Neutral Citation Number: [2013] EWHC 1877 (Admin)

Case No: CO/12157/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3rd July 2013

Before :

HIS HONOUR JUDGE RICHARD FOSTER
(SITTING AS A JUDGE OF THE HIGH COURT)

- - - - - - - - - - - - - - - - - - - -

Between :

The Queen (on the application of Chalfont St Peter Parish Council)	**Claimant**
- and -	
Chiltern District Council	**Defendant**

- -

- -

Ian Dove QC (instructed by **Richard Buxton, Cambridge**) for the **Claimant**
Morag Ellis QC (instructed by **Sharpe Pritchard**) for the **Defendant**

Hearing dates: 18th-19th April, 2013

- - - - - - - - - - - - - - - - - - - -

Judgment

His Honour Judge Richard Foster :

1. By a Claim Form dated 12th December 2011 the Claimant seeks an order quashing policy CS6 of the Defendant's Core Strategy insofar as it relates to the strategic housing allocation on the site of the Holy Cross Convent in Chalfont St Peter ("the site"). That Core Strategy had been adopted on 15th November 2011.

2. Section 113 of the Planning and Compulsory Purchase Act 2004 ("the Act") provides that a development plan document (which includes the Core Strategy) may only be questioned in proceedings under that section and that a *"person aggrieved"* may make application to the High Court on the ground that the document is not within the appropriate power and/or that a relevant procedural requirement has not been complied with. Section 113(7) provides:

   "(7) The High Court may quash the relevant document—

   (a) wholly or in part;

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

3. The Claimant relies upon two grounds, namely that (a) the Defendant failed to provide an adequate strategic environmental assessment or sustainability appraisal, and (b) the Inspector reached unlawful conclusions and failed to provide adequate reasons.

4. The Holy Cross Convent School which operated on the site closed on 31st July 2006, and thereafter the future use of the site became an important issue for its charitable owners (The Holy Cross Sisters Incorporated), as well as for the residents of Chalfont St Peter.

5. By the time of the school's closure the Defendant had already embarked upon the development of its core planning strategy. There was a requirement for additional housing by virtue of the South East Plan, with the Defendant being constrained by the nature of its area – 100% of its countryside being within the metropolitan Green Belt and over 70% being an Area of Outstanding Natural Beauty. The chronology relevant to these proceedings is as follows:

May 2006

Publication of "Core Strategy Preferred Options Paper", accompanied by the "Chiltern District Housing Potential Study 2005-2026". These documents were of course prepared prior to the closure of the school. Nevertheless the site was highlighted for potential development in the longer term.

January 2008

Strategic Housing Land Availability Appraisal ("SHLAA") published, listing the site as a "first priority site for consideration".

June 2008

"Core Strategy Options Paper" published, containing four scenarios for development within the Defendant's area and including a "Sustainability Appraisal" for each scenario. The Local Education Authority, Buckinghamshire County Council ("Buckinghamshire") responded that the proposed scale of development *"is unlikely to generate substantial education requirements",* despite some deficiencies in the infrastructure.

September – November 2008

The Defendant chose scenario 3 which involved "targeted expansion: Amersham, Chesham and Chalfont St Peter".

June 2009

"Draft Core Strategy for Chiltern District: document for stakeholder dialogue" published. This identified the need for 720 new dwellings in Chalfont St Peter, and allocated the site for 406 dwellings as part of that policy. There was a preliminary Sustainability Appraisal only at this stage.

2nd February 2010

Report by officers to Defendant's cabinet recommending approval "for consultation purposes" of draft Core Strategy.

March 2010

"Draft Core Strategy for Chiltern District: Consultation Document" published. The site was allocated for development, and there was an updated Sustainability Appraisal.

14th September 2010

Report by officers to Defendant's cabinet considering consultation responses.

October 2010

Publication of Core Strategy, including as policy CS6 the development of the site. This was accompanied by a "Final Sustainability Appraisal Report".

13th January 2011

Core Strategy submitted to Secretary of State.

6. Alongside the emergence of the Defendant's Core Strategy were the submissions and objections lodged by the Claimant, in particular detailing their preferred usage for the site. Additionally a dialogue continued with Buckinghamshire.

7. The first representation of the possibility of the site being retained for educational purposes appears to date back to 2006. A letter from the Headteacher of Chalfont St Peter Church of England Primary School dated 23rd July 2008 to the Cabinet Member for Education at Buckinghamshire includes this: *"Having been in touch with you two years ago regarding the possibility of Chalfont St Peter Church of England School moving to the Holy Cross School site, I am again writing for your support in this matter"*. The letter goes on to propose what has become known as the "land swap" proposal, namely the development of the existing primary school site for housing, with the primary school moving to the Holy Cross School site ("the land swap proposal"). A more detailed letter was sent on 31st March 2009. Buckinghamshire (by its Divisional Director) responded on 8th April 2009 explaining the planning process for educational provision in the county and stating this: *"Whilst I understand your keenness to pursue a move to the Holy Cross Convent site and acknowledge that there appears to be local support for this move to take place, the Local Authority is not currently in a position to give consent to this proposition"*. The primary school site was not a potential development site identified in the January 2008 Strategic Housing Land Availability Appraisal.

8. On 7th December 2009 the Claimant lodged objections with the Defendant to the June 2009 Draft Core Strategy document again putting forward the "land swap" proposal for the site and reminding the Defendant of the obligations concerning an Environmental Impact Assessment for the site.

9. There was further correspondence between the Headteacher of the primary school and Buckinghamshire in November 2009 when again Buckinghamshire made it clear that it was not in a position to consider the land swap proposal, and expressing doubts as to its viability. There was also at about this time correspondence between the Claimant and Defendant on the same subject culminating in a letter from the Defendant's Chief Executive to the Defendant on 7th December 2009 discussing Buckinghamshire's education provision planning and pointing out the need for developer contributions to fund extra school places. Importantly this letter confirms the ongoing dialogue between the Defendant and Buckinghamshire as part of the preparation of the Core Strategy and states: *"We understand from discussions with BCC officers that at this stage the County Council has no precise proposals for expanding schools in Chiltern"*. This accords with 2008 material before the court from Buckinghamshire concerning its work on future planning for education provision in the county, as well as the minutes of a meeting which took place on 21st September 2009 between relevant officers from the Defendant and Buckinghamshire.

10. In early 2010 there was a detailed consideration of the Draft Core Strategy by officers of Buckinghamshire from an education perspective, and by an email of 2nd February 2010 a senior education officer at Buckinghamshire informed the Defendant that the Core Strategy *"is acceptable to Buckinghamshire County Council's Children and Young People's Service"*, with certain provisos to include support for the policy of requiring developer contributions for additional education provision. The email went on to confirm that Buckinghamshire would *"shortly be developing its plans on education provision within the district – which will include our plans for addressing the need for additional school places as a result of housing growth"*. Buckinghamshire's formal response to the March 2010 consultation document confirmed its support for the draft Core Strategy. There is also an undated letter from the Cabinet Member for Education of Buckinghamshire responding to the land swap proposal in which she confirms the ongoing dialogue with the Defendant concerning education provision and in particular education contributions arising from the development of the site. More specifically in response to the land swap proposal she said this: *"Currently, however, the only way the County Council could seek to use the site for educational purposes would be to purchase the land and put in our own planning application. It is certain that the Charity would seek a residential sale price for the land which is likely to be prohibitive in light of the amount of land that would be required to house the school and its playing fields. Even if the Local Authority was able to release funds from the sale of the existing school site, and combine this with developer contributions secured in the area, it is possible this could still be insufficient to meet the cost of the residential sale price at the Holy Cross site. Further, if the school were to move to the Holy Cross site, the District Council would need to find additional sites to enable them to meet their housing allocation within the South East plan"*. This letter was also received by the Defendant.

11. Submissions were also made to the court at the hearing of this matter concerning the material emanating from Buckinghamshire dealing with population projections and the requirements for education provision. I do not regard an analysis of this as relevant to these proceedings – what matters are the decisions and policies of Buckinghamshire as known to the Defendant. It can be no part of these proceedings to look behind the processes and policies of Buckinghamshire.

12. On 22nd April 2010 the Claimant, through its planning agents, Cerda Planning, made detailed representations to the Defendant in response to the March 2010 "Draft Core Strategy for Chiltern District: Consultation Document". The response to policy CS15 (the previous nomenclature for what is now policy CS6) concentrates on the "deliverability" of the site to meet the Defendant's requirements for residential development. There were other specific representations from third parties proposing the land swap in connection with the site – in its January 2011 response to representations the Defendant stated that: *"the core strategy cannot require such land swaps to take place"*.

13. The possibility of any "land swap" type of arrangement was dealt with by the Defendant in its October 2010 final publication Core Strategy document (at paragraph 7.10) in these terms: *"From time to time the owners of a specific site (site A) may consider that their existing development would be better located on an alternative site (site B) currently with a different lawful use. If, at the same time, the owners of site B considered that site A was more suitable to accommodate their use, it may be appropriate for the respective land owners to consider whether a "land swap" could satisfactorily be achieved. Whilst it is rare for two landowners at the same time to seek to exchange their sites, it is clear that the process of satisfactorily undertaking such a "land swap" is highly complex. The Council considers that a "land swap" can exceptionally be an appropriate solution, but that in practice not only do the landowners need to promote this process but they must first obtain planning permission for the change of use of both sites. The Council does not have the power to require landowners to undertake "land swaps" and it would be for the owners/developers of such sites to reach agreement in principle before the Council would consider their proposals"*.

14. On 26th November 2010 the Claimant through its planning agents, Cerda Planning, responded to the October 2010 publication document and as regards policy CS6 again concentrated upon the "deliverability" of development on the site with a suggestion that the Defendant's housing requirements should be redistributed to other areas within the Defendant's district.

15. The Core Strategy in the same form as the "publication document" was submitted to the Secretary of State on 13th January 2011 for independent examination pursuant to section 20(1) of the Act

16. At all material times, preparation and adoption of the Core Strategy were governed by Part 2 of the Act, the Town and Country Planning (Local Development) (England) Regulations 2004 ("The Regulations"), Directive 2001/42/EC on the Assessment of the Effects of Certain Plans and Programmes on the Environment ("the Directive") and the transposing instrument Environmental Assessment of Plans and Programmes Regulations 2004 ("The SEA Regulations"). Sections 15 (local development scheme), 17 (local development documents), 19 (Preparation of local development documents) and 34 (Guidance) of the 2004 Act made provision for the preparation of development plans as a result of which Defendant was obliged to prepare a Core Strategy.

17. Section 19 of the Act required, amongst other things, the following:

"(2) In preparing a development plan document or any other local development document the local planning authority ("LPA") must have regard to –

(a) National policies and advice contained in guidance issued by the Secretary of State

(5) The LPA must also –

(a) carry out an appraisal of the sustainability of the proposals in each development plan document;

(b) prepare a report of the findings of the appraisal."

18. Section 20(1) of the Act required the Defendant to submit every development plan document to the Secretary of State for independent examination. They were also obliged to send him such other documents as were prescribed. Section 20(5) provided that:

"The purpose of an independent examination is to determine in respect of the development plan document–

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound."

Section 20(6) provided that any person who made representations seeking to change a development plan document must, if so requested, be given the opportunity to appear before and be heard by the examiner.

Section 20(7) provided:

"The person appointed to carry out the examination must –

(a) make recommendations;

(b) give reasons for the recommendations."

Section 23 provided as follows:

"(1) The local planning authority may adopt a local development document (other than a development plan document) either as originally prepared or as modified to take account of –

(a) any representations made in relation to the document

(b) Any other matter they think is relevant

(2) The authority may adopt a development plan document as originally prepared if the person appointed to carry out the independent examination of the document recommends that the document as originally prepared is adopted.

(3) The authority may adopt a development plan document with modifications if the person appointed to carry out the independent examination of the document recommends the modifications.

(4) The authority must not adopt a development plan document unless they do so in accordance with subsection (2) or (3).

(5) A document is adopted for the purposes of this section if it is adopted by resolution of the authority."

19. The examination stage pursuant to section 20(5) took place between January and October 2011. Independently of the development of the Core Strategy outline planning permission had been granted by the Defendant on 8th August 2010 for 260 dwellings on the site. This is the subject of challenge by the Claimant in separate judicial review proceedings. The Inspector correctly nevertheless still considered policy CS6 and heard representations in connection with the site.

20. The Inspector's hearing relating to policy CS6 took place on 13th April 2011 when he invited written representations in connection with the Claimant's alternative proposals for the site. These were submitted by the Claimant's planning agents on 26th April 2011 in which the Claimant supported sustainable development of the site but again put forward its land swap proposals with the necessary modifications to the Core Strategy to reflect this. In his "Post Hearing Note (1)" dated 4th May 2011 the Inspector raised three specific queries with the Defendant arising from the Claimant's submissions. Of importance to these proceedings is the response (dated 17th May 2011) that the Defendant relies on the continuing view of Buckinghamshire *"that no requirement for the provision of new primary schools exists (even in the light of the planned housing growth). The education authority has confirmed that this remains the situation"*. The Claimant also made further observations on 23rd May 2011 dealing with the Inspector's question as to whether the "land swap" proposal was sound.

21. On 8th September 2011 (which was after the deadline imposed by the Inspector for further submissions) the Claimant for the first time put forward a proposed development of the site by a company called Arrowcroft ("the Arrowcroft scheme"). This involved a mixed use for the site involving a school, a supermarket, housing and open space.

22. On 6th October 2011 the Inspector issued his report. He dealt with policy CS6 (the development of the site) at paragraphs 50 to 54. He pointed out that the Defendant's open space and needs assessment carried out in 2005 did not identify the need for additional sports facilities. He concluded that the allocation of the site for housing was *"justified with reasonable prospects of delivery"*. Although he was dismissive of the judicial review challenge to the existing planning permission (perhaps even disrespectful of this court's jurisdiction), the grounds of challenge, if successful, could

be remedied in any renewed application. Importantly as regards the land swap proposal he concluded as follows:

> *"On the basis of information provided by the education authority in 2010 the Core Strategy indicated that there was no requirement for a new school in this settlement (taking into account housing growth). This remains the advice of the education authority to the council. In the absence of evidence of need from the education authority it was reasonable for the council not to have considered a new middle school as a potential alternative use for the Holy Cross site in the evolution of the Core Strategy. Compared with the need for housing, there is not the overriding need or justification to set aside part of the Holy Cross site for a new school"*

Clearly the Arrowcroft scheme put forward belatedly by the Claimant came in too late to be dealt with in the Inspector's report or even to be considered by him, but in any event the rationale of that scheme is dealt with and rejected by the Inspector in the paragraphs to which I have referred.

The Inspector (at paragraph 108) also confirmed the compliance of the Core Strategy with legal requirements as listed including: *"Sustainability Appraisal (SA): SA has been carried out and is adequate. The proposed changes were also subject to SA"*.

23. The Defendant proceeded to adopt the Core Strategy on 15th November 2011, with the changes recommended by the Inspector none of which are relevant for the purposes of these proceedings.

24. I have set out the relevant history and the statutory framework for the adoption of the Core Strategy. I now deal specifically with the grounds of challenge advanced by the Claimant.

25. The first ground is that there was no adequate strategic environmental assessment or sustainability appraisal either for the allocation of the site or for the alternatives put forward by the Claimant. The statutory requirement for this is to be found in section 19(5) of the 2004 Act. One of the purposes of the examination by the Inspector is to ensure compliance with this (see section 20(5)).

26. In preparing the Core Strategy there is a statutory requirement to have regard to national policies (see section 19(2)). The relevant national policy included Planning Policy Statement 12: creating strong safe and prosperous communities through Local Spatial Planning (2008 edition) ("PPS12") which provided:

> *"Sustainability Appraisal*
>
> *4.39 The 'sustainability appraisal' required by s.19(5) of the Planning and Compulsory Purchase Act 2004 should be an appraisal of the economic, social and environmental sustainability of the plan.*

4.40 Sustainability appraisal fully incorporates the requirements of the European Directive on Strategic Environmental Assessment. Provided the sustainability appraisal is carried out following the guidelines in the Practical Guide to the Strategic Environmental Assessment Directive and the Plan-Making Manual there will be no need to carry out a separate SEA.

4.41 Where authorities are required by law or encouraged by government policy to undertake assessments of their plans, such assessments should feed into and be summarised in the sustainability appraisal.

4.42 Sustainability appraisal must be proportionate to the plan in question. It should not repeat the appraisal of higher level policy.

4.43 The Sustainability Appraisal should perform a key role in providing a sound evidence base for the plan and form an integrated part of the plan preparation process. Sustainability Assessment should inform the evaluation of alternatives.

Sustainability Assessment should provide a powerful means of proving to decision makers, and the public, that the plan is the most appropriate given reasonable alternatives."

27. Article 5 of the Directive provides:

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

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

28. Regulation 5 of the SEA Regulations required the Defendant to undertake environmental assessment of the Core Strategy during its preparation and before its adoption. Regulation 12 provided:

> *"(1) Where an environmental assessment is required by any provision of Part 2 of these Regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.*
>
> *(2) The report shall identify, describe and evaluate the likely significant effects on the environment of—*
>
> *(a) implementing the plan or programme; and*
>
> *(b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.*
>
> *(3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of—*
>
> *(a) current knowledge and methods of assessment;*
>
> *(b) the contents and level of detail in the plan or programme;*
>
> *(c) the stage of the plan or programme in the decision-making process; and*
>
> *(d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.*
>
> *(4) Information referred to in Schedule 2 may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation.*
>
> *(5) When deciding on the scope and level of detail of the information that must be included in the report ,the responsible authority shall consult the consultation bodies.*
>
> *(6) Where a consultation body wishes to respond to a consultation under paragraph (5), it shall do so within the period of 5 weeks beginning with the date on which it receives the responsible authority's invitation to engage in the consultation".*

The nomenclature "strategic environmental assessment" and "sustainability assessment" appear in the SEA Regulations and in the Directive respectively, but by virtue of PPS12 both requirements can and should be complied with by one appraisal.

29. It is abundantly clear from the Directive and the SEA Regulations that the sustainability appraisal must be carried out at every stage of the development of the Core Strategy and must also be carried out in respect of all reasonable alternatives under consideration. This has been emphasised by this court on a number of occasions. In <u>City and District Council of St Albans v. Secretary of State for</u>

Communities and Local Government [2009] EWHC 1280 Mitting J said: *"Article 5(1) of Regulation 12(2) required that reasonable alternatives to the challenged policies be identified, described and evaluated before the choice was made"*. In Save Historic Newmarket v. Forest Heath District Council [2011] EWHC 606 Collins J observed at paragraph 17 of his judgment:

> *"It is clear from the terms of Article 5 of the Directive and the guidance from the Commission that the authority responsible for the adoption of the plan or programme as well as the authorities and public consulted must be presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. Equally, the environmental assessment and the draft plan must operate together so that consultees can consider each in the light of the other. This was the view of Weatherup J in the Northern Irish case Re Seaport Investment Limited's Application for Judicial Review [2008] ENV.LR 23. However, that does not mean that when the draft plan finally decided on by the authority and the accompanying environmental assessment are put out for consultation before the necessary examination is held that there cannot have been during the iterative process a prior ruling out of alternatives. But this is subject to the important proviso that reasons have been given for the rejection of the alternatives"*.

And more recently in Heard v. Broadland District Council [2012] EWHC 344 Ouseley J said (at paragraph 69 of his judgment): *"alternatives have to be assessed, whether or not to the same degree as the preferred option, all for the purposes of carrying out, with public participation, a reasoned evaluative process of the environmental impact of plans or proposals"*. However he made it clear that this requirement does not apply to every alternative. He said (at paragraph 66): *"no doubt there are some possible alternatives which could be regarded as obvious non-starters by anyone, which could not warrant even an outline reason for being disregarded. The same could be true of those which obviously could not provide what (the Regional Strategy) required"*.

30. So dealing with the Claimant's first ground of claim I have to consider first whether there was an adequate sustainability appraisal of the Defendant's preferred option for the site (what became policy CS6), and second whether there was a failure to carry out such an appraisal on any alternatives which amounted to a non-compliance with a procedural requirement.

30. The June 2009 document "Draft Core Strategy for Chiltern District: document for stakeholder dialogue" included as draft proposals for retail and specialist housing allocations in Chalfont St Peter (draft policies CS17 and CS18), as well as for the provision of 720 new homes at draft policy CS13. This specifically included sites allocated by the SHLAA and so included 406 homes on the site, and on the accompanying "proposals map" the site was allocated as a "proposed strategic housing site". This was accompanied by a "Preliminary Sustainability Appraisal" which included all these alternatives (see pages 17, 18, 28, 29 and 48).

31. An updated Sustainability Appraisal accompanied the consultation document issued in March 2010. This in particular considered the impact of any changes to the draft Core Strategy upon overall sustainability. It also gave reasons for the removal of the previously proposed retail allocation in Chalfont St Peter (see page 11 of the updated appraisal).

32. The "Final Sustainability Appraisal Report" accompanied the October 2010 publication version of the Core Strategy (which was in the same form as that submitted to the Secretary of State). This sets out fully the legal and policy requirements of the appraisal. There is also a helpful table setting out the process leading up to the Final Sustainability Appraisal (see paragraph 2.24). Under "Assessment of Potential Strategic Site Allocations" (which includes this site) there appears at Paragraph 2.16: *"In addition to the policy appraisal, potential strategic sites within the four main centres of Amersham, Little Chalfont, Chalfont St Peter and Chesham were tested against a series of sustainability restraints which were grouped loosely around the SA objectives"*. The detail of the appraisal is set out in section 5. All reasonable alternatives were assessed against the sustainability criteria (see paragraphs 5.9 to 5.15). A summary of the results is set out in Appendix 7. Complaint is made by the Claimant that the commentary relevant to the site in this Appendix repeats what had been said before in the earlier stages of the process. In my view there is no substance in this complaint – unless materially different considerations have arisen (whether through the consultation process or otherwise) then it follows necessarily that the outcome of the earlier work is likely to be repeated in the final report.

33. I am entirely satisfied that all reasonable alternatives were considered and subjected to sustainability appraisal, to include the allocation which became policy CS6, and that at each appropriate stage in the process leading up to the Core Strategy as submitted to the Secretary of State explanations were given for the inclusion or rejection of any proposal.

34. It is clear that the Claimant's land swap proposal was never considered as a deliverable policy and was therefore not made the subject to a sustainability appraisal. Such a policy would have required the Core Strategy to consider the site being continued for educational purposes, possibly combined with other uses such as some (but presumably considerably less) housing, retail use or open space. The more specific Arrowcroft scheme was proposed far too late to play any part in the process. Nevertheless it is clear that the Defendant was on notice of the aspiration within the local community for such a proposal in general terms and the local interest which it had generated. This is summarised in the earlier parts of this judgment.

35. In my judgment the Defendant was entitled to rely upon the submissions received from Buckinghamshire at all times, and was certainly under no duty to go behind what Buckinghamshire was saying and take its own view on the available material. It does seem that there was some conflicting material concerning the statistical projections but the consistent view expressed by Buckinghamshire throughout the process was that there was no policy or plan which would make the land swap proposal a realistic possibility. It was Buckinghamshire alone (as Local Education Authority) which could make the land swap proposal deliverable. Furthermore the Defendant was entitled to consider this alongside the planning permission which had

been granted, the consequent effect upon the market value of the site and the expressed desire of the owner of the site to sell it for housing development.

36. What is clear as a matter of law is that the Defendant was obliged if it did consider the land-swap proposal (or to consider alternative draft Core Strategy policies so as to facilitate it) to do so properly as a "reasonable alternative" with the requirement for a sustainability appraisal. Such an appraisal is necessary at every stage of the process during the emergence of the Core Strategy until such time as any draft proposal is rejected and removed. In that situation an explanation and reasons must be given for its rejection and removal. None of this happened and so the land swap proposal was never treated by the Defendant as a "reasonable alternative".

37. In my judgment it was reasonable for the Defendant to decide not to treat the land swap proposal as a "reasonable alternative". That being the case there was no need for it (or any draft Core Strategy policy which might facilitate it) to be subject to sustainability appraisal or for it to appear as a possible option at any stage in the Core Strategy process. In the words of Ouseley J in the Broadland case it was a "non-starter" and it was reasonable for the Defendant to treat it as such. A key element of Core Strategy proposals is that they must be "deliverable". There was ample evidence upon which the Defendant could form the view that the Claimant's land swap proposal was not deliverable.

38. I now turn to deal with the Claimant's second ground of claim, namely that the Inspector reached unlawful conclusions and failed to provide adequate reasons.

39. The statutory obligations of the Inspector are set out at paragraph 18 above. There is an obligation under section 20(5) (b) of the 2004 Act to determine whether the Core Strategy is "sound". PPS12 provides that *"to be sound a core strategy should be justified, effective and consistent with national policy"* (see paragraph 4.52). It states that to be "justified" the document must be *"the most appropriate strategy when considered against the reasonable alternatives"*. It goes on to state that "effective" means that the document must be "deliverable". I assume that this means that the policies set out in the Core Strategy must be "deliverable".

40. The Inspector was clearly satisfied that the Defendant's legal requirement to conduct and publish sustainability appraisals on all reasonable alternatives at each stage of the process leading up to final submission document had been complied with. So am I.

41. The Claimant criticises "the failure of the Inspector anywhere to address the gravamen of the Claimant's objections, namely that its proposed alternative of a land swap addressed qualitative deficiencies (quite apart from the fact that the school was already overcrowded) in the current school" (see paragraph 44 of the Statement of Facts and Grounds). In my judgment the Inspector, like the Defendant, was entitled to rely upon the stated policy position of Buckinghamshire that there were no plans for a new school, and so accordingly there was no plan either to sell the existing village school site or to acquire the Holy Cross site. It was not incumbent upon the Inspector (nor for that matter upon the Defendant) to seek to go behind the policy of Buckinghamshire or to carry out an appraisal of the material upon which Buckinghamshire based its decisions or policy. That policy rendered the Claimant's land swap proposal non-deliverable.

42. The non-deliverability of any land swap proposal, including any variation of such a proposal to include mixed use of the site, in my judgment justified not only for the scheme to be not even considered as part of the Core Strategy process (see paragraph 38 above), but also would justify as entirely reasonable a decision that any alternative Core Strategy policy relying upon it as being "unsound". This was the point made by the Inspector on 23rd May 2011. The Arrowcroft scheme was introduced at far too late a stage to play any part in the Inspector's consideration of the Core Strategy.

43. In my judgment the Inspector was entitled to form the view that "it was reasonable for the Council not to have considered a new middle school as a potential alternative use for the Holy Cross site in the evolution of the Core Strategy" (see paragraph 53 of his report). In other words he was saying that the Defendant was entitled to have considered the proposal as non-deliverable from the outset and therefore it did not need to be included in the earlier options paper or the subsequent draft strategy documents, and nor therefore did it need to be subject to sustainability appraisal.

44. But the Inspector's statutory obligations did not end there. He had to consider any further "reasonable alternatives" to those appearing in the submitted Core Strategy, and also, by virtue of section 20(6), give those making representations the opportunity to appear before him and be heard by him. This he did for the Claimant at and following the hearing on 13th April 2011 – see paragraphs 19 and 20 above.

45. It is a pity that the Inspector did not spell out more clearly in his report the fundamental flaw in the Claimant's proposals - their unsoundness as an alternative - and that he did not explain why the Defendant was entitled not to give them consideration. The land swap proposal was a well meant aspiration expressed by the Claimant. The Inspector's report could have been the opportunity for the Claimant and others interested in the locality to have an explanation for why the proposal was non-deliverable and therefore in planning terms "unsound". Nevertheless the Inspector carried out his essential task and his reasoning was adequately explained.

46. The Inspector's report should be read as a whole without excessive legalism on the basis that the reader understands the principal controversial issues (see South Lakeland District Council v. Secretary of State for the Environment [1992] 2 AC 141). It is clear that the Inspector was well aware of the legal obligation for all reasonable alternatives to be considered with proper sustainability appraisals, and from a reading of the relevant passages relating to policy CS6 it is clear that he, like the Defendant, rejected the Claimant's proposals as non-deliverable and therefore unsound.

47. Accordingly, for the reasons set out in this judgment, the Claimant's challenge to policy CS6 of the Core Strategy fails.

48. I leave the parties to agree any consequential orders arising out of this judgment, to include the issue of costs, with permission to make application to me only if necessary.