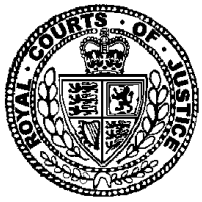

Neutral Citation Number: [2016] EWHC 73 (Admin)

Case No: CO/1812/2015 and CO/2669/2015

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/01/2016

Before:

MR JUSTICE HOLGATE

- -

Between:

R (Crownhall Estates Limited)	**Claimant**
- and -	
Chichester District Council	**Defendant**
- and -	
Loxwood Parish Council	**Interested Party**

- -

Richard Harwood QC and Daniel Stedman Jones (instructed by **SDK Law**) for the **Claimant**
Stephen Morgan (instructed by **Ms Nicola Golding, Chichester District Council**) for the **Defendant**
The Interested Party were not represented

Hearing dates: 18th and 19th November 2015

- -

Approved Judgment

Mr. Justice Holgate:

Introduction

1. The Claimant, Crownhall Estates Limited ("Crownhall"), is promoting the development of 25 dwellings on a site in the village of Loxwood, West Sussex, known as "Land to the South of Loxwood Farm Place" ("the Crownhall site").

2. The Defendant, Chichester District Council ("CDC"), is the local planning authority for its area. On 14 July 2015 CDC decided to adopt the Chichester Local Plan: Key Policies 2014-2029 ("the Local Plan"). The Local Plan forms part of the statutory development plan for CDC's district, including Loxwood. The Court was informed that Crownhall did not submit any objections to the draft versions of the Local Plan and has not made any application in the High Court to challenge that plan.

3. The Interested Party, Loxwood Parish Council ("LPC"), is a "qualifying body" for the area of Loxwood Parish under section 61E of the Town and Country Planning Act 1990 ("TCPA 1990"). Under section 38A of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004") it initiated the process for making a neighbourhood development plan. On 8 March 2013 CDC designated the whole of the parish as a neighbourhood planning area. Between 4 November and 15 December 2013 public consultation took place on the pre-submission draft of the Loxwood Neighbourhood Plan 2013 to 2029 ("the LNP"). Between 17 January and 28 February 2014 CDC organised a further round of public consultation on the submission draft of the LNP. The submission draft and the representations made in that consultation process were then submitted to an independent Examiner for the statutory examination of the plan in accordance with paragraphs 7 to 12 of schedule 4B to TCPA 1990. On 11 April 2014 the Examiner produced a report to CDC on the examination. Because CDC was satisfied that the draft LNP satisfied the "basic conditions" in paragraph 8(2) of schedule 4B, it was obliged to hold a local referendum under para 14. The referendum was held on 24 July 2014 and 97.7% of those voting, voted in favour of the plan and so CDC became obliged under section 38A(4) of PCPA 2004 to make the LNP.

4. In July 2014 Crownhall brought its first claim for judicial review under section 61N of TCPA 1990 in relation to the LNP. On 20 October 2014 the High Court made a consent order quashing CDC's decision to hold the referendum and also the subsequent referendum on the grounds that the Environmental Assessment of Plans and Programmes Regulations 2004 had not been complied with. In particular it was accepted that the process for making a screening decision that Strategic Environmental Assessment ("SEA") was not required for the LNP had been unlawful. Subsequently, a lawful screening process was carried out by CDC which determined that SEA was not required for the LNP. Crownhall has not raised any legal challenge to that decision. It is common ground that the consent order made in October 2014 on the first judicial review has no further implications for the present proceedings.

5. Between 23 October and 4 December 2014 a fresh round of public consultation took a place on a resubmitted draft of the LNP. Twenty representations were made, some supporting the LNP in its entirety. Crownhall made representations objecting that the LNP had not identified the Crownhall site for housing. As is normally the case (see paragraph 9(1) of Schedule 4B to TCPA 1990), the examination followed the written

representations procedure and so no hearing was held by the Examiner. No complaint is made regarding the decision not to hold a hearing.

6. On 25 February 2015 the Examiner sent her report on the examination of the re-submitted LNP to CDC. She recommended that, subject to modifications set out in the report, the LNP satisfied the "basic conditions" and should proceed to a referendum. CDC agreed and therefore came under a duty once again to hold a local referendum.

7. At this stage, following pre-action correspondence with CDC, Crownhall issued a second application for judicial review on 20 April 2015 (CO/1812/2015). The claim included a ground that the decision by an officer to accept the Examiner's recommendation and to hold a referendum was taken outside the scope of delegated authority. That ground was overtaken by a fresh decision taken by CDC's Cabinet on 24 April 2015 to accept the Examiner's recommendation and to hold a referendum. On 5 June 2015 Dove J granted Crownhall permission to apply for judicial review on all grounds save for the challenge to the earlier reliance upon delegated authority.

8. On 25 June 2015 the local referendum on the re-submitted LNP was held pursuant to the Cabinet's decision on 24 April 2015. On this occasion 98.5% of those voting, voted in favour of the making of the LNP. In the meantime on 8 June 2015 Crownhall had issued its third proceedings for judicial review (CO/2669/2015) challenging the decision in April 2015 to hold the referendum and seeking an order to quash that decision.

9. On 14 July 2015, the same day as it adopted the local plan, CDC also made the LNP under section 38(4) of the PCPA 2004.

10. On 5th August 2015 Cranston J granted Crownhall permission to apply for judicial review in the third claim and ordered that (a) the second and third claims be consolidated and (b) the Statement of Facts and Grounds in the third claim should also stand as the Claimant's grounds in the second claim. On 24 September 2015 Dove J made a consent order to amend the relief sought in the claim to include an order quashing the making of the LNP by CDC.

11. Going back to December 2013, whilst Crownhall was making representations on the draft LNP, it also submitted an application for planning permission for 25 dwellings on the Crownhall site. CDC refused the application on 25 June 2014 on a number of grounds, including conflict with the then emerging draft LNP and draft local plan. Crownhall appealed under section 78 of the TCPA 1990 to the Secretary of State for Communities and Local Government ("SSCLG") against that refusal. The appeal was recovered for determination by SSCLG. An Inspector held an inquiry into that appeal between 8 and 10 September 2015. The Inspector indicated that his report would be submitted to the SSCLG by the end of October 2015. SSCLG stated that his decision would be issued by 14 January 2016. On the advice of leading and junior counsel, on 29 October 2015 Crownhall applied for the hearing of the judicial review fixed for 18 and 19 November to be vacated and for the proceedings in the High Court to be stayed until 14 March 2016. It was said that in the event of SSCLG deciding to grant planning permission on the Crownhall site "the outcome of these proceedings will be of no effect or very limited effect". However, CDC did not consent to the application and expressed the concern that SSCLG might wish to defer his decision pending the

outcome of the judicial review (paragraph 20 of the Claimant's skeleton confirms that that is the case). LPC objected to the application. On 11 November Deputy Master Knapman refused the application for an adjournment and a stay.

National Planning Policy Framework

12. Paragraph 14 of the National Planning Policy Framework ("NPPF") provides:-

> "14. At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.
>
> For **plan-making** this means that:
>
> • local planning authorities should positively seek opportunities to meet the development needs of their area;
>
> • Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> - specific policies in this Framework indicate development should be restricted.
>
> For **decision-taking** this means:
>
> • approving development proposals that accord with the development plan without delay; and
>
> • where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
>
> - specific policies in this Framework indicate development should be restricted."

It is to be noted that the reference to plan-making in paragraph 14 is directed to the local plans which are to be made by local planning authorities.

13. Paragraph 17 of the NPPF sets out twelve core land-use planning principles which underpin both plan-making and decision-taking, of which the first and third are:

> "be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans

> setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;
>
> …
>
> proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;"

14. Under the heading "Delivering a wide choice of high quality homes" paragraph 47 provides:-

> "To boost significantly the supply of housing, local planning authorities should:
>
> • use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period; ….."

Once again the policy is directed towards the responsibility of local planning authorities for making local plans. Likewise paragraphs 50 to 54 of the NPPF state how local planning authorities should deliver a wide choice of housing.

15. More detailed guidance on plan-making is contained in paragraphs 150 to 185 of the NPPF. A local planning authority is to set out the "strategic priorities" for its area in the local plan, including the delivery of the homes and jobs needed for that area (paragraph 156). The authority should ensure that the local plan is based on "adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area" (paragraph 158). A local planning authority must have a clear understanding of housing needs in their area. To that end it must prepare a Strategic Housing Market Assessment to assess "full housing needs", working with neighbouring authorities where housing market areas cross administrative boundaries, and a Strategic Housing Land Availability Assessment to establish the availability, suitably and viability of land to meet the identified need for housing over the plan period (paragraph 159). Similar principles

apply to identifying development needs of business and the supply of land for that purpose (paragraphs 160-161).

16. Neighbourhood plans are dealt with in paragraphs 183 to 185 of the NPPF:-

> "183. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Parishes and neighbourhood forums can use neighbourhood planning to:
>
> • set planning policies through neighbourhood plans to determine decisions on planning applications; and
>
> • grant planning permission through Neighbourhood Development Orders and Community Right to Build Orders for specific development which complies with the order.
>
> 184. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. The ambition of the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with the strategic policies of the Local Plan. To facilitate this, local planning authorities should set out clearly their strategic policies for the area and ensure that an up-to-date Local Plan is in place as quickly as possible. Neighbourhood plans should reflect these policies and neighbourhoods should plan positively to support them. Neighbourhood plans and orders should not promote less development than set out in the Local Plan or undermine its strategic policies.
>
> 185. Outside these strategic elements, neighbourhood plans will be able to shape and direct sustainable development in their area. Once a neighbourhood plan has demonstrated its general conformity with the strategic policies of the Local Plan and is brought into force, the policies it contains take precedence over existing non-strategic policies in the Local Plan for that neighbourhood, where they are in conflict. Local planning authorities should avoid duplicating planning processes for non-strategic policies where a neighbourhood plan is in preparation."

Thus, a neighbourhood plan enables the community involved to express "a shared vision for their neighbourhood", so long as the neighbourhood plan does not promote less development than is set out in the local plan or undermine its strategic policies, where a local plan has been adopted. The formulation of strategic policies is a matter for the local plan.

Statutory Framework

The development plan

17. Section 38(3) of PCPA 2004 provides that the "development plan" comprises "the development plan documents (taken as a whole) which have been adopted or approved in relation to that area" and "the neighbourhood development plans which have been made in relation to that area". The "development plan documents" comprise the local planning authority's "local development documents" setting out its policies for the development and use of land in its area and specified as development plan documents in its "local development scheme" (sections 15, 17 and 37(1) – (3) of PCPA 2004). In this case the development documents include CDC's local plan.

Preparation of development plan documents

18. Section 19 of PCPA 2004 provides for the preparation of local development documents, including in this case CDC's local plan. Subsections (1), (2) and (5) provide (inter alia):-

> "(1) Development plan documents must be prepared in accordance with the local development scheme;
>
> (2) In preparing a development plan document or any other local development document the local planning authority must have regard to—
>
> (a) national policies and advice contained in guidance issued by the Secretary of State; …….
>
> (h) any other local development document which has been adopted by the authority; ……
>
> (5) The local planning authority must also—
>
> (a) carry out an appraisal of the sustainability of the proposals in each development plan document;
>
> (b) prepare a report of the findings of the appraisal."

19. Section 20 provides for the examination of a development plan document by an independent Inspector. Subsections (1) and (5) provide:-

> "(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.
>
> (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; …"

Whether the Inspector concludes (inter alia) that the development plan document is "sound" or not determines whether he becomes obliged to recommend that the plan be adopted or not (section 20(7) and (7A), subject to the "main modification" procedure (in section 20(7B) and (7C)) which enables modifications to be recommended by the Inspector to render an "unsound" policy or plan "sound". Similarly, whether or not the local planning authority is legally able to adopt a development plan document depends (inter alia) on the examining Inspector having concluded that the plan is "sound" or made recommendations for modifications to render it "sound" (section 23((2) to (3)). If, however, the Inspector concludes that the plan is "unsound" and is unable to recommend modifications which would make the plan "sound", the authority has no power to adopt the plan (Section 23(4)).

Neighbourhood Development Plans

20. Sections 38A to 38C of PCPA 2004 provide for the making and content of neighbourhood development plans. Section 38A(3) applies the procedure contained in schedule 4B of TCPA 1990 to preparing, consulting upon, examining and making neighbourhood plans, subject to the modifications made by section 38C(5).

21. Paragraph 8(1) of schedule 4B requires the Examiner to consider the matters specified therein. Paragraph 8(6) prohibits the Examiner from considering any matters falling outside the ambit of paragraph 8(1), save for whether the plan is compatible with "Convention Rights" under the Human Rights Act 1998. Under paragraph 8(1)(a) the Examiner must consider whether the draft plan meets (inter alia) the "basic conditions" set out in paragraph 8(2):-

> "A draft neighbourhood plan meets the basic conditions if –
>
> (a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the plan; …..
>
> (d) the making of the plan contributes to the achievement of sustainable development;
>
> (e) the making of the plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area) …."

22. It is common ground that paragraph 8(2)(e) only requires general conformity with the strategic policies in a *statutory* development plan (section 336(1) of TCPA 1990 and section 38 of PCPA 2004). It is also agreed that paragraph 8(2)(e) is irrelevant to the

legal issues raised in this case because at all material times the relevant local plan policies had not yet been adopted.

23. The "basic conditions" also control the ambit of the recommendations on, and modifications to, a draft neighbourhood plan which may be made by an Examiner. Under paragraph 10(2) of Schedule 4B the Examiner's report must recommend that the draft plan be submitted to a referendum, or that the draft plan as modified by modifications specified in the report be submitted to a referendum, or that the proposal for a neighbourhood plan be refused. Paragraph 10(3) restricts the modifications which may be made to certain specified circumstances. It was common ground that in the present case the only relevant provision was sub-paragraph (a):-

> "modifications that the Examiner considers need to be made to secure that the draft plan meets the basic conditions mentioned in paragraph 8(2)."

Paragraph 10(4) provides that the Examiner's report "may not recommend that a plan (with or without modifications) be submitted to a referendum if the Examiner considers that the plan does not –

> (a) Meet the basic conditions mentioned in paragraph 8(2), or
>
> (b) comply with the provision made by or under sections [38A and 38B of PCPA 2004]."

By paragraph 10(6) the Examiner's report must contain reasons for each of the recommendations made and a "summary" of the Examiner's "main findings".

24. Paragraph 12 of Schedule 4B of TCPA 1990 generally governs the consideration by the local planning authority of the Examiner's report and the actions it may then take. By paragraph 12(2) the authority must consider each of the recommendations made in the report (and the reasons for them) and decide what action to take in response to each recommendation. By paragraph 12(4) the local planning authority is obliged to hold a local referendum under paragraph 14 provided that it is satisfied that (inter alia):-

i) the draft plan meets the basic conditions mentioned in paragraph 8(2); or

ii) the draft plan would meet those conditions if modifications were to be made to the draft plan (whether or not recommended by the Examiner).

Although paragraph 12(5) confers a discretion on the local planning authority to make modifications to a draft plan, that power is restricted to the matters set out in paragraph 12(6). Once again it is common ground that the only part of paragraph 12(6) which is relevant to the issues in this case is:-

> "(a) modifications that the authority consider need to be made to secure that the draft plan meets the basic conditions mentioned in paragraph 8(2)"

If one or other of the pre-conditions in paragraph 12(4) to the holding of a referendum is not satisfied, then the local planning authority must refuse the proposal for a neighbourhood plan (paragraph 12(10)). By paragraph 12(11), the authority is obliged to publish the decisions that it makes under paragraph 12 and its reasons for making those decisions.

25. By section 38A(4) of PCPA 2004, if in a referendum held under paragraph 14 of Schedule 4B to TCPA 1990 more than half of those voting have voted in favour of the plan, the local planning authority is under a duty to make the neighbourhood plan and to do so as soon as reasonably practicable after the referendum is held. The obligation to make the plan does not apply, however, if the authority considers that the making of the plan would breach, or would otherwise be incompatible with, any "EU obligation" or any "Convention Right" under the Human Rights Act 1998 (see section 38A(6)). No such issue arises in the present case.

26. Section 61N of TCPA 1990 (as modified by section 38C(4) of PCPA 2004) provides that a legal challenge:-

    i) to a decision by a local planning authority under paragraph 12 of Schedule 4B of TCPA 1990; or

    ii) questioning anything relating to a referendum under Schedule 4B; or

    iii) questioning a decision by a local planning authority under section 38A(4) or (6) relating to the making of a neighbourhood plan,

    may only be brought by a claim for judicial review filed within 6 weeks from the date on which the relevant decision is published or declared.

27. The operation of this statutory framework has been considered in decisions of the High Court, notably by Supperstone J in BDW Trading Limited v Cheshire West Borough Council [2014] EWHC 1470 (Admin) and Lewis J in Gladman Developments Limited v Aylesbury Vale District Council [2014] EWHC 4323 (Admin). In Woodcock Holdings Limited v SSCLG 2014 EWHC 1173 (Admin) I summarised (at paragraphs 57, 61 to 62 and 129 to 133) key principles laid down by those earlier decisions, including the interpretation of relevant parts of national planning policy.

28. The parties prepared a helpful document entitled "Agreed Legal Propositions". Paragraph 12 referred to paragraphs 82 to 85 of BDW, to Woodcock and to paragraphs 133 to 134 of R (DLA Delivery Limited) v Lewes DC [2015] EWHC 2311 (Admin) as setting out relevant legal principles. It was not suggested in that document, the skeletons or in oral submissions that the legal or policy framework has been mis-stated in any of those decisions.

29. The relevant principles may therefore be summarised as follows:-

    i) The examination of a neighbourhood plan, unlike a development plan document, does not include any requirement to consider whether the plan is "sound" (contrast s. 20(5)(b) of PCPA 2004) and so the requirements of soundness in paragraph 182 of the NPPF do not apply. So there is no

requirement to consider whether a neighbourhood plan has been based upon a strategy to meet "objectively assessed development and infrastructure requirements", or whether the plan is "justified" in the sense of representing "the most appropriate strategy, when considered against reasonable alternatives" and based upon "proportionate evidence";

ii) Where it is engaged, the basic condition in paragraph 8(2)(e) of schedule 4B to TCPA 1990 only requires that the draft neighbourhood plan *as a whole* be in "general conformity" with the strategic policies of the adopted development plan (in so far as it exists) *as a whole*. Thus, there is no need to consider whether there is a conflict or tension between one policy of a neighbourhood plan and one element of the local plan;

iii) Paragraph 8(2)(a) confers a discretion to determine whether or not it is appropriate that the neighbourhood plan should proceed to be made "having regard" to national policy The more limited requirement of the basic condition in paragraph 8(2)(a) that it be "appropriate to make the plan" "having regard to national policies and advice" issued by SSCLG, is not to be confused with the more investigative scrutiny required by PCPA 2004 to determine whether a local plan meets the statutory test of "soundness". ;

iv) Paragraphs 14, 47 and 156 to 159 of the NPPF deal with the preparation of local plans. Thus local planning authorities responsible for preparing local plans are required to carry out a strategic housing market assessment to assess the full housing needs for the relevant market area (which may include areas of neighbouring local planning authorities). They must then ensure that the local plan meets the full, objectively assessed needs for the housing market area, unless, and only to the extent that, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF *taken as a whole*, or *specific* policies in the NPPF indicate that development should be restricted (St Albans City Council v Hunston Properties [2013] EWCA Civ 1610; Solihull Metropolitan B.C. v Gallagher Estates Ltd [2014] EWCA Civ 1610).

v) Those policies in the NPPF (and hence the principles laid down in Hunston and Gallagher in the interpretation of those policies) do not apply to the preparation by a qualifying body of a neighbourhood plan. Although a neighbourhood plan may include policies on the use of land for housing and on locations for housing development, and may address local needs within its area, the qualifying body is not responsible for preparing strategic policies in its neighbourhood plan to meet objectively assessed development needs across a local plan area. Moreover, where the examination of a neighbourhood plan precedes the adoption of a local plan, there is no requirement to consider whether it has been based upon a strategy to meet objectively assessed housing needs.

The Chichester Local Plan: Key Policies 2014-2019

30. As already noted the local plan and the neighbourhood plan ("the LNP") in this case were progressed in tandem. At the time when the LNP was examined for a second time (late 2014 to early 2015) the version of the local plan then in existence was the submission draft, published in May 2014.

31. Paragraph 5.1 of the local plan set out a settlement hierarchy:-

- Chichester City sub-regional centre
- Settlement Hubs (main centre for services providing for surrounding communities)
- Service villages (e.g. villages with a reasonable range of basic facilities for everyday needs)
- Rest of Plan area (countryside and small settlements with poor access to facilities)

Loxwood is a "service village". Paragraph 5.5 of the draft local plan dealt with "service villages" as follows:-

> "5.5 All settlements classed in the hierarchy as Service Villages or above are defined by Settlement Boundaries. These boundaries indicate the areas where new development will generally be permitted, subject to satisfying other policies in the Plan. Settlement Boundaries have been carried forward from the Chichester District Local Plan 1999, but will be reviewed through Development Plan Documents and Neighbourhood Plans, taking account of the housing and development requirements identified elsewhere in this Plan."

32. Paragraph 7.5 of the draft local plan recorded that CDC had identified an objectively assessed housing requirement ("OAN") for its district of between 480 and 590 homes a year. More up-to-date demographic projections indicated an OAN of 529 homes per year (paragraph 7.6). However, because of the constraints identified, the plan stated that it could not meet the full OAN for its area (paragraph 7.10). The plan assumed that a proportion of the district's housing needs would be met in the South Downs National Park, which lies outside the plan area, and that the plan would provide a total of 6,973 homes over the period 2012-2029, or approximately 410 homes a year (paragraphs 7.11 to 7.12). After allowing for completions which had already taken place, sites with planning permission and windfalls on small sites, paragraph 7.14 of the draft plan proposed that 3,550 homes be delivered on strategic locations and 775 homes under policy 5 on parish housing sites.

33. Table 7.1 and Policy 4 gave the broad distribution of housing across the plan area as follows:-

East-West corridor	5821
Manhood Peninsula	813
North of Plan area	339
Total	6973

Loxwood is in the "North of Plan area". The submission draft plan assumed that the supply of sites in the "North of Plan area" would provide 313 homes, a shortfall of 26 from the figure of 339. However, the plan assumed that *for the plan area as a whole* 160 more homes would be provided than the plan was aiming to provide, taking into account the additional provision expected in the East-West corridor and Manhood Peninsula.

34. Table 7.2 stated that parish housing sites would be identified either in the neighbourhood plans to be prepared by parish councils or in CDC's forthcoming Site Allocation DPD.

35. Paragraph 7.26 of the draft local plan explained that CDC had carried out a detailed assessment of the housing potential and capacity of individual parishes and settlements to identify "parish housing sites". Consideration had been given to such matters as the size and character of individual settlements and local housing need. In addition, parish councils had been consulted on the proposed levels of new housing.

36. Paragraph 7.27 read:-

> "7.27 Policy 5 presents indicative housing numbers to be planned for in each parish. These figures should be regarded as providing a broad indication of the potential scale of the housing that the District Council and individual parishes will seek to identify through future planning documents."

Paragraph 7.28 stated:-

> "7.28 …. It is intended that the identification of sites and phasing of delivery will be determined primarily by local communities through a neighbourhood planning process. In areas where parish councils do not wish to prepare their own neighbourhood plan, the Council will work with the parishes to identify sites in the Site Allocation Development Plan Document (DPD) which will be published for consultation in 2014."

Paragraph 7.29 read:-

> "7.29 Some flexibility will be allowed for minor amendments to housing numbers for individual parishes subject to the detailed investigation and assessment of potential sites

> through neighbourhood plan and in the Site Allocation DPD. In some cases, suitable sites of 6+ dwellings may come forward as planning applications. Where such sites are permitted, the requirement for additional housing in the parish will be reduced accordingly."

37. Policy 5 of the draft local plan gave the distribution of parish housing sites by parish across the area covered by the local plan. For the "North of Plan area" policy 5 gave a total indicative number of 200 dwellings, split between five parishes, three with 60 dwellings each and two with 10 dwellings each. The draft plan gave an indicative number of 60 new homes for Loxwood.

38. For the North of the Plan area, paragraphs 14.2 to 14.4 of the draft local plan stated:-

> "14.2 This part of the Plan area is predominantly rural with few sizeable settlements. Conserving the rural character of the area, with its high quality landscape and environment is a key objective. However, there is an identified need to accommodate some scale development to address local housing and employment needs, and support local village facilities.
>
> 14.3 Accessibility to services and facilities is a particular issue for this area, with local residents having to travel significant distances for many facilities. The larger villages provide a range of local facilities and play an important role providing services to their local communities. However, for higher order facilities such as employment, shopping, secondary schools and leisure facilities, the area mainly depends on larger settlements outside the District, principally Billinghurst and Haslemere, and further afield Guildford, Horsham and Crawley. Public transport serving the area is also very limited, particularly since recent cuts in local bus services.
>
> 14.4 Given the constraints on development in the area, the Local Plan provides only limited growth focused on meeting locally generated housing requirements. The strategy seeks to maintain the role of the villages as local service centres and supports small scale proposals in line with the overall Plan strategy and settlement hierarchy, Given the issues of accessibility, future planning for the area needs to focus particularly on protecting and where possible expanding local facilities. It should also seek opportunities to improve accessibility to local facilities and to larger settlements outside the Plan area."

39. The Examination of the draft local plan began in October 2014. The Inspector asked CDC to carry out an audit of its evidence base to demonstrate why constraints justified its proposal to provide only 410 new houses a year rather than the OAN. CDC published its audit in November 2014. Taking into account updated housing supply evidence, as well as transport constraints, CDC decided to increase the total

housing provision figure for the plan period by 415 dwellings, and thus increased the annual provision figure from 410 to 435 dwellings.

40. Paragraph 13 of the Claimant's Skeleton states that the figures for the North of the Plan area were not reviewed in the audit, but omits to give the explanation set out in paragraph 6.3 of the audit document. The level of housing proposed for that area in the draft plan already exceeded the total potential development identified in the Strategic Housing Land Availability Assessment for that area.

41. CDC's revised housing numbers were considered at the Examination of the local plan in December 2014. In January 2015 CDC proposed modifications of the draft local plan which would increase the district wide housing supply to 435 homes a year as against a revised annual OAN of 505 homes. The Report of the Examination of the local Plan was sent to CDC on 18 May 2015. The Inspector acknowledged that the limitations of a Transport Study carried out by the highway authority, West Sussex County Council, constrained any further increase in the supply of housing land until that work is updated to enable testing up to the level of the revised OAN (paragraphs 52 to 54 of report). The Inspector considered that the local plan should not be abandoned so as to enable that further transportation work to be undertaken, but instead the local plan should be adopted subject to a commitment to complete a review of the plan within 5 years. On that basis she considered that the local plan would be sound (paragraphs 55 to 56 of the report). It is common ground that that approach is lawful in the light of Grand Union Investments Limited v. Dacorum B.C, [2014] EWHC 1894 (Admin) (paras 66 to 78).

42. CDC agreed with the Inspector's recommendations and adopted the local plan as modified.

The Loxwood Neighbourhood Plan: 2013 to 2029

43. The parties' submissions in this case were made by reference to the resubmission version of the draft LNP dated January 2015. Paragraph 1.3 of the LNP states that it will be reviewed every 5 years to ensure compliance with national and local planning requirements and to reflect the changing needs of the local community.

44. In 2011 work began on a community led plan, including a series of workshops to obtain the views of the community on issues such as housing. A comprehensive village survey was launched in September 2012 and consultants engaged to analyse the results (paragraph 2.2). The housing, traffic, transport and infrastructure aspects of the survey were carried forward into the evidence gathering for the LNP (paragraphs 2.5). The draft plan was the subject of "extensive consultation" within the parish and with key stakeholders (paragraph 2.6).

45. Chapter 18 contains the plan's policies. Policy 1 provides

> "Policy 1
>
> The Loxwood parish Neighbourhood Plan will provide a minimum of 60 houses on allocated and windfall sites located within the Settlement Boundary defined in accordance with policy two of this Plan."

46. The settlement boundary was revised in the neighbourhood plan to include developments which had been built since the boundary was previously drawn up and two sites allocated in the plan for housing, Farm Close and the Conifer Nursery site (paragraph 18.2.3). Farm Close was allocated by policy 4 for a minimum of 17 houses and the Nursery site was allocated by policy 5 for a minimum of 43 houses. Thus, the two sites were allocated in order to meet the requirement in policy 1 of the draft LNP to provide a minimum of 60 homes in accordance with policy 5 of the draft local plan.

47. Because ground 4 challenges the basis upon which LPC decided not to allocate the Crownhall site in the LNP, it is necessary to set out the process followed by LPC, as summarised in the plan. The selection of sites for assessment was based upon local knowledge and CDC's Strategic Housing Land Availability Assessment (paragraph 18.3.3). In the first instance, each site was assessed against four basic criteria (paragraph 18.3.4). Amongst the sites which were taken to the next stage was the Crownhall site. A detailed assessment of the suitability of these sites was carried out by planning consultants, URS, using a set of criteria and a scoring system. The top three sites ranked by their scores were Farm Close, the Nursery site and the Crownhall site (paragraphs 18.3.5).

48. In selecting sites for allocation the LNP also relied upon the survey results obtained in 2012 in connection with the community led plan. The survey results gave the community's preferences as between five development sites. Combining the responses for the two most preferred sites, the ranking was as follows:

Farm Close	121
Nursery site	108
Land adjacent to North Hall	96
Crownhall site	65
Land adjacent to Willett's Way	61

49. In her report to CDC (February 2015) the Examiner of the LNP concluded (paragraphs 39 to 51) that:-

    i) District wide housing requirements were a matter to be examined in the local plan process, not the LNP. Draft Policy 5 of the local plan provided the best guidance on housing numbers for Loxwood, even if by the time it is adopted the emerging local plan is amended so as to provide for more growth;

    ii) Although the application of the site selection criteria had been criticised by Crownhall, the two allocated sites also received local support during a transparent and robust consultation process;

    iii) By paragraph 185 of the NPPF "outside the strategic elements neighbourhood plans will be able to shape and direct sustainable development" including growth. By allocating the two sites the LNP seeks to provide for sustainable growth. The allocated sites will contribute towards the achievement of sustainable development;

iv) The two allocated sites are deliverable;

v) Although there is no legal requirement to test the LNP against the emerging local plan, CDC had confirmed that there was no need to allocate the Crownhall site in addition for the LNP to be in accordance with the local plan;

vi) Paragraph 58 of the judgment in Gladman is relevant in that (a) a neighbourhood plan may include policies for the number and location of new dwellings even where there are no strategic housing policies in a development plan document; (b) the LNP's provision of additional housing in locations consistent with sustainable development, contributes to the achievement of sustainable development under the basic condition in paragraph 8(2)(d) of Schedule 4B to TCPA 1990, despite the fact that representations sought more growth and future development plan documents might provide for additional growth; and (c) having regard to national policy, it is "appropriate" to make the neighbourhood plan now although there might *in future* be a need for further growth (the basic condition in paragraph 8(2)(a) of Schedule 4B).

50. The Inspector recommended that the LNP should proceed to a referendum. In its decision statement CDC decided to adopt all of the Inspector's recommendations together with the reasoning in her report. It is therefore common ground that any legal errors in that report may vitiate the decisions by CDC which the Claimant seeks to impugn.

Grounds of challenge

51. In summary, the Claimant raises the following grounds of challenge:-

(1) The Examiner and CDC failed to consider whether, in accordance with the basic condition in paragraph 8(2)(a) of schedule 4B to TCPA 1990, it was *appropriate* to make the LNP, having regard to national policies and advice contained in guidance issued by SSCLG. In particular the Examiner and the CDC failed to consider whether it was appropriate for the LNP to allocate land for more than 60 new dwellings in Loxwood;

(2) The Examiner and CDC gave no adequate or intelligible reasons for concluding that the LNP should allocate land for only 60 new dwellings;

(3)(a) The Examiner and CDC erred in law by considering that the local Plan treats small windfalls (i.e. non-allocated sites for less than 6 dwellings) as being included within the indicative figure of 60 dwellings for Loxwood;

(b) The Examiner and CDC erred in law by failing to deal with the Claimant's representation that the LNP fails to allow windfalls for 6 or more dwellings to be approved on non-allocated sites;

(4) The scoring system used to select sites for allocation in the LNP was legally flawed, because (a) it had regard to an immaterial consideration, namely whether a site fell inside or outside the *proposed* revision of the settlement boundary for Loxwood, and (b) the treatment of the Nursery site as

"previously developed land" involved a misreading of the definition of such land contained in the NPPF.

52. In order to put matters into context, it is necessary at this juncture to set out a number of points which the Claimant accepts:

i) The Claimant did not ask the Examiner to consider recommending the deletion from the LNP of one or both of the two allocated sites. The Claimant did not ask the Examiner to treat the Crownhall site as being superior to either or both of the allocated sites. The Claimant did not present any comparative analysis of the merits of the three sites to the examination;

ii) The Claimant simply asked the Inspector to recommend the *additional* allocation of the Crownhall site as a sustainable site for housing development;

iii) The Crownhall site could not have been included in the LNP as an additional allocation unless a modification was justified to ensure compliance with the basic conditions in paragraph 8(2)(a) and (d) of schedule 4B, i.e. as a contribution to meeting local housing needs and to sustainable development;

Grounds (1) and (2)

53. Mr Richard Harwood QC suggested that it is convenient to take grounds (1) and (2) together and I will do likewise.

54. Under ground (1) the Claimant argues that the Examiner and CDC failed to consider whether it was "appropriate" to make the LNP having regard to national planning policy, in particular whether it was appropriate for the LNP to allocate land for more than 60 dwellings. In his reply Mr Harwood QC neatly encapsulated the Claimant's argument under ground (1):-

i) At the district level the local plan is unable to meet the annual OAN figure of 505 dwellings because of constraints. The local plan provides for only 435 dwellings a year, a substantial shortfall;

ii) On CDC's figures the supply of housing in the North of Plan area will fall short of the figure set for that area by 24 dwellings. There are only three villages in the North of Plan area which could accommodate development on that scale;

iii) The Crownhall site would provide about the same number of homes as the shortfall for the North of Plan area;

iv) There are no real objections to development of the Crownhall site and so no good reason not to modify the LNP to include the site as an additional housing allocation.

The Claimant submits that the modification it sought could have been made in order to comply with the basic conditions in paragraph 8(2)(a) and (d), of schedule 4B to TCPA 1990. National policy seeks to boost significantly the supply of housing in sustainable locations and the allocation of the Crownhall site for housing would increase the contribution made by the LNP to achieving sustainable growth.

55. Under ground (2) it is said that the Examiner and CDC gave no reasons in relation to the Claimant's case as outlined above and for allocating land for only 60 new dwellings in Loxwood.

56. With regard to the reasons challenge the Claimant submits that the principles on the duty to give reasons set out in South Bucks District Council v Porter (No.2) [2004] 1 WLR 1953 apply and so both the Examiner and CDC were obliged to give reasons dealing with the "principal important controversial issues" raised by the Claimant's representations in the examination (paragraph 36 of South Bucks). Mr Morgan on behalf of CDC did not dispute that the principles in the South Bucks case are, in general terms, applicable and so I will proceed on the assumption that that is correct.

57. However, I should record that in my judgment the question of whether the South Bucks principles apply, with or without modification, may need to be considered in a subsequent case. I say that for a number of reasons. South Bucks was concerned with the obligation to give reasons for a decision determining a planning appeal. Such appeals may involve a range of issues raised by a number of parties to do with the planning merits of a proposal for development. By contrast the ambit of an examination into a neighbourhood plan is rather different. Generally, the main focus is on whether or not the basic conditions in paragraph 8(2) of schedule 4B are satisfied, or would be satisfied by the making of modifications to the plan. The level of scrutiny is less than that applied to the examination of a local plan and the obligation to give reasons must be limited to matters falling within the true ambit of the examination process.

58. The obligation on the Examiner is to provide a report which (a) give reasons for each of its *recommendations* and (b) contains a *summary* of its *main findings* (paragraph 10(6) of schedule 4B to TCPA 1990). The Examiner may only make *recommendations* as to whether the plan should be submitted to a referendum because it satisfies the basic conditions and the statutory requirements, or whether modifications should be made in order to satisfy those requirements, or, if they are not satisfied, that the plan should not proceed. If the plan is to be submitted to a referendum the Examiner may also make a recommendation as to whether the area for the referendum should extend beyond the area covered by the plan (see paragraph 10(5) of schedule 4B). Similarly, the local planning authority (a) is obliged to consider each of the Examiner's recommendations (and the reasons for them) and to decide what action to take in response to each recommendation (paragraph 12(2)), (b) may consider the making of modifications, for example in order to secure compliance with the basic conditions (paragraphs 12(5) and (6)), and (c) is obliged to give reasons for the decisions it takes under paragraph 12 of schedule 4B (paragraph 12(11)). Thus the statutory scheme delimits the matters which the Examiner and the local planning authority are able to consider, which in turn will affect the application of the obligation to give reasons. At the very least the statutory process will affect what may be considered by the Court to have been the "principal important controversial issues"; they will not necessarily be any matter raised in representations on the draft plan.

59. In the present case it is helpful to consider the Claimant's contentions in the context of the representations which were put to the Examiner. In the representations by Planit Consulting (the Claimant's consultant) dated 3 December 2014 it was acknowledged that the LNP allocated land for 60 homes in accordance with policy 5

of the draft local plan. But it was argued that the indicative figure of 60 given in the local plan for Loxwood was too low because of that plan's failure to meet the OAN for the district and for that reason more than 60 new homes should be provided in the LNP (paragraphs 3.1 to 3.12, 3.18 to 3.21 and 4.6 to 4.10). An accompanying joint opinion by Counsel even went so far as to say in paragraph 40 (and also in paragraph 49):-

> "At present there is no up to date adopted development plan which sets out the housing requirement for the District Council area. *Consequently* the LNP should meet the full, objectively assessed needs as far as consistent with the requirements of the NPPF (para. 47)" (emphasis added)

60. That reference to paragraph 47 of the NPPF was erroneous, because that national policy is concerned with the responsibilities of local planning authorities preparing local plans, not parish councils preparing neighbourhood plans. Moreover, the Claimant's argument was inconsistent with the statutory and policy framework, as explained in cases such as BDW and Gladman. There was no requirement for the LNP to meet the full OAN, which is a concept related to a housing market area, typically the district covered by a local planning authority, if not larger.

61. CDC responded to the Claimant's representations in January 2015. It summarised the basis upon which the figures for housing provision had been prepared for the local plan and subsequently audited in November 2014. In paragraph 2.10 it was pointed out that although the projected delivery of housing in the North of the Plan area fell 24 dwellings short of the requirement for 339 dwellings for that area identified in policy 4, the projected housing supply would exceed the local plan target for the whole district by 403 dwellings. Moreover, in paragraphs 2.11 and 3.1 CDC stated:

> "2.11 In this context, the Council considers that the small shortfall in projected supply in the North of the Plan area is not a major cause for concern. It is inevitable that the level of windfall housing will vary from year to year and the 339 dwellings is only an approximate figure. The recent permission granted at Greenways Nursery, Wisborough Green demonstrates that windfall sites will come forward over and above the Local Plan allowance (which relates to sites of less than 6 dwellings). Furthermore, there is scope for additional housing not identified in neighbourhood plans to come forward from other sources such as rural exception sites.
>
> …
>
> 3.1 For the reasons set out above, the Council remains confident that a total of around 339 homes will be delivered in the North of the Plan area over the period to 2029, through a combination of sites in adopted and emerging neighbourhood plans and windfall developments. Whilst accepting that the site promoted by Crownhall Estates would boost the identified housing supply, the Council believes the site is not required to meet the Local Plan housing provision as currently proposed."

It is particularly important to note that CDC "emphasised" that the OAN estimates are based upon demographic projections for the district as a whole and "cannot be readily disaggregated to the level of individual parties on settlements, or to sub-areas of the district such as the North of the Plan area" (paragraph 2.2).

62. The Claimant submitted further representations to the Examiner, paragraphs 2.1 to 2.7 of which responded to CDC's statement. Paragraph 2.1 referred selectively to paragraph 3.1 of CDC's representations as an acknowledgment that the housing supply would be boosted by the Crownhall site, without mentioning CDC's position that the site was not required in order to meet the housing provision proposed in the draft local plan. For the most part the Claimant simply repeated its points that the local plan had not yet been adopted and that the OAN for the district is higher than the housing provision proposed in that plan. However, it is significant that the Claimant did not deal with CDC's important point that OAN figures are not disaggregated from the district level to parish level or even to sub-areas such as the North of the Plan area.

63. In paragraph 41 of her report the Examiner accepted the thrust of CDC's response, namely that the OAN is not disaggregated to the level of parishes or sub-areas. She also referred to the projection of a small shortfall for the North of the Plan area. In paragraph 42 of her report the Examiner correctly stated that district wide housing requirements, provision and distribution, are matters for the examination of the local plan. In paragraph 43 of her report, the Examiner considered the indicative housing figures in policy 5 of the draft local plan to be the best guidance on total housing numbers for Loxwood parish. Plainly, that was a matter of judgment for the Examiner which is not susceptible to legal challenge. The Examiner also stated correctly that in the absence of *adopted* strategic housing figures it was not the role of the examination to consider whether the LNP would be inconsistent with the local plan if by the time of its future adoption it were to be amended so as to accommodate further growth (see also paragraph 39 of the report). The Examiner accepted CDC's contention in its written representations that it was unnecessary for further development to be allocated in order for the LNP to accord with the draft local plan (paragraph 49). On any fair reading of her report, the Examiner was accepting CDC's response (in paragraphs 2.11 and 3.1) that the small shortfall projected for the North of Plan Area (a shortfall of 24 units compared to the "indicative figure" of 339) would be made up from neighbourhood plans, and from windfalls and rural exception sites not identified in neighbourhood plans. Again that was a matter of judgment for the Examiner. Other relevant parts of the Examiner's conclusions have been summarised in paragraph 49 above, in particular the Examiner's adoption of the reasoning in Gladman. No legal criticism is made by the Claimant of any of these findings or observations by the Examiner.

64. I reject the Claimant's contention under ground (1) that the Examiner (and hence CDC) merely "had regard to national policy" and failed to determine whether it was "*appropriate* to make the LNP having regard to national planning policy". This submission was based upon the Examiner's paraphrase of paragraph 8(2)(a) of schedule 4B contained in paragraph 18 of her report. But this amounts to no more than a drafting criticism. The Examiner specifically cited and adopted the reasoning in paragraph 58 of the judgment in Gladman and thus reached the conclusion that it was *appropriate* for the plan to be made without allocating any further housing land, such as the Crownhall site, even though a need for further growth might become part

of adopted local plan policy in the future. Reviewing the Examiner's reasoning fairly and as a whole it is self-evident why she considered it *appropriate* for the LNP to be made without increasing the plan's allocation of housing beyond a *minimum* of 60 dwellings in aggregate at the Farm Place and Nursery sites under polices 4 and 5. She accepted CDC's case as to why there was no need for any additional allocation to be made in Loxwood at the time of considering the LNP.

65. I also note that the Claimant's case before the Examiner and this Court was not that the Crownhall site should be allocated as an additional site simply because it was in a sustainable location and unobjectionable. Crownhall's argument was predicated on the basis that the local plan will not meet the OAN for the district and the LNP should make a greater contribution towards meeting that need. The short answer is that there was nothing unlawful in the Examiner or CDC proceeding on the basis that (i) the LNP allocated sufficient land to satisfy the draft local plan provision for Loxwood, (ii) criticisms of that provision were a matter for the local plan process, (iii) in any event the OAN figures were not disaggregated to Loxwood Parish or to any other sub-area of the district and (iv) the Claimant did not put forward any need figures for the parish in the examination.

66. Having reviewed the parties' representations in the examination process, in the context of the NPPF and the draft policies in the local plan and the LNP, I have also reached the firm conclusion that the Examiner (and hence CDC) discharged their respective obligations to give reasons. The Inspector gave adequate reasons for her recommendations and CDC gave adequate reasons for its decisions under paragraph 12 of schedule 4B to the TCPA 1990. Whether strictly required to do so or not, they also gave adequate and intelligible reasons dealing with the Claimant's representations. There was no defect in the reasoning given, applying the principles in South Bucks.

67. For these reasons grounds (1) and (2) fail.

Ground 3

68. The first criticism advanced by the Claimant is that whereas the draft local plan treated windfall sites as an element of housing supply additional to the indicative provision in policy 5 of 60 dwellings for Loxwood (see e.g. Table 7.1), the LNP inconsistently treated windfalls as falling within the allocation of 60 dwellings (see policy 1). There is nothing in this point. In fact policy 1 referred to a "minimum" of 60 houses and policies 4 and 5 referred to a minimum provision of 17 and 43 houses respectively on the two allocated sites, Farm Close and the Nursery site. Consequently, the LNP did not rely upon windfalls in order to satisfy the indicative figure in policy 5 of the Local Plan of 60 dwellings for Loxwood

69. The second complaint is that the Examiner and CDC wrongly treated windfalls as unallocated sites providing less than 6 dwellings (para 18.2.4 of the LNP), whereas paragraph 7.29 of the draft local plan (both in its submitted version and as subsequently modified) recognises that unallocated sites for 6 or more dwellings may also come forward as windfalls, but will then reduce the requirement for parish housing sites to be identified under policy 5 of the local plan. The Claimant argues that the Examiner and CDC failed to consider whether it was "appropriate" for the LNP to be made despite this conflict as to what may be considered as a windfall.

70. In my judgment this argument is misconceived. I agree with the Claimant that paragraph 7.13 of the draft local plan is merely explaining how an estimate has been made of the contribution from small windfall sites (i.e. those providing less than 6 dwellings) to the overall supply of housing land for the district. But I do not agree that either version of paragraph 7.29 of the local plan can be treated as a policy *encouraging* larger windfalls. Instead, that paragraph *acknowledges* that larger windfalls will receive planning permission from time to time, albeit they have not been planned for in development plans as allocations or (by definition) as part of the *small* windfalls estimate. The relevant part of paragraph 7.29 merely states that where such a site is granted permission the housing provision number for the relevant parish will be reduced correspondingly. Thus, the local plan clearly states how the supply of housing land against the provision figures in tables 7.1 and 7.2 and policies 4 and 5 will be monitored during the lifetime of the plan. Paragraph 7.29 does not go any further than that, so as to lend positive support for the development of larger windfall sites or to suggest that neighbourhood plans should take that approach.

71. I also agree with the construction of paragraph 18.2.4 of the LNP advanced by Mr Michael Allgrove, CDC's Planning Policy Conservation and Design Service Manager, (paragraph 9 of his witness statement); namely that the LNP does not contain a policy restriction on the development of windfall sites (of whatever size) within the settlement boundary. Paragraph 18.2.4 should not be read as if it were a statutory or contractual provision (paragraph 19 of Tesco Stores Ltd v Dundee City Council [2012] PTSR 983). It should be read alongside 18.1.1 of the LNP which referred to the explanation in paragraph 7.13 of the local plan as to how CDC's estimate for *small* windfall sites would form one part of the overall housing supply. In my judgment paragraph 18.2.4 simply *deems* that unallocated sites receiving permission for less than 6 dwellings are "windfalls" for the purposes of CDC's estimate and monitoring. The LNP does not contain text sufficient to create a *policy* restriction against larger windfalls.

72. In any event, even if there were to be a tension between the LNP and the local plan as regards larger windfall sites, contrary to the conclusion I have reached, that would not cause the LNP to fail to meet the requirement for general conformity with the strategic policies of the local plan (see paragraph 29 above).

73. For these reasons I reject ground (3).

Ground (4)

74. Under the site scoring system used by LPC's consultants, URS, the lower a site's score the better. Farm Close was scored by the consultants as 19, the Nursery Site as 20 and the Crownhall site as 24.

75. A number of criticisms were advanced by the Claimant during the examination of the LNP, but the oral submissions in these proceedings raised only two points. First, it was submitted that the LNP's preference for the two allocated sites improperly took into account as an advantage of those two sites, the proposal in the draft plan to include them within a redrawn settlement boundary, whereas the Crownhall site lies outside that boundary. Before the draft LNP proposed to amend it, all three sites lay outside the settlement boundary. Paragraph 18.2.3 of the LNP indicated that the redrawing of the settlement boundary so as to include the Farm Close and Nursery

sites was the result, or outcome, of the decision to select those two sites for allocation. It was therefore illogical to treat the anticipated redrawing of the settlement boundary as an input to the prior question of deciding where sites should be allocated.

76. The second submission related only to the Nursery site, which LPC's consultants treated as previously developed land, an advantage in comparison with the Farm Close and Crownhall sites, which are greenfield sites. The Claimant submits that LPC made two errors. First, the definition of "previously developed land" in Annex 2 of the NPPF makes it plain that the term excludes land that has been occupied by agricultural or forestry buildings, and so would not include the former nursery. Second, the assertion in paragraph 18.5.1 of the LNP that the rear of the site contains a detached house is incorrect. The ecology report supporting the planning application for residential development on the Nursery site submitted in June 2015 shows that the dwelling lies to the west of the allocated area. The Claimant also points out that in any event the scores for the Nursery site were added up incorrectly.

77. It is said that if these errors are connected, the revised scores would be Farm Close 21, Crownhall site 24 and the Nursery site 25. In other words, the Crownhall site would be second in the ranking by URS's criteria (corrected), rather than third.

78. Notwithstanding CDC's submissions in reply I see some force in the criticisms made. For the purposes of this challenge I will assume that the corrections should have been made so as to result in the revised scores set out above. Nonetheless, the real question is whether this line of argument provides a basis for vitiating the conclusions drawn in the Examiner's report and the decisions taken by CDC to put the LNP to a local referendum and to make the plan. I have reached the firm conclusion that it does not.

79. Firstly, the Claimant's case in the examination of the LNP was not that the Crownhall site should be preferred to either or both of the two sites allocated in the draft plan. The Claimant was simply seeking to have the Crownhall site added as a third allocation. It is conceivable that a revised ranking which placed the Crownhall site second after Farm Close, and substantially preferable to the Nursery site, could have assisted the Claimant to argue that its site should displace the Nursery site, but plainly that was not the Claimant's case in the examination process (or in this Court). Mr Harwood QC was unable to explain, with respect, why in these circumstances the correction of the scores was relevant to the issues which the Examiner had to deal with, and thereafter CDC had to deal with in response to the Examiner's report. As a matter of legal analysis, therefore, the criticism of the scoring turns out to be a hollow point in this challenge to CDC's decisions to accept the Examiner's recommendation, to hold a local referendum and to make the LNP. For this reason alone ground (4) must fail.

80. I should also add a cautionary note about the legal scope of the process for examining a neighbourhood plan. The more investigative scrutiny involved in the examination of a local plan in order to determine whether the draft policies and proposed allocations are "sound", including whether they are justified by reference to the evidence base relied upon by the local planning authority and reasonable alternative options, can result in a "competition" between rival sites. The extent to which such a case or exercise could be advanced in the examination of a neighbourhood plan will depend upon whether it falls within the scope of paragraphs 8 (1) and (6) of schedule

4B to TCPA which in many instances will simply turn upon whether the plan meets the basic conditions in paragraph 8 (2).

81. Secondly, in paragraph 46 of her report, the Examiner acknowledged certain of the Claimant's criticisms of the site assessment process by LPC's consultants, but added that this technique "is not an exact science". She said that it merely gives an indication of the suitability of sites. Mr. Harwood QC made no criticism of these observations. Indeed, they are consistent with his acceptance on behalf of the Claimant that there is not a material difference between revised scores of 24 and 25 for the Crownhall site and the Nursery site respectively. His only point here was that if the Nursery site could be treated as sustainable and appropriate to be allocated in the LNP with a score of 25, then there was no reason why the same course should not also have been taken for the Crownhall site with a score of 24. However, that argument overlooks the Examiner's conclusions on the following matters of judgment set out in paragraphs 45 to 51 of her report: -

    i) The two sites actually allocated in the draft LNP had received local support in a robust and transparent consultation process. Paragraphs 27 to 30 of the Examiner's Report referred to the considerable involvement of the community in the development of the policies in the LNP. As noted in paragraph 48 above, the Inspector must have been aware from the LNP that public support for the release of the Crownhall site was very much weaker than for three other sites, with the Crownhall site in a very poor fourth position;

    ii) The local plan envisaged that neighbourhood plans would shape and direct sustainable growth on parish sites. By allocating Farm Close and the Nursery site, the LNP would contribute to that sustainable development, irrespective of whether the local plan process, or a review of the local plan, might identify the need for additional growth;

    iii) The Inspector accepted CDC's case that there was no need for the Crownhall site to be allocated in this neighbourhood plan.

82. The correction to the scoring exercise cannot alter these further reasons given by the Examiner (and hence CDC) for not allocating the Crownhall site as an additional housing site in the LNP. They were legally sufficient for that purpose. The amendment of the scores would not alter the conclusion that, as far as it went, the LNP was making a contribution towards sustainable growth in the village consistent with the draft policy 5 of the local plan. Nor would it alter the judgment that there was no necessity to allocate the Crownhall site in addition.

83. Mr. Harwood QC suggested that if it had been appreciated by the local community that the Nursery site and the Crownhall site had similar scores according to the criteria used by URS, then the public's response might have been materially different. This argument was no more than an afterthought. It was not advanced by the Claimant during the examination of the LNP. The survey of local opinion was carried out in September 2012 as part of the earlier work on the community led plan which predated the scoring exercise. The survey responses from the public were not influenced by the scores attributed by URS. These responses clearly preferred Farm Close, the Nursery site and land adjacent to North Hall to the Crownhall site. The Claimant did not suggest during the examination of the LNP that the 2012 survey should not be

relied upon because of the subsequent "corrected scores" or that the survey should be carried out again in the light of those scores.

84. Given that the corrected scores for the Nursery site and the Crownhall site are so close, it is fanciful to suggest that the community's preferences in favour of the two allocated sites would have altered, either to displace the Nursery site in favour of the Crownhall site, or, more subtly, to result in the Crownhall site becoming a third additional allocation. In the 2012 survey of the local community the Crownhall site only achieved a poor fourth place.

85. For the additional reasons set out in paragraphs 81 to 84 above, as well as those set out in paragraph 79, ground (4) must fail, given that (a) the Claimant's sole objective has been to secure the modification of the LNP by adding the Crownhall site as a third housing allocation and (b) that case was rejected by the Examiner and CDC for reasons which are freestanding and cannot be impugned. The criticisms of the URS scoring exercise did not give rise to any material legal error in the process leading to the making of the LNP.

86. Accordingly, I do not think it is strictly necessary for the Court to go further and decide whether relief should be withheld in the exercise of discretion because the decision challenged would necessarily have been the same if the mis-scoring by URS had not occurred (Simplex G.E. (Holdings) Ltd v Secretary of State for the Environment (1987) 57 P & CR 306; R (Smith) v North East Derbyshire Primary Care Trust [2006] 1 WLR 3315) or because under section 31(2A) of the Senior Courts Act 1981 it is highly likely that the outcome for the Claimant would not have been substantially different if that mis-scoring had not occurred. Nevertheless, for completeness I would add that if it had been necessary for me to apply the tests in Simplex and in section 31(2A), I would most certainly have refused relief on those very grounds for the reasons I have already given. It is plain that the mis-scoring by URS could not have made any difference to the decisions to allocate the two other sites but not the Crownhall site in the LNP. I would also add that I would not have considered there to be any reasons of exceptional public interest which, under section 31(2B), would have made it appropriate for the Court to disregard the requirements in section 31(2A)(a) and (b).

87. For these reasons I reject ground (4) of the challenge.

Conclusion

88. For the reasons set out above all the grounds of challenge fail and the applications for judicial review in CO/1812/2015 and CO/2669/2015 must be dismissed.