

Mr Justice Sales:

Introduction

1. This is an application pursuant to section 113 of the Planning and Compulsory Purchase Act 2004 for an order that parts of the Winchester District Local Plan Part 1 – Joint Core Strategy (“the Core Strategy”), jointly adopted by the Defendants with effect on 20 March 2013, be quashed or remitted for further examination. I refer to the Defendants as “WCC” and “SDNPA”, respectively.
2. WCC had the principal role in developing the Core Strategy for adoption. The Core Strategy provides policy at a strategic level for the development of its area. Amongst other things, the Core Strategy sets a figure for the amount of new housing provision to be delivered in WCC’s area over a 20 year period and guidance as to where it is to be provided. The Core Strategy sets an overall requirement of 12,500 new homes to be provided in WCC’s area in the period 2011-2031.
3. The Core Strategy was developed and adopted against the background of another plan, the regional strategy for the South East adopted in 2009, known as the South East Plan. The South East Plan set a regional requirement for new housing for the period 2006-2026, of which a requirement of 12,240 was allocated to WCC’s area.
4. The importance of the Core Strategy is not in doubt. It forms part of the local development plan for WCC’s area under the 2004 Act, and applications for residential and other development will be assessed against its policy provisions and will be expected to comply with it, absent good reason not to: see section 38(6) of the 2004 Act and section 70(2) of the Town and Country Planning Act 1990. It also sets the framework for development by WCC of more detailed development plan documents below the strategic level, which will themselves form part of the local development plan for WCC’s area.
5. The Claimant (“Zurich”) owns a substantial area of land in WCC’s area, at Micheldever Station. It hopes at some stage to be able to develop that land by building houses on it. However, Micheldever Station is not an area designated for development in the Core Strategy.
6. Zurich’s challenge to the Core Strategy was brought within time, but there is a dispute between the parties whether Zurich qualifies as “a person aggrieved by” the Core Strategy, as required by section 113(3) of the 2004 Act in order to be entitled to make this application. In the course of development of and consultation on the Core Strategy, including its examination by an Inspector (Mr Nigel Payne) appointed by the Secretary of State, Zurich did not itself participate or make representations about the Core Strategy. Instead, a firm of planning consultants, Barton Willmore, participated and made representations. It has now emerged that they did so in order to promote the interests of their client, Zurich, but that was not evident at the time.
7. A developed draft of the Core Strategy was submitted to the Secretary of State for independent examination by the Inspector under section 20 of the 2004 Act. The Inspector approved the Core Strategy for adoption. He found the Core Strategy (with modifications proposed by him) to be “in general conformity” with the relevant regional strategy in place at the time, the South East Plan, as required by section

20(5)(a) and section 24(1)(a) of the 2004 Act; he found the Core Strategy (as modified) to be “sound”, as required by section 20(5)(b) of the 2004 Act; he found

becomes part of the statutory development plan of that authority, with the results indicated above.

11. At the time when the Core Strategy was drawn up, subjected to examination in public

335, at [40] per Keene LJ. Pursuant to an examination under section 20, the inspector may make recommendations for modifications to a development plan document to make it sound.

17. The Secretary of State has given policy guidance in relation to this process in the NPPF, which replaced a range of previous policy guidance documents. The proper interpretation of this policy guidance is a matter for the court: compare *Tesco plc v Dundee City Council* [2012] UKSC 13.
18. The NPPF includes a presumption in favour of sustainable development (paragraph 14). Paragraph 156 requires local planning authorities to set out the strategic priorities for their area in the Local Plan (i.e. the set of development plan documents adopted under the 2004 Act), including strategic policies to deliver the homes needed in the area and to meet infrastructure needs. Paragraph 157 states, among other things, that Local Plans should be based on co-operation with neighbouring authorities. Paragraph 159 requires local planning authorities to have a clear understanding of housing needs in their area, and states that they “should prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities

Enterprise Partnerships and Local Nature Partnerships. Local planning authorities should also work collaboratively with private sector bodies, utility and infrastructure providers.

181. Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position. Cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development.”

20. Paragraph 158 of the NPPF gives guidance in relation to use of evidence:

“Using a proportionate evidence base

158. Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market and economic signals

21. Paragraph 47 of the NPPF deals with the issue of delivery of a wide choice of high quality homes. It states:

“47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;

- identify and update annually a supply of specific deliverable¹¹ sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% moved forward from later in the plan period) to provide a realistic prospect of

achieving the planned supply and to ensure choice and competition in the market for land;

- identify a supply of specific, developable¹² sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15;

- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and

- set out their own approach to housing density to reflect local circumstances.”

22. Footnotes 11 and 12 state:

“11. To be considered deliverable, sites should be available

from neighbouring authorities where it is reasonable to do so
and consistent with achieving sustainable development;

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

(7C) The High Court's powers under subsections (7) and (7A) are exercisable in relation to the relevant document—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant.

...

(10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.

(11) References to the relevant date must be construed as follows—

...

(c) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be); ...”

(ii) *The SEA Directive and the Environmental Assessment Regulations*

26. The SEA Directive was promulgated to supplement and extend effective protection of

Community policies and activities, in particular with a view to promoting sustainable development. ...

- (4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.
- (5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.
- (6) The different environmental assessment systems operating within Member States should contain a set of common procedural requirements necessary to contribute to a high level of protection of the environment. ...
- (9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.
- (10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna, are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they deterereeso(o)-64(e)2.141 T9 TDyn

(14) Where an assessment is required by this Directive, an environmental report should be prepared containing relevant information as set out in this Directive, identifying, describing and evaluating the likely significant

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive. ...

7. Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public. ...

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure. ...

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I. ...

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying

importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;

- (e) the environmental protection objectives, established at international, Community or Member State level, which

(2) The report shall identify, describe and evaluate the likely significant effects on the environment of–

(a) implementing the plan or programme; and

(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–

(a) current knowledge and methods of assessment;

(b) the contents and level of detail in the plan or programme;

(c) the stage of the plan or programme in the decision-making process; and

(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

...”

32. Schedule 2 to the Environmental Assessment Regulations is in material respects in the same terms as Annex I to the Directive.
33. Regulation 13(1) corresponds to Article 6 of the Directive. It provides that every relevant draft plan prepared pursuant to regulation 12 “and its accompanying environmental report” shall be made available for the purposes of consultation. The Sustainability Appraisal in respect of the Core Strategy constituted the relevant environmental report.
34. Regulation 16 makes provision in relation to the procedures to be followed after a plan has been adopted. It corresponds to Article 9 of the Directive. It requires publication of the plan as adopted, its accompanying environmental report and various information.

Factual Background

35. In May 2009, the South East Plan was adopted. It included as Policy H1: Regional Housing Provision 2006-2026, new housing requirement figures for the region for that period, with an allocation of a total of 12,240 to WCC’s area for the period, as shown in Table H1b, at an “annual average” of 612 new homes per year. Policy H1 stated, “Local planning authorities will prepare plans, strategies and programmes to ensure the delivery of the annual average net additional dwelling requirement as set out in Table H1b”.
- 36.

37. To that end, in June 2011 WCC issued a “Housing Technical Paper” to consult on housing needs to be reflected in the Core Strategy which it would develop for adoption in 2012/2013. It noted that the Core Strategy would need to reflect household projections for the period 2011-2031, assessed by reference to up-to-date projections to be based on evidence such as the current and future census figures. The Paper discussed the evidence base and four particular scenarios regarding future housing needs in WCC’s area: Scenario 1 (from government projections drawn from modelling using 2008-based Office of National Statistics sub-national population

42. In March 2012, the NPPF was issued.
43. In May 2012 WCC issued its sustainability appraisal conducted in relation to the Housing Technical Paper (“the HTPSA”). In the HTPSA, WCC stated that a high

not to include such measures in the Core Strategy did not involve any failure to comply with paragraph 47 of the NPPF.

47. The point of including Appendix F in the Core Strategy and in explaining and

trajectory of supply shown in Appendix F would be likely to be exceeded, and in Appendix D to the Paper (“Appendix D”) it provided a more optimistic “stronger market conditions” trajectory which it regarded as more realistic.

53. Chapter 6 also included a discussion of the requirements of paragraph 47 of the NPPF in relation to land supply over 5 year periods and the buffer of supply over estimated annual average rates of new housing requirements over the period covered by the Core Strategy (11,000 new homes in the period 2011-2031 at the annual average rate of 550 per year). Previously, at para. 4.17, WCC noted that clarification had been provided about the interpretation of the second bullet point of paragraph 47: the 5% or 20% buffer is intended to relate to the amount of housing brought forward into the earlier part of the plan period, not to the overall housing requirement for 20 years set in out in the plan. At paras. 6.51-6.56, under the heading “5 Year Land Supply”, WCC included a detailed discussion in relation to that bullet point, as follows:

“5 Year Land Supply

6.51. A requirement of the NPPF is to identify a supply of specific deliverable sites sufficient to provide five years’ worth of housing against housing requirements, with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Authorities with a

maintained in every year for the whole Plan period up until 2024/5. After 2024/5 the housing requirement is met and there is no 5-year requirement.

6.55. Therefore, an adequate land supply, whether using a 5% or 20% 'buffer' (equating to 5.25 or 6.0 years' supply respectively), can be maintained in each year except at the very start of the Plan period. The 'shortfalls' in the later part of the Plan period are because the remaining requirement is less than 5 years, so the necessary supply is also reduced, or the requirement is already met. At the beginning of the Plan period, the shortfall is caused by the fact that the strategic allocations will take some time to achieve higher levels of delivery, but it is clear that this is only a short-term issue and that it is soon overcome. This 'problem' is reduced under the 'stronger discussed.'" 6.10 e0acr usmusabab-2lyt cussed."

Inspector, and not as part of the Core Strategy (i.e. it was again clear from this part of Background Paper 1 and the tables contained in it, as from the terms of the Core Strategy and Appendix F, that the Core Strategy itself was not being put forward by WCC as the relevant part of its Local Plan to meet the requirements of the second bullet point in paragraph 47 of the NPPF: see para. 21 above); and (iii) the table was based on conservative estimates of land supply, so there was a real prospect that in

reasonable assurance that even at an overall figure of 12,500 new homes in the Core Strategy, WCC would be able to satisfy the requirements of the second bullet point of paragraph 47 in its further development plan documents to be drawn up in the future, under the framework provided by the Core Strategy.

60. The Duty to Co-operate Statement issued by WCC described the co-operative working with other authorities which underlay WCC's work on the Core Strategy, to comply with its duty under section 33A. This included, among a wide range of co-operative working arrangements, participation in meetings held by the Partnership for Urban South Hampshire ("PUSH"), a co-operative partnership between eleven local authorities designed to address issues of common concern. Paragraphs 4.2 to 4.5 of the Statement describe section 33A.1.238- with the w5((e Sta8(tegyh)-iw[(tnh)-5.vd7(o)-whh)-5.iw[(tc6(ih strrn. P). 1sectionA. Thd lyundemfi“(unde)2.by2mo

allow for a limited buffer of new housing land supply, as recommended in the NPPF (para 47). It would also help to take into account the likely upward movement of household growth in the medium to longer term if the economy improves from its present low base. A revised total of 6,000 new units in the two main site allocations outside Winchester (not 5,500) would also be closer to the implied housing target for the PUSH growth area of the district in the most recent South Hampshire Strategy document (OD28) (October 2012). ...

54. The population projections used by representors to justify higher housing figures for the district (up to about 15,000 by 2031) essentially rely on a specific level of future job growth being required. They are essentially based on the premise that the only way of meeting that job growth over the plan period is through increased in-migration that would require extra housing. In contrast, demographic based projections, largely based on ONS and DCLG [Department for Communities and Local Government] methods, as used by Hampshire County Council for the Council, are less dependent on job forecasts and labour force projections that are inherently difficult to produce and affected by many uncertainties in the longer term.

55. This applies not least in respect of the performance of the local and national economy over time, compared to births and deaths, for example. Moreover, new jobs do not necessarily have to be filled by in migrants, given alternative sources such as lower local unemployment, later retirement and increased activity rates, including amongst the elderly/recently retired, as well as improved skills and training.

56. Therefore, a total new dwelling target of 12,500 across the district from 2011 to 2031, with a delivery rate of 625 per year on average, is considered to be realistic, as well as positive in terms of the economic growth of the district. This is so not only in relation to past delivery rates locally, albeit a material “step change” upwards, but also the reasonably assessed capacities of the main three strategic sites allocated in the plan and their realistic implementation prospects, including in respect of economic viability. Moreover, it would be generally consistent with the Council’s “stronger housing market” scenario considered in Appendix D of the Housing Background Paper (BP1) (June 2012).”

68. In this part of the Inspector’s Report, the Inspector assessed the evidence which had been presented by different parties in relation to how to estimate the future population of WCC’s area and hence the new homes requirement to be included in the Core Strategy to meet the needs of that population. WCC argued for future population figures based on up-to-date census data and projections based on modelling methods promoted by the Office for National Statistics, the Department for Communities and Local Government, as in Scenario 1, and in support of a new housing requirement of

11,000. Other parties, including Barton Willmore, argued for higher figures for population and for a higher figure for new homes, of up to 15,000. This was done primarily by reference to work commissioned by them (e.g. by Open House) using up-to-date census figures and other evidence, rather than by reference to the former estimates (based on earlier evidence which was, as the Inspector observed, “somewhat dated”) used to support the figure for housing need for the period 2006-2026 in the South East Plan (albeit that part of the argument proceeded by reference to the earlier estimates). Whilst focusing on the rival estimates of future need based on up-to-date evidence, the Inspector took the earlier estimates into account as a cross-check: he referred to them in para. 48 as being relevant and as reinforcing his overall conclusions. The Inspector’s focus on the up-to-date evidence was in line with what paragraphs 158 and 182 of the NPPF required.

69. The Inspector found that a figure of 12,500 new homes would be appropriate to address what he assessed would be the need for new homes. In other words, he found that there were reasons why WCC’s figure should be regarded as too low and reasons why the objectors’ figure should be regarded as too high. His weighing of the evidence presented on each side and the evidence relevant to the figure in the South East Plan and his conclusion in light of that evidence cannot be impugned as irrational or unlawful in any way. It involved a classic exercise of planning judgment by the Inspector, having proper regard to the available evidence before him – both the recent evidence from WCC and the objectors and the somewhat dated technical evidence available at the time of preparation of the South East Plan.
70. It is fair to say that I found the second sentence of para. 53 of the Inspector’s Report, set out above, puzzling when I first read it. I think Mr Bedford is right in his explanation of the “additional 2%” referred to, as being a reference to the increase in the figure proposed by the Inspector for a 20 year period (12,500, averaging 625 units p.a.) compared with that in the South East Plan (12,400, averaging 612 units p.a.). As an initial impression, because of use of the word “Moreover”, I thought the Inspector might be taken to be saying that adopting his figure of 12,500 would mean that there was more scope for accommodating the buffer required by the second bullet point in paragraph 47 of the NPPF. But that would clearly not be the effect of taking the higher figure, since the level of housing supply required to provide the percentage buffer element referred to in paragraph 47 would also go up with the adoption of the higher housing figure to be used in the Core Strategy. When one understands the

47, nor to require that housing supply figures be written into the Core Strategy to make that Strategy, by its own terms, meet the requirements of that bullet point. This is all because the Inspector correctly understood that WCC was not maintaining a case that the requirements in this bullet point would be met by the terms of the Core Strategy, and appreciated that WCC proposed to satisfy those requirements in subsequent, lower level development plan documents.

73. The Inspector saw nothing wrong in this, and nor do I. He did not consider that the absence of such a housing supply policy from the Core Strategy meant that the Core Strategy failed to comply with the policy guidance in paragraph 47 of the NPPF so as to affect the soundness of the Strategy under section 20(5) of the 2004 Act and paragraph 182 of the NPPF. I agree with him. As explained above, paragraph 47 of the NPPF does not have the effect that the requirements in its second bullet point *must* be dealt with in a core strategy document dealing with the requirements in its first bullet point, such as the Core Strategy in this case. They can be addressed, as WCC was proposing to address them, in other development plan documents.
74. Later in the Inspector's Report, the Inspector dealt with a number of local issues which are relevant to Ground Two in these proceedings. In paras. 72-75 he dealt with the area West of Waterlooville, where WCC's area bordered that of Havant BC. The Inspector considered that it was reasonable to conclude that housing delivery would proceed according to WCC's estimates in Appendix F and that WCC would meet the needs of its area by such development.
75. In paras. 76-98 the Inspector dealt with North Whiteley, an area for development close to the districts of Fareham BC and Eastleigh BC. He found that the North Whiteley development could accommodate 3,500 new homes, rather than just 3,000 as referred to in the Core Strategy, and that this identified increase in housing supply would not require any further Sustainability Appraisal since it was covered by the appraisal work already carried out (see, in particular, para. 90). He found that the work carried out to date was "sufficient to demonstrate a very strong likelihood that all the necessary transport elements of the overall scheme would be practically and economically deliverable" (para. 79). He noted a dispute regarding whether a by-pass around Botley village should be built, as a result of increased road traffic associated with the North Whiteley development (as Fareham BC and Eastleigh BC argued), which Hampshire County Council (the highway authority) opposed as not sufficient to justify the expense involved of about £30m (paras. 80-81). He found the case for the by-pass not to be made out on the evidence before him, but recommended that WCC take steps to keep the option open to build one should later transport assessment indicate it was required (para. 82).
76. At paras. 5 and 6 of the Inspector's Report, the Inspector gave his assessment that WCC had complied with its duty of co-operation under section 33A. In para. 6 he said this:

"6. In the Duty to Co-operate Statement (SD9) and elsewhere the Council has satisfactorily documented where and when co-operation has taken place, with whom and on what basis, as well as confirming that such positive engagement will continue. This includes with all the authorities in the Partnerships for

Urban South Hampshire (PUSH) area and particularly with
Fareham BC and Havant BC in

82. The test to identify a “person aggrieved” (which is a concept with a lengthy history in planning legislation) is open-textured. Factors relevant to the assessment whether a person who objects to a planning decision qualifies as a “person aggrieved” by that decision include the nature of the decision and the directness of its impact on him, the grounds on which he claims to be aggrieved, whether he had a fair opportunity to participate in the relevant decision-making process to raise such grounds of objection and whether he did in fact make use of such opportunity to make those objections before the decision was taken. The approach to be adopted was explained by the Court of Appeal in *Ashton v Secretary of State for Communities and Local Government* [2010] EWCA Civ 600, at [53].

83. As the Lord President (Lord Rodger) explained in *Lardner v Renfrew DC*, 1997 SC 104 (Inner House), at 108:

“The particular circumstances of any case require to be considered and the question must always be whether the appellant can properly be said to be aggrieved by what has happened. In deciding that question it will usually be a relevant factor that, through no fault of the council, the appellant has failed to state his objection at the appropriate stage of the procedure laid down by Parliament since that procedure is designed to allow objections and problems to be aired and a decision then to be reached by the council. The nature of the grounds on which the appellant claims to be aggrieved may also be relevant. We express no view on the merits of those advanced by the appellant, but we observe that they all relate to matters which he could have put, or endeavoured to put, to the council or to the reporter at the inquiry. Had he done so, his objections could have been considered at the due time. Instead of that, the appellant now seeks to have these issues reopened after the decision has been taken in accordance with the prescribed procedure. In these circumstances, having regard both to the nature of his interest in the site and to his failure to take the necessary steps to state these objections at the due time, the appellant cannot properly be regarded as ‘a person aggrieved’ in terms of [the relevant statutory provision].”

84. These observations have particular force in the present context. The Core Strategy is a plan document which operates at a high level of abstraction, with general impact across the whole of WCC’s area. It is intended to provide a settled framework within which other, lower order development plan documents can be drawn up. An elaborate procedure of consultation and examination in public has been adopted to ensure that all relevant views on a core strategy document are brought into account and considered and weighed together, first by the plan-maker (here, WCC) and then by the Inspector: compare *Ashton* at [55]-[56]. The effectiveness and fairness of that system and the overall efficiency of the plan making process would be undermined if persons in the relevant area could come forward with new points raised only after a core strategy has been adopted, and seek to compel review of the core strategy 1(h)-1a nse7.1532 T-5.4 (

section 113 to raise objections which could have been raised in the course of that process will not usually be able to show that he is “a person aggrieved” for the purposes of that provision.

85. However, as a matter of substance, it can be said that the basic object of the plan-making procedure has been met in this case, in that the main grounds of objection to the Core Strategy for Zurich were raised by Barton Willmore as its agents (albeit without explaining that Zurich was its client) at the appropriate time in the course of the plan-making procedure. WCC has not argued that in the course of the plan-making process there was insufficient notice of issues now raised in these proceedings, only that the issues were presented by Barton Willmore rather than Zurich.
86. The main question on this issue in the present case, therefore, is whether, as WCC submits, the failure of Zurich to identify itself as a person seeking to make representations in the course of that process and the failure of Barton Willmore to identify Zurich as their client for the purposes of the representations made by them means that Zurich cannot be regarded as “a person aggrieved” with an entitlement to challenge the Core Strategy.
87. Mr Bedford relied in particular on the Town and Country Planning (Local Planning) England Regulations 2012 governing who has a right to appear to be heard at an examination in public (which would have included Barton Willmore, who made pre-submission representations, but not, he said, Zurich) and on *Ashton v Secretary of*

of section 113. Zurich therefore has standing to make the present application to challenge the Core Strategy.

90. The technical position under the regulations regarding the right of attendance at an examination in public does not preclude this conclusion. In my view, the “person aggrieved” test looks to the justice and substance of the matter, and does not turn on the technical points which Mr Bedford sought to make on the regulations. Barton Willmore participated in the plan-making process and had a right, acknowledged by the Inspector, to be heard at the examination in public. As I have explained, they exercised that right for the benefit of Zurich and it is all the circumstances regarding Zurich’s position which leads to the conclusion that Zurich is “a person aggrieved” for the purposes of the 2004 Act.

91. Although I have reached this conclusion, it is right to observe that no good explanation was given why Barton Willmore did not complete the pre-submission stage representation form to set out that they were acting as agent for Zurich, nor why Mr Shepherd did not frankly say at the examination in public that he was acting for Zurich. The court deprecates the failure to explain exactly on whose behalf, as principal, Barton Willmore’s representations were being made. The source of representations in the course of the processes for making a plan such as the Core Strategy may be relevant to an assessment of their weight and force, and the source ought to be made known. However, I consider that it would be disproportionate and inappropriate to find that Zurich was disabled from being regarded as “a person aggrieved” in the circumstances of this case.

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95. According to Mr Cahill's suggestion, the modellers in 2011 should have begun by saying that there was a shortfall of 854 homes against a previous estimate and then should have added that on to their own modelled estimates for new homes for 2011-2031 to produce the relevant total figure. In fact, none of them proceeded in that way, and rightly so. In my view, they would clearly have been wrong if they had tried to do so. Their own modelling for 2011-2031 is self-contained, with its own evidence base, and would have been badly distorted by trying to add in a figure derived from a different estimate using a different evidence base. That would have involved mixing apples and oranges in an unjustifiable way.

96.

was comparing in the South East Plan and the draft Core Strategy were averages, not in themselves binding annual requirements (see, in particular, paras. 49, 53 and 56 of the Report, set out above). The housing supply trajectory figures he discussed and accepted as valid had the effect that the Core Strategy would be carried into effect in a way which fully met the housing requirement figure for 2006-2026 in the South East Plan. In these circumstances, the Inspector was plainly entitled to make the finding of general conformity which he did and his Report, read as a whole, explains to the informed reader the basis for that finding in respect of the housing requirement figures. Again, I accept Mr Bedford's submission that this met the standard for giving reasons set out in *Porter (No. 2)*.

104. I therefore reject all aspects of this Ground of challenge, both on the merits and on the adequacy of the reasons given.
105. In argument, in particular in his written submissions in reply lodged after the close of the oral hearing, Mr Cahill sought to develop a further ground of objection to the Core Strategy. He said that it failed to comply with paragraph 47 of the NPPF, in particular the second bullet point. In fact, this was not part of Zurich's pleaded case (see paras. 60-63 of Zurich's Grounds of Challenge), nor was it set out in Zurich's skeleton argument (see para. 29, where a different point on paragraph 47 is made, and paras. 38-42). Mr Cahill did not seek permission to amend at the hearing, nor in his written reply, but only in a further document which sought to reply to a r 8 -1 TD[d Tw[(a)7eton

submitted that the Inspector had again failed to give adequate reasons for his decision, contrary to the requirement explained in *Porter (No. 2)*.

108. I do not accept any of these submissions. I deal first with the substance of the obligation imposed by section 33A and the appropriate standard of review to be applied.
109. The duty to co-operate imposed by section 33A applies (so far as relevant in this case) in respect of the preparation of development plan documents “so far as relating to a strategic matter” (subsection (3)), as defined in subsection (4) (“sustainable development or use of land that has or would have a significant impact on at least two planning areas, [etc]”). The question of whether development or use of land would have a significant impact on two planning areas is a matter of planning judgment.
110. The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.
111. The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.
112. WCC was required to have regard to the guidance about co-operative working given in the NPPF: subsection (7).
113. The limited nature of the role for the court in a case like the present is reinforced by the structure of the legislation in relation to review of compliance with the duty to co-operate under section 33A. The Inspector is charged with responsibility for making a judgment whether there has been compliance with the duty: section 20(5)(c) of the 2004 Act. His task is to consider whether “it would be reasonable to conclude” that there has been compliance with the duty: section 20(7)(b)(ii) and (7B)(b). A court dealing with a challenge under section 113 of the Act to the judgment of an inspector that there has been such compliance is therefore limited to review of whether the inspector could rationally make the assessment that it would be reasonable to conclude that there had been compliance by a planning authority with this duty. It would undermine the review procedures in the Act, and the important function of an inspector on an independent examination, if on a challenge to a plan brought under section 113 the court sought to circumvent this structure by applying any more intrusive form of review in its own assessment of the underlying lawfulness of the conduct of the planning authority itself. A rationality standard is to be applied in relation to the decision made by the Inspector and in relation to the underlying decision made by WCC.

WCC to engage with it over matters of joint concern – WCC clearly had so engaged, as explained in the Duty to Co-operate Statement and again in its evidence in these proceedings – but rather that its concerns had not been accepted by WCC. The position was similar in relation to Eastleigh BC. But the duty to co-operate does not require that actual agreement should be achieved, only that proper efforts are made to address issues in a co-operative way. Indeed, it may often be the case that ultimate agreement cannot be reached, particularly where there are strong competing local interests between two or more authorities. In fact, in relation to infrastructure provision in respect of North Whiteley, Hampshire CC as the highway authority was in dispute with other authorities regarding the need for a by-pass around Botley and general agreement between all relevant authorities could not be achieved. agreemendit6i2a1(e

the other's area) there would be no "strategic matters" with cross-boundary implications, so the duty to co-operate would not arise in relation to adoption of a development plan such as the Core Strategy which reflected that approach. For the purposes of consideration of WCC's Core Strategy, Basingstoke & Deane BC did not suggest that it would need to seek provision in the Core Strategy to meet its own additional housing needs nor that there was any strategic matter which arose to engage that duty. By contrast, if Basingstoke & Deane BC made under-provision for its own housing needs in its own core strategy and sought to have those needs met by WCC, such issues could arise in relation to the development of Basingstoke & Deane BC's core strategy. It was because WCC was concerned that Basingstoke & Deane BC might be making such an under-provision in its core strategy that WCC made representations in relation to that core strategy to object to it. There was no inconsistency in WCC's position. The duty to co-operate under section 33A potentially arose in relation to Basingstoke & Deane BC and its consideration of that core strategy. However, since both Basingstoke & Deane BC and WCC were agreed in relation to consideration of WCC's Core Strategy that Basingstoke & Deane BC would not seek to displace its own housing s-or8ousing s-Gu(

Ground Three: Failure to comply with the SEA Directive and the Environmental Assessment Regulations

124. The authorities regarding the proper approach to a legal challenge to a development plan document were helpfully reviewed by Beatson J (as he then was) in *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 (Admin), at [71]-[78]. Review of the

130. Zurich criticises the selection of alternatives in the HTPSA and Sustainability Appraisal because it did not include assessment of a scenario that projected the housing requirement in the South East Plan forward from beyond the period in that Plan (ending in 2026) to the end of the Core Strategy period (in 2031) with an assumed ongoing annual requirement of 612 dwellings p.a.. However, there was no proposal to include this as an alternative brought forward at the time when WCC consulted on possible alternative scenarios for the Housing Technical Paper. The main scenarios which were considered were based on up-to-date census information and modelling, and it is far from clear that the alternative scenario now proposed by Zurich, based on the out-of-date work for the South East Plan (which did not even cover the period between 2026 and 2031), would have made very much sense. Certainly, it was not an alternative which was so obvious that WCC and the Inspector can be said to have acted irrationally or in any way unlawfully in failing to select it as an additional scenario for assessment. Neither WCC nor the Inspector can be said to have made an irrational or unlawful assessment in relation to these matters.
131. Zurich also criticises the examination of alternatives in the HTPSA because it says WCC treated Scenario 3 as leading to the same housing requirement figure as Scenario 1 and so did not properly consider Scenario 3 as an alternative. However, the HTPSA dealt with two different situations in relation to Scenario 3: (i) the position in relation to Scenario 3 as it stood at the time of the Housing Technical Paper itself (June 2011), with projections of future dwellings higher than those in Scenario 1 - this was in fact the main version of Scenario 3 considered and rejected in the HTPSA as a foundation for the figure to be included in the Core Strategy, and (ii) the position as it stood in May 2012, in relation to which the HTPSA stated “Further studies reduced employment (& population) figures down to similar numbers of dwellings as to the preferred Scenario 1”.
132. In my view, therefore, this criticism of the HTPSA also fails, for two reasons. First, even at the earlier, higher Scenario 3 figure, the appraisal in the HTSPA explained why Scenario 3 should be rejected as the foundation for the Core Strategy, in favour of Scenario 1. There is no good argument for Zurich that this assessment was irrational or unlawful. Secondly, by the time of the HTSPA and the Sustainability Appraisal, there was a further reason why Scenario 3 did not offer a reasonable alternative housing figure to that in Scenario 1, namely that the further assessment

workers because of a housing shortage, since WCC planned to meet its own housing requirements in full. Mr Cahill did not spend much time developing this point, and in my view it takes Zurich nowhere.

134. The question whether the modifications to the Core Strategy by the inclusion of the additional housing requirement of 1,500 dwellings required by the Inspector and adopted by WCC and SDNPA would require further sustainability or strategic