, provides an exclusive statutory remedy in relation to challenges to the adoption of Local Development Documents. It is under the powers provided by this section that the first claim in this case is brought.

28. The 2004 Act contains powers to make regulations in relation to making amongst other things Local Development Documents. Those regulations are the Town & Country Planning (Local Planning) (England) Regulations 2012. The Regulations contain material relevant to the claimant's argument, to which I shall turn in due course, and in particular to the legitimacy of what happened in respect of the Proposals Map. Regulation 2 of the 2012 Regulations contains a number of definitions to assist interpretation and the application of those Regulations. In particular, it provides as follows:

"'adopted policies map' means a document of the description referred to in regulation 9;

.....

'submission policies map' means a map which accompanies a local plan submitted to the Secretary of State under section 20 (1) of the Act and which shows how the adopted policies map would be amended by the accompanying local plan, if it were adopted."

29. Further material about Local Development Documents is contained in Regulation 5:

> "(1) For the purposes of section 17 (7) (za) (1) of the Act the documents which are to be prepared as local development documents are -
>
> (a) any document prepared by a local planning authority individually or in co-operation with one or more other local planning authorities, which contains statements regarding one or more of the following -
>
> (i) the development and use of land which the local planning authority wish to encourage during any specified period;
>
> (ii) the allocation of sites for a particular type of development or use;
>
> (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and
>
> (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;
>
> (b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted."

30. It will have been noted that Regulation 9 is alluded to in the definition of “adopted policies maps”. Regulation 9 provides as follows:

> "(1) The adopted policies map must be comprised of, or contain, a map of the local planning authority's area which must —
>
> (a) be reproduced from, or be based on, an Ordnance Survey map;
>
> (b) include an explanation of any symbol or notation which it uses; and
>
> (c) illustrate geographically the application of the policies in the adopted development plan."

31. Further material in relation to interpretation is provided in Regulation 17 which provides as follows:

> " .....
>
> 'proposed submission documents' means the following documents —
>
> (a) the local plan which the local planning authority propose to submit to the Secretary of State;

(b) if the adoption of the local plan would result in changes to the adopted policies map, a submission policies map."

32. Regulation 22 goes on to provide further assistance with the submission of documents and what is required is as follows:

> "(1) The documents prescribed for the purposes of section 20 (3) of the Act are -
>
> (a) the sustainability appraisal report;
>
> (b) a submission policies map if the adoption of the local plan would result in changes to the adopted policies map."

33. Regulation 26 deals with provisions which should be made after a plan has been adopted and provides as follows:

> "As soon as reasonably practicable after the local planning authority adopt a local plan they must -
>
> (a) make available in accordance with regulation 35 -
>
> (i) the local plan;
>
> (ii) an adoption statement;
>
> (iii) the sustainability appraisal report; and
>
> (iv) details of where the local plan is available for inspection and the places and times at which the document can be inspected."

34. For completeness, Regulation 35 provides the following in relation to availability of documents:

> "(1) A document is to be taken to be made available by a local planning authority when -
>
> (a) made available for inspection, at their principal office and at such other places within their area as the local planning authority consider appropriate, during normal office hours, and
>
> (b) published on the local planning authority's website."

35. It is common ground that the question of whether or not a Local Development Document passes the test of soundness required by Section 20 of the 2004 Act is a question of planning judgment for the independent examiner. The planning merits of that determination are not before the court to re-determine.

36. The conclusions of the independent examiner can however be attacked on conventional public law grounds. Those grounds will include the question of whether or not

planning policy has been properly interpreted and the question of its interpretation is a question of law (see Tesco Stores Ltd v Dundee City Council [2012] UKSC 13.

37. Of relevance to the issues which are raised in this part of the case is Gladman Development Ltd v Wokingham Borough Council [2014] EWHC 2320. That case concerned a challenge to a Site Allocations DPD which provided housing allocations in order to assist in meeting the housing requirements of a Core Strategy adopted on 29 February 2010 and therefore well before the publication of the Framework. That Core Strategy, like the one in the present case, had a housing requirement which was derived from the South East Plan. The claimant in that case contended that the Inspector could not find the Site Allocations DPD sound as it was not based on housing requirement which had been derived applying the Framework's policy. They could not determine the plan was sound without redetermining an Objectively Assessed Need ("OAN")for housing for the administrative area covered by the plan. Lewis J was satisfied that the Inspector did not need to determine whether the Core Strategy housing requirement represented a OAN, nor did he need to endorse the Core Strategy housing requirement as such. In those circumstances was it open for the Inspector to find that the plan was sound?

38. It is worthwhile setting out the conclusions and reasons of the judge in full as follows:

> "60 In my judgment, an inspector assessing the soundness of a development plan document dealing with the allocation of sites for a quantity of housing which is needed is not required to consider whether an objective assessment of housing need would disclose a need for additional housing. I reach that conclusion for the following reasons.
>
> 61 First, the statutory framework does not require such an approach. The statutory framework recognises that a development plan may be comprised of a number different development plan documents. Section 19 (2) (h) of the 2004 Act provides that a local planning authority preparing a development plan document must have regard to any other local development document (which will include a development plan document). Thus where, as here, the Defendant has an adopted development plan document in the form of a Core Strategy, it must have regard to that in preparing a subsequent development plan document. The inspector, on examination, will need to ensure, amongst other things, that that requirement has been met (see section 20 (5) (a) of the 2004 Act).
>
> 62 The structure of the 2004 Act is, therefore, consistent with a situation where one development plan document is giving effect to another earlier such document. It may be that the earlier development plan document needs up dating, and may need to make further and additional provision for development in the future. There is, however, nothing in the statutory framework to suggest that a development plan document, such as the MDD here, cannot be adopted simply because another development plan document, such as the Core Strategy, may need to be updated to include additional provision, for example additional housing.

63 Secondly, the Framework properly interpreted, and read against the statutory background, does not, in my judgment, require the result contended for by the Claimant. The Framework sets out the government's policies on planning in England. It provides guidance. It is written in a way which is intended to be accessible to the reader as is clear from the foreword. The Framework offers guidance on what it describes as local plans. These are, or at least include, the development plan. The development plan is, however, comprised of a series of development plan documents adopted under the 2004 Act as the glossary to the Framework makes clear. One should, therefore, be wary about assuming that the guidance in relation to one particular development plan document necessarily applies to all other development plan documents simply because the Framework refers to 'local plans' without differentiating between different development plan documents for these purposes.

64 Where a development plan document is intended to deal with the assessment of the need for housing, then, the provisions of the Framework material to housing need will be a material consideration. A local planning authority dealing with the question of the amount of housing needed for its area will need to have regard to paragraph 47 of the Framework. The provisions governing a local plan – that is a development plan document - dealing with the assessment of housing need would have to have regard to paragraphs 158 and 159 of the Framework. Any examination of that local plan, that is that particular development document, would need to have regard in that context to paragraph 182 of the Framework.

65 Properly read, however, the Framework does not require a development plan document which is dealing with the allocation of sites for an amount of housing provision agreed to be necessary to address, also, the question of whether further housing provision will need to be made.

66 Thirdly, in my judgment, the approach advocated by the Claimant would be likely to run counter to the aims of the Framework and lead to results that were not intended. On the facts of the present case, for example, the position taken by the inspector is that a figure of at least 13,230 dwellings will be required and the MDD, with modifications, would address the allocation of that amount of housing in a sound way. On the Claimant's case, the Defendant cannot prepare, and an inspector cannot consider the soundness of, a development plan document dealing with the allocation of necessary housing until further steps are taken to identify whether additional housing is required. The process of adopting the MDD allocating sites for required housing would have to stop while a strategic housing market assessment is carried out or equivalent data obtained. If additional housing were to be needed, then either the scope of the proposed MDD would have to be enlarged to include the larger figures and have that MDD supersede the Core Strategy figure or a

development plan document dealing with changes to the Core Strategy would need to be prepared. It is difficult to see that that interpretation is consistent with the Framework which seeks to encourage the development of development plan documents and to ensure that such documents are in place to guide decisions on development.

67 Fourthly, in reality, the approach of the Claimant would involve using the perceived need to comply with the Framework as a way of compelling the Defendant to carry out a full, objective assessment of its housing needs to discover if additional housing provision were required. The Defendant is, however, already under a statutory duty to review matters which may be expected to affect the development of their area (section 13 (1) of the 2004 Act). The Defendant is also under a duty to keep the development plan documents under review having regard to the results of any such review (section 17 (6) of the 2004 Act). The Defendant in the present case is, as the evidence establishes, in the process of preparing a strategic housing market assessment which may lead to a review of the housing provision identified as necessary. The use of the Framework as a means of compelling the Defendant to carry out such reviews is not necessary. In those circumstances, the interpretation of the Framework advanced by the Claimant has less force. The Claimant's interpretation is not needed to ensure that the local planning authority performs a review of its housing need but it would prevent them from adopting a development plan document which allocates sites for housing need already established.

68 Finally, this conclusion is, in my judgment, consistent with the decision in Gallagher Homes Ltd. There, Hickinbottom J. was dealing with a development plan document which did involve the assessment of housing need and proposed a figure of 11,000 new dwellings in the relevant period as appears from paragraph 35 of the judgment. It was in that context that Hickinbottom J. considered that the inspector erred in his approach to the examination of that development plan document in not addressing fully the issue of what was the objectively assessed need for housing. This case is different. The inspector here was not examining a development plan document assessing housing provision. He was examining a plan which proposed site allocations for housing which, as a minimum, would contribute towards the agreed housing need of the area.

69 For those reasons, in my judgment, the inspector in the present case was not required by reason of the Framework to consider an objective assessment of housing need in order to assess whether this development plan document was sound."

39. It is necessary to briefly examine some elements of the Framework which are involved in this case, in particular so as to understand and illustrate some of the claimant's argument. Paragraph 47 of the Framework provides as follows:

> "47 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;
>
> • identify and update annually a supply of specific deliverable11 sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
>
> .....
>
> 49 Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

40. In Solihull Metropolitan Borough Council v Gallagher Estates [2014] EWCA Civ 1610, the Court of Appeal concluded, (applying the interpretation at paragraph 47 of the Framework from Hunston Properties v St Albans City and District Council 2014 EWCA Civ 1610), that the Framework had effected a radical change of policy and that explicit calculation of the OAN for housing was required first before any subsequent adjustment could be made to that housing figure reflecting any policy considerations. That two-stage approach was necessary in order to derive a housing requirement which was compliant with the Framework. A requirement from earlier work related to a Regional Strategy undertaken prior to the Framework having been brought into force would not have been structured in accordance with this two-stage approach and therefore would not reflect the radical change that the court found had been effected in respect of policy for housing by the Framework.

41. The approach to paragraph 49 and which policies are relevant policies for the supply of housing in the event of a five-year housing land supply shortfall has also been the subject of consideration by the courts. A recent consideration of that matter is to be found in the judgment of Mr Justice Ouseley in South Northamptonshire Council v Secretary of State and Another [2014] EWHC 573. In relation to that phrase, the judge concluded as follows:

> "46 That phraseology is either very narrow and specific, confining itself

> simply to policies which deal with the numbers and distribution of housing, ignoring any other policies dealing generally with the location of development or areas of environmental restriction, or alternatively it requires a broader approach which examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner.
>
> 47 It is my judgment that the language of the policy cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate distribution and location of development. They may be generally applicable to all or most common forms of development, as with EV2, stating that they would not be permitted in open countryside, which as here could be very broadly defined. Such very general policies contrast with policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development.
>
> 48 However, once the Inspector has properly directed himself as to the scope of paragraph 49 NPPF as he did here, the question of whether a particular policy falls within its scope, is very much a matter for his planning judgment ..... "

42. Returning to the Framework, paragraph 53 is also pertinent to the issues in the case and provides as follows:

> "53 Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area."

43. In respect of design, the Framework provides a suite of policies but in particular in respect of the issues in this case provides as follows:

> "64 Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions."

44. Turning away from matters related to design to the Green Belt, it will be apparent from the explanatory text that I have quoted above that there were particular elements of the Framework's policy on the Green Belt that were engaged in the present case. It suffices to quote from paragraphs 86 and 89 as follows:

> "86 If it is necessary to prevent development in a village primarily

because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt.

If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.

.....

89 A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

.....

• limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan."

Submissions and Conclusions on LPT 2

45. The claimant's submissions fall under two headings: first, that the findings of the Inspector and the defendant (whose conclusions and decisions stand or fall together) that the DPD was sound were flawed. Second, submissions are made as to the procedural requirements in respect of the provision of the Proposals Map.

46. In relation to the question of soundness and the allegation that the conclusions of the Inspector and the defendant's decision reliant upon them were flawed, the submission which is made breaks down, first, into an overarching submission and then, second, specific and detailed concerns. The claimant submits as an overarching point that the Inspector erred in failing to inquire into what was the defendant's OAN pursuant to paragraph 47 as part and parcel of his assessment of the soundness of the DPD before him. Had he done so, it is contended, it would have been clear to him that the Core Strategy was out of date in respect of its housing requirement and measured against a properly assessed OAN the defendant did not enjoy an adequate five-year supply of housing. Once it was realised that the defendant did not have the five-year supply of housing then the policies (which have been set out above) - which, it is submitted, sought to suppress housing supply by controlling it - would, in accordance with paragraph 49, be both policies which were related to the supply of housing and also out of date as soon as the ink was dry upon them as a result of failing to have a five-year housing land supply.

47. That, it was contended, was a perverse situation which could not have sensibly led the Inspector to conclude that the plan was sound. This point was further underlined by the Council commissioning of material seeking to assess the OAN which, even at a very preliminary stage, had shown that the OAN would be significantly higher than the housing requirement contained in the Core Strategy.

48. Gladman, (above) was distinguished in submissions made on behalf of the claimant on the basis that that case concerned an allocations document which sought to permit and therefore work towards the delivery of significant quantities of housing whereas here the policies engaged were designed to constrain the supply.

49. In detail, the submissions on behalf of the claimant were that Polices DP 8 and DP 10 to DP 13 constrain the supply of housing and are therefore inconsistent with the Framework's objectives of seeking to boost housing supply. The policies' approach to infilling was more restrictive than that which was contemplated by paragraph 89 of the Framework.

50. Turning to the Proposals Map, it was submitted on behalf of the claimant that a policies map did not exist and, further, that the evidence showed confusion on an occasion when a hearing occurred, about which I was provided with witness evidence, when the defendant had difficulty in locating a proposals map which was able to assist the hearing as to the policy status of a particular site.

51. The defendant responded to these submissions by relying on Gladman to contend that the issues related to OAN and any associated questions of the five-year housing land supply including whether or not policies were policies for the supply of housing were not engaged. Even if they were, it was submitted that the policies contained in LTP 2 were not policies for the supply of housing but were policies directed towards ensuring high quality design and a good quality urban environment. They related to the character of the areas to which they applied or, alternatively, the detailed local implementation of the Framework's Green Belt policy.

52. So far as the Proposals Map points were concerned, it was submitted on behalf of the defendant that the requirements of the Regulations (set out above) were all satisfied by the steps that the Council took.

53. I start my conclusions by emphasising that it is clear, as noted by Mr Justice Lewis in Gladman, that the legislation contemplates a modular structure to the Development Plan whereby it can be constructed from a series of individual elements which are to be read together for the purposes of conducting exercises in development control. These individual parts may be developed at different times against the backdrop of different national policies for the purposes of Section 19 (2) (a) of the 2004 Act.

54. One of the central questions which in my view must be considered by an independent examiner is therefore what is the scope of the DPD that I am being required to examine? Within that scope, what is it that the DPD sets out to do? Once that question has been answered it will then be possible to properly address the question as to whether or not, within that scope and within what it has set out to do, it is a document which is in fact sound. Part of that assessment must be whether, in addition to having regard to national policy, regard has been had to any other development document which has been adopted by the local authority (see Section 19 (2) (h) of the 2004 Act). But a complaint of inconsistency or potential inconsistency with another local development document is not the substance of the complaint which is made here.

55. In my view the scope of TLP 2 is clear from paragraphs 1.4 and 1.5. It is clear that it did not include an examination of the OAN for the defendant. Considering the limited objectives of TLP 2, as set out in its introductory paragraphs, the Inspector was not in my view required to embark upon an inquiry as to what the OAN might be or whether or not the defendant had a five-year supply of housing, and consequentially whether the policies which were being examined were relevant to the supply of housing. The establishment of a new housing requirement for the defendant's administrative area was not a task which TLP 2 had set itself.

56. The claimant's attempts to distinguish Gladman were in my view entirely unconvincing. The question which has to be considered is what is the scope or purpose of the DPD being examined, not whether or not it was permissive of certain development or not. It is clear that the first, second, fourth and fifth reasons – set out by Lewis J in the paragraphs from Gladman set out above - apply with equal force to TLP 2 and the Inspector's task in this case. The third reason - that is to say consistency with the Framework - engages the arguments, which I shall address below, in relation to the detail of the policies.

57. Since in my view the question of or setting an OAN for the defendant did not arise and nor were questions of five-year land supply or whether paragraph 49 of the Framework (which is in any event a paragraph directed to applications) in point, it follows that the Inspector did not need to decide whether the Core Strategy is out of date or the impugned policies are policies relevant to the supply of housing for the purposes of paragraph 49.

58. The Inspector gave clear reasons (paragraphs 10 and 12 of his report) which explain his approach in relation to this point as to the OAN and the Core Strategy being out of date. It was a conclusion which was, in accordance with the matters I have set out above, both logical and lawful. As he pointed out in paragraph 11 of his report, it was not the role of TLP 2 to consider housing need or, indeed, a review of the Green Belt boundary. As he explains in paragraph 12, given the limited role of TLP 2, it would remain useful and applicable irrespective of what might emerge in the review of the Core Strategy and the production of TLP 1 to replace it.

59. Turning to the detailed issues which are raised, the Inspector was correct to record in paragraph 32 that there was in reality no evidence to substantiate the claim, repeated by the claimant in this case, that development might be severely restricted as a result of the policies in TLP 2. It is right to observe that as a generality there may be less grants of planning permission when there are no policies at all than when there are policies in place to guide and, where appropriate, restrict development. The claimant is correct that the definitions of appropriate types of site provided by, for example, DP 12 may exclude some sites being considered to be suitable to accommodate residential development and may, to that extent, more strictly control development. But the answer to that contention and, indeed, the relationship between the effective control and development and the Framework is provided clearly in the Inspector's reasons in paragraph 32 of his report. The fact is that the Framework does not promote housing at any cost to the environment, nor at any cost to the quality of urban areas. The

Framework contains policies which seek to protect design quality and also the character of existing urban areas.

60. These policies which were before the Inspector were a local interpretation of the Green Belt policies from the Framework and in particular those contained in paragraphs 86 and 89. The Inspector expressly dealt with that question of local interpretation and the relationship which the policies had to the overarching national policy in the Framework. His conclusions that they were sound, measured against that policy, is a conclusion which in my view is unimpeachable.

61. It follows that in my view the claimant's contentions in this part of the case cannot succeed.

62. I turn then to consider the issue raised in relation to the Proposals Map. It will be noted from the Regulations that they do not specifically require a single Proposals Map to be furnished at the submissions stage. The definition of a "submissions policies map" does not require just one piece of paper with the whole Proposals Map, as existing and as changed, upon it. That definition which is provided, in my view, encompasses what in fact the defendant provided here, namely extracts or insets illustrating the areas of the existing map which were proposed to be changed and how they were proposed to be changed. In my view not only was that approach lawful but it has good sense on its side. When undertaken in this way it is clear where the changes are taking place. There is no need to hunt for them amongst all of the other notations which may be present upon the Proposals Map.

63. The requirement for provision of the Proposals Map in Regulation 26 is "as soon as reasonably practicable". In my view that test was passed here since, under Regulation 35, provision of hard copy for inspection and also provision on the Council's website was achieved within a reasonable time so as to meet the requirements of the Regulations. It follows that in my view the way in which the defendant treated the production of the proposals map does not give rise to any error of law. My conclusion in that respect is not in any way affected by the anecdotal account in witness evidence about what occurred at a hearing where there may have been some difficulty in locating and furnishing the Inspector with a comprehensive copy of the proposals map.

CIL Schedule - The Law

64. Part 11 of the Planning Act 2008 contains powers for a District Council, as a charging authority, to prepare a CIL Schedule and charge the levy. This power is exercised through the publication, examination and (if endorsed) adoption of a CIL Schedule which contains charging rates. The CIL Schedule in question in this case charges by the type of development. It is common ground that that is an appropriate approach.

65. Whilst lengthy, the pertinent elements of the legal framework are as follows. Section 211 of the Planning Act 2008 provides, so far as relevant, as follows:

> "(1) A charging authority which proposes to charge CIL must issue a document (a 'charging schedule') setting rates, or other criteria, by

reference to which the amount of CIL chargeable in respect of development in its area is to be determined;

(2) A charging authority, in setting rates or other criteria, must have regard to the extent and in the manner specified by CIL regulations, to -

(a) actual and expected costs of infrastructure (whether by reference to lists prepared by virtue of section 216 (5) (a) or otherwise);

(b) matters specified by CIL regulations relating to the economic viability of development (which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL);

(c) other actual and expected sources of funding for infrastructure.

.....

(9) A charging authority may revise a charging schedule.

(10) This section and sections 212, 213 and 214 (1) and (2) apply to the revision of a charging schedule as they apply to the preparation of a charging schedule."

66. In reaching conclusions on these issues, Section 221 provides as follows:

> "The Secretary of State may give guidance to a charging authority or other public authority (including an examiner appointed under section 212) about any matter connected with CIL; and the authority must have regard to the guidance."

67. Much of the detail in relation to the preparation, examination and adoption of a CIL Schedule is contained within the Community Infrastructure Levy Regulations 2010 and is uncontroversial in this case. What is of particular note for the purposes of the arguments which have been advanced by the claimant is the content of Regulation 14 of the 2010 Regulations which provides as follows:

> "(1) In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between -
>
> (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
>
> (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area."

Submission and Conclusions

68. The claimant's first point is the contention that the CIL Schedule was related to the development requirements of the Core Strategy and that those development requirements and indeed the Core Strategy as a whole is, the claimant says, out of date. That is important because the guidance and also the Planning Practice Guidance (which replaced it in June 2014) both provide the following in relation to how the charging schedule should be approached as follows:

> "Charging schedules should be consistent with and support the implementation of up-to-date relevant plans."

69. A point was developed on behalf of the claimant that the Inspector relied expressly in producing his report on the Secretary of State's Guidance from February 2014 when, by the time his report was produced, this had been replaced by Planning Practice Guidance in June 2014. However since the relevant phrase relied upon by the claimant is the same in both, in my view this is a submission which is essentially without content.

70. The Inspector clearly addresses the concern of whether or not he is providing a charging schedule in relation to an up-to-date plan in paragraphs 10 and 11 of his report. He was entitled to conclude, that although the Core Strategy was to be reviewed, nonetheless there was good reason to endorse the CIL Schedule so as to support provision of infrastructure for the existing levels of completed development. The need for this CIL Schedule to be reviewed (potentially in the context of a revision to the Core Strategy) was contemplated in paragraph 37 of his report. It will be noted that revision is part of the Statutory Framework in Section 211 (9) and section 211 (10).

71. Thus the following points in my view need to be noted. First, there is no requirement in the legislative framework - nor is one relied upon - which requires a recently adopted plan to be in place before a CIL Schedule can be adopted. Second, whilst the Guidance to which regard must be had in accordance with the requirements of Section 221 of the 2008 Act suggests charging schedules should be consistent with and supported by an up-to-date plan, the decision here was for the reasons which were given by the Inspector, a departure from that policy which the Inspector was legally entitled to make, provided he gave reasons for that departure. He provided clear and adequate reasons to justify the departure. Whilst it is no doubt the optimal position, there is no reason in law why a charging authority can only produce a CIL Schedule if it has a recently produced plan. If, like here, the plan relied upon requires review then no doubt revision of the CIL Schedule to align it with the reviewed plan would be a high priority, if not essential.

72. The Inspector was alive to all of this, as is clear from the reasons I have extracted from his report.

73. In my view, having analysed the issues, the reality is that the claimant's case in respect of this matter is unarguable. Had the matter been before me for the grant of permission only, I would have refused it. In any event, for the reasons I have given, no relief should be granted on this basis.

74. The second point raised by the claimant focuses on the question of the appropriate balance to be derived from Regulation 14 of the 2010 Regulations and in particular the need for the Inspector and the defendant to consider the effects of viability "across its area". The claimant relies upon paragraph 26 of the Inspector's report where he concludes residential development will remain viable "across most of the district" if the CIL Schedule is endorsed. If that is the conclusion, it is said, then there ought to have been differential rates for different parts of the district and thus the Inspector has not properly applied the requirements of Regulation 14.

75. In my view this is a wholly semantic argument and represents an over-reading of an extract chosen selectively from the report rather than standing back and reading it as a whole. The overall conclusion reached by the Inspector in paragraph 37 shows quite clearly that he applied the correct approach and considered, having analysed all of the issues, that the rate which was proposed ensured "a range of development remains viable across the authority's area". Again, this is a point which had I been seized of an application for permission I would have refused as unarguable. It certainly is not a point which would justify the remedy which is sought.

Conclusion

76. It follows from the matters which I have set out above that the claim brought under Section 113 of the 1990 Act must be dismissed. The judicial review of the defendant's decision to adopt the CIL Schedule is refused permission and also dismissed.