IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
IN AN APPLICATION FOR STATUTORY REVIEW
B E T W E E N:

SAVE GREATER MANCHESTER GREEN BELT LIMITED

Claimant

- and -

(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES
(2) GREATER MANCHESTER COMBINED AUTHORITY
(3) BOLTON COUNCIL
(4) BURY COUNCIL
(5) MANCHESTER COUNCIL
(6) OLDHAM COUNCIL
(7) ROCHDALE COUNCIL
(8) SALFORD COUNCIL
(9) TAMESIDE COUNCIL
(10) TRAFFORD COUNCIL
(11) WIGAN COUNCIL

Defendants

AMENDED[1] STATEMENT OF FACTS AND GROUNDS

References: [CB/x]: core bundle page x; [DB/x]: decision bundle page x; [SB/x]: supplementary bundle page x; [IR§z] Inspectors' Report dated 14 February 2024 para x.

Introduction

1. This is a statutory challenge brought under s.113 of the Planning and Compulsory Act 2004 ("**PCPA 2004"**) to the adoption of a joint development plan document ("**DPD**").

2. On 21 March 2024, nine of the ten Greater Manchester districts (i.e. the Third to Eleventh Defendants) adopted *Places for Everyone 2022 to 2039* ("**the Plan**")[**DB/33-593**] as a joint development plan document under s. 23(1) of the PCPA 2004. The effect of the Plan is to permanently release 2,430 hectares of land from the Green Belt, with a net 4.1% reduction in the size of the Green Belt across Greater Manchester. This is despite the Inspectors finding that "*in purely quantitative terms, there is more than sufficient land within the existing urban areas to meet identified housing requirements ... without releasing land from the Green Belt*".[2]

[1] Pursuant to an application filed on 3 May 2024
[2] IR§162 [**DB/632**].

3. The policy requirement of "exceptional circumstances" to justify this Green Belt release was nonetheless considered to be met on the basis of a purported need for a 'flexibility surplus' assessed on a quantitative basis by reference to the percentage of housing supply over the requirement, but which, as is set out further below, is based on errors of law. This matters because Green Belt is a well-established policy constraint designed to prevent development in spatially undesirable places (which can be at the expense of more acceptable, policy compliant, development elsewhere). When undertaken, as here, on an erroneous basis, and on a huge scale, permanent Green Belt release has potentially serious, long-term and wide-ranging consequences across a very wide area.

4. Notwithstanding the very significant changes to the political and economic conditions since the Plan was first conceived ten years ago, the Councils have maintained an unwavering political commitment to this release of land from the Green Belt. The Plan has continued to be pushed through with no substantial reconsideration at any point despite one council, Stockport, withdrawing from the process in 2020 because of the release of Green Belt land, and despite a fundamental shift in the economic forecasts wrought by the government's cancellation of the leg of HS2 to Manchester (a matter on which the Inspectors expressly refused to consider representations).

5. Save Greater Manchester Green Belt Limited ("**SGMGB**") argues that the large release of Green Belt land results from some fundamental errors of law, the effect of which is to leave a Plan which, despite the very significant work which has gone into its preparation, is based on assessments which do not accord with policy or the current factual reality, and which require re-thinking. As the Plan is the largest outside London, it appears those promoting it may have considered it "too big to fail" and consequently and unfortunately the important procedures which should have led to such re-thinking have been ignored.

6. Although the Claimant obviously has a very large number of concerns about the political and planning judgements which have been reached in adopting the Plan (including particularly in relation to carbon emissions, ecology, air pollution, site selection and environmental assessment), the Claimant recognises that the Court is concerned only with errors of law and has therefore focused squarely on those issues in its claim and has rejected other potential grounds which, on balance, only

marginally touch on potential errors of law. The claim is therefore brought on the following grounds:

(a) Ground 1: failure to consult on main modifications proposed following the cancellation of the West Midlands to Manchester leg of HS2

(b) Ground 2: error of law in interpretation of policy justifying Green Belt release in policy JPA3.2 Timperley Wedge

(c) Ground 3: legal errors in the assessment of whether exceptional circumstances exist to justify release of Green Belt land to meet housing land requirements

(d) Ground 4: error of law in approach to withdrawal of Stockport

(e) Ground 5: Green Belt additions – unlawful restriction on scope of exceptional circumstances

Case management: significant Planning Court claim; rolled-up hearing

7. It is submitted this claim should be categorised as "significant" pursuant to PD 54D para 3.1 in that it (a) relates to commercial, residential and other developments which have significant economic impact both at a local level and beyond their immediate locality; (b) it raises important points of law as to (at least) consultation on Main Modifications and the interpretation of the statutory provisions governing the effect of a local planning authority withdrawing from a joint DPD; (c) the claim is already generating significant public and media interest across Greater Manchester and the country more widely; and (d) the volume and nature of the technical material before the Court means it is best dealt with by a Judge with significant experience of handling such matters. In light of this it is respectfully suggested it should be heard on an expedited basis, well within the target timescales in PD54D para 3.4.

8. Although every effort has been undertaken to reduce the size of the bundles, given the scale of the Plan this claim inevitably requires the consideration of a very large volume of material. It is estimated at least one day's pre-reading will be needed before a decision on permission could be taken. In these circumstances, it is suggested that the overriding objective would be best supported through a rolled-up hearing to prevent unnecessary duplication of judicial resources. It would also support the need for expedition.

Factual background[3]

The parties

9. The Claimant is a private company and is the incorporated manifestation of a previously unincorporated umbrella group of concerned citizens who have come from over 40 concerned greenspace groups across Greater Manchester to oppose the development of housing on Green Belt land as proposed under the Plan. Around 15 groups, along with SGMGB, submitted several representations to the consultation that was run by the GMCA and were active participants during the examination of the Plan. The members of SGMGB are unpaid volunteers: it has no paid employees [**CB/55**].

10. The First Defendant, the Secretary of State, recommended through his Planning Inspectors for the Plan to be adopted [**DB/782**].

11. The Second Defendant, the Greater Manchester Combined Authority ("**GMCA**") is made up of the ten Greater Manchester councils and the Mayor of Greater Manchester. The GMCA submitted the Plan to the Secretary of State on behalf of the nine local planning authorities.

12. The Third to Eleventh Defendants are the nine of the ten Greater Manchester councils ("**the Councils**") which adopted the Plan. The remaining tenth council is Stockport Metropolitan Borough Council, which was initially involved in the Plan but, as explained below, withdrew in December 2020 [**DB/47**] and is party to this claim.

Origins of the Plan

13. In January 2014, the GMCA agreed to bring forward a spatial framework for the Greater Manchester region, which evolved into a proposal to produce a Greater Manchester Spatial Framework ("**GMSF**") joint development plan document ("**DPD**"). On 29 August 2014 the GMCA and the Association of Greater Manchester Authorities ("**AGMA**") Executive Board (whose functions have now been subsumed into the GMCA) agreed to consult on the initial evidence to inform the GMSF, which ran from 26 September to 7 November 2014.

[3] For ease of reference, some of the relevant factual background to each ground is set out separately under the particular ground below.

14. On 28 November 2014 it was agreed each Council would approve the making of the GMSF and that the AGMA Executive Board would be appointed to prepare it.

15. A second consultation ran between 9 November 2015 and 11 January 2016 on strategic options for the GMSF.

16. The first draft GMSF joint DPD ("**GMSF 2016**") was published for consultation on 31 October 2016 ending 16 January 2017 under regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 ("**2012 Regulations**") [**DB/58**].

17. A revised draft GMSF was consulted on between January and March 2019 ("**GMSF 2019**"), also under regulation 18 [**DB/58**].

Withdrawal of Stockport Metropolitan Borough Council

18. In September 2020, in the light of those consultations, the AGMA Executive Board agreed that the GMSF would be progressed as a joint DPD of the 10 authorities ("**GMSF 2020**") and that this version would be the Publication Plan under regulation 19 of the 2012 Regulations, with consultation to take place between 1 December 2020 and 26 January 2021. On 30 October 2020, the AGMA Executive Board recommended to the 10 local authorities that they move to this process [**SB/28**].

19. However, on 3 December 2020, at a reconvened meeting which started on 17 November 2020, Stockport Metropolitan Borough Council decided not to publish GMSF 2020 for consultation or submit it for examination [**SB/30**], essentially on the basis of the impact of GMSF 2020 on the Green Belt.

20. On 11 December 2020, the AGMA Executive Board asked officers to report back on the implications and process of producing a joint DPD of the nine remaining districts [**SB/28**]. On 12 February 2021, it proposed continuing with this approach in a joint plan now known as "Places for Everyone" ("**PfE 2021**" or the "**Plan**"). Each of the nine districts then resolved to establish the Places for Everyone Joint Committee to continue to prepare the joint Plan [**SB/32-33**].

21. On 20 July 2021, following consideration by officers and on advice from Christopher Katkowski KC ([**SB/75-76**]), the AGMA Executive Board concluded that PfE 2021

had "substantially the same effect" [**SB/54**] on the nine remaining boroughs as the GMSF 2020 and recommended that it proceed to regulation 19 stage [**SB50-51**].

22. PfE 2021 was finally published for consultation under regulation 19 between 9 August 2021 and 3 October 2021, albeit some aspects had been publicly available since 12 July 2021. It proceeded on the basis of the NPPF as updated on 20 July 2021 [**CB/167-178**][4].

23. Work was undertaken to prepare the documents for submission to the Secretary of State.

Examination of the Plan and HS2 cancellation

24. On 14 February 2022, PfE 2021 was formally submitted for examination [**DB/594**]. No changes were made after the reg. 19 consultation.

25. Examination hearings were held between 1 November 2022 and 5 July 2023 [**DB/594**].

26. Following the examination hearings, the GMCA proposed a schedule of proposed main modifications ("**MMs**") which had been recommended by the Inspectors throughout the examination and carried out sustainability appraisal and habitats assessment of them.

27. Consistent with national guidance and with well very-established practice, the MMs were subject to public consultation for eight weeks between 11 October and 6 December 2023 [**DB/599**].

28. On 14 February 2024, the Inspectors published the IR on the examination of PfE 2021, which concluded that, with its recommended MMs (plus further MMs which had *not* been consulted upon – see under Ground (1) below), the PfE would be sound and legally compliant [**DB/782**].

Adoption of the Plan

29. At council meetings held between 28 February and 20 March 2024, the nine local authorities resolved to approve the adoption of PfE 2021 subject to the MMs

[4] This 2021 NPPF is the applicable version of the NPPF for the purposes of the examination and decision to adopt. Revised versions of the NPPF have been published since, the latest in December 2023, but their transitional provisions confirm that the 2021 NPPF remains applicable for the purposes of the examination and adoption of the Plan.

recommended by the Inspectors. The adoption took effect and thus PfE became part of the statutory development plan for each of the nine authorities on 21 March 2024. The largest development plan in the country outside London, it sets the spatial strategy for the region for up to 2039.

Pre-action correspondence

30. On 10 April 2024, the Claimant sent a letter before claim[5] to the Defendants, raising essentially the grounds as submitted in this claim [**CB/110-125**].[6] On 24 April 2024, the GMCA and the Councils responded to the letter [**CB/126-132**].

31. The Secretary of State indicated he would not be able to respond to the pre-action letter within the ordinary timescales and would only be able to do so by 30 April 2024 [**CB/133-134**]. Owing to the strict timing requirements for the making of an application under s. 113 PCPA 2004, the Claimant was not able to wait for the Secretary of State's delayed response before preparing the Claim documents, and the response was only received at 12.40 on 30 April 2024, when the Claim documents were close to finalised [**CB/135-145**]. The Claimant applied to make some minor amendments to ground 1 of its claim in light of the response.

Legal framework and principles

Preparation and adoption of development plan documents

32. Before a DPD is submitted for examination, an LPA must "*have complied with any relevant requirements contained in regulations under this part*": s. 20(2)(a) PCPA 2004 [**CB/146**].

33. The purpose of the examination (by Inspectors appointed by the Secretary of State) is to determine whether, inter alia, it satisfies regulations made under s.36 relating to the preparation of DPDs (s. 20(5)(a)), and whether it is sound (s. 20(5)(b)).

34. The test of "soundness" is not defined in law but the NPPF para 35 provided that a plan is sound if it is:

> "a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs21; and is informed by agreements with other

[5] Although noting no specific pre-action protocol applies to such a claim.
[6] A fifth ground raised in the letter is no longer pursued and the grounds have been re-ordered.

authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;

b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;

c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant." [**CB/170-171**

35. Relevant national policy includes the NPPF which makes clear the stringent requirement for "exceptional circumstances" when removing land from the Green Belt at paras 140-141:

> "140. Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.
>
> 141. Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development. This will be assessed through the examination of its strategic policies, which will take into account the preceding paragraph, and whether the strategy:
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> a) makes as much use as possible of suitable brownfield sites and underutilised land;
>
> b) optimises the density of development in line with the policies in chapter 11 of this Framework, including whether policies promote a significant uplift in minimum density standards in town and city centres and other locations well served by public transport; and
>
> c) has been informed by discussions with neighbouring authorities about whether they could accommodate some of the identified need for development, as demonstrated through the statement of common ground" (emphasis added). [**CB/177-178**]

36. Regulations 18 and 19 of the 2012 Regs were made under s. 36 PCPA 2014. Regulation 18 provides:

> "(1) A local planning authority must—
>
> (a) notify each of the bodies or persons specified in paragraph (2) of the subject of a local plan which the local planning authority propose to prepare, and

(b) invite each of them to make representations to the local planning authority about what a local plan with that subject ought to contain.

(2) The bodies or persons referred to in paragraph (1) are—

(a) such of the specific consultation bodies as the local planning authority consider may have an interest in the subject of the proposed local plan;

(b) such of the general consultation bodies as the local planning authority consider appropriate; and

(c) such residents or other persons carrying on business in the local planning authority's area from which the local planning authority consider it appropriate to invite representations.

(3) In preparing the local plan, the local planning authority must take into account any representation made to them in response to invitations under paragraph (1)." [**CB/156**]

37. Regulation 19 provides:

"Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must—

(a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35, and

(b) ensure that a statement of the representations procedure and a statement of the fact that the proposed submission documents are available for inspection and of the places and times at which they can be inspected, is sent to each of the general consultation bodies and each of the specific consultation bodies invited to make representations under regulation 18(1)." [**CB/157**]

38. If inspectors consider after examination that, in all the circumstances, it would not be reasonable to conclude that the document satisfies the requirements mentioned in s. 20(5)(a) (thus including regulations 18 and 19 of the 2012 Regulations) then they must recommend non-adoption of the document and give reasons for the recommendation: s. 20(7)-(7A) PCPA 2004 [**CB/147**].

39. If asked to do so by the LPA, the person appointed to carry out the examination must recommend modifications of the document that would result in it (a) satisfying the requirements mentioned in s. 20(5)(a) and (b) being sound: s. 20(7C), which are "main modifications" or "MMs".

40. The LPA may adopt the DPD only in two scenarios (s. 23(4)):

(a) If the inspectors recommend the DPD is adopted, then the authority may adopt it as it is or with modifications that (taken together) do not materially affect the policies set out in it: s. 23(2) [**CB/149**].

(b) If inspectors recommend the DPD is not adopted but make recommendations of MMs under s. 20(7C), the LPA may adopt the DPD with the MMs or with the MMs 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 MMs but no other modifications: s. 23(3) [**CB/149**].

41. LPAs have no power to change the MMs or to adopt the DPD if adoption is not recommended: "*[t]he LPA's hands are at that point tied and their discretion to act removed"*: *R (Rights Community Action Ltd) v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 359 (Admin) at §48.

Preparation of joint development plan documents

42. S. 28 PCPA 2004 provides for the adoption of joint local development documents ("**LDDs**"). A DPD is an LDD.

43. S. 28(2) provides that Part 2 PCPA 2004 (which includes all the provisions of the PCPA 2004 above) "*applies for the purposes of any step which may be or is required to be taken in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document*" [**CB/151**. S. 28(3) provides that each such step "*must be done by or in relation to each of the authorities*" [**CB/151**].

44. S. 28(7) to (9) apply if a local planning authority withdraws from an agreement to prepare a joint LDD. S. 28(7) provides:

> "Any step taken in relation to the document must be treated as a step taken by–
>
> ...
>
> (b) two or more other authorities who were parties to the agreement for the purposes of any corresponding joint local development document."[**CB/151**]

45. S. 28(11) provides that the Secretary of State may by regulations make provision as to what is a corresponding joint local development document [**CB/152**]. Regulation 32 of the 2012 Regulations has been made under that provision. Regulation 32 provides:

> "(2) A corresponding document for the purposes of section 28(7) of the Act is a document which—
>
> (a) does not relate to any part of the area of the local planning authority that have withdrawn from the agreement; and

(b) with respect to the areas of the local planning authorities which prepared it, has substantially the same effect as the original joint document.

(3) In paragraph (2)(b) "original joint document" means a joint local plan or supplementary planning document prepared pursuant to the agreement mentioned in paragraph (1)." [**CB/158**]

Challenges to development plan documents and available remedies

46. Basis of challenge: A development plan document may not be questioned in any proceedings other than a claim for statutory review under section 113 PCPA 2004 on the ground that the document is not within the appropriate power (s. 113(3)(a)) or a procedural requirement has not been complied with (s. 113(3)(b)). A challenge may only be brought on public law grounds; it is not a review of the merits: *Solihull MBC v Gallagher Homes Ltd* [2015] JPL 713 per Laws LJ at §2.

47. General approach under s. 113 PCPA 2004: the principles applicable to a statutory review under s. 113 follow those under s. 288 TCPA 1990 and are familiar: *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2018] PTSR 746 at §§6-7; *House v Waverley BC* [2023] EWHC 3011 (Admin) at §36. In particular:

(a) Neither the Inspectors' report nor the decision of the authorities should be subjected to "hypercritical scrutiny". They should be read with reasonable benevolence and in a reasonably flexible way.

(b) Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph".

(c) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question.

(d) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored.

48. Law of consultation: A common law duty to consult the public will arise from a legitimate expectation following (i) an express promise, representation or assurance which is clear unambiguous and devoid of relevant qualification; or (ii) past practice which is tantamount to such a promise and which is so consistent as to imply clearly, unambiguously and without relevant qualification that it will be followed in the future, although such practice need not be entirely unbroken: ***R (MP) v SSHSC*** [2021] PTSR 1122 at §53 per Newey LJ.

49. Where a consultation is carried out, in order to be legally adequate it must meet the four "*Gunning*" or "*Sedley*" requirements as adopted by the Supreme Court in ***R (Moseley) v Haringey LBC*** [2014] 1 WLR 3947 at §25:

    (a) consultation must be at a time when proposals are still at a formative stage;

    (b) the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;

    (c) adequate time must be given for consideration and response; and

    (d) the product of consultation must be conscientiously taken into account in finalising any statutory proposals.

50. Considerations: a claimant must show that the decision-maker was expressly or impliedly required by the legislation to take the particular consideration into account, or that, in the circumstances of the case, the matter was so "obviously material" that it was irrational for the decision-maker not to have taken it into account. A factor is "obviously material" if a failure to give direct consideration to it would not accord with the intention of the legislation. The test is not to be applied at large but in the context of the nature, scope and purpose of the legislation in question. If a Court should decide that a particular relevant consideration was not required by the legislation to be taken into account and was not "obviously material", it is of no legal significance that the decision-maker did not exercise his discretion as to whether to take it into account: ***R (Friends of the Earth Ltd) v Heathrow Airport Ltd*** [2021] 2 All ER 967 at §§116-121.

51. Role of the NPPF and PPG: as "soundness" requires consistency with the NPPF, relevant policies of the NPPF are necessarily a material consideration in the determination of the issues. Similarly, policies in the PPG may be relevant: see e.g.

Mead Realisations Limited v Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 279 (Admin) at §§59-60. The NPPF and the PPG have the same legal status: at §70. The interpretation of planning policy is a question of law for the Court to determine: *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983 at §§18-19. But the Court will not interfere with the application of a planning policy, which is a matter of planning judgment, although that exercise must be undertaken on the basis of a legally correct understanding of what the policy means and requires: *Hopkins Homes Ltd v SSCLG* [2017] 1 WLR 1865 at §§23-26.

52. Duty of inquiry: Inspectors are under a basic public law duty to take reasonable steps to acquaint themselves with relevant material to grapple with a decision (often known as the "*Tameside"* duty), and the Courts have found that the question as to whether this duty has been breached is *"whether the inquiry by the planning authority was so inadequate that no reasonable planning authority could suppose that it had sufficient material available upon which to make its decision"*: *R (Hayes) v Wychavon DC* [2019] PTSR 1163 at §31. Otherwise, the manner and intensity of inquiry to be undertaken is a question for the local planning authority and not the Court.

53. Reasons: an inspector conducting a local plan examination is required to give reasons for his conclusions and recommendations: *CPRE Surrey v Waverley BC* [2020] JPL 505 at §72 *per* Lindblom LJ and see *Aireborough NDF v Leeds CC* [2020] EWHC 1461 (Admin) at 107. The requisite standard of reasons is that set out by Lord Brown in *South Bucks District Council and another v Porter (No 2)* [2004] 1 WLR 1953 at §36:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and **what conclusions were reached on the 'principal important controversial issues'**, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the Court that he has genuinely

been substantially prejudiced by the failure to provide an adequately reasoned decision." (emphasis added)

54. Lindblom LJ further noted in *CPRE Surrey* at §75:

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

55. Matters affecting "soundness": In *Grand Union Investments Limited v Dacorum BC* [2014] EWHC 1894 (Admin) at §§56, 59 and 67, Lindblom J (as he then was) summarised the principles relevant when the Court is considering matters touching on the test of "soundness" as follows:

> "56. Testing the soundness of a plan is not a task for the Court. It is a task that lies within the realm of planning judgment exercised under the relevant statutory scheme in the light of relevant policy and guidance. The court's jurisdiction under section 113 of the 2004 Act is limited to review on traditional public law grounds ... The question in this case, as the parties agree, is whether the Council's adoption of the plan on the inspector's recommendation was irrational. As has been said many times, a claimant who seeks to persuade the court that a planning decision-maker has lapsed into irrationality will have to demonstrate an unusually bad error of judgment. He must show that the decision falls outside the range of judgment open to a reasonable decision-maker ...
>
> 59. But the guidance as to 'soundness' in the NPPF is policy, not law, and it should not be treated as law. ... so long as the inspector and the local planning authority reach a conclusion on soundness which is not 'irrational (meaning perverse)', their decision cannot be questioned in the courts, and the mere fact that they have not followed relevant guidance in national policy in every respect does not make their conclusion unlawful. Soundness, he said (at paragraph 33) was 'a matter to be judged by the inspector and the local planning authority, and raises no issue of law, unless their decision is shown to have been 'irrational', or they are shown to have ignored the relevant guidance or other considerations which were necessarily material in law'.
> …
>
> 67. The assessment of soundness was not an abstract exercise. It was essentially a practical one. If the core strategy as submitted was unsound, the inspector had to consider why and to what extent it was unsound, what the consequences of its unsoundness might be, and, in the light of that, whether its unsoundness could be satisfactorily remedied without the whole process having to be aborted and begun again, or at least suspended until further work had been done." (underlining added)

56. Remedies and "substantial prejudice": The legal remedies available to the court in such a claim are explained at the conclusion of this document. Where the ground relates to non-compliance with a procedural requirement, as with a challenge to a decision (such as a grant of planning permission) under s. 288 TCPA 1990, the court

can only grant relief if the Claimant's interests have been "*substantially prejudiced*": s. 113(6)(b). As under s. 288 TCPA 1990, there can be overlap between non-compliance with a procedural requirement and an error of law (in this case that manifests itself most clearly under ground 2). It is implicit in a finding that there has been a breach of natural justice that the applicant has been substantially prejudiced, because there is no such thing in law as a "technical" breach.

57. Substantial prejudice has been found where "*information and further argument*" was not, but could have been, presented to Inspectors, had the procedural requirement been met: see e.g. *Jopling v Richmond-upon-Thames LBC* [2019] JPL 830 at §§67-72.

Ground 1: failure to consult on main modifications proposed following the cancellation of the West Midlands to Manchester leg of HS2

Factual background relevant to ground 1

58. Since the Plan's inception in 2014 as the GMSF, the data underlying it and all the policies it has contained have been predicated on the assumption that the western leg of HS2 phase 2b, which connects Birmingham to Manchester, would be delivered, with a significant expansion of the train station at Manchester Piccadilly and a new high speed station at Manchester Airport with a direct link to central London in 63 minutes.

59. However, on 4 October 2023, the Government announced the cancellation of Phase 2b of HS2 [**SB/1008-1047**]. Although the Government's aspiration is that some of the benefits associated with HS2 might instead be repurposed under the developing "Northern Powerhouse Rail" project, many of the significant benefits associated with HS2 will no longer materialise in Manchester.

60. The cancellation of this leg of HS2 occurred shortly before the consultation on the MMs, which commenced on 11 October 2023 [**DB/599]**. However, the consultation was not amended to address HS2. Indeed, the Inspectors responded to a query (see response at [**SB/1055-1056**]) raised by a member of the public on this issue, which reiterated that they would not accept general representations concerning HS2 as part of that consultation unless they related to specifically to MMs already proposed (which did not factor in HS2 cancellation). Thus representations could:

> "only be made about the proposed main modifications, changes to the policies map, and updated sustainability appraisal and habitat regulations reports, not parts of the Plan that remain unmodified. If relevant in that context, representations could refer to HS2". [**SB/1055-1056]**

61. Many respondents thus assumed that a further consultation on MMs consequent on the cancellation of HS2 would follow: [**CB/58-109**].

62. In the IR the Inspectors recommend a series of further MMs to reflect the cancellation of HS2 but without any consultation. IR§80 states:

> "There are numerous references to the High Speed Two rail project ("HS2") throughout the Plan. On 4 October 2023, the Government published "Network North: Transforming British Transport" which outlines significant changes to the HS2 project including the cancellation of phases 2a and 2b Western Leg (West Midlands to Manchester). However, that document indicates the Government's intention to invest significantly in rail infrastructure in Greater Manchester and elsewhere in the north, including in relation to Northern Powerhouse Rail (NPR), which is also referred to in the Plan. Neither the Plan's overall spatial strategy, nor its expression through housing and employment land requirements and distribution of allocations, is dependent on HS2. We deal with the implications of the October 2023 announcements about HS2 and NPR for a number of specific policies later in this report. However, modifications are required to the various references to HS2 throughout the Plan to ensure that the reasoned justification is factually accurate and up to date. In the main, we identify these in the relevant parts of this report. The following modifications sit outside any specific policies but are however necessary to explain what the cancellation of HS2 means for the Plan as a whole and bring the context up to date [MM1.13, MM2.2, MM2.3, MM2.4 and MM2.5]. None of the further or amended main modifications that we recommend relating to HS2 and NPR materially affect the Plan's strategy or policies and therefore we are satisfied that consultation about them is unnecessary" [**DB/616**]

63. Notwithstanding the fact the Inspectors proposed MMs to deal with the cancellation of this leg of HS2, the Inspectors did not consult on these MMs.

64. The Claimant's witnesses have set out the numerous substantive concerns they have in relation to the effect of HS2's cancellation on the Plan [**CB/58-109]**. They are in outline only to demonstrate the point for the purposes of these proceedings, rather than being the full response the individual might have provided to a consultation. Even in this outline format, it is clear that the concerns are widespread and fundamental to the Plan. They demonstrate that HS2 was "woven into the fabric" [**CB/71**] of the Plan and is inextricably linked to it.

65. The witnesses are Edward Beckmann ("**EB**"), member of Warburton Parish Council; Matthew Broadbent ("**MB**"), member of the management committee of Save Royton's Greenbelt Community Group; Jackie Copley ("**JC**"), Planning Director at CPRE Lancashire; Lorraine Eagling ("**LE**"), committee member of Friends of

Carrington Moss; Christopher Russell ("**CR**"), chair of the Friends of Bury Folk; and Susan Sollazzi ("**SS**"), member of Climate Action Bury.

66. Each witness statement should be read in full, but the points can be broadly summarised as follows:[7]

(a) The assessment of growth prospects relied on HS2 phase 2B coming forward (with consequent effects on the population projections and infrastructure requirements), such that the fundamental economic case underlying the Plan needed reviewing: EB §§6-8; JC §13, LE §§13, 25-29; and SS §§5-7 [**CB/105-106; 95-99; and 59**].

(b) The spatial strategy as a whole needed revisiting in light of the impact on growth and other metrics: EB §§5-8; LE §30a; and CR §§17-19 [**CB/105-106; 100 and 69**.

(c) The overall justification for finding exceptional circumstances for releasing Green Belt land needed reviewing in light of the cancellation of HS2 phase 2b: JC §§13, 15; and SS §§10, 13 [**CB/90; and 60, 62**].

(d) The Plan relies on NPR coming forward as an alternative to HS2, but that is a false equivalence as the two are not the same, and there are uncertainties as to the likelihood of NPR coming forward in the way envisaged: MB §§15-18; LE §§14-16; CR §9; and SS §§8-9 [**CB/79-81; 67; and 60**].

(e) The Inspectors assumed there would be little impact on Manchester Airport when evidence may suggest otherwise which has not been explored: MB §§19-24; LE §17; and CR §§12-14 [**CB/82-83; 68-69; and 60**].

(f) The impact on policy JP-Strat 9 Southern Areas required assessing given the role of HS2 in its justification: LE §18 [**CB/97-98**].

(g) Some sites had potentially been excluded during the site selection process due to their proximity to the proposed HS2 line or its safeguarded land (on which see ground 2) and which may have required reviewing again: LE §19 [**CB/98**].

[7] For the avoidance of doubt, to the extent these witness statements set out matters of opinion or argument, the witnesses are simply explaining the opinions they would have expressed in a consultation rather than inviting the Court to wade into the territory of reviewing the planning merits.

(h) The justification for allocating land (including safeguarded land) at Timperley Wedge required re-visiting (see further ground 2 below): JC §§14, 16 and 17; LE §§20-24; CR §§15-16 [**CB/90; 68-69**].

(i) Changes may need to be made to the requirements for affordable homes because of the economic impact of the cancellation: SS §13 [**CB/62**].

(j) The transport strategy, and other transport-related issues, need to be revisited: eB §§9-14; MB §§10-14; CR §§20-22 [**CB/104; 77-79; and 69-70**].

(k) The economic strategy required revisiting: CR §§23-26 [**CB/70-71**].

(l) There may be impacts on air quality that need to be considered: EB §15 [**CB/107-108**].

Legal errors under ground 1

(a) Failure to follow and/or take into account the PPG and PINS Guidance

67. Paragraph 057 (updated 15 March 2019) of the PPG on Plan-making states:

> "The Inspector will require the local planning authority to consult on all proposed main modifications. Depending on the scope of the modifications, further Sustainability Appraisal and Habitats Regulations Assessment may also be required. The Inspector's report on the plan will only be issued once the local planning authority has consulted on the main modifications and the Inspector has had the opportunity to consider the representations on these.
>
> Whether to advertise any 'additional modifications' is at the discretion of the local planning authority, but they may wish to do so at the same time as consulting on the main modifications." [**CB/165**]

68. Similarly, the Planning Inspectorate ("**PINS**") Procedure Guidance for Local Plan Examinations ("**PINS Guidance**") (updated 10 February 2023) paragraph 6.7 says:

> "6.7. All proposed MMs must be subject to public consultation and, where necessary, SA and HRA before the Inspector can make recommendations on them. The Inspector will therefore agree a timetable with the LPA for the drafting of the proposed MMs, any necessary SA and HRA, and the public consultation." [**CB/162-163**]

69. There is a well-established common law duty to follow guidance unless there are good reasons not to: see e.g. *R (A) v SSHD* [2021] 1 WLR 3931 at §3.

70. The Secretary of State, through his inspectors, has breached his common law duty to follow the PPG and the PINS Guidance (without good reason not to) by failing to consult on the MMs consequent on the cancellation of Phase 2b HS2. Further or

alternatively, the Secretary of State has simply failed to take the PPG and PINS Guidance into account in failing to consult and/or has failed to give adequate reasons for failing to follow it.

71. No good reason is asserted for this departure, either in the decision itself or in the pre-action response. Indeed, remarkably, the pre-action response simply ignores this limb of the ground altogether.

72. The pre-action response from the Councils suggests the MMs *"did not materially affect the policies or strategy of the plan"* meaning it is *"questionable as a matter of substance whether they were indeed MMs properly so called*" [**CB/127**], but, even assuming the factual premise of that proposition (which is rejected by the Claimant), it is clear that:

    (a) the Inspectors exercised their power under s. 20(7C) PCPA 2004 to recommend these as MMs which were required to make the Plan sound;

    (b) if the Council were to adopt the Plan, they were bound to do so with these modifications: s. 23(3) and see *Rights Community Action* above;

    (c) if the proposed changes were not in fact MMs but instead simply additional modifications which "*(taken together) do not materially affect the policies set out in*" [**CB/149**] the Plan, then the Council had a discretion not to adopt those additional modifications;

    (d) that discretion could not, however, be exercised in this case because the MMs were put forward only as MMs.

73. Consequently irrespective of whether the HS2 MMs could have been made as 'additional modifications', they must be treated as MMs because of the consequences which flowed as a matter of law from their description as such.

74. In any event, for the reasons set out in the witness statements fielded with this claim, the factual premise underlying that assertion in the pre-action response is wrong and the MMs clearly *were* properly made as MMs and required consultation: see above.

75. The Councils' reliance on the fact that a small number of consultees raised concerns about the cancellation of HS2 goes nowhere.

(a) First, as set out above, the Inspectors expressly said that consultees were not to provide representations on this issue.

(b) Second, a number of individuals have said that they assumed a further consultation would happen, which never materialised.

(c) Third, in any event, as no consultation did take place, the individuals have identified a number of points they would have raised which were not considered.

76. The Councils thus cannot rely on the consultation commencing 11 October 2023 as clearly it did not satisfy the *Gunning* requirements: if it was intended as a consultation on the HS2 cancellation, it clearly was not a fair consultation. It was not at a "formative stage" of the HS2 MMs. It did not set out the basis of the MMs as made on HS2, meaning individuals were denied "sufficient reasons for any proposal to permit of intelligent consideration and response". As Inspectors rejected representations on HS2 which did not arise in respect of the MMs already made, the Inspectors clearly did not "conscientiously" take into account the representations.

(b) Breach of legitimate expectation of consultation

77. The pre-action response from the Secretary of State says the PINS Guidance allows inspectors to make changes to MMs without further consultation if satisfied that no party would be prejudiced as a result (para 22) [**CB/140**]. That is a misinterpretation of para 6.12 of the Guidance, which says:

> "When deciding whether or not to recommend that the LPA should make the MMs, the Inspector will normally consider them in the form in which they were published for consultation. However, in some limited circumstances, the responses to consultation may lead the Inspector to consider that a new MM, or an amendment to one that has already been consulted on, is also necessary to make the plan sound or legally compliant; or that a proposed MM is not in fact necessary for soundness and should not be recommended. The Inspector may only recommend such changes to the MMs without further consultation if he or she is satisfied that no party would be prejudiced as a result. For example, the consultation already undertaken on the MMs might have adequately addressed the point, or the amendment might be a very minor one." [**CB/163-164**]

78. This limited exemption to the expectation of consultation only applies where responses to the consultation trigger amendments to MMs which have already been proposed. It is clearly not intended to apply to new MMs proposed following a fundamental change in circumstances as applied in this case. In any event, as

elaborated below, the Claimant and other parties were obviously prejudiced by the absence of consultation on this point

79. Consistent with the PPG and PINS Guidance, the SoS has a well-established practice and expectation of public consultation meeting the ***MP*** criteria (set out above) where he, through his inspectors, recommends MMs as part of the DPD examination process: see, as illustrative examples (of which many more could be given), *Rights Community Action* (above) at §§24, 28; *Wealden DC v SSCLG* [2017] Env LR 31 at §29; *Abbotskerswell PC v Teignbridge DC* [2015] Env LR 20 at §7; and *Veolia ES (UK) Ltd v SSCLG* [2015] EWHC 91 (Admin) at §23. See also *Jopling v Richmond-upon-Thames LBC* [2019] JPL 830.

80. Further or alternatively, the PPG and PINS Guidance are clear and unequivocal promises of consultation which are devoid of qualification such that a legitimate expectation of consultation on MMs arose.

81. The pre-action response suggests that "*the fact that other MMs were consulted upon does not establish an unequivocal assurance based upon a practice of consultation"* [. The practice of consultation arises from the actions of the inspectors on behalf of the Secretary of State requiring such a consultation (consistent with the PPG and PINS Guidance) in the vast array of other local plan determinations. In any event, as set out above, the PPG and PINS Guidance amount to a *promise* of consultation giving rise to a legitimate expectation.

82. The same submissions as under ground 1(a) above are made here: there has been a breach of this legitimate expectation which has not been rectified.

(c) Failure to re-consult following fundamental change of circumstances

83. Where consultation on a proposal has already been carried out pursuant to a statutory duty (as here), further consultation is required where fairness demands it. It has been held further consultation is required where matters which have emerged after the consultation has closed lead the public authority to wish to do something fundamentally different from the proposals consulted upon, or fairness otherwise requires further consultation on a matter or issue that has been thrown up: *R (Murray) v Lord Chancellor* [2011] EWHC 1528 (Admin) at §47; see also *R (Holborn Studios Ltd) v Hackney LBC* [2018] PTSR 997.

84. For the reasons set out above and in further detail in the witness statements, fairness clearly required here further consultation following the cancellation of HS2. Its role in supporting the policies of the Plan as submitted to the Secretary of State was so fundamental that its cancellation required consultees to have the opportunity to make submissions as to what this should mean for the Plan going forward.

85. The denial of that opportunity was a fundamental breach of the requirements of procedural fairness and renders the Plan unlawful.

Substantial prejudice

86. Irrespective of the fact that some points were made by some consultees on the HS2 cancellation, no fair consultation was undertaken on it.

87. The Claimant has been substantially prejudiced by that failure for the reasons set out above and in further detail in the witness statements: see ***Jopling*** set out above.

88. In summary, therefore, the cancellation of HS2 was of such monumental importance to the Plan that it is staggering that no consultation was undertaken to ascertain its implications going forward. This was unlawful for the reasons set out above.

Ground 2: error of law in interpretation of policy justifying Green Belt release in policy JPA3.2 Timperley Wedge

89. A separate and specific ground arises from the Inspectors' treatment of the HS2 cancellation: Policy JPA3.2 Timperley Wedge is a significant strategic allocation in the Plan for around 2,500 homes (of which 1,800 will be in the Plan period), with 60,000sqm of employment floorspace and a new local centre [**DB/326**]. The allocation resulted in the release of around 100 hectares of Green Belt land. A large area of this released land was described as "safeguarded" land, which is no longer to have the protection of a Green Belt designation but will have a separate bespoke policy protection.

90. As the Inspectors noted at IR§311 [**DB/633**], the safeguarded land was originally intended to provide longer term opportunities to deliver growth associated with HS2. The Inspectors further noted the justification for releasing that land from the Green Belt was *"directly related to the economic benefits associated with HS2"* [**DB/663**]. However, the Inspectors go on to note:

> "311. ... However, it also states that, in the longer term, this area may also benefit from Northern Powerhouse Rail (NPR) or an equivalent project. The Government have announced an intention to deliver NPR. The economic argument for safeguarding this land may still therefore exist. There may also be other opportunities that could be delivered through the Government's 'Network North' proposals that may be relevant to this area in time. It therefore remains likely that there is significant scope for transport infrastructure investment in this area. In turn, there remains the potential for development to come forward in this vicinity that can benefit from such investment.
>
> 312. Importantly, the designation of 'safeguarded land' means that no development will take place until a review of this, or other relevant district local plan, has taken place. This process will be able to assess the situation at the time and determine whether it would be appropriate to identify the land for development.
>
> 313. We cannot ignore the fact that the changes to HS2 have clearly altered and perhaps weakened the justification to safeguard this land to an extent. Nevertheless, based on the evidence before us, we still consider that the **potential** for other infrastructure development in the area provides a justification for safeguarding the land and providing an **opportunity to see how such issues resolve themselves**. We consider this to be a logical and pragmatic approach in the circumstances.
>
> 314. The safeguarding of land is therefore justified in principle. As well as modifications to reflect changes to HS2, the policy needs to be amended to ensure consistency with national policy. In particular, it should provide clarity that development of the site would only be permitted following an update of the Plan and removing the unjustified caveat that development could only occur once the whole of JPA3.2 and any station has been implemented. This is pre-judging the outcome of any review and should be removed. As any changes to Green Belt boundaries must demonstrate 'exceptional circumstances' it is not possible for this Plan to dictate that it definitely would return to Green Belt in the event the anticipated infrastructure development is not delivered. While this may be an option, it would have to be assessed through a review of the Plan. Accordingly, this criterion should be deleted. Finally, the cross-reference to policy JP-G11 is made defunct by the deletion of that policy, as set out in issue 48 and thus should be removed. We have also altered the modification to Picture 11.46 to properly identify the safeguarded land; previously it was simply identified for housing which is not accurate [MMTr1]." (emphasis added) [**DB/663-664**]

91. Policy JPA3.2 as adopted states at paras 31-33:

> "31. The land identified to the south and west of the proposed NPR Airport station as shown on the Indicative Allocation Plan, although removed from the Green Belt, it is safeguarded and not allocated for development at the present time;
>
> 32. Permanent development of this land will only be permitted following an update to a plan that proposes its development; and
>
> 33. Any future allocation should have regard to the Greater Manchester HS2 / NPR Growth Strategy (as maybe updated and/or superseded) as part of a plan review." [**DB/325**]

92. The Inspectors' conclusion at IR§§313-314 that the "*logical and pragmatic approach*" to pre-emptively release land from the Green Belt is a clear misinterpretation of the NPPF policy on "exceptional circumstances", in that they

have interpreted "exceptional circumstances" as including "*potential"* circumstances which might *"resolve themselves"*, rather than actual forecast circumstances [**DB/664**]. The policy does not envisage a pre-emptive release from Green Belt land and the Inspectors' conclusion has the effect of inserting those words into the policy. It is a misinterpretation of what is permitted. This is demonstrated further by IR§314: if the infrastructure development does not materialise, then the Green Belt land would have been released for no reason at all. The Inspectors fail to reconcile their interpretation at IR§314 with their erroneous interpretation at IR§313 [**DB/664**].

93. Further or alternatively, the Inspectors' conclusion that exceptional circumstances had been justified in this situation was irrational in that it was perverse and illogical.

Ground 3: legal errors in the assessment of whether exceptional circumstances exist to justify release of Green Belt land to meet housing land requirements

94. In summary, the Claimant submits the Inspectors' assessment of whether exceptional circumstances existed to justify the release of Green Belt land to meet the housing land requirements is unlawful for the following reasons:

(a) the Inspectors misinterpreted or failed to have regard to paragraph 68 of the NPPF [**CB/173-174**];

(b) the Inspectors failed to take into account mandatory material considerations; and

(c) the Inspectors failed to give adequate reasons on a principal controversial issue, causing substantial prejudice.

Factual background relevant to ground 3

95. The Plan removes a total of 2,430 hectares from the Green Belt to facilitate the allocation of sites for housing and employment land. All but four of the 38 allocations in the submitted Plan are currently wholly or partially in the Green Belt (IR§145; **DB/628**).[8] A total of 18,500 new homes allocated in the Plan will be on land removed from the Green Belt (IR§166; **DB/633**). As set out below, none of the Green Belt land is required to meet the housing land requirements of the Plan *per se*. In quantitative terms, as the Inspectors openly acknowledge, the release of all the Green

[8] This figure of 38 allocation falls to 36 allocations in the adopted plan.

Belt land is purported to be justified only on the basis of the need for a "buffer" for flexibility.

96. The assessed housing requirement in the Plan is for 10,305 net additional homes per year (IR§62; **DB/612**). The submitted Plan looked ahead to 2037 from a base date of 2021 (a 16-year period). However, to ensure consistency with national policy, the Inspectors recommended a change to the Plan period so that it looks ahead to 2039 (15 years from adoption).[9] The amended Plan period is from 2022 to 2039 (a 17-year period, albeit running 15 years from adoption) (IR§§59-61; **DB/611-612**).

97. The submitted Plan identified an existing land supply (without allocations in the Plan) sufficient to accommodate just over 170,000 new homes between 2021 and 2037. This supply compares to the requirement of 164,880 over that period (i.e. 10,305 x 16) (IR§161; **DB/632**).

98. The Inspectors recognised that this was an oversupply, finding: *"therefore, in purely quantitative terms, there is more than sufficient land within the existing urban areas to meet identified requirements based on the figures in the submitted Plan without releasing land from the Green Belt*" (IR§162; **DB/632**). The Inspectors referred to distribution, delivery uncertainties and viability issues[10] and commented that the surplus "*represents less than 4%, providing limited flexibility*" (IR§162; **DB/632**), using the supply figure of 170,000 homes.

99. However, the GMCA had submitted updated (and more accurate) supply data (provided in 2022 at table 7.1 of GMCA8 **[SB/1212]**) which had shown an existing supply (for the same submitted Plan period) of 183,706, rather than 170,000.[11] As against the requirement of 164,880, this represents a surplus of 11% over supply. However, the Inspectors did not consider this, choosing instead to rely on the out-of-date, and less accurate, 4% figure.

100. The Inspectors then referred to the updated figures for the modified plan period 2022 to 2039 (17 years) and acknowledged that there would again be a surplus of supply (without allocations or Green Belt release), although reduced (from the figure of 4% that they considered for the 2021 to 2037 period), amounting to around 2% (IR§164).

[9] This recommendation was first made in December 2022
[10] Albeit that, under the PPG, these issues would have, or should have, been taken into account as part of compiling the SHLAAs which evidence the supply data (see PPG extract at **[CB/165-166]**).
[11] Total supply of 201,706 minus 17,980 (allocations).

101. The Inspectors' overall conclusion on this issue was that:

> "for both quantitative and qualitative reasons the removal of land from the Green Belt to allocate sites to accommodate a total of around 18,500 new homes in the broad locations proposed is justified in strategic terms as all other reasonable options for meeting the identified need for development have been fully examined." (IR§166; [**DB/633**)

102. The "quantitative" reasons identified in that conclusion are set out at IR§165; **DB/633**:

> "The allocations in the Plan would mean that there would be an overall total supply surplus of just under 26,000 dwellings compared to the minimum requirement for 2021 to 2037 in the submitted Plan. This represents a flexibility allowance of around 16% for the Plan area as a whole. Based on the updated supply and requirement figures for the modified plan period of 2022 to 2039, the surplus would be around 23,700 (approximately 14%). There is no prescribed flexibility allowance set out in national policy, and we are satisfied that a figure in the region of 15% is reasonable given the nature, location and viability of the existing supply, and the need to provide additional opportunities to deliver new market and affordable housing in accordance with the spatial strategy whilst having regard to the implications for the Green Belt."

103. The "*flexibility allowance of around 16%*" that the Inspectors took into account for the 2021 to 2037 period in IR§165 was based on the out-of-date (and less accurate) data for the submitted plan (see table 7.1 of the submitted plan at **[SB/86]**). Had they taken into account the up-to-date data (based on the 2022 SHLAAs, at table 7.1 of GMCA8 at **[SB/1212]**), the surplus and "flexibility allowance" would have been 22%.[12]

104. These differences are summarised in the table below. Importantly the Inspectors only took into account columns 1 and 4:

	1 2021 – 2037 (submitted plan, outdated data)	2 2021 – 2037 (submitted plan, updated data)	3 2022 – 2037 (years 1 – 15 of adopted plan).	4 2022 – 2039 (adopted plan – 17 year period)
Requirement	164,880	164,880	154,575	175,185

[12] 201,706 minus 164,880 = 36,826 surplus, which is 22.34% of 164,880 (the 16-year requirement). Note the updated figures (for the 2021-2037 period) are not only more up-to-date but more accurate because they are derived from actual completions for the first year (2021-22) and from 2022 SHLAAs for the remaining 15-year period (2022-2037). The 2022 SHLAAs squarely cover that 15-year period. By contrast, the submitted plan figures for the same period (2021-2037) relied only on the 2020 SHLAAs which largely do not attempt to evidence any supply for the last two years (being largely based on the 15-year period from 2020-2035), artificially creating a theoretical deficit for the last two years which distorts the overall figure.

Total existing supply	170,385	183,706	172,787	178,766
Existing supply surplus	5,505	18,826	18,212	3,581
Existing supply surplus as %	3.3%	11.4%	11.8%	2.0%
Total supply (including allocations)	190,752	201,706	190,767	198,885
Total surplus (including allocations)	25,872	36,826	36,192	23,700
Total surplus (including allocations) as %	15.7%	22.3%	23.4%	13.5%

105. A further issue relates to windfall sites. The GMCA's Housing Topic Paper (at paras 8.1.2 to 8.2.4 of Appendix A **[SB/301-302]**) acknowledged that there is a "*significant potential for additional sites to come forward for housing that have not specifically been included in the supply and go beyond the small sites windfall allowances. It is considered that such sites will provide a degree of flexibility to replace any sites that should drop out of the supply due to unforeseen circumstances*." (para 8.1.2) [**SB/301**].

106. Similarly, the Housing Topic Paper drew attention to the fact that there are large existing employment sites which are likely to come forward for housing during the plan period and stated:

> "No specific windfall allowance is currently proposed for such sites as part of the land supply due to the inherent difficulties in calculating what an appropriate allowance would be for all districts due to lack of consistent and comparable data on past trends, however there is clear evidence to demonstrate that such sites have come forward in the past and no reason to believe that this will not continue to be the case." (para 8.2.4 of Appendix A to the Housing Topic Paper, **SB/302**)

107. However, none of the supply data included an allowance for large windfall. The IR does not consider the relevance or otherwise of large windfall.

<u>Policy in the NPPF relevant to ground 3</u>

Assessing housing needs, requirements and supply

108. Paragraph 11 of the NPPF states that, in respect of plan-making:

> "a) all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;

> b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless
>
> > i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area[7] ..." [**CB/167**]

109. The list of "policies in this Framework" identified in footnote 7 to para 11b)i) includes "land designated as Green Belt".

110. In terms of assessing housing needs, the NPPF states:

> "To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals." (para 61) [**CB/172**]
>
> "Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period." (para 66) [**CB/173**]

111. In terms of identifying land for homes, the NPPF says:

> "Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:
>
> a) specific, deliverable sites for years one to five of the plan period[34]; and
>
> b) specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15 of the plan." (para 68) [**CB/173-174**]

112. Under footnote 34 and para 74 of NNPF, there is additionally a requirement to apply a buffer (usually of 5%) to the required supply in the first five years (moved forward from later in the plan period) [**CB/173, 175-176**]. There is no requirement anywhere in the NPPF to apply any buffer to the required supply for the period beyond the first five years.[13] The GMCA's assertion (at JPH1-JPH1.173 (p.58) of Places for Homes issues summary – February 2022 **[SB/695]**) that para 74 of the NPPF required a buffer of at least 10% additional supply across the plan period is wrong and based on a misinterpretation of the NPPF.

[13] It is also worth noting that the reference to requiring flexibility *"plans should ... be sufficiently flexible to adapt to rapid change*" that appeared in NPPF version from 2019 (at para 11(a)) does not appear in the 2021 NPPF.

Preparing and reviewing plans

113. The NPPF is clear that up to date evidence should be used in the preparation and review of plans:

> "The preparation and review of all policies should be underpinned by relevant and up-to-date evidence. This should be adequate and proportionate, focussed tightly on supporting and justifying the policies concerned, and take into account relevant market signals." (NPPF para 31) [**CB/170**]

Representations made to the examination of particular relevance to ground 3

114. A huge number, amounting to a very significant proportion of the representations made to the examination, were on the question of whether there were the required "exceptional circumstances" to justify the removal of so much Green Belt land, including the specific issue of whether the housing land supply situation gave rise to a quantitative justification for "exceptional circumstances" (see the greener – places – issues summary and the places – for – homes issues summary at **[SB/533-636]** and **[SB/637-868]**).

115. In particular, Matthew Broadbent (of "Save Royton's Greenbelt") ("**MB**") set out detailed objections relating to the way in which housing land supply was being assessed against requirements. These points were obviously of crucial relevance to the issue of whether "exceptional circumstances" could be evidenced and justified for the very significant release of Green Belt land proposed in the Plan.

116. MB drew specific attention to the fact that the use of Strategic Housing Land Assessments ("**SHLAAs**") to evidence supply had significant limitations that needed to be taken into account and addressed. His representations (dated 28 August 2022 and 5 November 2023) are at **[SB/1193-1202 & 1213-1222]**. In summary they include the following points:

(a) The land supply analysis treats the SHLAA as a finite land supply and fails to recognise the cyclical nature of land, namely that as land falls out of the SHLAA over time (i.e. as the land is used up by housing completions), new land falls into the SHLAA as a result of considerable quantities of windfall coming forward. No account is taken of these windfall historic trends in the analysis.

(b) A major flaw that has persisted across all iterations of the Plan is that it treats a land requirement beyond the lifespan of a SHLAA as creating a deficit in supply in the same way as it treats a shortfall during the lifespan of the SHLAA. Clearly, they are very different concepts: a deficit during the assessed period can legitimately be regarded as a land shortfall, but a deficit beyond the lifespan of the SHLAA is simply outstanding need from a period whose supply has not yet been accurately assessed.

(c) These flaws are exacerbated by the fact that the supply data does not include any allowance for large windfalls, in circumstances where they are considered by GMCA to almost be inevitable.

117. These points are not simply asserted, they are reasoned and backed up by considerable analysis and by GMCA's own data.[14]

118. Table 2b of the November 2023 representation **[CB/x/xx]** shows (by reference to base data in Table 7.1 of the GMCA document GMCA8[15] at **[CB/x/xx]**) that the existing supply (without allocations/Green Belt release) for the 2022 to 2037 period would provide a 12% surplus over the assessed requirement. When including the proposed allocations/Green Belt releases, the supply amounts to a 24% surplus over the requirement for the same 15-year period (2022 to 2037).

119. However, once the period is stretched to 17 years, two years beyond the standard SHLAA evidence base,[16] the surplus reduces very disproportionately due to the almost total lack of assessed supply for the final two-year period. This is shown in table 2c in MB's November 2023 representation, where the surplus of 12% over the first 15 years of the plan period dramatically drops to a surplus of just 2% when looked at across a 17-year period. As MB explains, this is misleading and distortionary. The reduction in the surplus is very artificially increased by (i) the

[14] Table 7.1 in the submitted plan (**[SB/86]**) showed existing supply (without allocations) for the 16-year period (2021 – 2037) as 170,385. This was based on the 2020 SHLAA, with estimated completions for 2020-21 deducted (see para 3.25, Housing Topic Paper at **[SB/213-214]**), but with minimal supply included for the years 2035–37 (due to the limitation of the SHLAAs in predicting supply post 2035) and nothing added for large windfall. When these figures were updated (see Table 7.1 in GMCA8 at **[SB/1212]**) using the 2022 SHLAA (which does cover the last two years) and adding the actual (higher than estimated) completions for 2021/22, the supply figure (without allocations) for the same period (2021-2037) jumps by more than 13,000 to 183,726.

[15] The figure of 172,787 for baseline supply for 2022 – 2037 can be calculated from table 7.1 by deducting allocations (17,980) and 2021/22 completions (10,939) from 201,706.

[16] Note the 2022 SHLAAs were undertaken before it was decided (in December 2022) to extend the plan period beyond 2037 and the period they cover is up to 2037, with only a very small amount of post 2037 supply identified, and not projected to necessarily fall within the period 2037-39.

failure to recognise the lack of supply evidence (as opposed to there being any *actual* lack of supply) beyond the SHLAA period; and (ii) the refusal to take into account historic windfall trends which could plug that evidence gap.

Legal errors under ground 3

(a) Misinterpretation of, or failure to have regard to, para 68 NPPF

120. In relying on a quantitative need for Green Belt land for housing as a significant part of the exceptional circumstances case justifying Green Belt release, it was incumbent on the Inspectors to ensure that they took into account all relevant policy, data and analysis as to the assessment of the quantitative shortfall.

121. The Inspectors failed to take into account paragraph 68 of the NPPF which sets out clear policy as to the housing land supply which is required to be identified in strategic plan policies. That paragraph (set out above) requires sufficient supply to be identified up to year 10 of the plan period and *"where possible, for years 11 – 15 of the plan"*[**CB/174**]. There is no policy at all requiring or advising that sufficient supply should be shown beyond year 15 of the plan period. It is probably no accident that this requirement in national policy aligns with the standard 15-year period of SHLAAs, and also uses the words "where possible" to acknowledge that the necessary data for even the full 15-year period may not yet be available.

122. This policy is a critical part of Government planning policy and a mandatory material consideration. The Inspectors erred either by failing to take it into account, or by misinterpreting it as applying to the period from adoption rather than the "plan period". It is very clear that the plan period here runs from 2022 to 2039 and that "year 15" of the plan period is 2037. However, nowhere do the Inspectors consider whether there is sufficient land supply up to year 15 of the plan period, and nowhere do they consider the extent of the surplus of supply over requirement for that period.

123. Furthermore, nowhere do the Inspectors consider the allowance made in policy for the potential deficiency in full supply data (i.e. the reference to "*where possible*" [**CB/174**] in relation to identifying supply up to year 15). Had they considered this acknowledgment in the NPPF, together with the flaws in the last two years' worth of data for the 17-year period that had been pointed out to them, they would, or should,

have realised that sticking to the consideration of a 17-year period was a flawed approach.

(b) Failure to take into account mandatory material considerations

i. Up-to-date data

124. The Inspectors failed to take into account the up-to-date and accurate data for the submitted plan period and for the relevant 15-year period of the amended plan period. This data was obviously material to the decision that had to be reached. In terms of up-to-date data,[17] the Inspectors only considered identified supply against requirements for a 17-year period rather than the 15-year period set out in policy. Because of the fact that the 2022 SHLAAs largely only evidence a 15-year period, this approach inevitably creates a sharp deficit for years 16 to 17. As a result, and as explained above and in MB's representations, the resulting reduced surplus is wholly misleading. The Inspectors' relied significantly on that misleading and distorted reduced surplus to justify the quantitative need for the huge Green Belt releases.

125. In IR§§162-164 [**DB/632-634**], the Inspectors rely exclusively either on out-of-date and inaccurate supply data (in relation to the submitted plan period) or, when they consider the updated data, they rely exclusively on the surplus figures for the 17-year period from 2022 to 2039 (2% surplus over requirement, not including allocations/Green Belt releases and 14% surplus over requirement when such allocations/Green Belt releases are taken into account). Exceptional circumstances are then considered justified for that 14% surplus on the following basis:

> "There is no prescribed flexibility allowance set out in national policy, and we are satisfied that a figure in the region of 15% is reasonable given the nature, location and viability of the existing supply, and the need to provide additional opportunities to deliver new market and affordable housing in accordance with the spatial strategy whilst having regard to the implications for the Green Belt." [**DB/633**]

126. It is readily apparent that (i) the failure to have regard to the up-to-date figures for the surplus for the submitted plan period; (ii) the failure to have regard to the surplus for the 15-year period referenced in the NPPF; and (iii) the failure to have regard to the factors undermining the calculation of the 17-year period figures have serious and

[17] In looking at the submitted plan period (16 years from 2021 to 2037) (IR§162), the Inspectors relied on out-of-date data that is shown to be inaccurate and misleading (showing a surplus of only 4%) once the updated supply is considered. This is shown, not least by the fact that when the 2022 to 2037 period is assessed with the GMCA's up to date supply data, a surplus of 12% is shown.

significant consequences, which demonstrate why this material was "obviously material".

127. First, the surplus of 12% of existing supply over the requirement for the 15-year period is not far from the 14-15% buffer considered by the Inspectors to be a reasonable flexibility allowance. Had the Inspectors considered the appropriate period, they may have considered that, in quantitative terms at least, there was no need for Green Belt release, or at least a very reduced need for Green Belt release. A similar conclusion is likely to have been reached had they considered the up to date and more accurate data for the submitted plan period (amounting to an 11% surplus, as opposed to the 4% surplus that they actually took into account).

128. Second, had they considered the drawbacks and evidential difficulties (that had been clearly pointed out to them) in the use of SHLAA data to assess the surplus/deficit over a 17-year period, they would likely have concluded that the surplus for that period was shown as artificially reduced,[18] and this could again only have lessened the weight of quantitative need as part of the exceptional circumstances case.

ii. Windfall

129. Further and separately, the Inspectors failed to take into account that, as pointed out in the Housing Topic Paper (see above), there was inherent flexibility in the land supply figures due to their failure to account for large windfall. Had this been taken into account, it is even more likely that the Inspectors would have considered that there were not exceptional circumstances to release all (or most) of the Green Belt land which was purportedly considered to be justified for such "flexibility".

130. Taken individually, each of the above points demonstrates clear legal errors in the Inspectors' consideration of exceptional circumstances. Taken together, the legal errors are compounded and are overwhelming. A series of crucial pieces of evidence that are likely to have had a highly material impact on the Inspectors' conclusions was left out of the account.

[18] This is shown, not least, by how very significantly different the 17-year surplus is for the amended plan period (at 2% and 14%, without and with allocations respectively) from the surplus calculated for the submitted plan period (at 11% and 22% using the updated and more accurate land supply figures provided in GMCA8), and from the surplus for years 1 to 15 of the amended plan period (at 12% and 24%). It is also notable that the latter two sets of figures are broadly similar, corroborating each other, whereas the figures relied on by the Inspector for the 17-year period are outliers.

(c) Failure to give adequate reasons on principal controversial issue

131. Additionally or alternatively, if it is said that the points made by objectors, including MB, were in fact considered and rejected, then there was a duty to give reasons for rejecting them. The assessment of exceptional circumstances for such a significant amount of land released from the Green Belt was a principal controversial issue. It was the subject of a huge number of representations, including some that were very specifically concerned with the reliance on quantitative housing need and whether this was justified. As such, the Inspectors were legally required to give adequate reasons to demonstrate that the exceptional circumstances case was *"fully evidenced and justified*" [**CB-177**]. A key plank of the "exceptional circumstances" case for the release of Green Belt for housing was clearly stated to be "quantitative" and to rely on the need for "flexibility".

132. The reasons given were seriously deficient in:

(a) failing to explain at all the reasons for assessing supply against a 17-year period in circumstances where the policy is for supply to be identified for (at most) the first 15 years of the Plan;

(b) failing to give any reasons for departing from policy in this respect, and in any event for failing to take into account at all that 15-year period;

(c) failing to give any reasons for not considering the up to date and more accurate data in relation to the surplus for the submitted plan period;

(d) failing to give reasons for considering the 17-year period supply figures to be reliable contrary to well-reasoned evidence and data to the contrary;

(e) failing to address at all the effect of the comparative lack of data for years 16 to 17 and the reasons for that (i.e. relating to the limitations of the data collection as opposed to an actual predicted (anomalous) lack of supply during that two-year period); and

(f) failing to give reasons for not taking into account the flexibility provided by large windfalls, when "flexibility" was a key plank of the "exceptional circumstances" case.

133. This failure to give adequate reasons has caused the Claimant "substantial prejudice" in the sense that objectors can have no confidence that a lawful process was followed or that their representations were taken into account. Additionally, as in *Aireborough* at §107, the Claimant is prejudiced by the end result, namely the loss of a significant amount of Green Belt land which on one analysis was not properly justified in terms of national policy.

Ground 4: error of law in approach to withdrawal of Stockport

134. On a proper understanding of the statutory framework, it is clear that the Inspectors were required to undertake an assessment of whether the procedural requirements for the adoption of the Plan as a joint DPD had been satisfied, which included whether the Plan had gone through the reg. 18 process, which required a consideration of whether it could be *deemed* to have gone through reg. 18 on the basis that it had 'substantially the same effect' on the remaining Council areas as the version of the Plan which had gone through that stage prior to the withdrawal of Stockport (i.e. GMSF). The Inspectors, however, considered that was actively *not* a matter they were supposed to investigate and thus did not undertake that assessment. This was an error of law.

135. The Inspectors deal with the withdrawal of Stockport at IR§§20-24 [**DB-605**]. They had received on this issue a note on behalf of GMCA setting out the view of Christopher Katkowski KC as to the legal requirements **[SB/75-76]**. On the basis of that viewpoint, the Inspectors concluded:

> "23. The purpose of the examination defined in section 20(5) of the 2004 Act does not include consideration of compliance with section 28. Furthermore, we consider that, on balance, it is likely that regulation 32(2) of the 2012 Regulations was made under section 28(11) of the 2004 Act, rather than under section 36 relating to the preparation of development plan documents. On that basis, the question of compliance with regulation 32(2) also falls outside the scope of the examination as defined in section 20(5) of the 2004 Act.
>
> 24. We do not, therefore, consider it to be our role to come to a formal conclusion about whether the Plan complies with section 28 and regulation 32(2). However, we understand that this matter has not been considered by the court and it could be possible to conclude that regulation 32(2) is a regulation made under section 36 relating to the preparation of development plan documents. We have, therefore, considered both the meaning of the legislation and the effect that the Plan has, including through discussion at a hearing session. Nothing that we read or heard during the examination indicates to us that the judgement of the nine local planning authorities (that the Plan has substantially the same effect on their areas as the last version that included Stockport) was unreasonable." [**DB/605**]

136. The Inspectors thus concluded that they were not supposed to investigate whether the Plan has substantially the same effect as the GMSF. This amounted to an error of law in the interpretation of s. 20(5) PCPA 2004.

137. The crucial provision is s. 28(2) which applies to joint LDDs all the provisions of Part 2 PCPA 2004 *"for the purposes of any step which may be or is required"*[**CB/151**]. Thus the same requirements under s. 20 are applied to joint LDDs. That includes that any joint LDD has met the requirements of the regulations made under s. 36, which includes regs. 18 and 19 of the 2012 Regulations.

138. The continuation of a plan post-withdrawal under s. 28(7) does not introduce a free-standing question over whether the plan has substantially the same effect. Rather, it allows for a step which has already been completed (under reg. 18) to be carried over to the new joint LDD post-withdrawal only if the new joint LDD has substantially the same effect.

139. The overarching question for the inspectors under s. 20(5)(a) [**CB**/146] remains whether or not the joint LDD satisfies the requirements of the regulations made under s. 36, namely regs. 18 and reg. 19. The question of 'substantially the same effect' is not a free-standing test but is a necessary part of that question, by virtue of s. 28(7) and reg. 32, for any joint LDD which triggers those provisions. In this case (of a joint LDD where one party has withdrawn after the reg.18 stage), the only way in which the Inspectors would have been able lawfully to determine (under their s.20(5)(a) duty) whether the requirements of regs. 18 and 19 were met was if they could determine that the reg. 18 consultation could be relied on following Stockport's withdrawal. And the only way that reg.18 consultation could be relied on was if the post-withdrawal joint LDD met the 'substantially the same effect' test. Accordingly, that latter question was squarely a matter for the Inspectors under s.20(5)(a).

140. It is a complete red herring whether or not reg. 32 was "made under" s. 36 or s. 28(11): the power to make regulations in s. 28(11) – and the regulation made under that provision – is clearly not intended to supersede all the other procedural requirements which a joint LDD must meet, as with any other LDD. The Councils continue to be led astray by that red herring in their pre-action letter response. Their confused argument appears to be that the "specific power" to make regulations defining a "corresponding document" for the purposes of joint LDDs means that the

only relevant requirements are those under reg. 32 of the 2012 Regulations. That is simply absurd and would mean that *none* of the other requirements need be assessed by Inspectors. There is simply no basis for this reading.

141. The Inspectors, based on this error of law, breached their statutory duty of examination under s. 20. They were required to examine and determine whether or not the Plan had substantially the same effect as GMSF such that the reg. 18 stage that had been conducted in respect of GMSF could be relied on for the purposes of the Plan.

142. It is no answer to this complaint to say that the Inspectors nonetheless concluded that the judgment of the nine authorities as to substantially the same effect was 'not unreasonable'.

143. First, the Inspectors openly acknowledge that this was not a full consideration of the issue, because they did not (on the basis of the error of law) consider it their role to carry out such a full consideration [**DB/605**].

144. Secondly, the task for the Inspectors was not to review whether the authorities' opinion was reasonable but rather whether the Inspectors *themselves* considered the Plan had 'substantially the same effect'. They have never asked themselves that question. This matters because of, for example, Stockport's key role as an attractor of employment opportunities and also, separately, the significant, and disproportionate, change in balance of employment land supply against requirements (particularly in relation to industrial/warehousing) following the recalculation when Stockport withdrew, with the knock on effect on jobs for the remaining plan area. These matters were pointed out (see Reps of Gillian Boyle, a Chartered Surveyor and Town Planner, who worked as a planner for Manchester City Council between 2011 and 2022, including as Deputy Head of Corporate Property, on Matter 1.7 and Matter 2.8 and see MB reps dated 11 September 2021 and August 2023 and Nov 2023 at [**SB/1203-1207, 1208-1211**]), but the Inspectors declined to consider and determine their impact on whether the Plan had 'substantially the same effect' following Stockport's withdrawal.

145. As this matter goes to whether or not the document "*is within the appropriate power"* under Part 2 of the PCPA 2004 (see s.113 PCPA 2004), this is not a matter on which the Claimant is required to demonstrate substantial prejudice in order for the Court to

be able to exercise its powers of remedy. If, however, such prejudice is required, then it is manifest in the concerns raised by objectors and the absence of any direct consideration and determination of this issue by the Inspectors, as opposed to their merely adopting the Councils' reasoning.

Ground 5: Green Belt Additions – unlawful restriction on scope of exceptional circumstances

146. In part as an attempt at "compensating for" the substantial losses of Green Belt land, the Plan originally proposed a total of 49 sites to be added to the existing Green Belt.

147. During the examination, GMCA outlined what the IR described as a *"revised approach to considering whether each of the Green Belt additions made in the Plan is justified based on a Court of Appeal judgment"*, which ultimately led to the conclusion that only 17 of the original 49 sites could be justified to be added.

148. The "revised approach" was contained in a "Note re Green Belt Additions" dated 9 March 2023 [**SB/1254-1256**]. The Court of Appeal judgment identified was *Gallagher Homes Ltd v Solihull MBC* [2015] JPL 713. It was said at para 6 of the Note that this:

> "6. ... confirmed the legal principles which apply where it is proposed to add land to an existing Green Belt. In essence, in order to demonstrate exceptional circumstances for adding land to an existing Green Belt there needs to be a fundamental change in circumstances since the time when the extent of the Green Belt was established previously and the land in question was not included in the Green Belt.
>
> 7. This is an exacting legal test." [**SB/1254**]

149. The Note then assessed the proposed additions against the tests of whether there had been a "fundamental change" since the boundary was established or "would resolve an anomalous boundary" [**SB/1255**].

150. The Inspectors adopted GMCA's submissions on the policy (albeit coming to different conclusions as to the sites, recommending the addition of 18 of the sites) (para 873) [**DB/771**]. By narrowing the scope of the exceptional circumstances test and introducing a requirement for a fundamental change or resolution of an anomalous boundary, the Inspectors erred in law.

151. The policy is contained in paragraph 140 NPPF:

> "Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries has been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans." [**CB/177**]

152. *Galagher Homes* is not authority for the propositions asserted by GMCA and relied on by the Inspectors. A proper reading of Laws LJ's judgment makes very clear that he was not outlining a requirement for a fundamental change of circumstances. That does not appear anywhere in the judgment. While he refers to *obiter* comments in *Copas v Windsor and Maidenhead RBC* [2002] PCR 16 at §40 ("*fundamental assumption which caused the land initially to be excluded from the Green Belt is thereafter clearly and permanently falsified by a later event*"), he does not anywhere suggest this replaces the overarching test of exceptional circumstances. This is simply identified as an example of an exceptional circumstance – but it does not become the *only* way for exceptional circumstances to be demonstrated.

153. The correct interpretation of the *Copas* case law was explained in *IM Properties Development Ltd v Lichfield DC* [2015] PTSR 1536 at §§51-53,[19] emphasis added:

> "51. In Gallagher Homes v. Solihull MBC [2014] EWHC 1283, Hickinbottom J helpfully gathered together a number of the relevant principles regarding the green belt at paragraph [124]. Firstly, the test for redefining a green belt boundary has not been changed by the NPPF. Secondly, the mere process of preparing a new local plan is not in itself to be regarded as an exceptional circumstance justifying an alternative to a green belt boundary. **Thirdly, the test for redefinition of a green belt under the NPPF remains what it was previously: exceptional circumstances are required which necessitate a revision of the boundary**. That is a simple composite test because, for this purpose, circumstances are not exceptional unless they necessitate a revision of a boundary. Fourthly, whilst each case is fact-sensitive and the question of whether circumstances are exceptional for these purposes requires an exercise of planning judgment, **what is capable of amounting to exceptional circumstances is a matter of law, and a plan-maker may err in law if it fails to adopt a lawful approach to exceptional circumstances**. Fifthly, once a green belt has been established and approved, it requires more than general planning concepts to justify an alteration. Hickinbottom J's fifth point was endorsed on appeal: [2014] EWCA Civ 1610, [33], [36].
>
> 52. When Patterson J considered the claimant's judicial review, ... she endorsed Hickinbottom J's enunciation of the relevant principles in Gallagher Homes , see at [90]. In Calverton Parish Council v. Nottingham City Council [2015] EWHC 1078 (Admin), Jay J considered Patterson J's judgment where at paragraph [100] she considered the issue of planning judgment and slightly recast the issue as follows:

[19] Both Lewison LJ on the papers and Sales LJ at a hearing considered there was no prospect of success on appealing this part of the judgment: [2016] EWCA Civ 527 at §8

> "[W]hether, in the exercise of planning judgment and in the overall context of the positive statutory duty to achieve sustainable development, exceptional circumstances existed to justify the release of Green Belt: [44]"
>
> **It will be recalled that Patterson J rejected at [90] what the claimant had advanced as an additional principle, that to justify an alternative of the green belt boundary the Council had to identify a basis for concluding that the assumptions upon which it had been drawn had been falsified**. **The claimant had drawn this falsification principle from obiter remarks of Simon Brown LJ in *Copas v. Royal Borough of Windsor and Maidenhead* [2001] EWCA Civ 180; [2002] 1 PCR 16, [40]**. In refusing permission to appeal from Patterson J's judgment, Sullivan LJ said that the claimant 'erroneously elevates judicial dicta which were a response to the particular factual circumstances of the Copas case into a legal principle of universal application.'
>
> **53. So any submission that Mr Crean would make that the planning inspector was in error for not asking himself whether something had occurred to undo an assumption on which the green belt boundary had originally been drawn would fall at the first hurdle.** Mr Crean focused instead on the contention that the planning inspector erred in not asking himself whether it was necessary to alter the green belt boundary. Instead, he submitted, the jurisdiction he gave for endorsing the change was based on general planning concepts, such as suitability and sustainability. Even in that context, he relied not on the lack of suitable or sustainable alternative sites, since he accepted, Mr Crean recalled, that the claimant's land was a sustainable location for development, but merely that the Council's judgment was that the interested parties' green belt sites were relatively more sustainable. Moreover, Mr Crean submitted, insofar as the planning inspector also sought to justify his conclusion by reference to the fact that removing the sites from the green belt would be consistent with the Council's strategy in the local plan, this was self-evidently circular reasoning." (emphasis added)

154. Thus the Courts have rejected the contention that a fundamental change since, or falsification of the assumptions underpinning, the original boundary is the only way for "*exceptional circumstances*" to be demonstrated. The test is a broader one, as set out by Jay J.

155. The Councils' pre-action response letter asserts that the reference to "fundamental change" in the Note referred to above is a "*sensible proxy for considering whether the exceptional circumstances test is met together with a separate category of correcting an anomalous boundary...the Councils did not adopt an additional 'falsification principle' referred to within* IM Properties *... or suggest that it was the only way that exceptional circumstances could be demonstrated...*" [**CB/129**]

156. There would of course be nothing wrong in including a short summary of the case law, but the effect of the Note is not to summarise the case law but to positively misrepresent what it says. The Councils' letter is simply attempting to re-write the very clear words of paragraph 6 of the note, which says expressly *"there needs to be a fundamental change..."* [**SB/1255]**.

157. It does not say, as the Councils now try to suggest "*one way of meeting exceptional circumstances would be through a fundamental change*". That would of course be permissible and correct: the Claimant does not dispute that. The error arose in the fact that Inspectors were led astray in thinking fundamental change was the *only* way of meeting exceptional circumstances, when other factors legitimately come into the assessment.

158. In consequence, by adopting GMCA's erroneous reading of the case law, the Inspectors' removal of originally proposed Green Belt additions was based on an error of law.

Conclusion

159. The errors of law identified above are so fundamental to the entirety of the Plan that it is submitted this is a rare case where the entirety of the Plan ought to be quashed. However, it is recognised that in a claim under s. 113 PCPA 2004, the Court has flexibility in the range of remedies available to it. It may quash the DPD, in whole or in part, or remit it or a part of it, to the SoS or LPAs with directions: s. 113(6)-(7C).

160. Directions on remittal may in particular (s. 113(7B)):

> "(a) require the [DPD] to be treated (generally or for specified purposes) as not having been approved or adopted;
>
> (b) require specified steps in the process that has resulted in the approval or adoption of the [DPD] to be treated (generally or for specified purposes) as having been taken or as not having been taken;
>
> (c) require action to be taken by a person or body with a function relating to the preparation, publication, adoption or approval of the document (whether or not the person or body to which the document is remitted);
>
> (d) require action to be taken by one person or body to depend on what action has been taken by another person or body."

161. The law relating to these remedies was summarised by Lieven J in *Aireborough Neighbourhood Development Forum v Leeds City Council* [2020] EWHC 2183 (Admin) (relief judgment). She noted at §23: "*[i]n deciding what is the appropriate remedy the starting point must be the nature of the legal errors found and how those errors can be remedied"*. In the light of this, it is suggested the question of relief should be left for further submission in the event the Claimant is successful in demonstrating any of the errors of law identified above.

162. The Claimant also seeks its costs, and an order that the Claimant's aggregate costs liability for all the Defendants' costs should be capped at £10,000 inclusive of VAT pursuant to CPR r.46.26.

JENNY WIGLEY KC
CHARLES BISHOP
Landmark Chambers

Amended 3 May 2024
30 April 2024