

N208PC

Planning Statutory Review
Part 8 Claim Form (CPR8.1(6) and
Practice Direction 8C)

In the High Court of Justice
Planning Court in the Administrative Court

<i>For Court use only</i>	
Planning Court Reference No.	CG/2919/2017
Date filed	20/06/2017



SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name(s) and address(es)

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address
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Hungerford RG17 0JG

Telephone no. _____ **Fax no.** _____

E-mail address

Claimant(s) or claimant(s) legal representative(s) address to which documents should be sent.

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1st Defendant

name
West Berkshire Council

Defendant(s) or (where known) Defendant(s) legal representative(s) address to which documents should be sent.

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2nd Defendant

name

Defendant(s) or (where known) Defendant(s) legal representative(s) address to which documents should be sent.

name

address

Telephone no. _____ **Fax no.** _____

E-mail address

SECTION 2 Details of other interested parties as set out in paragraph 4 of PD 8C

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name Secretary of State for Communities and Local Government	name
address c/o Government Legal Department One Kemble Street London WC2B 4TS	address
Telephone no. 020 7210 3000	Telephone no.
Fax no.	Fax no.
E-mail address thetreasurysolicitor@governmentlegal.gov.uk	E-mail address

SECTION 3 Details of the decision to be statutorily reviewed

Decision:
The Council's decision to adopt policy HSA18 of the West Berkshire Housing Site Allocations DPD 2006-2026.

This claim for statutory review is being made under the following section as set out in CPR PD 8C 1.1:-

- section 287 of the Town and Country Planning Act 1990
- section 288 of the Town and Country Planning Act 1990
- section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990
- section 22 of the Planning (Hazardous Substances) Act 1990
- section 113 of the Planning and Compulsory Purchase Act 2004

other, please state

Date of decision:
9 May 2017

Name and address of the authority, tribunal or minister of the Crown who made the decision to be reviewed.

name West Berkshire Council	address Council Offices Market Street Newbury West Berkshire RG14 5LD
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SECTION 4 Permission to proceed with a claim for a planning statutory review

I am seeking permission to proceed with my claim for a planning statutory review.

Are you making any other applications? If Yes, complete Section 8. Yes No

Is the claimant in receipt of a Civil Legal Aid Certificate? Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Section 8. Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below. Yes No

Does the claim include any issues arising from the Human Rights Act 1998? Yes No
If Yes, state the articles which you contend have been breached in the box below.

SECTION 5 Detailed statement of grounds

set out below attached

SECTION 6 Aarhus Convention Claim

If you have indicated that the claim is an Aarhus claim set out the grounds below, including (if relevant) reasons why you want to vary the limit on costs recoverable from a party.

This is a statutory review of a DPD which falls within Art 9(2) of the Aarhus convention. Further, the DPD under challenge is subject to the Strategic Environmental Assessment (EIA equivalent for plan documents). In addition the matter relates to an allocation of housing development in an Area of Outstanding Natural Beauty so engages wider issues of national public interest and so the Cornerhouse public interest costs limitation rules are engaged. For a full statement of reasons for granting a PCO see supporting witness statement from the Claimant and the solicitor.

SECTION 7 Details of remedy (including any interim remedy) being sought

set out below attached

1. Order quashing the decision at Section 3 above;
2. Costs

SECTION 8 Other applications

set out below attached

I wish to make an application for:-

SECTION 9 Statement of facts relied on

set out below attached

SECTION 10 Supporting documents

If you intend to use a document to support your claim but do not presently have that document, identify it, give the date when you expect it to be available and give reasons why it is not presently available in the box below.

Please also tick the following boxes in relation to the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Detailed statement of grounds | <input type="checkbox"/> set out in Section 5 | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> set out in Section 8 | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> set out in Section 9 | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Written evidence in support of the claim | | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Where the claim for a planning statutory review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | <input type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> A copy of the legal aid or Civil Legal Aid Certificate <i>(if legally represented)</i> | | <input type="checkbox"/> attached |
| <input type="checkbox"/> Copies of any relevant statutory material | | <input type="checkbox"/> attached |
| <input type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Claimant and solicitor's PCO supporting witness statements:

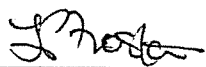
Due to late instructions to proceed one day before the last day to lodge (on 19/6/17) we have not been in a position to complete work on the PCO supporting witness statements - these witness statements will be lodged within 5 working days, i.e by 27/6/17.

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name Lisa Foster

Name of claimant's legal representative's firm Richard Buxton Environmental & Public Law

Signed 

Position or office held Partner

Claimant ('s legal representative)

(if signing on behalf of firm or company)

STATEMENT OF FACTS AND GROUNDS

Introduction

1. The Claimant, Hungerford Town Council (“the Town Council”) applies under section 113 of the Planning and Compulsory Purchase Act 2004 to quash policy HSA18 of the West Berkshire Housing Site Allocations DPD 2006-2026 (“the DPD”).
2. The DPD is not within the appropriate power and/or a procedural requirement has not been complied with.
3. The Town Council contends that the Inspector examining the DPD unlawfully concluded that policy HSA18 was (i) consistent with the West Berkshire Core Strategy (“the Core Strategy”) and (ii) was sound. He also (iii) failed to give adequate reasons for his conclusion that the policy was sound.
4. Part 8 of the Civil Procedure Rules applies to this application. It is a Planning Court case.¹

Background

Parties

5. The Town Council was a consultee during the preparation of the DPD by the Second Defendant (“the Council”). An Inspector appointed by the First Defendant examined the draft DPD and recommended its adoption subject to main modifications.

Legal background

6. The DPD is a development plan document prepared pursuant to the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”).
7. Under the 2004 Act, the authority must prepare a local development scheme which specifies the “local development documents” which are to be “development plan documents”.²

¹ Reference is made below to a bundle of documents to accompany the claim. References are to: Bundle/[page]/[paragraph](where applicable).

² Section 15(2)-(3).

“Local development documents” must, taken as a whole, set out the authority’s policies relating to the development and use of land in their area.³

8. The Town and Country Planning (Local Planning)(England) Regulations 2012 (“the 2012 Regulations”)⁴ provide for some local development documents, known as “local plans,” to be “development plan documents”.⁵ “Local plans” include any document prepared by an authority which contains statements regarding “the development and use of land which the local planning authority wish to encourage during any specified period” and “the allocation of sites for a particular type of development or use”.⁶
9. By section 19(2) of the 2004 Act, when preparing a development plan document, authorities must have regard to matters including national policies and advice contained in guidance issued by the Secretary of State, and any other local development document which has been adopted by the authority.⁷ By section 19(5), they must carry out an appraisal of the sustainability of the proposals and prepare a report of its findings.⁸
10. By regulation 8 of the 2012 Regulations, a “the policies contained in a local plan must be consistent with the adopted development plan”.⁹
11. A local planning authority must submit every development plan document, when it believes it is ready, to the Secretary of State for independent examination. The examination is carried out by an Inspector appointed by the Secretary of State.¹⁰ Section 20(5) provides that 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..., regulations...relating to the preparation of development plan document; (b) whether it is sound ...”
12. There is no statutory definition of “sound”, but paragraph 182 of the National Planning Policy Framework (“Framework”) advises 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:

³ The significance of the distinction is that development plan documents form part of the “development plan” and “if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”: 2004 Act, section 38(6).

⁴ Pursuant to section 17(7) of the 2004 Act.

⁵ See regulations 2(1), 5(1)(a) and 6, referring to section 17(7) of the 2004 Act; see too section 17(3).

⁶ Regulation 5(1)(a).

⁷ 2004 Act, section 19(2)(a).

⁸ Section 19(5).

⁹ This is subject to regulation 8(5) which provides that where a local plan contains a policy that is intended to supercede another policy in the adopted development plan, it must state that fact and identify the superceded policy.

¹⁰ Sections 20(1)-(2), (4).

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

13. Where the person appointed to carry out the examination considers¹¹ that the above requirements of section 20(5) are met, he must recommend adoption and give reasons for the recommendation.¹² If this is not the case, he must make such recommendations that would make it satisfy those requirements, if asked to do so by the authority.¹³

14. With the exception of modifications that do not materially affect its policies, the plan cannot be adopted otherwise than in accordance with the recommendations of the Inspector.¹⁴

The DPD and policy HSA18

15. The DPD was prepared following the adoption of the West Berkshire Core Strategy in July 2012 (“the Core Strategy”) and its role is to “implement the framework set by the Core Strategy by allocating non-strategic housing sites across the District in accordance with the spatial strategy of the Core Strategy” [**Bundle/271**]. The Core Strategy is also a local plan and development plan document forming part of the statutory development plan.¹⁵

16. The draft DPD was submitted to the First Defendant for examination on 6th April 2016. Examination hearings took place in June and July 2016. In September 2016, the Council published additional work, on which the Town Council and other consultees were able to

¹¹ After taking into account representations made by any person on the submission version of the plan: 2012 Regulations, regulation 23.

¹² Section 20(7).

¹³ Section 20(7C).

¹⁴ See section 23.

¹⁵ The development plan for the West Berkshire administrative area also includes some policies from the West Berkshire District Local Plan 1991-2006 (Saved Policies 2007) and the Replacement Minerals Local Plan for Berkshire (adopted 1997) and the Waste Local Plan for Berkshire (adopted 1998). These are not material for present purposes.

comment, and asked the Inspector to recommend main modifications to the DPD. Preliminary findings of the Inspector were issued on 17th October 2016, after which main modifications were consulted upon between 12th December and 30th January 2017. The final report of the Inspector was published on 6th April 2017, in which policy HSA18 was supported **[Bundle/240]**. This report is considered further below. The Council adopted the DPD on 9th May 2017.

17. Policy HSA18 of the DPD allocates land east of Salisbury Road, Hungerford for the provision of “approximately 100 dwellings” (“the site”) **[Bundle/277]**. The site has a developable area of around 5.7 hectares and lies on open land adjacent to the southern edge of the existing settlement, in the North Wessex Downs Area of Outstanding Beauty (“AONB”). The AONB also includes the settlement and covers almost three quarters of the district.

Core Strategy

18. The Core Strategy includes a spatial strategy which is contained with “Area Delivery Policy 1”. This provides that development will “comply with the spatial strategy set out in the Area Delivery Plan policies of this document based on the four spatial areas. Provision will be made for at least 10,500 net additional dwellings and associated infrastructure over the period 2006-26” **[Bundle/205]**.
19. The four spatial areas are identified as (i) Newbury and Thatcham, (ii) the Eastern Area, (iii) the AONB and (iv) the East Kennet Valley **[Bundle/205-208]**. Area Delivery Policies 2, 3, 4 and 6 for provide Newbury, Thatcham, the Eastern Area and the East Kennet Valley to accommodate “approximately” 5400, 900, 1400 and 800 new homes respectively (totalling 8500) over the plan period [Bundle/3/internal pages 25, 28, 32 and 40].
20. Area Delivery Policy 5, relating to the AONB, states as follows:

“Housing

- The North Wessex Downs AONB will have appropriate and sustainable growth that conserves and enhances its special landscape qualities. During the Core Strategy period provision will be made for the delivery of up to 2,000 dwellings, of which over half have already been built or have planning permission. Provision of this scale of housing is subject to the overarching objective for the AONB set out at the beginning of this policy. If preparation of the Site Allocations and Delivery DPD indicates that there are insufficient developable sites to provide the balance of the 2,000 dwellings whilst adhering to the

landscape priority of the policy, any shortfall will be provided on sites allocated outside the AONB.

- There will be further opportunities for infill development and for development on previously developed land. New housing allocations will be focused on the rural service centres and service villages within the North Wessex Downs, with the emphasis on meeting identified local needs. The development will be allocated through the Site Allocations and Delivery DPD or a subsequent planning document, and will depend on the role and function that the settlement performs, supported by suitable development opportunities, identified through the SHLAA. The conservation and enhancement of the natural beauty of the landscape will be the paramount consideration in assessing these sites.
- The SHLAA has assessed the future development opportunities in the AONB. Landscape sensitivity work has been a critical part of the assessment, given the ‘great weight’ to be given to the conservation of the natural beauty of the landscape and countryside within the AONB. The outcome of this work has shown a ‘basket’ of potentially developable sites from which to select at the Site Allocations stage.
- Within the North Wessex Downs AONB there are three rural service centres; Hungerford and Lambourn in the west of the District and Pangbourne in the east. In the western part of the AONB, development will be focused in Hungerford as the more sustainable rural service centre. Hungerford is considerably larger than Lambourn and performs a more significant function for a large catchment area. Hungerford town centre is defined as one of only two town centres in the District, reflecting the range of goods and services which it provides for the surrounding area. More information is set out below which describes Hungerford’s role, and these factors will be used to inform decisions about the level of growth to be allocated to the town. The capacity for growth on the edge of Hungerford has been assessed” [emphasis added] **[Bundle/214]**.

21. The policy therefore contemplated the potential allocation of up to 2000 homes in the AONB, but this was subject to the “overarching objective” of conserving and enhancing the landscape quality of the AONB, which was the “paramount” consideration. There was no requirement to deliver that amount of housing, or indeed any housing, in the AONB, because any shortfall could be delivered outside the AONB (as is explained later, the DPD sought to allocate a total of 385 dwellings in the AONB). Potentially developable sites had been identified, however the assessment of those sites was to be carried out at the site allocations stage, subject to this paramount consideration.

22. The Inspector who examined the Core Strategy policy confirmed that the inclusion of “up to” was to “make clear that it is not a minimum that has to be achieved and that delivering less is acceptable...There is sufficient capacity in the other spatial areas to make up any shortfall in the AONB” **[Bundle/203]**.

Examination of the DPD

23. The submission draft of the DPD included draft policy HSA19 which was materially identical to adopted policy HSA18.¹⁶
24. The “SHLAA”¹⁷ referred to in the Core Strategy was updated during the preparation of the DPD **[Bundle/322]**. It referred to work on landscape sensitivity **[Bundle/323, 325]** dating from 2011 before identifying deliverable and “potentially developable” sites **[Bundle/326]** which were assessed in different settlements including Hungerford.
25. The Landscape Sensitivity Assessment 2011 included reports for sites lying outside the settlement boundary for Hungerford, including a larger site (HUN007) which incorporated the allocated site **[Bundle/6/internal pages 26-8]**. It concluded that “with the exception of HUN001, HUN003, HUN015 and HUN020 where the impact on the special qualities of the AONB can be avoided by way of careful design and siting and the retention of boundary planting, all of the sites will have an impact to a greater or lesser degree”. It recommended that “any expansion is achieved through a greater number of well landscaped smaller sites...rather than a few larger ones” and “the northern approx. 200m wide part of HUN007 to round off with the school...would be possible, provided [it] included a landscape buffer to the open countryside and careful design in the approach to Hungerford” **[Bundle/320]**.¹⁸
26. The Sustainability Appraisal of the draft DPD, prepared initially in April 2016 and amended in December 2016, explained that SHLAA sites were regarded as potential housing sites, and went on to automatically exclude some on grounds including their location within the settlement boundary, before assessing the remaining sites against identified sustainability criteria and recommending the site for allocation **[Bundle/327-454]**.
27. During the examination, the Inspector issued several notes and requests for additional work. His second note stated that he remained “concerned about the visual consequences for the AONB of development on the [allocated] site and in particular on land to the west of the

¹⁶ The site plan in the adopted version substituted a band of “landscape buffer” for “woodland buffer” in the submission draft, on the southern boundary to the site. It also amended the site area from 5 to 5.7h and stated that the provision of allotments on the site would be explored.

¹⁷ Strategic Housing Land Availability Assessment

¹⁸ A later Landscape Capacity Assessment of July 2014 considered another site to the west of the allocated site which was not in the 2011 assessment but had been included in the SHLAA.

public footpath. Whilst also in the AONB, site HUN001 sits more comfortably within the existing settlement form” **[Bundle/459]**.

28. Replies by the Council stated that the DPD had followed a landscape-led approach which meant that the AONB could make the contribution expected by the Core Strategy. It argued that the recommendations of the landscape assessment work had been taken forward into the site policies **[Bundle/220]**.

29. The Town Council objected to the allocation along with other parties including the AONB Unit, on grounds including the landscape effect of the allocation on the AONB and the availability of preferable sites **[Bundle/463-478]**.

Inspector’s report

30. The Inspector’s report considered the broad approach and housing numbers in the DPD as follows **[Bundle/232-233]**:

“26. I share [West Berkshire] Council’s concerns regarding the need to conserve the landscape and scenic beauty of the AONB and to avoid inappropriate development in areas at risk of flooding. The Council’s approach to these matters is in accordance with national advice.

28. With regard to housing provision in the AONB it is clear that the Inspector who examined the CS concluded that there should be a cap of 2,000 new dwellings in the AONB for the period 2006-2026. In terms of housing numbers the Council’s Note on Housing Development within the AONB (PS/02/16) confirms that in the AONB, as at March 2016, 1,230 dwellings had been completed, 200 units had planning permission, and a further 385 dwellings are allocated – a total of 1,815.

29. The Council has undertaken further sensitivity testing with regard to the windfall allowance and if the trend of the last five years is projected forward, this would lead to a windfall allowance of 193 dwellings (for the period 2016 – 2026). This would give a total of 2,008 dwellings (it should be noted that no allowance has been made for permissions lapsing). Bearing in mind the restrictive policies that apply to the AONB and the diminishing likelihood that major development in the AONB would be in the public interest, then I am satisfied that the Council’s approach to allocating housing in the AONB is justified.

30. On the evidence submitted it can be concluded that there is a need for housing in the AONB (which covers almost 75% of the District); that in terms of sustainability, Hungerford is an appropriate settlement to accommodate much of that need; and that the Council’s landscape-led approach to identifying potential housing sites in the AONB (as summarised in PS/04/05/10) is justified.

31. As already referred to, it is currently estimated by the Council that about 2,008 dwellings will come forward in the AONB, a number that is broadly compatible with the CS figure. Bearing in mind it is currently estimated that the [West Berkshire Local Plan] (which will re-assess housing need and distribution) will be adopted by November 2019, I consider this is a pragmatic and reasonable route to follow because the Council will shortly have the opportunity to reconsider its approach to sustainable development in the AONB in the light of the current housing evidence at that time. I am satisfied that the very small 'overprovision' of housing in the AONB is not of such significance that it threatens the overall soundness of the HSADPD".

22. When considering whether the allocation policies for the AONB were justified, the Inspector reached the following conclusions:

"73. Hungerford sits within the AONB and I have attached great weight to the need to conserve the character and appearance of the AONB and to the fact that major development should be refused unless there are exceptional circumstances and the development can be demonstrated to be in the public interest. To this end I have questioned the Council on a number of occasions with regard to its approach to development in the town and the wider AONB.

74. The framework is provided by the adopted CS and in particular Area Delivery Plan Policy 5. This confirms that there will be appropriate and sustainable growth in the AONB and that new housing allocations will be focussed on the Rural Service Centres (e.g. Hungerford) and Service Villages. The policy makes provision for up to 2,000 dwellings in the AONB (see also paragraphs 28-31). The emphasis will be on meeting local needs and it is clear that it will be the role of this Plan to allocate development depending on the role and function of the settlement and taking into account the Strategic Housing Land Availability Assessment (SHLAA). The policy states that 'development will be focussed in Hungerford as the more sustainable Rural Service Centre'. Hungerford town centre is one of only two defined town centres in the District and I saw that it is a sustainable settlement which enjoys a wide range of facilities and services.

75. The principle of development in Hungerford is therefore established and the issue then becomes whether or not the Council's allocation on land to the east of Salisbury Road is sound and in particular whether or not such development would adequately respect the need to conserve the landscape and scenic beauty of the area".

23. The Inspector dealt specifically with the site as follows:

"76. The allocated site for about 100 dwellings (HSA 19) lies to the south of the town on relatively elevated but predominantly flat land. Access is proposed off Salisbury Road, which is the main entrance to Hungerford from the south. A public footpath runs from north to south across the site and I saw that some significant screening around the site already exists.

77. Although it is not a level route to the town centre, the development would be within a relatively comfortable walking distance for many and the site is very close to the secondary school and leisure facilities. The SHLAA confirms that the potential impact on the appearance of the landscape would be the primary consideration. This factor is also reflected in the Sustainability Appraisal which concludes that the northern part of the site (HUN007) should be allocated and that little harm would be caused to the AONB subject to the implementation of appropriate mitigation measures.

78. I have considered all the evidence regarding the visual implications of developing the site (including the objection to the allocation from the North Wessex Downs AONB team) and I have visited the area on a number of occasions. The Hungerford Landscape Sensitivity Study concludes that the land to the south of the town is of medium sensitivity and I note that there are no areas of low or low to medium sensitivity identified around the settlement. The Landscape Capacity/Sensitivity Assessment confirms that development on the whole site (as identified in the SHLAA for 188 dwellings) would result in significant harm to the AONB but concludes that development on a smaller area (as is currently proposed for 100 dwellings) would be acceptable subject to the implementation of appropriate mitigation measures. Indeed it is suggested that the development may be beneficial in terms of 'softening' the southern edge of the town. The policy includes requirements for a woodland buffer, enhancements to the 'entrance' to Hungerford, the retention of views through the site and the retention of existing tree cover. A full Landscape and Visual Impact Assessment has been prepared on behalf of the developer and this concludes that, with the implementation of appropriate mitigation measures, the development of the site would be acceptable in both landscape and visual terms.

79. The AONB team suggests that the most sensitive part of the site sits adjacent to Salisbury Road and expresses concern regarding the visual impact of the potential roundabout access to the site. I understand those concerns but they are largely matters to be addressed at the planning application stage and the Council would be expected to determine any application in the light of the adopted CS policies, in particular policy CS 19 (Historic Environment and Landscape Character) and CS 14 (Design Principles). With appropriate planting, layout and design there is no reason to conclude that any harm caused would be of such significance to the landscape and scenic beauty of the AONB that it would outweigh the need for Hungerford to accommodate an appropriate level of growth for such a sustainable settlement.

80. It is clear to me that the Council is fully aware of the need to respect the character and appearance of the AONB and bearing in mind the requirements of the adopted CS and the other factors summarised above, the circumstances exist to justify the proposed allocation and it is in the public interest to support efforts to contribute towards meeting the housing needs of the town.

81. I therefore conclude that the allocation and requirements of policy HSA 19 are sound. I am therefore not required to consider alternative sites in Hungerford that

have been proposed, suffice it to say that many of them display similar or worse consequences with regard to the character of the AONB, none of them alone would be able to accommodate a similar number of dwellings and some are further away from key facilities and services. Concerns were expressed regarding the implications of traffic from the site travelling through the town centre to reach the A4 but there was no conclusive evidence to demonstrate that any harm caused would be of such significance to justify an ‘embargo’ on development to the south of the town. I have considered the potential for brownfield sites to make a greater contribution to housing provision but there is insufficient robust evidence to enable me to conclude that such sites could be satisfactorily developed or accommodate an appropriate number of dwellings, bearing in mind the housing need”.

31. The Inspector concluded that the approach to the AONB was consistent with the policies of the Core Strategy and was the most appropriate strategy for the area” **[Bundle/247]**. In his assessment of legal compliance, the Inspector concluded that the DPD “complies with the [2004] Act and the [2012] Regulations” **[Bundle/252]**.

Grounds of challenge

Introduction

32. Section 113(3) of the 2004 Act provides that “a person aggrieved by a relevant document may make an application to the High Court on the ground that (a) the document is not within the appropriate power; (b) a procedural requirement has not been complied with”. By section 113(2) a “relevant document” includes a development plan document.
33. A contention that a document is not within the appropriate power brings into play conventional principles of administrative law: Blyth Valley BC v Persimmon Homes (North East) Ltd [2008] EWCA Civ 861 at [8].

Ground 1: unlawful conclusion on consistency with the Core Strategy

34. The Inspector failed to have regard to Core Strategy policy, properly construed, when deciding whether the site allocation policy was consistent with the adopted development plan; or alternatively reached an irrational conclusion that consistency had been achieved.
35. The following legal propositions apply to this ground:

- a. planning policy is to be interpreted objectively in accordance with the language used, read in its proper context; and that task of interpretation is for the court: Tesco Stores Ltd v. Dundee city Council [2012] UKSC 13 at [18]-[19];
 - b. the question of whether a document satisfies the relationship of consistency involves a question of planning judgment reviewable on Wednesbury principles, although the meaning of “consistent” is a matter for the court: see RWE Npower v. Milton Keynes BC [2013] EWHC 751 (Admin) at [100] and [105], referring to Persimmon Homes (Thames Valley Ltd v. Stevenage BC [2005] EWCA Civ 1365 at [29];
 - c. the question of whether a document is “sound” is also a question of planning judgment, reviewable on Wednesbury grounds: DB Schenker Rail (UK) Ltd v. Leeds City Council [2013] EWHC 2865 (Admin) at [12]; Oxted Residential Ltd v. Tandridge DC [2016] EWCA Civ 414 at [27]
36. Area Delivery Policy 5 was adopted on the basis that “up to” 2000 dwellings could be built in the AONB, “subject to” compliance with the policy objective of conserving or enhancing the AONB, to which “landscape priority” any site allocations had to “adhere”. Conservation of the AONB was to be the “paramount” consideration. The policy did not require any particular level of development to be carried out at any settlement within the AONB where harm to the AONB was caused. It anticipated that further assessment of “potentially developable sites” would take place through the DPD process to consider whether development could take place, but clearly provided for circumstances where it was found that the AONB would not be conserved by potential allocations, by stating that any shortfall would be provided on sites outside the AONB. If a proposed allocation did not conserve the landscape qualities of the AONB, there was nothing in the policy which required or even supported that allocation through policy in the DPD.
37. It is accepted that the Inspector was aware of the policy objective to conserve the AONB and the need for a “landscape-led” approach, but his analysis of the site allocation policy did not recognise that in circumstances where development was not found to conserve the AONB, there was nothing in the associated policy of the Core Strategy which required or justified any allocation to be made. The Core Strategy policy stated that if allocations did not adhere to the priority of conserving the AONB, other sites would instead be found outside the AONB to meet any shortfall (which when the DPD was being examined would have potentially totalled 385 dwellings).
38. In his report, he mentioned the advice in the Framework that great weight should be given to the need to conserve the character and appearance of the AONB and that major

development should be refused unless exceptional circumstances in the public interest can be shown **[Bundle/241]**.¹⁹ He referred to the Core Strategy policy by saying that “new housing allocations will be focussed on the rural service centres (eg Hungerford)” (paragraph 74). He identified as the issue whether the allocation “would adequately respect the need to conserve the landscape and scenic beauty of the area” **[Bundle/241]**.

39. However, after describing the conclusions of the SHLAA, the Sustainability Appraisal and the Landscape Sensitivity Study, he concluded that “there is no reason to conclude that any harm caused would be of such significance to the landscape and scenic beauty of the AONB that it would outweigh the need for Hungerford to accommodate an appropriate level of growth for such a sustainable settlement” **[Bundle/242]**.
40. That balancing exercise did not reflect the approach required by the Core Strategy, which did not provide for a simple weighing exercise of harm to the AONB set against an assessment of a need to accommodate growth in Hungerford. Whilst Hungerford had been identified as suitable location for growth, this was dependent upon a conclusion that the landscape qualities of the AONB would be conserved; and if they were not, then development could be allocated elsewhere. This was not considered by the Inspector when reaching a decision that was based upon this balancing exercise.
41. The Inspector states that the Council was aware of the need to respect the character and appearance of the AONB, but he also refers to what he describes as “the requirements of the adopted Core Strategy,” which involved an erroneous assumption that there was a requirement to provide housing in Hungerford under the policy that caused harm to the AONB.
42. Further, although the Inspector described the findings in the submitted evidence regarding impact on the AONB, his conclusion of “any harm” assumes that harm, of an unidentified degree, would be caused. He does not then consider how that judgment of harm, whatever it might be, is consistent with the policy objective in the Core Strategy of only allocating sites where the objective of conserving landscape quality was achieved. His conclusions suggest that harm, or a failure to conserve, would arise from the allocation, but this is outweighed by a claimed housing “need” which the Core Strategy does not ask to be met in Hungerford where harm is caused.
43. For similar reasons it was irrational for the Inspector to conclude that where an unexplained degree of harm was caused, the site allocation policy was consistent with a Core Strategy policy which only sought allocations “subject to” the requirement of conserving the AONB.

¹⁹ “115. Great weight should be given to conserving landscape and scenic beauty in...Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty...”. See below for paragraph 116.

Ground 2: unlawful approach to soundness

44. The Inspector failed to address the basis of Core Strategy policy when deciding whether the allocation was sound; and he reached an irrational conclusion regarding soundness, in particular when rejecting alternatives to the allocation.

45. The Framework states that one element of “soundness” is whether a plan is “justified” – “the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence” [emphasis added].

46. Another element is “consistency with national policy”, which in the case of major development in the AONB advises that:

“116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of: the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated” [emphasis added].

47. It is submitted that:

- a. although the policy in paragraph 116 refers to “permission being refused” the Inspector correctly took into account its principles when considering whether the allocation was sound;
- b. the above principles of considering alternatives (see the emphasised text) apply to the question of whether site allocations are sound.

48. However, when considering whether “exceptional circumstances” existed to justify the allocation, the Inspector failed to address the basis of the Core Strategy policy, which was that where harm was caused to the AONB, there was no requirement to allocate land for housing. The balancing exercise undertaken by the Inspector balanced a “need” for housing in Hungerford against an unexplained degree of harm, but did not consider whether “exceptional circumstances” justified the allocation in the context of policy which anticipated that any shortfall in meeting housing need in the area could be met outside the AONB. Similarly, when applying the policy in paragraph 116, the Inspector did not take into

account any potential for the development which caused harm to the AONB to be accommodated outside the designated area.

49. It is also submitted that the Inspector was in error in finding that he was “not required to consider alternative sites in Hungerford”, in circumstances where harm to the AONB was found to arise. The Inspector went on nonetheless to consider alternatives, but the error may explain findings which were irrational, for the following reasons.
50. He considered that of the alternatives sites proposed “many” of them would have “similar or worse consequences” for the AONB, “none of them alone” would be able to accommodate a similar number of dwellings and “some” are further away from key facilities and services. On this analysis, some of the alternatives would have better consequences for the AONB than the allocation, and there is no sensible basis why these could not be taken together to assess whether a suitable number of dwellings could be accommodated, particularly if “some” are not further away from facilities and services. A suitable number of dwellings did not have to equate to the level of provision in the allocation, for it appears that the “need” for development was based broadly on what would be an appropriate level of growth given the sustainability of the settlement, rather than any specific evidence of housing needs.
51. The Inspector also appeared to reject alternatives on the ground that there was no conclusive evidence to demonstrate that traffic impacts arising from development on the site “would be of such significance to justify an ‘embargo’ on development to the south of the town”. But when considering alternatives in traffic terms, the assessment required is not whether development of the proposed allocation should be prevented, but where it is most appropriate to locate development on traffic grounds.
52. He also stated that he had considered the potential for brownfield sites to provide for housing, but concluded that there was “insufficient robust evidence” to conclude that such sites “could be satisfactorily developed or accommodate an appropriate number of dwellings, bearing in mind the housing need”. This analysis appears to have applied to brownfield sites considered en bloc, without any assessment of the extent to which any could be developed, with other sites considered by the Inspector, to provide an acceptable level of housing which did not necessarily have to equate to the allocation and did not cause harm to the AONB.

Ground 3: failure to give adequate reasons

53. Further or alternatively, the Inspector failed to give adequate reasons for rejecting alternatives to the allocation when finding that policy HSA18 was sound.

54. The duty to give reasons as set out in South Bucks DC v. Porter (No. 2) [2004] UKHL 33 at [36] applies to the issues of soundness and consistency, albeit that it does not have to be focussed specifically on how he has dealt with participant's individual objections: Cooper Estates Strategic Land Limited v. Royal Tunbridge Wells BC [2017] EWHC 224 (Adkin) at [23] and [28]-[29], referring to University of Bristol v North Somerset Council [2013] EWHC 231 (Admin) at [76]-[77].
55. In circumstances where an assessment of alternatives was to be carried out, the explanation of rejected sites was inadequate. If, as explained above, some sites could have had better consequences for the AONB, it is unclear:
- a. why an aggregation of those sites could not achieve an appropriate level of provision or;
 - b. how any such candidate sites (as opposed to others causing greater harm to the AONB) were considered to be ruled out on the grounds of distance from facilities and services;
 - c. why other sites were dismissed on traffic grounds relative to the allocation site;
 - d. which brownfield sites were being considered - eg those in the SHLAA, or others suggested by objectors including the Town Council [see Bundle/5 and Bundle/12], or;
 - e. what impediments were considered to apply to their development, or;
 - f. the extent to which any of them could be developed, potentially in conjunction with other sites considered by the Inspector, to meet an acceptable level of provision.
56. The findings of the Inspector give rise to a substantial doubt that he appreciated the need to examine alternatives as an element of soundness, in particular to adequately assess the relative merits of different sites on AONB and other grounds.
57. The Town Council is prejudiced by the lack of a clear explanation of why this issue was resolved in favour of the allocation.

Relief

58. The Town Council respectfully asks the Court to grant leave and then to quash policy HSA18, with an order for costs in its favour.