Neutral Citation Number: [2021] EWHC 2190 (Admin)
Case No: CO/3773/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL
30/07/2021

B e f o r e :

THE HON. MRS JUSTICE THORNTON DBE

Between:

CHERWELL DEVELOPMENT WATCH ALLIANCE **Claimant**

-v-

(1) CHERWELL DISTRICT COUNCIL
(2) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT **Defendants**

- and –

(1) THE DEAN AND CHAPTER OF THE CATHEDRAL CHURCH OF CHRIST IN OXFORD OF THE FOUNDATION OF KING HENRY THE EIGHTH,
THE RECTOR AND SCHOLARS OF EXETER COLLEGE IN THE UNIVERSITY OF OXFORD,
THE WARDEN AND SCHOLARS OF THE HOUSE OR COLLEGE OF SCHOLARS OF MERTON COLLEGE IN THE UNIVERSITY OF OXFORD **Interested Parties**

("MERTON COLLEGE") AND THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF OXFORD ("UNIVERSITY OF OXFORD")
(2) MERTON COLLEGE AND UNIVERSITY OF OXFORD
(3) MERTON COLLEGE

Jenny Wigley QC (instructed by Leigh Day) for the Claimant
Hereward Phillpot QC and Hugh Flanagan (instructed by Cherwell District Council) for the First Defendant
Leon Glenister (instructed by Government Legal Department) for the Second Defendant
Rupert Warren QC (instructed by Mills and Reeve) for the First Interested Party
The Second and Third Interested Parties were unrepresented.

Hearing dates: 23/06/2021 and 24/06/2021

HTML VERSION OF JUDGMENT APPROVED BY THE COURT↟

The Hon. Mrs Justice Thornton:

Introduction

1. This is an application brought under section 113 of the Planning and Compulsory Purchase Act 2004 ("PCPA") to quash or remit (in whole or in part) the Cherwell Local Plan Partial Review ("the Cherwell Plan"), dated 7 September 2020, adopted by the Defendant as part of its statutory development plan.

2. The claim arises out of a significant shortage of housing in the City of Oxford with the result that the shortfall must be accommodated in neighbouring areas, including the district of Cherwell. The Cherwell plan under scrutiny is titled 'Partial Review - Oxford's Unmet Housing Need'. It commits the Defendant to work with the City of Oxford to deliver 4400 homes in Cherwell to meet Oxford's unmet housing need by 2031. In simple terms, the spatial strategy adopted is to locate housing development on Green Belt land around North Oxford, including the site of the North Oxford Golf Course, with 30ha of agricultural land reserved for a replacement golf course, if required.

3. The Claimant is a coalition of five residents' groups who oppose the extent of the Green Belt allocations. They are Begbroke and Yarnton Green Belt Campaign; GreenWayOxon; Harbord Road Area Residents' Association; Kidlington Development Watch and Woodstock Action Group. The First Defendant is the local planning authority. It was the Second Defendant's Inspector who carried out and reported to the First Defendant on the statutory examination of the submission draft of the Plan. The Interested Parties are landowners of some of the greenbelt sites allocated in the Cherwell Plan. The First Interested Party was represented at the hearing. The Second and Third Interested Parties were not separately represented at the hearing in accordance with a previous case management direction.

4. There are two grounds of challenge:

   1) *Green Belt and reduced housing need:* The Claimant says that in deciding that 'exceptional circumstances' exist to justify the allocation of 4400 houses on Green Belt land, the Inspector failed to take into account a highly material consideration, namely that need based on demographic growth and affordable housing need had reduced by 28% and 34% respectively, since a previous evidential assessment in 2014. The Defendants and Interested Parties say in response that, to the extent he was

obliged to do so, the Inspector plainly took account of the updated evidence on housing need and reached a planning judgement open to him on the evidence.

2) *The replacement of the North Oxford Golf Course at Frieze Farm:* The Claimants say that in determining that a site at Frieze Farm could provide an equivalent or better facility in terms of quality and quantity to the existing North Oxford Golf Course, the Inspector failed to take into account detailed evidence that it could not. His decision was irrational and unreasoned. The Defendants and Interested Parties say this ground is a thinly disguised attack on the merits.

The Legal Framework

5. The parties were agreed that, for present purposes, the assessment of the relevant legal framework is comprehensively and helpfully set out in the judgment of Holgate J in his recent decision in Keep Bourne End Green v Buckinghamshire Council [2020] EWHC 1984 (Admin) which drew, in turn, on Court of Appeal authorities, including Jelson Ltd v Secretary of State for Communities and Local Government ([2018] EWCA Civ 24) and Oadby and Wigston BC v Secretary of State for Communities and Local Government [2016] EWCA Civ 1040. Accordingly, I simply summarise the legal framework below.

Local plan making - the Planning and Compulsory Purchase Act 2004

6. A local planning authority is required to set out its policies relating to the development and use of land in its area in local development documents, such as the Cherwell Plan in this case. In the preparation of a local development document the local planning authority must have regard to "national policies and advice contained in guidance issued by the Secretary of State" (s.13 s.17(6) and s 19(2)(a) PCPA).

7. A local authority must submit the draft development plan document to the Secretary of State for independent examination to determine whether it satisfies the requirements of section 19 and whether it is sound (s.20(1) PCPA). "Soundness" is not defined in the legislation but in the NPPF (see below).

8. If the examining Inspector considers that the plan is "sound", he must recommend that the document be adopted by the authority or recommend "main modifications" to the draft plan which would make it "sound" or otherwise compliant, if requested by the plan-making authority to do so (s.20(7) s.20(7B) and (7C) PCPA).

9. The local planning authority may adopt the plan only if the Inspector has either recommended that outcome or has recommended main modifications to make the plan sound and/or satisfy the requirements referred to in s.20(5)(a) (s.23(2) to (4)).

10. An "aggrieved person" may apply to the High Court for statutory review of *inter alia* a development plan document on the grounds that (a) it is not within the powers conferred by Part 2 of PCPA 2004 or (b) a "procedural requirement" (under the relevant powers or regulations made under those powers) has not been complied with (Section 113(3)).

11. The High Court may only intervene if either (a) the document "is to any extent outside the appropriate power" or (b) "the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement" (s.113(6)). Limb (b) might cover a failure to comply with the Inspector's duty to give reasons for his recommendations under s.20.

National Policy

12. It was common ground that the 2012 version of the Government's National Planning Policy Framework ("NPPF") was the applicable version for the examination of the Cherwell Plan.

The presumption in favour of sustainable development and plan making

13. Paragraph 14 states (so far as relevant):

*"At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**.*

*For **plan-making** this means that:*

- *Local Plans should meet objectively assessed needs …*

unless:

- *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;*
- *or specific policies in this Framework indicate development should be restricted."*

The provision of housing

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

"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."*

15. This principle is carried through in greater detail to the sections of the NPPF dealing with plan-making which includes:

"159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

• Prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:

– meets household and population projections, taking account of migration and demographic change;

– addresses the need for all types of housing, including affordable housing and the needs of different groups in the community (such as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes); and

– caters for housing demand and the scale of housing supply necessary to meet this demand."

Open space and opportunities for sport and recreation

16. Paragraphs 73 and 74 provide that:

"73. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or

surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required."

"74. existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- *an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or*
- *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- *the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss."*

Green Belt

17. Paragraphs 79 to 92 set out policy on green belts. Paragraph 79 states:

> *"The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence."*

18. In relation to the review of green belt boundaries:

> *"83. Local planning authorities with Green Belts in their area should establish Green Belt boundaries in their Local Plans which set the framework for Green Belt and settlement policy. Once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation or review of the Local Plan. At that time, authorities should consider the Green Belt boundaries having regard to their intended permanence in the long term, so that they should be capable of enduring beyond the plan period."*

Soundness

19. Paragraph 182 addresses soundness:

> *"The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:*
>
> - *Positively prepared – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.*
> - *Justified – the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence.*
> - *Effective – the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities.*
> - *Consistent with national policy – the plan should enable the delivery of sustainable development in accordance with the policies in the Framework."*

Legal Principles

General

20. The Court's jurisdiction under S113 PCPA depends upon the application of conventional public law principles. It is not an opportunity for the parties to re-run the planning merits of an issue (Solihull MBC v Gallagher Homes Ltd [2014] EWCA Civ 1610 at [2]). The assessment of 'soundness' requires an assessment of whether the plan is 'positively prepared, justified, effective and consistent with national policy'. This undeniably involves a planning judgment, unlawful only on the basis of general public law principles (Cooper Estates Strategic Land Limited v Royal Tunbridge Wells Borough Council [2017] EWHC 224 (Admin)).

The delivery of housing

21. NPPF 2012 requires a two-step approach to be followed whereby: 1) the full objectively assessed need has first to be identified and 2) that need met unless and only to the extent that other policy factors in the NPPF indicate otherwise. Thus it is plain that a local plan could properly fall short of meeting the full objectively assessed need for housing in its area because of a conflict which would otherwise arise with policies on the Green Belt (Hunston Properties v Secretary of State for Communities and Local Government [2013] EWCA Civ 1610 at §6).

Housing need assessments

22. Responsibility for the assessment of housing need lies with the decision-maker (governed by the principles of public law). Although the decision-maker is clearly expected to establish, at least to a reasonable level of accuracy and reliability, a level of housing need that represents the "full, objectively assessed needs" this is not an "exact science". It is an evaluation that involves the decision-maker's exercise of planning judgment on the available material, which may not be perfect or complete. No single methodology is prescribed, and no level of precision is specified. The exercise does not lend itself to mathematical exactness. The scope for a reasonable and lawful planning judgment here is broad. The court will only interfere if some distinct error of law is shown – for example, a misinterpretation of relevant policy or guidance, or a failure by the decision-maker to apply reasonable planning judgment to the available evidence, which may well be imperfect or incomplete. It will not be tempted into an assessment of the evidence, expressing a preference of its own for one set of data or another, or forecasts from a particular source. For a challenge to succeed, the applicant will always have to show that what was done was actually unlawful, not merely contrary to its own case at an inquiry or examination hearing. Otherwise, the proceedings are liable to be seen as an attempt to extend by other means a debate belonging only in that forum. It is at an inquiry or examination hearing that the parties have the opportunity to argue their case on housing need, not before the court. (Oadby & Wigston BC v Secretary of State for Communities and Local Government [2016] EWCA Civ 1040; Jelson Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 24; CPRE Surrey v Waverley [2019] EWCA Civ 1826).

Exceptional circumstances to justify alteration of Green Belt boundaries

23. There is no definition of the policy concept of "exceptional circumstances". The expression is deliberately broad, and the matter is left to the judgment of the decision-maker, a judgment that is highly fact sensitive in each individual case. It will be sensitive to a range of case-specific considerations and the varying weight given to each, including the circumstances of a particular area, the policy context, the evidence base and the arguments advanced in the consultation and examination stages. There is a danger of the simple question of whether there are 'exceptional circumstances' being judicially over-analysed "(with too little regard for the space for planning judgment) (Compton Parish Council v Guildford Borough Council [2020] JPL 661 at [68]-[72] (Sir Duncan Ouseley); Keep Bourne End Green [2020] EWHC 1984 (Admin) at [146]; Hopkins Homes v Communities Secretary [2017] 1 WLR 1865 at [23]-[25]; R(Samuel Smith) v North Yorkshire County Council [2020] PTSR 221 at [21]-[22])."

The duty to give reasons in an examination in public

24. The reasons given by an Inspector on the examination of a local plan under s20 PCPA should not be assessed by unqualified application of authorities dealing with reasons on appeals against the refusal of planning permission, notably the oft-cited principles in particular in South Bucks DC v Porter (No.2) [2004] UKHL 33 at [36]. The public examination of a plan is not an inquiry into objections raised by

individual parties. The examination is structured around the issues which the Inspector has identified as crucial for his judgment on the soundness of the plan. It alerts parties to the Inspector's proactive and inquisitorial role; representations do not dictate the structure or focus of the examination. If contentions do not assist him to reach a judgment on the soundness of the plan, he will not spend time at the hearings on them. The hearings are only part of his examination of the soundness of the plan.

25. Accordingly, the Inspector should reach clear conclusions backed by reasoned judgments on the plan's compliance with the PCPA 2004, including the requirement of soundness. The report does not summarise the parties' individual cases, will avoid direct reference to specific representations and will not describe discussions at hearings. But it will explain concisely why the Inspector has reached the views he has on soundness and the compliance issues. Accordingly, reasons may be more succinctly expressed than in a decision letter on a planning appeal (Cooper Estates Strategic Land Assessment v Royal Tunbridge Wells Borough Council [2017] EWHC 224 (Admin) confirmed in CPRE Surrey v Waverley Borough Council v Secretary of State for Housing Communities and Local Government [2019] EWCA Civ 1826).

Factual Background

26. Chronological developments in the assessment of Oxford City's housing need and the plan making for Oxford and Cherwell are material to the issues raised by this challenge.

The 2014 Oxfordshire Strategic Housing Market Assessment

27. In April 2014, the 2014 Oxfordshire Strategic Housing Market Assessment ('SHMA') was published. The need for Cherwell itself was assessed at 1140 dwellings per annum (dpa). Oxford City Council's housing need was assessed at 1400 dpa. The starting point was an assessment of need based on population growth including provision for addressing the past shortfall in housing delivery. This produced a figure of 782 dwellings per annum. A figure of 2058 dwellings per annum was identified as the figure needed to meet affordable housing in full. This was a reflection of assessed affordable housing need of 1029 dpa and a 50% affordable housing delivery rate. A range of overall housing need per year was identified as 1200 – 1600 with a midpoint range of 1400 dwellings per annum. The SHMA noted that:

> *"For Oxford the specific circumstances in regard to both affordability pressures and the need for affordable housing justified a substantial upwards adjustment to the assessed need relative to the projections based on past population change and arose because of the specific circumstances in Oxford relating to both affordability pressure and the need for affordable housing." [9.49]*

28. In relation to Oxfordshire as a whole it was said:

> *"The level of housing need identified is quite different from that delivered in the past. This reflects evidence that housing provision in the past has not kept pace with that needed; the need to house a growing older population (with people living longer) and the significant drivers – particularly in terms of job creation – which are expected to influence future need for homes" [9.53]*

The 2015 Cherwell Local Plan (Part 1)

29. On 20 July 2015, the Cherwell Local Plan Part 1 was adopted. It provides for Cherwell's development needs to the year 2031. It includes provision for Cherwell's need of 1140 dpa as well as a commitment to working partly with other local authorities in the wider Oxfordshire area to consider the extent of Oxford's need and how it might be apportioned amongst the neighbouring authorities. In this respect the First Defendant committed to a partial review of the plan within two years to cater for "Oxford's Unmet Need."

The apportionment of Oxford's unmet need (2016)

30. In September 2016, the Oxfordshire Growth Board (a joint committee of six Oxfordshire Councils alongside other bodies including Oxford University, the Environment Agency and the Highways Agency) agreed the apportionment of Oxford's unmet need. This was based on the 2014 SHMA. 4400 houses were apportioned to Cherwell from an overall total of 14850.

The Cherwell Plan Partial Review submission and preliminary hearing (2018)

31. In March 2018, the partial review of the Cherwell Plan was submitted for formal examination. On 28 September 2018, the Cherwell Inspector held a full day preliminary hearing during which the soundness of Oxford's overall unmet need and the apportionment of 4400 houses to Cherwell were considered. The First Defendant, representatives of the Claimant, and Oxford City Council made representations. A statement on behalf of GreenWayOxon (one of the groups comprising the Claimant) stated:

> *"Critically Oxford's housing capacity figures have not been properly tested. The City's Local Plan timetable is significantly behind the programmes for the 4 surrounding Authorities – a classic example of putting the cart before the horse."*
>
> *"The Inspector has therefore correctly highlighted an insurmountable hurdle. The only tenable remedy is to put all the remaining Local Plans on hold until an Oxford Local Plan has been tested at EIP."*

October 2018 update on Oxford City Housing Need

32. Shortly after the preliminary hearing in the Cherwell Plan, Oxford City Council published an update on objectively assessed need for the Oxford area in order to understand its housing need until 2036. The update expressed the view that the 2014 SHMA conclusion for OAN of 1400 dpa remained appropriate.

33. The review update used the same methodology as the 2014 assessment but the most up to date household forecasts and recalculated the implications of economic growth. It reassessed the scenarios which had informed the 2014 assessment including the demographic growth scenario and the affordable housing scenario. In summary, the demographic growth scenario saw need reduced from 755 (dpa) (2014) to 543-554 dpa (2018). Affordable housing need had reduced from 1029 (2014) to 678 (2018). This meant that the housing provision needed to meet affordable housing need in full had fallen from 2058 dpa in the 2014 SHMA to 1356 dpa in the 2018 SHMA (based on a policy of requiring 50% affordable housing delivery on housing sites). Nonetheless, the 2014 figure of 1400 dpa for housing need was retained. A note issued by the authors of the 2018 analysis (GL Hearn) in July 2019 for the Oxford Inspectors explained the assessment:

> *"The affordable housing issues were (and still are) so significant that it justified doing as much as could be considered deliverable to help meet affordable housing need…"*
>
> *"Although the OAN range in the SHMA 2014 aimed to meet affordable housing need in full the uplift that was considered achievable (1400 dpa) did not achieve the aim at that point in time."*
>
> *"To clarify the position of the 2018 update is that we consider the like for like figure as 1356 dpa and that the SHMA conclusions of 1400 dpa remains appropriate…"*
>
> *"The core outcome of the 2018 update was that there is still an acute affordable housing need and significant market signals affecting Oxford." (GL Hearn Clarification Note)*

34. More detail was provided by Oxford City Council as follows:

> *"The PPG states in paragraph 024 (Reference ID: 2a-024-20190220), that the total affordable housing need can be considered in the context of its likely delivery as a proportion of mixed market and affordable housing developments, taking into account the probable percentage of affordable housing to be delivered by eligible market housing led*

developments. An increase in the total housing figures included in the plan may need to be considered where it could help deliver the required number of affordable homes. As stated in paragraph 6.49 of the OAN Update, any increase above the OAN would increase delivery of affordable housing. On the basis of the 50% affordable housing policy an affordable housing need of 678dpa would require a supply of 1,356dpa.

The same approach was taken to identifying Oxford's housing target in the 2014 SHMA. An affordable housing net need per annum of 1,029 was identified for Oxford in the 2014 SHMA. Because of Oxford's long-standing policy requiring 50% of housing to be delivered on site, the affordable housing need was doubled to take into account likely delivery. I.e. if 2,058 homes were delivered it would be expected that, with half of these delivered as affordable homes, this would result in delivery of the needed 1,029 affordable homes per annum (whereas the demographic base + shortfall was 792 per annum).

However, this represented a growth rate that was not considered achievable. The need figure identified (1,400) was based on a growth rate per annum that was considered a deliverable growth rate (based on assessments of high growth rates achieved elsewhere), that if the land was available, could be met by the housing market. Thus, the housing need figure identified for Oxford in the original 2014 SHMA was not based on the application of an 85% uplift; the 85% figure merely describes the amount of uplift from the demographic starting point. The starting point in identifying the final figures in the 2014 SHMA and the update was the ambition to meet affordable housing need in full, which in the 2014 SHMA was tempered by application of a realistic growth rate. It is simply that now the growth rate, which the OAN Update considers to still be relevant, gets much closer to meeting affordable housing needs in full."

Opinion Research Services report on the 2018 SHMA (January 2019)

35. The Claimant commissioned a report by Opinion Research Services to review the level of OAN identified in the SHMA 2018 and compare it with the 2014 figures. The report was critical.

36. The summary stated as follows:

"The Oxford City SHMA Update 2018 identifies an OAN for Oxford City of 776 dwellings per annum. This figure is in line with adopted plan figures for similar areas across the South East of England. The figure of 1,400 dwellings per annum in the Oxfordshire SHMA 2014 was an outlier and should be disregarded.

The figure proposed by Oxford City of 1,356 dwellings per annum to meet all affordable housing need is based upon a substantial over-estimation of affordable housing needs and is also an approach which is flawed and without precedent across the country."

"...the OAN for Oxford City has fallen from 1,400 dwellings per annum to 776 dwellings per annum between the two studies. A drop of this magnitude requires explaining and there are a number of factors behind the changes."

"...the figure of 678 dwellings per annum for affordable housing need is an overstatement and therefore, a figure of 1,356 dwellings per annum to meet this affordable need is also an overstatement of need. Therefore, the approach proposed by Oxford City council is not necessary. High Court judges have been very clear that the approach adopted by Oxford City Council does not give the OAN and it is in fact again without precedent across the country. No Council that we are aware of has sought such a large uplift to their OAN to meet their affordable housing need."

February 2019: The Cherwell Plan main hearing sessions

37. During the main hearing sessions into the Cherwell Plan in February 2019, the Claimant repeated its concern about the Cherwell Plan continuing before Oxford's OAN had been considered as part of the Oxford plan process:

> *"We therefore consider that Plan be sent back to Cherwell for reconsideration or the EIP should be halted at this point and considered in the context of whatever emerges from the Oxford Local Plan"* (EIP submission on behalf of GreenWayOxon)
>
> *"Given that the Cherwell Plan is solely about meeting Oxford's unmet need and the vast majority of homes would be built on Oxford's Green belt we respectfully requires that you now delay the next stage of your examination of the Cherwell Plan until the issues raised within the Oxford Plan have been fully examined"* (Email from the Claimant to the Programme Office 13 June 2019)

38. The Cherwell Inspector held a further hearing session entitled "Unmet Need". Both the Oxford City SHMA 2018 and the critical Opinion Research Service report were submitted. The First Defendant, Claimant, and Oxford City Council made written and oral representations. The Claimant put matters as follows in its written statement:

> *"The latest evidence indicates that Oxford's unmet housing needs in the plan period would be substantially lower than when the figure of 4400 homes for Cherwell was proposed….*
>
> *In its submitted plan Cherwell claims that the first of twelve supposed 'exceptional circumstances' for removing land from the Green Belt is the putative 'urgent and pressing need to provide homes for Oxford.' The plan also makes clear that this is based on the 2014 SHMA's OAN for Oxford of 1,400 dpa and the working assumption which follows from it…this is now incorrect."*

The Oxford Plan process (March 2019 – May 2020)

39. In March 2019, the Oxford Local Plan was submitted. At this point it was behind the Cherwell Plan examination process. In December 2019, the Oxford Plan main hearings took place. The Claimant participated and advanced arguments about reduction in housing need to the Oxford Inspectors, as is apparent from the following extracts from a witness statement filed on behalf of the Claimant in these proceedings:

> *"When Oxford City Council [published] its plan on 1 November 2018 it also published an OAN Update, also referred to as the 2018 SHMA. This report had been produced by the same consultancy as the 2014 SHMA. I read this with interest and noted that, on a like for like basis, need arising from baseline demographic growth had fallen from 755 dwellings per annum ('dpa') to 543dpa, a reduction of 28%..."*
>
> *"I also noted that the authors accepted that in 2014 their assessment of affordable housing need "was written under a less evolved understanding of its relationship with OAN as previously defined" ... In 2018 they considered that "an uplift of 40% in response to market signals and affordable housing need would be appropriate" (para 9,39) rather than the 85% in 2014. This suggested that they now realised that the 2014 figure of l400dpa had itself been based on an unjustifiable uplift and therefore could never have represented OAN. Furthermore, it was clear to me that a logical reading of the 2018 SHMA led to the conclusion that Oxford's OAN was now 776dpa…"*
>
> *"I contacted Oxford City Council who did not accept that OAN was 776dpa. As a result, on behalf of CDWA, I contacted Opinion Research Services one of the major consultancies specialising In Housing Needs Assessment. ORS agreed to undertake an independent review of the 2014 and 2018 SHMAs for CDWA. ORS concluded that "The Oxford City SHMA Update 2018 Identifies an OAN for Oxford City of 776 dwellings per annum…"*
>
> *"I therefore wrote hearing statements on behalf of CDWA and the OGBN for the Examination in Public ('EiP') of the Cherwell Local Plan Partial Review, the former statement being supported by a report from ORS. Together with an expert from ORS, I also presented CDWA's evidence at the EIP In February 2019…"*

"CDWA also participated in the Examination of Oxford's Local Plan. I wrote its hearing statement on the Issue of housing need which was supported by a further report from ORS. I participated in the examination hearing, again with the support of an expert from ORS."

40. The Oxford Plan process then caught up and overtook the Cherwell Plan process. In January 2020 the Oxford Inspectors published their preliminary findings and the final report was published in May 2020.

41. The Oxford Inspectors considered the soundness of the updated housing need as follows:

"Issue 1 - Whether the plan's calculation of housing need is sound

Introduction: overall housing need

19. Oxford's overall housing need is 1,400 dwellings per annum (dpa) as indicated in paragraph 3. 7 of the submitted plan. This is derived from the 2018 Objectively Assessed Need Update (HOU.5), itself an update of the 2014 Oxfordshire Strategic Housing Market Assessment (SHMA) (HOU.3). It is a substantially higher figure than the local housing need (LHN) calculation of 810 dpa uncapped, or 746 dpa capped.

20. The housing need figure of 1,400 dpa reflects the number of homes required to meet Oxford's affordable housing need of 678 dpa, or 13,560 affordable homes over the 20-year plan period. Most affordable housing is delivered as a percentage of the total number of homes in market housing schemes; in Oxford this is 50%, based on viability evidence, as required by Policy H2. So, if 50% of the new homes on every housing site in Oxford were affordable, the total number of homes theoretically required to deliver 678 dpa would be 1,356 dpa. In practice, the percentage of affordable homes achieved overall is likely to fall below 50% owing to site-specific and development-related adjustments and the fact that non-major sites do not qualify (see Issue 3). Consequently, even at 1,400 dpa, affordable housing delivery would be likely to fall below overall affordable housing need.

21. The 1,400 dpa is referred to as a housing need figure rather than a requirement because only a proportion of the number of homes required to meet it can be accommodated within Oxford. The soundness of this need figure and the calculations that have led to it are discussed below.

Housing affordability and equality

22. Oxford stands out among cities as having unusual housing problems which point towards a higher level of housing need than that derived from the standard method calculation...

the Centre for Cities publication "Cities Outlook 2018" {HOU.29) shows Oxford as the least affordable city in Britain with average house prices 17.3 times higher than average earnings.....it points towards a severely skewed housing market with a strong bias towards more expensive homes compared with income distribution.....all affordability calculations show that, over the long term, homes in Oxford have been consistently much less affordable than nationally, and all calculations show that there has been a significant long-term deterioration in housing affordability in the city (PSD.15). The equality analysis in "Cities Outlook 2018" also indicates that Oxford is the second most unequal city in the country....

24. The factors described above, and the limited supply of new homes, have led to what can reasonably be described as a crisis of affordable housing need in the city. HOU.5 states that the situation in Oxford is one where there is a clear, acute affordable housing need beyond that in any of the comparators it examines.

The calculation of affordable housing need

25. The elements of the affordable housing need calculation are discussed in this section. They were a focus of scrutiny in the plan's examination because the scale of affordable housing need is central to the calculation of overall housing need.

26. The methodology, assumptions and inputs of the affordable housing calculation are sound... The model has been used by other planning authorities in Oxfordshire and elsewhere and has been found sound at other local plan examinations. It is derived from Oxford -specific information and the methodology is based on that in Planning Practice Guidance (PPG)."

42. The Inspectors turned to consider Environmental constraints:

"34. It has been suggested that the housing need figure should be reduced, or that development needs should be met away from the city, in response to environmental constraints. This point needs to be considered in two parts: the city itself and the wider Oxfordshire area."

"35. As far as the city itself is concerned.....

"36. As regards environmental considerations in the wider Oxfordshire area, these are a matter for the local authorities themselves, but it is notable that the local plans referred to above, two of which are already adopted and two are at examination, have already addressed the growth needs for the majority of the Oxford Local Plan period. They have rigorously evaluated the balance between growth and environmental considerations and have been subject to sustainability appraisal."

43. The Inspectors' conclusion on the issue was as follows:

Conclusion on Issue 1

"38. The situation in Oxford, with its stark inequalities and a very large and growing number of households unable to access market housing, clearly justifies the plan's approach. The plan's assessment of overall housing need for Oxford, established at 1,400 dpa, is sound. The need figure is evidence-based and is founded on sound methodologies, including the up-to-date needs assessment as set out in the 2018 OAN Update. It is important to emphasise that it has not been derived from Growth Deal assumptions, it is not a policy-based uplift, and it is not rooted in a circular argument. It is fully justified by the serious housing affordability issues in Oxford and the very clear inequalities of access to housing within the city. There are no convincing environmental or delivery grounds that indicate that a lower figure for housing need should be set."

Adoption of the Oxford Local Plan (June 2020)

44. The Oxford Local Plan was adopted on the 08 June 2020. Relevant provisions provided:

"The scale of new housing need

3.6 The Oxfordshire SHMA 2014 covers the period until 2031 so a roll-forward was commissioned by the City Council in order to understand housing need to 2036. The SHMA roll forward has used the same methodology as the previous SHMA but has used the most up to date household forecasts…

The 2018 SHMA roll-forward to 2036 found that, in order to meet Oxford's affordable housing need in full based on a policy of 50% delivery of affordable housing, 1356 dwellings per annum would be required. As identified above affordability is a critical factor for Oxford. The Oxfordshire Housing and Growth Deal with Government signed by all of the local authorities in Oxfordshire in February 2018 commits the Oxfordshire authorities to work together to delivery 100,000 homes in the 20 yar period to 2031. The assumption built into this overall figure was the 1,4000 dwellings per annum were identified as required in Oxford until 2013. Therefore, the housing target remains as it was in the 2014 SHMA."

The Cherwell Inspector's Report (August 2020)

45. The Cherwell Inspector reported on his examination of the Cherwell Plan in August 2020. He explained the background of Oxford's unmet need as follows:

> ***"Context of the Plan***
>
> *8. In the Cherwell Local Plan, adopted in 2015 (Local Plan 2015), the Council undertook to continue working with all other Oxfordshire authorities as part of the DtC to address the need for housing across the Housing Market Area (HMA). The authorities concerned had all understood that the City of Oxford might not be able to accommodate all of its housing requirement for the 2011 -2031 period within its own boundaries.*
>
> *9. The Local Plan 2015 made clear that if joint work revealed that the Council, and other neighbouring authorities, needed to meet additional need for Oxford, then this would trigger a 'Partial Review' of the Local Plan 2015. As set out below, that joint work has revealed just such a requirement. The resulting 'Partial Review' is the Plan under examination here.*
>
> 10. *It is useful to recognise too the challenges faced by the City of Oxford. It is the driver of the County's economy and makes a significant contribution to the national economy. alongside other constraints, the tightness of the Green Belt boundary around the city leads to intense development pressure because of the demand for market housing, the need for more affordable housing, and the parallel economic priority that must be given to key employment sectors."*

46. He then turned to consider Oxford's unmet need as follows:

> ***Issue 1: Have the figures for Oxford's unmet need, and the apportionment for Cherwell been justified?***
>
> *27. As outlined above, informed by the SHMA 2014 and the SHLAA, the OGB concluded that Oxford has an unmet need of 14,850 homes between 2011 and 2031, and that of that total, Cherwell should accommodate 4,400 homes in the period to 2031.*
>
> *28. It is relevant to note too that the OGB decided that of that 14,850 figure, alongside Cherwell 's apportionment, Oxford itself should accommodate 550, South Oxfordshire 4,950, the Vale of White Horse 2,220, and West Oxfordshire 2,750. I say this is relevant because Inspectors conducting examinations in West Oxfordshire and the Vale of White Horse in relatively recent times have accepted the figures set out above, concluding that the process by which they were produced was a robust and reasonably transparent one.*
>
> *29. However, at the hearings I conducted, informed in part by a critical review of the SHMA 2014 and the Oxford City SHMA Update 2018 carried out by Opinion Research Services, there was much criticism of the way Oxford City Council had calculated their overall housing need, and their unmet need, with the suggestion being that if the city concentrated more on providing housing rather than employment sites, then they could reduce the pressures on neighbouring authorities. It is not for me to examine Oxford's calculations, but I am able to observe that the Inspectors who examined the Oxford Local Plan 2036, that was adopted on 8 June 2020, accepted Oxford's overall housing figures, the extent of unmet need, and the balance between housing and employment sites the city had struck.*
>
> *30. In that overall context, I find no fault in the way the OGB have approached the difficult problem of identifying Oxford's unmet housing needs and apportioning them between the different authorities involved. ...*
>
> *Conclusion*

32. As a result, I conclude that the figure for Oxford 's unmet need, and the apportionment for Cherwell, have been justified and form a robust basis for the Plan."

47. The Inspector considered the resulting spatial strategy for Cherwell to locate development along the A44/A4260 corridor on a range of sites around North Oxford on land west and east of the Oxford Road (Policies PR6a and PR6b), with land at Frieze Farm reserved for a replacement golf course, if required (Policy PR6c) to be sound.

48. The Inspector went on to consider the implications for the Green Belt of the proposed development:

"Issue 3: Are the exceptional circumstances necessary to justify the alterations to Green Belt boundaries proposed in the Plan in place so that the Plan is consistent with national policy?

44. Paragraph 83 of the Framework says that once established, Green Belt boundaries should only be altered in exceptional circumstances, through the preparation ·or review of the Local Plan. Evidently, in preparing a Plan that proposes changes to the boundaries of the Oxford Green Belt, the Council has met the second part of that requirement.

45. In relation to the first part, there a number of factors in play that combined, lead me to the firm conclusion that the exceptional circumstances necessary to justify the alterations proposed to Green Belt boundaries have been demonstrated.

46. Chief amongst these is the obvious and pressing need to provide open-market and affordable homes for Oxford; a need that Oxford cannot meet itself. On top of that, in seeking to accommodate their part of Oxford's unmet need, the Council has undertaken a particularly rigorous approach to exploring various options. That process has produced a vision and a spatial strategy that is very clearly far superior to other options. There is a simple and inescapable logic behind meeting Oxford's open market and affordable needs in locations as close as possible to the city, on the existing A44/A4260 transport corridor, with resulting travel patterns that would minimise the length of journeys into the city, and not be reliant on the private car. On top of that, existing relationships with the city would be nurtured. Finally, this approach is least likely to interfere with Cherwell's own significant housing commitments set out in the Local Plan 2015.

47. It is important to note too the scale of what is proposed. The Oxford Green Belt in the District of Cherwell covers 8,409 Ha. As submitted, and I come on to further removals below, the Plan makes provision in Policy PR3 for the removal of 253 Ha, a reduction of 3%. That is a relatively small reduction that must be seen in the context of the regional and indeed national benefits that would flow from meeting Oxford's unmet need in such a rational manner.

48. On top of that, as the evidence base, and notably the Green Belt Studies, show that while existing built-up areas of Oxford, Kidlington, Begbroke and Yarnton would be extended into the surrounding countryside, there would be clear, defensible boundaries, both existing ones that could be strengthened further as part of development proposals, and new ones, and whilst the release of some land parcels would result in harm, the overall sense of separation between Kidlington and Oxford in particular, would not be harmfully reduced. Further, the setting and special character of Oxford would not be adversely affected. In that context, the purposes of the Green Belt, as set out in paragraph 80 of the Framework, would not be undermined to any significant degree.

Conclusion

49. Overall, it is my judgment that the exceptional circumstances necessary to justify the alterations to Green Belt boundaries proposed In the Plan are in place. The Plan is therefore consistent with national policy."

49. The Inspector's analysis of provision for a replacement golf course for the North Oxford Golf Club was as follows.

50. He explained the context:

> "*64. As submitted, Policy PR6b - Land West of Oxford Road proposed an urban extension to the city of Oxford on 32 hectares of land currently occupied by the North Oxford Golf Club with 530 dwellings (50% affordable housing) on 32 Ha of land ...*

51. He expressed his view on the potential of the current site for the golf course for development:

> *"65. Following the main hearings, I made plain that notwithstanding the value placed on the North Oxford Golf Club, the site it occupies is an excellent one for the sort of housing the Plan proposes, given its location so close to Oxford."*

52. He expressed his view on the proposed replacement site at Frieze Farm:

> *"66. Moreover, Policy PR6c - Land at Frieze Farm allocates land for a replacement golf course and from what I saw of the existing course, it could, if necessary, provide equivalent or better provision in terms of quantity and quality, on a site very close to the existing facility."*

53. He considered the need to ensure the test in the NPPF at 74 was satisfied prior to allocation of the golf course land for development:

> *"Policy PR6b*
>
> *102. Policy PR6b allocates the site currently occupied by the North Oxford Golf Club, on the opposite side of the Oxford Road from the Policy PR6a site. There are some specific points to deal with here too.*
>
> *104. Criterion 17 requires any planning application that flows from the allocation to be supported by sufficient information to demonstrate that the tests contained in paragraph 74 of the Framework are met, so as to enable the redevelopment of the golf course.*
>
> *105. I expressed my concerns about this criterion during the hearings and afterwards because it is difficult to see how the allocation could be justified if there remain questions about compliance with paragraph 74. I do understand that the existing golf course is well-appreciated by its users but those that propose its replacement with housing have shown that it is underused, and that there are lots of other facilities where golf can be played nearby. Even if they are wrong on those points, the Plan includes in Policy PR6c that I deal with below, provision for a replacement golf course and, given the requirements of that policy (as proposed to be modified) I see no good reason why it need be inferior in quality or quantity to the existing course."*

54. He considered the application of land at Frieze Farm for the potential construction of a golf course:

> *"Policy PR6c*
>
> *107. While it is not an allocation that includes housing, it is as well to deal with Policy PR6c at this juncture. In the form submitted, the policy allocates land at Frieze Farm for the potential construction of a golf course, should this be required as a result of the development of the site of the Policy PR6b allocation. It goes on to explain that the application for development of the golf course will need to be supported by a Development Brief prepared jointly, in advance, by representatives of the landowner(s) and the Council, in consultation with Oxfordshire County Council. It is then explained that the intention is that the Development Brief will incorporate design principles that respond to the landscape and Green Belt setting (the site is intended to remain part of the Green Belt) and the historic context of Oxford.*

108. As I have explained above, I consider that the extent of the site is such that it could provide a facility that would be similar, or superior, in quality and quantity to the existing course so there is no difficulty in principle here. Nevertheless, the examination showed the policy as drafted to be rather lacking in coverage and detail. There are constraints that will influence any provision of a golf course and associated facilities on the site that need to be addressed. These need to be identified as requirements for the Development Brief referred to above and, as a result, the policy requires significant expansion."

Adoption of the Cherwell Plan (September 2020)

55. On 07 September 2020, the Cherwell Plan was adopted. The explanation of context and relevant policies are set out below:

The Cherwell Local Plan Partial Review – Oxford's unmet housing need

"Why has this Plan been prepared?

1.10 There are three reasons why this Partial Review of the Local Plan has been prepared:

1. Oxford needs additional homes

2. there is a need to meet national policy and legal requirements 3. Cherwell was required to make a commitment to undertaking the review.

….

Policy PR1 Achieving Sustainable Development for Oxford's Needs

Cherwell District Council will work with Oxford City Council, Oxfordshire County Council and the developers of allocated sites to deliver

a) *4,400 homes to help meet Oxford's unmet housing needs*

…

"Policy PR6a – Land East of Oxford Road

An urban extension to Oxford city will be developed on 48 hectares of land to the east of Oxford Road as shown on inset Policies May PR6a. Development proposals will be permitted if they meet the following requirements:

Key Delivery Requirements

1. Construction of 690 dwellings (net) on approximately 25 hectares of land (the residential area as shown).

2. The provision of 50% of the homes as affordable housing as defined by the National Planning Policy Framework.

…"

"Policy PR6b – Land West of Oxford Road

An urban extension to Oxford City will be developed on 32 hectares of land to the west of Oxford Road as shown on inset Policies Map PR6b. Development proposals will be permitted if they meet the following requirements:

Key Delivery Requirements

1. Construction of 670 dwellings (net) on 32 hectares of land (the residential area as shown).

2. The provision of 50% of the homes as affordable housing as defined by the National Planning Policy Framework.

...

21. A programme for the submission of proposals and the development of land at Frieze Farm as a replacement golf course (under policy PR6c) before development of land west of Oxford Road commences, or the submission of evidence to demonstrate that a replacement course is not required.

..."

"Policy PR6c – Land at Frieze Farm

Land at Frieze Farm (30 hectares) will be reserved for the potential construction of a golf course should this be required as a result of the development of land to the West of Oxford Road under Policy PR6b.

..."

Discussion

Ground 1 Failure of the Cherwell Inspector to take account of reduced housing need as a material consideration

Submissions of the parties

56. The Claimant emphasises that it does not seek to challenge the Cherwell Inspector's planning judgment as to whether unmet need is capable of amounting to an exceptional circumstances nor is the decision on housing need in relation to the Oxford Plan challenged. The Claimant points to the Cherwell Inspector's analysis that his 'chief' reason for finding that exceptional circumstance justify the release of Green Belt land in Cherwell to meet Oxford's unmet need is "*the obvious and pressing need to provide open market and affordable homes for Oxford; a need that Oxford cannot meet itself*" [§46]. However, the Inspector failed to take into account the nature and acuteness of the underlying housing need, within the final figure of 1400 dpa. In particular; demographic need (i.e. the provision required to support population growth) had fallen from 755 dwellings per annum in the 2014 SHMA to 543 dpa in the 2018 SHMA, a reduction of 28%. The need for affordable housing had fallen from 1,029 dpa in the 2014 SHMA to 678 dpa in the 2018 SHMA, a reduction of 34%. These matters are not dealt with at all in the Cherwell Inspector's report. Whilst policy considerations were taken into account in arriving at the housing target in the Oxford Local Plan, the policy picture is entirely incomplete in relation to Cherwell. What has clearly gone wrong is that the relationship between the need figure and the constraints in Cherwell (Green Belt) was an issue that was (lawfully) left out of consideration by the Oxford Inspectors and then (unlawfully) overlooked in the examination of the Cherwell Plan by the Cherwell Inspector. This was a clear lacuna in the decision making and an important issue on which judgement was required to be exercised but which fell, fatally, between two stools. When housing need is a matter relied on as constituting exceptional circumstances to justify Green Belt release, a significant change occurring to the level of assessed need occurring during the plan process will constitute a material consideration that should be taken into account by the decision maker. That judgment simply was not taken by either planning Inspector or if it was, no reasons were given to explain what was considered preferable and why.

57. The Claimant relies on the analysis of Jay J in Calverton Parish Council v. Nottingham City Council [2015] EWHC 1078 (Admin):

"51. In a case such as the present, it seems to me that, having undertaken the first-stage of the Hunston approach (sc. assessing objectively assessed need), the planning judgments

> *involved in the ascertainment of exceptional circumstances in the context of both national policy and the positive obligation located in section 39(2) should, at least ideally, identify and then grapple with the following matters: (i) the acuteness/intensity of the objectively assessed need (matters of degree may be important) ...(§51)* (underlining is Claimant's emphasis)

and on the analysis of 'exceptional circumstances' by Sir Duncan Ouseley in *Compton PC v. Guildford BC* ([2020] JPL 661):

> "*General planning needs, such as ordinary housing, are not precluded from its scope; indeed, meeting such needs is often part of the judgment that "exceptional circumstances" exist; the phrase is not limited to some unusual form of housing, nor to a particular intensity of need. I accept that it is clearly implicit in the stage 2 process that restraint may mean that the OAN is not met. But that is not the same as saying that the unmet need is irrelevant to the existence of "exceptional circumstances", or that it cannot weigh heavily or decisively; it is simply not necessarily sufficient of itself. These factors do not exist in a vacuum or by themselves: there will almost inevitably be an analysis of the nature and degree of the need, allied to consideration of why the need cannot be met in locations which are sequentially preferable for such developments ....*" (para 72).
>
> (underlining is Claimant's emphasis).

58. In addition, reliance is placed on the decision in Aireborough Neighbourhood Development Forum v. Leeds City Council [2020] EWHC 1461 (Admin), where Lieven J considered it would be irrational to say that a fall of 25% in the level of housing required would not be a fundamental change requiring consideration:

> "*I have significant sympathy with the Council trying to deal with such large amounts both of housing requirements but also so many sites across a very diverse area. However, on any analysis a drop in requirement of 25% is a very significant amount. More importantly, it translated into a very large reduction in the absolute number of units required and therefore, on any approach, a very significant impact on the GB release that would be required. In circumstances where national policy requires exceptional circumstances to be shown to justify any GB release it would, in my view be irrational to say that a fall of 25% requirement with these potential GB consequences would not be a fundamental change.*" (§ 127)

59. The Defendants and Interested Parties submit that the figures relied on by the Claimant in relation to a reduction in housing need were not material considerations that the Inspector was bound to consider. 'Objectively assessed need' is referred to expressly in the NPPF at paragraphs 14 and 47 and has a policy significance, in contrast with the inputs into the OAN, such as affordable housing. Whilst the former may be considered a mandatory consideration, the latter cannot be. Nor were the figures so obviously material, given they were calculations along the way to arriving at the OAN. In any event, even if there was a free-standing legal obligation on the Inspector to consider the reduction in need for affordable housing then that was discharged. The Cherwell Inspector had express regard to the 2018 SHMA update, as is apparent from the reference to it and the critical review commissioned by the Claimant in his report. Further, his conclusions on housing need, which were fundamentally a matter of planning judgment, were open to him on the evidence. He was entitled to place significant weight on the conclusions of the Oxford Plan Inspectors, who had very recently examined this precise subject and concluded that the 1,400dpa was the OAN and "not a policy-based uplift", and that the figure remained "sound" and "fully justified" given the existence of "a crisis of affordable housing need in the city" (§38 of the Oxford Inspectors report).

Discussion

60. In this case the housing need under scrutiny is that of Oxford City Council, not that of the First Defendant. There are analogies between the present case and the case of CPRE Surrey v Waverley [2019] EWCA Civ 1826 which raised the question of whether a local planning authority (Waverley) had made any legal error in its consideration of unmet housing need in a neighbouring authority's area

(Woking) when preparing its local plan. This was in circumstances where the Waverley Inspector was, in the words of the Court, in the 'difficult position' of having to ensure that the Waverley plan sought to meet the unmet need in Woking, even though Woking was not yet in a position to provide the evidence necessary to determine its housing need figure. The Waverley Inspector's analysis was upheld at first instance and by the Court of Appeal on the basis that determining the unmet need in Woking in Waverley's local plan process was not an "exact science" and entailed an exercise of planning judgement, which the Inspector had exercised lawfully.

61. Several points of relevance to the present case emerge from the Court of Appeal's judgment.

62. Firstly; it is not wrong in principle, let alone unlawful, for a local planning authority to incorporate in the housing requirements set out in its local plan a proportion of the unmet housing need in another authority's area [§47].

63. Secondly; in these sorts of 'cross border' housing need cases the assessment of unmet housing need in a neighbouring authority's area is no more an exact science, and may often be less so, than the assessment of housing needs in an authority's own area [47]. It may be less so because the evidence to inform it may be more limited. It is in any event a classic process of evaluation undertaken not by the Court but by a planning decision maker, inherently imprecise and for which there is no prescribed, uniform approach [48]. The scope here for a rational and lawful planning judgment is broad. In this context, the Court of Appeal rejected the submission that when one local planning authority's housing requirement figure is increased to accommodate the unmet housing need in another authority's area, the inspector conducting the examination must assess the OAN in both areas and that he was "bound in law" to acquaint himself with all the material before him (up to date projections and evidence in annual monitoring reports):

> *"The fatal weakness in such arguments is that they draw the court beyond the line dividing the role of the judge from the role of the planning decision-maker – territory where the court will not intrude [46].*

64. Thirdly; the Court will consider the extent to which a Claimant has participated in the debate on housing need during the examination:

> "*50. In this case, both appellants took an active part in the debate on housing need – which included the question of unmet need in Woking – in the course of the examination process, before the hearing, at it, and afterwards in the main modifications stage. It is not suggested that they were unable to put their evidence and arguments before the inspector, as did other participants whose evidence and arguments were different. They cannot complain that the inspector overlooked what they had to say, or that the evidence before him was insufficient for the assessment he had to make."*

65. Fourthly; the principle of consistency in planning decision-making, recognized in North Wiltshire District Council v Secretary of State for the Environment (1993) 65 P. & C.R. 137, may be in play. In this context, the Court of Appeal rejected a submission that the Inspector had adopted an inconsistent approach in his assessment of the evidence base for the two neighbouring authorities [54].

66. It is common ground that the question of Oxford's unmet need was a live issue when the Cherwell Plan was submitted for examination in March 2018. By this juncture the 2014 Oxfordshire SHMA had established a substantial upwards adjustment to assessed housing need, relative to the projections based on past population change, because of the specific circumstances in Oxford relating to affordability pressure and the need for affordable housing. In September 2016, the Oxfordshire Growth Board had agreed the apportionment of Oxford's unmet need, based on the 2014 SHMA and allocated 4400 houses to Cherwell from an overall total of 14850. This had been foreshadowed in the Cherwell Local Plan (Part 1) in 2015 which committed to working with other local authorities in the wider Oxfordshire area to consider the extent of Oxford's need and how it might be apportioned amongst the neighbouring authorities and to a partial review of the plan within two years to cater for "Oxford's Unmet Need".

67. The Cherwell Plan was submitted for examination before the Oxford Plan. All parties in the Cherwell examination process, including the Claimant, were fully aware of the Oxford plan process and the significance of that process to the Cherwell plan. At a preliminary hearing in September 2018 the Claimant had emphasised the difficulties in assessing Oxford's need before it had been examined in the Oxford plan process. Shortly after the preliminary hearing, Oxford City Council published an update to the 2014 assessment of housing need, in so far as related to the Oxford City area, in order to understand its housing need until 2036. It reached the view that the 2014 SHMA conclusion for OAN of 1400 dpa remained appropriate. The Claimant disagreed with the view reached and commissioned a report by Opinion Research Services to assess the updated assessment. At the main hearing in the examination of the Cherwell plan in February 2019, the Claimant repeated its concern about the Cherwell examination proceeding in advance of the Oxford plan and pointed to the reduction in need evidenced in the 2018 SHMA.

68. In March 2019, the Oxford Local Plan was submitted. At this point it was behind the Cherwell Plan examination process. In December 2019, the Oxford Plan main hearings took place. The Claimant participated in the debate on housing need and presented its evidence.

69. Having started behind the Cherwell plan, the Oxford process speeded up and overtook the Cherwell plan. The Oxford Inspectors published their final report in May 2020. They concluded that "*The plan's assessment of the overall housing need for Oxford established at 1400 dpa is sound"* (§38). Their basis for doing so was that, in practice, even at 1,400 dpa, affordable housing delivery would be likely to fall below overall affordable housing need due to expected difficulties in delivery (§20). They arrived at their conclusions having taken account of the updated figures in the 2018 SHMA *("The need figure is evidence based and is founded on sound methodologies including the up to date needs assessment as set out in the 2018 OAN Update")* (§38). The outcome was no material change of circumstances in relation to the 2014 Oxford OAN or the allocation of unmet proportion of housing.

70. It is apparent that their conclusions were informed by representations from the Claimant. In relation to the housing need figure, the Inspectors stated that "*It is important to emphasise that it has not been derived from Growth Deal assumptions, it is not a policy-based uplift and it is not rooted in a circular argument"* (§38). The Claimant's hearing statement on 'Matter 1: The housing requirement' referred to '*the Council's justification for retaining the 1400 dpa is an 'invalid circular argument'* and a *'policy on'* figure.

71. The language used by the Inspectors to describe the nature and extent of Oxford's housing need is noteworthy:

> *"The factors described above, and the limited supply of new homes, have led to what can reasonably be described as a crisis of affordable housing need in the city. HOU.5 states that the situation in Oxford is one where there is a clear, acute affordable housing need beyond that in any of the comparators it examines." [§24]*
>
> *"The situation in Oxford, with its stark inequalities and a very large and growing number of households unable to access market housing, clearly justifies the plan's approach…"*
>
> *"It is fully justified by the serious housing affordability issues in Oxford and the very clear inequalities of access to housing within the city. There are no convincing environmental or delivery grounds that indicate that a lower figure for housing need should be set".* [§38]
> (Underlining is the Court's emphasis).

72. It was not disputed by the Claimant that the Oxford Inspectors had grappled with the acuteness of housing need. Nor does the Claimant challenge their conclusions.

73. The Cherwell Inspector reported on his examination of the Cherwell Plan in August 2020, three months after the Oxford Inspectors had reported on the soundness of the Oxford Plan and two months after the Oxford Plan had been adopted. There is, in this chronology, a material distinction between the plan making in this case and that in the cases of CPRE v Waverley and Aireborough Neighbourhood Development Forum v Leeds City Council, the latter of which is relied on by the Claimant. In both those cases, for different reasons, there was no clear, established, recent assessment of housing need.

In both cases the relevant Inspector was said by the Court to be in a 'difficult position' in making an assessment of housing need on the basis of imperfect material. The Cherwell Inspector was in a much easier position. He had before him a very recent assessment of housing need by the Oxford Inspectors arrived at following the Claimant's participation in the Oxford examination.

74. The Cherwell Inspector explicitly addresses the criticisms of housing need advanced before him, which makes for an unpromising start to the Claimant's submission that he failed to take account of the figures relied on by the Claimant:

> *"at the hearings I conducted, informed in part by a critical review of the SHMA 2014 and the Oxford City SHMA Update 2018 carried out by Opinion Research Services, there was much criticism of the way Oxford City Council had calculated their overall housing need, and their unmet need" (29).*

75. Nevertheless, the Inspector agreed with the reasoning of the Oxford Inspectors in relation to the Oxford housing need. He expressed the view that:

> *"It is not for me to examine Oxford's calculations, but I am able to observe that the Inspectors who examined the Oxford Local Plan 2036, that was adopted on 8 June 2020, accepted Oxford's overall housing figures, the extent of unmet need, and the balance between housing and employment sites the city had struck. In that overall context, I find no fault in the way the 0GB have approached the difficult problem of identifying Oxford's unmet housing needs and apportioning them between the different authorities involved…*" (§29)

76. The Claimant submitted that the Inspector's focus in the above paragraph is on a separate issue relating to employment sites. However, read fairly, the Inspector is referring to three issues: "*Oxford's overall housing figures"; "the extent of unmet need"* and *"the balance between housing and employment sites that the city had struck."*

77. The Cherwell Inspector's conclusion was that "*the figure for Oxford 's unmet need, and the apportionment for Cherwell, have been justified and form a robust basis for the Plan." (32)*

78. According to established legal principle, it was a matter for the Cherwell Inspector's planning judgment whether he should adopt the Oxford Inspectors' conclusion that the housing need remained at 1,400 dpa (Oadby and Wigston; Jelson; and CPRE v Waverley). His conclusion is not surprising. The conclusions of the Oxford Inspectors about Oxford's unmet need and the adoption of the Oxford Plan were clearly of central importance and very recent. The Claimant had participated in the Oxford examination and had submitted a critical report on the 2018 SHMA. Consistency of decision making was relevant, as the Cherwell Inspector recognised in his references to housing need conclusions of the recent examinations in the neighbouring districts of West Oxfordshire and the Vale of White Horse (§28). The Oxford plan itself acknowledges the importance of the principle ("*all Oxfordshire Councils in this current round of local plans are working to deliver the housing need identified in the 2014 SHMA and it is important that Oxford's Plan is consistent with the plans prepared and adopted by other Councils" §3.6)*.

79. The Cherwell Inspector's planning judgment cannot therefore be criticised. Moreover, it is apparent from his references at §29 that he considered the 2018 SHMA and the Claimant's critical report, in exercising his planning judgment.

80. The Cherwell Inspector's assessment of Oxford's OAN then fed into his assessment of the existence of exceptional circumstances to justify alteration of the Green Belt boundaries. He considers this as Issue 3 ("*are there exceptional circumstances necessary to justify the alterations to Green Belt boundaries proposed in the Plan in place so that the Plan is consistent with national policy*?") (§44 - 49). This exercise is the focus of the Claimant's challenge.

81. It was common ground that unmet housing need is capable of amounting to an exceptional circumstance justifying the alteration of Green Belt boundaries. Whether it does so is a matter of judgment for the decision-maker. The exercise of judgment "will be sensitive to a range of case-

specific considerations and the varying weight given to each, including the circumstances of a particular area, the policy context, the evidence base and the arguments advanced in the consultation and examination stages" (Keep Bourne End Green v Buckinghamshire Council [2021] JPL181 (Admin)) at [153]. More generally, the scope of planning judgment in the assessment of housing need is broad (Oadby & Wigston BC v Secretary of State for Communities and Local Government [2016] EWCA Civ 1040; Jelson Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 24; CPRE Surrey v Waverley [2019] EWCA Civ 1826).

82. The Cherwell Inspector sets out the relevant policy test (§44) and there is no challenge to his having identified the correct test. He then performs the task of balancing Oxford's need with the impact of development on the Green belt and coming to a conclusion. He identifies a number of factors in play '*that combined, lead me to the firm conclusion that the exceptional circumstances necessary to justify the alterations proposed to Green Belt boundaries have been demonstrated'* (§45). The factors considered include the superior nature of the vision and spatial strategy; the impact on the Cherwell Green belt in the scale of the proposal (a reduction of 3% in Green Belt which he describes as '*a relatively small reduction'*) (§47 and §48). These were matters of planning judgment which have not been challenged.

83. "Chief" amongst his reasons for finding exceptional circumstances exist is *"the obvious and pressing need to provide open-market and affordable homes for Oxford; a need that Oxford cannot meet itself"* (§46). The Claimant points to this 'chief' reason and submits that the Inspector failed to take into account the nature and acuteness of the underlying housing need within the final figure of 1400 dpa. In particular he failed to take account of the 28% reduction in demographic need and the 34% reduction in affordable housing need.

84. However, the Inspector does not simply refer to the report of the Oxford Inspectors and put it to one side. In this context it is necessary to consider the Claimant's reliance on the analysis of Jay J in in *Calverton Parish Council v. Nottingham City Council* ([2015] EWHC 1078 (Admin)) that an Inspector should ideally identify and grapple with the acuteness/intensity of the OAN in an assessment of exceptional circumstances. In Keep Bourne End Green, Holgate J considered that Jay J's analysis must be read in context. It was, as Jay J recognised, "an ideal approach" and a "counsel of perfection". Jay J did not lay down any standard or rule requiring that approach to be followed in order for a review of green belt boundaries to be lawful. He stated that a more discursive, or open-textured approach by a Planning Inspector would suffice. It is, reasoned Holgate J, necessary to understand Calverton in this way so that that decision accords with the principles laid down by the Supreme Court in R(Samuel Smith Old Brewery (Tadcaster) v North Yorkshire County Council [2020] UKSC 3. This case concerned the interpretation of NPPF policy in the context of mineral extraction in the Green Belt, and in particular, paragraph 90 NPPF that 'certain other development is not inappropriate in the Green Belt provided they preserve the openness of the Green Belt'. In the course of his judgment, Lord Carnwath approved the following analysis by Sales LJ in his judgment in the Court of Appeal that:

> *"25. The concept of 'openness of the Green Belt' is not narrowly limited to the volumetric approach suggested by [counsel]. The word 'openness' is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents."*

85. In stating that "chief" amongst his reasons for considering exceptional circumstances exist the Inspector cited *"the obvious and pressing need to provide open-market and affordable homes for Oxford; a need that Oxford cannot meet itself"* (§46). He is here acknowledging the acuteness and intensity of need, as per the stipulation of Jay J in Calverton. He also does so when he refers to the *"pressing need of a neighbouring authority"* when considering the vision and spatial strategy of the Plan (§39). He is 'grappling' with the intensity and acuteness of Oxford's need as part of the more discursive or open-textured approach analysis permitted by Jay J in Calverton. In this respect it is necessary to understand the figures relied on by the Claimant in context. Whilst it is correct to say that the 2018 housing need figures showed a reduction in need, the conclusion of the Oxford Inspectors was that the housing crisis in Oxford remained (§24 & §38 Oxford report). The significance of the

2018 figures is not that the housing crisis is over but that the prospects of an effective response have improved. The provision of 1400 dpa might deliver all of the relevant housing need whereas in 2014 it would only have delivered a proportion of the need.

86. The Claimant points to the 34% drop in need for affordable housing and relies on the case of Aireborough Neighbourhood Development Forum v Leeds City Council. The Aireborough scenario is not however apt for comparison. In that case the Council had adopted a figure for its housing requirement in the Core Strategy which had to be revised downwards to accord with national guidance. The Council found itself in the unfortunate situation of taking forward a Site Allocations Plan, reflecting the housing need figure in the adopted Core Strategy at virtually the same time as a review plan to revise the housing need figure in the Core Strategy. Unsurprisingly, that led to considerable difficulty in the production of the Site Allocations Plan and decisions around Green Belt release within that plan. The Court in Aireborough observed that these difficulties lay at the heart of the Aireborough challenge. In this case there is no legal basis for impugning Oxford's OAN, not least because the Claimant does not challenge it. Moreover, in this case the updated housing figures have not changed the basic position. Despite the reduction in need, there is a still a *"clear and pressing"* unmet need in Oxford.

87. Accordingly, I am of the view that the Cherwell Inspector took account of the update on housing numbers identified in the 2018 SHMA but agreed with the Oxford Inspectors that they did not matter because the housing crisis remained. He concluded that this need, amongst other reasons, amounted to exceptional circumstances to justify the alteration of Green Belt boundaries. The Inspector's judgment in this respect was unimpeachable. He took account of the intensity of Oxford's need, as per the stipulation of Jay J in Calverton to inform his assessment. He was entitled to conclude as he did on the scale of the problem. On the facts, there was no justification for him to revisit Oxford's needs and it would be inconsistent for him to have done so. The Claimant had made its arguments before the Oxford Inspectors and the Cherwell Inspector. It is at an inquiry or examination hearing that the parties have the opportunity to argue their case on housing need, not before the court (Oadby & Wigston BC v Secretary of State for Communities and Local Government [2016] EWCA Civ 1040; Jelsen Ltd v Secretary of State for Communities and Local Government [2018] EWCA Civ 24; CPRE Surrey v Waverley [2019] EWCA Civ 1826). Nor am I persuaded that his reasoning was inadequate. It is apparent from his reasons that he took account of the updated 2018 figures; the analysis of the Oxford Inspectors and come to a judgment that the assessment of Oxford's OAN is robust and that the need is *"real and pressing"*. In the circumstances of this particular plan making, he did not need to repeat in detail the analysis of the Oxford Inspectors given: the analysis was recent (3 months previously); he agreed with it; nothing had changed in the interim and the main participants in the Cherwell examination were fully aware of the Oxford process. He went further in his reasons than required by Cooper Estates in making specific reference to the Claimant's case and his response to it at (§28/29).

88. The Defendants and Interested Parties submit that the figures relied on by the Claimant as demonstrating a reduction in housing need were not material considerations that the Inspector was bound to consider such that it would have been unlawful for him to have failed to take them into account. Nor were the figures so obviously material given it was a calculation along the way to arriving at the OAN.

89. Where it is alleged, as here by the Claimant, that a decision-maker has failed to take into account a material consideration, it must be shown that the decision-maker was compelled by legislation (expressly or implicitly), or by a policy which had to be applied, to take the particular consideration into account, or, on the facts, the matter was so "obviously material", that it was irrational not to have taken it into account. R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council [2020] PTSR 221 and (R(ClientEarth v Secretary of State for Business Energy and Industrial Strategy [2020] EWHC 1303 (Admin) at [99]). Thus, in Samuel Smith, the Supreme Court dismissed an argument that a local planning authority had acted unlawfully in failing to consider the visual impact of the development in their consideration of the effect of the development on the openness of the Green Belt:

> *"The issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of*

including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgment not law" [39] (Lord Carnwath).

90. Given that for the reason explained above, I have arrived at the view that the Inspector did consider the figures relied on by the Claimant, it is not necessary for me to determine these points. Even if there was a free-standing legal obligation on the Inspector to consider the figures, the obligation was discharged. Nonetheless, in light of the fact that the argument was advanced before me, I express the view that I see force in the submission that there may be said to be a policy distinction between OAN, referred to expressly in the NPPF (paragraphs 14 & 47) and the data that feeds into the OAN. In CPRE Surrey v Waverley Lindblom LJ referred to *"the decision-maker is clearly expected to establish, at least to a reasonable level of accuracy and reliability, a level of housing need that represents the "full, objectively assessed needs".* This is not however an *"exact science"* and '*the choice of relevant data and projections and the use made of such evidence are matters for the inspector…and the local planning authority*' (49). Nor am I convinced that the figures relied on by the Claimant were so obviously material in the specific context of the present case that it would be irrational for the Inspector not to have considered them. The change in housing needs between 2014-2018 had been considered by the Oxford Inspectors three months previously and had fed into an updated assessment of Oxford's OAN, as of mid-2020, as to which there has been no challenge. The outcome was that nothing had changed in terms of the acuteness of housing need – the housing crisis remained. In other words, the need analysis relied on by the Claimant to advance its case in these proceedings has been superseded by the up to date assessment of need set out in the Oxford Inspectors' Report of May 2020 and in the June 2020 Oxford Plan. As is apparent from the chronology of decision making the Claimant's emphasis on the change in figures between 2014-2018 was a live issue at the start of the Cherwell plan examination but the issue been laid to rest by the Oxford plan process by the time the Cherwell Inspector reported.

91. Ground 1 fails.

Ground 2: The allocation of Frieze Farm for the potential construction of a golf course

Submissions of the parties

92. The Claimant submits that the Inspector's decision to recommend the allocation of land under Policy PR6b was critically dependent on his conclusion as to the adequacy of Frieze Farm as a replacement site for the North Oxford Golf Course. His conclusions in this respect were irrational, fundamentally flawed and unreasoned. In particular, there is no evidence to support his conclusion that the Frieze Farm site would be able to accommodate a replacement facility for the golf course whether in terms of quantity or quality and certainly not in terms of both. There was compelling, and highly material, evidence before the Inspector as to the unsuitability of Frieze Farm. This comprised representations from GreenWayOxon supported by a report from Hawtree Limited and the representations from the North Oxford Golf Club supported by evidence from Lobb and Partners. The evidence demonstrated that the Frieze Farm site has significant constraints including size and usable area. There was absolutely no evidence before the Inspector seeking to rebut or challenge any of these points.

93. The Defendants and Interested Parties submit that the Claimant's challenge under this ground is a merits challenge to the Inspector's broad evaluative judgment as to whether the site for a replacement golf facility was at least equivalent in terms of quantity and quality to the existing golf course. His exercise of judgment discloses no legal error. The Claimant seeks impermissibly to re-run its planning arguments as to the alleged unsuitability of site PR6c, which the Inspector rejected. Its argument also fails to recognise that the policy does not require like for like replacement.

Discussion

94. Paragraph 74 of the NPPF (second bullet point) requires that regard must be had to the quantity and quality of the replacement golf provision to establish whether the loss will be replaced by equivalent or

better provision. One may be set off against the other and a balance struck:

> *"Para 74 requires that, where open space land is to be built upon, the loss will be replaced by "equivalent or better provision". Whether or not the provision is equivalent or better must be judged in terms of both quantity and quality. The word "and" simply makes clear that both quality and quantity are relevant parameters in judging whether provision is "equivalent or better". So the overall requirement is that the open space land lost must be made up for, and whether or not that requirement is met is a matter of planning judgment, having regard to both the quantity of what is to be provided and the quality, but allowing (in an appropriate case) for one to be set off against the other."* R (Brommell) v Reading BC [2018] EWHC 3519 per Lang J.

95. In exercising his planning judgment, the Inspector is an expert tribunal and entitled to make value judgments within the scope of his qualifications/expertise, without needing the assistance of expert reports:

> *"The inspector at a planning inquiry is a technical tribunal himself and he is entitled, it seems to me, to make decisions – make value judgments or subjective judgments – about planning matters that fall within his qualification and expertise which in most cases is very great. He does not have to have planning experts on both sides to tell him what the planning issues are or anything of that kind. He is perfectly able to make up his own mind for himself. There must be many many cases in which the decision turns on what is the view – the value judgment in planning terms – of an experienced inspector on any planning proposal. I cannot see that that is a matter with which this court can or should interfere. This court is not composed of planning experts and it seems to me that in the jurisdiction of this court one is not dealing at all with the question of whether on technical matters of this kind there was sufficient evidence or insufficient evidence of an inspector to come to some planning judgment on a matter before him"* [261].
>
> *"One asks oneself why on earth an expert planning inspector should not have come to that conclusion perfectly properly even if he had every single noise expert in the country ranged on the appellant's side"* [263] Westminster Renslade Ltd v Secretary of State (1984) 48 P&CR [255].

96. The importance of an Inspector's site visit to the exercise of his judgment is well established:

> "*the Inspector's conclusions will invariably be based not merely upon the evidence heard at an inquiry or an informal hearing, or contained in written representations but, and this will often be of crucial importance, upon the impressions received on the site inspection. Against this background an applicant alleging an inspector has reached a Wednesbury unreasonable conclusion on matters of planning judgment faces a particularly daunting task*". Sullivan J in Newsmith Stainless v SSETR [2017] PTSR 1126 at [7].

97. The Inspector was tasked with making a broad evaluative judgment as to the overall equivalence of the existing and replacement facilities. It is clear from his report that his judgment was informed by what he saw on his site visit (*"land at Frieze Farm allocates land for a replacement golf course and from what I saw of the existing course, it could, if necessary provide equivalent or better provision in terms of quantity and quality on a site very close to the existing facility"*) (§66).

98. Accordingly, the Inspector reached a judgment that the Frieze Farm site could provide equivalent or better provision. He went on to state that "*I see no good reason why it need be inferior in quality or quantity to the existing course" (§105)* and concluded that the "*requirements of paragraph 74 have been passed already"(§106)* and repeated his assessment at §108. *"I consider that the extent of the site is such that it could provide a facility that would be similar, or superior, in quality and quantity to the existing course."*

99. There was adequate evidence on which the Inspector could reasonably reach the conclusion he did, including evidence as to the limitations of the existing 18 hole provision; the potential for an

"interesting" 9-hole course with additional facilities and the context of a policy focus on diversity of provision.

100. Evidence was provided by the First Defendant. This included a written Hearing Statement for an examination session, considering the allocation policies (PR6a, b and c), which explained that:

> *"42. ... Site PR6c is approximately of a similar size to the existing golf course (30ha compared to 32ha) and could accommodate an alternative course / facility if required."*

101. For the same hearing session, the First Defendant submitted an extract of a report produced for it by the consultants Nortoft entitled 'Open Space, Sport and Recreation Assessment and Strategies – Part 2: Sports Facilities Strategy'. The report dealt with supply and demand for golf provision in the district. It noted the importance of diversity in provision, including shorter course formats to attract new participation. The report stated (emphasis added):

> "*11.9 ... England Golf latent demand analysis suggests that there may be the potential for more demand, but in Cherwell the current 18-hole dominant format may be hindering this potential.*
>
> *...*
>
> *11.19. The national governing body commented that the number of affiliated clubs and driving ranges in Cherwell which have pay and play access in addition to membership, means that there is good open access to golf, though there are no Par 3 courses or other shorter formats which are more suitable for the beginner and for younger people.*
>
> *...*
>
> *11.29. Typically, shorter than 18-hole format will be more attractive to younger players. This would suggest a need for more Par 3 and other short format courses, especially as there is only one 9-hole course in the district (and it is not a Par 3)."*

102. Mr Paul Almond, the then Landscape and Street Scene Manager for the Council advising the planning department on outdoor sports provision, gave oral evidence to the Inspector. He was formerly employed as a manager of golf courses and had experience of developing and delivering new sports facilities and golf course design and management. In his opinion, the Frieze Farm site presented an opportunity to build a good nine hole course, together with a driving range and a par three pitch and putt course, and that this would be of interest for established golfers and provide an opportunity for beginners to learn and be introduced to the game.

103. The evidence submitted by the Interested Parties comprised a 'Golf Needs Assessment' produced by the consultants WYG dated January 2019 which appended a statement by Savills on golf provision dated November 2018, and a further 'Golf Needs Assessment' by Gaunt Golf Design dated November 2018. The Gaunt report examined the existing North Oxford Golf Course in detail and found that it suffered from drawbacks ("*by modern terms a site of 79 acres for 18 holes is very small ...if a 60 metres width safety buffer zone was imposed the safe playable area would reduce to 17.6 ha which is barely enough to accommodate 9 holes let alone 18..."*)

104. The report concluded:

> "*When compared to other golf courses in the surrounding catchment area NOGC is not obviously better than the majority of alternatives, and in some respects, notably site area, drainage, practice and clubhouse facilities, it could be regarded as poorer."*

105. The Savills statement identified further drawbacks:

> *NOGC is stated to occupy an unusually tight site extending to 79 acres compared to the average required for an 18-hole golf course of 125 acres. The report identifies a risk of ball escape, both beyond the site boundaries but also between the playing areas within the*

> *golf course. Safety standards on golf courses have increased over the last 20 years and therefore the associated risk to players at NOGC and to users of the adjoining land is accordingly perceived to be greater now than it would have been in the past. The layout and design of the golf course is stated to be rudimentary and the course is also prone to waterlogging or flooding during the winter in periods of high rainfall. The practice facilities are very limited, the only practice area being shared partly with the ninth fairway of the golf course. The tight site area limits the scope to improve or expand such practice facilities. Based upon the findings of the Golf Needs Assessment, the closure of NOGC would not result in the loss of a particularly notable golf facility. Whilst NOGC is a long-established golf club, its facilities are of only average standard and the golf course itself is not exceptional when compared to some of its competitors, such as Oxford Golf Club which was designed by Harry Colt, a renowned golf designer, and offers a far superior playing experience. In this context it should also be noted that England Golf's view is that the availability of a diverse range of golf facilities at a golf course is preferable and this is clearly not provided for by NOGC, which offers no scope to diversify its offering as a result of the lack of available land."* (Savills report November 2018).

106. The view of Sport England was before the Inspector. Sport England did not take issue with identification of Frieze Farm for a replacement facility. A statement of common ground between Sport England and the Council dated 31st January 2019 stated:

> "*3.12 Sport England welcomes the identification of a replacement golf course site on land at Frieze Farm (Policy PR6c), to replace the facility lost through development of North Oxford Golf Course, in accordance with the requirements of the NPPF (Representation PR-C-1403).*
>
> *3.13 The parties agree that a replacement golf course will need to be provided unless an assessment shows that there is not a need or the tests in the NPPF are met."*

107. Evidence was also submitted by objectors to the proposals, including the Claimant. Reports by Lobb and Partners dated 15th December 2019 and by Hawtree Ltd dated 9th July 2018 were submitted. The report compiled by Lobb and Partners (dated 15 December 2019) expressed the conclusion that, in light of the *"the small useable area of a site that would already be too small for an 18-hole golf course we have concluded that the proposed Frieze Farm site is totally unsuitable as a reprovision site for North Oxford Golf Club."*

108. The Hawtree report concluded that*:*

> *"we can say without reservation that this land would not be suitable as a replacement 18-hole golf course complying with paragraph 74 of the NPPF".*

109. However, both reports appear to envisage like for like replacement provision which will be superior in extent and facilities to the current site. Under a heading "*Ideal requirements for land swap at North Oxford Golf Club"* the Lobb report states:

> *"We would suggest that a site of 60+ hectares be considered for the relocation of the North Oxford Golf Club. With modern safety margins between golf holes and boundaries a larger site than is currently used would be ideal. The 60+ hectare site would see a comparable 18-hole golf course of similar length and challenge but also include a practice academy region for the continued growth of existing members but also to attract non-members and non-golfers to start to take up the game."*

110. The Hawtree report observes that: *"The prime reason for saying this is the limited size of the provisionally allocated site. A modern-day golf course when completed occupies a footprint surface area of at least 75ha, to include access, clubhouse building and parking, practice range, maintenance buildings, etc."* Nonetheless, the report appears to acknowledge the potential for a 9-hole course *("it might even be tricky to provide a satisfactory course of 9 holes")*.

111. The application of NPPF/74 is likely to involve a range of judgments in assessing whether the replacement is equivalent or better, including the scope for offsetting quantity and quality against each other. The policy test does not require like for like provision and the Claimant did not suggest that it did.

112. The Claimant suggests that the Inspector's statement that "*I see no good reason why [PR6c] need be inferior in quality or quantity to the existing course*" indicates that he had no regard to any offset as between quality and quantity. However, read fairly the Inspector is here simply and correctly referring to the test in national policy.

113. The Claimant's suggestion that the Inspector had "no evidence" on which to reach his conclusions is unsustainable in light of the evidence set out above, including that of Mr Almond, who had appropriate expertise. It would not have been unlawful for him to have reached the view he did, even if he had not had the evidence (Westminster Renslade Ltd v SSE (1984) 48 P&CR 255 at 261-262).

114. There is nothing in the Inspector's report to support the Claimant's allegation that he failed to take account of its evidence as to the alleged unsuitability of PR6c for replacement golf provision. Any such contention would only have traction if all the evidence pointed away from the conclusion that Frieze Farm satisfies the policy test, but that is not the case here. In any event, the Inspector's reference to 'constraints' on the site *("There are constraints that will influence any provision of a golf course and associated facilities on the site that need to be addressed." (§108))* reflects the language of the Lobb report. In my assessment the Inspector had regard to the constraints but did not regard them as insurmountable. Assessed by reference to the analysis in Cooper Estates, the Inspector's reasons were sufficient. His report was addressed to an informed audience and it is not necessary for the reasons to refer to every material consideration or item of evidence. It is clear from his reasoning that the Inspector was alive to the constraints of the Frieze Farm site but considered they were not insurmountable.

115. Ground 2 fails

Conclusion

116. For the reasons set out above, the application for statutory review is dismissed.
