

Case No: CO/1455/2014

Neutral Citation Number: [2014] EWHC 2320 (Admin)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/07/2014

Before :

MR JUSTICE LEWIS

Between :

GLADMAN DEVELOPMENT LIMITED

Claimant

- and -

WOKINGHAM BOROUGH COUNCIL

Defendant

Mr Paul Tucker QC and Mr Martin Carter (instructed by **Irwin Mitchell**) for the **Claimant**
Ms Saira Kabir Sheikh QC (instructed by **Wokingham Borough Council**) for the **Defendant**

Hearing dates: 1st & 2nd July 2014

Judgment

MR JUSTICE LEWIS:

INTRODUCTION

1. This is an application brought pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) to quash a development plan document known as the Managing Development Delivery Local Plan (“the MDD”). The MDD was adopted by the Defendant, the local planning authority, on 21 February 2014, following an examination by an inspector appointed by the Secretary of State for Communities and Local Government.
2. The MDD is concerned with the allocation of sites within the Wokingham Borough Council area for proposed residential development amongst other issues. It sets out a series of policies which are intended to identify which locations would be suitable for residential development. The MDD proceeds on the basis that the number of new houses for which it is identifying appropriate locations is the number identified in another development plan document, the Core Strategy, adopted in January 2010. That contemplates that provision will need to be made for at least 13,230 dwellings over a 20 year period from 2006 to 2026, equivalent to approximately 660 new dwellings each year.
3. In summary, the Claimant contends that the inspector failed to have regard to parts of relevant national guidance, namely the National Planning Policy Framework (“the Framework”) in considering whether the MDD was sound. In particular, the Claimant contends that there was a failure to identify the objectively assessed need for housing in the area in accordance with the Framework. The Claimant contends that the inspector could not lawfully determine whether a development plan document allocating sites for residential development across the borough was sound for the purposes of section 20(7C) of the 2004 Act without first ensuring that there had been such an objective assessment of housing need. The Claimant further contends that, in those circumstances, the Defendant itself erred in adopting the MDD.

THE LEGAL FRAMEWORK

The Statutory Framework

4. Part 2 of the 2004 Act deals with local development. Section 13 of the 2004 Act imposes a duty on local planning authority to survey, and to keep under review, matters relating to the development or planning of development within its area. Section 13 provides so far as material that:

“13 Survey of area

“(1) The local planning authority must keep under review the matters which may be expected to affect the development of their area or the planning of its development.

“(2) These matters include–

- (a) the principal physical, economic, social and environmental characteristics of the area of the authority;
- (b) the principal purposes for which land is used in the area;
- (c) the size, composition and distribution of the population of the area;
- (d) the communications, transport system and traffic of the area;
- (e) any other considerations which may be expected to affect those matters;

(f) such other matters as may be prescribed or as the Secretary of State (in a particular case) may direct.

“(3) The matters also include–

(a) any changes which the authority think may occur in relation to any other matter;

(b) the effect such changes are likely to have on the development of the authority's area or on the planning of such development.

“(4) The local planning authority may also keep under review and examine the matters mentioned in subsections (2) and (3) in relation to any neighbouring area to the extent that those matters may be expected to affect the area

.....”

5. Section 15(1) of the 2004 Act provides that the local planning authority must prepare and maintain a scheme to be known as their local development scheme. Section 17(3) of the 2004 Act provides that:

“(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. Section 15(2)(aa) of the 2004 Act provides that the local development scheme must specify which local development documents are to be “development plan documents”.

7. Section 19 of the 2004 Act deals with the preparation of documents. Section 19(2) of the 2004 provides, so far as material to this case, that:

“(2) In preparing a development plan document or any other 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.....”

8. Section 20 of the 2004 Act deals with the independent examination of every development plan document and provides as follows:

“20 Independent examination

“(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.

“(3) The authority must also send to the Secretary of State (in addition to the development plan document) such other documents (or copies of documents) and such information as is prescribed.

“(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 section 19(1) and 24(1) and, 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) Where 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 subsection (5)(a) and is sound, and
(ii) that the local planning authority 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 subsection (7) to recommend that the document is adopted,
the person must recommend non-adoption of the document and give reasons for the recommendation.

“(7B) Subsection (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 subsection (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 subsection (5)(a), and
(b) is sound.

“(8) The local planning authority must publish the recommendations and the reasons.”

9. Section 23 of the 2004 Act provides, so far as material, that:

“(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) Subsection (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(7)C 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.

“(4) The authority must not adopt a development plan document unless they do so in accordance with subsection (2) or (3).

“(5) A document is adopted for the purposes of this section if it is adopted by resolution of the authority.”

10. The development plan has particular significance in terms of the operation of the planning system. Section 38(6) of the 2004 Act provides that:

“(6) If regard is to be had to the development plan for the purposes of any determination made under the planning Acts the determination must be made in accordance with the development plan unless material considerations indicate otherwise”.

11. That subsection applies to, amongst others, decisions on applications for planning permission for development (see section 70 of the Town and Country Planning Act 1990). If proposed development conflicts with the development plan, permission will be refused unless material planning considerations indicate otherwise.

12. So far as England other than Greater London is concerned, the development plan now is defined as follows by subsections 38(3) and (5) of the 2004 Act in the following terms:

“(3) For the purposes of any other area in England the development plan is

.....

(b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area;

(c) the neighbourhood plan documents (taken as a whole) which have been adopted or approved in relation to that area.

.....

“(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in which the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan.”

The Framework

13. The Framework sets out the government’s planning policies for England. It is guidance. It is not part of any development plan. The policies contained within it, however, are a material consideration in planning terms.
14. Paragraph 6 of the Framework explains that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 14 explains that at the heart of the Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and individual decision-taking.
15. The Framework contains a series of sections under a heading “Delivering sustainable development” which contain substantive policies relating to discrete matters such as, for example, maintaining town centres, transport and so on. The relevant section for present purposes is section 6 dealing with “Delivering a wide choice of homes”. Paragraph 47 of the Framework provides as follows:

“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 deliverable 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;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and

- set out their own approach to housing density to reflect local circumstances.”

16. Paragraphs 150 onwards of the Framework deal with local plans. The Framework uses the phrase “local plans” to mean the development plan documents adopted under the 2004 Act: see the glossary to the Framework.

17. Paragraphs 158 and 159 of the Framework provide as follows:

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

“159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

- Prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:
 - meets household and population projections, taking account of migration and demographic change;
 - addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and
 - caters for housing demand and the scale of housing supply necessary to meet this demand;
- prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.”

18. Paragraph 182 of the Framework addresses the examination of local plans (that is, examination of individual development plan documents by an inspector pursuant to section 20 of the 2004 Act). It provides as follows:

“The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority

should submit a plan for examination which it considers is “sound” – namely that it is:

- **Positively prepare** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;
- **Justified** – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;
- **Effective** – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and
- **Consistent with national policy** – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework.”

THE FACTS

The Core Strategy

19. The Defendant adopted a Core Strategy on 29 January 2010. That document is a development plan document and is part of the development plan for Wokingham. The Core Strategy set out a number of what it describes as high level policies to guide where development would take place within the borough between 2006 and 2026.
20. Policy CP17 in the Core Strategy delivery deals with housing. It provides that:

“Provision will be made for the development of at least 13,230 dwellings and associated development and infrastructure in the Borough in the period 2006-2026 for which substantial investment infrastructure will be required.”
21. That equated to an equivalent of 660 new dwellings a year over the lifetime of the development plan. In fact, the provision was to occur in phases with a lower figure than 660 dwellings a year in the first five year period and higher numbers in the middle two five year periods. Policy CP17 set out the phases of development, i.e. the number of dwellings as to be provided in five year cycles over the period of the development plan. The policy continues by saying that:

“The Council through subsequent [development plan documents] will phase and manage the release of allocated sites to ensure the overall targets are met.”
22. Policy CP17 also indicated where the Defendant expected the at least 13,230 new dwellings were to be located. Residential developments providing 9,990 dwellings would take place on four identified sites, referred to as strategic development locations.

23. The figure of at least 13,230 dwellings originated in a former regional strategy document known as the South East Plan. There was formerly an obligation to prepare a regional strategy and provision for it to form part of the local planning authority's development plan. Those provisions have now been repealed and the regional strategies revoked. The policies formerly incorporated in regional strategies may, of course, be included within development plan documents. Furthermore, the information and data used to formulate regional strategy policies may, depending on its continued relevance, be relevant to the formulation of policies included in development plan documents: see paragraph 218 of the Framework.
24. Policy H1 of the South East Plan provided for the provision of a total of 32,700 homes within the south east. The accompanying text indicated that that was not the number of homes assessed as needed over the relevant period for the south east. Rather, the figure would go "some way towards" the goal of meeting the needs. There is a dispute as to what the position is for Wokingham. The South East Plan allocated a figure of 12,460 homes for Wokingham. That, however, included a figure of 2,500 homes to meet anticipated needs in Reading. It is not clear from the text whether the figure of 12,460 would itself meet all the needs for housing in Wokingham or whether it was still a figure that was lower than the number of houses that would be needed for Wokingham. Ultimately, that issue does not need to be resolved in this case.
25. In any event, the 2010 Core Strategy used the figure of 12,460 homes as a starting point. As earlier targets had not been met, there was also a backlog of 772 dwellings. That figure was added to the South East Plan figure to give the total of at least 13,230 new dwellings which CP17 said should be provided in Wokingham over the development plan period of 2006 to 2026.
26. The Core Strategy also contained policies dealing with the Defendant's spatial vision for Wokingham. These policies are concerned with location of housing. They are not concerned with assessing the number of dwellings required.

The MDD

27. As foreshadowed by the Core Strategy, the Defendant began working on producing another development plan document to deal with the allocation of sites to accommodate the proposed 13,230 houses. The Defendant prepared a development plan document, the MDD, and submitted that to the Secretary of State for the purposes of examination by an inspector under section 20 of the 2004 Act.
28. The purpose and objectives of the MDD are set out in paragraph 1.10 in the following terms:

"1.10. The objectives in the MDD take forward and develop the objectives laid down in the Core Strategy and the earlier version (Draft Options) of the MDD (June 2011) as set out in the following paragraph. The MDD is consistent with the Core Strategy, as well as taking into account the National Planning Policy Framework. Where relevant, it also takes account of other plans, programmes and strategies, including those produced by WBC. Specifically, the purpose of the MDD is to:

- i. Allocate sites for residential development. The Core Strategy already seeks to concentrate the majority of residential development (circa 9,900 dwellings) in four key locations called Strategic Development Locations (SDLs). However, it is also necessary to allocate further sites outside the SDLs to meet overall housing requirements set out in the Core Strategy
 - ii. Allocate sites for other uses, including commercial development such as retail development
 - iii. Set boundaries, which can be seen on the Policies Map for issues such as development limits (settlement boundaries)
 - iv. Provide additional detailed policies to use when considering development proposals.”
29. The MDD then set out a series of policies dealing with matters relevant, amongst other things, to the allocation of sites for residential development within the borough.
30. An inspector was appointed. He prepared a series of papers setting out issues and questions for the examination. Written submissions were made by the Defendant, the Claimant and others. The Claimant consistently submitted that it would not be possible for the inspector to determine if the MDD were sound unless he first ensured that there had been an objective assessment of the need for housing as envisaged by paragraph 47 of the Framework and carried out in accordance with the process contemplated by paragraph 159 of the Framework. It contended that the inspector could not determine if the allocation of sites for proposed residential development was sound unless he was satisfied that the amount of housing to be provided (and so the amount of land to be allocated) would satisfy the objectively assessed need for housing in the borough.
31. The inspector held hearings between 14 and 24 May 2013. He then prepared interim conclusions intended to give a brief indication of those aspects of the MDD which were considered sound and those where major modifications would be necessary to make it sound.
32. There was also correspondence between the inspector and the Defendant. That correspondence was placed on the Defendant’s website and was publicly available. By letter dated 20 October 2012, the inspector indicated that he “would like to receive the Council’s comments” on certain significant issues. In an attached document, he referred to a number of issues. The opening paragraph says the following:

“I am concerned that, irrespective of the Council’s statement in WBC/11 that 14,962 dwellings could be completed between 2006-2026, there is no comprehensive evidence in the form of an up-to-date SHMA to support the overall housing requirement. I have accepted that reliance is placed on the Core Strategy to provide the basis for the MDD proposals. However, there is no indication of any commitment to review the Core Strategy in the event that the spatial vision is not being achieved. In the case of Reading, the Council has indicated that a review of the Core Strategy is likely to take place in the near future. It appears to me that such a review may also be

necessary for Wokingham's Core Strategy, specifically if the [strategic development locations] are seen to be failing to deliver the levels of development necessary to fulfil the Core Strategy's spatial vision. If this is correct, then further text must be included following para 1.6 to make the intention clear."

33. Later in that document, the inspector said that a section of the MDD headed "Overall Housing Requirement and maintaining a five-year supply of housing land" required further consideration. He said this:

"In brief, I consider it is necessary to include recognition that the [strategic housing market assessment], on which the Core Strategy was based, is out-of-date and the figure of 'at least 13,230 dwellings (2006-2026)' may be an under-estimate. This suggests that para 4.5 et seq requires some revision. I am also concerned that there is no recognition that my initial conclusions advised there is no doubt that there has been underperformance and there is clear evidence that there should be a buffer of 20%. It would appear that the Council can show that a 20% buffer can be brought forward from later in the plan period. In this context I do not believe that para 4.9 (which was not the subject of a Main Modification) sits easily following the new paragraph. In particular the second sentence should be deleted. (Separately, it would be helpful to know the latest position regarding the various applications for planning permission submitted during the examination period – effectively an update on the position shown in Appendix 3 to the SHLAA, April 2013, CD/03/03.02)."

34. The Defendant provided its comments on those issues and put forward drafts of possible modification to the wording of the text of parts of the MDD.

35. The inspector reported to the Defendant on 23 January 2014. At paragraph 1 of his report, the inspector said this:

"This report contains my assessment of the Managing Development Delivery Local Plan in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). It considers first whether the Plan's preparation has complied with the duty to co-operate, in recognition that there is no scope to remedy any failure in this regard. It then considers whether the Plan is sound and whether it is compliant with the legal requirements. The National Planning Policy Framework (paragraph 182) makes clear that to be sound; a Local Plan should be positively prepared; justified; effective and consistent with national policy."

36. Paragraphs 10 and 11 of his report under the Heading "Assessment of Soundness" and "Preamble" are in the following terms:

"10. The NPPF was published in March 2012 replacing previous Government planning policies and guidance, at which time the MDD was at an advanced stage of preparation. The Council carried out a compatibility self-assessment, using the PAS checklist. Whilst the overall conclusion was that there were no significant issues relating to compatibility, the presumption in favour of sustainable development, which is a golden thread running through both plan

making and decision-making, has not been addressed satisfactorily and is a subject of consideration in this report (para 22).

“11. In addition to the NPPF, the partial revocation of the South East Plan is a further change to the context within which the MD has been prepared. The development plan now consists of the local plans produced by each LPA. Reg 8(4) of the Town and Country Planning (Local Planning) (England) Regulations 2012 requires a local plan to be consistent with the adopted development plan which, in this instance, includes the adopted Wokingham Core Strategy. Although there is provision for policies in adopted plans to be superseded under reg 8(5), in this instance, the CS provides a spatial vision for the Borough within which the MDD has been developed to provide an important part of the means for implementing the provisions of the CS. For this reason consistency with the CS is an important consideration. No convincing evidence has been submitted to show that the strategy is fundamentally flawed and, as a consequence, there is no need for this Examination to re-visit the basis for the spatial vision or the principle of concentrating development in four Strategic Development Locations, which have been examined, found sound and adopted.”

37. The inspector then identified four main issues upon which he considered that the soundness of the MDD depended. The first relates to the housing requirement for Wokingham and the issue, and his conclusions, are expressed in the following terms:

“Issue 1 – Whether the MDD has a clear strategy for allocating adequate and appropriate land for development purposes, including meeting the full, objectively assessed housing needs and ensuring a supply of specific deliverable sites sufficient to provide five years worth of housing.

Housing requirement

“13. The council has used the housing numbers in the CS for the purposes of calculating the requirement. This is appropriate since the CS has been relatively recently adopted. The numbers comprise the requirement from the South East Plan (SEP), together with a shortfall against the former Berkshire Structure Plan, totalling 13,232 dwellings, equating to just over 660 dpa for the Plan period.

“14. The Council has been criticised for the absence of an up-to-date Strategic Housing Market Assessment (SHMA) on which to base its housing requirement. The existing SHMA for Berkshire dates from 2007 [WBC/28]. However, it did not offer conclusions on the overall requirement for housing within Berkshire, indicating that this would be set by the SEP. As the CS is based on the SEP requirement, and was adopted 2010, it clearly provides the most recent assessment of the overall requirement.

“15. No other credible basis for calculating an alternative overall level of housing need has been suggested. The 2008 based national projections, indicating an annual increase of 955 households per annum for the period 2006-2026 [WBC/11, Table 2] suggests a serious under-estimation of the housing requirement. However, the

national projections vary from a potential requirement. However, the national projections vary from a potential requirement of 242 dpa (2003) to 733 dpa (interim 2011). This suggests that reliance on a single projection would be unwise. Recent performance of around 330 dwellings completed per annum shows that even if the requirement were to be based on a higher estimate, it is unlikely that this could be achieved, in the short term at least. For these reasons and in this particular local context it is appropriate to continue to rely on the CS numbers.”

38. The second issue concerned the supply of housing land supply. In view of the criticisms made of this aspect of the inspector’s reasoning it is necessary to set out the following paragraphs of his report:

“16. Two significant appeal decisions, relating to land at Shinfield and at Kentwood Farm, with inquiries held respectively in October & November 2011, concluded that the Council could not demonstrate a 5-year deliverable housing land supply. In the case of the second appeal, a letter dated 17 May 2012 confirmed that, as at 1 April 2012, the Council still did not have a 5-year deliverable housing land supply. Representations to the Examination maintain that this is still the case.

“17. Despite the Council’s assertions, there can be no doubt that there has been underperformance in housing delivery over the past 6 years: Appendix 3 to WBC/11 shows the average figure is 329 dpa compared to the 662 dpa required to meet the overall housing requirement. This is clear evidence that, in accordance with para 47 of the NPPF, there should be a buffer of 20% moved forward from later in the plan period.

“18. Evidence provided suggests the annual requirement for assessing a 5-year supply is around 990 dpa (2013-2018) or just over 1,000 dpa if the period 2014-2019 is considered. Against this, the assessment shows sites for around 6,000 in the former case and well over 6,500 in the latter, each equating to around 6-years supply, and so providing a 20% buffer.

“19. The Council has argued that its performance mirrors that of the sub-region, region and country as a whole, reflecting the economic recession and the impact of wider issues such as mortgage availability, that may well be the case, but it is also clear that the Council’s strategy of concentrating in a limited number of Strategic Development Locations (SDLs) carries with it the risk of under-delivery in the short term. On the other hand the allocation of more sites outside the SDLs risks undermining the overall strategy, potentially leading to further shortfalls in delivery from the SDLs over time.

“20. Raising the annual rate of housing delivery from the 401 achieved in 2012-2013 to the 990 annual rate anticipated for the 5-year period 2013-2018, or the 1,000 annual rate anticipated from 2014 would present a substantial challenge to all parties. Against this, the risk of harm to the overall strategy through the allocation of more sites outside the SDLs, to provide flexibility in terms of delivery,

significantly outweighs any potential benefit. Accordingly, I conclude that, in all the relevant local circumstances, the MDD is not unsound in this respect.”

And

“84. As already indicated, it has not been my intention that this Examination should seek to re-visit the basis for the spatial vision or the principle of concentrating development in four Strategic Development Locations. In this context I have concluded that the MDD is generally sound in respect of the amount of land allocated for housing purposes, and the individual sites included in policies SAL01 – SAL03. It follows that there is no need or reason to recommend further allocations and for this reason I conclude that the MDD is sound in this respect. It is also the case that none of the omission sites proposed by representors offer clear benefits over those included in the MDD, either in terms of location, sustainability or deliverability.”

39. The inspector’s overall conclusion was that the MDD had deficiencies and he could not recommend it for adoption. However, the inspector recommended main modifications which, if accepted would, make the MDD sound. He therefore concluded that, if those modifications were accepted, the MDD would meet the requirements of section 20(5) of the 2004 Act and the criteria for soundness.

40. The Defendant did make those main modifications. It also made certain other minor modifications. One was to replace paragraph 4.5 in the site allocation section of the MDD. The original text read:

“4.5 The Council considers that the housing target within the adopted Core Strategy is consistent with the advice in the National Planning Framework (“NPPF”).”

41. The text in the MDD as adopted reads:

“4.5 The Inspector who examined the MDD concluded (in paragraph 15 of his report) that the Core Strategy’s housing target provides a robust basis upon which the MDD can rely.”

42. The Defendant resolved to adopt the MDD on 21 February 2014.

THE ISSUES

43. Against that background, and in the light of the claim form, the skeleton arguments and oral submissions, the following issues arise:

(1) did the inspector consider what the objectively assessed need for housing in Wokingham was, or did he simply consider whether the MDD was sound in so far as it dealt with the allocation of the number of houses proposed in the Core Strategy?

(2) could the inspector consider the soundness of the MDD without considering what was the objectively assessed need for housing, determined in

accordance with paragraph 47, and using the process envisaged by paragraphs 158, 159 and 182, of the Framework?

- (3) if the inspector was purporting to depart from the Framework, did he give proper, adequate and intelligible reasons for doing so?;
- (4) did the inspector fail to determine whether or not there was a five year supply of housing land available, or, if he did determine that issue, did he give adequate reasons for his conclusion?
- (5) should the Claimant be given permission to amend the claim to allege that the Defendant's failure to adopt the MDD with the modifications proposed by them in response to the inspector's letter of 20 October 2013?

THE FIRST ISSUE – THE INSPECTOR'S APPROACH

44. In my judgment, the inspector approached the examination on the basis that he was considering that the MDD was dealing with the allocation of sites for the amount of housing proposed in the Core Strategy, that is the figure of at least 13,230 houses over the 20 years of the development plan period. He did not determine that that figure represented the objectively assessed need for housing in Wokingham in the development plan period. In other words, the inspector was considering whether the MDD was sound in the sense of whether the policies for the allocation of sites for the number of dwellings referred to in the Core Strategy were sound. He did not determine whether the number of houses to be provided under the Core Strategy would be sufficient to ensure the objectively assessed need for housing during the relevant period.
45. I reach that conclusion for the following reasons. First, the MDD which was before the inspector itself indicates that its purpose was to take forward the Core Strategy and allocate sites in accordance with it, as appears from paragraph 1.10 of the MDD set out at paragraph 28 above. There is nothing to indicate that the intention of the MDD was to review the figure for housing in the Core Strategy.
46. Secondly, the inspector's report, read as a whole, confirms that he did not consider that he was, or was in a position, to consider whether the Core Strategy housing figure now represented what was objectively assessed as necessary to meet the housing needs of the Borough. In paragraph 11 of his report, the inspector indicates that his assessment of soundness involved considering whether there was any need to reconsider the spatial vision in the Core Strategy or the principle of locating development in the four strategic development locations. He considered that there was no such need. Those matters all relate to the location of housing – not the different question of what amount of housing is needed. There is nothing in the preamble, therefore, to indicate that the inspector was considering whether the Core Strategy housing figure continued to represent the objectively assessed need for housing.
47. Thirdly, paragraphs 13 to 15 of the inspector's report also confirm that he was not seeking to determine that issue. His report is carefully drafted. He indicated that the Defendant was using the Core Strategy figure to determine its housing requirement. He notes criticisms based on the absence of an up-to-date strategic housing market assessment (of the sort envisaged in paragraph 159 of the Framework). He notes the

Core Strategy figures, adopted in 2010, were the most recent assessment of housing figures. He then noted that there was no other better or credible basis for calculating the level of housing need. He was aware that housing projections from 2008 suggested that the Core Strategy figure may be a serious under-estimate of the needs for housing (although he was also alive to the risk of relying on a single projection, given the variation that could be seen in the projections over time). The inspector concluded that for “these reasons” – that is, the absence of any better, credible figure, and in this particular local context - “it was appropriate to continue to rely on” the number of dwellings identified in the Core Strategy.

48. Fourthly, an objective assessment of housing needs would generally require a strategic housing market assessment. That would address the sort of issues referred to in paragraph 159 of the Framework, including household and population projections and needs for different types of housing. The inspector was aware that there was no up to date assessment of this nature available in relation to the housing needs of the borough. That again, supports the conclusion that the inspector was not purporting to determine that the Core Strategy figure adopted in 2010, and based on figures produced in 2006, were an objective assessment of the current need of the sort contemplated by paragraph 47 of the Framework.
49. Furthermore, that interpretation of the inspector’s report is reinforced by the exchanges between the inspector and the Defendant. The evidence produced generally appeared to indicate that the figure of 13,230 dwellings over the plan period, or 660 houses per annum, might well not reflect the current need for housing in the borough. The indications are, generally, that that is likely to be an under-estimate of the amount of housing necessary. The inspector noted that he was concerned that there was “no comprehensive evidence in the form of an up to date [strategic housing market assessment] to support the overall housing requirement”. He noted that Core Strategy figure for the provision of at least 13,230 dwellings between 2006 and 2026 may be an under-estimate.
50. In my judgment, read as a whole, and read in context, it is clear from the inspector’s report that he was not intending to endorse the figures in the Core Strategy as the figures for housing that would reflect an objective assessment of the current need for housing in the borough. Rather, the inspector considered that it was appropriate to consider whether the MDD was sound in its allocation policies for the figure of at least 13,230 new dwellings bearing in mind that that might be an underestimate of the housing needs for the borough.

THE SECOND AND THIRD ISSUES – THE INSPECTOR’S APPROACH TO THE ASSESSMENT OF SOUNDNESS

51. The next issue, encapsulated in the Claimant’s first and second grounds, is whether the inspector could lawfully proceed to assess the MDD without there being an objective assessment of housing needs of the sort envisaged by paragraph 47 of the Framework?
52. Mr Tucker Q.C., on behalf of the Claimant, submitted that it was implicit in the Framework that assessing the soundness of a development plan document, such as an MDD, which dealt with the allocation of housing across the district, required consideration of the objectively assessed need for housing. He submitted that that was

what the Framework envisaged. The objective recognised in paragraph 47 of the Framework was to boost significantly the supply of housing and that the local planning authority should use their evidence base to ensure that the local plan (that is the development plan documents) did meet the full, objectively assessed need. The means of doing that was set out in paragraphs 158 and 159 which required authorities to have a clear understanding of housing needs in their area, based on adequate, up to-date and relevant information and, to that end, to prepare a strategic housing market assessment.

53. Furthermore, Mr Tucker relied upon paragraph 182 of the Framework which is expressly addressed to examination of development plan documents such as the MDD. That set out guidance on what constituted a “sound” local plan. That required that local plans be positively prepared in that they should be based on a strategy which seeks to meet objectively assessed development needs. The local plan should be based on proportionate evidence. Further, the local plan, to be sound, should be consistent with national policy, that is, the local plan should deliver sustainable development in accordance with the policies in the Framework
54. All those factors, submitted Mr Tucker, indicated that assessment of the soundness of a development plan document dealing with the allocation of sites for housing necessarily involved forming a view on whether that document would deliver sufficient sites to meet the objectively assessed need for housing. If the MDD were based on a Core Strategy, and that Core Strategy was out of date and did not provide for sufficient housing development, the MDD itself would not therefore be sound.
55. Mr Tucker submitted that that approach was consistent with the legislation. Section 19(2) of the 2004 Act required the inspector to have regard to national guidance, such as the Framework, and other development plan documents, such as the Core Strategy. It was permissible for one development plan document, such as an MDD, to supersede an earlier development plan document such as a Core Strategy. That was implicit in section 38(5) of the 2004 Act and regulation 8(5) of the Town and Country Planning (Local Planning) (England) Regulations 2012 which provide that if one development plan document is to supersede an earlier one, it must say so.
56. Mr Tucker realistically recognised that as, the Framework was guidance and not a statute, it would be open to an inspector to depart from the guidance but an inspector would need to have, and to articulate, good, adequate and intelligible reasons for doing so. The inspector here, he submitted, failed to have regard to the Framework, rather than deciding consciously to depart from it and failed to give good reasons for doing so.
57. Finally, Mr Tucker drew attention to the decision of Hickinbottom J. in *Gallagher Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin). Hickinbottom J. chartered the changes in relating to housing policy represented by the Framework and explained the significance of having an objective assessment of housing need based upon a strategic housing market assessment, or equivalent data. Hickinbottom J. considered that an inspector conducting an examination into the soundness of a development plan document which determined the housing provision for the area needed to address the issue of what were the objectively assessed needs. Hickinbottom J. held that the inspector had approached

the issue unlawfully by failing to do so. Mr Tucker submitted that the same conclusion applied here.

Discussion

58. In my judgment, the starting point is an analysis of the scope of this particular development plan document, that is the MDD. That deals with policies for the allocation of a certain quantity of housing, i.e. a figure of “at least 13,320” over 20 years. That amount of housing provision will be required, as a minimum, as a contribution to meeting the housing needs for Wokingham. As the inspector recognised, that might well prove to be an under-estimate of the amount of housing that will be required. The MDD will provide a set of policies for allocating sites for the provision of 13,320 dwellings (although more houses, and possibly other sites, may be required).
59. On analysis, therefore, the issue is whether the inspector could assess the soundness of a development plan document dealing with the allocation of the provision of at least 13,320 dwellings which would be required without also having an objective assessment of what further additional housing provision might be required in due course.
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 updating, 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 of 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.
70. If that conclusion were wrong, Mr Tucker accepts that the Framework is guidance only, and an inspector could depart from it for good reasons. In the present case, the context in which the MDD came to be prepared and examined is one where the Defendant had a figure for housing requirement and this MDD would deal with allocating sites for that amount of housing. The preparation of the MDD was, as the Defendant submitted to the inspector in its comments in May 2013, well advanced before publication of the Framework and the Defendant wanted to ensure that there was an up-to-date development plan document dealing with these matters. The inspector did not, I accept, expressly indicate whether he considered he was not required by the Framework to consider objectively assessed housing needs before he could consider the soundness of the MDD or whether he was departing from that guidance. Reading paragraphs 13 to 15 of his report, however, it is clear, in my judgment, that the inspector was aware of the possibility that the figures in the Core Strategy might underestimate the need for housing but considered that there were no other better or credible basis for calculating an alternative figure for housing requirements. As the inspector made clear in the last sentence of paragraph 15, in those circumstances, and in this particular local context (where at least 13,230 dwellings were needed and the MDD would at least allocate sites for those), he considered it appropriate to rely on the number in the Core Strategy. Read as a whole, that is a sufficient indication of the reasons why he considered it appropriate to proceed. If, contrary to the interpretation that I consider to be correct, the Framework would have required him to have an objective assessment of need, his report gives a sufficiently clear explanation of why the inspector did not consider that one should be required in the present case and would explain the departure from the Framework.
71. For those reasons, the inspector did not err in his approach to the examination of the soundness of the plan. He was not obliged to consider whether there was an objective

assessment of need for housing before considering the examination of the MDD to determine whether the allocation of sites was sound. Provided that the inspector's approach is lawful and his conclusion is rational, the assessment of soundness is, of course, a matter of planning judgment for the inspector: see *Barratt Developments plc v Wakefield Metropolitan District Council* [2010] EWCA Civ. 897 at paragraph 33.

72. For completeness, I note that even if I had found that the inspector had erred in law, I would not, as a matter of discretion, have quashed the MDD. In the course of submissions, Mr Tucker frankly and realistically accepted that he was not seeking to quash the MDD as he recognised that the Claimant did not object to the allocation of sites made by that MDD. Rather, the Claimant's concerns was that the process of the examination should, as they saw it, be properly carried out as they believed that any objective assessment of need would recognise that additional housing was required.

THE FOURTH ISSUE – HOUSING LAND SUPPLY

73. Mr Tucker submits that one of the principal issues at the examination was whether the proposed allocations would provide a five-year supply of land. He submits that the inspector either did not decide this issue or, if he did, gave no adequate intelligible reasons for his conclusion on that issue.
74. In my judgment, reading the report as a whole, and in particular paragraphs 16 to 21 and 84, the inspector did resolve this issue. He concluded that the MDD was sound, having regard to the amount of land allocated generally for housing purposes, and the specific sites allocated in policies SAL01 to SAL03. There was no need for any further allocations of land and none of the other proposed sites were better than those allocated by the MDD. It is clear that the inspector did resolve the issue of housing land supply and gave reasons for his conclusion: the MDD allocated the right amount of land, in the most appropriate sites, for the provision with which it was dealing.

THE FIFTH ISSUE – THE ADDITIONAL GROUND

75. The Claimant seeks permission to amend the claim form to allege that the Defendant erred in law in that it gave assurances to the inspector as to changes it would make to the MDD but then adopted it without making those changes. The alleged changes were included in the Defendant's response to the inspector's letter of 20 October 2013.
76. In my judgment, permission to amend should be refused. First, the alleged ground demonstrates no arguable ground of error on the part of the Defendant. It was invited by the inspector to comment on certain issues. It did so. As is clear from the accompany covering letter, and the text provided, the Defendant was providing a response to the inspector's queries and it did so by way of showing possible changes to the text of the MDD which would address any queries. The Defendant was not giving assurances that it would make any changes. The inspector, having received the comments, could have decided that the MDD would not be sound unless the proposed modifications were made. He did not do so. There is no arguable error on the part of the Defendant in not incorporating its responses to the inspector into the adopted version of the MDD. Secondly, the correspondence was made publicly available in November 2103. The adoption report published by the Defendant in February 2014 made it clear that there were background documents, including correspondence,

available on the Defendant's website. The Claimant did not indicate that it would seek any amendment until it provided its skeleton argument dated 10 June 2014. No adequate explanation is given for the fact that the Claimant did not investigate this issue earlier and apply to amend earlier. Given that the proposed amendment discloses no arguable ground and was raised extremely late without any adequate explanation, permission to amend is refused.

CONCLUSION

77. The inspector approached the examination on the basis that he was considering that the MDD was dealing with the allocation of sites for the amount of housing proposed in the Core Strategy, that is the figure of at least 13,230 dwellings over the 20 years of the development plan period. He did not determine that that figure represented the objectively assessed need for housing in Wokingham in the development plan period. That was a lawful approach as the inspector was not required when examining a development plan document dealing with the allocation of sites to consider whether an objective assessment of housing need would disclose a need for additional housing. The inspector did decide that the MDD identified sufficient supply of housing land in the appropriate locations and gave adequate, intelligible reasons for that conclusion. The MDD was, therefore, lawfully adopted. This application is dismissed.