Proof of Evidence Appendices

Graeme Tulley

The Homes and Communities Agency

Land South of Brackmills
Newport Pagnell Road
Northampton

PINS Ref: 2228866
LPA Ref: N/2013/0388

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Appendices

APPENDIX A: HCA Statement
18th May 2015

Dear Mr Tulley,

Reference: APP/V2825/W/14/2228866
Land to the East of Hardingstone
North of Newport Pagnell Road
Northampton
NN4 7BW

I am writing to confirm the Homes and Communities Agency (HCA)'s interests and involvement in relation to the outline planning application for the Land South of Brackmills (the Appeal Site) as a new urban extension for Northampton and which is now the subject of an appeal.

The following is provided in support of your May 2015 planning evidence and is intended to provide background information and context on the approach that the HCA has taken in its promotion of the Appeal Site.

1. HCA's remit, role, responsibilities

The HCA is an executive non-departmental public body and its sponsoring department is the Department for Communities and Local Government (DCLG). The HCA’s function is to act as the government’s housing, land and regeneration agency, and as the regulator of social housing providers in England. The statutory objectives of the HCA, as defined by the Housing and Regeneration Act 2008, are to:

- improve the supply and quality of housing in England;
- secure the regeneration or development of land or infrastructure in England;
- support in other ways the creation, regeneration or development of communities in England for their continued wellbeing;
- contribute to the achievement of sustainable development and good design in England, with a view to meeting the needs of people living in England.
Consistent with these objectives the HCA has sought to bring forward the Appeal Site for housing led development.

2. HCA's Land and Development Disposal Plan

The HCA is the successor body for the Commission for New Towns (CNT) and, as such, owns significant strategic land holdings (including the Appeal Site) in Northampton. The HCA's objectives and strategy for the Appeal Site are consistent with the long-established intention that these former CNT assets will deliver further development and growth of Northampton.

The HCA's objectives with regard to its landholdings are more specifically set out in the Land Development and Disposal Plan (LDDP), first published in 2011 and updated on a biannual basis. The objectives relate to acceleration of economic activity; the development of homes and employment floorspace and construction activity in support of local priorities. The LDDP also sets out how we intend to use our landholdings to achieve those objectives. The LDDP describes that, where possible, the HCA will hold its land no longer than is necessary and that we will make sure the land is disposed of to support local plans and ambitions.

When disposing of land, we want to ensure that the purpose for which it is being developed meets the needs of the local community and we will use the planning system as the primary means to achieve this objective. Our approach to establishing land use is, therefore, determined by local planning policies. The LDDP confirms that, where there is an allocation we will work within that but, where there is no allocation, we will work with the local planning authorities through the statutory planning process so that the site can be brought forward. Once sufficient certainty about the use is achieved we then would seek to dispose of the site and transfer the majority of the planning process to a development partner, allowing them to bring their detailed scheme proposals through the local planning process. In this case our intention would be to dispose of the site to the HCA's Delivery Partner Panel.

The approach taken with regard to the Appeal Site has been entirely consistent with the objectives and principles of the LDDP as outlined above. The HCA has actively promoted the Appeal Site through the strategic planning process and, given the positive support of the emerging JCS allocation, an outline planning application was prepared and submitted to address any remaining planning uncertainty and to enable early delivery by disposal to a development partner.

3. HCA's promotion of the Appeal Site

The HCA's active promotion of the Appeal Site followed the 2005 Regional Spatial Strategy for East Midland's identification of the South East of Northampton as a possible direction for growth. Initially the HCA's approach was to work in association with a consortium of developers/land owners to promote a new sustainable urban extension in south east Northampton. The integrated scheme at this stage (the Wootton SDA) proposed a total capacity of 4,000 to 4,500 homes of which 1000 to 1400 would be on the HCA land. Schools, local centres, open space, health and community facilities were all included and a series of technical studies and a programme of public and stakeholder consultation and preparation of an initial master plan were undertaken in support of the proposals.

At pre-submission stage of the JCS, in early 2011, the Appeal Site was allocated under Policy N6 to provide 1000 dwellings along with a primary school, local centre and other infrastructure provision. At this point and in accordance with this pre-submission stage
allocation, the HCA began to progress with the promotion of the Appeal Site in its own right. Continued representations were made in support of the emerging JCS allocation at every subsequent stage of the emerging JCS.

The HCA's continued promotion of the Appeal Site from early 2011 was enabled with funding from the HCA's Accelerated Land Disposal (ALD) programme. The ALD programme arose from the Government's Growth Review, published alongside the 2011 Budget, which stated that the Government intended to accelerate the release of public sector land to encourage the delivery of new homes and jobs. DCLG made the ALD programme funds available to the HCA to support the additional or accelerated cost of bringing sites to the market. The HCA allocated ALD funds in June 2011 to progression with an outline planning application for the Appeal Site in accordance with the emerging JCS allocation.

The HCA's intention at this stage was to progress with the outline planning application to further de-risk the Appeal Site ahead of the uncertain time-scale for JCS adoption so as to enable early delivery of the proposed development. The HCA's active delivery of the Appeal Site with the benefit of this ALD funding was welcomed by partners, including Northampton Borough Council (NBC), at an early stage in the preparation of the outline planning application.

4. HCA work in partnership with relevant local authorities

The HCA's approach to promotion of the Appeal Site has been guided by the HCA's wider approach to working in partnership with the relevant local authorities. In Northampton, the HCA has worked with NBC and other local authorities in the West Northamptonshire area to agree the West Northamptonshire Local Investment Plan 2010-2014 (LIP). The LIP has been prepared by local partners including the West Northamptonshire Councils' Planning & Housing Departments; Northampton County Council infrastructure team and the HCA.

The LIP is not a formal, policy document but refers to and reflects local and national strategies. It is intended to provide a focused structure for investment that is integrated with all aspects of regeneration and growth. This comprehensive investment approach is intended to ensure delivery of appropriate housing and sustained regeneration across the area, creating places where people want to live and work. The LIP set out strategic priorities for partner investment (including housing, health, economy, education and transport) focused on the Government's place-based budgeting agenda. The LIP was agreed by all partners with specific support provided by NBC Cabinet on 9th February 2011 (please see the Footnote 1 below).

The LIP identified that the HCA has significant strategic and other land holdings in Northampton and that it will seek to utilise these assets to meet the aims and objectives of local partners arising from the LIP and other emerging policies. The June 2011 allocation of ALD funding (as described above) was consistent with the principles of the LIP and provided a means of enabling the HCA to promote the site in accordance with the aims and objectives of local partners.

5. HCA as a responsible landowner/promoter

The HCA is a public agency with a specific remit and objectives as described above. The HCA also has significant land holdings in Northampton and the LIP provides context for the
HCA's approach to dealing with these in support of local objectives and priorities, which, in
land use terms, are best identified through the local planning process.

Rather than seeking to appoint a development partner to take the Appeal Site forward
through the strategic policy allocation and outline planning application process, the HCA has
kept a 'hands on' approach. The HCA has itself made representations and attended the
relevant Examination hearings as the Appeal Site's policy allocation was considered by the
JCS Inspector. From inception of the outline planning application project in June 2011, to
submission of the application in March 2013 and up to its consideration by NBC's planning
committee in May 2014, the HCA area team has worked collaboratively with NBC's officers
to ensure that any issues and concerns raised through this process were addressed.

As noted above the HCA has extensive land holdings in Northampton which, beyond the
appeal site, include a number of other strategic sites identified within the LIP. Given the
scale of the proposed development and the important role these sites have in delivery of
Northampton's plans for growth, the HCA and NBC established a Major Projects Board in
November 2012 to specifically guide and ensure the orderly progression of the HCA's
strategic sites (including the Appeal Site) through the planning process. The Major Projects
Board was chaired by the NBC's Head of Planning and considered progress updates from
HCA and NBC officers and sought to 'unblock' issues relating to each of the HCA's strategic
site applications.

Following submission of the Appeal Site outline planning application in March 2013 a
Planning Performance Agreement was also entered into to ensure a commitment of
resources and prompt determination of the application by NBC. Subsequent to this a series
of 'project team' meetings between HCA area team and NBC planning officers was held to
monitor progress with NBC's consideration of the application.

The outcome of this process was the officer's report to NBC's 6th May 2014 planning
committee with a recommendation for approval and, given the efforts made and approach
taken (as outlined above) the HCA was naturally surprised and disappointed by the decision
taken by this committee.

I hope that the above information has been helpful and will be of use in the Inspector's
consideration of the appeal.

Yours sincerely

[Signature]

Julian Frost
Area Manager, South East Midlands
Homes and Communities Agency
Woodlands, Manton Lane, Bedford, MK41 7LW
Footnote 1: The minute of the 9th February 2011 meeting states that Cabinet resolved:

1. That the Council would continue to support the development of the West Northamptonshire Local Investment Plan 2010-2014 as a co-ordinated approach to partner investment in place making, maximizing investment in the agreed priority areas, and endorsed the Interim Statement.

2. That the Director of Planning and Regeneration in association with the relevant Portfolio Holder, be delegated to make further appropriate amendments as the document progresses to finalization, and subsequently approved, on behalf of the Council, the finalised West Northamptonshire Local Investment Plan 2010 - 2014.
APPENDIX B: Emergent JCS (2009) Plan identifying preferred location for growth
Map 6.1 Northampton - Preferred Locations for Growth
APPENDIX C: MGH Letter
12 May 2015

Mr Julian Frost
Area Manager – South East Midlands
The Homes and Communities Agency
Woodlands, Manton Lane
Manton Industrial Estate
Bedford, MK41 7LW

Dear Julian

Re  Wooton Fields, Northampton

We write further to our recent meetings and in relation to your forthcoming Appeal Inquiry scheduled for June 2015. Martin Grant Homes (MG Homes) fully supports the Homes and Communities Agency’s (HCA) position in regard to challenging the Local Planning Authority’s refusal of outline planning permission and we wish to put on record our considerations in this regard.

As you are aware Martin Grant Homes/Harcourt Developments Ltd has options to acquire land directly to the east of the HCA’s land ownership. This land was included as an extension to the allocation under Policy N6 of the adopted West Northamptonshire Joint Core Strategy Local Plan Part 1 (the JCS). MG Homes and Harcourt Developments Ltd have been involved in the promotion of their land adjoining the HCA site for development for more than 10 years and the site was, of course, mooted for development in early drafts of the JCS in 2009 at the time a Sustainable Urban Extension of 6,250 dwellings was envisaged.

West Northamptonshire Joint Planning Unit, the HCA and Martin Grant Homes/Harcourt Developments Ltd agreed a Joint Position Statement in March 2014 in relation to modifying Policy N6 of the JCS (the Position Statement). The Position Statement clearly demonstrates the commitment of all parties and the agreement that the objectives of policy N6 could be addressed by the HCA’s planning application for up to 1000 homes with a subsequent MG Homes component realising the remaining 300 homes of the Sustainable Urban Extension (the SUE). The following matters were agreed in the Position Statement:

"The Northampton South of Brackmills SUE is a suitable and available site and is deliverable within the timeframe of the Plan period;

"Policy N6, which provides an appropriate framework that supports the delivery of the site, is sound being positively prepared, justified, effective and consistent with national policy;

"The HCA and Martin Grant Homes/Harcourt Developments Ltd are committed to bringing the site forward for development expeditiously to facilitate the delivery of the spatial strategy for the NRDA;

"The HCA has submitted an outline planning application to NBC in respect of the western element of the SUE for the construction of some 1,000 dwellings, representing 77% of the total capacity of the allocation anticipated at MM45."
On the basis of what was agreed and the subsequently adopted JCS, MG Homes was extremely surprised by the Local Planning Authority’s decision to refuse the HCA planning permission. We consider this decision was short sighted given the pressing need for new housing within West Northamptonshire and on a site allocated as a SUE in an adopted Development Plan.

MG Homes and Harcourt Developments Ltd support the outline planning application proposed by the HCA. The mix of uses, quantum of housing, community and green infrastructure and the indicative layout proposed appears to be a well-considered approach to the site and would be entirely complimentary to our own emerging proposals for land at the eastern end of the allocation.

Together the HCA land (accommodating up to 1000 homes) and our land (accommodating in the region of 300 homes) would help realise the full quantum of development envisaged by the JCS for this SUE. While both sites can be delivered independently of one another, we consider there to be compatibility in the masterplanning of each site and linkages between the two sites can easily be achieved. There would be no need for one to rely upon the other in terms of vehicular access or infrastructure.

MG Homes has a long held interest in West Northamptonshire and understands the residential property market very well indeed. Through a MG Homes subsidiary (Ensign Group), MG Homes recently obtained planning permission for 370 dwellings at Buckton Fields, Northampton. The area around the neighbourhoods of Wootton and Hardingstone has experienced a degree of house building in recent years, notably Morris Homes currently on site with the first phase of a 300 home development to the south of Newport Pagnell Road. However, the wider picture is one of significant undersupply against the West Northamptonshire housing targets and there remains significant demand for new housing to meet both local (Northampton) need and regional growth need. We are, therefore, confident that there is capacity for both the HCA and MG Homes proposals and that homes in this location will be very much in demand.

MG Homes and Harcourt Developments Ltd remain committed to delivering a development of up to 300 homes on the remaining part of the land allocated in Policy N6 and we are progressing towards a planning application. Our draft masterplan, illustrating the potential layout is attached. We are currently awaiting the outcome of the HCA’s Appeal with interest prior to pressing ahead with our own planning application.

MG Homes and Harcourt Developments Ltd are content for the HCA to use this letter as proof of support for the HCA’s case at Planning Appeal and as evidence of our continued communications and commitment with regard to bringing the site forward and facilitating delivery of the spatial strategy for the NRDA.

Yours sincerely

Andrew Wilson
Land Director
APPENDIX D: Savills Letter
Dear Julian

Hardingstone, Northampton Appeal – Market Commentary

It is understood that as part of the planning proof for the forthcoming appeal, information is required in relation to the housing market in Northampton and the level of sales anticipated, should the appeal be successful and development can commence without delay.

As you are aware Savills has been involved in this proposed development since the beginning of 2013. Our main involvement has been in relation to viability work at this site, in addition to the HCA’s other sites, Upton Park and Upton Lodge. We have also provided advice to the HCA in relation to disposal strategy options at Hardingstone and Upton Park.

With regard to the disposals strategy at Hardingstone, Savills has been in contact with a number of prospective developers with a view to soft market test the site and establish initial interest. The developers contacted are all part of the HCA’s Delivery Partner Panel 2 (DPP2), a framework panel of pre-qualified housing developers used to speed the construction of homes on land owned by the HCA and other public sector bodies. We understand there is currently strong interest in the Hardingstone site with a number of the pre-qualified developers looking for sites coming to market now to continue their pipeline of delivery. In particular, the location of the site is very attractive to the house builders, and the HCA’s Land Development and Disposal plan which involves close working with the house builders to enable accelerated delivery is also an appealing feature.

Below is a summary of the local market, consideration of competing sites, a view on delivery rates at Hardingstone and an indication of potential phasing that could apply here.

Local Market
As published in Savills Residential Property Focus Q1 2015, the mainstream market forecast expects the East Midlands to see 19.3% house price growth in the next 5 years. This is an average, and it would be our expectation that Northampton, due to its good transport linkages to London and Milton Keynes, would achieve slightly above the average level.

The Northampton development land market broadly reflects the national position, with land price growth occurring in the market over the past 12 to 18 months, and increasing appetite for larger lot sizes. The
majority of purchasers in the market are from Northampton originally, or are moving north from Milton Keynes to capitalise on the lower house prices in Northampton.

**Other Sites**
Northampton has seen an increase in the supply of new build properties with a number of other sales outlets around Northampton and the surrounding villages. In general, we would comment the private owner occupation market is seeing a number of new developments coming on stream, however sales outlets are reporting good interest for new build units, with reservations and sales broadly inline with build rates. We understand that demand has been stimulated by the introduction of Help to Buy.

The Joint Core Strategy provides for 28,470 new dwellings in the Northampton Related Development Area over the plan period (2011-2029). Currently there is a reasonable supply of new housing around Northampton, and the planned housing trajectory shows a steady supply of new build housing over the short to medium term. However, of the 28,470 new dwellings planned for Northampton, only 1,000 dwellings currently have planning consent (HCA owned Upton Park), with 2,300 dwellings (including the HCA Land at Hardingstone) subject to planning appeals for refused planning permissions. It is also likely that a number of smaller infill sites will come forward within Northampton over the short to medium term.

The only large site expected to come to the market in the short term is Upton Park which is in a different location to Hardingstone. Furthermore the Hardingstone area is considered to achieve slightly higher sales values which can reasonably be expected to attract a larger range of purchasers. It is not expected that Upton Park will provide direct competition to Hardingstone.

A scheme by Morris Homes on Newport Pagnell Road (Wootton) is currently on site. It has planning permission for 300 units (of which 105 are affordable), with the first phase of 38 units being constructed and selling now. We understand sales are achieving on average 6 to 8 sales per month and it is expected the last units will be constructed and sold in 2017. As a result, it is estimated that all the units will be sold before the HCA’s Hardingstone scheme, subject to planning, comes on stream.

**Delivery Rates & Phasing**
The Northampton new homes market is dominated by a number of large developments in areas including Upton, Duston, Pineham and Wootton, where sale rates are on average 3 to 5 sales per outlet per month.

With regard to Hardingstone, should the appeal be successful, the site will be delivered under the HCA Land Development and Disposal Plan, as updated by the Land Disposal Policy 2014, which includes the following key objectives:

- Accelerating the release of sites wherever possible;
- Post consent, transferring the majority of the planning process to the incoming developer;
- Undertaking the minimum necessary pre-disposal work;
- Where possible, looking for developers to provide infrastructure using land value and payment terms to support this;
- Generally disposing of sites to a single purchaser / consortium;
- Seeking to maximise the rate of development on site;

We understand that board approval will be sought to select a suitable development partner under the Delivery Partner Panel 2 (DPP2) framework, which is a panel of pre-qualified housing developers. The site is divided into two, broadly equal parcels, bisected by Landimore Road which was constructed in the 1990’s and will serve as the primary access point. Given this existing road access, it would be relatively easy to enable a
number of house builders to commence development at different locations of the site. However as a prudent measure, taking account of the local housing market, we would expect to see 2 house builders on the site at any one time. 

Taking the agreed 24% affordable housing provision and an average sales rate of 4 private dwellings per outlet per month, with an average of two outlets in operation at any one time over the life of the development, the following number of homes could be constructed each year:

- 4 private dwellings x 2 outlets x 12 months = 96 homes
- 24% affordable per annum (using above figures) = 30 homes
- Total average construction anticipated per annum = 126 homes

Utilising the projections in the viability work undertaken, and taking account of infrastructure works required prior to the construction of homes, it is anticipated that should the appeal be successful, and the HCA contracts a developer without delay, the construction of homes could start at the end of 2016 or beginning of 2017. The following projections are considered to be reasonable given the above assumptions:

- 2017/18 - 50 dwellings
- 2018/19 – 100 dwellings
- 2019/20 – 100 dwellings

If you would like to discuss any part of this letter please do not hesitate to contact me on the telephone number above or via e-mail.

Yours sincerely

Alison Meigh
Associate Director
Housing Division – Development Services
APPENDIX E: James Maurici QC of Landmark Chambers’ Opinion
This Opinion dated 25 February 2015 (the *Opinion*) is disclosed solely for the purposes of informing the Inquiry in relation to the appeal by the Homes and Communities Agency (the *HCA*) for development of the land to the East of Hardingstone, north of Newport Pagnell Road, Northampton. More particularly, its content is produced solely in relation to Northampton Borough Council (NBC)'s decision to confirm an objection to the allocation of the Appeal site on 19 January 2015.

The Opinion is privileged and the benefit of the privilege belongs to the disclosing party, that is the HCA. The provision of the Opinion does not amount to any further, extended waiver of privilege, including to other documentation related to the Opinion or referenced by it. In addition, the Opinion must be held in complete confidence and not be disclosed to any other person without the disclosing party's prior consent (save as required by law or regulation).
OPINION

INTRODUCTION
1. I am asked by the Homes and Communities Agency (“the HCA”) for my opinion on a number of matters relating to an appeal against refusal of outline planning permission for a proposed development (“the Proposed Development”) of a Sustainable Urban Extension (“SUE”) to Northampton to include up to 1000 dwellings at land east of Hardingstone, North Newport Pagnell Road, Northampton (“the Appeal Site”).

2. In October 2014, I advised generally on the merits of the appeal and I am now asked to advise further in light of the adoption of the West Northamptonshire Joint Core Strategy (“JCS”) and the decision of Northampton Borough Council (“NBC”) to confirm an objection to the allocation of the Site for 1300 dwellings in Policy N6 of the JCS.

BACKGROUND FACTS
The JCS and the allocation of the Appeal Site
3. In July 2008, Northampton Borough Council, Daventry District Council, South Northamptonshire Council and Northamptonshire County Council agreed, by way of Statutory Instrument No.1572 of 2008, to form a joint committee to act as the local planning authority for the purposes of plan-making for the administrative areas of Daventry District, Northampton Borough and South Northamptonshire District. Together the authorities formed the West Northamptonshire Joint Strategic Planning Committee (“the JSPC”) which was responsible, inter alia, with developing the JCS. By virtue of section 29 to the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”), that JCS was to be to the Core Strategy for each of the constituent authorities.
4. The Appeal Site was promoted by the HCA throughout the preparation of the JCS. It is now allocated for around 1300 dwellings in Policy N6 of the adopted JCS. Below, I set out the background to that allocation, and the attitude of NBC and the West Northamptonshire Joint Planning Unit (“the JPU”) \(^1\) to the allocation.

i. The Emergent JCS was published in August 2009. It did not include specific allocations, but identified preferred locations for growth. The Appeal Site formed part of the Northampton South East Extension which was envisaged to deliver 6250 dwellings within the Plan period.

ii. The pre-submission JCS (31 January 2011) allocated the Appeal Site as “Northampton South of Brackmill SUE” under Policy N6. It proposed 1000 dwellings along with a primary school, local centre with convenience retail unit of up to 500 sqm and other infrastructure provision. The Appeal Site and the allocated site in Policy N6 were identical. In its consultation response dated 31 March 2011, NBC stated in relation to Policy N6 that it “supports the principle of development in this SUE”.

iii. No further changes were made to Policy N6 prior to submission for independent examination by an Inspector appointed by the Secretary of State.

iv. In March 2013, a Joint Position Statement was agreed by the JPU and the HCA supporting the allocation in Policy N6 as “a suitable and available site… deliverable within the timeframe of the plan period.”

v. In March 2013, the Inspector set out the questions and issues that he wanted addressed as part of the examination process. One of those issues (issue 13) related to the soundness of Policy N6. In relation to that issue, Martin Grant Homes, the owner of a piece of land adjoining the eastern edge of the Appeal Site (“the Adjacent Land”), made representations that emerging Policy N6 should apply to a larger site, encompassing both the Appeal Site and the Adjacent Land, and should accommodate in the region of 1300 homes rather than 1000. In response to these representations, the JPU resisted the proposed increase.

\(^1\) The JPU is the administrative body of local government officers which serves the JSPC.
vi. Following preliminary examination of the JCS during hearings which took place between April and May 2013, the Inspector indicated that further work needed to be done by the JPU to i) objectively assess housing needs over the plan period; and ii) produce a Sustainability Appraisal Addendum report in order to provide further justification for the SUEs in light of the reassessed housing needs of the area. The Inspector also requested that consideration be given to extending the Plan period from 2026 to 2029 or 2031.

vii. In December 2013, having reassessed housing needs to 2029, the JSPC approved a series of proposed Main Modifications to the draft JCS. Three of those Main Modifications (MM8, MM44 and MM45) related to Policy N6. Together, they proposed the inclusion of both the Appeal Site and the Adjacent Site within the Policy N6 allocation, and proposed an increase of housing within the allocation to “the region of 1300 dwellings”. In representations made on 21 February 2014, NBC requested that the additional allocations, including the additional land and additional housing numbers included in Policy N6, not be included in the final JCS. NBC raised specific concerns in relation to the reliability of the evidence base for the end of the period 2026 – 2029, “in particular in relation to the transportation elements”.

viii. In March 2014, a Joint Position Statement was agreed by the JPU and the HCA describing the Appeal Site and the Adjacent Site as “a suitable and available site… deliverable within the timeframe of the plan period.” It also noted that Policy N6 “provides an appropriate framework that supports the delivery of the site, is sound bring positively prepared, justified, effective and consistent with national policy”.

5. In October 2014, the Inspector issued his report (“the JCS IR”) which found the JCS to be sound, subject to the adoption of the Main Modifications proposed in January 2014. In relation to Policy N6, the JCS IR said:

"Issue 13 - Northampton South of Brackmills (policy N6)
139. This site is well related to the existing built up area on the south eastern edge of the town with existing housing to the west and south and close to the substantial Brackmills employment area to the north. A SUE here would provide a new local centre, primary school and medical facilities, as well as new housing. The scale is such that a mix of size and type of new homes should prove deliverable."
140. This would include an appropriate percentage of affordable housing, in accordance with policy H2, together with a park, allotments, informal green spaces and sustainable drainage features. In addition, a green corridor running roughly north west to south east across the site, plus peripheral green spaces would help to define but also soften the edges of the development, especially to the east where it would adjoin open countryside.

141. The local landscape sensitivity of parts of the site can be addressed and partly mitigated through such measures, together with the backdrop of woodland to the north, which forms a strong local landscape feature, as part of a comprehensive masterplan for the whole site. The masterplan should also take into account the potential skyline views of buildings on the site from the north and east, as well as the retention, if at all possible, of existing footpaths, Landimore Road and the minor road within the site to help integrate the scheme into its surroundings. As a result, the development should not materially threaten the separate identity of the settlements of Hardingstone and Wootton.

142. The understandable concerns of local residents regarding possible flood risk, noise, air quality, ground stability and traffic generation can all be satisfactorily addressed through appropriate technical analysis and on site measures, as well as contributions to offset impacts elsewhere. This should include through a full Transport Assessment looking at all traffic movements likely to occur on the local road network in the context of the agreed NGMS for the A45 route. Consequently, none are sufficient, individually or collectively, to indicate that the site is unsuitable in principle for a SUE.

144. Most of the site is presently owned by the Homes and Communities Agency (HCA) and forms part of their accelerated disposals programme to assist the delivery of new housing nationally. The remainder is owned by a national house builder that is “ready, willing and able” to proceed as soon as possible. In such circumstances, this site is clearly able to have an early start to delivery and to make a material contribution to the plan’s new housing trajectory accordingly. This conclusion is supported by the fact that extensive public consultation has been conducted locally in respect of specific proposals by the HCA and prospective developers.

145. Taking into account the positive outcome of the revised SA, that did not identify any material constraints in relation to the higher number of new dwellings regarding the extension of the originally identified site to the south east, the site is suitable in principle to accommodate a SUE and for about 1,300 rather than just 1,000 new homes (MMs 44/45). This would also accord with the earlier Northampton Longer Term Growth Options Study (GLD 2). Policy N6 is therefore sound, as modified.”

6. On 15 December 2014, the JCS, incorporating the Main Modifications, was adopted by the JSPC. Adopted Policy N6 provides as follows:

“Policy N6 - Northampton South Of Brackmills SUE

The boundary of the northampton south of brackmills SUE is shown on the Policies Map (Figure 5). The development will make provision for:

a) In the region of 1,300 dwellings;
b) A primary school;
c) A local centre to include local retail facilities of an appropriate scale (including a small convenience store), health care services and community facilities;
d) An integrated transport network focused on sustainable transport modes including public transport, walking and cycling with strong links to adjoining neighbourhoods, employment areas and the town centre;
e) Structural greenspace and wildlife corridors as indicated on the policies map (figure 5);
f) The creation of a landscape buffer to the south west of the site as indicated on the policies map (figure 5);
g) Archaeological and ecological assessment of the site and required mitigation;
h) Open space and leisure provision; and
i) Flood risk management including surface water management and from all other sources.

Necessary infrastructure is required to be phased alongside the delivery of the development.

Development proposals must be accompanied by a masterplan.”

The Application

7. In March 2013, after the draft JCS had first been submitted for independent examination, the HCA made an application to NBC for outline planning permission (NBC Ref N/2013/338) for “a Sustainable Urban Extension to include up to 1,000 dwellings (Class C3); Local Centre up to 1,320 sqm net floor space of retail, professional and financial services restaurants/cafes (Classes A1, A2 and A3); up to 375 sqm net public house (Class A4); 2.09ha of land for a two-form entry primary school (Class D1); up to 750 sqm of community uses to include medical centre, pharmacy and community centre (Class D1). Infrastructure improvements including a pumping station, green infrastructure and highway access” on the Appeal Site (“the Application”).

8. The Application went to NBC’s Planning Committee on 6 May 2014. At that stage, the independent examination hearings had concluded but the JCS IR had not yet been published. The officer report (“OR”) recommended that the Committee approve the application. The OR noted the significant weight to be given to the emerging JCS. It said:

“7.7 It is considered that the site’s identification as a SUE in the submitted JCS should be given significant weight. Northampton Borough Council in its representations to the Pre- Submission JCS on policy N6 supported the proposed allocation. The Council did not support the expansion of the SUE by an additional 300 in the proposed modifications and the plan considered by the Inspector in the re-convened examination in March. Notwithstanding that the JCS has not been adopted, in the context of the Examination hearings in April/May 2013 and March 2014 which addressed housing numbers, proposed allocations and Policy N6 Northampton Land South of Brackmills SUE, no materially significant issues were identified by the Inspector at the examination hearings sessions into this proposed allocation that would appear to call into doubt the principle of the site’s acceptability as an allocation.”
7.8 Indeed consistent with the NPPF and in particular paragraph 47, one of the Inspector’s main emphases at the Examination Hearings was on testing the potential to ensure that sufficient housing to meet identified objectively assessed needs was identified in the JCS for the periods beyond that for which the Plan was originally submitted. In the material submitted in support of the JCS, the site is shown to be delivering homes in the earlier parts of the Plan period.

7.9 In accordance with paragraph 49 of the NPPF, the Council can show that it has sufficient sites available to meet the 5 year housing land supply if the allocation of the Land South of Brackmills SUE is included. Nevertheless, it does not have the 5% ‘buffer’ also stipulated by the NPPF. In compiling the figures that identify the supply, it is assumed that this site starts delivering housing in 2016/17 and supplies 250 dwellings within the 5 years. Clearly, given the current position on 5 year housing land supply and the site’s identification as providing significant numbers towards achieving the target, Committee needs to be mindful of the potential wider ramifications if a decision is taken which impacts negatively on development proceeding on site in a timely manner.

7.10 Incremental development of smaller brownfield sites within or on the edge of Northampton sufficient to achieve the required 5 year land supply are more difficult to serve with the range of community facilities and infrastructure needed to support the increase in population. Consequently, spatial strategy such as the Core Strategy aims to concentrate additional development that cannot be allocated within the town centre in a small number of Sustainable Urban Extensions that can provide the necessary infrastructure to support the growth.

7.11 In this context, it is considered that the residential development of the site would make a significant contribution towards the Council’s housing requirements and that the proposal accords in principle with the overriding aims of the NPPF for the provision of housing and the Council’s obligations to ensure a 5 year housing land supply as required by the Government.”

9. Notwithstanding the officer recommendation, the Planning Committee determined to refuse Planning Permission and a Decision Notice was issued on 15 May 2014. The reasons for refusal were given as follows:

“(1) The highway mitigation measures proposed fail to demonstrate that this major development would not have a residual cumulative impact on the A45 trunk road and associated junctions such that the cumulative impacts of the development would not be severe. These adverse highway impacts in turn will lead to a detrimental impact on the highway network adversely affecting all users including occupiers of business premises located in Brackmills Industrial Estate thus acting as an impediment to the operation of the business park and its future sustainable economic growth. The development would therefore be contrary to the overarching intentions of the National Planning Policy Framework.

(2) The site is identified in the Northampton Landscape and Green Infrastructure Study 2009 as being of high-medium landscape and visual sensitivity comprising of a rural landscape which has a stronger visual connection with the surrounding countryside than with Northampton. Furthermore, Policy E7 of the Northampton Local Plan identifies part of the site as an important skyline between Great Houghton and Hardingstone as seen from the Nene Valley. Public Footpath KN6 runs across the site in a south-easterly direction providing amenity access through the rural landscape. The National Planning Policy Framework seeks to ensure that any detrimental effects on the environment, the landscape and recreational opportunities
arising from major developments are moderated. The proposed development would have an urbanising effect and be of a scale and density detrimental to the existing rural character of the surrounding area and would result in the loss of land of significant amenity value. In the absence of sufficient information to demonstrate appropriate mitigation for the impact of the development on the landscape, skyline and rural character of the area the proposal is therefore contrary to Policies E1, E7 and H7 of the Northampton Local Plan and the overarching intentions of the National Planning Policy Framework.”

10. On 13 November 2014, the HCA submitted an appeal against this decision (“the Appeal”).

**NBC’s decision to confirm an objection to the allocation of the Appeal Site**

11. On 19 January 2015, the Full Council of NBC were presented with a report (“the Adoption Report”) prepared by the Director of Regeneration, Enterprise and Planning recommending that the Council notes and supports the adoption of the JCS, but also recommending that, at the same time, it should confirm an objection to Policies N5 and N6 of the JCS, and confirm an objection to the limited provision of the North-West Bypass in Policy T7 of the JCS.

12. The Adoption Report provided the background to the adoption of the JCS and set out the Council’s dissatisfaction with the process by which policies N5 and N6 were included in the final JCS. It said (emphases added):

**“Joint Core Strategy – examination hearings**

3.1.8 As the Examination Hearings proceeded, the Inspector appointed by the Secretary of State identified a number of issues related to the potential soundness of the Core Strategy. He required the Joint Strategic Planning Committee to address these to enable the Joint Core Strategy to be found sound. These issues included: the Sustainability Appraisal requiring more work around options testing; identifying and meeting Objectively Assessed Housing Needs consistent with the National Planning Policy Framework; and meeting strategic employment needs around Northampton.

3.1.9 The Joint Planning Unit undertook the work associated with these issues. Once completed the Unit sought to work with partner Council officers and respective members of the Joint Strategic Planning Committee to identify appropriate evidence based ‘sound’ modifications. This process in dealing with housing allocations around Northampton was an uncomfortable one. This was partly due to the significant time constraints which limited debate and consensus building. Northampton Borough’s committee members had significant reservations about the robustness of the transport modelling and the associated appropriate transport infrastructure in particular.

3.1.10 In addition, after considering representations made at the Examination Hearings, the Council’s members had greater concerns than previously identified to officers about the appropriateness of the submitted Core Strategy’s allocations in
Policy N5 on land south of Northampton (Collingtree) and Policy N6 on land south of Brackmills (Hardingstone).

3.1.11 Time constraints caused by the Examination process meant that either the Committee had to propose modifications, or risk the Plan being found unsound by the Inspector. If found unsound the Core Strategy preparation would have had to recommence at the beginning of the statutory processes, leading to significant delay in attaining an adopted Core Strategy. This would have associated risks to the development management process in addition to requiring a further significant resource for completion. Notwithstanding these issues, the Council’s members felt unable to support the modifications proposed by the Unit to the Joint Committee.

3.1.12 Ultimately overall consensus between the partner Councils was not reached. The decision to publish proposed modifications was approved by the Joint Strategic Planning Committee on the chair’s casting vote (Daventry), with both Northampton Borough and Northamptonshire County Council voting against issuing the modifications.

3.1.13 The Council, through the Leader who considered a report in February 2014, made representations to the proposed modifications. In summary, these recognised and supported the need to address an extended Plan period to 2029 and the amount of objectively assessed housing need identified for Northampton. However, the Council did not consider it appropriate to identify additional sites to accommodate these houses in Strategic Urban Extensions around Northampton. This was primarily due to a lack of certainty over the robustness of strategic transport modelling related to the whole of the network around Northampton.

3.1.14 The transport model used by the County Council was old and at the outset wasn’t designed to cover such a long period or the volume of development proposed in the revised Core Strategy. It had a number of ‘patches’ added to allow some estimation of impacts to occur for the purposes of strategic plan making. However, these amendments would not be considered robust enough to be used for development management purposes in identifying the mitigation measures required. This was a concern to the Council as it could either or both significantly under-estimate wider impacts and thus associated infrastructure required to mitigate the impacts of development (making allocations undeliverable when assessed through the development management process), as well as undermine long term delivery by committing to sites which ultimately might require such expensive infrastructure post 2029 that development would become unviable.

3.1.15 To overcome this uncertainty associated with the traffic modelling, for additional housing in the period 2026-2029 the Council considered it more appropriate for the forthcoming Part 2 Northampton Related Development Area Local Plan to allocate the necessary sites. This would allow the partner Councils, developers and local communities more time to appraise the options using more robust evidence and come to a consensus on the most appropriate sites to allocate.

3.1.16 The Council was unable to make further comment on the policies N5 and N6 as there were no substantive changes to the original wording of these policies. As such any comment would have not been considered to be ‘duly made’ and given limited weight by the Inspector in his deliberations. Nevertheless, the Inspector was aware of a letter provided by the Leader requesting that he gave weight to the concerns of local residents in relation to the Urban Extensions.

3.1.17 The Inspector considered the Council’s representations to the proposed modifications, along with those of the County Council and all other participants (both verbal at the Hearings and written submissions) on the strategic housing and transport discussions. At the Hearings, the Inspector revisited each of the Northampton Related Development Area Sustainable Urban Extension’s policies.

**Joint Core Strategy - Inspector’s report and adoption**

3.1.18 The Inspector considered all duly made representations submitted at all the statutory stages and addressed them in his report issued in September 2014.
Notwithstanding the Council’s objections, which were drawn out extensively at the Hearings, he identified that subject to proposed modifications (which had been appropriately considered through the Examination process) that the Joint Core Strategy was sound for the purposes of adoption.

3.1.19 Subsequently the West Northamptonshire Joint Core Strategy Part 1 Local Plan was adopted by the West Northamptonshire Joint Strategic Planning Committee on the 15th December 2014. The decision to adopt was carried on the chair’s casting vote (South Northamptonshire). South Northamptonshire and Daventry District supported the adoption and Northampton Borough and Northamptonshire County Councils did not.”

13. In light of the Council’s dissatisfaction with the adoption of the JCS incorporating Policies N5 and N6, the Report listed a series of options for the Council, including (1) do nothing; (2) judicially review the adoption of the JCS by the JPU; and (3) make a Council resolution confirming an objection to the impugned policies.

14. Option (2) was not recommended on the basis that under section 113 of the PCPA 2004, only “a person aggrieved” is entitled to bring a judicial review and “as the Council delegated its Executive function of Development Plan adoption to the West Northamptonshire Joint Strategic Planning Committee and had representation on the Committee, Counsel considered based on case law it is unlikely it will be able to meet the test of being “a person aggrieved”.”

15. The Report instead recommended option (3), the details of which are set out as follows:

“Option 3 – Council resolution confirming objection to policies N5 and N6 of the Joint Core Strategy and the inadequacy of the transport model for identifying the scope of strategic highways infrastructure including a North West by-pass in association with development.

3.1.29 In terms of outcome on the positive side, a resolution of the Council to object to policies N5 and N6 of the Joint Core Strategy and also around the inadequacy of the transport model for the purposes of identifying necessary highways infrastructure would constitute a material planning consideration in the determination of planning applications, provided it is founded on matters that relate to the use and development of land.

3.1.30 The weight that can be attached to it by the decision maker will be a matter for them, however the more grounded that the objection is in material planning considerations, the greater the likely weight that it will be given. In terms of risk in dealing with the wider Council’s concerns about the policies, this is considered the lowest risk option. It focuses on individual policies/areas of development rather than seeking to undermine the whole plan, and is a low cost option.

3.1.31 The objection is a material consideration that the decision maker may take into account if relevant to a particular application; however Council should be mindful that in relation to S38(6) that as it is newly adopted, the Plan is the starting point for the determining of applications and will have substantial weight. In addition, the
resolution should not be seen as binding on members of the Council who sit on Planning Committee, prejudicing the decision maker’s (including Planning Committee’s) ability to weigh up all the facts when determining an application. The resolution is not in any way planning policy itself. The Planning Committee must not pre-determine an application, but have an open mind at Committee taking account of all the evidence placed before them.

3.1.32 In planning circles it is recognised that for the purposes of plan making, the bar set for the testing of technical issues such as transport is likely to be lower than that associated with the determination of a planning application. So whilst the Inspector came to his conclusions on the appropriateness of information placed before him, he recognised that additional work would have to be done to address development impacts. For instance in relation to Policy N6 (paragraph 142 of his report) he identified that appropriate technical analysis and on site measures, as well as contributions to offset impacts elsewhere would be necessary. Planning Committee in determining the planning application for the development of the site consistent with Policy N6 was within its rights (on the basis of information that it had before it) to refuse the planning application due to a lack of evidence indicating significant harm from the development on the transportation network would not arise.

3.1.33 The Council’s Joint Strategic Planning Committee’s members considered that the transport, impact on setting of the existing settlements, increased flooding risk and social infrastructure implications of the policy N5 and N6 allocations are so significant that these sites should not be allocated in the Core Strategy.

3.1.34 In addition as set out above, the transport modelling used to support the Joint Core Strategy has been subject to criticism from the Council in representations made to the proposed modifications. The Council’s Joint Strategic Committee members conclude that the model’s likely inability to realistically address impacts of proposed development is such that it significantly underestimates the highways infrastructure around the town required to support all the proposed development. On this basis they consider the proposals for the North West by-pass as set out in the Joint Core Strategy’s Table 7 as insufficient. This is due to three factors; its capacity as a single carriageway, the lack of a complete continuous connection between the A4500 and the A43; and the timing for those sections identified for delivery after 2021.

3.1.35 Option 3 is considered the most appropriate way forward. It gives a clear indication of the Council’s position in relation to the Joint Core Strategy, which as a material consideration may be given weight by decision makers determining planning applications.

16. Notwithstanding the approach recommended in Option 3, an Addendum to the Adoption Report noted that “a review of strategic policies within the JCS would have to occur either through a single document approach such as a replacement JCS or individual Local Plans by the Councils delivered in a coordinated manner through the duty to cooperate, e.g. joint timetabling of consultation and agreed position statements/consistent Local Plan Policies”.

17. On 19 January 2015, the Council accepted the recommendation contained in the Adoption Report and resolved as follows (“the Objection”):

“1. That Council confirms an objection to the allocation of the site for 1000 dwellings in Policy N5 “Northampton South SUE” and makes this known to the decision maker in the determination of the associated planning applications.”
2. That Council confirms an objection to the allocation of the site for 1300 dwellings in Policy N6 “Northampton South of Brackmills SUE” and makes this known to the decision maker in the determination of the associated planning applications
3. That Council confirms an objection to the limited provision of the North-West bypass as set out in Policy T7 of the Joint Core Strategy and requests that Northamptonshire County Council invests in updating its strategic transportation modelling to better assess impacts of development on Northampton’s highways and also plans and provides for a significant upgrade and as well as addressing the missing links of the North-West bypass, to be completed as soon as possible.
4. That Council, subject to confirmation of the recommendations above, notes and supports the adoption of the West Northamptonshire Joint Core Strategy Local Plan Part 1 as part of the Development Plan for the purposes of determining planning applications.”

The ratification of NBC’s reasons for refusal of the Application by the Planning Committee.

18. On 28 January 2015, the Planning Committee ratified the reasons for refusing the Application. A single amendment was made to the reasons provided to the HCA in the notice of 15 May 2014, namely that the word “sufficiently” was inserted in the first sentence of the first reason for refusal before the word “demonstrate”.

19. The Report provided to members of the Planning Committee noted that the Planning Committee had been asked to ratify the reasons for refusal on the advice of Counsel acting on behalf of the Council in the HCA’s appeal. That advice was given on the basis that the minutes of the Planning Committee’s meeting of 9 May 2014 did not record the Planning Committee’s agreement that the detailed wording of the reasons for refusal be agreed by the Chair and Vice Chair of Committee in conjunction with the Head of Planning.

LEGAL FRAMEWORK

The power to create joint planning committees

20. Section 29 of the PCPA 2004 provides as follows (emphasis added):

“Joint committees
(1) This section applies if one or more local planning authorities agree with one or more county councils in relation to any area of such a council for which there is also a district council to establish a joint committee to be, for the purposes of this Part, the local planning authority —
(a) for the area specified in the agreement;
(b) in respect of such matters as are so specified.
(2) The Secretary of State may by order constitute a joint committee to be the local planning authority—
   (a) for the area;
   (b) in respect of those matters.

(3) Such an order—
   (a) must specify the authority or authorities and county council or councils (the constituent authorities) which are to constitute the joint committee;
   (b) may make provision as to such other matters as the Secretary of State thinks are necessary or expedient to facilitate the exercise by the joint committee of its functions.

(7) The policies adopted by the joint committee in the exercise of its functions under this Part must be taken for the purposes of the planning Acts to be the policies of each of the constituent authorities which are a local planning authority.

(8) Subsection (9) applies to any function—
   (a) which is conferred on a local planning authority (within the meaning of the principal Act) under or by virtue of the planning Acts, and
   (b) which relates to the authority’s local development scheme or local development documents.

(9) If the authority is a constituent authority of a joint committee references to the authority’s local development scheme or local development documents must be construed as including references to the scheme or documents of the joint committee.”

The statutory instrument establishing the JSPC

21. Pursuant to section 29 of the PCPA 2004, the Secretary of State made the West Northamptonshire Joint Committee Order 2008 ("the 2008 Order") which provided for the establishment of a joint committee as the local planning authority for the purposes of Part 2 (local development) of the PCPA 2004 for the administrative areas of Northampton Borough Council, Daventry District Council and South Northamptonshire District Council, in respect of those documents specified in the joint Local Development Scheme submitted to the Secretary of State in 2007.

22. I have been unable to find the joint Local Development Scheme submitted to the Secretary of State in 2007, but have assumed those documents which still fall within the Local Development Scheme were also specified in the earlier scheme, namely: the JCS; the West Northamptonshire Gypsies, Travellers and Travelling Showpeople Allocations DPD; the Northampton Related Development Area Allocations and Development Management LDD; the Northampton Central Area
Action Plan; the South Northamptonshire Settlements and Countryside LDD; and the Daventry District Settlements and Countryside LDD.

23. I have proceeded on the basis that, in respect of those documents at least, NBC retain no plan making powers and have, instead, delegated those powers to the JSPC.

24. Paragraph 5 of the Order provides as follows:

“Membership of the joint committee and voting rights
5. (1) The joint committee shall consist of—
(a) 2 members appointed by Northamptonshire County Council;
(b) 4 members appointed by Northampton Borough Council;
(c) 3 members appointed by Daventry District Council;
(d) 3 members appointed by South Northamptonshire District Council; and
(e) such number of co-opted members as may be appointed pursuant to paragraph (5).
(2) The members appointed by the constituent authorities shall be entitled to vote at a meeting of the joint committee on any question that falls to be decided at that meeting.”

The plan-led system

25. The planning system in England is famously “plan-led”. In deciding whether or not to grant planning permission a decision maker must abide by section 70(2) of the TCPA 1990, which provides that:

"In dealing with such an application the authority shall have regard to the provisions of the development plan, so far as material to the application [and to] (c) any other material consideration".

26. Similarly, section 38(6) of the PCPA 2004 explains:

"If regard is to be had to the development plan for purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise".

27. In Cala Homes (South) Ltd v Secretary of State for Communities and Local Government (No. 2) [2011] 1 P. & C.R. 22 Lindblom J said that one found in section 38(6) “a cornerstone principle of the statutory framework: the principle that decisions on planning proposals are to be—to use the now familiar expression—"plan-led"". 
28. The primacy of the development plan has one significant legislative consequence: development plan documents (“DPDs”) are subject to rigorous preparation, consultation and examination requirements (see, for instance, section 20 of the PCPA 2004 and Part 6 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”). The position in law is that planning authorities are required to make policy for the use and development of land through the development plan process and not outside of it. To make policy for the use and development of land outside of the statutory process would subvert the rigorous scrutiny to which development plan documents are subjected.

29. In Westminster City Council v Great Portland Estates plc [1985] AC 661 Lord Scarman said in relation to an earlier statutory scheme:

“The statute requires that a local plan shall formulate in such detail as the council thinks appropriate their proposals for the development and use of land: section 11 and Schedule 4, paragraph 11(2) of the Act of 1971. If a local planning authority has proposals of policy for the development and use of land in its area which it chooses to exclude from the plan, it is, in my judgment, failing in its statutory duty. An attempt was made to suggest that the non-statutory guidance in this case went only to detail, as to which the council is given a discretion. But the council provides the answer to this point: it speaks in its guidelines of its non-statutory policies. In the Court of Appeal, Dillon LJ demonstrated by his quotations from paragraph 3.2, 3.3 and 3.4 of the non-statutory guidelines that they do indeed, as the council itself says, contain matters of policy relating to the control of office development outside the central activities zone. It was the duty of the council under Schedule 4 of the Act of 1971 to formulate in the plan its development and land use proposals. It deliberately omitted some. There was therefore a failure on the part of the council to meet the requirement of the Schedule. By excluding from the plan its proposals in respect of office development outside the central activities zone the council deprived persons such as the respondents from raising objections and securing a public inquiry into such objections.”

30. Accordingly, subject to the caveat below in respect of supplementary planning documents (SPDs), while non-statutory guidance is permitted, that non-statutory guidance is not permitted to revise the development plan or create entirely new policy in relation to the development and use of land. In J A Pye (Oxford) v Oxford City Council [2002] EWCA Civ 1116, Pill LJ said:

“23. The purpose of an SPG is to supplement an adopted local plan and not to anticipate a revision of that plan or achieve a new plan. This SPG, it is submitted, purports to introduce what is acknowledged, for example in Issue Paper 2 Social Housing (paragraph 47), to be a new policy. If it was sought to introduce a new policy in the short term, that could have been done by a partial review of the local plan on a particular topic area, as contemplated in PPG 12 paragraph 2.23. Such a
review could have been conducted in the time taken to adopt the SPG without depriving interested parties of the safeguards provided in local plan procedures.

32. Local planning authorities should, however, bear in mind, and I would respectfully underline, Lord Scarman’s comment in Westminster, reflected in paragraph 3.17 of PPG 12, the effect of which is that SPG must not be used as a device to avoid legitimate public scrutiny of local planning policies in accordance with statutory procedures. It follows from the Westminster decision that what section 36 of the 1990 Act requires to be in a local plan must be in a local plan, and subject to the local plan review procedure. I consider this to be a continuing duty in the plan-led system and not one which applied only at the point of adoption.

31. The 2012 Regulations introduce some further nuance but the core principle remains. By section 17(3) PCPA 2004 all planning authorities must prepare local development documents which “must (taken as a whole) set out the authority’s policies (however expressed) relating to the development and use of land in their area”.

32. That provision is similar in terms to section 11 and Schedule 4, paragraph 11(2) of the 1971 Act, referred to by Lord Scarman in the Westminster case. However, pursuant to regs 2(1) and 5 of the 2012 Regulations, some “local development documents” are DPDs and others are SPDs. Local development documents which are DPDs are documents falling within the following descriptions set out in reg.5 of the 2012 Regulations:

“5(1)(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—
(i) the development and use of land which the local planning authority wish to encourage during any specified period;
(ii) the allocation of sites for a particular type of development or use;
...
(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;
...
(2)...
(a) [and] any document which
(i) relates only to part of the area of the local planning authority;
(ii) identifies that area as an area of significant change or special conservation; and
(iii) contains the local planning authority’s policies in relation to the area; and
(b) any other document which includes a site allocation policy.”

33. SPDs are local development documents “including statements regarding any environmental, social, design and economic objectives which are relevant to the
attainment of the development and use of land which the local planning authority wish to encourage” (regs 2(1) and 5(1)(a)(iii)). In that respect, SPDs may contain policies, and may potentially contain entirely new policies not already addressed in the development plan, but only where such policies fall within the definition set out in reg 5(1)(a)(iii). Importantly, regulation 8(3) states in terms that the policies contained in an SPD must not conflict with the development plan.

34. Consequently, the current position is that policies relating to the use and development of land should appear in the development plan unless they are policies which are clearly appropriate for an SPD. In those limited circumstances, where policies may be developed outside of the rigorous development plan process, the policies must not conflict with the development plan.

35. Although SPDs are not subject to the development plan process, they must still be subjected to public consultation: see reg.12 of the 2012 Regs.

The status of a document is determined by its nature and not its title

36. A document purporting to be a non-statutory SPD may in fact be an unlawfully adopted DPD. It is the nature of the document and not the title that counts: see R (Abdul Wakil (t/a Orya Textiles)) v London Borough of Hammersmith and Fulham [2012] EWHC 1411 (QB); R (RWE N Power Renewables) v Milton Keynes BC [2013] EWHC 751).

Material considerations in planning

37. The effect of section 70(2) of the TCPA 1990 and section 38(6) of the PCPA 2004 is that the determination of an application for planning permission is to be made in accordance with the development plan, unless material considerations indicate otherwise.

38. In City of Edinburgh Council v. The Secretary of State for Scotland [1997] 1 WLR 1447, the House of Lords considered an equivalent provision to section 38(6) in
the Scottish legislation prevailing at the time. In his speech, Lord Hope said this (at pp.1449H-1450G, emphasis added):

"Section 18A of the Act of 1972 ... creates a presumption in favour of the development plan. That section has to be read together with section 26(1) of the Act of 1972 [the provision in the Scottish legislation equivalent to section 70(2) of the 1990 Act]. Under the previous law, prior to the introduction of section 18A into that Act, the presumption was in favour of development. ... It is not in doubt that the purpose of the amendment introduced by section 18A was to enhance the status, in this exercise of judgment, of the development plan. It requires to be emphasised, however, that the matter is nevertheless still one of judgment, and that this judgment is to be exercised by the decision-taker. The development plan does not, even with the benefit of section 18A, have absolute authority. The planning authority is not obliged, to adopt Lord Guest's words in Simpson v. Edinburgh Corporation 1960 S.C. 313, 318, "slavishly to adhere to" it. It is at liberty to depart from the development plan if material considerations indicate otherwise. No doubt the enhanced status of the development plan will ensure that in most cases decisions about the control of development will be taken in accordance with what it has laid down. But some of its provisions may become outdated as national policies change, or circumstances may have occurred which show that they are no longer relevant. In such a case the decision where the balance lies between its provisions on the one hand and other material considerations on the other which favour the development, or which may provide more up-to-date guidance as to the tests which must be satisfied, will continue, as before, to be a matter for the planning authority."

39. In his speech Lord Clyde said (emphasis added):

"Section 18A was introduced into the Act of 1972 by section 58 of the Planning and Compensation Act 1991. A corresponding provision was introduced into the English legislation by section 26 of the Act of 1991, in the form of a new section 54A to the Town and Country Planning Act 1990. The provisions of section 18A, and of the equivalent section 54A of the English Act, were: "Status of development plans. Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise." Section 18A has introduced a priority to be given to the development plan in the determination of planning matters. It applies where regard has to be had to the development plan. ... By virtue of section 18A the development plan is no longer simply one of the material considerations. Its provisions, provided that they are relevant to the particular application, are to govern the decision unless there are material considerations which indicate that in the particular case the provision of the plan should not be followed. If it is thought to be useful to talk of presumptions in this field, it can be said that there is now a presumption that the development plan is to govern the decision on an application for planning permission. ... By virtue of section 18A if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted. If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations then a decision contrary to its provisions can properly be given."
40. In *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* (above), Lindblom J summarized the case law on materiality as follows:

“31. What is capable of being a material consideration for the purposes of a planning decision? This question has on several occasions been considered by the courts. The concept of materiality is wide. In principle, it encompasses any consideration bearing on the use or development of land. Whether a particular consideration is material in a particular case will depend on the circumstances (see the judgment of Cooke J. in *Stringer v Minister of Housing and Local Government* [1970] 1 W.L.R.1280 (at p.1294G)). In the context of development plan-making and development control decision-taking, the test of materiality formulated by Lord Scarman in his speech in *Westminster City Council v Great Portland Estates Plc* [1985] AC 661 (at p. 669H to p. 670C-E) is whether the consideration in question "serves a planning purpose", which is one that "relates to the character and use of land".

32. Three further propositions are relevant in the present case. First, a statement of national planning policy, however made, is capable of being a material consideration in the determination of a planning application. This was recognized by Lord Hope in the passage of his speech in *City of Edinburgh* which I have set out above (see, for example, the decision of Carnwath J., as he then was, in *R. v. Bolton Metropolitan Council, ex parte Kirkman* [1998] Env. L.R. 560 (at p.567)). Secondly, the provisions of a draft development plan document progressing through its statutory process towards adoption, even while objections to them remain unresolved, can be material considerations in a planning decision. There is abundant authority to this effect (see paragraph P70.09 of the Encyclopedia of Planning Law and Practice). Thirdly, emerging national policy, for example in the form of a draft circular or Planning Policy Statement, can also be a material consideration (see *ex parte Kirkman*, ibid.)."

41. To that might be added the judgment of Thomas Parker LJ in *R (Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370, at paragraph 121, where he said:

"In my judgment a consideration is 'material', in this context, if it is relevant to the question whether the application should be granted or refused; that is to say if it is a factor which, when placed in the decision maker's scales, would tip the balance to some extent, one way or the other. In other words, it must be a factor which has some weight in the decision making process, although plainly it may not be determinative. The test must, of course, be an objective one in the sense that the choice of material considerations must be a rational one, and the considerations chosen must be rationally related to land use issues."

42. Once a consideration is material, the weight to be attached is a matter of planning judgment, subject only to challenge on the grounds of perversity: see *Tesco Stores Limited v. Secretary of State for the Environment* [1995] 1 WLR 759.

**ANALYSIS**

*Is the Objection to certain policies in the JCS lawful?*
43. In my opinion, it is likely that the Objection is unlawful because it is likely that the decision was irrational/perverse and/or it is arguable that the decision sought to make planning policy outside of the statutory plan-making process and in conflict with the development plan. In addition it is unlawful on the basis that it frustrates the purposes of the Planning Acts.

44. First, I consider that a court would be likely to find that the decision was irrational/perverse. I reach that conclusion for the following reasons:

i. By virtue of section 29(7) PCPA 2004, the JCS is deemed to be the Core Strategy for NBC as local planning authority. Consequently, in law, NBC was noting an objection to its own Core Strategy which it had adopted little more than a month previously with no material change in circumstances from the date of adoption. The Adoption Report notes that NBC’s Counsel had advised that it could not bring a judicial review of the decision to adopt the JCS as it is unlikely it would be able to meet the test of being “a person aggrieved” in relation to the JCS. Indeed, it would not be a person aggrieved because, in law, the JCS is NBC’s own document.

ii. As noted in the Adoption Report, the reasons for the Objection were reasons that had been rehearsed before the Inspector and rejected after full consideration. In that respect, the situation is analogous with that in R v Warwickshire County Council ex parte Powergen plc (1998) 96 LGR 617. In that case, the County Council refused to enter into an agreement under section 278 of the Highways Act 1980. Previously, on the planning application, the District Council had decided that the access would be unsafe. On appeal, however, an inspector had adjudged the arrangements not to be unsafe and so had granted planning permission, subject to completion of the necessary works. The County Council then, as highway authority, refused to agree to complete the necessary works on the footing that the access arrangements were not safe. It was held that - in the absence of a material change in circumstance - the highway authority could not reasonably maintain the original view as to the lack of safety of the access in the light of the inspector's independent factual judgment to the contrary on that very issue. To do so would effectively defeat the entire statutory planning process; and see also The Mayor of London v.
Enfield LBC [2008] Env. L.R. 33. Here the same can be said of NBC’s continued objection to Policy N6 on grounds that had been considered and rejected by the Inspector in the independent examination.

iii. Thirdly, the approach of NBC is an approach which – if lawful – would fundamentally undermine the operation of joint plan making between neighbouring authorities. By agreeing to set up the JSPC and by agreeing to the execution of the 2008 Order, NBC was agreeing to be bound by the decisions of the JSPC as plan-making authority. By virtue of paragraph 3 of the 2008 Order the JSPC became the local planning authority for the administrative areas of Northampton Borough Council, Daventry District Council and South Northamptonshire District Council. NBC became a constituent authority, with voting rights only. To make the Objection to specific aspects of the JCS, with the express intention of seeking to undermine the force of those policies when determining specific planning applications, is – in effect – to resile from the agreement to be bound by the decisions of the JSPC. If that approach were permitted, it would fundamentally undermine the joint committee approach. NBC may not like Policies N5 and N6 and may confirm an objection to them; Daventry District Council may not like policies N9 and N8 and may confirm an objection to them; South Northamptonshire Council may not like policies D5 and D8 and may confirm an objection to them, and so on. The result would be a JCS containing a patchwork of policies undermined to a greater or lesser extent by each of the constituent authorities. I consider that a court would be unlikely to conclude that it was a rational approach for a planning authority to agree to delegate its plan-making functions to a joint committee and thereafter seek to undermine the resultant plan by asking a decision maker to take into account its disagreement with particular aspects of the plan as material considerations.

iv. Fourthly, the Objection to Policies N5 and N6 are fundamentally unsound when assessed against the authorities own obligations to deliver a five year supply of housing land. As confirmed by the JPU and the HCA in its Joint Position Statements, the Appeal Site is “a suitable and available site… deliverable within the timeframe of the plan period.” Along with the site identified in Policy N5, the policies are set to deliver 2300 homes.
Those sites are vital to the authority’s ability to identify specific deliverable sites to provide five years’ worth of housing: see the OR on the Application. In that context, NBC made the Objection to these two allocations without proposing any additional allocations to compensate for the loss of 2300 homes. If that approach were adopted by all the constituent authorities of the JSPC, the consequence for housing supply would be catastrophic.

45. Secondly, I consider that the Objection is arguably unlawful on the basis that it seeks to create planning policy outside of the statutory process and/or in a way which conflicts with the development plan.

46. It is important to note exactly what the Objection to Policy N6 is. Although it purports not to be planning policy, that is precisely the effect it seeks to have. Policy N6 allocates the Appeal Site and the Adjacent Land for development of around 1300 dwellings. The Objection seeks to undermine that allocation by seeking to establish a material consideration in any planning determination that NBC does not support the allocation.

47. It is arguable that the statement contained in the Objection is a statement which falls within paragraph 5(1)(a)(ii) or 5(i)(a)(iv) of the 2012 Regulations, namely that it is a statement regarding “(ii) the allocation of sites for a particular type of development or use” or a statement regarding “(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission”. If that is correct, then the statement can only lawfully be made within a DPD and the attempt to include the statement through non-statutory means was unlawful.

48. In my opinion, this argument has some force, but I am not convinced that it would be likely to succeed if the matter were determined by a court. The difficulties with the arguments are as follows:

i. The Objection is an objection to the allocation of land for a particular type of development or use.
ii. A statement of policy regarding the allocation of sites for a particular type of development of use, including – in my opinion - a statement which seeks to remove an allocation, must be a DPD.

iii. However, NBC has no statutory power to make policy in relation to the allocation of sites for a particular type of use. Given that it has no power to make such policy, it might be said that it cannot have been seeking to do so.

49. On that basis, a court may well conclude that the statement could never have had any effect on the development plan because it was a statement made by a party with no power to alter the development plan. Consequently, the Objection to the policy could have no more force than an objection registered by any other third party to the adopted plan e.g a local group who unsuccessfully objected to the inclusion of a site in the adopted plan. Indeed I think that it can be said that it would have less force than the objection of another third party because the latter, unlike NBC, has not agreed to devolve its relevant functions as regards the plan as NBC have done. Indeed it seems to me that there is a strong argument based on Padfield principles (see below) in relation to the Objection; and this argument would it seems to me extend to preventing NBC doing things to undermine the JSPC set up by statutory instrument.

50. The better argument is that the Objection was a statement of policy contained in a non-statutory document, which fundamentally conflicts with the development plan. NBC does have power to set non-statutory guidance in relation to the development and use of land within its area but, on the basis of the case-law (See above), such non-statutory policy must not conflict with the development plan. If the Objection is considered as non-statutory policy, which I consider to be strongly arguable, then the statement is likely to be unlawful.

51. Third, even if it is not policy at all its intention is to undermine and frustrate the statutory development plan and the plan-led system. It is thus also unlawful on that basis: see paras. 44 - 46 of Cala Homes (South) Limited v Secretary of State for Communities and Local Government (No. 1) [2010] EWHC 2866 (Admin), relying on the Padfield principle.
What remedies are available to the HCA to challenge the lawfulness of the Objection?

52. It is open to the HCA to challenge the Objection to Policy N6 by way of judicial review. Such a challenge would need to be brought by 2 March 2015, 6 weeks from the date of the decision.

53. For the reasons set out above, I consider that the prospects of success in a judicial review are good. However, I do not consider that any such challenge is necessary.

54. The HCA’s objective is to get planning permission for the Application on appeal. Its concern in relation to the Objection to Policy N6 is only a concern insofar as the Objection might tip the balance on appeal and lead to an Inspector refusing permission where he otherwise would have granted permission. For the reasons set out below, I do not consider that an Inspector or the Secretary of State in an appeal could rationally give the Objection anything but the most minimal weight if any weight at all.

Is the Objection a ‘material consideration’ in the determination of the Appeal?

55. Notwithstanding that “the concept of materiality is wide” and “in principle, it encompasses any consideration bearing on the use or development of land” (per Lindblom J in the High Court decision in *Cala Homes (No.2)*), I consider that the Objection to Policy N6 is not a material consideration in the determination of the Appeal.

56. In order to understand that opinion, it is important to be clear about the nature of the Objection. As set out above, NBC has no legal status in relation to the plan-making functions it devolved to the JSPC. It is merely a constituent authority with voting rights, but no other special status and no reasonable expectation of unanimity in the taking of decisions. Decisions taken by the JSPC are taken collectively, whether by majority vote or unanimously.

57. In that context, NBC’s role in the JSPC is analogous to the role of a group of members of the same political party within a local planning authority. The members have voting rights, but no special status and no reasonable expectation
that there will be unanimity in the taking of decisions. Decisions taken by the planning authority are taken collectively, whether by majority vote or unanimously.

58. Assume that a group of Labour members with the planning authority voted against the inclusion of Policy X in a draft Core Strategy, but were outvoted by Conservative and Liberal Democrat members who voted to include Policy X. An Inspector subsequently finds the Core Strategy, including Policy X, to be sound and the authority formally adopts the Core Strategy. In these circumstances, the authority as a whole is deemed to have taken the decision to adopt the policy. While it would be open to the Labour members publicly to register their disagreement with the decision, would that registration of disagreement be relevant in the planning system? Not in my opinion. The planning authority would have adopted the policy as a collective decision and it is irrelevant whether it was adopted by majority vote or unanimously. In my opinion, it is likely that it would be unlawful for a decision maker to take into account, as a material consideration in determining a planning application where Policy X was at issue, that Policy X was adopted only by a bare majority rather than unanimously and that some members of the Council did not support it. To do so would be to take into account an irrelevant consideration.

59. It is strongly arguable that the same approach applies to the Objection to Policy N6 of the JCS. NBC’s disagreement with the Main Modifications to Policy N6 was discussed within the planning authority but by majority vote (the Chair exercising the casting vote), the planning authority adopted all the proposed Main Modifications and submitted them to the Inspector. NBC’s objections were then considered by the Inspector who rejected the concerns. The JSPC then adopted the JCS, including Policy N6 incorporating the Main Modifications.

60. Subject to the observations above in relation to the likely unlawfulness of confirming the Objection, NBC may have been entitled to note its disagreement with the adopted Policy N6, but there is nothing surprising or unusual about the fact that a constituent authority within a joint committee, or a group of members within a planning authority, did not agree with all policies that were adopted. It
is irrelevant in planning terms that some policies were adopted unanimously and others were adopted by majority or casting vote. The simple point is that the policies were adopted lawfully.

61. So does the Objection take the matter any further? In my opinion, it doesn’t. The Objection is no more than a statement that NBC did not vote for the adoption of the Main Modification to Policy N6, that it made representations to the Inspector not to adopt the Main Modification to Policy N6, and that it still disagrees with the Policy, notwithstanding the Inspector’s findings and its adoption as part of the development plan.

62. Importantly, however, the Objection does not signal an intention to change the policy (as in Cala Homes (No.2)), and nor does it highlight any material change in circumstances between the adoption of the policy and the Objection which might justify a change in approach (see the underlined passages in the City of Edinburgh case cited above). Instead, the Objection is a mere disagreement with the policy for reasons that were raised, or could have been raised, in the statutory process of adoption.

63. In my opinion, where the statutory process for adoption of development plan policies is so rigorous, and the democratic process for adoption of such policies is followed, then the mere fact that a constituent member of the planning authority disagrees with an adopted policy is not a material consideration in determining a planning application or appeal where that policy is at issue.

*If the Objection is a material consideration, can it be given any significant weight in the Appeal decision?*

64. If, contrary to my opinion above, the Objection to Policy N6 can be considered to be a material consideration in the Appeal, the question arises as to what weight should be attached to that decision.

65. It is trite law that the weight to be attached to a material consideration is a matter for the decision maker alone, subject only to challenge on the grounds of perversity. So in this case, the question is whether it would be perverse and/or
irrational for the Inspector on appeal to give significant weight to the Objection. In my opinion, it is strongly arguable that it would be.

66. The judgment of Sullivan LJ in *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWCA Civ 639 is instructive. In that case, the Secretary of State had indicated his clear disagreement with the policy of having Regional Strategies – then, of course, part of the statutory Development Plan for the purposes of section 38(6). Beyond that expression of disagreement, he had indicated, by way of letter to local planning authorities and to the Planning Inspectorate, that the Government intended to abolish Regional Strategies in the Localism Bill and that he expected local planning authorities to have regard to this as a material consideration in planning decisions. Nonetheless, Sullivan LJ found that it would only be rational for a decision maker to give any significant weight to the intention to abolish Regional Strategies in very limited cases. He said (emphasis added):

“31. In most cases the constraint of *Wednesbury* rationality will be a very light rein because the Courts normally give a very wide latitude to planners' judgments as to the weight to be given to planning considerations. However, it is proposed that this particular change of policy will be effected by legislation, so the proposal is subject to two legal obstacles:
(a) Parliamentary approval; and
(b) the SEA process.
32. Although the point was not raised on behalf of the Appellant, I asked the parties for their submissions as to whether it might be irrational for any decision-maker to give any significant weight at this stage to the proposed abolition of regional strategies because to do so would require the decision-maker to prejudge:
(a) Parliament's acceptance of the proposal; and
(b) the outcome of the SEA process.
It would be inappropriate for any decision-maker to consider in any detail what Parliament's response to the Government's proposal might be, because to do so might involve them in questioning the proceedings of Parliament: see the *Office of Government Commerce* case (para 29 above). Moreover, even if clause 89 is enacted in its present form, it could not lawfully be assumed that revocation of any individual regional strategy is bound to occur regardless of the outcome of the process of environmental assessment, because to make such an assumption would be contrary to the requirement of the SEA Directive and the SEA Regulations: that a decision to revoke may not be made until the process has been completed.
33. Mr. Village submitted that if the proposed abolition was a material consideration it would be irrational to give it any weight at this stage. However, Mr. Mould's submissions have persuaded me that where the issue is one of weight rather than materiality, "never say never" is the appropriate response to a submission that, as a matter of law, any decision-maker in any case would be bound to give no significant weight to a potentially material factor. Mr. Mould fairly acknowledged that even within the minority of cases in which the proposed abolition of regional strategies will be relevant, there may well be very few cases in which it would be appropriate at this stage of the Parliamentary and SEA process to give any significant weight to the
proposal. But the Chief Planner's letter is concerned with the whole of the period prior to the enactment of the Localism Bill (if it is enacted), and the position will change as it progresses, or fails to progress. Even now there might be finely balanced cases where the very slight prospect of a very substantial policy change might just tip the balance in favour of granting or refusing planning permission. Mr. Mould gave the hypothetical example of a large-scale residential proposal (which he referred to as a "new town", but the point would equally apply to a proposed extension of an existing settlement), which is proposed to be developed over the next 15-20 years, to which there are very strong site-specific objections, and where the sole justification for granting planning permission is the need to meet the requirement for residential development over the next 20 years in the regional strategy. In such a case it would not be irrational for the decision maker to give some weight to the prospect, however uncertain, that the regional policy justification for granting permission for such a long-term proposal may cease to exist within the short term. In such a case, to give even very little weight to the prospect of a change in policy might be to give that factor "significant" weight, significant in the sense that it might tip the balance in favour of refusing permission. This hypothetical example may well be an extreme case, but it does illustrate why it would not be safe for the Court to assume that at this stage there are no circumstances in which any decision-maker could rationally give some weight to the proposed abolition of regional strategies. In view of the uncertainty created by the legal obstacles referred to above (para. 31) any decision-maker who does think it appropriate to give some weight to the Government's proposal when determining an application or an appeal would be well-advised to give very clear and cogent reasons for reaching that conclusion, but that does not mean that there could be no case whatsoever in which any decision-maker might be able to give such reasons.”

67. In that case, the Court did not suggest that any weight ought rationally to be attached to the mere fact that the Secretary of State did not approve of the policy of Regional Strategies. Sullivan LJ’s judgment focused on whether the genuine prospect of a revocation of Regional Strategies could amount to a potentially material consideration. Even then, the judge noted that the barriers to revocation meant that it would only be in rare cases where any weight could be attached to that prospect.

68. The same reasoning applies, a fortiori, in relation to the Objection to Policy N6. In this case, the Objection is the mere expression of disapproval. It does not indicate any intention to amend or revoke Policy N6. And in any case, any amendment or revocation would need to pass through the statutory development plan process and would require a full Sustainability Appraisal to be conducted, neither of which is within the power of NBC.

69. In the circumstances, and relying on the approach of Sullivan LJ in Cala Homes (No.2), it is very difficult to see how a decision maker in the Appeal could
rationally attach weight to the fact that NBC, as a constituent authority to the JSPC, disagreed with an adopted policy in the JCS when there was no realistic prospect that such a policy was going to be amended or revoked.

Other matters

70. I have considered NBC’s representations during the JCS process. NBC supported the principle of an SUE on the Appeal Site for 1000 homes and only registered an objection to Policy N6 when the Main Modifications were proposed to increase the size of the allocation to include the Adjacent Land and to increase the number of dwellings to around 1300 homes. These representations will assist the HCA in its appeal. In particular, it is worth noting that the HCA’s application is for 1000 homes, for a Site whose red line boundary matches the allocation in Policy N6 as it was drawn in the presubmission JCS. Although the application submitted by the HCA anticipates a further application to be made by Martin Grant Homes in respect of 300 further homes on the Adjoining Land, the HCA’s application itself is – to a very significant extent – compliant with the allocation supported by NBC in the presubmission stage.

The ratification of NBC’s reasons for refusal

71. I am asked to advise generally in relation to the ratification of NBC’s reasons for refusal by the Planning Committee and its implications for the Appeal. In short, I am not sure that there is much to be said in relation to this somewhat sorry episode.

72. Aside from the very minor adjustment to the reasons for refusal which the HCA will be able to challenge at the Appeal, I do not consider that the ratification of those reasons by the Planning Committee has any significant implications for the Appeal.

SUMMARY AND NEXT STEPS

73. As is clear from the discussion above, I consider that:

i. The Objection is likely to be unlawful on the basis that the decision to make it was perverse/irrational, and/or because it is reasonably arguable
that the Objection amounts to a non-statutory planning policy which is in conflict with the development plan and or frustrates the policy underlying the Planning Acts;

ii. The Objection is unlikely to be a material consideration in the determination of the Appeal on the basis that it merely notes NBC’s disagreement with particular policies in the development plan. Given that NBC is merely a constituent member of the planning authority and was outvoted in the statutory adoption process, NBC’s disagreement is neither noteworthy nor material to the application of the adopted policies;

iii. To the extent that the Objection is, contrary to my opinion, a material consideration at all in the determination of the Appeal, it is likely to be irrational for the decision maker to attach anything but the most minimal weight to it;

iv. Consequently, I do not advise pursuing a judicial review of the Objection, but instead advise the HCA to prepare detailed submissions on the materiality of, and the weight to be attached to, the Objection in the Appeal process. I should note that one risk of failing to challenge the Objection by way of judicial review is that the Objection is likely to be legally valid unless and until it is quashed by a Court: see Smith v. East Elloe RDC [1956] AC 736 per Lord Radcliffe at pp 769-7. However, the fact that the Objection has not been quashed does not render it a material consideration in the Appeal, nor will it increase the weight that should be attached to it. In the circumstances, I consider that the risk of not challenging the decision by way of judicial review is an acceptable one.

v. Finally, the HCA may wish to consider making an application for costs in the Appeal in relation to the work involved in addressing the argument that the Objection is a material consideration. It is strongly arguable that NBC’s approach, which seeks to undermine the statutory process of plan-making, amounts to unreasonable behaviour.

74. I note as a postscript that I have not, in this Opinion, advised on the prospects of the Appeal generally. The weight to be attached to Policy N6 is only one aspect among many that will need to be determined at Appeal.
75. My preliminary view on the prospects of the Appeal was set out in my opinion of 30 October 2014. I am happy to update that advice in light of developments since that date if those instructing me wish.

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Wednesday, 25 February 2015
IN THE MATTER OF LAND EAST OF HARDINGSTONE, NORTH OF NEWPORT PAGNELL ROAD, NORTHAMPTON
AND IN THE MATTER OF A PROPOSED PLANNING APPEAL

OPINION

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