[redacted]

15th November 2021

Warrington Borough Council
Planning Policy and Programmes
Town Hall
Sankey Street
Warrington
WA1 1HU

Sent via email to: localplan@warrington.gov.uk

Dear Sir/Madam

Representations to Updated Proposed Submission Local Plan Consultation (September 2021)
Broomedge, Lymm, Warrington

We have been instructed on behalf of our client, Peter and Diane Martin, to provide representations to the Updated Proposed Submission Version Local Plan Consultation. Whilst these Representations make some general comments on the overall strategy of the emerging Local Plan (Section One), we specifically focus on Broomedge, a village settlement located to the east of Lymm, Warrington in Section Two of these Representations.

Please note that the contents of this letter are very similar to our representations to previous rounds of consultation, namely the earlier Regulation 19 consultation (June 2019) and Regulation 18 consultation (September 2017).

It is extremely disappointing that our objections remain, as the Local Plan still fails to provide the required information relating to the assessment of whether villages should be 'washed over' by the Green Belt or inset from it, as well as other key matters which we explore throughout these Representations. This is a fundamental issue and one which must be rectified in the emerging Local Plan is to be deemed sound.

The Council will recall in our previous Representations how we highlighted that Broomedge is a settlement that could accommodate a modest level of growth, which will assist in ensuring it remains a vital and viable settlement with a range of community facilities. We explain in these Representations how there remains to be a strong case for modest growth in Broomedge.

These Representations make reference to the relevant provisions of the NPPF, and in particular the NPPF's stance on supporting rural communities, meeting housing needs and the approach to undertaking Green Belt reviews.

We also comment on the issues arising from the Council's current Green Belt assessment not reviewing a number of the settlements located within the Borough that are currently washed over by Green Belt. These comments reiterate our previous concerns raised and explain **how the current approach is inconsistent with the NPPF**. If the Local Plan proceeds on this basis, our view is that it would be deemed unsound. We therefore respectfully request that the Council's consultants preparing the Green Belt review are instructed to look at this matter in detail. Given the former UDP identified boundaries for these settlements, we do not consider this would be a significant undertaking but it does need to be formally addressed.

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Section One: comments on overall Strategy and Housing Requirement

We express major concerns with the reduced housing requirement outlined in the updated submission plan. The plan now identifies a minimum of 14,688 new homes to be delivered between 2021 to 2038, which equates to 816 dwellings per annum. This represents a 14% decrease from the previously proposed 945 dwelling per annum figure, which represented an ambitious, yet realistic, economic growth led figure.

This change has arisen from the Council's decision to now just pursue the local housing need figure generated by the Governments standard housing method, namely 816 dpa. Paragraph 61 of the 2021 NPPF is clear that the local housing need figure represents the **minimum** number of homes needed. The decision to add no uplift to the minimum housing need figure, which fails to take into account economic growth factors, therefore represents a do minimum approach and will result in Warrington being unable to reach its full potential with a housing requirement that is aligned with its economic growth aspirations.

Our primary concerns with the reduced housing requirement are summarised as follows:

- **Exacerbating existing affordability issues:** The housing crisis in the UK is well known, with demand greater than the housing stock supply. Simply put, this imbalance has resulted in increased housing prices which continue to threaten people's ability to get on to the housing ladder. This has led to affordability issues, with affordability ratios providing one indicator to measure/quantify affordability issues. Affordability ratios are calculated by dividing median annual salary by the median house price of an area. In 2000 the affordability ratio in Warrington was 3.6. This means that average house price was 3.6 times the average annual salary. This was below the affordability ratio in England (4.19), but above the affordability ratio for the North-West (3.13). By 2020 the ratio in Warrington had increased to 6.27, a rise of 2.67 on the 2000 figure. Affordability issues have therefore worsened in Warrington, and a lower housing target/land supply than previously envisaged will not ameliorate these issues.

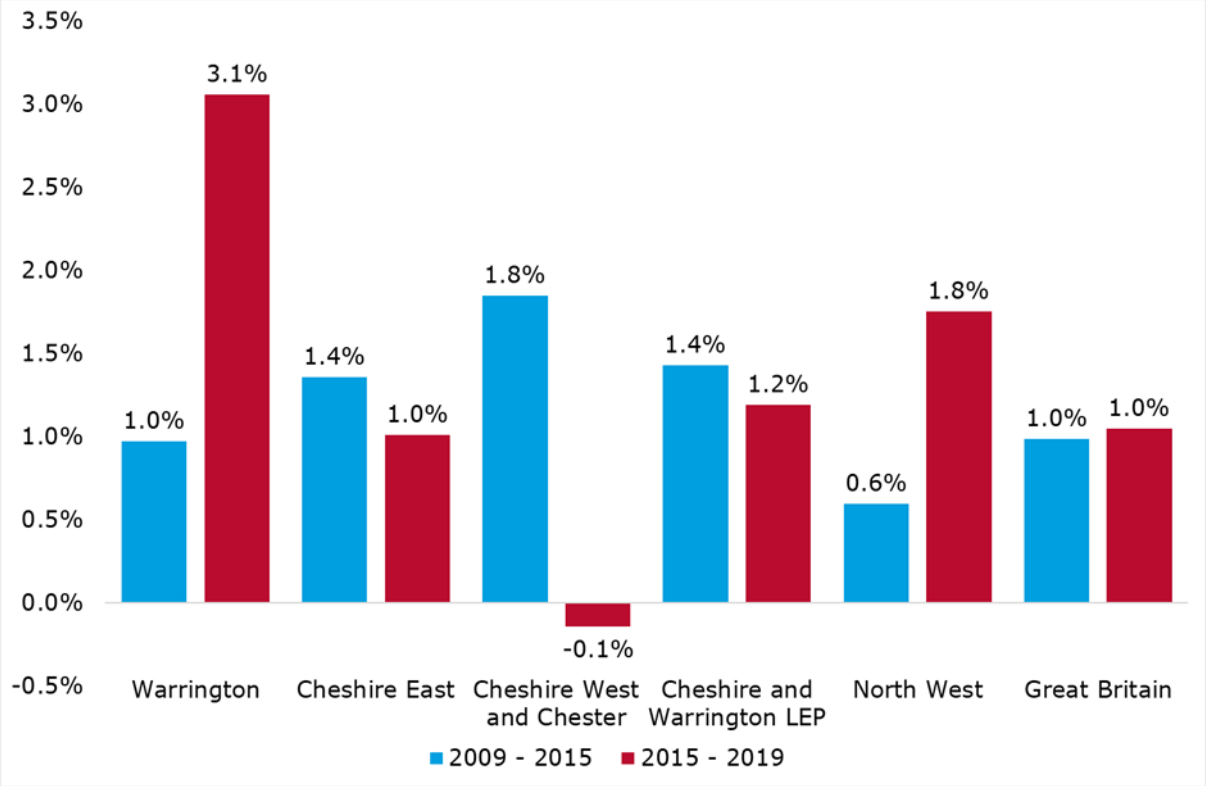
Table 1: Affordability Ratios, 2000-2020

	2000	2020	Absolute Change
Warrington	3.6	6.27	2.67
North-West	3.13	5.75	2.62
England	4.19	7.84	3.65

Source: ONS, Affordability Ratios

- **Will fail to build on Warrington's strong economic growth in recent years:** As already explained, the Local Housing Need figure of 816 dwellings per annum does not take into account economic growth factors. This is particularly important in the Warrington context given that the Borough has seen strong employment growth in recent years. As shown on **Figure 1** overleaf, between 2015 and 2019, the employment growth rate in Warrington more than tripled from its 2009-2015 annual growth rate and was 3.1% per annum. This was higher than all comparator areas during the same time period, indicating that the Borough is performing well in terms of economic growth. The decision to pursue a lower and bare minimum housing requirement figure will therefore fail to build on this recent success and will not enable Warrington to achieve its full potential.

Figure 1: Annual Employment Change, 2009-15 & 2015-19



Source: Business Register & Employment Survey

Put simply, the Council must pursue a higher housing requirement, and as a minimum Pegasus advocate reverting to a housing target of 945 dpa (as proposed in the previous Regulation 19 consultation).

Notwithstanding the issues cited above, we also have concerns regarding urban land supply and the Council's ability to deliver their housing requirements with the land currently identified. Pegasus have separately submitted detailed representations on behalf of a consortium of developers which indicates the Council need to identify Green Belt land to accommodate a further 4,000 + homes in order for the housing requirement to be met.

Conclusions to Section One

The client raises major concerns with the decision to pursue a lower housing requirement of 816 dpa, which represents a do-minimum approach to growth. We have also raised concerns regarding land supply and do not consider this to be sufficient to meet the Council's housing requirement. The large housing requirement to be delivered across the plan period points towards a need for a dispersed approach to growth across the Borough, including towards small rural villages like Broomedge which have a capacity to deliver modest and sustainable level of growth. We raise serious concerns with the Council's evidence base not addressing the requirement to look at the needs of smaller villages too, including an assessment of whether such villages should be inset

within the Green Belt or washed over. Accordingly, we continue to urge the Council to take steps to rectify this matter and explain the compelling case for doing so below.

Section Two-Broomedge, Lymm

This section explains the case as to why Broomedge is well placed to accommodate modest levels of growth. Additionally, we refer to the NPPF and best practice for Green Belt Assessments to advise the Council on future steps to overcome our concerns with certain elements of the current approach of the Local Plan and accompanying evidence base.

The Settlement

The village of Broomedge contains a population of less than 2,000 people (based on SOA Warrington 21F), which also includes some residential dwellings on the fringe of Lymm/Rush Green.

Properties range from large multi-bedroom detached dwellings, standard family homes and smaller post war, semi-detached homes.

The heart of the village contains a crossroads with the A56 (Higher Lane) running east/west and the B5159 (Burford Lane/High Legh Road) running north/south. Located on/adjacent to the crossroad is a good sized, local convenience store/post office/hardware store (Budgens / Post Office), a pub (Jolly Thresher), office space, and bus stops. Other services in the village include a further pub (Wheatsheaf Inn), Air Cadets Training Centre, an equipped play area, and a vehicle repair/MOT garage.

The nearest primary schools to the village are Little Bollington and High Legh Primary Schools, which are both known to be currently undersubscribed and have places available.

The frequency of bus services running through the settlement is reasonable. Services include the 191 and 47 services, the latter of which provides access to Warrington.

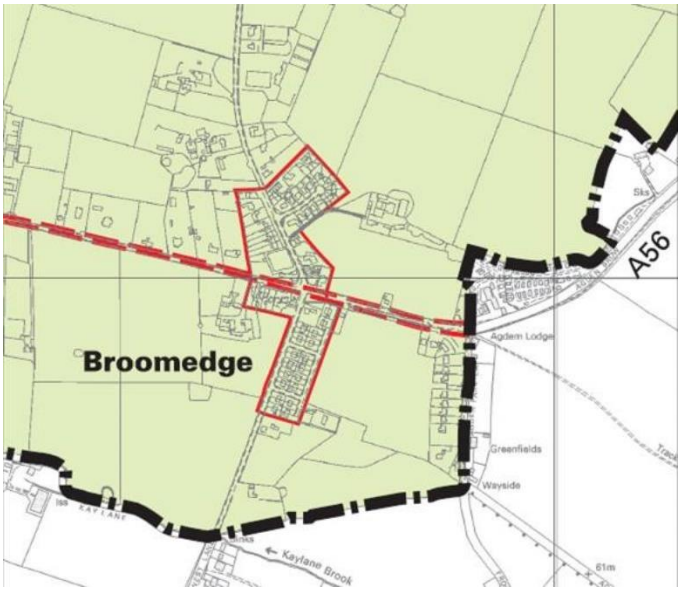
Planning Policy

Local Plan (Adopted)

The adopted Local Plan comprises of the unchallenged parts of the Warrington Local Plan Core Strategy, which was adopted in 2014.

The supporting Proposals Map illustrates that the settlement is washed over by Green Belt but there is also a defined settlement boundary from Broomedge, which does not include all of the dwellings and physical features within the settlement but the main core which runs along High Legh Road and Burford Lane.

The extract overleaf is from the former UDP proposals map but the boundary has not altered as part of the Core Strategy Local Plan. Indeed, with regard to villages that have been excluded and washed over by Green Belt, there has been no alteration to their status since the former UDP was adopted in 2006.



Policy CC 1 – Inset and Green Belt Settlements lists those settlements within the Borough that are inset (excluded) from the Green Belt and those that are washed over. Broomedge is one of 12 settlements that are washed over by the Green Belt, whilst a further 10 larger villages/towns are inset within the Green Belt (excluded). The policy goes on to note the following in relation to the washed over settlements:

> *'Within these settlements development proposals will be subject to Green Belt policies set out in national planning policy. New build development may be appropriate where it can be demonstrated that the proposal constitutes limited infill development of an appropriate scale, design and character in that it constitutes a small break between existing development which has more affinity with the built form of the settlement as opposed to the openness of the Green Belt; unless the break contributes to the character of the settlement.'*

The supporting text to Policy CC 1 clarifies that this approach was adopted on the basis of seeking to control the spatial distribution of development across the Borough. Indeed, Paragraphs 17.3 and 17.4 state the following:

> *'With regards to the Countryside's constituent settlements, a distinction has been made between those which are regarded as 'Inset' settlements (that are excluded from the Green Belt) and those that are regarded as 'Green Belt' settlements (that are washed over and within the Green Belt). Policy CC1 identifies which of the borough's settlements fall within each of the classifications and the Proposals Map identifies individual settlement boundaries.*
>
> *The Overall Spatial Strategy sets out the quantity and distribution of development within the borough and directs growth towards the urban area of the town of Warrington. Policy CC1 helps to implement this approach by requiring development proposals to conform with Local Plan Core Strategy policy CS1 and specifically, with regards to Green Belt settlements, through guiding the scale and nature of development likely to be deemed appropriate in such locations. This approach alongside evidence which suggests that development opportunities within the countryside and its constituent settlements are limited, is such that any growth within these areas should be organic.'*

As noted above, the commentary in paragraph 17.3 reflects a position that has simply been transferred from the former UDP (i.e. there has been no change in terms of which settlements fall within and outside the Green Belt since at least 2006). Moreover, the reason for retaining this distinction between the settlements was on the basis of a spatial strategy that continued to focus development towards Warrington. It was also in the context of a strategy that did not propose a review of the Green Belt across the Borough.

The housing requirements presented by the Council in the Submitted Local Plan equated to 500 dwellings per annum between 2006 and 2027. However, by 2012 a total of 5,075 dwellings had already been delivered, with completions in 2006 exceeding 1,362 and in 2007 over 1,500 dwellings where completed. Sufficient housing supply was available for the remaining requirement and Policy SN1 confirmed that 80% of new homes will be delivered on previously developed land within the Borough, with 60% in Inner Warrington and 40% in the suburban areas of Warrington and the Borough's outer lying settlements. As such, the Core Strategy planned for a reduced level of housing completions over the remainder of the plan period and it was deemed that exceptional circumstances did not exist to review the Green Belt.

The Inspector's report for the Core Strategy highlights that no Green Belt review was deemed necessary. In addition, there is no comment within the Inspectors report (and we are not aware of any evidence that was prepared) in relation to the role of each village in terms of their contribution to the role and function of the Green Belt. Put simply, a case for Green Belt review was never advanced by the Council and therefore there was very limited focus in relation to the needs of those settlements that fell within the Green Belt.

However, the housing policies of the Warrington Core Strategy Local Plan were subsequently challenged successfully through the Courts. As such, the housing policies of the Core Strategy are omitted from the adopted version of the plan, hence the Council progressing a new Local Plan, which this updated Regulation 19 consultation represents an important and advanced stage of.

Local Plan (Emerging) and Associated Evidence Base

We have outlined our general comments in relation to the updated Regulation 19 consultation of the emerging Local Plan in Section One of these Representations. It is evident that the housing requirement to be met over the Plan Period represents a do minimum approach and is a disappointing turn in events given the previous, economic growth led figure in the previous Regulation 19 consultation. We have raised our concerns in relation to the proposed housing requirement and outline how there are compelling reasons for this to increased.

Furthermore, we still have concerns that the Green Belt Assessment and Review is not consistent with the NPPF- as explained below.

Green Belt Assessment

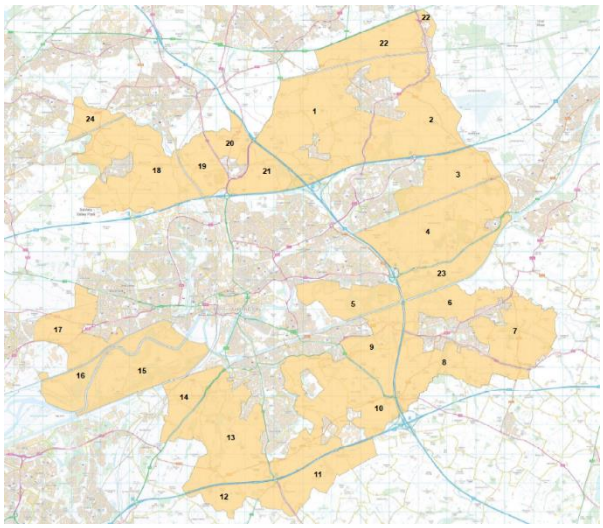
In June 2019 and April and September 2017, we set out comments to the Council in relation to the findings of the original Green Belt Assessment report which was produced in October 2016. We replicate these comments below.

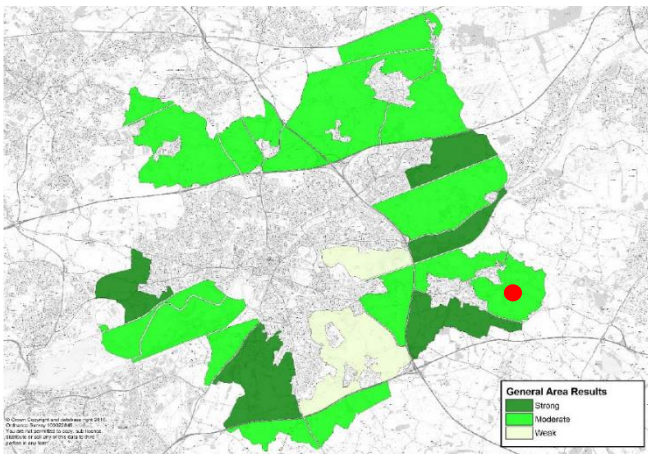
We continue to have a fundamental objection to the Green Belt Assessment evidence base, as whilst it was updated in May 2018 to include additional site assessments in the Main Urban Area, as well as additional 2021 Green Belt Assessments in relation to

Fiddlers Ferry and the other proposed allocations across the Borough, it remains unchanged in terms of its failure to assess whether villages should be 'washed over' by the Green Belt or inset from it.

Green Belt Assessment- original report 2016

The Council's original Green Belt Assessment undertakes a high-level assessment of 23 large Green Belt parcels across the Borough. Broomedge is located within large parcel no 7. That parcel has been ranked as making a 'moderate' contribution in terms of its function in relation to the 5 purposes of Green Belt by ARUP (see below).





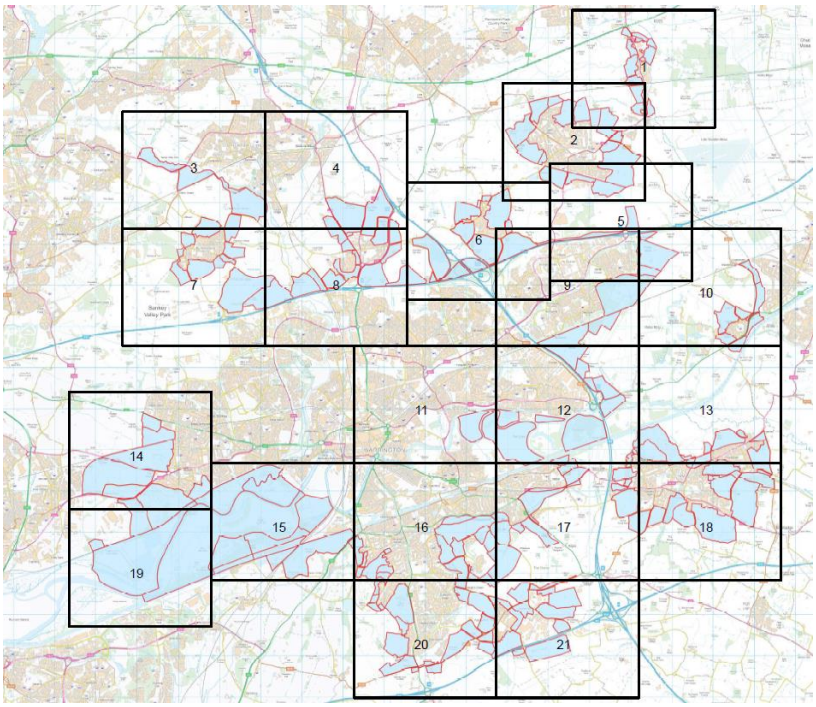
Broomedge

7	No contribution: The GA is not adjacent to the Warrington urban area and therefore does not contribute to this purpose	No contribution: The GA does not play a role in preventing towns from merging.	Strong contribution: The GA is well connected to the open countryside given it is only connected to the inset settlement of Lymm along the western boundary. The boundary between the GA and the inset settlement consists of the limits of development which is not durable and may not be able to prevent encroachment. The boundary between the GA and the open countryside consists of the River Bollin, the A56, Spring Lane and field boundaries. Not all of these features are durable and may not be able to prevent encroachment in the long term. The existing land use predominantly consists of open countryside although includes the washed over village of Broomedge and Heatley as well as Lymm High School and Lymm Marina. The GA supports a moderate to strong degree of openness given that it has less than 20% built form and low levels of vegetation. Overall the GA makes a strong contribution to safeguarding from encroachment.	No contribution: Lymm is a historic town however the GA is over 250m from Lymm Conservation Area. The GA does not cross an important viewpoint of the Parish Church.	Moderate contribution: The Mid Mersey Housing Market Area has 2.08% brownfield urban capacity for potential development, therefore the parcel makes a moderate contribution to this purpose.	The GA makes a strong contribution to one purpose, a moderate contribution to one and no contribution to three. Professional judgement has been applied and the GA has been judged to make a moderate contribution overall to the Green Belt. While the boundaries between the GA, Lymm and the open countryside are weak and would not prevent the town from encroaching into the countryside, the GA contains a considerable amount of development including two washed over villages. This compromises its openness and means that the GA does not contribute to the Green Belt in a strong and undeniable way as would be required to make a strong contribution overall. The GA also does not prevent towns from merging, does not check unrestricted sprawl as it is not adjacent to the urban area and does not preserve historic towns as it is not close to the Lymm Conservation Area.	Moderate contribution

Notably, Arup highlight that the parcel makes no contribution to 3 of the 5 purposes. The 5th purpose which relates to the contribution to the regeneration of Brownfield sites is applied at a moderate level to every parcel in Warrington.

The only strong contribution relates to purpose 4: safeguarding encroachment into the countryside. Even then, Arup consider the parcel makes a moderate to strong contribution and confirms the parcel includes a large amount of development including the two washed over villages of Broomedge and Heatley, indicating that even this purpose is compromised.

Arup go onto assess smaller parcels. However, this is only in relation to parcels surrounding Warrington and the inset villages (see below). No assessment is carried out in relation to Broomedge.



Green Belt Assessment- Addendum following Regulation 18 Consultation (June 2017)

The Addendum report to the Green Belt Assessment provides some amendments to the Green Belt findings in the October 2016 assessment, in light of some comments made in the previous Regulation 18 consultation. This includes consideration of the route of the HS2. Whilst Parcel 7 (in which Broomedge is located) is located in close proximity to the HS2 route, the report confirms that this general area parcel has not been re-assessed as part of this exercise. The findings in relation to general parcel 7 therefore remain the same as the October 2016 findings (as discussed above).

The Addendum also assesses all call for site submissions. Our client's land interest (on the southern edge of Broomedge) is classified as having a moderate contribution to the purposes of the Green Belt.

Whilst we welcome that the Addendum clearly addressed some of the previous concerns raised, including that it has now assessed all call for site submissions which include parcels of land adjacent to 'washed' over settlements such as Broomedge, it does not address all concerns.

Notably, the Council's Green Belt evidence base still fails to consider whether villages lying in the Green Belt should continue to be 'washed' over by the Green Belt, or whether there is scope for the settlement boundary to not be 'washed' over and the green belt designation to surround just the village boundary instead. This is a fundamental concern that needs rectifying, being an issue that has prevailed despite the Local Plan now being at an advanced stage and scheduled for submission for Examination in Public next year.

We respectfully request that this matter is fully addressed before the Local Plan is submitted for Examination, in order for the plan to be consistent with the NPPF and ultimately found sound.

Requirements of the NPPF

At this point it is pertinent to highlight some key paragraphs in the 2021 NPPF in relation to the need to support rural communities and the approach to reviewing Green Belt.

With regards to supporting rural communities, paragraph 79 states the following in relation to the need to support growth in rural areas:

> *'To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby'*

In this case, we have already highlighted that Broomedge contains a number of key services. Clearly an element of growth would assist in ensuring these services continue to remain viable into the future, which is considered to be a key sustainability consideration.

Moreover, given that the Borough will now have to deliver a far higher level of housing over the entirety of the plan period than that envisaged as part of the Core Strategy, Broomedge could also represent a sustainable location to meet a modest element of this requirement.

We have also highlighted that Broomedge contains a reasonable level of bus services providing sustainable connections to the main areas of service, employment and retail within the vicinity. Whilst those services will not be as regular as might be the case in larger settlements, paragraph 105 of the NPPF already recognises this dynamic and states:

> *'Opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making'*

In light of this policy advice, the role, function and needs of the villages washed over by the Green Belt within the Borough should not be ignored. Indeed, the delivery of further residential development in the village would not represent 'isolated homes in the countryside' and would help to assist meeting a modest level of housing need in an entirely sustainable manner.

Green Belt policies in the NPPF are not a blockade to such an approach. Paragraph 143 confirms that when reviewing Green Belt boundaries, Local Authorities should ***'not include land which it is unnecessary to keep permanently open'***. Moreover, Paragraph 144 clearly states the following in relation to villages within the Green Belt:

> *'If it is necessary to restrict development in a village primarily because of the important contribution which the open character of the village makes to the openness of the Green Belt, the village should be included in the Green Belt. If, however, the character of the village needs to be protected for other reasons, other means should be used, such as conservation area or normal development management policies, and the village should be excluded from the Green Belt.'*

This was a new policy requirement introduced by the 2012 NPPF, which requires an assessment of villages within the Green Belt in terms of their contribution to openness. As noted above, no such

assessment was carried out in relation to the adopted Core Strategy, nor is it currently being progressed in the evidence base for the emerging Local Plan (Green Belt Assessment).

Of critical note, it is clear that the Council must undertake this assessment now (to ensure compliance with NPPF paragraph 144) and it is not something that can be pushed later down the line. NPPF paragraph 140 states:

> *'Once established, **Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified**, through the preparation or updating of plans. Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period. Where a need for changes to Green Belt boundaries have been established through strategic policies, detailed amendments to those boundaries may be made through non-strategic policies, including neighbourhood plans.'*

The Council have outlined their case for exceptional circumstances in support of their strategic policies and proposed allocations in the emerging Local Plan. The case has therefore been set to amend detailed Green Belt boundaries, thus, in turn, paragraph 144 must also be considered in relation to potential Green Belt boundary changes to villages currently 'washed over' by the Green Belt such as Broomedge.

Broomedge Green Belt Boundary

In the case of Broomedge, we would accept that parts of the village display elements of openness that could be said to contribute to the openness of the Green Belt. For example, the fields that separate the properties fronting Agden Park Lane and those on High Legh Road/Park Road create a sense of openness.

However, as previously noted each of the villages (including Broomedge) already have defined boundaries as set out on the Core Strategy Proposal Map. In the case of Broomedge, this boundary focuses on the core of the village which is not open and comprises a level of density and development that warrants its exclusion from the Green Belt. Indeed, as part of the emerging Local Plan, Arup have already concluded that Broomedge and Heatley represent built form that impacts on the openness of the Green Belt already and therefore there is a strong case that those villages should be omitted from the Green Belt.

At the very least, those areas defined on the adopted Proposals Map should be omitted from the Green Belt based on this policy advice and assessment. However, the NPPF points to the need to carry out a specific review of each settlement and each village will have evolved (however slightly) since the boundaries where first defined as part of the UDP in 2006.

In the case of Broomedge, our client would seek, as a minimum, to have their property (purple area overleaf) included within the existing settlement boundary. The property is situated directly on the edge of the currently defined boundary and the property has been subject to sizable extensions since 1997 linking the main house with the formerly separate converted barn/garage building to the rear. Indeed, the property could be extended even further, as it benefits from an extant permission (77/4749) which was partly implemented but not all – with opportunities still available for a gable extension. There may be other similar instance/examples elsewhere on the edge of the defined boundary that now need to be reconsidered/included.

For instance, we are aware of the approved application for 14 houses to the north of the village at Willowpool Nurseries and Garden Centre on Burford Lane (reference: 2015/26642), which has now been built out as the development known as Willowpool retirement village. This development demonstrates the village is changing and expanding and supports our view that this village should

be reviewed, not be washed over by the Green Belt, and represents a sustainable location for continued and additional modest growth.

Relevant Examples undertaken by other Local Authorities

We believe the approach we have set out above would be consistent with Green Belt reviews carried out elsewhere. Those that we are familiar with include Tandridge, Guildford and Runnymede (see links below).

- https://www.guildford.gov.uk/article/22860/Green-Belt-and-Countryside-Study
- https://www.runnymede.gov.uk/planning-policy/green-belt-villages-review?m=637375172243300000
- https://www.tandridge.gov.uk/Portals/0/Documents/Planning%20and%20building/Planning%20strategies%20and%20policies/Local%20plan/Local%20plan%202033/Examination%20library/GREEN%20BELT/GB14-Green-Belt-Assessment-Methodology-2015.pdf

Guildford

Pegasus Group was instructed by Guildford Borough Council to prepare a Green Belt and Countryside Study to inform their new Local Plan. Paragraph 1.4 of the summary document states:

> *'In June 2012, further work was instructed by the Council relating to whether villages should be 'inset' or 'washed over' by the Green Belt designation and the identification of Green Belt boundaries relating to the villages as required. This element of the Study was instructed in specific response to revised national guidance issued on the matter within the National Planning Policy Framework (March 2012).'*

The methodology followed for the insetting of villages and defining Green Belt is as set out below:

- Stage 1: Assessing the degree of openness within each village through analysis of village form, density and extent of existing developed land;
- Stage 2: Assessing the village surrounds and locations of potential Green Belt defensible boundaries surrounding each village across Guildford Borough;

- Stage 3: Assessing the suitability of each village for insetting within the Green Belt and defining new Green Belt boundaries.

In short, it was necessary to carry out an assessment of each village within the Green Belt before the Council could finalise their spatial strategy and Local Plan.

Runnymede Council

As part of Runnymede's Council's evidence base for the Local Plan, the Council appointed Arup to review Green Belt boundaries in Runnymede, who we note have also been appointed for Warrington's assessment.

Two phases of Green Belt Review work have been undertaken; the first of which was a strategic level review in 2014, followed by a more finely grained assessment of land within defined buffers of the Borough's urban settlements in 2017. To complement the Arup review of the Green Belt a further review was undertaken by the Council to consider whether villages lying in the Green Belt should continue to be 'washed over' included by the Green Belt or excluded and returned to the settlement.

This was in direct response to the requirement set out in paragraph 144 (previously 86) of the NPPF. A Stage 1 review of Green Belt Villages considered which developed areas of Runnymede lying within the Green Belt could be considered as a 'village' and if so, whether they should remain in the Green Belt or be excluded and returned to settlement, based on the tests of open character and openness.

Redhill Aerodrome Ruling ([2014] EWCA Civ 1386)

On a final note, a legal judgement has confirmed that the national planning policy context in relation to Green Belt matters and the assessment of villages has materially changed since the village boundaries were last reviewed in Warrington (2006 or earlier). The full legal judgement is contained at **Appendix 1**, with the following extract replicated below which confirms the policy change in relation to assessing villages within the Green Belt:

> *'16(i) While there have been some detailed changes to Green Belt policy in the Framework, protecting the Green Belt remains one of the Core planning principle the fundamental aim of Green Belt Policy to prevent urban sprawl by keeping land open, the essential characteristics of Green Belts, and the five purposes that they serve, all remain unchanged.* ***By contrast with paragraph 86 of the Framework, which does change the policy approach to the inclusion of villages within the Green Belt****, paragraph 87 emphasises the continuation of previous Green Belt policy (in PPG2) in respect of inappropriate development: "As with previous Green Belt policy'*

There is therefore now a need to assess the contribution villages such as Broomedge make to the openness of the Green Belt, to ensure compliance with NPPF paragraph 144 (previously 86) which represents a material change to the policy context when Warrington last assessed 'washed over' Green Belt villages.

Summary

The examples above clearly demonstrate that other local authorities are correctly following the NPPF requirements when assessment Green Belt boundaries in relation to their Local Plan production. Indeed, Warrington's appointed consultant for their own Green Belt Assessment (Arup) are familiar with the methodology to use for assessing whether villages should continue to be 'washed over', as demonstrated in the Runnymede Council example.

The upshot of paragraph 144 is that if a village's character makes an important contribution to the essential characteristic of the Green Belt (i.e. its openness), then there is justification to maintain the village in the Green Belt. However, if there are areas within the village that are not open in character, or the village as a whole does not make an important contribution to the openness, retaining the village in the Green Belt, either through the washing over or 'infilling' of the village, would be entirely at odds with paragraph 144. Indeed, this would also be at odds with paragraph 143, which confirms local authorities should 'not include land which it is unnecessary to keep permanently open' when defining Green Belt boundaries. It is also at odds with the NPPF policies which support a thriving rural economy and the ability for villages to support sustainable development (paragraph 79).

Despite our previous objections, this remains to be a process which is not being undertaken by Warrington Council, as the assessment of villages washed over by Green Belt has not taken place. **As such, the Local Plan cannot be considered sound.**

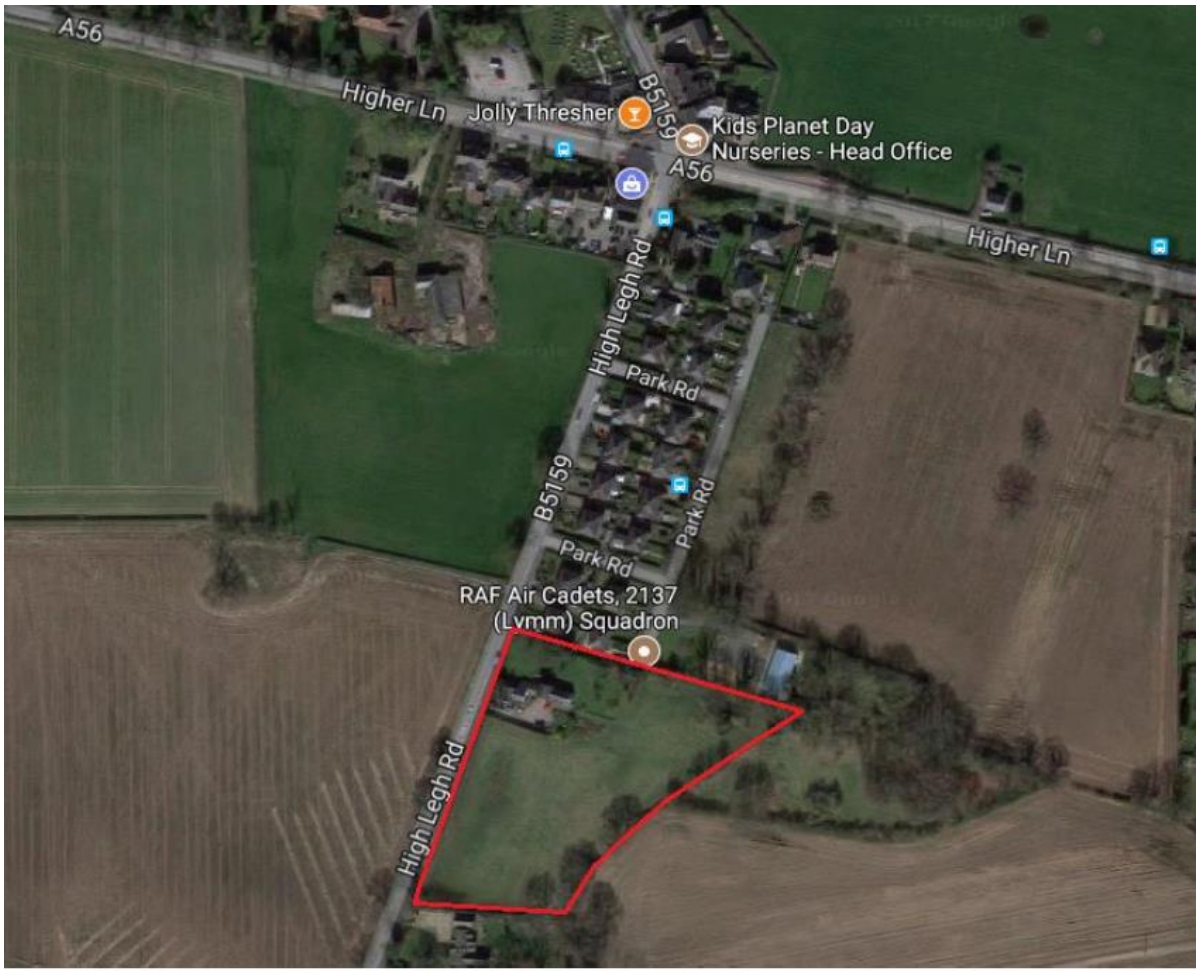
We therefore urge the Council to instruct their consultants to undertake this process, before the Plan is formally submitted for Local Plan Examination, to ensure compliance with the NPPF and to ensure that the supporting evidence base is sufficiently robust for the forthcoming Examination process.

Site allocations in rural areas

In addition to our major concerns regarding the Green Belt evidence base discussed above, we also continue to reiterate the need for additional site allocations in rural areas such as Broomedge. Whilst it is accepted that large site allocations are more appropriate in the larger settlements, there is still a compelling need to ensure sustainable levels of growth in rural areas (in line with NPPF paragraph 79). Indeed, the NPPF is clear that planning policies should identify opportunities for villages to grow and thrive.

The Council will recall our previous call for site submission (full details contained at **Appendix 2**) in relation to Mr and Mrs Martin's land parcel put forward for residential development. The location of the land parcel is replicated overleaf.

The land parcel has capacity to accommodate modest and sustainable levels of residential growth, which could assist in meeting local housing needs in Broomedge in a suitable and sustainable manner. We therefore continue to urge the Council to re-consider their strategy in relation to site allocations in Broomedge (i.e., to allocate none) and to consider Mr and Mrs Martin's land parcel for residential development.



Conclusion

Section One of these Representations explain how we are very concerned with the decision to reduce the housing requirement to 816 dwellings per annum, which will exacerbate affordability issues and will also fail to build on Warrington's strong economic growth in recent years. As a minimum, this should revert back to the 945 homes per annum figure that was proposed in the previous Regulation 19 consultation draft of the Plan.

We also have concerns with the land supply figures suggested by the Council, and consider there to be a need for additional Green Belt land to accommodate in excess of 4,000 + dwellings in order for the Council to meet their housing needs.

The large housing requirement which will need to be delivered across the plan period is clear. Despite this large requirement, based on the evidence prepared to date, we consider the Council have largely ignored the rural settlements located within the Borough. We accept such settlements will not accommodate significant levels of development. However, it is equally vital that rural communities contribute to the objectives of sustainable development. Indeed, the lack of any growth will lead to stagnation and ultimately loss of services and would therefore run counter to the objectives of the NPPF. We continue to highlight the case for sustainable levels of growth in

[redacted]

rural settlements such as Broomedge, which Mr and Mrs Martin's land parcel could suitably accommodate.

The Council continue to ignore our ongoing representations, which highlight a continued failure for the Green Belt Assessments, a fundamental part of the evidence base, to consider whether villages lying in the Green Belt should continue to be 'washed over'. This is a fundamental concern that must be rectified to ensure compliance with the NPPF.

We reiterate our previous comments that the following matters must be addressed before the Local Plan is formally submitted for Local Plan Examination:

- Review the Green Belt boundaries around the villages currently washed over by the Green Belt in line with paragraphs 143 and 144 of the NPPF; and

- Consider the needs of villages within the Borough in terms of ensuring local needs are addressed and rural communities are able to continue to rely on the services that they currently benefit from in line with paragraph 79 of the NPPF.

In carrying out this fundamental additional work, we believe there are strong arguments and facts that would lead to Broomedge being identified as a village settlement that can be omitted from the Green Belt (with the precise boundaries to be defined) and that some moderate additional growth would help meet local needs and support/sustain existing services within the local community.

We trust the above information is useful and we would very much welcome the opportunity to meet with officers to discuss this further.

Yours sincerely

[redacted]

Kerry Walker
Senior Planner
[redacted]

APPENDIX ONE: THE REDHILL AERODROME COURT OF APPEAL RULING (GREEN BELT ASSESSMENTS)

Neutral Citation Number: [2014] EWCA Civ 1386

Case No: C1/2014/2773, 2756 and 2874

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
PLANNING COURT
MRS JUSTICE PATTERSON
CO/1361/2014

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/10/2014

Before:

LORD JUSTICE SULLIVAN
LORD JUSTICE TOMLINSON
and
LORD JUSTICE LEWISON

- -

Between:

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT	**First Appellant**
REIGATE AND BANSTEAD BOROUGH COUNCIL	**Second Appellant**
TANDRIDGE DISTRICT COUNCIL	**Third Appellant**
- and -	
REDHILL AERODROME LIMITED	**Respondent**

- -
- -

James Maurici QC and **Richard Kimblin** (instructed by **Treasury Solicitors)** for the **First Appellant**
Stephen Whale (instructed by **Tandridge District Council Legal Services and Reigate and Banstead Borough Council**) for the **Second and Third Appellants**

Christopher Katkowski QC and Alistair Mills (instructed by **Wragge Lawrence Graham CO LLP**) for the **Respondent**

Hearing dates: 9th October 2014

- -

Approved Judgment

Lord Justice Sullivan:

Introduction

1. On the 9th October 2014 we allowed this appeal, set aside the Judge's Order quashing the Inspector's decision, and dismissed the Respondent's application under section 288 of the Town and Country Planning Act 1990 ("the Act"). We said that we would give our reasons in due course. These are my reasons for allowing the appeal.

Green Belt policy

2. The protection of the Green Belt around our main urban areas is one of the twelve "Core planning principles" in the National Planning Policy Framework ("the Framework") (paragraph 17). Paragraphs 87 and 88 of the Framework say that:

> "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
>
> 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations." (emphasis added)

The Issue

3. Do the words "any other harm" in the second sentence of paragraph 88 of the Framework mean "any other harm to the Green Belt" as submitted by the Respondent, and found by the Judge, or do they include any other harm that is relevant for planning purposes, such as harm to landscape character, adverse visual impact, noise disturbance or adverse traffic impact, as submitted by the Appellants?

The Inspector's decision

4. In a decision dated 18th February 2014 a Planning Inspector dismissed the Respondent's appeal against the refusals of planning permission by the Second and Third Appellants for the construction of a hard runway to replace the existing grass runways, together with ancillary infrastructure, at Redhill Aerodrome. The Aerodrome, which straddles the boundary between the two local planning authorities, is located in the Metropolitan Green Belt.

5. There is no challenge to the Inspector's conclusion that the proposal was inappropriate development in the Green Belt. In paragraph 19 of her decision the Inspector said:

> "Submissions were made as to whether the Green Belt balancing exercise should follow the approach set out in the *River Club* judgment. Even though the judgment was made on the policy set out in Planning Policy Guidance 2, the wording in the Framework is very similar and I intend to follow the

> interpretation in the judgment. Furthermore this approach is reflected in decisions by the Secretary of State since the publication of the Framework."

6. The Inspector duly followed the *River Club* approach (see below, paragraphs 7 and 8). In her conclusions in paragraph 123 she said:

> "123. The harm to the Green Belt by reason of the inappropriate development, the loss of openness and the encroachment into the countryside has substantial weight. The harm to landscape character has moderate weight and the slight adverse visual impact a small amount of weight. The limited harm to the quality of life and learning environment through noise disturbance and the failure to satisfactorily resolve the capacity and mode of travel issues provide additional weight against the proposal. The overall weight against the proposal is
>
> very strong. This conclusion takes account of the mitigation afforded by the use of planning conditions and planning obligations."

Having identified in paragraph 124 the other considerations on the positive side – safeguarding employment, the prospect of additional jobs, the expansion of business aviation and support to business initiatives in the area – the Inspector concluded in paragraph 125:

> "125. The other considerations, when taken together, do not clearly outweigh the potential harm to the Green Belt and the other identified harm. Very special circumstances to justify the development do not exist. The proposed hard runway development fails to comply with national policy to protect the Green Belt set out in the Framework…"

River Club

7. In *R (on the application of River Club) v Secretary of State for Communities and Local Government* [2009] EWHC 2674 (Admin), [2010] JPL 584 Frances Patterson QC (as she then was) sitting as a Deputy High Court Judge considered the meaning of the words "any other harm" in paragraph 3.2 of Planning Policy Guidance 2: Green Belts ("PPG2"). Paragraphs 3.1 and 3.2 of PPG2 were in these terms:

> "3. Control Over Development
>
> Presumption against inappropriate development
>
> 3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances.
>
> 3.2 Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission

> should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly
>
> outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development."

8. The Claimant in *River Club* had submitted that the "other harm" referred to in the third sentence of paragraph 3.2 meant harm to the purposes or objectives of the Green Belt, so that as a matter of law "any other harm" was constrained to Green Belt harm: see paragraph 21 of the judgment. The Deputy Judge rejected that submission for the reasons set out in paragraphs 26 and 27 of her judgment.

> "26. Paragraph 3.2 of PPG2 is within the section of the PPG entitled "Control over development" and, within that part, subheaded "Presumption against inappropriate development". In my judgment, paragraph 3.2 is dealing with what is required to make inappropriate development acceptable in the green belt. That means considering the development as a whole to evaluate the harm that flows from it being inappropriate, together with any other harm that the development may cause, to enable a clear identification of harm against which the benefits of the development can be weighed so as to be able to conclude whether very special circumstances exist so as to warrant grant of planning permission.
>
> 27. It is of note that there are no qualifying words within paragraph 3.2 in relation to the phrase "and any other harm". Inappropriate development, by definition, causes harm to the purposes of the green belt and may cause harm to the objectives of the green belt also. "Any other harm" must therefore refer to some other harm than that which is caused through the development being inappropriate. It can refer to harm in the green belt context, therefore, but need not necessarily do so. Accordingly, I hold that "any other harm" in paragraph 3.2 is to be given its plain and ordinary meaning and refers to harm which is identified and which is additional to harm caused through the development being inappropriate. It follows that I reject the argument that the phrase is constrained and applied to harm to the green belt only"

The judgment below

9. The Respondent applied under section 288 of the Act to quash the Inspector's decision on the ground that she had erred in taking non - Green Belt harm into account when deciding whether the "other considerations" clearly outweighed the potential harm to the Green Belt by reason of inappropriateness and any other harm. The Respondent submitted before Patterson J:

   (i) that *River Club* was wrongly decided;

(ii) alternatively, that the policy context now contained in the Framework was so different that it required a different approach to the meaning of the words "any other harm" in paragraph 88: see paragraph 30 of the judgment.

10. Having referred in paragraph 53 to her earlier decision in *River Club*, Patterson J accepted the Respondent's submission (ii) for the reasons set out in paragraphs 54 – 57 of her judgment:

> "54. Now, as Mr Katkowski QC submits, the policy matrix is different in that all of planning policy is contained within the NPPF which is to be read and interpreted as a whole. That includes when, for individual considerations in a planning application, it is appropriate to refuse planning permission. For each of the individual considerations a threshold is set which, when it is reached or exceeded, warrants refusal. It is for the decision maker to determine whether the individual impact attains the threshold that warrants refusal as set out in the NPPF. That is a matter of planning judgement and will clearly vary on a case by case basis.
>
> 55. Here, the individual non Green Belt harms did not reach the individual threshold for refusal as defined by the NPPF. Was it right then to take them into account either individually or as part of the cumulative Green Belt harm assessments?
>
> 56. On an individual basis given the clear guidance given in the NPPF I have no difficulty in concluding that, in this case, it was not right to take the identified non Green Belt harms into account. The revised policy framework is considerably more
>
> directive to decision makers than the previous advice in the PPGs and PPSs. There has, in that regard, been a considerable policy shift. Where an individual material consideration is harmful but the degree of harm has not reached the level prescribed in the NPPF as to warrant refusal, in my judgment, it would be wrong to include that consideration as "any other harm".
>
> 57. That leaves the question of whether individual considerations can be considered together as part of a cumulative consideration of harm even though individually the evaluation of harm is set at a lower level than prescribed for refusal in the NPPF. In my judgement it would not be right to do so. That is because the Framework is precisely as it says: a framework for clear decision making. It is a re-writing of planning policy to enable that objective to be delivered. It has no words that permit of a residual cumulative approach in the Green Belt when each of the harms identified against a proposal is at a lesser level than would be required for refusal on an individual basis. Without such wording, to permit a combination of cumulative adverse impacts at a lesser level than prescribed for individual impacts to go into the evaluation of harm of a Green Belt proposal seems to me to be the

> antithesis of the current policy. It would re-introduce a possibility of cumulative harm which the NPPF does not provide for. It is clear that the NPPF does contemplate findings of residual cumulative harm in certain circumstances, as is evident in paragraph 32, where it deals with the residual cumulative impact of transport considerations. Such phraseology does not appear in the Green Belt part of the NPPF."

11. Patterson J did not accept the Respondent's submission (i) (above). In paragraph 60 of her judgment she said:

> "60. In those circumstances I do not need to hold that my previous decision in *River Club* was wrong. It was taken in a different policy context where there was greater scope for flexible interpretation. That is not to say that I am ignoring or disregarding the jurisprudence in *Ex Parte Taj*. The fact is that the instant decision had to be determined in a NPPF policy context. If the consequence of that means that non Green Belt harms of a lesser effect than those which would warrant refusal on an individual basis cannot be considered as part of a cumulative impact of a development proposal, as set out, that is due to the effect of the wording of the NPPF."

The Respondent's case

12. There was no Respondent's Notice, and the Respondent's Skeleton Argument did not suggest that *River Club* was wrongly decided in the policy context of PPG2. At the outset of the hearing we asked Mr. Katkowski QC to confirm that the Respondent was not submitting that *River Club* was wrongly decided. Although he was reluctant to concede that *River Club* was rightly decided in the context of PPG2, he did not pursue a submission that it was wrongly decided, and confirmed that he was content to base the Respondent's case on its submission (ii) (above).

13. Before Patterson J the Respondent had relied on *Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions* [2002] JPL 1509 in support of its submission that *River Club* was wrongly decided: see paragraph 31 of Patterson J's judgment. That reliance was misplaced. In his oral submissions before us Mr. Katkowski accepted that the only "other" harm that had been found by the Inspector in *Doncaster* in addition to the harm by reason of inappropriateness was harm to the openness and purpose (preventing urban encroachment into the countryside) of the Green Belt: see paragraph 19 of the judgment in that case. Thus the issue raised in *River Club* – whether "any other harm" was confined to harm to the Green Belt other than harm by reason of inappropriateness – did not arise in *Doncaster*.

14. *River Club* was decided on the 7th October 2009. I have referred to it at some length because the *River Club* approach to the meaning of "any other harm" in paragraph 3.2 of PPG2 was well established as the existing Green Belt policy background against which the policies in the NPPF were prepared, and published in March 2012. An earlier example of the same approach to the meaning of "any other harm" in paragraph 3.2 of PPG2 can be seen in *R (on the application of Basildon District Council) v First Secretary of State* [2004] EWHC 2759 (Admin), [2005] JPL 942: see

paragraph 18 of that judgment. Mr. Katkowski accepted that there was no authority which supported a different approach to the meaning of "any other harm" in the context of PPG2.

The Framework

15. It is common ground that excluding non – Green Belt harm from "any other harm" in the second sentence of paragraph 88 of the Framework would make it less difficult for applicants and appellants to obtain planning permission for inappropriate development in the Green Belt because the task of establishing "very special circumstances", while never easy, would be made less difficult. All of the considerations in favour of granting permission would now be weighed against only some, rather than all of the planning harm that would be caused by an inappropriate development.

16. If it had been the Government's intention to make such a significant change to Green Belt policy in the Framework one would have expected that there would have been a clear statement to that effect. Mr. Katkowski accepts that there is no such statement. In my judgment, all of the indications are to the contrary:

(i) While there have been some detailed changes to Green Belt policy in the Framework, protecting the Green Belt remains one of the Core planning principles, the fundamental aim of Green Belt Policy to prevent urban sprawl by keeping land open, the essential characteristics of Green Belts, and the five purposes that they serve, all remain unchanged. By contrast with paragraph 86 of the Framework, which does change the policy approach to the inclusion of villages within the Green Belt, paragraph 87 emphasises the continuation of previous Green Belt policy (in PPG2) in respect of inappropriate development: "As with previous Green Belt policy."

(ii) The Impact Assessment in respect of the Framework published by the Department for Communities and Local Government in July 2012 said that "The government strongly supports the Green Belt and does not intend to change the central policy that inappropriate development in the Green Belt should not be allowed." Under the sub-heading "Policy Changes" the Impact Assessment said that "Core Green Belt protection will remain in place." It then identified four proposed "minor changes to the detail of current policy" which would resolve technical issues, but not harm the key purpose of the Green Belt, "as in all cases the test to preserve the openness and purposes of including land in the Green Belt will be maintained." On the face of it, paragraphs 87 and 88 of the Framework would appear to constitute the "central policy" which the Government did not intend to change.

(iii) That there was no intention to change this aspect of Green Belt policy is confirmed by the Inspector's statement in paragraph 19 of her decision: that the *River Club* approach to "any other harm" in the balancing exercise is reflected in decisions by the Secretary of State since the publication of the Framework. We were not referred to any decision in which a different approach has been taken to "any other harm" since the publication of the Framework.

17. I readily accept that these indications are not conclusive. The Framework means what it says, and not what the Secretary of State would like it to mean: see the authorities cited by the Judge in paragraphs 18 and 19 of her judgment. However, if the Framework has effected this change in Green Belt policy it is clear that it has done so unintentionally. Mr. Katkowski did not submit that there was any material difference

between paragraphs 3.1 and 3.2 of PPG2 and paragraphs 87 and 88 of the Framework. He was right not to do so. The text of the policy has been reorganised (see paragraphs 2 and 7 above), but all of its essential characteristics – "inappropriate development is, by definition, harmful to the Green Belt", so that it "should not be approved except in very special circumstances", which "will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations", and the "substantial weight" which must be given to "harm to the Green Belt" – remain the same. Mr. Katkowski submitted that the change in policy was to be inferred, not from the wording of paragraphs 87 and 88, but from the other policies in the Framework which "wrapped around" Green Belt policy, and which were, he submitted, very different in some respects from previous policies in the earlier policy documents which were replaced by the Framework. At an early stage in his submissions he said that at the heart of his case was "Context, context, context."

Paragraph 88

18. There is no dispute that the words in paragraph 88 should not be construed in isolation, and must be construed in the context of the Framework as a whole, but Mr. Maurici QC and Mr. Whale for the Appellants rightly submit that the

starting point must be the words of the policy in paragraph 88. Not only are the words "any other harm" in the second sentence of that paragraph unqualified, they are contained within a paragraph that expressly refers, twice, to "harm to the Green Belt." When the policy wishes to restrict the type of harm to harm to the Green Belt it is careful to say so in terms.

19. The Appellants also submit that the Judge's approach to "any other harm" would lead to an imbalance in the weighing exercise that is at the heart of paragraph 88. In paragraph 51 of her Judgment, having rejected the Second and Third Appellants' submission that the effect upon landscape character and the visual impact of the proposed development were harms to the Green Belt, Patterson J continued:

> "51. …The effect upon the landscape character and the visual impact of a development proposal are clearly material considerations but are different from a consideration of harm to a Green Belt. If a development proposal contributed to the enhancement of the landscape, visual amenity and biodiversity within the Green Belt those could well be factors in its favour as part of a very special circumstances balancing exercise…."

20. It is common ground that all "other considerations", which will by definition be non-Green Belt factors, such as the employment and economic advantages referred to by the Inspector in her decision in this case, must be included in the weighing exercise. On the Judge's approach, if an inappropriate development in the Green Belt is beneficial in terms of the appearance of the landscape, visual amenity, biodiversity or, presumably any other matter relevant for planning purposes such as the setting of a listed building, or transportation arrangements, it must be weighed in the balance when deciding whether "very special circumstances" exist; but if the inappropriate development is harmful to any of those non-Green Belt considerations, that harm must not be weighed in the balance when deciding whether "very special circumstances" exist. I accept the Appellants' submission that this imbalance is illogical. If all of the "other considerations" in favour of granting permission, which will, by definition, be non-Green Belt factors, must go into the weighing exercise,

there is no sensible reason why "any other harm", whether it is Green Belt or non-Green Belt harm, should not also go into the weighing exercise.

21. Mr. Katkowski submitted that it was not illogical to exclude non-Green Belt harm from the weighing exercise because the underlying purpose of the policy was to protect the openness of the Green Belt so that it could continue to serve one or more of the five purposes identified in paragraph 80 of the Framework. Since there is no suggestion that the underlying policy purpose has changed as between PPG2 and the Framework – the essential characteristics and the five purposes of the Green Belt all remain the same – this argument is, in reality, a return to the submission that *River Club* was wrongly decided. There is no dispute that the underlying purpose of the policy was, and still is, to protect the essential characteristic of the Green Belt – its openness – but there is nothing illogical in requiring all non-Green Belt factors, and not simply those non-Green Belt factors in favour of granting permission, to be taken into account when deciding whether planning permission should be granted on what will be non-Green Belt grounds ("very special circumstances") for development that is, by definition, harmful to the Green Belt.

The wider policy context

22. It is true that the "policy matrix" (see paragraph 54 of the judgment) has changed in that the Framework has, in the words of the Ministerial foreword, replaced "over a thousand pages with around fifty, written simply and clearly." Views may differ as to whether simplicity and clarity have always been achieved, but the policies are certainly shorter. There have been changes to some of the non-Green Belt policies, and there have also been changes to detailed aspects of Green Belt policy, not all of which were identified in the Impact Assessment: see eg. *Europa Oil and Gas v Secretary of State for Communities and Local Government* [2014] EWCA Civ 825, [2014] JPL 1259.

23. However, I do not accept the premise which underlies the Respondent's case, which was accepted by the Judge, that the other policies "wrapping around" the Green Belt policy in paragraphs 87 and 88 of the Framework are "very different" from previous national policy (see paragraph 24 of the judgment), or that, as the Judge put it, there has been "a considerable policy shift": see paragraph 56 of the judgment.

24. The Judge listed the policy differences relied upon by the Respondent in paragraph 23 of the judgment. Mr. Katkowski placed paragraph 32 of the Framework at the forefront of his submissions, and it is the only policy expressly relied upon by the Judge in her conclusions: see paragraph 57 of the judgment. I will deal with paragraph 32 below (paragraphs 26 - 33). I am not persuaded that any of the other policies relied upon by Mr. Katkowski is an example of a change of substance, as opposed to a shorter, and in the Minister's view, a simpler and clearer, statement of well established policy. The policy in respect of heritage considerations is the best illustration of this point. In his oral submissions Mr. Katkowski accepted that the policy contained in paragraph 133 of the Framework was not substantially different from the policy guidance which was replaced by the Framework.

25. The Judge did not refer to paragraph 134 of the Framework which says that when a development would cause less than substantial harm to the significance of a designated heritage asset, that harm must be weighed against the public benefits of the proposed development. Mr. Katkowski accepted that this approach did not represent any practical change from previous policy. If less than substantial harm to the

significance of a designated heritage asset must be weighed against the public benefits of the proposed development in all cases, it is difficult to see why, in the case of an inappropriate development in the Green Belt which would cause harm that is less than substantial to the setting of a listed building, that harm should not be included as "any other harm" when the public benefits of the proposed development are being weighed in the balance as the "other considerations" in favour of granting permission for the inappropriate development.

Paragraph 32

26. Paragraph 32 of the Framework requires all developments that would generate significant amounts of traffic to be supported by a Transport Statement or Transport Assessment. Account must be taken of a number of factors, including whether:

> "improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development."

Paragraph 32 continues:

> "Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."

27. The "residual cumulative impacts" referred to in paragraph 32 are impacts on the transport network. There is nothing new in the proposition that such residual cumulative impacts – ie those traffic impacts which would remain after any highway improvement to limit the significant impacts of the development have been carried out – are a material planning consideration which may, in appropriate cases, justify a refusal of planning permission. What is new is that part of the policy which, unusually, sets out the only basis on which planning permission should be refused on this ground: permission should only be refused on transport grounds "where the residual cumulative impacts of development are severe" (emphasis added).

28. While this is a change in transport policy, which is now more prescriptive in this respect, it does not provide any support for the Respondent's submission that the Framework has implicitly effected a change in Green Belt policy. It does not follow from the (new) policy that permission should only be refused on transport grounds where the residual cumulative impacts of a development are severe, that when considering whether permission for inappropriate development in the Green Belt should be granted, an adverse residual cumulative transport impact of that development that is less than severe should be ignored when an Inspector is deciding whether "the potential harm to the Green Belt by reason of inappropriateness, and any other harm", is clearly outweighed by "other considerations", which would include any beneficial transport considerations, eg an offer to provide a bus service to the development, or to fund the construction of a new railway station.

29. Mr. Katkowski repeated the submission that is referred to in paragraph 25 of the judgment: that if the *River Club* approach to "any other harm" is followed an applicant for planning permission is "cheated" of the benefit of those policies in the Framework which prescribe the threshold at which particular harms will justify a refusal of planning permission. Paragraph 37 of the Respondent's Skeleton Argument explained the basis of that submission, as follows:

> "37. To take an easy example of the consequences of applying the *River Club* approach to the [Framework]: if a development is sited outside the green belt, it can "only" be refused on transport grounds if the impact would be "severe" (paragraph 32) but if the site is in the green belt then either instead of or in addition to this very specific policy test, any adverse transport impact (even if far less than "severe" and even if the impact was on roads outside the green belt) would lead to a refusal of permission unless "clearly outweighed" by "very special circumstances" under [paragraph] 88."

30. The Judge accepted that submission, saying in paragraph 56 of her judgment:

> "Where an individual material consideration is harmful but the degree of harm has not reached the level prescribed in the [Framework] as to warrant refusal …. it would be wrong to include that consideration as "any other harm"."

It is not clear whether the Judge considered that where an individual non-Green Belt consideration did reach the impact level for refusal prescribed in the Framework, eg where there would be "significant harm" to biodiversity, such a consideration could then be taken into account in the weighing exercise as "any other harm". If that was the Judge's approach, it was not supported by Mr. Katkowski who submitted that non-Green Belt harm, whether or not it reached the impact level prescribed for refusal in the Framework on another ground, such as transport or biodiversity, was not "any other harm" for the purposes of paragraph 88 of the Framework.

31. In my judgment, there are two fallacies in this submission. There is no question of an applicant or appellant being "cheated" of the benefit of another policy in the Framework which prescribes a threshold for a refusal of permission on a particular ground, such as transport or biodiversity. First, the submission assumes that if the threshold for a refusal of planning permission on transport or biodiversity grounds is not met in the case of a proposed development outside the Green Belt any adverse impact on transport or biodiversity must simply be ignored when a decision is taken whether to grant or refuse planning permission. That assumption is incorrect. Take the example of a proposal for a large scale commercial development in the countryside outside the Green Belt. If, as is likely, the proposal is not in accordance with the policies in the development plan for the protection of the countryside, planning permission must be refused in accordance with the development plan "unless material considerations indicate otherwise": see section 70(2) of the Act and section 38(6) of the Planning and Compulsory Purchase Act 2004, and paragraphs 11 and 12 of the Framework.

32. The Framework does not purport to alter the statutory duty to have regard to "any other material consideration" when determining a planning application or appeal: see section 70(2) of the Act. When deciding whether "material considerations indicate otherwise" the local planning authority or the Inspector on appeal will consider all of the material considerations, those which point in favour of granting permission, and those considerations which, in addition to the conflict with the development plan, point against the grant of permission. In the former category there may well be employment and economic considerations of the kind referred to in the Inspector's decision in the present case. If the proposed development would cause some, but not

significant harm to biodiversity; some, but not substantial harm to the setting of a listed building; and some, but not severe harm in terms of its residual cumulative transport impact, those harmful impacts will fall within the "material considerations" which point against the grant of permission. The fact that a refusal of planning permission on biodiversity grounds, heritage grounds or transport grounds would not be justified does not mean that the harm to those interests would be ignored. The weight to be given to such harm would be a matter for the Inspector to decide in the light of the policies set out in the Framework, but it would not cease to be a "material consideration" merely because the threshold in the Framework for a refusal of planning permission on that particular ground was not crossed. The position is no different if development is proposed within the Green Belt, save that the "very special circumstances" test will be applied if the proposal is for inappropriate development in the Green Belt.

33. The second fallacy in the Respondent's submission is the proposition that "any adverse transport impact, even if far less than severe….would lead to a refusal of planning permission unless 'clearly outweighed' by 'very special circumstances.' " The harm that must be "clearly outweighed by other considerations" is not simply the less than severe transport harm, but the harm to the Green Belt by reason of inappropriateness and "any other harm", which would include, but would not be limited to the less than severe transport harm. If, having carried out this balancing exercise, the Inspector concluded that "very special circumstances" did not exist, she would refuse planning permission, not on transport grounds, but on the ground that the proposed development did not "comply with national policy to protect the Green Belt set out in the Framework": see the Inspector's decision in this case (paragraph 6 above).

Sustainable Development

34. There is one respect in which it can fairly be said that there has been a change in policy. The Framework now places a presumption in favour of sustainable development at the heart of national planning policy: see paragraph 14 of the Framework. The Judge mentioned this new presumption in paragraph 47 of her judgment, but it does not assist the Respondent. One of the circumstances in which the policy that permission should be granted where relevant policies in the development plan are out of date (which was conceded by the Second and Third Respondent in respect of some of their development plan policies, see paragraph 12 of the Inspector's decision) does not apply is if "specific policies in this Framework indicate development should be restricted.[9]" Footnote 9 gives a number of examples of such policies. Those examples include policies relating to land designated as Green Belt. Thus, far from there being any indication that placing the presumption in favour of sustainable development at the heart of the Framework is intended to effect a change in Green Belt policy, there is a clear statement to the contrary.

Conclusion

35. The Inspector's approach to "any other harm" was correct.

Lord Justice Tomlinson:

36. I agree.

Lewison LJ:

37. I also agree.

APPENDIX TWO: 35 HIGH LEGH ROAD CALL FOR SITES SUBMISSION

[redacted]

28th September 2017

Warrington Borough Council
Planning Policy and Programme
New Town House
Buttermarket Street
Warrington
WA1 2NH

Dear Sirs

Preferred Development Option Regulation 18 Consultation
35 High Legh Road, Broomedge, Lymm

We have been instructed on behalf of our client, Peter and Diane Martin, to submit their land interests at 35 High Legh Road, Broomsedge for the Council's consideration in their emerging Local Plan process.

[redacted]

[redacted]

Pegasus Group

Their land interests comprise of the residential property of 35 High Legh Road, Broomedge and its associated curtilage and field to the rear. The site is well-related to the existing settlement of Broomedge, and immediately abuts the existing settlement boundary to the north (which ends at 33/36 High Legh Road).

The site is available for development and we politely request that the Council consider this site for development as part of their emerging Local Plan process. The site is well placed to sustainably accommodate a modest level of growth which should be directed towards Broomedge, as a sustainable rural settlement. Accordingly, the Council are urged to consider this site in the emerging Local Plan process.

We trust the above information is useful and we would very much welcome the opportunity to meet with officers to discuss this further.

Yours sincerely

[redacted]

Kerry Walker

Planner

[redacted]

[redacted]