Neutral Citation Number: [2017] EWHC 224 (Admin)

Case No: CO/4431/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/02/2017

Before :

THE HON. MR JUSTICE OUSELEY

Between :

COOPER ESTATES STRATEGIC LAND LIMITED	**Claimant**
- and -	
ROYAL TUNBRIDGE WELLS BOROUGH COUNCIL	**Defendant**

Mr Gregory Jones QC (instructed by **Messrs Blake Morgan**) for the **Claimant**
Mr William Upton (instructed by **Messrs Sharpe Pritchard**) for the **Defendant**

Hearing dates: 13 December 2016

Approved Judgment

MR JUSTICE OUSELEY :

1. On 20 July 2016, Tunbridge Wells Borough Council, the Defendant Council, adopted its Site Allocations Local Plan, SALP. On adoption, it became a Development Plan Document, DPD. It had been through a public examination by an Inspector, and his recommended modifications had been accepted. Cooper Estates Strategic Land Ltd, Cooper Estates, the Claimant, had argued at the examination, that its land at Sandown Park, a site in the Green Belt to the north of Tunbridge Wells, should be allocated for institutional housing for the elderly and, failing which, it should at least be removed from the Green Belt. Cooper Estates was unsuccessful on both counts. It now challenges the adoption of the SALP under s113(3) of the Planning and Compulsory Purchase Act 2004, PCPA. It did so under both heads of challenge: that the adoption was beyond the powers of the Act, and that procedural requirements had not been complied with.

2. Mr Gregory Jones QC for Cooper Estates contended that (1) the Inspector had misunderstood or failed to deal with Cooper's case for a site allocation or removal of the site from the Green Belt; (2) the Inspector had misunderstood what the Tunbridge Wells Borough Council Core Strategy, CS, required or expected of the SALP in relation to housing for the elderly or for the removal of sites from the Green Belt; and (3) the Inspector had misunderstood the law in relation to his considering events arising after the adoption of the CS for the purpose of applying the CS to the SALP.

3. Mr Jones submitted, on the first two grounds, that his factual complaints resulted from legal error which could be "expressed under a number of heads of judicial review: a failure to address the central plank of the Claimant's case as identified by the SALP Inspector/misunderstanding of the Claimant's primary case/failure to ask the correct question/failure to take into account a material consideration/irrationality/reaching a conclusion unsupported by the factual evidence before him, failure to give adequate reasons, and unfairness." I did not find that lack of focus at all helpful.

4. The Secretary of State for Communities and Local Government, who appointed the Inspector, whose reasoning and recommendations lay at the heart of the challenge, did not appear. That implies no concession; the Secretary of State is leaving responsibility for the adoption of a Local Plan with its creator.

5. Permission is now required for such a challenge. The hearing was a rolled up hearing.

The Council's Plans: the Core Strategy

6. The Council's Core Strategy was adopted in 2010. It is a DPD. As its name suggests, it sets the general strategy for the Council's planning for its area. It does not allocate sites to meet the needs it identifies. The SALP allocates the sites to meet the needs in accordance with the strategy and policies in the CS. Allocation plans are sometimes graced by the name "daughter" documents. The CS states, [1.5], that it provides "the overarching principles of the LDF [Local Development Framework] by which the essential development needs of the Borough will be delivered." It said, [1.9], that later DPDs had to be in general conformity with it.

7. Under CS Core Policy 1, the SALP was to allocate sufficient sites to meet the Borough's known needs as set out in Core Policies 6-14. Priority was to be given to the development of previously developed land within the Limits of Built Development, LBD. Selected greenfield sites within the LBD or adjacent to the LBD of settlements in the main urban area would also be allocated and released to maintain a phased supply of land for development. Exceptionally, allocations could be made elsewhere for certain identified purposes such as for affordable housing for local needs.

8. The commentary in CS [5.10 and 5.11] added:

> "5.10 Core Policy 1 therefore prioritises the allocation of sites on previously developed land located within the existing Limits to Built Development (LBD). The current extent of the LBDs, as defined by the Tunbridge Wells Borough Local Plan 2006 is shown on the adopted Proposals Map, but the LBDs will be reviewed during preparation of the Allocations DPD. On the basis of currently known land availability (and making no allowance for windfall development – see paragraph 5.18 further) it will also be necessary to allocate greenfield sites and/or sites outside the existing LBD in order to maintain a sufficient supply of deliverable and developable land to accommodate the Borough's identified development needs. Core Policy 1 therefore allows for allocations on both previously developed and greenfield land and it will be necessary for the Allocations and Town Centres Area Action Plan DPDs to consider both sources.
>
> **Greenfield Sites outside the existing Limits to Built Development**
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> 5.11 Where it is necessary to draw on greenfield sites they will only be allocated where they are adjacent to the main urban area or the small rural towns and their allocation is required to meet the Borough's identified needs for development."

9. Core Policy 2 relates to the Green Belt. Its boundaries were defined on the adopted Proposals Map. Its general extent was to be maintained. A long term reserve, called the Rural Fringe, was to be maintained and:

> "a review of land within that category will be conducted in parallel with the preparation of the Allocations Development Plan to ensure that Green Belt boundaries will endure thereafter until 2031."

10. The commentary at [5.27-5.28] is important. It states:

"5.27 However, the South East Plan states, in the supporting text to Policy AOSR8: Tonbridge/Tunbridge Wells Hub, that "*there may be a need for small scale Green Belt review at Tunbridge Wells*" in order to be able to accommodate sufficient development here to support its Regional Hub status. This is capable of being an exceptional circumstance for a review of the inner boundaries of the Green Belt (PPG2 paragraphs 2.6-2.7). Any release of land from the Green Belt following a review would be dependent on there being no suitable non-Green Belt sites available to support the requirements of the Regional Hub. The Borough Council would then consider the release of sites within the Green Belt that are adjacent to the Limits to the Built Development (LBD) of Royal Tunbridge Wells and Southborough where this would least compromise the purposes of the Green Belt.

5.28 On the basis of currently known land availability, as set out in the SHLAA 2009, there may be no need to release Green Belt sites for development during the period to 2026. However, in parallel with the preparation of the Allocations DPD a review will be undertaken of the adequacy or otherwise of the stock of safeguarded non-Green Belt land outside the LBD, designated as Rural Fringe in previous Local Plans. This is because compliance with PPG2 requires there to be a sufficient stock of developable Rural Fringe sites to permit housing development to continue in 2026-31 at the same annual rate as in 2006-26 without further review of the Green Belt. This review of Rural Fringe sites will not take place at locations other than Royal Tunbridge Wells and Southborough."

11. The commentary also said this about the Rural Fringe, at [5.33-5.34]:

"5.33 As indicated at paragraphs 5.27-5.28 above, the Borough Council will retain a stock of safeguarded land reserved as Rural Fringe to extend beyond the Plan period to 2031. The existing Rural Fringe sites were not excluded from consideration in the first SHLAA and their relative merits (including their five-year deliverability and 10 year deliverability) will need to be considered against those of other candidate sites in the process of preparing the Allocations DPD and Town Centres Areas Action Plan DPD. In accordance with Core Policy 1: Delivery of Development, Rural Fringe sites, like other sites outside the LBD, will not be released unless they are allocated in DPD.

5.34 If it is necessary to allocate existing Rural Fringe sites, the SHLAA, together with the Landscape Character Assessment and Capacity Study 2009, will help identify suitable areas for

> designation as replacement Rural Fringe sites through the Allocations DPD."

(SHLAA is the Strategic Housing Land Availability Assessment).

12. The need for a mix of housing types and sizes, including specialist forms of housing, to cater for "an ageing population" or "older people", among others, is identified in a number of places, and reflected in Strategic Objective 5. The majority of new development was to take place at Tunbridge Wells and Southborough, as the main urban area, and part of a Regional Hub.

13. Housing policy is dealt with in CS Core Policy 6. The housing requirement is for a net increase in dwellings of 6000 between 2006 and 2026. Policy 6.7 states that the size and type of dwellings will reflect current and projected housing needs to ensure that development contributes to a sustainable and balanced housing market. Provision would be made, by implication, in the SALP, for a mix of dwelling sizes to meet the identified need for smaller dwellings, and for a sustainable mix of dwelling types to meet the needs of all people, including older people, people with disabilities and the vulnerable. The CS provided the framework for the delivery of this new housing.

14. There was a specific section on housing for older people. An ageing society posed one of the Borough's "major housing challenges". The population aged between 65 and 85 was forecast to rise by 40 percent to 20800 by 2026, and those over 85 to double to 5200. The incidence of debilitating illnesses which prevented independent living was more prevalent among the over 75s. 1060 households required sheltered housing, though some could be met from existing stock. By 2011, 40 "extra care" sheltered units were required for "frail older people," [5.161]. A mix of tenures, types, purpose-built or adapted, was required. Future DPDs, by implication including the SALP, would consider the need for supported accommodation schemes across the Borough; [5.160-5.164]. Core Policy 9 required 4200 net dwellings increase for Royal Tunbridge Wells and Southborough.

15. The general extent of the Green Belt would be maintained for the Plan period "unless it is necessary to replenish the stock of Rural Fringe sites required to provide a long-term supply of land to meet future growth requirements to 2031. This will be established by the review to be undertaken in accordance with Core Policy 2: Green Belt."

The Council's plans: the Site Allocation Plan

16. The SALP, as drafted for consultation in 2015 and then known as the SADPD, stated that its main purpose had been to allocate land for housing and other forms of development, and had been "written in accordance" with the CS. The draft submitted for examination was not materially different. Land had been allocated to meet housing and other development needs to 2026 "and beyond", a point repeated in its next section. It stated at [1.4]:

> "This Site Allocations DPD has been prepared in order to allocate sites to accommodate the level of growth identified within the adopted Core Strategy 2010 and the evidence base that supports it. The Local Planning Authority has not carried

> out new evidence in relation to objectively assessed housing needs, Strategic Housing Land Availability Assessment or Strategic Housing Market Assessment. These documents will all be reviewed as part of the Core Strategy Review (Local Plan). A commitment has been made within the Local Development Scheme to review the existing Core Strategy, and at that time the overall level and distribution of growth for the Borough will be reassessed in light of updated evidence.
>
> Additionally, this Site Allocations DPD has not carried out a review of the Green Belt; it has reviewed the suitability and capacity of the existing Rural Fringe Sites (safeguarded land) at Royal Tunbridge Wells for meeting the identified housing need during the Plan period, where it cannot be met on previously developed land within the Limits to Built Development of Royal Tunbridge Wells and Southborough."

17. Later it said [2.14] that the role of the SADPD was "to identify sites that will meet the needs identified in the Core Strategy (or updated needs, as explained above)". [2.13], "above", said that some of the need figures had been "updated in light of continued monitoring (for example monitoring housing completions) and also in light of new studies and evidence [non-housing example given]". Some requirements pre-dated the National Planning Policy Framework, NPPF, and the Council was committed to an immediate review of the CS to meet the NPPF requirements. Core Policy 1 of the CS prioritised the use of previously developed land within the settlement LBDs, followed by selected greenfield sites in or adjacent to the LBDs of the main settlements, which would provide a supply of "deliverable and developable land" to 2026; [2.15].

18. On the allocations for Royal Tunbridge Wells and Southborough, the SADPD commented in [2.18] that it would be necessary to allocate land outside the LBD and on greenfield sites within the long-term land reserve, the Rural Fringe, as set out in the 2006 Local Plan. The associated housing table ran to 2026, but not beyond. When it came to defining the LBD, the SADPD adopted the 2006 Local Plan LBDs, except where they had been revised to take account of allocations.

19. Chapter 3, on Royal Tunbridge Wells and Southborough, repeated the priority given to previously developed land inside the LBD, followed by selected greenfield sites inside or adjacent to the LBD. The potential capacity of sites within Royal Tunbridge Wells and Southborough had implications for what might be needed from the Rural Fringe. It noted that Core Policy 9 of the CS had required a review of Green Belt boundaries and the stock of Rural Fringe sites, as well as a 4200 net increase in dwellings. But the development requirement which now remained to be met over the plan period 2006 – 2026 meant that it had "not been necessary to review the Green Belt for this" SADPD.

20. The Green Belt and Rural Fringe were dealt with in Chapter 4. At [4.6], it noted that, as the NPPF required, six sites had previously been removed from the Green Belt into the Rural Fringe so as to provide a long term reserve for future development needs. Three such sites had to be allocated in this SADPD to meet the needs of the main urban area to 2026. Mr Jones drew attention to the Council's reference to the NPPF in this context in his argument about its approach to post 2010 policy changes.

21. I need to mention two terms which pepper the subsequent material. Use Class C2 is defined in the Use Classes Order as "residential institutions, residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres." Use Class C3 covers three forms of dwelling houses of which two are germane: (a) includes use by a single person or family, an employer and certain domestic employees (such as a nurse), and a carer and the person cared for; (b) includes up to six people living together as a single household and receiving care in supported housing schemes for example.

The public examination: the framework

22. S20 PCPA, as amended by the Localism Act 2011, requires a local planning authority to submit every DPD to the Secretary of State for independent examination. S20(5) provides that the purpose of the examination is to determine whether the DPD at issue satisfies legal requirements, is consistent with the NPPF, is sound as elaborated in the NPPF, and has met, so far as relevant, the duty to co-operate with other authorities, in s33A. Those who seek changes to the plan are to be given the opportunity to be heard before the Inspector carrying out the examination. If the Inspector considers that "in all the circumstances it would be reasonable to conclude" that the plan is sound and meets the other requirements of s20(5), he must recommend adoption and give reasons for that recommendation; s20(7). If he is not so satisfied, he must recommend that it is not adopted, again with reasons for that recommendation; s20(7A).

23. If however the Inspector does not consider it reasonable to conclude that the plan is sound but is asked to recommend main modifications which will make the plan sound and compliant with policy and legal requirements, he must do so. He does so on the basis that he considers that, with those modifications, it would then "be reasonable to conclude" that those requirements have been met; s20(7B) and (7C). There is seemingly a lacuna in the duty to give reasons for such recommendations, but, in agreement with the analysis of HHJ Robinson sitting as a Deputy High Court Judge in *University of Bristol & North Somerset Council* [2013] EWHC 231 (Admin) at [72-75], I accept that the recommendation that the plan, as modified, is sound brings back the s20(7) duty to give reasons. This is what happened here. There are minor modifications which do not need to go through that process.

24. The assessment of "soundness" requires, NPPF [182], an assessment of whether the plan is "positively prepared, justified, effective and consistent with national policy." This undeniably involves a planning judgment, unlawful only on the basis of general public law principles; *Oxted Residential Ltd v Tandridge DC* [2016] EWCA Civ 414, the *Tandridge* case.

25. By the Town and Country Planning (Local Development) (England) Regulations 2004 SI No.2204, Regulation 13(6), the policies contained in the SALP must conform to those in the adopted CS. However, the T&CP (Local Planning) (England) Regulations 2012 SI No. 767 require by Regulation 8(4) that a local plan, which includes a site allocation plan, "must be consistent with the adopted development plan". The CS is such a plan. The 2012 Regulations apply to this SALP coming into force on 6 April 2012.

26. The public examination of a plan is not an Inquiry into objections raised by individual parties. The Planning Inspectorate's document "Procedural Practice in the

Examination of Local Plans" makes that clear. The examination is structured around the issues which the Inspector has identified as crucial for his judgment on the soundness of the plan. It alerts parties to the Inspector's proactive and inquisitorial role; representations do not dictate the structure or focus of the examination. If contentions do not assist him to reach a judgment on the soundness of the plan, he will not spend time at the hearings on them. The hearings are only part of his examination of the soundness of the plan.

27. This is all reflected in what is said about the Inspector's report to the local authority. He should reach clear conclusions backed by reasoned judgments on the plan's compliance with the PCPA 2004, including the requirement of soundness. The reports do not summarise the parties' individual cases, will avoid direct reference to specific representations and will not describe discussions at hearings. But they will explain concisely why he has reached the views he has on soundness and the compliance issues.

28. The lawfulness of the Inspectorate's guidance, rightly, has not been challenged. The examination is not a series of mini-inquiries into participants'/objectors' proposed allocations. I caution however against the unqualified application, to the Inspector's duty to give reasons under s20 PCPA, of authorities dealing with reasons on appeals against the refusal of planning permission, notably the oft-cited principles in particular in *South Bucks DC v Porter* (No.2) [2004] UKHL 33 [2004] at [36], Lord Brown. They were not directed to reports of this sort. Much of what he said is relevant, but not the requirement, in the terms used, to deal only with the main issues in dispute, a phrase used as the counterpoint to "every material consideration". The prejudice for dissatisfied developers or participants, which the uncertainty generated by inadequate reasoning may create, is also different.

29. The Inspector's duty to give reasons for his recommendations is not focused on how he has dealt with the participants' objections. The recommendations relate to why it was reasonable to conclude that the plan was sound and compliant with policy and legal requirements. He is not obliged to go through each participant's principal points and say how he has resolved them, with reasons. That has never been required of such examinations, and it would be a novel and major burden to the process. He has to deal with what he regards as the major issues relevant to soundness, legal compliance and policy consistency. A lengthy contribution may show nothing of significance. I accept, of course, that the reasons must not create substantial and genuine doubt as to whether he made an error of public law. The different focus and nature of the duty does not affect the decision which I come to, but I do not wish to subscribe to what I consider to be a not wholly appropriate test.

The public examination: the facts

30. The Inspector's approach to the hearings reflected all of that. His Note on "Matters, Issues and Questions for Discussion at Examination Hearings" (and matters, issues and questions, in this context are terms of art explained in the Inspectorate's guidance), set out the main issues as he then saw them. Matter A was "Policy, Strategy and Methodology". Main issue 3 in Matter A was the relationship between housing policy in the CS and allocation in the SALP. One question under main issue 3 concerned the legal implications of the *Gladman Developments Ltd v Wokingham BC* [2014] EWHC 2320 (Admin) chain of authorities, including *Tandridge*: as he later

put it, should he "direct himself to the examination of policies primarily within the context set by an adopted Core Strategy", or where there are changed circumstances, should he look "beyond circumstances relevant to the Core Strategy."

31. The last of the four questions within this main issue was whether sufficient account had been taken of the need for residential care home development (C2) or similar provision (such as extra-care housing) in the allocations. This was the issue raised by Cooper Estates' representations.

32. [illegible]een Belt and Rural Fringe allocations. One question was whether, in the absence of a Green Belt boundary review and the allocation of land for development from the Rural Fringe, to which no land had been added, there was a need to bring forward land for housing within the long term land reserve. This reserve was focused on Royal Tunbridge Wells and Southborough, to the north of which lay the Green Belt.

33. In its March and October 2015 written representations to the Inspector, Cooper Estates had set out its evidence and argument about the need for C2 housing, including the Council's own needs assessment. The SALP was where the CS, and the Inspector approving its soundness, intended sufficient allocations of sites for older persons, residential institutional care homes and "extra care" housing in Use Class C2 to be provided. The unmet need, existing and predicted, was unlikely to be met without allocations to the SALP.

34. [illegible] proposed oral submissions for the public examination said that no numeric requirement from the CS was needed to warrant specific site allocations, and it was not enough for the Council to rely on managing the grant of permissions on ordinary housing allocations. Only 3 allocated sites were suitable anyway for C2. The note criticised the Council's quantification of need. Cooper Estates' submission went to the soundness of the plan through what was said to be non-compliance with the CS or the Council's own needs assessment of the housing needs of the elderly.

35. The Council told the Inspector that the SADPD allocated sites for development needs up to 2026, a period which would overlap with the new Local Plan; it was committed to its preparation, and had started work already.

36. The Council's Note of Day 1 of the hearings notes that Cooper Estates said that its case was based entirely upon the identification by the CS of a need for C2 uses to be met by the SADPD, which had failed to quantify or meet that need. The Inspector asked where the CS actually set out a specific C2 need. The Note, which is not complete, records no answer. But the Inspector pressed the point lest Cooper Estates were raising a point which went to compliance with the CS. Cooper Estates said that it "would be surprised if the Council stated that there is no need identified in the Core Strategy." So no passage in the CS was mentioned by Cooper Estates at that stage. But later it said that the question was whether the SADPD met that need with the required degree of certainty; a need had been identified in the CS for the SADPD to meet. Core Policy 6 of the CS referred to meeting the housing needs of the community including elderly people, and to the need for a mix of house types to that end, supported also by [5.161] of the CS. The Strategic Housing Market Assessment, SHMA, in 2008 had identified the need for 40 extra care units for the frail elderly

population, referred to in the CS. There was, said Cooper Estates, a general and specific focus in the CS on different age groups including the elderly.

37. The Inspector questioned whether C2 housing required a specific allocation and instead could be met by inserting a reference into housing allocations to the effect that it was a C2 opportunity. Cooper Estates rejected this on the grounds that the market would always go for conventional housing instead, where it could. So a specific allocation was necessary. The Inspector pointed out that others held a different view, including that significant volumes of C2 housing could diminish the amount available as conventional housing. This, the Inspector said, was an issue for the Council to respond to: specific allocation versus references on general allocations, enough C2 or too much? What was the policy balance, in achieving "enough C2", between specific C2 allocations and preventing "successful delivery" of C2 depressing the provision of necessary housing? Cooper Estates argued that specific allocations for C2 were the answer to either risk - too much or too little. Mr Jones characterised his submissions to the Examination as being that the SADPD was unsound because it failed to meet the housing needs of the elderly, as identified in the CS.

38. The Council's evidence to the Inspector made the point that the SADPD aimed to deliver the CS housing requirement, but not to revise or update it. A new local plan was being prepared. The allocations would meet that requirement with some 300 to spare, but that could be affected by flexibility in some allocations. The SHMA for the CS had identified 1060 households requiring sheltered housing, some of which could be met from existing stock and the likely need for "extra-care" units had been identified. 170 net additional C2 units had been delivered since the start of the Plan period.

39. The CS had not set out any specific C2 or similar requirement such as C3, and so the SADPD did not have to meet any C2 or similar target. But there were policies which proposed "C2 or similar use uses to reflect the site promoter's proposals for these and/or suitability of the site for such a use, as well as some current and extant planning applications for C2 or C3 elderly housing." Four of them were identified and discussed. Its evidence continued:

> "29. It is also the case that sites allocated for a C3 residential use in the SADPD are likely to be suitable for elderly accommodation, either C2 use or C3 elderly housing that provides self-contained accommodation and an associated relatively low level of support such as a resident warden and a communal meeting area. Further provision may therefore come from this source.
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> 30. The new Local Plan that will replace the Core Strategy will be informed by an updated SHMA, which will be required to specify a development requirement for housing to serve the elderly population. The housing target in the new Local Plan will differentiate between standard C3 dwellings and those specifically providing accommodation for the elderly. It will therefore be likely that the new Local Plan will allocate sites delivering either C2 accommodation or more general elderly housing."

40. The Council also produced a position statement on the land supply for C2 housing. Evidence was being gathered to form the base for targets for C2 and C3 housing in the new Local Plan, which could be met by policies or by allocations or by permissions. There was scope for considerable debate about whether various forms of housing for the elderly were in Class C2 or C3 or a mix, as Cooper Estates' proposal possibly was. The Council's later SHMA of 2015, covering the period 2013-2033, showed a need for 1391 specialist housing or 70 a year, and for 796, or 40 a year, of C2, separate from the overall assessed housing need. The total net delivery of C2 units over the period 2006-2016 was 296. Over the last three years, 2013-2016, net delivery of C2 amounted to 242 units, with 146 C3 units. This was said to show that C2 units were coming forward at a "buoyant rate" based on the 2015 SHMA, without specific site allocations, were being permitted and built. Two planning applications for C2 were also being considered. There was no need for either form of Cooper Estate's proposals.

41. The Council opposed Cooper Estates' proposed allocation or its site's designation as Rural Fringe on the grounds that the CS stated that the general extent of the Green Belt would be maintained for the plan period. It was therefore not "within the remit" of the SADPD to allocate sites within the Green Belt. The extent of the Green Belt would remain as in the 2006 Local Plan. As the new Local Plan would need to reconsider the suitability of land for development around the main urban area of Royal Tunbridge Wells and Southborough to meet future development requirements, as part of the process "it could be necessary to carry out a review of land within the Green Belt." Each of Cooper Estate's proposals contravened national policy and the CS. As the CS housing requirement could be met through the SADPD there was no need for sites to be added at this stage to the Rural Fringe sites, even though three of the six had now been allocated. The situation "will be reassessed as part of the Local Plan review."

The Inspector's Report

42. The Inspector reported to the Borough Council on 9 June 2016 on his examination of the submitted SADPD, which he calls the SALP. His statutory task was to deal with the issues of soundness, consistency and compliance in s20(5) and to make recommendations with reasons for his recommendations. Here, he recommended that the SALP was not sound or legally compliant without main modifications, but he recommended main modifications which made the SALP capable of adoption with them; and it was adopted with those modifications. None of the modifications are relevant to the case. He made no recommendations for modifications in relation to C2 or other housing for the elderly. It follows that he concluded, in relation to issues where no modifications were recommended, that it was reasonable to conclude that the plan as submitted was sound, legally compliant and met other statutory requirements.

43. At the end of his assessment of the duty to co-operate with other authorities, Greater London ones in particular, he concluded that the duty had been met. But he added, [9], that the SALP "must provide housing within the strategic framework that the CS sets. It will be for the intended replacement Local Plan (rLP) to address emerging evidence since the adopted CS and deal with issues that arise."

44. He identified three main issues going to soundness. Issue A was "Policy, strategy and methodology – the CS relationship", which covered the relationship between the SADPD and the CS. He dealt with site specific matters on a geographical basis following the framework of the CS and SALP.

45. Under Issue A, he identified one sub-issue as being the consistency of the SALP with the CS, evidence base and whether the SALP had been positively prepared , and another sub-issue as being the approach to the Green Belt. On the first sub-issue, he noted, [14] that the 2012 Regulations required the SALP policies to be "consistent with" the CS. He concluded that the SALP was "generally consistent" with the CS, though there were minor variations.

He continued:

> "The adopted CS identifies the overall economic, social and environmental objectives for the borough and the amount, type and broad location of development needed to fulfil these objectives that the SADPD conform to the adopted CS, a CS which preceded the National Planning Policy Framework by nearly two years. However, in the years that have passed since its adoption, new evidence has arisen and new policies have been articulated which suggest additional needs and new directions of travel, which are proposed to be met by a replacement Local Plan (rLP) which is also under active preparation."

46. He dealt with changes after 2010 and additional allocations at [18-19]:

> "18. Further to representations focussed on the delivery of land for housing development and for provision of the elderly, I have also considered whether the nature of the changes in evidence and policy that have taken place since 2010 mean that the SALP should allocate additional land that would have the effect of materially modifying the strategy in the adopted CS, or alternatively be withdrawn. However, having regard to the Wokingham judgment (and the recent finding in the Court of Appeal on the Tandridge case which confirms the correct approach) there is no basis in law for me to consider this matter further.
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> 19. I have not considered any additional land for allocation (omission sites) over and above that proposed to be allocated in the SALP, on the basis that the SALP meets the land requirements of the CS and there have been no circumstances in which my consideration of individual proposed site allocations in the remainder of this report have led to a shortfall of land against the requirement set out in the CS."

47. His report on the approach taken to the absence of a Green Belt review by the Council is important. He said at [21-24]:

> "21. The SALP has not proposed a review of the Metropolitan Green Belt boundary engirdling Royal Tunbridge Wells and Southborough, because in the Council's view, the land requirements for those settlements that cannot be met within the existing LBD, can be met when land is allocated from within rural fringe sites (a long term reserve of safeguarded land located between the LBD and the Metropolitan Green Belt Boundary).
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> 22. Having taken this position into account, together with paragraph 83 of the NPPF, I am satisfied that the CS housing land requirement can be met from land within the LBD and land proposed to be allocated from within the rural fringe sites. In reaching this position, I have taken account of the proposed allocations in Royal Tunbridge Wells and Southborough, and in the rural fringe. Subject to matters of detail reported on further below, I find that these allocations are sound. On this basis, there is not a shortfall of allocated and deliverable land in Royal Tunbridge Wells and Southborough and the rural fringe. It follows that I do not accept a need to allocate any land currently in the Green Belt.
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> 23. In reaching this view I have considered whether an argued shortage of or lack of diversity in housing and the ageing population is capable of constituting the exceptional circumstances necessary to trigger an alteration to the Green Belt boundary but again observe that the role of the SALP in relation to the adopted CS means that I should not recommend the allocation of land in the Green Belt when this direction has not been sought to the CS.
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> 24. It follows that I agree the approach that the SALP has taken to the Metropolitan Green Belt and I have not recommended that any land currently within the Green Belt should be allocated.

48. He referred back to these paragraphs at [58] on Green Belt and Rural Fringe allocations:

> "58. For reasons set out in paragraph 21-24 above I consider that the Council has taken an appropriate approach to the allocation of land in the rural fringe. It follows that the proposed allocations in this part of the SALP are sound. The CS does not support and no justified case has been made for the allocation of land in the Green Belt."

49. There is nothing of relevance in the section of the report dealing with allocations in the area of Royal Tunbridge Wells and Southborough. The SALP as adopted did not

contain any modifications of significance to this case from the draft before the Inspector for examination.

Ground 1: the approach to C2 homes for the elderly

50. Mr Jones submitted that the Inspector had misunderstood Cooper Estates' primary case in [18] of his report. This case had been that the SADPD did not address the need for homes for the elderly, including care homes, identified in the CS. It was not about meeting future needs. The SALP could not be sound if it had not delivered what the CS required. CP6 expected more specific provision for housing for the elderly; CS [5.160-164] clearly expected the SALP to assess the scale and type of housing to be provided for the elderly, to quantify the need for C2 housing and to allocate sites accordingly. The Inspector never found that the delivery of C2 housing met the CS needs. He had treated it as simply a matter for general housing. The report in [19] had erred in consequence. The new evidence of the inadequacy of provision of C2 housing, the draft SHMA 2013-2033, included most of the plan period, a point arising in ground 3.

51. The Inspector also failed to address what he had recognised in his opening of the examination as a central issue in C2 housing, about the policy balance between provision for C2 by specific allocation and depressing the provision of other housing. The Council had provided no specific evidence to support its contention here that C2 could be provided on C3 sites without depressing the delivery of C3 or general housing. It appeared to say that, so long as the overall housing requirement was met, it did not matter if the C2 requirement was not. C2 was not just to be tagged on to C3.

52. Mr Upton submitted that the contention that sites should be allocated for C2 use, and that use should not be left to come forward on housing sites generally, was an approach the SALP was entitled to eschew, and the Inspector was entitled to find that the SALP was sound, with that approach. The debate went far beyond the oral hearings; there was much written material. The Inspector had to answer with short form reasoning what his views were on the issue of soundness, and compliance with policy and legal requirements. The Inspector in his Report consistently tested the SALP against the CS and found it consistent and sound. That was a planning judgment he was entitled to reach, and was not unlawful.

53. As the Council had pointed out to the Inspector, the CS did not set a specific C2 target for the SALP, and so the SALP did not need to meet it. There was a five-year housing supply. There was no need for specific allocations to bring C2 uses forward; there was evidence which the Inspector was entitled to accept that sites which were not so allocated had come forward over the previous 10 years. Sites were being promoted for C2 without specific allocations; the point made by Cooper Estates was answered by evidence submitted by the Council as to what was actually happening, albeit that Cooper Estates disputed it before the Inspector. C3 sites could be developed for C2 uses. Windfalls were a significant source of C2 permissions. The Inspector heard the debate over the rate of past delivery of C2 and grant of C2 permissions.

54. The Inspector's comments in the discussion were no more than a discussion of the issues pursuant to his duty to satisfy himself as to the plan's soundness. He had to decide whether housing needs could be dealt with within general allocations or whether housing needs should be broken down into various categories, of which C2

would be one. Choice, by size and type, was already a requirement from the CS, and of itself that did not resolve whether specific type allocations were required or whether the general housing allocations would suffice. The Inspector was entitled to conclude that there was sufficient provision for C2 housing in the general housing allocations, and that there was no changed evidence such as to require further allocation.

55. I accept Mr Upton's submissions. It is important to remember that the judgment on soundness is a planning judgment; the judgment on consistency and compliance will involve planning judgments. The obligation to give reasons does not require the Inspector to treat each objection as an Inquiry into an application for planning permission. It is not suggested that the Inspectorate Guidance on the approach to the parties' cases and the extent of reasons required is unlawful. It obviously is not. I also accept that the Inspector had a great deal of written material, and although I was taken to some of the oral argument and submissions, I am very conscious that the judgment on the merits of these issues is very much for the planning judgment of the Inspector, who heard and read all the evidence over a number of days on these and related issues.

56. First, did the CS require the SALP to identify or quantity the specific need for C2 housing? The answer is clearly that it did not. It might not have been wrong for the SADPD to do so, and I can understand how forensically the citations might have been used to advance such a case. But Mr Jones' first point is that there was a requirement for it to do so. The Inspector was clearly alive to that aspect of Mr Jones' representations, as he asked him to identify where the obligation could be found. Mr Jones' eventual answer to the Inspector was that the obligation was to be found in CP6 along with [5.160-164], especially [5.161] of the CS. That requires more than a creative reading of the paragraphs. There is no Core Policy requirement for such quantification by the SALP. The CS quantified the general housing requirement to be met in the SADPD. That is all. The commentary to the CP6 did contain some quantification of some aspects of the housing provision for the elderly but not for C2 specifically. Nor does it say that that is for the SADPD to do, nor is it a necessary implication.

57. Second, was there a CS requirement for any need which there might be to be met by specific allocations for C2? The answer again is plainly not; neither expressly or by necessary implication.

58. Third, I can understand Cooper Estates' argument that it would be sensible to meet the needs, which would have to be quantified, by allocations. But I can also understand the rationale behind the Council's approach. The Inspector however was not required to reach a view on which was the preferable approach, so long as the approach adopted was sound. He heard the conflicting views of Cooper Estates and the Council, heard and read what evidence the parties brought to bear on the point, and reached a wholly unassailable planning judgment, that the SADPD was sound in the approach it adopted. Allocations were not required to meet the need. Other means would suffice.

59. Mr Jones said that a key aspect of the argument had been ignored when the Inspector had raised it himself. This I understand to be the question of whether allocations would be more or less effective than leaving it "to the market" to provide C2 on sites

where conventional housing could be permitted. This is part of the argument that allocations were preferable. The Inspector cannot be required, as a result of a comment or point raised in argument, especially on an inquisitorial basis, to treat the point as one which required a specific comment in his report. I cannot infer that he did not consider the point he raised when coming to his more general conclusion that the plan was not unsound for want of specific C2 allocations.

60. Fourth, I accept that the Inspector's report at [18] does not specifically set out that part of the argument from Cooper Estates and reject it. I can see how it could lead to the impression that he has just dealt with how future needs are to be dealt with. I cannot infer that the Inspector did not have the Cooper Estates' case in mind when reaching his conclusions on the soundness of the SALP or on its consistency with the CS. Even less can I do so in the light of the extensive material and oral argument before him.

61. Fifth, the Inspector did not fail in his duty to give reasons for the recommendation he made that in these respects the plan was sound. This is short form reasoning, conforming to the Inspectorate's guidance. It satisfies the statutory duty and the guidance. The plan was sound in the respects relevant to this case, for the reasons which the Council gave to the Inspector and which he plainly accepted. A plan may be sound, even if other approaches could also have been sound. Cooper Estates' arguments simply did not persuade the Inspector that it was reasonable to conclude that the plan was unsound or inconsistent with the CS. The Inspector obviously accepted the full and contrary arguments of the Council that the SALP was at least sound and consistent with the CS, as he was entitled to do. He is not required to spell out why it is not unsound in the light of every participant's/objector's argument. It was not necessary for him to go through the main arguments in contention between Cooper Estates and the Council, and state his conclusions on each as if it were an appeal against the refusal of planning permission for the Sandown site. That would be a misconception of the role of the examination with its particular role, notably the testing of soundness. Nor can I see any scope for prejudice from any want of reasoning. The points raised by Cooper Estates on the interpretation of the CS requirement are obviously wrong. The Inspector may have felt that he did not need to say so, but should deal with the problem about the newer evidence raised by Cooper Estates. No legal error is concealed by any inadequacy.

62. This Ground is dismissed. I deal with the role of further evidence in ground 3.

Ground 2: the approach to removing land from the Green Belt

63. Mr Jones principally submitted that the Inspector misinterpreted the CS. First he failed to address in [21-23] of his report what the CS actually had required in relation to the Green Belt. The Inspector had misinterpreted the CS policies as precluding consideration of sites in the Green Belt. So he was unable to consider Cooper Estates' case for the allocation of land in the Green Belt to meet the specific needs which it had identified. Cooper Estates' site adjoined the LBD in places. This was the sort of site which the CS intended should not be dismissed out of hand just because it was in the Green Belt or not entirely contiguous with the LBD. CS Core Policies 1 and 2 when read together did not prevent Green Belt sites being released for allocation for development; they contemplated that needs would be met, including by the release of

land on the edge of the LBD; the extent of the Green Belt was not to be maintained regardless and absolutely, but only its general extent.

64. Mr Jones also contended that Core Policies 2 and 9 of the CS required the Green Belt to be reviewed or in parallel with the SADPD, whether leading to allocations for development or additions to the Rural Fringe, a task which the Council was wrongly postponing to the new Local Plan. If what the Inspector said in [22] applied to C2 housing, there was no evidence base for his conclusion on the need to be met. About half of the land area of the Rural Fringe had been allocated in the SADPD. It was the task of the review to replenish the land allocated from the Rural Fringe. The Council agreed that the rest of the Rural Fringe land might not even be developable in the plan period or even for some time beyond. It was not sufficient to meet the CS requirements that the Council consider only the allocation of land from the Rural Fringe for development. Even the Local Plan review could not suffice, since it was limited to seeing whether further sites needed to be allocated from Green Belt to the safeguarded Rural Fringe. These points were all made to the Inspector. The Inspector referred to the Rural Fringe only in [58]; [14] related to the Local Plan.

65. Mr Upton for the Council submitted that Cooper Estates' case had required it to show exceptional circumstances in relation to housing needs for the elderly for its site to be released from the Green Belt. The Council had reviewed the stock of land within the Rural Fringe, as site allocations reflected. The Council's case, accepted by the Inspector, was that the needs of Royal Tunbridge Wells and Southborough could be met without releasing land from the Green Belt. The Green Belt boundaries should only be altered in exceptional circumstances. That did not mean that development could not take place on non-Green Belt but still greenfield land.

66. The Inspector had accepted the absence of review of the Green Belt and the Council's reasons for that: essentially it was not yet necessary and the new Local Plan would be able to do it. The replenishment of the Rural Fringe would have required a full review of the Green Belt. The general extent of the Green Belt was being maintained as required by the CS. NPPF [83] considered that such boundaries should only be altered in the Local Plan. Core Policy 2 from the CS required a review of the Rural Fringe but not of the Green Belt. The question for the Inspector was whether the SALP was sound without such a review, following a review of the Rural Fringe sites. The Inspector was reasonable in concluding that the Local Plan review would be sufficient and the absence of review did not make the SALP unsound or non-compliant with the CS. This was not an issue confined to whether a site for C2 housing should be allocated but also could be raised on the back of the need for general housing allocations.

67. I accept Mr Upton's submissions. Mr Jones' first point is misconceived. True it is that the CS does not say that no Green Belt land shall be allocated, and only that its general extent shall be maintained, which does not preclude some minor changes. But the Inspector does not suggest otherwise. He takes the conventional approach: before releasing land from the Green Belt for development, otherwise than on a review of the Green Belt, the strategy of the CS in Core Policy 1, and followed in the SALP, must be considered. This was to give priority to the use of previously developed land within the LBDs, then greenfield sites in the LBDs, and then land adjacent to the LBDs. For Green Belt land to be released for development by the SALP, outside a review at least, an exceptional case would have to be shown. There simply was no

need for such an allocation to meet the housing requirements of the CS. The Inspector did not find an unmet need but refuse to allocate Green Belt land when that was the only way to meet the need. He said that there was no need to do so and that was that. [19-24] and [58] of his report need to be read together. There was no starting point or finishing point that, no matter what, land in the Green Belt could not be released. There was just no case for doing so. Even had he adopted the approach that no Green Belt land could be considered, there would still have been no basis for its allocation for C2 housing.

68. Mr Jones' second point concerned the review of the Green Belt. I accept that CS Core Policy 2 required a review of land within the Rural Fringe, a review which could lead to land being removed from the Green Belt and placed into the long term reserve of the Rural Fringe. This is reflected in CP9. This review was to be in parallel with the SADPD. The review had been put off to the Local Plan so that the prospect of Cooper Estates' site becoming Rural Fringe rather than Green Belt had been postponed. The CS imposed no requirement that the review produce further land for the Rural Fringe, even if some were allocated in the SALP. The purpose of the review was to maintain the long-term boundaries of the Green Belt, after such adjustment, if any, as that review required to 2031. But the SALP did not contain the review nor was it done in parallel with the SALP. Thus far Mr Jones has a point.

69. The Council's reasons, however, for not having a review were set out; the Inspector heard them and accepted them. First, there was still land in the Rural Fringe, and no immediate need for further land to be allocated from it so as to deplete it further. There was no need for Green Belt land to be allocated either. Second, essentially, the replacement Local Plan, covering strategy and sites, was under way, and would be a better mechanism for dealing with that Rural Fringe review.

70. I consider that the Inspector was entitled to hold that it was reasonable to conclude that the SALP was nonetheless sound; the information which a review would have afforded was not necessary for soundness in those circumstances. That is a planning judgment for him and it is not irrational. I do not think that the absence of a review, meant that he was bound to conclude that the SALP was not consistent with the CS. The obligation of consistency permits of some departures, the significance of which it is for the Inspector to judge, and he reached a reasonable, and adequately reasoned, view on that point. This approach was reasonable. Dealing with this sort of problem, adverted to by Dove J in *Gladman v Aylesbury BC*, infra, is very much the territory of planning judgment, with which the Court should not interfere. The Inspector was also judging the consistency of SALP with the CS. The review did not have to be performed in the Plan itself. The review obligation was a parallel obligation, not a SALP obligation though it could inform the SALP. If failure there be, the obligation can reasonably be regarded as more honoured in the breach by a more satisfactory proposal for dealing with the issue. I see no prejudice either to Cooper Estates in any deficiency of reasoning.

71. I reject ground 2.

Ground 3: dealing with evidence of need arising after 2010

72. This ground focused on [18] of the Inspector's report. He had misunderstood the effect of *Gladman* and *Tandridge* line of cases. The fact that he was entitled to

examine policies within the context of the CS did not mean that changes in evidence and policy after the adoption of the CS in 2010 were irrelevant.

73. In *Tandridge*, above, Tandridge DC had adopted a Core Strategy in 2008 and had dealt with its housing requirement to 2026, in general accordance with the South East Plan, revoked in 2013. In 2014 it adopted a Local Plan Part 2. It was argued that the Local Plan Part 2 could not be "sound", because on adoption it would immediately be out of date since it did not conform to the NPPF's housing supply requirements. The Court rejected that argument, saying that soundness challenges to the adoption of a DPD would seldom succeed - as this case is also going to show. It approved, [29-36], the reasoning of Lewis J in *Gladman Developments Ltd v Wokingham BC* [2014] EWHC 2320 (Admin) on a related issue of whether a site allocations plan was sound when the housing provision had not been based on the NPPF requirement for "objectively assessed needs" but on the Core Strategy derived from the South East Plan. That is closer to the issue in this case.

74. Lewis J's reasoning included the following. 1: the fact that the CS might require updating did not prevent adoption in accordance with it. 2. The NPPF itself did not require every DPD, notably a site allocation plan, itself to comply with every NPPF policy for the provision of housing, and in particular did not require it to address whether housing beyond that in the CS should be provided. 3. Indeed, such an approach would run counter to the aim of adopting local plans in timely fashion, because, in my words, each would have to go back to square one for an assessment of needs. 4. The statutory duty to keep DPDs under review made such an approach unnecessary. "Soundness" did not require the Site Allocations Plan Inspector to consider an objective assessment of housing needs, even if the CS containing the objective assessment was out of date by reference to NPPF [182]. All of those points are contrary to the thrust of Mr Jones' submissions here.

75. Lindblom LJ, with whom Jackson and Patten LJJs agreed, at [38] also approved Dove J's comment in *R (Gladman Developments Ltd) v Aylesbury Vale DC* [2014] EWHC 4323 (Admin). The soundness of the plan had to be judged by reference to its scope, and what it set out to do. There was no error of approach in an Inspector concluding that a plan was sound rather than expecting all DPDs "to provide a seamless, comprehensive and continuously up-to-date palette of planning policies and proposals." That seemed, however, to be rather what Mr Jones hoped for.

76. Mr Jones submitted that these decisions showed only that the Inspector was not required to consider new policies and evidence when that was not the clear intention of the allocation plan. He emphasised that in [1.3 and 2.1] of the SALP, the Council had stated that the main purpose of the SALP was to allocate land for various needs including housing within the Borough to "2026 and beyond". He emphasised the last two words. He also referred to SALP [2.13-15], and CP2. The absence of a requirement to look beyond the CS period did not mean that doing so was barred. The references, notably to "and beyond" in the SALP distinguished this plan from those in *Tandridge* and *Wokingham*.

77. The Council could not cherry pick the issues on which it would look beyond the plan period. Cooper Estates' evidence to the Inspector referred to the draft SHMA prepared for the Council for the period 2013-2033, which anticipated strong growth in the needs of the elderly, showing a current need which would not be met before the

new Local Plan was adopted. The Inspector should have considered that evidence for consistency with the SALP but refused to do so.

78. Mr Jones also submitted that for those same reasons, the Inspector had erred in concluding that the preparation of the SALP complied with the duty to co-operate, that the SALP was sound and legally compliant, and complied with NPPF [182] which required it to be consistent with national policy. These points were largely just left unelaborated. I do not propose to consider them beyond the extent I have already done so.

79. Mr Upton pointed out that the SALP was fleshing out the strategy in the CS, whereas the Local Plan would cover both the strategy for the future and its related needs assessments and the allocations required to meet them. The Inspector had to deal with the Plan in front of him. He submitted that the phrase "and beyond" merely reflected the fact that the SALP, as it did more than just allocate land, also safeguarded land for future needs, and had to avoid prejudicing what might be needed after 2026. Infrastructure and community benefits could be expected to provide for the area's needs during the period to 2026 but would not then simply expire. There was an admitted 5 percent oversupply of housing for the plan period. Sites allocated within the Plan for needs in the plan period, which began to produce houses during the plan period and met those plan needs, would not necessarily all be built out precisely within the period to 2026. The Inspector unquestionably lawfully found that the SALP was sound within the CS framework. It was not for the SALP to rewrite the CS. As the Inspector pointed out in his report at [18], if evidence as to post 2010 changes meant that the SAP should allocate additional land for general housing and for housing for the elderly, the strategy in the CS would be modified by the SALP, or the SALP would have to be withdrawn. He was right that this was for the Local Plan to deal with.

80. I accept Mr Upton's submissions. He is right as to the role which the words "and beyond" play. No plan can confine allocations in such a way that they provide a neat edge at 2026: the sites may over-produce; they may require allocation for plan period needs but will continue producing after the plan period. Some allocations may necessarily provide for needs which will endure beyond the plan period, though needed within it. The words do not and could not turn the SALP into a plan for a period after 2026. They do not and could not require allocations to be made for sites not now needed to meet the CS requirements for the plan period but which might meet needs identified in later plans which partly cover later years of the plan period.

81. I was not sure how the complaint by Mr Jones related to the tasks of the Inspector in relation to soundness or consistency. There can be no complaint that the SALP was unsound because it did not look to meet needs beyond those required by the CS. It was not obliged to by statute, policy, authority or by the CS itself. The SALP could not be regarded as unsound because it could now be seen that the CS would need to be replaced and that its replacement would have to meet additional needs, some arising within the remaining years of this plan period, and that the SALP had not provided for those needs. It is a commonplace for plans to cover periods during which replacement plans will emerge; the process may be one of continual adjustment as needs and policies change. The task here on soundness was for the requirements of the CS to be met; the SALP had to be consistent with it. The Inspector concluded that they were, and it was. His approach, notably at [18], was inevitable for the reasons

given by Mr Upton. Although *Tandridge* does not bar account being taken of post CS changes, it emphatically does not require account to be taken of them and, as Mr Upton and the Inspector pointed out, doing so can swiftly lead to a rewriting of the CS, and SALP.

82. At the heart of Mr Jones' submissions is his complaint that the Council took account of some post CS changes in evidence, but not of one which could have favoured Cooper Estates, and the Inspector did not do so either. I am far from clear that there is any significant internal inconsistency in the SALP, comparing the post CS changes taken into account, and the refusal to assess the need for C2 housing by reference to a draft SHMA for 2013-2033, or error by the Inspector in not correcting it in the way Mr Jones sought. It was not for the SALP to carry out a full objective assessment of housing needs. It is but a speculative assumption on Mr Jones' part that the draft SHMA could have been taken into account without a full and final assessment of housing needs, which it was clearly not for the SALP, let alone the Inspector, to undertake.

83. But whether or not a legitimate complaint on the planning merits, it has no traction as a point of law. I understand Mr Jones' point that the draft SHMA related to the period 2013 onwards and so covered even the early years of the SALP. But there is nothing new about that sort of problem. Circumstances are always changing; further surveys and analysis are done. The plates beneath the planners' feet never stop moving; the plan-making process cannot always in all respects catch up with the latest movements, because the process of making even a single plan would never end: finalise and review is a perfectly lawful and sensible approach. There may be changes which the Council considers can be dealt with in the confines of a particular Plan but not others. The example given, the results of monitoring housing completions, is obviously relevant since it affects the housing numbers for which sites have to be allocated.

84. There is no basis for saying that the Inspector's conclusion on housing needs for the elderly contained an error of law over soundness or consistency, even if there had been an internal inconsistency on this aspect in the SALP. The Inspector had no basis for coming to conclusions other than those he did on soundness and consistency with the CS. He was entitled to treat the more recent and incomplete assessment of needs as he did, and that showed no misunderstanding of *Tandridge*.

Conclusion

85. I grant permission, though I am far from clear that all the points are truly arguable. However, I reject the claim and refuse to quash the SALP.