TED42: Tandridge District Council (TDC)
Response to Inspector’s correspondence - examination document ID14

1. Introduction

1.1. Tandridge District Council have prepared their response to ID14 relating to the most recent publication by the Office for National Statistics of the 2018-based Household Projections in two parts; the first focusing on whether the new projections give rise to a ‘meaningful change’ in the housing situation in Tandridge and the second on the implications for the plan.

2. Meaningful change

2.1. ‘Meaningful change’ is not defined in the Planning Practice Guidance and therefore a professional judgement needs to be made. The most appropriate approach to this is to analyse the data within the 2018-based Household Projections, in accordance with the PPG, and identify whether the Objectively Assessed Need (OAN) figure is materially different from that of the 2014 and 2016 based projections.

2.2. The 2014-based household projections yielded a figure of 470dpa, whilst the 2016-based populations resulted in 332dpa. HNS5 – Updating the Objectively Assessed Housing Needs of Tandridge 2018 identifies that the 2016-based household projections should be used as the basis for the Local Plan. The reasons for this are set out in HNS5 and as such, will not be revisited here.

2.3. The PPG\(^1\) to support the NPPF 2012 sets out that household projections should provide the starting point estimate of overall housing need but that they may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. The 2018-based household projections set a figure of 222 homes a year, and as such is a significant material change in the figures.

2.4. The differences between the two sets of projections are summarised in Table 1. This table shows that the majority of the difference is due to the reduction in net migration flows from the rest of the UK to Tandridge.

\(^1\) ID: 2a-015-20140306 (06.03.2014)
Table 1: Changes between the 2016 and 2018 SNHPs

<table>
<thead>
<tr>
<th>Changes between the 2016 and 2018 SNHPs</th>
<th>Homes/ yr</th>
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<tr>
<td>2016 SNHP</td>
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<tr>
<td>Difference due to higher mortality rates</td>
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<tr>
<td>2016 SNHP + 2018 SNPP deaths</td>
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<td>Difference due to higher international migration</td>
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<td>2016 SNHP + 2018 SNPP deaths &amp; international</td>
<td>330</td>
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<tr>
<td>Difference due to changed flows from and to the rest of the UK</td>
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</tr>
<tr>
<td>2016 SNHP + 2018 SNPP deaths &amp; international &amp; UK flows</td>
<td>222</td>
</tr>
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</table>

2.5. The 2018 projections show net inflows as being the largest driver of projected population growth, which in turn drives projected household growth. The dominant role of net inflows is also present in previous population projection results.

2.6. The ONS has changed the internal migration methodology and the data used in its 2018 population projections and the impact of this is discussed in the ONS article “Impact of different migration trend lengths.” After considering the variants published by the ONS, we have decided to continue to use the standard (also known as the “principal”) population and household projections for Tandridge.

2.7. The ONS has determined that the benefits of using the upgraded data/methodology outweigh the risks of using only the past two years in its chosen principal projection. The ONS would not have made these changes if it considered the previous inflow and outflow migration data and methodology to be sufficiently reliable. The five and ten-year variant projections produced by the ONS mix different data sets and so both will lack statistical consistency.

2.8. The Council believes that the only way it could justify using figures other than those in the ONS principal/standard projections would be to conclude that the ONS is incorrect in both its assessment of past migration data and its decision to use two past years in its principal projection. The Council believes that this conclusion would be contrary to the 2014 PPG (paragraph 2a-016-20140306) because it would not be driven by circumstances local to Tandridge.

2.9. Paragraph 2a-017-20140306 of the PPG says that the “latest available information” should be used. In the Council’s view, this means using both the latest methodology and figures. Using either data or a methodology that the ONS explains will be phased out would be contrary to that.

2.10. The 2018 standard projections continue the trend of decreasing net inflows shown in the 2016 population projection results for Tandridge, which was based on the previous methodology. This implies that decreasing net inflows is an
underlying trend and is another reason why the 2018 household projections constitute a meaningful change in the housing situation.

2.11. Application of the PPG to the 2016-based household projections in HNS5, included a market uplift of 20% based on the affordability ratio within Tandridge and what had been applied in surrounding areas, which provided an OAN figure of 398dpa. Nothing has significantly changed in relation to market signals, therefore the 20% uplift has been retained, which identifies 266dpa.

2.12. Considering the alignment of jobs and workers with homes, the Experian 2017 data provides an optimistic approach to job growth across the country, and potentially, as with all forecasts and as recognised by ONS, “future demographic behavior is inherently uncertain, meaning that any set of projections will almost inevitably be proved wrong, to some extent,” no additional homes would be needed. The ongoing COVID19 pandemic may result in downward revisions to these already uncertain forecasts.

2.13. In conclusion, the most appropriate OAN figure would be 266dpa, or 5,320 across the plan period (2013-2033). Consequently, a meaningful change in the housing situation for the Tandridge Our Local Plan has occurred.

3. Implications for the Our Local Plan

3.1. Policy TLP01 identifies that the housing figure in the plan is 303dpa. This is further explained in HNS6 – Housing Topic Paper and TED05 – TDC Supporting Paper 1 on Matter 2: the provision of housing, which recognise that the housing figure is 306dpa. There is now an excess of 40dpa from the 2018-based OAN figure of 266dpa.

3.2. The revised indicative housing trajectory shown in Appendix A demonstrates that with the most current completions and permissions from 2019/2020 included, the revised housing figure annualised over 20 years would be 279dpa for a total of 5,578.

3.3. The main difference between this possible scenario and previous ones is the start date and delivery rate for the Garden Community. If the new OAN of 266dpa is accepted, this indicative trajectory demonstrates how the allocated sites can be phased such that delivery of the Garden Community can commence about two years later. The scenario also assumes a lower delivery rate for the early years.

3.4. The GPDO Amendments – The Town and Country Planning (General Permitted Development) (England) (Amendment) (No 2) Order 2020 provides an opportunity that there could be some additional supply. Due to the criteria within these Orders, it would not be appropriate, nor possible, to attribute a figure to this windfall, but based on historic trends for windfall development in the District, it can be considered highly likely and would provide some additional flexibility to the housing supply up to 2033.
3.5 Notwithstanding this, a note to the Inspector prepared as a response to Day 4 of the Examination on Allocated Housing Site Yields (TED 17) identifies in Appendix B a potential alternative trajectory, which would yield an additional 456 units for the plan period, providing a total of 6,034 in our indicative scenario included in this paper. Over the 20-year period (2013-2033), this would be annualised to 302dpa.

Five-year supply

3.6 The Local Plan site allocations have been included in the five year supply tables below. Based on the OAN of 266dpa and the indicative housing trajectory in Appendix A, the authority can demonstrate a five year supply of either 7.41 or 6.48 years supply, including a 5% or 20% respectively. Table 2 sets this out further.

Table 2: Five year land supply with an OAN of 266dpa

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<tr>
<th>Housing requirement:</th>
<th>5% buffer</th>
<th>20% buffer</th>
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<tbody>
<tr>
<td>Annual requirement</td>
<td>266</td>
<td>266</td>
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<tr>
<td>Annual requirement + buffer</td>
<td>279</td>
<td>319</td>
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<td>Five-year requirement + buffer</td>
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<td>2,067</td>
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<tr>
<td>Over / under provision</td>
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<td>+471</td>
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<tr>
<td><strong>Number of years supply</strong></td>
<td><strong>7.41</strong></td>
<td><strong>6.48</strong></td>
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3.7 When applying the site yields in TED17 against the OAN of 266dpa and a 5% and 20% buffer, a five year supply of either 8.14 or 7.12 years can be demonstrated respectively. Table 3 sets this out further.

Table 3: Five year supply based on sites yields in TED17 and an OAN of 266dpa.

<table>
<thead>
<tr>
<th>Housing requirement:</th>
<th>5% buffer</th>
<th>20% buffer</th>
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<tbody>
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<tr>
<td>Annual requirement + buffer</td>
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<tr>
<td>Five-year requirement + buffer</td>
<td>1,395</td>
<td>1,595</td>
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<tr>
<td>Total supply</td>
<td>2,270</td>
<td>2,270</td>
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<tr>
<td>Over / under provision</td>
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<td><strong>Number of years supply</strong></td>
<td><strong>8.14</strong></td>
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Green Belt exceptional circumstances

3.8 Paragraph 83 of the NPPF 2012, says that land should only be released from the Green Belt if there are the exceptional circumstances to justify this. The Inspector examining the Harlow Local Development Plan cites in his response to the Council on the 2018-based household projections (found at Appendix C) that he wishes the Council to consider “whether the projected reduction in household growth affects the justification for the plan’s proposed Green Belt releases.”

3.9 To consider this further, Tandridge District Council have taken the Aireborough v Leeds City Council June 2020 (an extract can be found at Appendix D) High Court Judgement into consideration. The judgement considered whether there could be exceptional circumstances if the housing requirement emerging through the Development Plan Document decreased. The claimant accepted that the level of housing need in the local authority area was in principle capable of amounting to exceptional circumstances. The defendant argued that the justification for the Green Belt release, and therefore the exceptional circumstances, related back to the spatial strategy and did not solely turn on the absolute level of housing need, but took account of the wider factors of spatial planning. Mrs Justice Lieven concluded that the Inspectors were focusing on the absolute level of need, in particular that of housing need, but that it would be a perfectly valid planning judgement to consider the wider matters, such as the broad spread of housing as exceptional circumstances to justify Green Belt release.

3.10 As the Inspectors were examining the Site Allocations Document, one of the most important points being considered was that the housing need figure had decreased since the Core Strategy had been prepared and therefore there was no justification for Green Belt release. Mrs Justice Lieven identifies that there might be other matters amounting to exceptional circumstances, but the judgement relates to the fact that the Inspector did not give adequate reasoning on these matters.

3.11 The Housing Objectively Assessed Need of 266dpa, set out in this paper, would be an increase from the currently adopted Core Strategy figure of 125 dpa. As such, the Housing figure being considered in this paper has increased from the delivery figure set out in the adopted Core Strategy.

3.12 GB1: Part 3: Section 3.1 Exceptional Circumstances sets out the exceptional circumstances that have been applied; one of which is the acuteness/intensity of the objectively assessed need (matters of degree may be important). The objectively assessed need tested in GB1 was 470dpa. The Council note this a difference from the 266dpa set out in this paper. However, the test being applied to Green Belt release, and consequently the exceptional circumstances, in GB1 relies on a number of other matters, such as the supply available from non-Green Belt areas. GB1 states that “the quantum of land supply available for meeting the district’s development needs in sustainable locations is extremely limited, with
land supply exhausted within the non-Green Belt settlements and the low-density character of the district making the use of land at significantly higher densities difficult”.

3.13. It is inevitable that figures relating to housing need will have changed from the date GB1 was undertaken. However, the principle of the quantum of land supply (set out in the previous paragraph) has not changed and all the exceptional circumstances for Green Belt release are still justified.

4. **Conclusion and Next Steps**

4.1. Tandridge District Council have prepared their response to ID14 relating to the most recent publication by the Office for National Statistics of the 2018-based Household Projections in two parts; the first focusing on whether there is a ‘meaningful change’ in the housing situation and the second on the implications for the plan.

4.2. The Council have determined that the 2018-based household projections have justified a ‘meaningful change’, and that the objectively assessed need figure is 266dpa. This has decreased from 398dpa in HNS5. However, TED05 identifies that the housing figure within the submitted Our Local Plan is 306dpa; an excess of 40 dpa.

4.3. This paper identifies that the objectively assessed need of 266dpa can be met and that a five-year supply can be demonstrated.

4.4. The Council have also considered whether the change in objectively assessed need affects the justification for the plan’s Green Belt release, and consequently the exceptional circumstances text. GB1 considered several exceptional circumstances to justify sites that were to be released from the Green Belt, and these are still valid. Whilst the figure relating to the acuteness of the objectively assessed need has changed, the fundamental principles that there is a limited quantum of land supply available in sustainable and non-Green Belt locations to meet 266dpa still exists.

4.5. The work on the affordable housing needs assessment will be completed as part of updating the other evidence documents to reflect the revised OAN.
Appendix A- Revised indicative projected annual completions for an OAN of 266dpa

Due to the delay of Our Local Plan: 2033, as stated in the Council’s adopted Local Development Scheme (2020)\(^2\), the Local Plan Site allocations that were due to be delivered in 2020/21 have been pushed back to be delivered a year later in 2021/22 to reflect this delay.

Table A1: Housing trajectory

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\(^2\) Local Development Scheme (2020)
Housing Trajectory - LP Period 2013-2033

New Dwellings

Year

COMPLETIONS


Actual completions
Projected annual completions (site based)
Annual requirement taking account of past/projected completions
Local Plan allocation annualised over 20 years
Appendix B – Revised indicative projected annual completions based on TED17

Due to the delay of Our Local Plan: 2033, as stated in the Council’s adopted Local Development Scheme (2020), the Local Plan Site allocations that were due to be delivered in 2020/21 have been pushed back to be delivered a year later in 2021/22 to reflect this delay.

Table B1: Housing Trajectory

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3 Local Development Scheme (2020)
Housing Trajectory - LP Period 2013-2033

Actual completions
Projected annual completions (site based)
Annual requirement taking account of past/projected completions
Local Plan allocation annualised over 20 years


New Dwellings

Tandridge District Council – Response to ID14 – November 2020
Appendix C: Harlow Local Development Plan Examination Inspectors response to the Council's response on 2018-based household projections

Harlow Local Development Plan Examination

Andrew Bramidge
Head of Planning
Harlow Council
Civic Centre
The Water Gardens
Harlow
CM20 1WS
17 July 2020

Dear Mr Bramidge

HARLOW LOCAL DEVELOPMENT PLAN EXAMINATION
OFFICE FOR NATIONAL STATISTICS: 2018-BASED HOUSEHOLD PROJECTIONS

As you know I have been seeking to progress the final report into the HLDP as soon as possible. However, the 2018 based household projections were released by the ONS on 29 June and as the HLDP is a transitional plan being examined under the 2012 NPPF these now need to be taken into account.

Thank you for arranging the prompt note from ORS responding to the projections. Whilst this is helpful, on further reflection this is insufficiently clear and robust to justify the OAN of 7,400 dwellings for Harlow and 51,700 for the HMA as a whole. This is particularly important given the role of the OAN as part of the ‘exceptional circumstances’ required to justify the deletion of land from the Green Belt. For example, since each official projection uses the latest available information it presumably supersedes previous projections, so the average of the last four projections has little relevance as a factor.

The relevant PPG guidance concerning how to calculate the Objectively Assessed Need (OAN) for housing includes the following:

The government’s official population and household projections are generally updated every 2 years to take account of the latest demographic trends...

Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

The Council’s local needs assessment in the West Essex & East Hertfordshire SHMA July 2017 takes the 2014-based household projections as the starting point for calculating the OAN for housing. This was found to be 7,400 dwellings for the plan period or 336 dpa, while for various reasons the plan sets the housing requirement at 9,200 dwellings for the plan period or 418 dpa (prior to any adjustment for a stepped trajectory).

The 2016-based household projections published by the Office for National Statistics now need to be considered as part of the latest available information. I have summarised the various projections for the plan period in the table below, which the Council should check. The 2018-based projections forecast a noticeably lower level of household growth than did the 2014-based ones, continuing a downward trend indicated by the 2016-based projections. Clearly though, these projections do not take account of all the factors set out in the PPG which have the potential to affect the objectively assessed housing need identified within the SHMA.
As part of my examination of whether the Plan’s housing requirement is sound, I will need to consider whether the 2018-based household projections represent a meaningful change in the housing situation from the one which informed it. As a first step, I would like to invite the Council to address this question in a more comprehensive evidence-based written statement. In reaching your conclusion about whether a meaningful change in the housing situation has occurred, please cover the following issues alongside any others which might be relevant:

1. The effect of the 2018-based projections on the OAN for housing vs. the 2014-based projections used in the SHMA. The 2012 projections are now old and the 2016 projections superseded so the relevant comparison is between the 2014 projections which inform the plan and the 2018 projections which are the latest available information.

2. Whether there are implications for the housing requirement set in the plan, having regard to any wider considerations/interrelationships across the HMA; and

3. Whether the projected reduction in household growth affects the justification for the plan’s proposed Green Belt releases.

In dealing with (1), it would be helpful if the statement could go back to first principles starting with the 2018 household projections and working through any necessary adjustments following the PPG guidance. As with previous SHMA exercises these might include the use of longer-term migration trends and household formation rates to arrive at the demographic starting point, followed by consideration of other factors such as the need to align jobs and workers (which should be calculated) and any uplift to reflect market signals. Please quantify the adjustments. Comparison can then be made with the 2017 SHMA to reach an overall conclusion as to whether a meaningful change in the housing situation has occurred since the preparation of that document.

I would be grateful to receive your statement by 7 August 2020 or earlier if possible. If you require more time, please advise the Programme Officer. I will then consider whether it is necessary to seek the views of other participants in the examination and, if so, the best means of doing so.

A similar letter has been sent to Epping Forest District Council in respect of their plan.

Please place a copy of this letter on the examination website.

Yours sincerely

David Reed
INSPECTOR

Document Reference TED42:
Tandridge District Council – Response to ID14 – November 2020
Ground Three – inadequate reasons in respect of the justification for Green Belt Release

89. Under paragraph 83 of the NPPT land should only be released from the GB if there are exceptional circumstances. The Claimant submitted to the Inspectors that there were no exceptional circumstances. Ms Wigley accepts that the level of housing need in the local authority area, as set out in the CS, is in principle capable of amounting to exceptional circumstances. The SAP Green Belt Review Background Paper (May 2017) refers at para 3.2.3.9 to two exceptional circumstances, the geography of Leeds and the need for development. However, it is clear from para 3.9 that it is the CS targets which are the exceptional circumstances which are said to justify the GB release.

90. Ms Wigley submits that the exceptional circumstances being advanced by the Council were the level of need for development, both housing and employment, and the fact that that need could not be met in its entirety without some GB land. She argues that the CS requirement figure had been undermined by the figures in the CSSR and the Government Guidance on the calculation of housing need. This was a principal important controversial issue in the SAP and, as such, if the Inspectors were going to continue to rely on the CS figures they had to set out clear adequate reasons for doing so.

91. Mr Lopez argues that the justification for GB release, and therefore the exceptional circumstances, related back to the spatial strategy in the CS, in particular SP1 and SP6. He referred to the settlement hierarchy and the allocation of housing within the HMCAs in SP6. Therefore, he says that exceptional circumstances did not solely turn on the absolute level of housing need, but also took into account the wider factors of spatial planning across the Leeds area.

92. Mr Lopez argues, on this and other grounds, that the justification for GB release was not simply the need figures but also the “geography” of Leeds and the principle of a “fair shares” approach to the distribution of housing. In essence, the argument is that SP1 and particularly SP7 of the Core Strategy envisaged housing spread across the HMCAs taking into account various factors and this established a fair or equitable distribution across the entire area. Further, it was important not to focus supply wholly or largely in the city and main urban area. This would be for two reasons, firstly city centre supply acts rather differently to that of the more rural areas and therefore deliverability could become a problem if supply is too dependent on city centre and main urban area sites. Secondly, the nature of the dwellings provided are different in the urban areas from the more rural areas. It is important to have a range of sites and thus dwelling types to meet the range of housing demand.

93. He also argued that the purpose of the SAP was to provide for the development set out in the CS and the Inspectors were simply following the CS. Therefore, it was not for the SAP process to question the level of housing need, that was a matter for the CSSR. It was therefore not necessary for the SAP Inspectors to consider whether the falling level of housing requirement in the CSSR meant that there were no longer exceptional circumstances. It followed that they were under no duty to give reasons in this regard. He relied on the fact that the Inspectors had accepted the need for a review of the SAP in the light of the CSSR at IR40, and therefore had fully taken into account the factual position of changing requirement figures.

94. On the duty to give reasons Mr Bannister referred to the dicta of Lindblom LJ in CPRE v Hammersley DC [2019] EWCA Civ 1826 at [72].

“72. The requirement for an inspector conducting a local plan examination to give reasons for his conclusions on soundness under

Document Reference TED42:
Tandridge District Council – Response to ID14 – November 2020
At [75], Lindblom LJ said:

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

Mr Banner argued that the Inspectors fully took into account the falling CSSR figures through their acceptance of the need for a review of the SAP. They sought to hold the ring until that review could take place by putting in place the SAP with its housing allocations up to 2023 and thus prevent planning by appeal decisions in the interim period before the review could take place.

Conclusions on Ground Three

It seems to be the case from IR38 and IR75-76 that the exceptional circumstances that the Inspectors were relying on to justify the GB release was the absolute level of housing need as set out in the CS. Although I accept Mr Lopez's argument that the CS refers to the need for land for the development planned and the geography of Leeds, the Inspectors were focusing on the absolute level of need, in particular that of housing need.

The matters advanced by Mr Lopez as to why a broad spread of housing would be desirable are, in my view, perfectly valid points which might as a matter of planning judgement justify the release of GB land even though there was no need for the release in terms of the crude housing supply figures. That would be a matter of planning judgement. However, it is quite clear that that is not what the Inspectors thought they were doing, and not the justification in the IR for the GB release. IR44 and IR75-76 show that the Inspectors were justifying GB release on the basis of the “identified needs” (IR76) and not issues of geographical spread and fair distribution. Further, and in any event, the Council cannot point to any document where they are asking the Inspectors to take a "fair shares" approach or to ensure deliverability by spreading the allocations across the entire area other than in passing references. Although these justifications might be valid as a matter of planning judgement, they were not being
advanced in that way by the Council. It seems to me that there is a good deal of ex post facto justification in the argument being put in order to seek to overcome the problem with the figures and the lack of reasoning as to the GB release.

100. The passages in the IR referred to above do not refer either to a policy imperative to spread development across the HMCAs (and therefore arguably into the GB in those HMCAs); nor to a need to balance the allocated sites between urban and rural land (in order to improve deliverability). These were the elements that go to what is described in shorthand as the “geography of Leeds”. The matter being relied upon by the Inspectors in the IR was rather the absolute quantum of housing need. This is consistent with the CS where reference to the HMCAs and to the settlement hierarchy is not itself advanced as being a justification for GB release in those areas. The justification in the CS is related to the quantum of house required. In other words, I reject Mr Lopez’s argument that underlying the Inspectors’ approach was a “fair share” approach between HMCAs which in itself justified the release of GB sites even if the overall housing requirement did not need that level of release.

101. The Claimant, and others, were strongly submitting to the Inspectors that GB land should not be released because, in the light of the emerging CSSR, there was no longer a need for GB release and thus no longer exceptional circumstances. There can be no doubt that this was a principal important controversial issue before the Inspectors, indeed it was probably the most controversial issue in the SAP process. In those circumstances there was a duty on the Inspectors to explain clearly their reasons on the issue.

102. In my view the Inspectors’ reasoning is very far from clear. At IR37 they say the emerging CSSR figure was 46,352 between 2017-2033, i.e. for the period including 10 years after the end of the SAP years 1-11, and this was “substantially less” than the CS equivalent figure. Yet in IR39 they take the entirety of the CS figure up to 2023, being 43,750. One way of looking at this is that the annual requirement in the CS for years 2017/18 -2022/3 is 4,700 p.a., whereas the annual requirement under the emerging CSSR was 3,247. There is no clear explanation from the Inspectors as to why, in the light of this drop in the requirement figure, they still decided there were exceptional circumstances justifying the level of GB release in the SAP.

103. I reject Mr Lopez’s argument that the job of the SAP was simply to allocate for the figures in the CS, and that the Inspectors therefore did not need to, and indeed should not, have looked at any other figures. The job for the Inspectors in deciding whether there should be GB release was to apply the NPPF, and in particular para 83. They therefore had to determine whether there were exceptional circumstances to justify GB release. If the level of need in the CS was undermined in emerging policy then that was a matter that they had to take into account and give reasons in respect of. The logical outcome of Mr Lopez’s argument would be that any change of circumstance which undermined the CS requirement was irrelevant to the determination of exceptional circumstances in the SAP. In my view that cannot be right. The Inspectors had to take the up to date position in respect of all material considerations and that must include the actual level of housing requirement if the policy had become out of date.

104. The CSSR was emerging and not adopted policy, and as such carried less weight. However, the Inspectors were fully aware of the position in emerging policy as is shown both in IR37 but also by the simple fact that Ms Sherratt was both the Inspector in the
105. It is possible that the Inspectors thought exceptional circumstances continued to exist because of the Leeds geography; or because they thought that housing should be shared across HMCAs in the same proportions as in the CS; or because they were concerned about deliverability over the 5 year period if there was no GB land. But if this was their reasoning they needed to explain it. Instead they set out the factual position, referred to the need for exceptional circumstances and then failed to deal with the consequences of that position.

106. It is important to note at this point that this is a reasons challenge and not an argument that it was not open to the Inspector to conclude there were exceptional circumstances. Therefore, the dicta in *Compton FC v Guildford BC* does not strictly apply. The argument under this ground is not whether the factors set out in the paragraph above might be capable of amounting to exceptional circumstances but the failure of the Inspectors to give adequate reasons on the issue. They certainly do not explain that they are seeking to merely hold the ring for a limited period, and thus to prevent planning decisions being made by appeal, as Mr Banner suggested was their rationale. Even if this could amount to exceptional circumstances for GB release, within the NPFF, it would need to be explained why GB release was justified in those circumstances.

107. In my view this was a failure to give adequate reasons within para 36 of *South Bucks v Porter (no 2)* and *CPRE v Waverley BC* [2019] EWCA Civ 1826. I entirely accept, as I did in the *Waverley* case at first instance, that a Local Planning Inspector is likely to need to give less detailed reasons than a s.78 Inspector, and that the reasons are given to parties who are likely to be very knowledgeable about the process. However, the discrepancy between the CSSR and the SAP figures and the arguable lack of justification for GB release was an absolutely central issue in the SAP process. It is simply not possible to discern why the Inspectors still thought that the level of GB release up to 2023 was justified. The Claimant was prejudiced by this failure, both by the simple fact that it is unclear what the Inspectors did consider to be the exceptional circumstances, but also by the fact that the end result is the loss of a significant quantum of GB land which, on one analysis was not properly justified in terms of national policy. This amounts to an error of law.

Ground Four – inadequate reasons as to the use of HMCAs in the site selection process

108. Ground Four is closely linked to Ground Three. Ms Wigley argues that the Inspectors have failed to give adequate reasons for why sites to be removed from the GB through the SAP were assessed within each HMC rather than carrying out an assessment across the entire Leeds area. She argues that, as set out above, the SAP necessarily involved a fundamental rethink as to the need for, scale of, and distribution of GB release in the light of the emerging CSSR figures. The Claimant and others had made representations about how the assessment process in the light of the new figures should be carried out.

109. The Council’s approach, ultimately adopted by the Inspectors, was to determine the quantum of housing required, see Ground Three, and then pro rata that across HMCAs
in accordance with the percentage distribution in SP7 of the CS. Therefore, the analysis of which sites no longer to release from the GB following the reduced requirement figure for years 1 to 11 was done within each HMCA rather than by assessing sites across the entire local authority area.

10. Ms Wigley says that the Inspectors’ reasoning for taking this approach is inadequate. The Inspectors’ reasoning is set out at IR96-7 and IR108 under the heading of “Issue 6 – Are the site allocations justified by a robust process of site selection within the context of the CS?” It is important to note the last sentence of IR97. “... it is not considered necessary in this examination to consider whether the distributions set out in SP7 are broadly met on a pro rata basis for years 1 to 11.” This appears to indicate that the Inspectors were not seeking to apply a pro rata approach across the HMCAs in accordance with SP7.

11. At IR108 the Inspectors say “The overall site selection assessment does not reveal any clear reasonable alternative sites that would provide preferable sustainable options to those sites selected for Green Belt release. The exceptional circumstances required have therefore been demonstrated.” Ms Wigley argues that the Inspectors have failed to explain why they have not taken a site selection assessment across the entire area rather than within each HMCA.

12. Mr Lopez argues that there was no fundamental rethink of approach and the Council and Inspectors were simply following the CS. This is in essence the same argument as under Ground Three above. He then argues that there was no requirement on the Inspectors to consider all the HMCAs together and it was entirely open to them to adopt a selection process within the HMCAs individually. Further, he argues that this approach accorded with SP1 and SP7 and the “fair shares approach” between HMCAs was an entirely lawful one.

13. Mr Banner aligned his arguments on Ground Four with Ground 1(b) (see below) in relation to the reliance on the HMCAs. He said that the HMCA distribution in the CS was a guideline and not a rigid rule, and as such it was a matter for the Inspectors the degree to which they followed it. In practice it was not going to be practicable to rethink the distribution of housing in the SAP, and it was entirely open to the Inspectors to adopt the approach they did.

14. It seems to me that this Ground follows from Ground Three above. The Inspectors were faced with a situation where the level of housing requirement had fallen considerably. They needed to explain clearly how GB release was justified in those circumstances. Although they did not have to do that in respect of each individual site, they did need to do so in respect of the approach they were taking to release. It might well have been reasonable to say that they thought the allocations of sites should continue on the basis of the same pro rata level as in the CS to provide an equitable distribution. But they did need to explain why they were assessing GB sites within each HMCA as this was fundamental to the decision as to which sites to continue to release. The IR does not give clear and adequate reasons for the approach that they took and this again amounts to an error of law.
Grounds One and Two (Breach of Strategic Environmental Assessment Regulations)

115. Ms Wigley argues that the Council breached the SEA Regulations in three respects. Under Ground One she argues (a) there was a breach by failing to consider, set out and report on “reasonable alternatives”, contrary to regulation 12(2); and (b) that the Council acted irrationally in failing to assess as a reasonable alternative an unconstrained site selection process across the entire area, as opposed to only comparing sites within each HMCA. Under Ground Two she argues that there was a breach by the failure to consult on either the June 2018 SA Addendum 3, or the November 2018 SA Addendum 5.

116. These grounds are very closely related, both on the facts and the law and I will consider them together. Ms Wigley argues that the strategy set out in the SAP for GB release had fundamentally changed from the submission draft because of the falling housing requirement numbers set out in the draft CSSR. As such, the material change of circumstances needed to be addressed in the Sustainability Assessment, see Swarling Historic Newmarket v. Forest Heath DC [2011] EWHC 1078 (Admin) at [30]. The Inspectors had acknowledged the importance of this change, and of the CSSR process, by their Questions of August 2017, referred to at paragraph 22 above. It was clear from these questions that one option that needed to be considered was to suspend the SAP process until the CSSR was concluded.

117. Ms Wigley therefore argues that suspending the SAP was a “reasonable alternative” to the implementation of the SAP, which fell within reg 12(2) of the SEA Regulations, and as such needed to be considered and consulted upon within the SEA process. However, she says, this alternative was not identified or appraised in the various Sustainability Appraisals which in their totality amounted to the Environmental Report for the purpose of the Regulations.

118. She argues that the document dated June 2018, sometimes described at SA/3, does not meet the terms of the regulation. Firstly, it does not set out suspending or delaying the SAP as a reasonable alternative. Secondly, it was not consulted upon. According to Ms Wigley, her client was wholly unaware of it until they saw Mr Elliot’s witness statement and, in any event, even if it was somewhere on the Inquiry website, no comments were sought upon it so it did not meet the terms of regulation 12(2).

119. In the alternative on Ground One, Ms Wigley argues that the Council was irrational in November 2018 when undertaking the site selection process to determine which sites would continue to be released from the GB up to 2023. As is clear from the history set out above, the Council did this exercise as a comparative assessment within each HMCA. Ms Wigley says that it was irrational not to carry out an unconstrained site selection assessment across the entire Plan area.

120. Ms Wigley argues that the figures for the HMCA in CS policy SP7 were indicative figures rather than being based either on need within that HMCA or a deliberate “fair share” approach. She says that this was specifically recognised in the Council’s Housing Background Paper (May 2017), which was submitted with the draft SAP, and which said;

“4.13 Finally, it is important to note that the Core Strategy in para 4.6.13 sets out that “The SHMA 2011 was not able to identify any geographically...”
specific need for new housing based on population growth.” To that end, whilst the CS Policy SP7 split by HMCA seek to distribute housing across the authority in line with the spatial policies of the CS the full objectively assessed needs for market and affordable housing, as required by paragraph 47 of the NPPF, are those for the Leeds MD housing market area, not individual HMCA’s.”

121. Therefore, she argues that the Council, when considering whether there were reasonable alternatives, should have considered the need for GB release by looking at sites across the Plan area and not merely in each HMCA separately.

122. Mr Lopez argued in his Skeleton that there was no fundamental change in position by the Council that necessitated any consideration of reasonable alternatives to continuing with the SAP. He argued that the reduction in delivery was a vis a vis an “indicative” housing target under the CS, meaning the deletion of a number of GB allocations, did not amount to a fundamental change. The overall strategy and the need for GB release had not changed, albeit there was a lower level of housing. Equally, he said that the rationale underlying the CS policy in SP7 for a “fair shares” approach between HMCA’s had not changed.

123. In his oral submissions he focused more on arguing that suspending the SAP process was not a reasonable alternative because it did not meet the imperative need to get the Plan adopted so that the Council could show it had a 5 year land supply. Therefore, there was no breach of the Regulations by not separately considering and consulting on this possibility.

124. Mr Bannister emphasises the breadth of evaluative judgement which the local authority has in deciding what is a reasonable alternative as set out in Friends of the Earth v Forest of Dean DC at [40] and in R (Spurrer) v Secretary of State for Transport [2019] EWHC 1163, the Divisonal Court at [433-4]. He correctly said that the judgement is only challengeable on Wednesbury grounds. He argues that there was no fundamental change triggering a need to consider reasonable alternatives because the purpose of the SAP was still fundamentally to deliver the CS policies. He argues that the alternative of suspending the SAP was not a reasonable alternative because it would not have delivered the CS policies. He points to the fact that the Council did consider the alternative of withdrawing the SAP in the June 2018 document (SA/3). Mr Corbet Burche adopts the same analysis.

125. The same arguments arise on the consultation issue. The Defendant argues that all the relevant material was published, albeit Mr Lopez accepts that the June 2018 document was not consulted upon and was confusingly one of three documents called “SA/3.” Both Defendant and Interested Parties rely on Careen Land v Rochford DC [2013] 1 P&CR 2 at [111-126] and Spurrer at [397] for the proposition that deficiencies in an EA can be cured by subsequent compliant steps.

Conclusions on Ground One and Two

126. On the first part of Ground One, I do not accept that the significant fall in housing requirement numbers from 4,700 p.a. to 3247 p.a. was not a fundamental change that necessitated the consideration of reasonable alternatives within the SAP process. It was a drop of something like 23% for each remaining year of the SAP including, critically,
the five years up to 2023. It is plain from the Development Plans Panel reports dated 3 and 21 November 2017 that the Council saw the changing position on housing land requirement as being a significant change that required a careful response in order to meet the need for justification of GB releases.

127. I have significant sympathy with the Council trying to deal with such large amounts both of housing requirements but also so many sites across a very diverse area. However, on any analysis a drop in requirement of 25% is a very significant amount. More importantly, it translated into a very large reduction in the absolute number of units required and therefore, on any approach, a very significant impact on the GB release that would be required. In circumstances where national policy requires exceptional circumstances to be shown to justify any GB release it would, in my view, be irrational to say that a fall of 25% requirement with these potential GB consequences would not be a fundamental change. On Mr Lopez’s analysis the only thing that would amount to a fundamental change would be matters such as a complete withdrawal of the CS, or a total reversal of national policy, but it does not appear to me to accord with the purpose of the Regulations to have such a high hurdle before reasonable alternatives have to be considered. As I have said above, it is clear from the Council’s own approach they thought the change in the requirement figures needed an assessment of different possible strategies going forward.

128. Therefore, I reject Mr Lopez’s first argument.

129. The problem with his second argument is that the SA/3 (July 2018) document assesses withdrawing the SAP as one of the “reasonable alternatives”, but this would self-evidently have involved a greater delay than suspending the process. Therefore, the argument that delaying the SAP was at least potentially a reasonable alternative must be a logical consequence of the Council’s own thinking. I accept Mr Lopez’s point that one should not be overly legalistic about the Council’s use of language, and I am intensely conscious of the very difficult situation that the Council has found itself in, and the truly massive task of the SAP process. However, suspending the SAP process to get the CSSR adopted first was an obvious possibility and should in my view have been clearly and transparently consulted upon.

130. However, the fact that it was such an obvious possibility shows why in my view no prejudice was caused by the failure to consult. The Claimant (and anyone else interested) was fully aware of the possibility of delaying or suspending the SAP pending the outcome of the CSSR, and the Claimant made representations on this very point. Equally, given that the objectors were arguing that the Council should either suspend the SAP process or withdraw it, it seems to me that even if the matter had been properly consulted upon, it is inevitable that the Council would have made the same decision to press on. In the reports to the Development Plans Panel the officers had made clear that they considered it to be of great importance to continue with the process because of the impact on deliverability and appeals. This is therefore one of those situations where it is entirely clear that the outcome would have been the same even with consultation. I therefore take the view that this is a case that properly falls within the principles in Champion and Halton. I therefore decline to grant any relief in respect of these Ground one (a) and two.

131. In respect to the approach to the HMCAs, I have dealt with the background to this issue under Ground Four above. I do not accept the Claimant’s argument that it was
necessarily irrational to assess the most sequentially preferential sites for GB release against reasonable alternatives within each HMCA rather than across the local authority area as a whole. This might have been a reasonable approach. Firstly, to carry out the exercise across the entire area would have been a very major undertaking, involving very significant delay to the process. Secondly, it could have been reasonable to adopt what Mr Lopez calls the “fair shares” approach. There are undoubtedly advantages in spreading GB release across the whole area and in having a variety of sites in different locations and with different characteristics in terms of speed of delivery and range of housing choice. The problem for the Council is that neither it nor the Inspectors have set out adequate reasons for this approach. However, I do not consider the principle of taking that approach to be Wednesbury irrational.

132. For these reasons I reject these Grounds.

**Ground Five- breach of s.39(2) of the 2004 Act**

133. Mr Wigley argues that it was a breach of the duty under s.39(2) PCPA to “contribute to the achievement of sustainable development” for the Council to continue with the SAP. The argument goes that the Council knew that the GB releases would no longer be necessary because of the CSSR figure. In those circumstances it was necessarily unsustainable to continue with a strategy that advanced extensive GB releases.

134. Mr Lopez argued that the s.39(2) duty is incorporated into the test of soundness and adds nothing to it. Further, he says that the IR when read as a whole properly included the issue of sustainability.