



Neutral Citation Number: [2013] EWHC 231 (Admin)

Case No: CO/5259/2012

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14 February 2013

**Before :**

**HER HONOUR JUDGE ALICE ROBINSON**  
**sitting as a Deputy High Court Judge**

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**Between :**

**UNIVERSITY OF BRISTOL**  
**- and -**  
**NORTH SOMERSET COUNCIL**

**Claimant**

**Defendant**

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**Ian Dove QC and Rowena Meager** (instructed by **Veale Wasborough Vizards**) for the  
**Claimant**

**Suzanne Ornsby QC and Mark Westmoreland Smith** (instructed by **the Head of Legal Services**) for the **Defendant**

Hearing dates: 18<sup>th</sup> and 19<sup>th</sup> December 2012  
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**Approved Judgment**

## **Her Honour Judge Alice Robinson sitting as a Deputy High Court Judge :**

### **Introduction**

1. This is an application to quash certain policies of the North Somerset Core Strategy (“the Core Strategy”) pursuant to s.113 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”). The Claimant (“the University”) owns approximately 70 hectares of land near Long Ashton to the south west of Bristol within the Defendant’s (“the Council’s”) administrative area and of which it is the local planning authority. The University’s land lies within the Bristol-Bath Green Belt.
2. The Council adopted the Core Strategy on 10 April 2012 pursuant to the 2004 Act and regulations made thereunder. Policy CS6 states that the Green Belt will remain unchanged during the plan period. Policy CS13 provides that the number of dwellings for which land will be identified in the plan period of 2016 to 2026 is 14,000. This had been increased from the draft policy figure of 13,400 dwellings to correct a mathematical error. The University had put in objections to the draft Core Strategy seeking to increase the housing numbers for which provision was made and arguing that a review of Green Belt boundaries should take place and an urban extension to the south west of Bristol should be identified which would include its land. Those objections were rejected by the Inspector who conducted an independent examination into the Core Strategy. The only modifications he recommended were the correction from 13,400 to 14,000 dwellings and the addition of the following words to Policy CS13: “the appropriate level of new homes will be reviewed in 2016 and 2021.”
3. The University now seeks to challenge the adoption of those policies and other policies consequential upon them on three grounds which I summarise as follows:
  - (1) The Council is in breach of the duty to co-operate in s.33A of the 2004 Act, as amended by the Localism Act 2011, and the Inspector wrongly held that the duty did not apply;
  - (2) The Inspector failed to give adequate reasons for his conclusion that the Core Strategy was sound so far as the scale and distribution of housing development was concerned;
  - (3) The Inspector’s conclusion that the Core Strategy was in general conformity with Regional Planning Guidance Note 10 (“RPG10”), as required by s.24(1)(a) of the 2004 Act, was unlawful.
4. The grounds on which the Core Strategy may be challenged are set out in s.113(3) of the 2004 Act which provides that

“A person aggrieved by a relevant document may make an application to the High Court on the grounds that –

  - (a) the document is not within the appropriate power;
  - (b) a procedural requirement has not been complied with.”

It is common ground that this imports the normal principles of administrative law, see *Blyth Valley BC v Persimmon Homes (North East) Ltd* [2009] JPL 335, per Keene LJ at paragraph 8.

5. In order to deal with the grounds of challenge it is necessary to explain in some detail the legislative and policy background.

### **Background**

6. The Core Strategy is a local development document prepared pursuant to the provisions of Part 2 of the 2004 Act. By virtue of s.17(7) of the 2004 Act regulations may prescribe which local development documents are to be development plan documents together with their form and content and other procedural requirements. The Town and Country Planning (Local Development)(England) Regulations 2004 (SI 2004 No.2204) make provision for a core strategy which is to be a development plan document “containing statements of – (i) the development and use of land which the local planning authority wish to encourage during any specified period...”, see regulations 6 and 7.
7. In preparing a development plan document the local planning authority must have regard to a number of matters including the regional strategy for the relevant area, s.19(2)(b). Further, s.24(1)(a) provides that local development documents “must be in general conformity with – (a) the regional strategy...”
8. Prior to the 2004 Act the Secretary of State provided regional guidance as to strategic issues in a Regional Planning Guidance Note. The Regional Planning Guidance Note for the South West region was RPG10 which was approved by the Secretary of State in September 2001. By virtue of the Town and Country Planning (Initial Regional Spatial Strategy)(England) Regulations 2004 (SI 2004 No.2206) RPG10 was prescribed as the initial regional strategy for the purposes of the 2004 Act (then called a Regional Spatial Strategy).
9. Paragraph 1.2 of RPG10 states that the RPG “sets out a broad development strategy for the period to 2016 and beyond.” Objectives for the Northern sub-region (which includes Bristol and North Somerset) are set out in Policy SS3 and include making adequate provision for future development requirements in Principal Urban Areas and seeking a more sustainable pattern of development. Paragraph 3.10 notes that some growth relating to Principal Urban Areas including Bristol has been leaping the Green Belt to nearby commuter towns leading to less sustainable patterns of development and travel. As a result provision was made for the Green Belt boundaries to be reviewed and urban extensions:

#### **“Policy SS 4: Green Belt**

Green Belts in the region should continue to fulfil the purposes set out in PPG2. As a key element of the future planning of the region, local authorities when preparing their development plans should:

- critically review the green Belt to examine whether boundary alterations are needed to allow for long term sustainable developments needs;
- remove land from the Green Belt for development, if, on balance, this would provide the most sustainable solution for accommodating future development requirements;

- include additional land within the Green Belt where clearly necessary for the purposes set out in PPG2.

**Policy SS8: The Bristol Area**

Local Authorities, developers, infrastructure and transport providers and other agencies should work together to achieve the following for the Bristol area:

- ...
  - balanced provision of additional housing... within the urban area or as planned urban extensions
- ...
  - a review of the Green Belt in accordance with Policy SS4”

10. In due course steps were taken to revise RPG10 and in July 2008 the Secretary of State published a draft Revised Regional Strategy incorporating changes for consultation following a public examination. The draft Revised Regional Strategy (“dRSS”) had therefore gone a considerable way down the statutory processes towards formal approval. The only remaining step was for the Secretary of State to consider any representations to the proposed changes and then publish the final document. However, the final document never was published for reasons which will become apparent.

11. Chapter 4 of the dRSS ‘Sub-Regional Policies and Housing Distribution’ identified a West of England Housing Market Area (“HMA”) centred on Bristol but including several surrounding authorities including North Somerset. Policy HMA1 provided that:

“In the West of England HMA provision will be made for:

- .....
  - growth of at least 137,950 homes, distributed between the local authorities as...

Bristol	36,500
North Somerset	26,750

**Bristol SSCT**

Provision for sustainable housing growth will comprise:

- 10,500 new homes at Area of Search 1A (9,000 within North Somerset and 1,500 in Bristol)”

12. This was a policy to which the Council had objected. Area of Search 1A lay to the south west of Bristol where an urban extension was proposed and the policy made clear that it included land in Bristol City Council’s area but that the bulk of the housing would have to be accommodated in North Somerset. In consequence changes were required to the Green Belt:

“At Bristol... the RSS identifies urban extensions as part of the most sustainable solution for delivering housing and other development. This has required changes to be made to the general extent of the Bristol and Bath... Green Belts.” Paragraph 4.0.15

13. In the run up to the May 2010 general election the Conservative Party indicated that if elected it would abolish regional strategies. In November 2009 the Council published

its consultation draft Core Strategy. This made provision for 17,750 dwellings excluding an urban extension to the south west of Bristol. Instead possible options for urban extensions were indicated with the document making it clear that these were not supported by the Council. In effect the Council was ‘hedging its bets.’ If regional strategies were retained the Council recognised that the Core Strategy would have to be in general conformity with the dRSS and make provision for an urban extension but on the other hand if regional strategies were not retained the Council would be able to make lower provision for housing with no urban extension.

14. After the May 2010 election the Coalition Government announced that it would abolish regional strategies and that decisions on housing supply lay with local planning authorities. This has been described as a move away from top-down planning to bottom-up planning. In July 2010 the government purported to revoke all regional strategies. At the same time the Council’s Executive approved a further consultation on the draft Core Strategy which incorporated, amongst others, the following “key principles”:

- “• Protection of the green Belt
- No development at SW Bristol”
- A new locally derived housing requirement for the district will be investigated and tested. This likely to be in the range 14,000-16,000 dwellings.”

15. The Council commissioned an independent consultant to consider housing needs and in consequence proposed a figure of 13,400 as the number of new homes required in the Core Strategy plan period of 2006 to 2026. No urban extension was proposed to the south west of Bristol nor were any changes proposed to the Green Belt.
16. In the meantime, several legal challenges were brought to the Coalition Government’s actions. First, in *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government* [2010] EWHC 2866 (Admin) the High Court quashed the decision to revoke all regional strategies on the grounds that s.79(6) of the Local Democracy, Economic Development and Construction Act 2009 did not give power to, in effect, abolish an entire tier of planning policy. The Secretary of State then indicated that decision makers should have regard to the intention to abolish regional strategies “in any decisions they are currently making” pending a change in the law. In December 2010 the Localism Bill was published, clause 89 of which included a power to revoke all regional strategies. Clause 90 introduced in its place a duty to co-operate. In consequence the dRSS was not progressed nor is it ever likely to be approved.
17. There was a further challenge to the indication that the intention to abolish regional strategies should be taken into account when making planning decisions, *R(Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWCA Civ 639. In its judgment the Court of Appeal made clear that, by virtue of the requirement that a development plan document must be in general conformity with the regional strategy, the intention to abolish regional strategies could not be a material consideration for a local planning authority or Inspector during preparation of a development plan and it would be unlawful for a local authority or Inspector when preparing or examining a development plan to have regard to that intention.

18. On 8 July 2011 the Council submitted the draft Core Strategy for examination, including policies CS6 and CS13 proposing 13,400 homes, no urban extension and no change to the Green Belt. The Council and objectors, including the University, put forward position statements and other documentary material in support of their cases. In November and December 2011 the Inspector held a number of hearings at which the University appeared in support of its objections. In the meantime on 15 November 2011 the Localism Act received the Royal Assent.
19. On 15<sup>th</sup> March 2012 the Inspector reported recommending a number of modifications. No change was proposed to Policy CS6 on the Green Belt. As already indicated, the only modifications proposed to Policy CS13 ‘Scale of new Housing’ were the correction of 13,400 to 14,000 dwellings and the addition of a requirement to review the appropriate level of new homes in 2016 and 2021. On 10 April 2012 the Council adopted the Core Strategy in accordance with the Inspector’s recommendation.

### **Core Strategy – the objections**

20. Justification for the Council’s approach towards housing figures was set out in a Stage 2 Report from its consultant Dr Keith Woodhead. The Executive Summary stated:

“This study has been commissioned to provide evidence based guidance as on future housing requirements for North Somerset in the light of changing economic and social trends.

The issues considered include:

- Population growth and declining household size;
- The effect of, and prospects for, economic growth;
- The dynamics of the local housing market...

Four key policy principles are set out to help guide the process of identifying an appropriate level of housing development, together with four possible policy options in order to test the results. Two methods of linking future house building both with economic change and other requirements for sustainable development were applied. The first is based on establishing direct links between future housing and projected economic growth within North Somerset itself. The second approach, based on a broader assumptions connecting projected job growth in the wider West of England Partnership area with housing requirements within North, is then used to examine the conclusions reached from application of the direct method.

The analysis is based on four economic scenarios for the WoE Partnership area relating to potential rates of national economic performance...

These scenarios provide the economic reference point for the analysis of housing requirements, which also take into account factors such as population ageing and other social factors leading to increasing household formation and smaller households, non job related migration relating to the attractiveness of the area as a place to live and evidence for currently unmet housing need...

The assessment and testing concludes that the range of housing delivery for North Somerset 2006-26 should be 14,000 – 15,600 (700 dwellings p.a – 780 p.a)

Bearing in mind the Council's policy requirement to rebalance development rates better to reflect the growth capacity of the local economy, it is further recommended that the Core Strategy should plan for growth at the lower end of the range, subject to a Plan, Monitor, Manage regime and, if required in the light of more favourable economic prospects, early review."

21. In summary the Council's strategy was to focus on local employment led housing growth rather than to meet all housing demand which had in the past led to high levels of in-migration to North Somerset and out commuting from there into Bristol. Thus, rather than relying on existing trends which it was said would perpetuate the unsustainable patterns of development hitherto, the number of homes would be linked to the number of jobs created in North Somerset. The following steps were taken to arrive at the 14,000 figure:

- (1) Having regard to various forecasts of economic growth it was calculated that 10,100 jobs would be created in North Somerset in the plan period.
- (2) Population projections from the Office of National Statistics ("ONS") from 2004 were used in preference to later forecasts.
- (3) These were used to calculate the total additional housing requirement in the West of England area as a whole during the plan period.
- (4) That figure was divided by the number of jobs predicted to occur in the West of England in the same period (using a higher growth percentage than in (1) above) to arrive at an additional home to jobs ratio of 1.388.
- (5) The 1.388 ratio was applied to the number of jobs predicted for North Somerset of 10,100 to give a figure of 14,000.

22. On 1 August 2011 the inspector produced an Initial Note in which he said:

"5. I am bound to take [the *Cala Homes*] judgment fully into account. I therefore proceed on the basis that, even though the RS for the SW remains in draft and does not carry the full weight of statutory policy, it is a strongly material consideration with respect to the preparation and soundness of the Core Strategy.

6. Accordingly in my Report I will be obliged to reach a conclusion as to whether the local evidence carries sufficient weight to override the draft RS with respect to any departures from it."

23. The Council responded by drawing attention to the fact that the dRSS was unlikely to be adopted and said:

"7. The evidence base which underpinned the draft RSS was, and remains a material consideration for the preparation of the Core Strategy. The weight to be accorded to this evidence and the policy implications to be drawn from it will be a matter for the Inspector to assess. However, the Council disagrees with the view set out in the

initial note that the draft RSS is “a strongly material consideration” and that the test is whether “local evidence carries sufficient weight to override the draft RS.

8. The key reasons for this can be summarised as follows...”

24. Those key reasons included that the dRSS evidence base was out of date and related to the pre-recession situation, it was predicated on ambitious growth assumptions, there is evidence that the housing numbers proposed in the Bristol urban extensions are physically undeliverable which has worsened in the recession, the population projections are trend based and fail to address employment led objectives and the dRSS failed to take account of localism.
25. The Inspector responded to that in a short note in which he said the dRSS remained a material consideration carrying substantial weight and that “it is necessary in current circumstances to examine whether the local evidence in support of the CS should override the evidence that underpinned the dRSS...” He went on to refer to paragraphs 7 and 8 of the Council’s response and stated that “the points made are not so much reasons to set aside the test outlined by the Inspector as they are evidence of material considerations that might ultimately prove sufficient... to override the dRS evidence and justify the CS provisions in the light of that test.”
26. The Position Statement submitted in support of the University’s objection set out 4 headline arguments in paragraph 16:

“• Ingrained within both the extant RSS (RPG10) and the SWRSS is the need for development to accommodate the growth requirements of the Housing Market Area (HMA). Instead, North Somerset’s current housing target is an attempt to satisfy the growth requirements of North Somerset only, under the guise of Localism. Both the sub-regional housing market and the sub-regional functional economy operate at a West of England level and are not contained within the boundary of North Somerset.

“• The Core Strategy housing evidence base is allegedly structured against an employment led approach to secure the delivery of approximately 10,100 jobs during the plan period. The relationship between job and housing delivery is established using a job to home ratio of 1.33. Adhering to this logic, zero job production would result in zero housing need. Such an approach is obviously flawed as it would simply imply that there would be no housing requirement from population growth.

• Alternative modelling undertaken by Hardisty Jones Associates (HJA) suggests that there is a latent demand for at least 14,100 units before employment drivers are considered. Therefore if the Council were to satisfy Core Strategy employment targets or those set by the Local Enterprise Partnership. The housing requirement would total at least 22,100 units and 23,200 units respectively.



- The HJA growth scenarios are aligned to the 2003 population projections which underpin the SWRSS housing target of 26,750 for North Somerset. The Inspector into Bristol City's EiP placed weight on the 2003 projections and adjusted Bristol City's housing target in line with the SWRSS Panel Recommendation. Furthermore, to ensure flexibility the Inspector insisted on cross-boundary working between Bristol City and neighbouring authorities should the need for urban extensions be required."

27. The Position Statement went on to say that "the use of the 1.33 multiplier is flawed for two fundamental reasons" (at that stage the correction to 1.388 had not yet been made):

"4.4 ...Firstly, the West of England as a whole is considered a poor proxy indicator for undertaking analysis of North Somerset. North Somerset has a very different age profile when compared to the rest of the West of England, which would lead to different patterns of population change over the period.

4.5 Secondly, the Council have assumed that the multiplier would remain constant as levels of employment change within the district, which is simply not the case as the relationship is dynamic. Should job levels fall then it would be expected that in response the multiplier would rise. The basis for this argument is that there are multiple drivers for housing growth and they do not all move together and are not all a function of employment levels. As already highlighted, there are significant population changes which will drive housing growth in the area as a result of natural change and changes in household structure. In addition, there will be non economic migration, perhaps for retirement or family reasons which are not driven by employment. There will then be a portion of housing requirements driven by economic migration. It is only the latter element that would be related to employment growth, and even that is a complex relationship given the current economic climate."

28. Alder King submitted further written material on behalf of the University in respect of housing numbers making similar points to those in their Position Statement. In addition, they drew attention to up to date ONS forecasts of population growth which showed that the population of North Somerset was forecast to grow by 67,600 and the West of England by 285,000 between 2006 and 2026, significantly higher than those forecasts relied upon by Dr Woodhead in his calculation of the homes to jobs ratio (paragraph 2.10 and Appendix 1). Alder King also included in Appendix 2 a paper prepared by Hardisty Jones Associates, Economic Development Consultants, showing how the 14,100 dwellings had been calculated, being the number they asserted were required to meet latent demand. This concluded that, if one adopted a homes to jobs ratio approach, the ratio increased the fewer jobs were created. If a ratio were to be adopted, the constant non employment related housing need of about 14,100 should be the starting point to which should be added a further figure for dwellings of 0.84 multiplied by the number of jobs to be created:

**"Table 5: Estimated Housing Requirements in North Somerset over the period 2006-2026**

Scenario	Housing Requirement	Additional jobs	Homes to Jobs Ratio
Nil further employment growth	14,100	600	25.7
Core Strategy aligned	22,100	10,100	2.2
LEP pro rated growth	23,200	11,400	2.0

**Source: HJA** (all figures rounded to nearest 100 so may not sum)

## 6. Conclusions

The outputs clearly differ from the analysis presented by North Somerset Council. In particular, it demonstrates that rather than employment and housing being directly linked through a multiplier of 1.33 (which would imply zero jobs requires zero homes) the relationship is based on both a baseline requirement related to population (circa 14,000) plus a further 0.84 homes required for each additional job. As a result the overall ratio of homes to homes varies with the level of employment as shown in table 5. For higher levels of employment the ratio reduces. The assumption adopted within the North Somerset evidence base of 1.33 homes per job would only hold for one specific level of employment, rather than across an extended range.”

29. In Section 6 Alder King went on to refer to the recent Inspector’s Report on the Bristol City Core Strategy. He considered Bristol’s proposed housing figure to be to low and recommended it be increased as well as requiring a review after a 5 year period. They also drew attention to his reference to the need for a cross boundary approach to the Green Belt highlighting that housing delivery is to accommodate the needs of the wider HMA not just that of the individual authority. They concluded that the Council had failed to plan for the needs of the HMA.
30. Alder King submitted further written material dealing specifically with the Green Belt. I refer to this in more detail when dealing with the third ground of challenge.
31. On behalf of the Council Dr Woodhead provided supporting information in response to issues raised by the objectors about housing numbers. Many other objectors besides the University were also arguing that the Council’s provision for housing was too low and the use of the homes to jobs ratio inappropriate. He set out the advantages of the new homes to new jobs ratio approach, in particular:
 

“2.2 Compared with basing the housing requirement solely on demographic projections such as the ONS/DCLG sub national projections, the method here avoids simply replicating and extrapolating a version of past population growth trends in a “predict and provide” fashion. Instead, while taking into account demographic trends, it establishes a clear link between economic growth and future housing requirements, whilst acknowledging, and making generous allowance for, the considerable section of the housing market that has no particular connection with local employment.”
32. Dr Woodhead went on to argue that the ratio approach was stable and gave predictable outcomes. He then referred to updating the dRSS methodology and said in paragraph 3.1:

“Therefore, whilst the Stage 2 assessment was primarily based on the growth prospects for jobs within N Somerset, account was taken of the wider characteristics of the wider West of England economy and housing market in order to ensure a more balanced context for growth. The projected wider WoE new homes to jobs ratio was therefore used rather than that of N Somerset alone to prevent over generous provision of housing for migrants without a local employment connection to the area, such as out-commuters and the retired. ”

33. As to the more recent ONS forecasts Dr Woodhead commented that they had fluctuated severely, by which he meant the figures had increased substantially, and drew attention to the fact that they amounted to a 41% increase in households in North Somerset during the plan period (paragraph 3.5). He compared this to the lower 2004 figures he had used. Then he stated that the ONS make clear their projections are only indicative of trends and concluded:

“3.8 As a result of this, it was decided to retain the rather more conservative population base from the Revised ONS 2004 based projections of private household population for the West of England as a basis for the calculation of the new homes/additional jobs ratio.”

34. Under the subheading ‘Projecting local housing requirements’ Dr Woodhead said this:

“4.1 To approximate to a measure of typical housing demand from the local population, the Stage 2 study (Section 8, para 8.2) uses the artificial assumption of zero net migration (ie that equal numbers of migrants move into an area and move out – with all the age and gender differentials that this implies – but overall the population is just allowed to age). The results from the Chelmer model are given below in Table 2. This suggests that an additional 2,700 dwellings is required by the “local” population in North Somerset 2006-26.”

35. The paper goes on to respond to specific objections and in relation to those from the University says:

“3. Alder King for University of Bristol, issues 1 and 2

3.1 AK maintain (para 1.6) that according to the “employment led” methodology used in the Core Strategy “zero job creation would result in zero housing need”, implying “that there is no housing requirement arising from population growth, in-migration or changes in household structures”. This represents a misunderstanding of the approach in the Stage 2 study. The homes/jobs ratio (of 1.39 revised from 1.33) fully incorporates projected increases in demand due to both population structure related and social trend induced falls in household size, the preservation of the substantial pre-recession trend based relationship between local job and other types of migration

growth and increased structural demand from the “local base” population of North Somerset 2006-26 (of 2,600 additional households). However, whilst the method allows for considerable non local employment led growth, at the same time it ensures that elements of the market such as dormitory commuting accommodation and retirement migration related inward migration do not get further out of balance with the job led growth component. This is the reason why the multiplier, based on projected 2026 population/household/jobs relationships, is held constant. To vary the ratio as suggested in AK para 4.5 would be to remove the very point of using it in the first place.

3.2 Without access to the detailed assumptions of the Hardisty-Jones model, it is difficult to comment on their assertion that 14,100 dwellings would be needed even if 2006 levels of local employment remained static in North Somerset to 2026. Amongst other things, this would depend on the degree of substitution into local jobs that characterised newcomers to the District as opposed to those leaving – population change caused by migration involving far greater levels of gross turnover per annum than is indicated by just focusing on estimates of change predicated on net migration and projected shifts in local population structure. During the year ended June 2010, for example, out of a total population of 212,000 in North Somerset, 9,300 people had moved into the area during the preceding year and a further 7,400 moved out. Total population turnover in 2009-10 was therefore 16,700 (8%) compared with a net gain of just 1,900 (under 1%). Similarly, there will be substantial turnover of inward and outward commuters to and from employment in North Somerset. These turnover factors provide ample scope for higher local take-up of new and existing jobs in the District by locally resident workers. As local employment grows, albeit perhaps at a rate lower than was hoped for at the time that the RSS was prepared, more opportunities will be available to both inward migrants and existing local residents to take up local jobs.”

36. In rebuttal the University produced a Technical Note from Hardisty Jones Associates. This stated:

**“2. Assessment of Latent Demand**

In his initial report to North Somerset Council and the follow-up Position Statement HD/01a, Keith Woodhead has assumed a single fixed ratio between growth in employment and growth in housing demand. This is wrong for two principal reasons...”

37. The two reasons were the same as before. First, the relationship between housing demand and new employment is not fixed and linear and

“...there is a constant level of housing growth required to address non-employment related drivers (latent demand) regardless of the level of employment growth which is forthcoming. This constant is incorporated within the Hardisty Jones Associates approach.”

38. Second:

“the ratio [Dr Woodhead] uses is derived from data for the West of England. The reason given for this is to “avoid the over generous provision of housing for migrants... such as out-commuters and the retired.” However, the drivers of the homes to jobs ratio in the West of England and in North Somerset are so different as to make the use of the same ratio problematic. North Somerset has a different population structure to the West of England with more retired people and more households not linked to employment, hence a much greater ratio of houses to working population than is the case in the West of England. Over the period under consideration, 40% of the growth in North Somerset population projected by the ONS is amongst those aged 65 years and above. This compares with only 25% of the growth in the West of England... it is indicated that the Dr Woodhead approach is “not over sensitive to the ... details of population structure.” However, it is vital that such an important factor is a key consideration within any assessment of future housing requirements. The desire for simplicity should not be at the expense of accurately reflecting key relationships between the drivers of housing requirements.”

39. In relation to Dr Woodhead’s use of 2004 ONS data Hardisty Jones Associates point out that all the forecast revisions have been upwards and continue:

“In fact Keith Woodhead postulates that the levels of migration assumed within population projections were high as a result of high levels of economic growth though the late 1990’s and early 2000’s, which would be reversed as a result of the recession and sluggish recovery. However, the reverse has proved to be the case, with the latest ONS projections for the UK, released in October 2011, showing even higher levels of migration than were assumed in the 2006 and 2008 projections which Keith Woodhead has dismissed.”

40. There was a final response from Dr Woodhead. In paragraph 3 he argued again that because the homes to jobs ratio was calculated using ONS data, albeit from 2004, it included the impact of declining household size, changing household representative rates, aging population structure and improving industrial productivity. He referred to his modelling exercise to identify the level of housing generated by the local population assuming zero net migration which showed an underlying demand for 2,500 dwellings which together with an allowance for vacant dwellings provided a minimum requirement of 2,600 dwellings. As to the argument that the West of England figures failed to reflect the population structure of North Somerset Dr Woodhead said this:

“6. The flaw in this argument is that the ONS project on the basis of trends that have been contributing to the very issues that the Core Strategy is aiming to address. ONS themselves are at pains to point out that the Sub-national projections should not be used as forecasts.

7. While the consequences of continuing “on trend” need to be taken into account by the plan, to follow them too closely in the plan’s provisions would result in perpetuating the problems of high levels of both population dependency and also of out-commuting from N Somerset. Taking the broader measure of H/J over the whole WoE helps avoid building in these problematic relationships. The H/J ratio, being calculated on the pre-recession homes/jobs relationship has an in-built allowance for what was a generous allowance for the element non local job related growth...”

41. In relation to the use of 2004 data he referred again to the instability of ONS figures and that they are the projection of relatively short term trends. He continued:

“9. Finally, the point that 14,000 dwellings would still be required in N Somerset due to in-built demand due to projected changes in local age structure affecting average household size and number of economically active demonstrates some of the dangers of relying uncritically on the shifting components of a simple population. In reality, the turnover of both populations and the occupants of the District, substitution of many out-commuters for a demand for more locally based employment together with the growing impact of increases in retirement age, are likely to increase. Use of the H/J ratio approach largely avoids these over-sensitivities. In addition, it is difficult to see how the development of such a large increase in housing in the RSS SW Bristol Urban Extension area of search would really relate to the bulk of additional employment provision within N Somerset, as this extension was intended to serve the needs of Bristol and not employment centres further south.”

### **Core Strategy – Inspector’s Report**

42. The Inspector reported on the Core Strategy on 15 March 2012. In paragraph 5.a.ii the Inspector referred to the duty to co-operate and said:

“Section 110(3) introduces the duty to co-operate between local authorities regarding cross-boundary strategic matters by inserting an additional purpose into the examination under section 20(5) of the PCPA 2004 to consider whether the local authority has complied with any duty imposed under section 33A in relation to the preparation of the plan. This CS DPD was already prepared and submitted by the date of the Royal Assent. Therefore, no such duty could have been imposed on NSC prior to that point because the duty was not in existence. Accordingly, taking into account all views expressed upon this new legislation, no action is taken in this examination regarding the duty to co-operate, albeit cross-boundary issues are germane to the ultimate conclusions of this report.”

43. In paragraph 6 he noted the Court of Appeal decision in *Cala Homes* and said that “any DPD must be in general conformity with the relevant RS”. He went on in paragraph 7 to refer to RPG10 as the approved RS and to the dRSS which with the passing of the Localism Act had no realistic prospect of ever becoming part of the development plan. He continued:

“In the context of this examination and the focus of the CS on the long-term planning of the District, the dRSS now carries little policy weight. Even so, regard should still be had to the evidence which supported it, insofar as it remains relevant to the assessment of the soundness of this CS.”

44. The Inspector identified the main issues of which the first was “Whether the CS makes appropriate provision for overall amounts of employment and housing development.” In paragraphs 10 to 12 he set out the policy background and employment-led approach of the Council:

“10. RPG10 as the current Regional Strategy (RS) sought to focus development on Principle Urban Area and the draft Revised Regional Spatial Strategy for the South West (dRSS) similarly promotes sustainable development focussed on Strategically Significant Cities and Towns (SSCTs) including Weston-super-Mare (WsM) as well as the city of Bristol. Historically in WsM housing development has out-performed the creation of employment resulting in the main town of North Somerset increasingly occupying a role as a dormitory location for Bristol with implications for transport and sustainability. Current development plan provisions to encourage employment alongside the buoyant housing market have failed to result in a rebalancing of jobs and housing, leaving a calculated backlog of 4000 jobs at WsM in relation to the present housing stock.

11. Accordingly, the CS seeks to link new housing to employment in North Somerset, and WsM in particular, in order to improve self-containment, reduce out-commuting and so achieve a more sustainable relationship. This approach is consistent with established regional and “local policy” and it attracts no substantial challenge to the extent that it applies to WsM. Nor is there any challenge to the premise adopted by NSC that over-provision for housing can lead to unsustainable development with excessive in-migration and out-commuting whilst under-provision can result in unaffordable house prices and a high level of in-commuting. It is accepted that an appropriate balance needs to be struck.

12. However, there is widespread representation that the CS is unsound in terms of its overall numerical provision for housing in relation to employment. If that is found to be the case, there are consequential implications for the spatial distribution of any additional development about the District, including within the Green Belt. Dispute is centred on whether the estimated amount of growth in employment and the directly-related new housing requirement figure are justified on the evidence of NSC when considered against the established assessment methodology of national housing policy in Planning Policy Statement 3. The question also arises as to whether the policies of the CS linking the release of housing to the creation of employment opportunities will succeed in practice without detriment to the overall housing target being met. This matter is

especially pertinent to the Weston Villages developments (discussed under issue 2 below).”

45. Under the sub-heading “Re-Appraising the Evidence”, in paragraph 13 the Inspector refers to the correction from 13,400 to 14,000 dwellings and then states in paragraph 14:

“The questions raised are whether the choice of employment growth scenario selected is logical and whether the applied ratio, of homes required to jobs created, is appropriate.”

In fact there was an issue as to whether the methodology of using a homes to jobs ratio was appropriate at all.

46. The Inspector refers to the preparation of the dRSS, the Government announcement in July 2010 and the steps taken towards preparation of the Core Strategy since then and then states in paragraph 16:

“16. The NSC local evidence for the overarching numerical and spatial provisions of its CS is thus predicated on RS revocation and, at first sight, a prejudgement of the reduced housing requirement. The widespread misgiving at this approach is therefore understandable, especially given the explicit advice at para 33 of PPS3 to include consideration of government household projections. However, there is evidence by way of reports commissioned by NSC [LD/18 and LD/22] that neither of the urban extensions could be achieved within the timeframe of the CS and that a housing figure of 6,000 would be more realistic for each. Changes to the RS expressed reservations about the scale of the 26,750 total. Furthermore, it is plainly desirable now to review the five-year-old evidence of housing requirements that informed the dRSS because it pre-dated the current economic recession, which is widely regarded as the worst since the 1930s. The examination provides the appropriate opportunity for the necessary fresh appraisal.”

47. In paragraphs 17 to 23 the Inspector considers economic growth forecasts and in paragraph 23 concludes that, in the context of apparently unprecedented and continuing economic uncertainty, the Council’s growth assumption of 10,100 jobs is justified.

48. Under the sub heading “Overall Homes: Jobs Ratio” the Inspector states:

“24. NSC multiplies its estimated jobs growth total of 10,100 by an assumed homes:jobs ratio of 1.388, arriving, coincidentally, at an overall housing target rounded also to 14,000.



25. Again, the chosen ratio is criticised as overly pessimistic as it is based upon pre-recession WoE figures in preference to the strong historic housing performance in North Somerset. However, this choice recognises that rural performance is unlikely to outperform its urban neighbours of Bristol and Bath in the crucial business service sectors of their local economies and so is also consistent with the employment-led approach to housing, in contrast with the previous trend toward out-commuting from new homes. Further, the ratio is calculated still to include a degree of spare capacity with reference to changing population structure and migration, reducing household size and local demand from non-working residents.

26. Falling within a wide range of known homes;jobs ratios within the WoE, the chosen value again appears as a reasonable compromise in present circumstances.”

49. After referring to the implications of the Council’s policy with respect to Bristol City and housing land supply issues the Inspector sets out his conclusions on Issue 1:

“29. The approach of NSC to the employment and housing targets of the CS is at first sight an inward-looking and conservative departure from the dRSS and national advice in PPS3. However, in the context of virtually unprecedented economic uncertainty and the intended removal of regional targets, there is no evident single right answer to the question of how many jobs and homes the CS should provide for at this time. Although highly subjective however, the conclusions in the NSC corrected evidence base appear to provide justifiable overall employment and housing targets based on the available evidence in current circumstances. That is despite being substantially below both the dRSS figure and ONS household predictions cited in PPS3 as a source of data to be taken into account. At the same time, on reasonable estimates of economic recovery, the figures match historic District house building performance

30. However, the uncertainty of the present situation re-emphasises that to be sound the CS must incorporate sufficient flexibility to meet unforeseen developments, especially any unpredicted upturn in the economy giving rise to increased job and housing requirements more in line with pre-recession forecasts. The spare capacity of over 3,000 dwellings identified in the SHLAA provides a significant measure of flexibility toward meeting such an eventuality.

31. Nevertheless, a substantial improvement in the economy, if reflected in the WoEP Districts, would have dramatic implications for the CS. In particular, should there arise a need for urban extensions or other provision to serve unmet need in Bristol, this would trigger a need for comprehensive review of

the CS with respect to Green Belt boundaries (discussed under Issue 2 below) and further strategic development locations other than WsM, potentially involving neighbouring Districts in accordance with the duty to co-operate under the Localism Act.

32. Therefore, the CS should commit itself to early review of its housing provision...”

He went on to recommendation modifications providing for such a review.

### **Ground 1 – breach of duty to co-operate**

50. I turn to consider the first ground of challenge, namely that the Council is in breach of the duty to co-operate in s.33A of the 2004 Act, as amended by the Localism Act 2011 (“the 2011 Act”), and the Inspector wrongly concluded that the duty did not apply.

51. Section 110 of the 2011 Act inserted into the 2004 Act a new s.33A with effect from 15 November 2011:

“(1) Each person who is—

(a) a local planning authority,

(b) ...

(c) ...

must co-operate with every other person who is within paragraph (a) ... in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b) the preparation of other local development documents,

(c) ...

(d) activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and

(e) activities that support activities within any of paragraphs (a) to (c), so far as relating to a strategic matter.

4) For the purposes of subsection (3), each of the following is a “strategic matter”—

(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas...”

52. The 2011 Act also amended s.20 of the 2004 Act, which makes provision for every development plan document to be submitted for independent examination by a person appointed by the Secretary of State. So far as relevant s.20 as amended provides:

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

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

(b) whether it is sound ; and

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

(7) Where the person appointed to carry out the examination—

(a) has carried it out, and

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

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation,  
the person must recommend that the document is adopted and give reasons for the recommendation.

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

(a) has carried it out, and

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

(7B) Subsection (7C) applies where the person appointed to carry out the examination—

(a) does not consider that, in all the circumstances, it would be reasonable to conclude that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, but

(b) does consider that, in all the circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation.

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

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

53. The 2011 Act also amended s.23 of the 2004 Act relating to the adoption of plans as follows:

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

(a) as it is, or

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

(2A) Subsection (3) applies if the person appointed to carry out the independent examination of a development plan document—  
(a) recommends non-adoption, and  
(b) under section 20(7C) recommends modifications (“the main modifications”).  
(3) The authority may adopt the document—  
(a) with the main modifications, or  
(b) with the main modifications and additional modifications if the additional modifications (taken together) do not materially affect the policies that would be set out in the document if it was adopted with the main modifications but no other modifications.  
(4) The authority must not adopt a development plan document unless they do so in accordance with subsection (2) or (3).”

54. Subsections 20(7) to 20(7C) were added by s.112(2) of the 2011 Act and subsections 23(2) to (3) were added by s.112(3) of the 2011 Act, both with effect from 15 January 2012. Section 112(6) provides:

“The amendments made by subsections (2) and (3) apply in relation to all adoptions of development plan documents that take place after the coming into force of those subsections, including an adoption where steps in relation to the document have taken place before then.”

55. Mr Ian Dove QC, who together with Rowena Meager appeared on behalf of the University, submitted that the effect of these changes was clear. The Inspector conducting an examination of a development plan document such as the Core Strategy after 15 January 2012 must determine whether the Council has complied with the mandatory duty to co-operate. That applies here because the Inspector’s report is dated 15 March 2012. If he concludes the Council have complied with the duty (and other requirements) he must recommend adoption. If he concludes that the Council have not complied with the duty he cannot recommend adoption.
56. He submitted that the effect of s.112(6) of the 2011 Act is that the new tests in s.20(7) to (7C) of the 2004 Act as amended apply to all plan adoptions after 15 January 2012 including where steps have been taken towards adoption before then. These provisions require compliance with the duty to co-operate in relation to the plan’s preparation. Thus the Inspector was bound to consider whether the Council had complied with the duty to co-operate in relation to preparation of the Core Strategy. The duty to co-operate had been published in clause 90 of the Localism Bill on 13 December 2010 and its proposed introduction had been well known for over a year, it was a substantive duty that authorities must comply with. If any local planning authority had concerns that they would not be able to satisfy an Inspector that they had complied with it the authority could withdraw the plan, the prohibition on withdrawal in s.22(2) of the 2004 Act having been repealed by s.112(4) of the 2011 Act. Any other construction would render s.112(6) otiose.
57. Because the Inspector had erroneously concluded in paragraph 5.a.ii of his Report that the duty to co-operate did not apply to the Council prior to submission of the Core Strategy for examination on 8 July 2011, he had never considered whether the Council had complied with the duty. There had been a clear error of law and the adoption of the Core Strategy was unlawful.

58. Miss Suzanne Ornsby QC, who together with Mark Westmoreland Smith appeared on behalf of the Council, submitted that the purpose of the duty to co-operate in s.33A of the 2004 Act as amended was expressly to maximise the effectiveness of the preparation of development plan documents, see ss.33A(1) and (3)(a). Preparation of the Core Strategy had ceased on 8 July 2011 when it was submitted for examination and the duty to co-operate did not come into force until 15 November 2011. This is unaffected by ss.20(7) to (7C).
59. Section 112(6) was not rendered otiose because it also applied to other changes introduced by the 2011 Act, namely the power to ask the Inspector to recommend main modifications and the flexibility given to the authority to make minor modifications of its own motion. On the University's approach about 60 development plans which have been adopted since the introduction of s.112 are unlawful.
60. She also made fallback submissions. If the University's construction of s.112(6) was correct nevertheless there was no duty to co-operate because the matters in issue were not "strategic" as required by s.33A(3) and (4). Consideration of the appropriate housing requirement and a review of green belt boundaries do not relate to the development or use of land but to the factual background and a policy designation. Alternatively, on the evidence, if had there had been a duty to co-operate the Council's joint working with neighbouring authorities would have complied with it.
61. In my judgment the University's arguments as to the construction of s.112(6) are incorrect.
62. The starting point is the duty to co-operate itself. So far as development plan documents are concerned, the effect of ss.33A(1) to (3) is that the relevant authorities must co-operate in maximising the effectiveness with which the following activities are undertaken: preparation of development plan documents, activities that can reasonably be considered to prepare the way for preparation of development plan documents and activities that support preparation of development plan documents. Self evidently, there is no duty to co-operate in relation to steps taken after preparation of the development plan document has completed. At this stage the local planning authority's powers are strictly limited and are confined to adoption (or not) in accordance with the recommendations of the Inspector and minor modifications i.e. those which do not materially affect the policies, see s.23 of the 2004 Act as amended.
63. So far as the Inspector's consideration of the duty to co-operate is concerned, he must consider whether "the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation", s.20(7)(b)(ii) of the 2004 Act as amended. The reference to "any duty" envisages that a duty to co-operate may or may not have been imposed. This could be because there were no activities involved in the preparation of a plan that related to strategic matters but it could also be because the duty had not yet arisen as preparation of the plan had been completed prior to the duty coming into effect. Development plan documents routinely take many months if not years to prepare so it would not be surprising if that were the case. Further, s.20(7)(b)(ii) refers to "any duty imposed... by section 33A in relation to the document's preparation" which can only mean a duty imposed by s.33A and not by virtue of another provision (such as indirectly by s.112(6)) and moreover a duty imposed at the time of the plan's preparation. Thus, s.20(7) does not

itself impose a duty to co-operate, rather it requires the Inspector to consider whether the duty to co-operate, insofar as it exists, has been complied with.

64. It is only at this stage that it is necessary to have regard to s.112(6) of the 2011 Act. This subsection is directed towards the application of the amendments to s.20 and not to the application of the duty to co-operate introduced by s.110 of the 2011 Act. The provision states that those amendments apply to plan adoptions which take place after the amendments come into force. As plans will have been in preparation for a considerable period of time prior to adoption the provision makes clear that the amendments will apply to any plan, whenever its preparation started, if it is adopted after 15 January 2012. The addition of the words “including an adoption where steps in relation to the document have taken place before then” puts that beyond doubt.
65. It is true that, if the requirement in s.20(7)(b)(ii) that the Inspector consider whether the authority has “complied with any duty imposed on the authority by section 33A” is construed as restricted to any plan preparation after 15 November 2011 when the duty to co-operate was introduced, in reality s.112(6) will initially be of little or no effect so far as ss.20(7)-(7C) are concerned. This is because any Inspector reporting on examination of a plan immediately after 15 January 2012 will be dealing with a plan which, owing to the time which an examination takes, will have been submitted for examination before 15 November 2011.
66. In this respect, although s.112(6) states that both subsections (2) and (3) apply to all adoptions after 15 January 2012, there is a difference in the practical effect of the two sets of amendments. The amendments introduced by s.112(3) to s.23 of the 2004 Act relating to main and minor modifications are given immediate effect. A local planning authority may adopt a plan on, say, 16 January 2012 with minor modifications. On the other hand, the amendments introduced by s.112(2) postpone the application of ss.20(7) to (7C) and consideration by an Inspector of the duty to co-operate to plans whose preparation had not been completed by 15 November 2011. However, that does not mean that s.112(6) is otiose so far as the amendments introduced by s.112(2) are concerned.
67. This approach dovetails with the introduction and application of the duty to co-operate itself. The duty is imposed on any plan currently in preparation on 15 November 2011 (so far as the activities relate to a strategic matter). While it is very unlikely there will be any plans where the duty to co-operate has existed in relation to the preparation of a plan adopted on 15 January 2012, as time goes by the number of plans where such a duty has arisen will increase. It was necessary for the amendments made by s.112(2) to come into force at some time and it could be said that Parliament was simply being very cautious. By adopting a 2 month time gap between the introduction of s.33A and the amendments to s.20 the legislation ensures that, as and when the duty to co-operate in plan preparation does bite, the examination of a plan must include consideration of whether the duty has been complied with.
68. The University’s approach to construction has the practical effect of imposing the duty to co-operate retrospectively. Any authority which had completed plan preparation before 15 November 2011 would have to consider whether they could satisfy an Inspector examining their plan after 15 January 2012 that such a duty had been complied with. If not, either the Inspector would not recommend the plan for

adoption or the authority would have to withdraw it. In either case there could be significant cost and delay.

69. In my judgment legislation should not be taken to impose a statutory duty retrospectively unless the language clearly indicates that is the intention. To impose retrospectively a substantive duty of co-operation requiring joint working between authorities which could affect the preparation of development plans over a lengthy period of time where failure to comply would likely result in significant delay and expense would in my view require the clearest possible wording. That is not the case here. The fact that authorities may have seen the writing on the wall in the form of the Localism Bill proceeding through its Parliamentary stages is not sufficient. The wording of the draft provisions could have changed and it would not have been certain when the Bill would become law.
70. In my judgment the Inspector was right to adopt the approach that he did and adoption of the Core Strategy is not unlawful on the ground that he did not consider the duty to co-operate.
71. In those circumstances it is not necessary to consider Miss Ornsby's fall back arguments. While I have no doubt some may find guidance on these matters helpful bearing in mind the legislation is new, I consider it would be wrong of me to give any guidance in a case where the issues do not strictly arise for consideration.

## **Ground 2 – inadequate reasons**

72. I turn to the second ground of challenge namely that the Inspector failed to give adequate reasons for his conclusion that the Core Strategy was sound so far as the scale and distribution of housing development was concerned. It was common ground between the parties that Inspector was under a duty to give reasons. However, it became apparent during the course of the hearing that there was a dispute as to the legal basis on which the Inspector was required to give reasons for his recommendations. In this case the Inspector recommended a number of modifications which he considered necessary in order to make the Core Strategy sound. His recommendation therefore fell within s.20(7C) as amended:

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

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.”

73. It is to be noted that there is no express requirement to give reasons in this subsection. For the University Mr Dove submitted that this is because such a recommendation means that the Inspector concludes that the requirements of subsection (5)(a) are satisfied, the plan is sound (with the modifications) and any duty to co-operate has been satisfied. Therefore by virtue of s.20(7) the Inspector is bound to recommend that the plan be adopted which includes an express obligation to give reasons for the

recommendation. For the Council Miss Ornsby submitted that there is nothing in subsections (7B) or (7C) that takes the reader back to subsection (7) so that there is no statutory duty to give reasons. However, she accepted that the Inspector was under a duty to give reasons to the same standard as if there was a statutory duty to do so.

74. In my judgment Mr Dove's submissions are correct. It is unlikely that a plan would be considered sound without any modification at all so that an Inspector's recommendation to adopt would almost always fall under subsection (7C). It would be an extraordinary oversight if the legislation imposed a duty to give reasons in every other case but not that one. I do not consider there has been such an oversight.
75. At the end of an examination the Inspector will either recommend the plan be adopted or that it be not adopted. Subsections (7) and (7A) make provision for each eventuality respectively. However, provision is also made in subsections (7B) and (7C) for a situation in which the Inspector considers that in order to make the plan sound some modifications are necessary. If those modifications are made the plan will be sound and (provided the other requirements are satisfied) the Inspector is bound to recommend the plan be adopted by virtue of subsection (7). Thus subsection (7C) does not provide for a third and separate outcome for which reasons may or may not be given. It is an outcome that is subsumed within subsection (7). In effect there are two routes by which an Inspector may recommend a plan be adopted, with or without modifications. But in either case the obligation to recommend adoption is contained within subsection (7) and with it the obligation to give reasons.
76. There is no dispute as to the correct legal approach towards the standard of reasons which was summarised by Lord Brown in *South Bucks District Council v Porter* (No.2) [2004] 1 WLR 1953 at paragraph 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.”
77. Mr Dove also relied upon *Blyth Valley BC v Persimmon Homes (North East) Ltd* [2009] JPL 335 in which the Court of Appeal upheld a decision to quash the affordable housing policy of a core strategy on the grounds of flaws in the Inspector's



reasoning. Keene LJ, who gave the judgment of the court, held that it is for the Inspector to decide the question of soundness from a neutral starting point, there is no presumption of soundness, see paragraph 40. The Inspector had also failed to take into account the absence of a robust and credible evidence base, one of the tests of soundness in PPS12 which applied at the time of this Inspector's report as well.

78. Mr Dove submitted that the University took issue with 3 areas of the Council's housing figures:

(1) Rejection of the latest dRSS figures;

(2) Failure to use up to date ONS household projections as required by PPS3; and

(3) Flaws in the ratio methodology, namely

(a) The use of a fixed figure when household trends are dynamic, and

(b) The use of West of England figures where the population structure is very different from the Council's area.

79. He submitted that the Inspector had posed himself the right question in the run up to the examination hearings, namely whether the evidence the local evidence in support of the CS should override that which underpinned the dRSS, see paragraph 25 above. However, he had failed to engage with that question and had failed to provide any basis for concluding that the up to date ONS household projections were inappropriate. Paragraph 16 of the report simply states that it is desirable to review the dRSS housing figures, not that they are wrong or why they are wrong. Paragraph 29 does not explain why the University's case was rejected.

80. Further, he submitted that the Inspector had wholly failed to grapple with the issues between the Council and the objectors, including the University, as to the appropriateness of the Council's ratio methodology. In particular, the last sentence of paragraph 25 – "Further, the ratio is calculated still to include a degree of spare capacity with reference to changing population structure and migration, reducing household size and local demand from non-working residents" – merely states what was common ground. The report not only fails to grapple with the key issue but leaves the reader in clear doubt as to whether the Inspector understood the objections.

81. Mr Dove contrasted this Inspector's approach with that of the Inspector who considered the core strategy of Bath and North East Somerset District Council ("BANES"). In the Annex to his preliminary conclusions that Inspector drew attention to BANES' reliance on a jobs-to-homes multiplier to calculate the district's housing requirement and went on in paragraphs 1.9 to 1.20 to consider 5 critical problems with that methodology. In summary these were that it assessed the district's needs rather than those of the relevant HMA, the linear link between homes and jobs, dependence on the reliability of forecasts of jobs growth, a lack of transparency in the methodology and that the methodology cannot adequately accommodate a review.

82. Miss Ornsby submitted that it is clear from the Inspector's report that he had the issues relating to the PPS3 requirement to use up to date ONS figures, the dRSS figures and criticisms of the Council's ratio methodology well in mind. Paragraph 12

set out the criticisms of the Council's approach and paragraph 14 identified the issues. Paragraph 29 explains clearly why he considered a departure from PPS3 and the dRSS was appropriate.

83. As to the ratio methodology, she submitted that the Inspector was under no obligation to give reasons for rejecting all the detailed criticisms made by the University's consultants, only to reach a conclusion on the main controversial issue, namely whether the use of the 1.38 ratio produced an insufficient housing requirement (Skeleton Argument paragraph 111). Paragraph 25 referred to the criticism of using West of England figures and rejected it on the grounds that use of North Somerset's figures would perpetuate the out-commuting the Council was trying to get away from. The Inspector goes on to accept the Council's argument that their figures included an element of non economic related housing and concludes in paragraph 26 that those figures are a reasonable compromise i.e. that the spare capacity is adequate. She accepted that the reasons were shortly stated but said the Inspector had dealt with the principal important controversial issues.
84. Finally, Miss Ornsby submitted that in contrast to BANES, this Inspector found the underlying characteristics of North Somerset justified the use of the ratio. Further, policy CS13 states the housing figure is a minimum whereas BANES were using their figure as a cap on housing numbers and this Inspector's modifications specifically required a review in 2016 and 2021.
85. I accept the Council's submissions that the Inspector had the broader issues relating to PPS3 advice on the use of ONS household projections and the dRSS figures well in mind. Paragraph 12 of the Inspector's report refers to the dispute as to "whether the estimated amount of growth in employment and the directly-related new housing requirement figure are justified on the evidence of [the Council] when considered against the established assessment methodology of national housing policy in [PPS3]." Paragraph 15 refers to the dRSS housing figure of 26,750 new homes in the Council's area and paragraph 16 goes on to refer to the widespread misgiving at the Council's approach "especially given the explicit advice in para 33 of PPS3 to include consideration of government household projections" i.e. the up to date ONS figures. The Inspector then explains why he considers it appropriate to review the dRSS figures.
86. In my judgment the Inspector gives clear reasons in paragraph 16 as to why he considers the dRSS figures should be reviewed. It is apparent from this he means that they should not be treated as a starting point, rather that "This examination provides the appropriate opportunity for the necessary fresh appraisal." The reasons he gives for this view are that reports commissioned by the Council show that the urban extensions proposed by the dRSS could not be achieved within the time frame of the Core Strategy and that a figure of 6,000 dwellings would be more realistic for each (as opposed to 9,000 in the North Somerset urban extension), the Strategic Environmental Assessment of the dRSS expressed reservations about the 26,750 figure and finally that the evidence on which the dRSS figures were based is now 5 years old and pre-dates the current economic recession, widely regarded as the worst since the 1930's.
87. It is perfectly clear that the Inspector has rejected reliance on the dRSS figures and the reasons why. This is a conclusion to which he was entitled to come and for which he has given adequate and intelligible reasons. Having done so, the Inspector goes on to

consider the Council's evidence in support of the revised housing requirement figure proposed in the Core Strategy. I return to the detail of that shortly.

88. Further, in paragraph 29 the Inspector summarises his conclusions on "Issue 1 – whether the CS makes appropriate provision for overall amounts of employment and housing development". Here again the Inspector explicitly recognises that the Council's approach is a departure from the dRSS and PPS3 but considers that the unprecedented economic uncertainty means there is no 'right' answer to the question how many jobs and homes should be provided. Although highly subjective he considers that the Council's figures are justified despite being substantially below the dRSS figures and ONS data PPS3 advises should be taken into account. Finally he notes that on reasonable estimates of economic recovery, the Council's figures match historic house building performance.
89. In that paragraph the Inspector gives several further reasons for rejecting use of the dRSS housing figures as well as use of up to date ONS data: virtually unprecedented economic uncertainty, removal of regional employment and housing targets, the Council's evidence base provides justifiable targets and that on reasonable estimates of economic recovery, the Council's figures match historic house building performance in the area. Whether those were good or bad reasons as a matter of planning judgment is not a matter for this court and Mr Dove expressly disavowed any argument that the Inspector's conclusions were irrational. Further, it cannot be said that he failed to have regard to PPS3 advice or the dRSS figures, see paragraphs 12, 15, 16 and 29 of the report.
90. Some further indication of the importance the Inspector places on the uncertainty of the economy is given in paragraph 30 to 32 of the report where he refers to the need for flexibility to meet unforeseen developments especially any unpredicted upturn in the economy. He envisages this will be met by the spare capacity in housing land supply of 3,000 dwellings and the requirement which he recommends be introduced for regular reviews of housing provision.
91. Further, whatever the merits of the Inspector's assessment of the Council's figures, he relies upon them, amongst other matters, in support of his rejection of the use of up to date ONS data and the dRSS figures. If there were no criticism of the Inspector's assessment of the Council's housing figures he would be perfectly entitled to prefer them to the use of up to date ONS data and the dRSS figures for the reasons he gives. This is not a case where the Inspector has started with a presumption of soundness and his approach is not contrary to the principles set out in the *Blyth Valley* case, see paragraph 77 above.
92. In my judgment taken as a whole the Inspector's reasons were adequate, intelligible as far as they dealt with the first two criticisms of the Council's approach summarised in paragraph 78 above.
93. I therefore turn to the Inspector's assessment of the Council's housing figure. The key criticisms of the Council's approach were these. First, that there is a demand for housing generated by changes in household structure, changes in population structure and non economic migration that have nothing to do with whether or not jobs are created and to provide only for housing generated by jobs fails to make appropriate provision for that latent demand. Second, that step (3) in the Council's approach (see

paragraph 21 above) used household projection figures for the West of England area as a whole which has a different population structure from North Somerset and therefore underestimated household growth in North Somerset.

94. As to the first, there was no dispute that the Council's approach did make some allowance for latent demand. This is because 2004 ONS forecasts were used, see step (2) in paragraph 21 above, which would have included some allowance for matters such as population and household changes. The issue was whether the Council's figures included a sufficient allowance for latent demand. The University's Economic Development Consultants calculated that the correct figure was 14,100 new homes plus 0.84 new homes for every new job which, depending on the economic growth rate used, gave rise to a total of 22,100 to 23,200 new homes. The Council's evidence was that its' figures included a 'floor' of 2,600 new homes to meet latent demand.
95. As to the second criticism, the Council preferred to use the West of England household projection forecasts because those for North Somerset were based on trends which included a high level of out commuting that the Council was trying to reverse. The University's evidence was that this did not address differences in population structure and, by way of example, referred to the fact that 40% of the projected growth in North Somerset population was amongst those aged 65 or older whereas in the West of England only 25% of the projected growth is in that age group. The implication of this is that there would be a greater rate of growth in the number of households of older persons in North Somerset than in the West of England as a whole.
96. The Inspector dealt with the issues relating to the Councils jobs/homes ratio in paragraphs 25 and 26 of his report. In the first sentence of paragraph 25 he refers to the criticism of use of the West of England figures in preference to those for North Somerset. In the next sentence he responds to that point by effectively accepting the Council's case that use of North Somerset's figures would continue the previous trend towards out commuting contrary to the employment led approach to housing. However, that does not deal with the University's case that, as a result, the increase in households has been underestimated.
97. He deals with the criticism relating to latent demand in the last sentence of paragraph 25 and in paragraph 26:
- “25....the ratio is calculated still to include a degree of spare capacity with reference to changing population structure and migration, reducing household size and local demand from non-working residents.
26. Falling within a wide range of known homes:jobs ratios within the WoE, the chosen value appears as a reasonable compromise in present circumstances.”
- The latter appears to be a reference to the Hardisty Jones Associates Technical Modelling Note Table 5 and section 6 (bundle pp.166-167) which refer to ratios of 0.84, 2, 2.2 and 25.7, see paragraph 28 above.
98. I agree it is implicit in the Inspector's reasons that he considers the “degree of spare capacity” to which he refers is adequate to meet latent demand. The issue is whether that is sufficient reasoning in law for his conclusion that use of the 1.388 ratio

produces an appropriate housing requirement figure. The degree of particularity required from reasons will depend very much upon the nature of the issues to be decided. This Inspector's role was to consider whether the Core Strategy's housing requirement figure was "sound", see s.20(7)(b)(i) of the 2004 Act as amended. A key issue which arose on the University's objections was whether the figure of 14,000 made sufficient allowance for latent demand having regard to the use of West of England figures with a different population structure and a flat ratio of jobs to homes. The evidence from the Council and the University went into a considerable amount of detail and figures in support of their respective cases. I accept Miss Ornsby's submission that the Inspector does not have to give reasons for rejecting all the University's detailed criticisms but he does have to deal with the principal important issues.

99. The problem with the Inspector's reasons is that they do not tell the reader why the Council's figures include sufficient allowance for latent demand having regard to the differing assessments of latent demand and differing population characteristics as between the West of England and North Somerset. As Miss Ornsby put it, he does reach a conclusion on the main controversial issue, namely whether the use of the 1.38 ratio produced an insufficient housing requirement. However, he does not say why. That is not to say that the Inspector was required to go into the same level of detail as the BANES' Inspector, but the shortness of his reasons contrasts sharply with the reasons this Inspector gave for accepting the Council's jobs growth figure of 10,100 in paragraphs 17 to 23 of the report. Contrary to Miss Ornsby's submissions (see paragraph 84 above), the Inspector has not found that the underlying characteristics of the North Somerset justify use of the ratio.
100. Paragraph 25 simply says that the use of North Somerset instead of West of England figures would have the disadvantage identified by the Council – continuation of the previous trend towards out commuting – without addressing the (unchallenged) evidence that they understate the likely growth of households in North Somerset by virtue of differing population structure. The statement that the Council's figures include "a degree of spare capacity" simply states what was common ground without saying why the Inspector thought that was adequate.
101. It is correct that in paragraph 26 the Inspector goes on to say that the ratio falls "within a range of known homes:jobs ratios with in the WoE" and therefore appears "a reasonable compromise". There may well be cases where all the Inspector can do is contrast two figures and say something in between is a reasonable compromise. However, in this case the reference to a wide range of ratios within the West of England and a compromise points strongly to the fact that the Inspector has not understood the evidence.
102. The Council's ratio of 1.388 involved no compromise at all. True it lay in a range of ratios from 0.84, through 2, 2.2 to 25.7. But 0.84 was a ratio to apply to new jobs in addition to the latent demand of 14,100 calculated by the University's Economic Development Consultants. Further, the ratios of 2, 2.2 and 25.7 were calculated by reference to a minimum of 14,100 new homes plus a figure for new homes related to the creation of new jobs. In other words, all the ratios in the University's evidence assumed a latent demand for 14,100 new homes whereas the Council's ratio assumed, on its evidence, a latent demand for new homes of about 2,600. The reason for the different ratios in the University's evidence arises entirely out of different

assumptions as to jobs growth. The only ratio that was in any way comparable to that of the Council was 2.2 because it assumed 10,100 new jobs.

103. Further, it is unclear what the Inspector meant by “known... ratios within the WoE.” The University’s evidence was based on household forecasts for North Somerset not the West of England and it is curious to describe those ratios as “known”. They are simply arithmetic calculations based on differing forecasts for growth in jobs. Miss Ornsby did not point to any evidence which the Inspector may have been alluding to in this paragraph other than the Hardisty Jones Associates Technical Modelling Note Table 5 and section 6.
104. The Inspector has therefore misunderstood the University’s evidence and in particular wrongly thought he was adopting a figure which lay within a range (0.84 to 25.7) as opposed to a figure which was right at one end of the range (if one compares 1.388 with any of 2, 2.2 or 25.7) and therefore was not a compromise at all.
105. Thus, even to the extent that the Inspector could be said to have dealt with the principal important controversial issues arising in respect of the Council’s ratio in that paragraph 26 gives his reasons for accepting the Council’s figure, in my judgment those reasons are neither adequate nor intelligible.
106. The Council’s housing requirement figure depended wholly on the ratio applied to the figure for jobs growth. Policy CS13 adopts the ratio recommended by the Inspector as sound. The legal validity of that policy depends upon the Inspector having reached conclusions that were lawful. For the reasons I have given I consider the Inspector failed to give adequate or intelligible reasons for accepting that the Council’s housing figure made sufficient allowance for latent demand. It follows that in my judgment the process leading towards adoption of policy CS13 was legally flawed and in that respect the Core Strategy is not within the appropriate power and a procedural requirement has not been complied with for the purposes of s.113(3) of the 2004 Act.

### **Ground 3 – general conformity**

107. The final ground of challenge is that the Inspector’s conclusion that the Core Strategy was in general conformity with RPG10 was unlawful. As already set out in paragraph 7 above, the Core Strategy must be in general conformity with the regional strategy RPG10 by virtue of s.24(1)(a) of the 2004 Act, at least until the regional strategy is revoked pursuant to s.109 of the 2011 Act. The correct approach to considering a challenge to decisions as to general conformity of a development plan was set out by the Court of Appeal in *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council* [2006] 1 WLR 334. Save to the extent that a question of statutory construction arises (which is a matter for the court), the court’s role is a supervisory one only, applying conventional public law principles, see the leading judgment of Laws LJ paragraph 22.
108. As to the meaning of “general conformity”, Laws LJ stated that the long lead in time for development plans and the exigencies of planning policies which are liable to change militated in favour of a looser rather than a tighter approach, paragraph 25. Further, the use of the adjective “general” introduced a degree of flexibility, paragraph 26. He concluded that the court should favour a balanced approach to construing the general conformity requirement accommodating these factors and that

there is considerable room for manoeuvre, paragraph 28. The question whether one plan is in general conformity with another is likely to admit of more than one reasonable answer and will be a matter of planning judgment not legal reasoning, paragraph 29.

109. The University's Position Statement on the Green Belt set out the following headline arguments:

- “• The extant regional tier of the development plan (RPG10) advocates the need for major development to be focused at Primary Urban Areas (PUAs), followed by urban extensions to PUAs. The Core Strategy must maintain general conformity with RPG10...
- By adhering to their principle of no SW Bristol urban extension, the Council are failing to satisfy the growth requirements of the HMA, and Bristol in particular. Therefore the Core Strategy spatial strategy is flawed.
- Due to the Council's unyielding commitment to the principle of 'Green Belt protection' they are unable to identify a sufficient supply of land to meet the needs of the HMA...
- The deletion of the south west Bristol urban extension will result in a significant shortfall in housing delivery...”

110. The Position Statement concluded as follows on the Green Belt implications of the Core Strategy:

“3.10 On the basis that Green Belt boundaries should be reviewed at the plan making stage, it is imperative that a robust green belt Assessment is undertaken now, as there is a critical need for green Belt land to be released to accommodate the growth requirements of the HMA as an urban extension to SW Bristol.”

111. In a Position Statement on the Green Belt the Council said in paragraph 8:

“The Council has not undertaken a comprehensive Green Belt review as this is not required to meet long term development needs.”

and in paragraph 11:

“The locally derived housing target of 14,000 dwellings and opportunities for the delivery of development consistent with the Core Strategy spatial strategy justify the Council's position that the scale of demand for housing no longer provides the exceptional circumstances required to alter the Green Belt.”

112. In a Position Statement on 'Cross boundary implications of the revised housing target for Bristol City and other neighbouring districts'. It stated:

3. “The Council's position is that Bristol's Core Strategy examination process assessed housing need, demand and supply and concluded that Bristol's needs within the plan period can be met within its administrative area. A review was specifically built in after 5 years with a contingency identified

at SE Bristol on the bath and NE Somerset border. There is no residual or unmet Bristol housing requirement which has to be provided within neighbouring authorities.

4. If the Inspector had accepted the case that there was an imperative to provide additional housing land to meet Bristol's needs then he had the option of either allocating Green Belt land or safeguarding it for long-term development. He did neither."

113. The Inspector who examined Bristol City's core strategy reported on 31 March 2011. He referred to RPG10 in paragraph 46:

"RPG10 2001 indicates (3.11) that the next round of structure plans should review the boundaries of the green Belt to ensure future patterns of growth are sustainable and this is required in policy SS8 for the Bristol Area. That task now falls to Core Strategies, but does not mean that Green Belt land has to be released for development. Its capacity to accommodate development has been reasonably assessed and the Council's intended proposals do not require Green Belt land."

114. His overall conclusions on housing provision and housing land supply were that Bristol City Council's minimum housing provision of 26,400 was very unlikely to meet the potential housing demands of the city but 32,800 dwellings could be provided and any further housing provision was restricted by land supply. This was because of the lack of available land within the City, the unsatisfactory nature of developing small pockets of Green Belt land in the City Council's area and the unwillingness of neighbouring authorities (including North Somerset) to consider urban extensions in the Green Belt. As a result he accepted the City Council's housing figures. As to the urban extensions he said this:

"52. The only way that substantial additional housing pressures could be accommodated would be via urban extensions in the Green Belt and these would largely be beyond the city's boundary, as was proposed in the emerging RSS. The opposition of the relevant adjoining councils to such development effectively precludes any current strategy that sought a more comprehensive approach to potential needs and opportunities. It would be unreasonable to expect the City Council to explore cross-boundary urban extensions at a time when the neighbouring authorities are opposed to such development and there is no higher tier of planning being actively pursued to promote such an approach. Nonetheless, as this plan is the first Core Strategy of the West of England authorities to be examined, it would be short-sighted to rule out the possibility of a cross-boundary approach to development of the green belt in the future. The Localism Bill may also require adjoining authorities to co-operate on cross-boundary issues."



115. In paragraph 6 of the Inspector's report into the Council's Core Strategy he refers to the requirement that the Core Strategy be in general conformity with RPG10 and at the end of the report in paragraph 99 he states:

“The approved RS (RPG10) is outdated but the Core Strategy is in general conformity with it so far as it remains relevant.”

There is no further express consideration of the issue of general conformity in the report but the Inspector does deal with issues relating to the need for urban extensions to Bristol and a Green Belt Review.

*“Cross-boundary Implications with respect to Bristol*

27. Significantly, the Bristol Core Strategy was found to be sound and adopted in 2010 without reliance upon urban extensions outside its boundary with North Somerset. Even though future urban extensions south west of Bristol are not ruled out, there is evidently no current need for North Somerset to cater for any unmet need from neighbouring Districts over and above its own calculated housing and employment requirements...

*Alternative Urban Extensions*

37. The most significant question to arise in the examination is whether further urban development locations are required to cater for unmet need in North Somerset and neighbouring Bristol, in addition to, or as alternatives to those selected by the CS in existing settlements in the Weston villages.

38. The answer to this question depends chiefly on the likelihood of an unexpected upturn in the economic situation in the next few years sufficient to enlarge the employment-led housing target above the chosen 14,000 and beyond the estimated supply of some 17,000 units. However, it is concluded under Issue 1 (above) that the overall employment and housing requirement totals are on balance appropriate in the circumstances, subject to regular review...

*Green Belt Review*

45. In the event of additional development capacity becoming necessary in a future review of the CS, it would be for NSC to consider providing for it by way of one or more urban extensions in the Green Belt south west of Bristol as proposed by the dRSS, whether at Long Ashton or at Pill as suggested by different Representors, or at other locations either within or outside existing settlements.

46. It is suggested by Representors that a review of sites within the Green belt should take place immediately and even that, without it, the CS cannot be sound as submitted. However, such consideration would be expected to require joint working with other WoEP authorities in accordance with the duty to co-operate under the Localism Act, and to involve a comprehensive reassessment of Green Belt boundaries within all four Districts.

47. Notwithstanding the earlier provision of RPG10 that a Green Belt review should be undertaken and the proposal of the dRSS for an urban extension in an area of

search south west of Bristol, it is not within the scope of this Report in current economic and planning circumstances to anticipate the outcome of such review processes which should remain within the purview of the PUAs responsible. Moreover, the Bristol CS has been adopted on the basis that no urban extension is required outside its boundaries pending review over a five-yearly cycle. Accordingly, the requisite exceptional circumstances, in terms of para 2.7 of Planning Policy Guidance 2 (PPG2), to justify changing the Green Belt are not currently made out.”

116. Mr Dove submitted that RPG10 included a requirement in policy SS4 that Green Belt boundaries be reviewed in order to provide for the expansion of Bristol including long term sustainable development needs i.e. beyond the RPG plan period ending in 2016. The Council’s housing requirement failed to make provision for any housing to meet the needs of Bristol City and the Core Strategy failed to include any Green Belt review. The Inspector wholly fails to address the question as to whether the Core Strategy is nonetheless in general conformity with RPG10. Further, the Inspector’s conclusion that no Green Belt review was required is inconsistent with the Inspector’s report on Bristol City’s Core Strategy which envisaged joint working with other authorities.
117. Miss Ornsby submitted that policy SS4 of RPG10 only required a review of Green Belt boundaries in order to allow for future development requirements albeit in the long term. She submitted that unless there were a development need identified which might require Green Belt land there was no need for a review. As the Inspector concluded that the housing requirement was only 14,000 dwellings which the Strategic Housing Land Availability Assessment found could be accommodated without the need for Green Belt land there was no need for a Green Belt review.
118. She submitted that the Bristol City Inspector’s report stated that there was no need for housing to meet Bristol’s needs which could not be accommodated within Bristol’s area without the need for any land in the Green Belt. Accordingly this Inspector was entitled to conclude that there was no need for an urban extension to the south west of Bristol or any Green Belt review for that reason.
119. In my judgment it is quite clear from paragraph 47 of the Inspector’s report that he was well aware of the policies in RPG10 requiring a Green Belt review. Although Mr Dove submitted that there was no issue between the parties as to the meaning of those policies it was apparent from the submissions of the parties as a whole that there is a disagreement about the meaning of Policy SS4.
120. Mr Dove submitted that the policy contained an obligation to review Green Belt boundaries and if necessary remove land from the Green Belt in order to accommodate long term development needs i.e. extending beyond a plan period. Even though the land would not be immediately required for development it would be removed from the Green Belt and become what used to be known as ‘white land,’ land safeguarded for future development. On the other hand Miss Ornsby submitted that no review was required unless there was, in effect, a quantified need for land for development.

121. In *Tesco Stores Ltd v Dundee Council* [2012] 2 P&CR 9 the Supreme Court confirmed that the interpretation of planning policy is a mixed question of law and fact. The interpretation of planning policy is a matter of judgment for the decision maker but policies should be interpreted objectively in accordance with the language used read in its proper context, paragraph 18. Or as it was put by Brooke LJ in *R. v Derbyshire County Council ex p. Woods* [1997] JPL 958 at p.967, it is for the court to determine as a matter of law what the words are capable of meaning and the decision maker cannot attach a meaning to the words they are not properly capable of bearing.
122. Policy SS4 of RPG10 requires local authorities when preparing their development plans to  
  
“critically review the Green Belt to examine whether boundary alterations are needed to allow for long term sustainable development needs;  
  
remove land from the Green Belt for development if, on balance, this would provide the most sustainable solution for accommodating future development requirements.”
123. The Inspector’s approach to SS4 can be seen in paragraphs 27 and 31 of his report. In paragraph 27 he states that there is no need for an urban extension to Bristol (which by definition would require removal of land from the Green Belt) because there is no current need for the Council to cater for any unmet need from neighbouring districts. Paragraph 31 states that if a need for an urban extension arises this would trigger a need for a comprehensive review of the Core Strategy with respect to Green Belt boundaries. The Inspector’s approach to a Green Belt review is that it was not required as there was no identified need for development which might require Green Belt land.
124. In my judgment the Inspector’s interpretation was one that was properly open to him. “Long term sustainable development needs” is a general expression and one that may encompass a plan period, which in the case of the Core Strategy is 20 years, or a timescale beyond that of a plan period. If the current housing requirement for a particular district can be met without the need to use Green Belt land there may be no need for a boundary review. On the other hand, if the identifiable housing land supply is insufficient to meet the current housing requirement of a district, a Green Belt review may well be required. If it is considered appropriate to meet housing need in an urban extension then proper planning may require a larger area of land is released from the Green Belt for that urban extension than is immediately required for development. Thus, the phrase “long term” – the time period within which development needs are to be considered – is flexible and will depend on the nature of the need and how it is proposed to be met.
125. Thus, insofar as the Inspector was entitled to conclude that there is sufficient housing land supply to meet the Council’s 14,000 housing requirement and that there is no need for an urban extension to meet the housing needs of Bristol, he was entitled to conclude that a Green Belt review was not required by Policy SS4 now as part of the Core Strategy.
126. As to the housing requirement figure of 14,000, there is no suggestion that this would require the release of land in the Green Belt, indeed no issue is taken with the

Inspector's acceptance of the Council's housing land supply figure of 17,150 dwellings, see paragraph 28 of his report. However, I have already concluded under ground two, the reasons challenge, that the Inspector's approach to the housing requirement figure of 14,000 was flawed. It is therefore possible that on a reconsideration that figure may increase. If so, that may have implications for housing land supply and give rise to the possibility at least that land may need to be released from the Green Belt. In this event it would be necessary for the Council to reconsider whether a review of Green Belt boundaries should take place. I will return to the implications of that in my Conclusions.

127. As for housing to meet the needs of Bristol City, paragraph 27 of the Inspector's report correctly indicates that the Bristol Core Strategy did not identify a current need for housing that could only be met outside the City boundaries. It is true that the Bristol Inspector's acceptance of that authority's housing figures was based on restricted land supply for housing. This was because of the lack of available land within the City, the unsatisfactory nature of developing small pockets of Green Belt land in the City Council's area and the unwillingness of neighbouring authorities to consider urban extensions in the Green Belt.
128. I recognise there is a 'chicken and egg' quality to the two Inspectors' reports. In Bristol the housing requirement figure was constrained by the unwillingness of North Somerset to consider an urban extension. In North Somerset no urban extension was proposed because it was not needed to meet Bristol's housing requirement figure.
129. However, the question for the court is whether this Inspector's conclusion that the Core Strategy was in general conformity with RPG10 was lawful. In the light of the fact that Bristol City's Core Strategy did not identify a housing requirement that needed land outside the City Council's area in an urban extension, the Inspector's conclusion that North Somerset's Core Strategy need not make provision for an urban extension and in consequence no review of Green Belt boundaries was required to meet such a need was plainly open to him. That conclusion was not inconsistent with the Bristol City Inspector's report on joint working between authorities. Paragraph 52 of the latter report simply states that it would be short sighted to rule out the possibility of a cross boundary approach to development in the Green Belt in the future, it does not specify when and if such joint working should take place.
130. Further, the North Somerset Inspector's report deals with an argument that there should be an immediate review of sites within the Green Belt as part of the Core Strategy. His conclusion is that such a review should require joint working under the duty to co-operate and the Core Strategy could not anticipate the outcome of such a review, see paragraphs 46 and 47. The duty to co-operate had not been in force during the preparation of the Bristol City and North Somerset Core Strategies and the Inspector was entitled to conclude that any Green Belt review should take place in the future and in co-operation with other authorities. Further, in accordance with the Inspectors' recommendations, both the Bristol and North Somerset Core Strategies incorporated a review of housing need, see paragraph 57 of the Bristol City Inspector's report and 32 of the North Somerset Inspector's report. This would provide an early opportunity to carry out a Green Belt review.
131. Having regard to the principles set out in the *Persimmon Homes* decision, I consider the Inspector was entitled to conclude that an immediate Green Belt review was not

required by Policy SS4 of RPG10 by virtue of any unmet need for housing to serve Bristol and that the Core Strategy was in general conformity with RPG10 in that respect.

## **Conclusions**

132. To summarise my conclusions on the first ground of challenge, the duty to co-operate introduced by s.110 of the 2011 Act as s.33A of the 2004 Act did not come into force until 15 November 2011 after preparation of the Core Strategy had completed and it had been submitted for examination. Accordingly it did not apply to preparation of the Core Strategy and s.112(6) does not have the effect of retrospectively imposing the duty. The Inspector did not misconstrue the 2011 Act and there was no duty to co-operate which the Inspector had to consider for the purposes of s.20(7) of the 2004 Act as amended.
133. As to the second ground of challenge, the Inspector gave clear reasons for rejecting the 26,750 new homes figure in the dRSS and concluding that there should be a fresh appraisal of housing need. He also had regard to the advice in PPS3 as to the use of up to date ONS household forecasts and explained why he declined to follow that advice. However, in his appraisal of the Council's housing requirement figure of 14,000 he failed to give adequate or intelligible reasons for his conclusion that the figure made sufficient allowance for latent demand i.e. demand unrelated to the creation of new jobs. In consequence the adoption of Policy CS13 of the Core Strategy in reliance on the Inspector's recommendation was unlawful.
134. Finally, on the third ground of challenge, the Inspector was entitled to conclude that there is sufficient housing land supply to meet the Council's 14,000 housing requirement and that there is no need for an urban extension to meet the housing needs of Bristol. Further, he was entitled to conclude that, in consequence, a Green Belt review was not required by Policy SS4 now as part of the Core Strategy.
135. However, my decision that the Inspector's conclusions as to the housing requirement figure of 14,000 were unlawful and consequently that it was unlawful for the Council to adopt policy CS13 may well have a knock effect on other policies. In particular, while I have found no flaw in the Inspector's approach towards whether an urban extension was required to meet the needs of Bristol City, it is possible that an alternative housing requirement figure for North Somerset excluding an urban extension may necessitate the release of land in the Green Belt or otherwise affect spatial or area policies of the Core Strategy. I will reserve the precise form of order to be made under s.113 of the 2004 Act pending consideration of further submissions from the parties.