

[REDACTED]

From: [REDACTED]
Sent: 26 April 2018 14:48
To: Planning.Responses
Cc: Anita Gardner
Subject: Planning Consultation on: A/36/18/OUT

Dear Sir/Madam,

Please find attached consultation response concerning policing infrastructure contributions for application A/36/18/OUT (200 homes on the land off Arundel Road, Angmering).

Kind regards,

Andy Taylor

Commercial Planning Manager
Sussex & Surrey Police

[REDACTED]

From: planning.responses@arun.gov.uk [<mailto:planning.responses@arun.gov.uk>]
Sent: 28 March 2018 17:23
To: Designing Out Crime [REDACTED]
Subject: Planning Consultation on: A/36/18/OUT

To: **F A O Neville Wren**

NOTIFICATION FROM ARUN DISTRICT COUNCIL
Town & Country Planning Act 1990 (as amended)
Town & country Planning (Development Management Procedure) (England) Order 2015 -
Article 5 - Articles 16 & 18 Consultation before the grant of permission
Outline Consent

APPLICATION NO: A/36/18/OUT

Registered: 15th March

2018
Site Address: Land off Arundel Road Angmering BN16 4ET
Grid Reference: 506639 105348
Description of Works: Outline planning application with some matters reserved for the erection of up to 200 dwellings with access, public open space, landscaping and sustainable drainage system (SuDS) with vehicular access point from Arundel Road, one full-sized adult football pitch and the demolition of industrial units and one residential dwelling. Departure from the Development Plan.

The Council have received the above application. I shall be pleased to receive any observations you may wish to make.

[Click here to view the application details](#)

Should you have any comments to make, these should be sent by replying to this email by 26-APR-18.

You can also monitor the progress of this application through the Council web site:

www.arun.gov.uk/planning

Please be aware that any comments you may make will be available on our website so please do not insert personal details or signatures on your reply.

In the absence of a reply within the period stated, I shall assume that you have no observations to make.

The officer dealing with this application is Mrs A Gardner who can be contacted on telephone number 01903 737529.

Regards
Planning Officer

consultee_email

<http://www.arun.gov.uk>

NLPG UPRN 100062237016
DX 57406 Littlehampton

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Sussex
Police & Crime
Commissioner

Andrew Taylor
Joint Commercial Planning Manager
Sussex and Surrey Police

Estate Department
L Block
Sussex Police Headquarters
Church Lane
Lewes
East Sussex
BN7 2DZ

Our Ref: 18.006
Your Ref: A/36/18/OUT

26th April 2018

Anita Gardner
Planning Department
Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Dear Mrs Gardner,

RE: OUTLINE APPLICATION WITH SOME MATTERS RESERVED FOR THE ERECTION OF UP TO 200 DWELLINGS WITH ACCESS, PUBLIC OPEN SPACE, LANDSCAPING AND SUSTAINABLE DRAINAGE SYSTEM (SUDS) WITH VEHICULAR ACCESS POINT FROM ARUNDEL ROAD, ONE FULL-SIZED ADULT FOOTBALL PITCH AND THE DEMOLITION OF INDUSTRIAL UNITS AND ONE RESIDENTIAL DWELLING ON THE LAND OFF ARUNDEL ROAD, ANGMERING.

I write on behalf of the Office for the Police and Crime Commissioner (PCC) for Sussex concerning the outline planning application seeking permission for 200 dwellings on the land at off Arundel Road, Angmering.

Sussex & Surrey Police are an active member of the National Police Estates Group and now act as one on all infrastructure and town planning related matters across their combined geographical area. Our approach to Section 106 requests is in accordance with national best practice recommended by the National Police Chief's Council (NPCC). The approach now adopted has been tested at public inquiries nationally and found to be in accordance with the statutory CIL tests.

The large numbers of housing being developed across Sussex and more specifically Arun will place a significant additional demand upon our police service. These impacts will be demonstrated in this submission and the necessity of investment in additional policing services is a key planning consideration in determination of this planning application.

This development will place permanent, on-going demands on Sussex Police which cannot be fully shouldered by direct taxation. Like many other public services, policing is not fully funded via public taxation. This request outlines a number of the capital costs that will be incurred by Sussex Police to enable safe policing of this development.

All of the infrastructure outlined in this funding request has been found compliant with regulation 122 of the Community Infrastructure Levy and are considered directly related to the development in scale and kind and necessary to make the development acceptable in planning terms.

The application site is currently a partially developed greenfield site comprising four land parcels including an agricultural field, and area of scrubland, a residential property, and the former New Farm Nursery. These using currently have a negligible impact on policing and when built upon will create an additional demand upon the police service that does not currently exist.

The police will need to recruit additional staff and officers and equip them. The development will also require the services of a police vehicle. Staff and officers will also need to be accommodated in a premises that will enable them to serve the development. This request is proportionate to the size of the development and is intended to pay for the initial, additional costs resulting directly from the development for those areas where the police do not have existing capacity. The request also explains how the police service is funded, outlines National Planning Policy support for policing contributions and references numerous appeal decisions where police requests for developer contributions have been upheld.

Police forces nationally, are not in a position to support major development of the scale now being proposed for many of the nation's town and cities without the support from the planning system. If we are obliged to do so using our own resources only, then it is reasonable to conclude that there will be a serious risk of service degradation as existing coverage is stretched to encompass the new development and associated population growth. This is already evident across Sussex due to the significant numbers of housing being developed and clearly shown by the increasing numbers of recorded crimes in Sussex over the last year. Our force must ensure that development growth is supported by the infrastructure necessary to guarantee the safety and security of the new communities.

It is the responsibility of the PCC to ensure our Chief Constable has sufficient financial support to deliver a high level of policing to the residents of Sussex. Our office continues to actively seek financial contributions via Section 106 agreements and Community Infrastructure Levy funds to support our capital program. This will enable Sussex Police to deliver the highest possible service to ensure the protection of the communities that we serve. In line with many other police forces Sussex & Surrey Police have updated our methodology for infrastructure requests to ensure our representations are transparent and provide an up to date, accurate reflection of our current capacity in the district.

Our new methodology has been developed through a joint partnership with Leicestershire, Thames Valley, West Mercia, Warwickshire and other active members of the National Police Estates Group. This methodology was considered Community Infrastructure Levy REG122 compliant by Mr Justice Green in the case of *Jelson v SoSCLG and Hinckley and Bosworth Council* [2016] CO/2673/2016 (**Appendix 1**). In addition, there are a significant number of recent appeal decisions and High Court judgments supporting both the principle of Police contributions and our methodology (see attached appendices). The principle of developer contributions towards Sussex Police has recently been upheld by the Secretary of State in the allowed appeal relating to new 400 homes on the land east of Fontwell Avenue, West Sussex (Appeal ref: APP/C3810/V/16/3143095 – **Appendix 2**).

I will go into further detail on the various items of infrastructure and provide evidence of their compliance with Regulation 122 tests.

1. Police Funding and Development Growth

A primary issue for Sussex Police is to ensure that new development, like that proposed by application A/36/18/OUT, makes adequate provision for the future policing needs that it will generate. Like other public services, Sussex Police's primary funding is insufficient to be able to add capital infrastructures to support new development when and wherever this occurs. Furthermore there are no bespoke capital funding regimes e.g. the Health Lift to provide capital either. The police therefore fund capital infrastructure by borrowing. However in a service where most of the budget is staffing related, the Sussex Police capital programme can only be used to overcome pressing issues with existing facilities, or to re-provide essential facilities like vehicles once these can no longer be used.

Sussex Police endeavour to use our existing funds as far as they stretch to meet the demands of an expanding population and overwhelmingly for revenue purposes. However, it is the limit of these funds which necessitates the need to seek additional contributions via Section 106 requests and the Community Infrastructure Levy (CIL). This situation also prevails in other public services seeking contributions and there is nothing different here as far as policing is concerned. What is different is that the police do not enjoy capital income from the usual taxation sources. This evidences that the police do not make requests where other funds are available to meet their needs.

The reality of this financial situation is a major factor in our Forces planning and alignment with plans for growth in that whilst Sussex Police can plan using their revenue resources to meet their on-going, and to a limited extent, additional revenue costs these do not stretch to fund necessary additional investment in their infrastructures.

Sussex Police will continue to engage with Local Planning Authorities to ensure crime prevention is referenced within new local plan documents and provide crime prevention design advice to minimise the opportunities for crime within new development. Ensuring new development takes full consideration of crime prevention and the provision of adequate infrastructure to support policing is clearly outlined within the NPPF and within Paragraph 156 of the NPPF which states "*Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver... the provision of health, security, community and cultural infrastructure and other local facilities*".

In the support of this request the following information is provided by Miranda Kadwell, Corporate Finance Manager at Sussex Police and is a detailed commentary on Sussex Police's budget, which underpins the above statements:

National funding

Sussex Police receives 61% of its funding from central government and 39% from local taxation. Central government funding comprises of the Home Office Core Funding Settlement, the Department for Communities and Local Government (DCLG) Formula Funding, (together these are referred to as central government grant or CGG for the purposes of this submission) and legacy Council Tax Grants (LCTG). LCTG are fixed and some elements of this are time limited, therefore, LCTG are not affected by variations in the funding formula.

The distribution of central government grant is calculated by the Police Relative Needs Formula. This Police Funding Formula divides up how much money each police force receives from the overall central government funds. It takes into account a number of factors to assess demand in each area.

The first stage of the formula is to divide funds between the different activities that the police undertake. These activities, or workloads, can be broken down into five key areas (Crime, Incidents, Traffic, Fear of Crime, and Special Events).

A portion of total funding is also distributed according to population sparsity, to address the specific pressure created by the need to police rural areas.

The second stage is to divide funding for each of these workloads between the 43 local policing bodies of England and Wales. In order to do this, "workload indicators" are calculated to estimate how much work each police force is expected to have in each of the key area compared to other forces. These estimates are calculated by socio-economic and demographic indicators that are correlated with each workload. Indicators of workload are used rather than data recorded crime levels to account for known variations in recording practices, and the funding model has been designed to avoid creating any incentives for forces to manipulate figures.

The formula consists of a basic amount per resident and a basic amount for special events, and top ups for the five key areas, sparsity and area costs (which takes account for regional differences in costs).

The top-ups etc. are weighted and use specific categories of population, rather than a straight forward population figure, to determine grant allocations, for examples specific categories includes

the population of various benefits, long-term unemployed, over crowded households, hard pressed households, residents in terraced accommodation etc.

Whilst the funding formula is influenced through allocation of a basic amount per resident, this does not necessarily lead to an increase in Central Government Grant to Sussex Police. Putting aside the time delays between recognising population growth and this being fed in to the funding formula, the overall pot available to all forces the CGG is limited and in fact has declined over the last few years as part of the Government's fiscal policy. Therefore, changes in general population or the specific population do not increase the overall funding made available through CGG, rather they would affect the relative distribution of grant between forces.

For the 2018/19 year there was no change to the CGG despite the occurrence of development growth in the county area compared to previous years. However it can be stated with certainty that even if there was an increase in central funding as a result of development growth, this funding would be fully utilised in contributing to additional salary, revenue and maintenance costs (i.e. not capital items and not what is claimed here). This funding, therefore, would not be available to fund the infrastructure costs that are essential to support the proposed development growth.

During the last year, the Home Office and police partners engaged on potential changes to the police funding formula. However, in the context of changing demand, the Minister for Policing and the Fire Service Nick Hurd has said that providing funding certainty over the next two years to enable the police to plan in an efficient way is his priority. Therefore, proposed changes to the funding formula will be revisited at the next Spending Review. Due to the uncertainty and range of possible outcomes, we have made no assumptions regarding a change to the funding formula in our current financial forecasts. This adds to the level of uncertainty over future government funding.

Local funding

Sussex Police (precepting body) places a demand or precept on the district and borough councils in its area (billing authorities) for a sum of money to be raised through the council tax. The amount to be raised is divided by the Council Tax Base (CTB) or number of households to arrive at an average Band D council tax, from which all other bands of council tax are determined. The growth in the council tax or the amount each household pays is decided by the Police and Crime Commissioner (PCC), having regard to the DCLG rules concerning the need to hold a local referendum where the proposed spending increase in the precept is above a prescribed threshold, currently £12 per Band D property to maintain real terms funding. The cap on precept uplift was raised to £12 for all forces for the 2018/19 year. Following public consultation the Police and Crime Commissioner proposed an increase in the 2018/19 precept of £12.

During 2017/18 Sussex Police received the 5th lowest precept of any PCC in England and Wales. Sussex Police also had the 7th lowest net revenue cost per head of population in 2017/18 and the 7th lowest total funding per head of population according to the 2017/18 HMICFRS Value for Money Profiles.

There remains potential for the council tax yield to increase simply through a growth in the CTB. However, it should be noted that the CTB is reduced for discounts and exemptions provided under the Local Council Tax Benefit Scheme (LCTBS) and may also be affected by collection rates. Therefore, a growth in households might not lead to a growth in council tax yield where those households benefit under the LCTBS.

The additional funding generated by council tax in 2018/2019 will reduce the severity of the Forces previous savings target. The savings target represents a funding gap between our existing budget requirements and current funding sources. However the latest Medium Term Financial Strategy indicates the PCC will still require a further £17m to be drawn from our reserves to support revenue costs associated with our Local Policing Program over the period to April 2020.

Most importantly, the higher council tax precept will allow our PCC to retain and invest in our workforce and continue supporting our Local Policing Program (LPP). Key considerations driving the precept increase decision included:

- Public demand on police services is increasing exponentially;
- Criminal investigations are becoming increasingly complicated, with huge amounts of digital material to identify, secure and analyse, against an exacting threshold for prosecution;
- The public want to see investment in more visible, local policing, focusing on crimes like burglary and anti-social behaviour and they rightly want to feel safe on the roads, in public spaces and at night-time;
- The public also want to see improvements in the force's approach to public contact and more support to the 101 service;
- HMICFRS (Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services) has recently acknowledged the public's concerns about changes to neighbourhood policing, and stressed the importance of community intelligence;
- And, the PCC's consultations and correspondence with the public show that a majority of Sussex residents are prepared to support their police service through increased precept contributions.

Savings

Since 2010/11 we have seen reductions to the grant funding provided by the Government to Policing Bodies in England and Wales. Over the last eight years Sussex Police have worked hard to deliver savings and have made £88m of reductions and efficiencies to head towards balancing its books (source: Her Majesty's Inspectorate of Constabulary's (HMIC) Police Effectiveness, Efficiency and Legitimacy (PEEL) assessment and 2017/18 revenue budget).

Despite increases in the Council tax yield the 'Sussex Police Medium Term Financial Strategy' (MTFS) identifies a net savings requirement in the region of £3m over the next four years. This is the "budget gap" i.e. the difference between funding and the cost of policing which will need to be met by savings. Savings of £3m in addition to using £17m of reserves will be required to meet the total in-year gaps over the life of the MTFS and it is anticipated the budget will be balanced at the end of the 2021/22 year.

Capital Funding

Central Government funding for investment in capital infrastructure takes the form of a Home Office Grant. This grant makes up a small part of the overall funding for the Capital Programme and was reduced from £1.766m to 0.906m for the 2017/18 financial year and will remain at this level for the forthcoming 2018/19 year. Our capital and investment program is funded firstly by our capital grant and capital receipts (building sales) and is then supported by reserves or revenue contributions. The latest MTFS capital and investment programme funding sources are shown on the table below:

2017/18 £m	Funding	2018/19 £m	2019/20 £m	2020/21 £m	2021/22 £m	Total £m
0.906	Home Office Capital Grant	0.906	0.906	0.906	0.906	3.624
2.025	Revenue Contribution	2.059	3.213	3.699	3.507	12.478
4.264	Capital Receipts	7.250	3.350	2.050	5.500	18.150
20.126	Reserves	1.675	1.966	0	0	3.641
27.321	Total Capital and Investment Programme	11.89	9.435	6.655	9.913	37.893

(MTFS – 16.3 – Capital financing)

Home office capital grant is cash limited and has been reduced in recent years due to austerity measures and the requirement to fund national projects such as the new National Police Air Support (NPAS) service and Police Live Services for digital data and technology capabilities. The grant is not affected by movement in the local population of CTB, therefore, any local capital investment creates an additional financial burden on Sussex Police which will be funded through reserves or borrowing. With diminishing reserves and the implications of borrowing both situations both alternative funding mechanisms are inadvisable.

Conclusions on funding

Like many other public sector organisations, Sussex Police have seen a real terms reduction in grant funding in recent years, which has necessitated changes to the policing model. At the same time the demands placed on the police service increase, whilst the service has to deal with the changing nature of crime at both the national and local level, for example, cybercrime, child sexual exploitation and terrorism are areas of particular concern. Additional funding granted towards policing will support and sustain local policing services to Sussex residents.

In conclusion it remains necessary to secure Section 106 contributions or direct CIL funding for policing infrastructure, due to the direct link between the demand for policing services and the changes in the operational environment beyond Sussex Polices control i.e. housing growth and the subsequent and permanent impact it has upon policing.

Securing modest contributions means that the same level of service can be provided to residents of new development as it is to existing residents and without compromising frontline services. The consequence of no funding is that existing infrastructure will eventually become stretch to breaking point, and none of the communities we serve will received adequate policing.

Whilst national and local funding must continue to cover salary and maintenance costs, there would be insufficient funding to provide the infrastructure required for officers to carry out their jobs effectively, Sussex Police consider that these infrastructure costs arising directly as a result of the development proposed and that funding for the police under S106 or CIL is both necessary and justified.

2. Assessment and Request

Our office have undertaken an assessment of the implications of growth and the delivery of housing upon the policing of Arun and in particular the areas of these districts where new development is being directed towards. We have established that in order to maintain the current level of policing, developer contributions towards the provision of capital infrastructure will be required. This information is disclosed to secure essential developer contributions and is a fundamental requirement to the sound planning of the district. In the absence of developer contributions towards the provision of essential policing infrastructure the additional strain placed on our resources would have a negative impact on policing of both the development and forcewide policing implications within the district.

This submission will provide the most recent annual statistics for crime/incidents in Arun which will be compared to the number of existing households. This provides an incident per existing household (or person) within Arun which can then be used as the background to the various items of infrastructure outlined in this funding request.

Nationally, the Police Force ensure that we take regular legal advice and guidance from industry professionals on the applicability of NPPF tests relating to the application of Regulation 122 on our funding requests for S106 agreements and Infrastructure Development Plans. This included advice as to what is infrastructure which can be summarised as follows:

- The first point to note is that "*infrastructure*" is not a narrowly defined term. Section 216 of the Planning Act 2008 provides a list of "*infrastructure*" but is clear that that list is non-exhaustive. That fact is demonstrated by the use of the word "*includes*" prior to the list being set out.
- There is no difficulty in the proposition that contributions towards Police infrastructure can be within the definition of infrastructure for the purposes of the 2008 Act. In policy terms this is reinforced by the reference to security infrastructure in paragraph 156 of the National Planning Policy Framework.
- Infrastructure is not limited to buildings and could include equipment such as vehicles, communications technology, and surveillance infrastructure such as CCTV.

The submission set out below is based on the same methodology previously found sound by Planning Inspectors, the Secretary of State and the High Court and has been found sound. The

costs included in this submission are sites specific costs which are envisaged to be secured via a Section 106 agreement. The significant costs relating to revenue will be met by local and national taxation.

3. Current Policing requirements in the district of Arun

Sussex Police's existing estate

At present, Neighbourhood policing in Angmering is delivered from the Littlehampton or Bognor Regis Police station. Littlehampton police station is located in the County building on East Street, Littlehampton. Littlehampton police station currently supports a number of Forcewide and divisional support staff and officers who are required to deliver policing to the site and surrounding area of Angmering.

As outlined in the Police Crime Commissioners Estate Strategy 2013-2018 Littlehampton Police Station is to be re-provided / re-located. Potential sites and collaboration opportunities are currently being investigated with other blue light partners with a view to this project being completed in the next 3-5 years.

Sussex Police's current policing requirements and projections

For the last year Sussex Police recorded 41,015 incidents in the District of Arun which accounted for 9% of the total number of incidents in the County (2016/17 incident records). There has also been a notable rise in recorded crimes from 9,209 crimes (2015/16) to 10,028 (2016/17) crimes.

Sussex Police received approximately 42,195 calls to the non-emergency switchboard from Arun, of which 52,660 were managed by the non-emergency contact centre. Sussex Police also received approximately 18,429 calls directly to the emergency assistance number (999) in the 2016/17 year. There has been a significant rise in the number of calls directly to the (999) emergency number with approximately 22,000 additional calls received countywide by Sussex Police between 2015/16 and 2016/17.

To determine the current policing requirements per household or individual person an approximate estimation of the number of households and population in the district is required. The 2011 census listed 66,700 households in the District of Arun and taking into account net completions since this has increased by 3,478 homes to the end of the 2016/17 financial year (Arun AMR 2013/14 & Arun 5YHLS - 31/03/17).

The 2011 census listed 66,700 households and 149,518 persons in the Arun District and taking into account net completions since this has increased by approximately 3,047 (AMR 2015/16). There have been an average of 609 net completions over the last 5 years recorded, which is the closest figure to estimating the number of completions in the 2016/17 financial year. This brings the total number of existing homes in the District to approximately 70,356 with an average household consisting of 2.24 persons (149,518/66,700).

Sussex Police have a duty to respond to all incidents and many of these incidents are not recorded as crimes. We deliver crime prevention and presence, attendance and service lead at emergencies eg RTA's or flooding, counter terrorism and community reassurance. We must also attend all incidents involving deaths, attend crowd and events policing, attend and input to community safety and crime partnerships, and provide referral responses when there are expressed concerns about the safety of children, the elderly and those with special needs.

Taking into account the number of recorded incidents and the recorded number of existing households this results in 0.583 incidents per household or 0.260 incidents per person that require a police response in Arun each year.

4. Breakdown of predicted incidents as a result of population increase in Arun

The proposed development of 200 homes would have a population of 448 persons (at 2.24 persons per household). Applying the current ratio of "incidents" to population then the development would generate an additional 91.7 incidents per year for Sussex Police to attend (0.4583×200).

These incidents are likely to result in 22.4 additional recorded crimes per year attributed to this neighbourhood.

5. Current breakdown of policing delivered in Arun

A full strategic review of staffing has been undertaken for the purposes of this representation and is considered accurate to date.

Current statistics show that Sussex Police employ 2622 officers in active duty delivering policing to the residents of Sussex. These roles can be categorized into dedicated policing teams delivering neighbourhood policing; divisional policing delivering specialist services such as response roles and investigations; and Forcewide policing teams delivering specialist policing services across the county such as Firearms, Major crime and counter terrorism. All of these functions are essential to the success of Sussex Police and will all be utilised in some capacity to deliver policing to this new neighbourhood in Fontwell. Sussex Police also employ 2237 support staff in either dedicated, divisional or Forcewide roles.

In total the Local Authority of Arun is served by; (all figures = FTE)

Police officers

- 142 dedicated uniformed Officers
Neighbourhood Policing Team officers (NPT), Local Support Team, Response Policing Teams, Police Community Support Officers.
- 15 divisional officers

The West Sussex division has 105 officers not including the dedicated officers listed as dedicated uniformed officers. These roles include Investigation teams, Special Investigations Unit (SUI), CIT (Crisis Intervention Team, Operational support teams. Recorded incidents in Arun account for 17.6% of the recorded incidents in West Sussex over the last year therefore it is reasonable to allocate 15 divisional officers to the Arun District.

- 64 Forcewide officers

A large number of our officers deliver force wide policing in a variety of roles including Operations, Firearms, Major crime, Public protection, Specialist crime, Custody, Communications, Professional standards and Training roles. There are 821 officers Forcewide officers which deliver policing to the whole of Sussex and are vital to the operation of all types of policing including the functioning of neighbourhood policing. Taking into account that 8.1% of all incidents managed by Sussex Police occur in Arun 64 (64.5) officers are required for the policing of this District.

Police staff

Sussex Police currently employs 2237 support staff delivering policing to the residents of Sussex. These roles can be categorized into dedicated support staff such as police enquiry officers and facilities assistants; Divisional staff teams (ie: East Sussex, West Sussex, and Brighton & Hove) delivering services such as crime prevention, operations, investigations, strategic support, corners office and other essential roles. Forcewide support staff roles such as public protection, joint transport services, crime justice & custody, communications departments and specialist crime command. Some specialist department roles have not been included, however all the above forcewide departments consist of 10 employees or larger. This precludes specialist support staff roles such as the office of the Police and Crime Commissioner which are not directly linked to population growth.

- 11 dedicated support staff

Police Enquiry officers, Facilities officers, Facilities Assistants

- 14 divisional support Staff

As with police officers roles divisional support staff is essential to support front line policing and drawn upon when required. Divisional support staff roles include Investigations teams, Crime Prevention, Licensing, Prosecution case workers, Coroners Office and other essential roles. There are 99 divisional support staff within these departments. Again utilising the ratio of incidents in West Sussex (21%), 14 support staff are required to support the existing population of Arun.

- 89 forcewide support staff

The majority of our support staff functions are delivered in a forcewide capacity. Only departments with over 10 or more support staff members have been included within this field which removes specialist roles within Sussex Police which capacity is not directly related to population increase. There are 1202 support staff within these various major support staff departments including Specialist crime command, Public protection, Operations, Human Resources, Communications departments and Joint Transport Service. Taking into account into account that 8.1% of all incidents managed by Sussex Police occur in Arun, 89 support staff are currently required to support policing in Arun.

Dedicated officers	142
Divisional officers	15
Forcewide officers	64
Total number of officers	221
Dedicated support Staff	11
Divisional support staff	14
Forcewide support Staff	89
Total number of staff	114

Currently 41,015 incidents are attended by 221 officers per year in Arun which is a ratio of 185.6 incidents per officer, per year. To retain this current ratio of 185.8 incidents per officer per year, an additional 91.7 incidents per year would require 0.49 additional officers (49% of an officers workload).

In addition to the significant impacts this development would place on our policing teams this development would also require significant investment in our support staff capacity. As we have shown, approximately 114 police staff are required to support policing to the 70,356 households in Arun. This is a ratio of 617 households per staff member. Therefore an additional 200 households would require 0.32 additional support staff to retain this existing ratio.

Additional officers/staff required as a result of 200 additional houses

Total Additional Officers Required	0.49	91.7 (expected No. incidents arising from development) / 185.8 (No. incidents attended per year by an officer)
Total Additional Support Staff (Local/Central)	0.32	(200 / 617) (no. of new households / Existing no of support staff per household)

6. COSTS

In order to mitigate against the impact of growth our office have calculated that the capital "cost" of policing new growth as a result of this major planning application equates to **£31,683**. These funds would be used for the future purchase of infrastructure to serve the proposed development.

This cost will now be broken down clearly to show the capital infrastructure required to support these new officers.

The contribution represents a pooled contribution towards the provision of new infrastructure to serve the site and surrounding area. The pooling of contributions towards infrastructure remains appropriate under the CIL Regulations, provided this does not exceed five separate contributions and subject to other regulatory tests.

The contribution requested will fund, in part, the following items of essential infrastructure and is broken down as follows;

OFFICER SET UP

The basic set up costs of equipping staff are listed below. Following the start of the 2017/18 tax year we have reviewed and updated the start-up costs per officer which are now as follows:

OFFICER			
Start-up equipment (radio, workstation, body worn camera, IT equipment)	£4,307.33	0.49	£2,110.59
Start-up recruitment and training cost	£5,460	0.49	£2,675.40
TOTAL COST	£9767.33	0.49	£4,785.99

SUPPORT STAFF			
Start-up equipment (workstation, IT equipment)	£2,086	0.32	£667.52

Start-up recruitment cost	£1,060	0.32	£339.20
TOTAL COST	£3,146	0.32	£1,006.72

Sussex Police would utilise the contribution in the following manner;

- **£4,785.99** as a maximum of 1 of 5 pooled payments towards the cost of 1 additional officer in the Angmering NPT to deliver policing to the site and surrounding area.
- **£1,006.72** as a maximum of 1 of 5 pooled payments towards the cost of one additional support staff member to be based at Littlehampton police station.

We could not have officers attending this development with less than adequate equipment with unnecessary risk to themselves and occupiers served.

PREMISES

At present, Neighbourhood policing in Angmering is delivered principally from the Littlehampton police station. Officers also use Bognor Regis Police station which is the primary policing base in the District.

The Sussex Police Estates department have undertaken a full capacity analysis of our sites across Sussex and identified police stations where we have issues with existing capacity and would therefore be unable to support additional officers and staff required due to population growth. This study shows that Bognor Regis police station and Littlehampton police stations have very limited capacity and could not support additional staff or NPT/NRT officers to mitigate against this development.

The additional officers/staff required to police this development would be based at the new Littlehampton police station and therefore a financial contribution equivalent to the scale of the development is therefore sought from this development. There will be an increased number of officers/staff that need to be based on this new site as a result of policing needs arising from this development.

Sussex Police are required to maintain a high capacity of accommodation for staff and officers, with any additional capacity delivered via new works to provide floor space. Taking an average of the floor space provision over our sites in Sussex which deliver neighbourhood policing we have determined that each new officer/member of staff should be allocated approximately 7.93sqm of office floor space. We are also required to provide a minimum of 1sqm for officers/staff for storage (locker room etc). This brings the total space requirement to 8.93sqm.

Sussex Police have previously used Saxon House in Newhaven as an example to estimate costings for a new build or extension/adaption of existing building. This facility is a new facility shared with East Sussex Fire and Rescue and Lewes District Council which replaced the old police station. For new buildings such as Saxon House [the cost was estimated to be between £2500-3000/sqm].

Following the start of the 2018/19 tax year, Sussex Police will use the up to date BCIS costings index for all future S106 requests. The 17/03/18 issue of the RICS BICS costs (**Appendix 5**) which lists the median cost for new police stations at £2,631 (Median) which would be considered the minimum cost appropriate to support the additional officers/staff and the new Littlehampton police station.

The cost of accommodating a minimum of 1.83 additional officers/staff (which are required to police this development) would be $8.93 \times £2,631 \times 0.81 =$ **£19,030.81**

VEHICLES

A vital part of providing effective policing to the residents of Arun is maintaining the large fleet of vehicles. These vehicles range from General Response Vehicle (GRVs or patrol cars), unmarked general support vehicles, Public Service Unit vans and minibuses, scientific (e.g Scene of Crime Officers) vehicles, pursuit vehicles – 4 x 4 and high speed, motorcycles. Current fleet deployment in Arun administrative area (serving 70,356 households) currently consists of 28 active divisional vehicles and 43 forcewide vehicles. Maintaining our forcewide fleet is essential to the success of Sussex Police and important to enable the force to efficiently combat cross border crime. There is currently no capacity to meet the additional policing needs this development will present, therefore investment towards increasing fleet capacity is sought from this development.

In total there are 28 divisional vehicles and 43 forcewide vehicles delivering policing to the District of Arun.

	Department	Number of vehicles
Divisional	Crime management, Local command, Local investigations, Neighbourhood Policing Teams, Neighbourhood Response Teams, Response investigations	28
Forcewide	Crime support command, Dogs section, Firearms, Intel, Licensing, Major investigations, Public protection, Traffic, Training.	43

The average capital cost of a new vehicle is £17,000 (not including fuel and maintenance). Our guideline for the majority of marked vehicles is to replace every four years or £125,000 miles. The condition of vehicles at the end of their police life varies however Sussex Police forecast that they will redeem, on average 5% of a vehicles value on disposal.

The development will require fleet investment far exceeding 4 years therefore Sussex Police would require at least an 8 year life of provision. This contribution is justified because there is insufficient funding within the police's revenue income to take on the capital cost after just four years, without diverting money from elsewhere. Sussex Police estimate that the 4 year lifetime cost per vehicle is approximately £42,240 including running costs and capital charges.

71 vehicles at net value of £1,207,000

Existing number of households in Arun (70,356) = £17.15 per Household (1,207,000 / 70,356) x 200 Households x 2 = **£6,860** to give 8-year life of provision.

It is vital to ensure fleet deployment is maintained in line with the existing population of Arun and therefore a financial contribution towards fleet capacity is essential to make this development acceptable in planning terms.

Vehicles are fundamental capital policing infrastructure to deliver community safety and address crime especially at neighbourhood level. Fleet deployment is related to the known policing demands of comparable developments in the locality.

The direct demand from the new development can be accurately forecast and delivering policing direct to this development will not be possible without additional vehicles to do so. Levels of demand and mitigations have been determined by the scale of the development and demonstrate only a proportion of a vehicle's time will be spent policing this development.

7. Compliance with National Policy and CIL Regulations

Firstly, the pooling of S106 contributions is acceptable under CIL regulation 123 subject to each infrastructure item not exceeding 5 separate developer contributions. Within Arun the majority of policing is carried out by the NRT/NPT teams, therefore our office would recommend funds received from Section 106 agreements should be spent directly on supporting these teams.

Therefore, when contributions from new housing development are pooled it is sensible to do this based on NRT areas which in the case of this development is the Angmering NRT/NPT. At present there are no S106 planning contributions secured to support the Angmering NRT/NPT, therefore complying with the pooling restrictions under CIL regulation 123. There is only one other S106 contribution secured towards the re-location of Littlehampton police station.

The assessment for these infrastructure contributions is outlined in CIL Regulation 122, which requires each item to meet the following three tests. From the numerous appeal / Secretary of State decisions and High Court judgements there is significant evidence that all the items listed in this request comply with CIL Regulation 122.

The costs of training officers have been included in this request and have been found sound (and compliant with Regulation 122) in numerous appeal decisions included as **Appendix 2**. In the respect of training in particular, the Sketcheley house decision (page 19 of Appendix 2) makes specific reference to "protective clothing, uniforms and bespoke training" and were endorsed by the Inspector in his report at paragraph 11.57 and by the Secretary of State at paragraph DL22.

It is therefore plain that the Secretary of State and numerous Planning Inspectors consider that National Planning Policy and legislation is capable of encompassing these types of infrastructures.

1. Necessary to make the proposed development acceptable in planning terms

The creation of safe and accessible environments where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion is fundamental to planning for sustainable development as confirmed in the National Planning Policy Framework.

Arun's publication version of the emerging Local Plan (2011-31) states that "In general, Arun is a relatively safe place with low incidence of crime, although fear of crime remains a significant issue which is highlighted in the Sustainable Community Strategy. Crime rates are relatively high in parts of Bognor Regis and Littlehampton, with part of River Ward, Littlehampton ranked within the worst 10% areas in England, and a number of other areas within Littlehampton and Bognor Regis falling within the worst 20%".

Policy DM1 (Aspects of form and design quality) lists 'Crime prevention' as the 6th consideration for new development proposals. When considering any application for development the Council will have regard to the following aspects:

6. Crime prevention

Provide security measures that make places feel safer. This shall be achieved through natural surveillance and human presence by locating building and play areas along public routes and spaces, and making a clear division between private and public land to foster a mutual protection for the territorial belonging. With respect to crime prevention, regard shall be had in particular to the document 'New Homes 2010 – Secured by Design' and the 'Safer Places – The Planning System and Crime Prevention'.

The importance of policing contributions are recognised in recent court judgements and are an essential core principle of the NPPF.

The Secretary of State has recognised that it is not a rigid requirement to have express reference to policing within local planning policy because the overarching principle of ensuring safe communities is recognised in the NPPF. The Planning Inspector in the case of North-west Leicester District Council vs Money Hill Consortium (**Appendix 4**) stated:

62. The obligations of the Undertaking, other than that to support Police operations, are all related to requirement of development plan policies and are all necessary to make the development acceptable in planning terms. They are all furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Agreement, setting aside the Police contributions, therefore complies with Regulation 122 of the CIL Regulations 2010. Furthermore, taking into account the submissions of NWLDP, LCC and LP, the Agreement complies with Regulation 123 of the CIL Regulations 2010.

63. The contributions of £219,029 towards Police infrastructure is not related to requirement of development plan policies. The figure has been arrived at following a close and careful analysis of the current levels of policing demand and deployment in Ashby. The proposed development, in terms of population increase, would have a quantifiable and demonstrable effect on the ability of the Police to carry out their statutory duties in the town. LP has not sought any contribution to some aspects of policing, such as firearms and forensics, but only for those where there is no additional capacity. The contribution is necessary because the new housing that would be created would place a demonstrable additional demand on Police resources in Ashby. The financial contributions to Police operations thus satisfies Regulation 122 of the Community Infrastructure Levy Regulations 2010 and a provision of the Undertaking would ensure that the contribution also satisfies Regulation 123 of the Community Infrastructure levy Regulations 2010.

The importance of policing contributions is importantly recognised in recent court judgments and considered an essential core principle of the NPPF. The judgment of Mr Justice Green 01/11/2016 (**Appendix 1**) with regard to the High Court challenge of Jelson Limited vs Secretary of State for Community and Local Government (1) Hinkley and Bosworth District Council stated:

"The gist of the Inspectors reasons are adequately set out in paragraphs [44]-[47] (see above). She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose "... *Directly from the new households occupying the proposed development*". Accordingly she concluded, in terms of causality, that there was a proper nexus between the expenditure and the new development. She also records that the proposed spending was properly attributed between individual projects and procurement such as property adaption and contributions towards a vehicle in order to prevent a need for pooling contributions".

"Mr Lambert cited empirical data based upon existing crime patterns and policing demand and deployment from nearby residential areas which established the direct and additional impacts of the development upon local policing. That data established that there would be an incremental demand in relation to such matters as calls and responses per year via the police control centre; an increase in annual emergency events within the proposed development; additional local non-emergency events which trigger follow-up with the public; additional recorded crimes in the locality based upon beat crime and household data and a proportionate increase in anti-social behaviour incidents an increase in demand of patrol cover; and, an increase in the use of vehicles equating to 12% of an additional vehicle over a six year period."

Moreover, the wider principles of sustainable development within the NPPF also require consideration of all necessary infrastructure requirements, as observed by Foskett J in R. (Police and Crime Commissioner for Leicestershire) v Blaby DC and others. This judgment stated:

11. *It is obvious that a development of the nature described would place additional burdens on local health, education and other services including the police force. The focus in this case is upon the effect upon the local police force. If it sought to shoulder those additional and increased burdens without necessary equipment (including vehicles and radio transmitters/receivers for emergency communications) and premises, it would plainly not be in the public interest and would not be consistent with a policy that encourages "sustainable development": see for example, paragraphs 17 of 79 of the National Planning Policy Framework (NPPF). It is that that leads to the Claimants interest in the matters".*

As shown in section 1, there is no dedicated Government funding to comprehensively cover the capital costs associated with policing new housing development. Unless contributions from new developments are secured then Sussex Police would be unable to maintain the current levels of policing with resources diverted and stretched, inevitably leading to increased incidents of crime and disorder within the local area. Sussex Police strive the reduce the level of crime in the County however due to the significant numbers of new housing being brought forward the need for more front line staff and associated infrastructure has never been more relevant as a fundamental planning policy consideration.

Appeal decision APP/C3240/W/16/314445 (**Appendix 2**) issued on the 21st March 2017 provides further support for developer contributions towards the capital costs of additional policing infrastructure arising from new development. The Planning Inspector stated:

165: There is no doubt that the proposed development would generate a need for policing and that need would require additional resources which have been calculated on a pro-rata dwelling basis. The Framework identifies a need for safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion. In addition, an extensive array of appeal decision supports the principle of police contributions. Overall, the balance of the evidence before me points to the obligation (based on the underlying pro-rata calculation) being necessary and proportionate mitigation for the development.

We would also bring to attention dicta from the High Court judgment by Mr Justice Foskett in *Police and Crime Commissioner for Leicestershire vs Blaby Council*. Paragraph 61 and 62 of the judgment state:

61. I do not, with respect, agree that the challenge mounted by the Claimant in this case can be characterised as a quibble of a minor factor. Those who, in due course, purchase properties on this development, who bring up children there and who wish to go about their daily life in a safe environment, will want to know that the police service can operate efficiently and effectively in the area. That would want to know that the police service can operate efficiently and effectively in the area. That would plainly be "consumer view" of the issue. The providers of the service (namely, the Claimant) have statutory responsibilities to carry out and, as the witness statement of the Chief Constable makes clear, that itself can be a difficult objective to achieve in these financially difficult times. Although the sums at stake for the police contributions will be small in comparison to the huge sums that will be required to complete the development, the sums are large from the point of view of the police.

62. I am inclined to the view that if a survey of local opinion was taken, concerns would be expressed if it were thought that the developers were not going to provide police with sufficient contribution to its funding requirements to meet the demands of policing the new area: lawlessness in one area can have effects in another nearby area. Miss Wigley, in my judgment, makes some entirely fair points about the actual terms of the section 106 Agreement so far as they affect the Claimant.

Appeal decision APP/K2420/W/15/3004910 provides further evidence for developer contributions towards necessary policing infrastructure required to enable effective policing of new housing development. The Planning Inspector supported the methodology used for this calculation and compliance with the specific capital infrastructure items detailed in our request.

44. Leicestershire Police (LP) have demonstrated adequately that the sums request would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, there, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework's core planning principle of supporting local strategies to improve health, social and cultural wellbeing and delivering sufficient community facilities to meet local needs".

In respect of the methodology used for this request the same Planning Inspector stated "47 – *I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP*".

A financial contribution towards essential policing infrastructure is clearly essential to make new housing development acceptable in planning terms. The policing infrastructure items outlined in this request are essential to help support new officers required due to population growth and most importantly keep existing and future residents of Arun safe.

2. Directly related to the proposed development

There is a functional link between new development and the contributions requested. Put simply without new development taking place and the subsequent population growth there would be no requirement for the additional infrastructure. The additional population growth will lead to an increase in incidents, which will require a Police response. The infrastructure outlined in this request has been specifically identified by the NPT/NRT teams policing the areas of Arun as

necessary to deal with the likely form, scale and intensity of incidents this new housing development will generate.

3. Fairly and reasonably related in scale and kind to the proposed development.

Securing proportionate developer contributions towards necessary capital expenditure is essential to help meet a proportionate increase in police infrastructure costs and to enable Sussex Police to maintain its current level of service in the District. This infrastructure has been identified by Sussex Police as necessary to provide an appropriate level of policing to serve the proposed development and maintain the existing high level of community safety.

A clear numerical, evidence based approach has been demonstrated which is supported by case law and recent appeal decisions by the Planning Inspectorate. The various items of capital expenditure and infrastructure requested are considered CIL compliant and are necessary to enable new officers to undertake their role to meet the policing needs of the development and mitigate impacts to existing resources. A reasonable and proportionate approach has been adopted.

We would also highlight two recent appeal decisions in Leicestershire (APP/F2415/A/12/2179844 & APP/X2410/A12/2173673, **Appendix 2**). In assessing the request from Leicestershire police for developer contributions towards infrastructure the Inspector commented at **para 29** of decision 2179844;

The written evidence submitted by Leicestershire Police detailed the impact the proposed development would have on policing, forecasting the number of potential incidents and the anticipated effect this would have on staffing, accommodation, vehicles and equipment. In view of the requirement of national planning policy to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life, it is considered that, on the evidence before me, a contribution towards policing is necessary to make the development acceptable in planning terms.

Furthermore with regard to appeal decision 2173673, the Inspector is unequivocal in highlighting the acceptability of police contributions being recipients of developer's contributions;

Adequate policing is so fundamental to the concept of sustainable communities that I can see no reason, in principle, why it should be excluded from the purview of S106 financial contributions, subject to the relevant tests applicable to other public services. There is no reason, it seems to me why police equipment and other items of capital expenditure necessitated by additional development should not be so funded, alongside, for example, additional classrooms and stock and equipment for libraries.

Para 292

These appeal decisions confirm that the approach of Sussex Police in assessing the impact of development, having regard to an assessment of the potential number of incidents generated by growth is appropriate, and fundamentally it confirms that police infrastructure should be subject to developer contributions as the provision of adequate policing is fundamental to the provision of sustainable development.

Furthermore the requirement to ensure that crime and the fear of crime is addressed through the planning process runs through the NPPF;

Paragraph 17 sets out the core planning principles and states that planning should, inter alia:

"...take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs"

Paragraph 58 states that local and neighbourhood plans policies should aim to ensure that developments, inter alia;

"create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion"

Paragraph 69 sets out the role of the planning system in facilitating social interaction and creating healthy, inclusive communities and states that planning policies and decisions should aim to achieve places which promote;

"safe and accessible environments where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion"

Paragraph 156 states that local planning authorities should set out strategic priorities in the Local Plan to deliver;

"...the provision of health, security, community and cultural infrastructure and other local facilities..."

I trust this sets out sufficiently our office's request for S106 developer contributions towards this major planning application on the land off Arundel Road, Angmering.

I am more than happy to discuss the content of this submission with yourselves and support with any further evidence if considered necessary.

Yours sincerely



Andrew Taylor
BA (Hons), MSc, MRTPI
Joint Commercial Planning Manager
Sussex and Surrey Police

Part A

'What', 'where' and 'when' of infrastructure requirements relevant to application reference to A/36/18/OUT

TOPIC	INFRASTRUCTURE REQUIREMENT	AREA	COST PER ITEM	QTY	TOTAL COST	TIMING OF DELIVERY (Occupations)
Policing	Officer start-up equipment cost	Angmering NPT	£4,307.33	0.49	£2,110.59	TBC
Policing	Officer start-up recruitment and training	Angmering NPT	£5,460	0.49	£2,675.40	TBC
Policing	Staff start-up equipment cost	Littlehampton	£2,086	0.32	£667.52	TBC
Policing	Staff start-up recruitment and training	Littlehampton	£1,060	0.32	£339.20	TBC
Policing	Premises	Littlehampton			£19,030.81	TBC
Policing	Fleet	Angmering NPT			£6,860	TBC
Total					£31,683.52	

Enc.

Appendix 1 – Jelson Ltd vs Secretary of State and Local Government (1) Hinkley and Bowsorth District Council (2) – 22/11/2016 (paragraphs 71-81)

Appendix 2 – Examples of appeal decisions supporting police contributions

- APP/R3650/V/17/3171287 – Dunsfold Park, Stovolds Hill, Cranleigh, Surrey, GU6 8TB
- APP/R1845/W/17/3173741 – Land off The Lakes Road, Bewley, Worcestershire, DY12 2BP
- APP/C3105/W/17/3172731 – White Post Road, Banbury.
- APP/C3105/W/16/3163551 – Land off Howes Lane and Middleton Stoney Road, Bicester, Oxfordshire
- APP/C3810/V/16/3143095 – Land east of Fontwell Avenue, Fontwell, West Sussex, BN18 0SB
- APP/E3715/W/16/3147448 – Land at Ashlawn Road West, Rugby, Warwickshire
- APP/C3240/W/16/314445 – Land east of Kestrel Close / Beechfields Way, Newport, Shropshire
- APP/K2420/W/15/30004910 – Land off Sherbourne Road, Burbage, Leicestershire
- APP/G2435/A/14/2228806 – Money Hill, Land North of Wood Street, Ashby-de-la-Zouch, Leicestershire
- APP/X241-/W/15/3007980 – Land rear of 62 Iveshead Road, Shepshed, LE12 9ER
- APP/T3725/A/14/2221613 – Land at the Asps, bound by Europa Way (A452) to the east and Banbury Road (A425) to the west
- APP/T3725/A/14/2229398 – Land South of Gallows Hill / West of Europa Way, Heathcote, Warwick
- APP/G2435/W/15/3005052 – Land South of Greenhill Road, Coalville, Leicestershire
- APP/Q3115/A/14/2222595 – Land north of Littleworth Road, Benson
- APP/A2470/A/14/2222210 – Greetham Garden Centre, Oakham Road, Greetham, Oakham
- APP/A2470/A/14/2227672 – Land to the rear of North Brrok Close, Greetham, Rutland
- APP/L2440/A/14/2216085 – Land at Cootage Farm, Glen Road, Oadby, Leicestershire
- APP/Y2430/A/14/2224790 – Land to the east of Nottingham Road, Melton Mowbray, Leicestershire
- APP/2460/A/14/2213689 – Land rear of 44-78 Ashby Road, Hinkley, Leicestershire
- APP/K2420/A/13/2208318 – Land surrounding Sketchley House, Watling Street, Burbage, Leicestershire
- APP/F2415/A/14/2217536 – Land off Fairway Meadows, Ullesthorpe, Leicestershire
- APP/K2420/A/13/2202658 & APP/A/13/2210904 – Land off (to the south of Spinney Drive and land off (to the east of) Brookside, Barlestone, Leicestershire
- APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426 – Land off Pulley Lane, Newland Road and Primslan Way, Droitwich Spa
- APP/F2415/A/12/2183653 – Land South of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire
- APP/X2410/A/13/2196928 & APP/X/2410/A/13/2196929 – Land of Mountsorrel Lane, Rothley, Leicestershire
- APP/T2405/A/13/2200867 – Land at Seine Lane/Forest Road, Enderby, Leicestershire
- APP/T2405/A/13/2193758 & APP/T2405/A/13/2193761 – Land east of Springwell Lane, Whetstone, Leicestershire
(additional appeal decision included)

Appendix 3 – The Queen (on the application of The Police and Crime Commissioner for Leicestershire) vs Blaby Council and Hallam Land (and other developers).

Appendix 4 - North-west Leicester District Council vs Money Hill Consortium – Money Hill, Land North of Wood Street, Ashby-De-La-Zouch (paragraphs 61-63)

Appendix 5 - BCIS Index AveragePricesResults_21360986



Neutral Citation Number: [2016] EWHC 2979 (Admin)

Case No: CO/2673/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2016

Before :

MR JUSTICE GREEN

Between :

Jelson Limited
- and -
Secretary of State for Communities and Local
Government (1)
Hinckley and Bosworth Borough Council (2)

Claimant

Defendant

Mr Lockhart-Mummery QC (instructed by **Shakespeare Martineau**) for the **Claimant**
Ms Blackmore (instructed by **Government Legal Department**) for the **First Defendant**
Ms Osmund-Smith (instructed by **Solicitor to Hinckley & Bosworth Borough Council**) for
the **Second Defendant**

Hearing date: 1st November 2016

Approved Judgment

MR JUSTICE GREEN :

A. Introduction: The Issue – “FOAN”

1. This case concerns a dispute over the calculation of “Full Objectively Assessed Need” for housing or “FOAN”. This is a measure of the theoretical need that a local authority has for housing. It is required to be set by local authorities in accordance with paragraph [47] of the National Planning Policy Framework (“NPPF”). It is an important figure because it is used as a benchmark against which the “need” for a particular proposed development is measured, subject to the processes described below. I have described FOAN as a theoretical figure because once the FOAN is calculated in practice it is then modified to take account of relevant policy considerations. In practice the FOAN will almost always exceed the housing requirement figure that is set once policy is applied. For this reason FOAN has been termed a “policy-off” figure and the housing requirement ultimately fixed has been termed a “policy-on” figure. The policy on housing requirement will (or should) be worked out in the context of the preparation of a Local Plan. Problems however arise when there is no up-to-date Local Plan.
2. On the 12th May 2014 Jelson Limited (“the Claimant”) applied to Hinckley and Bosworth Borough Council (“HBBC”) for planning permission for residential development and associated infrastructure in relation to land off Sherborne Road, Burbage, Leicestershire. On the 12th November 2014 HBBC rejected the application and the Claimant appealed, by way of public inquiry, to the Inspector. By a decision made on the 4th May 2016 (“the Decision”) the appeal was refused. A central issue at the inquiry was whether HBBC could establish that it had a five year supply of housing for the purposes of paragraph [47] NPPF. The Council argued that it could demonstrate a supply sufficient to meet demand for a period in excess of five years. The Claimant, however, argued that there was a supply of significantly less than five years. The nub of the dispute between the parties centred upon identification of a figure, or range of figures, as to the relevant numerical requirement. The Claimant argued that if HBBC was unable to demonstrate a supply of five years or more that this would have been a significant material consideration in favour of allowing the appeal (taking into account the presumption in favour of grant in paragraph [14] NPPF). In her Decision the Inspector held that there was, in fact, sufficient housing land in Hinckley and Bosworth to meet the housing needs for the following five years.
3. It is common ground that at the time of the inquiry HBBC had not adopted a new Local Plan since the coming into effect of the NPPF in March 2012. The Core Strategy (“CS”) had been adopted in 2009 and this set out a housing requirement of 450 dwellings per annum (“dpa”). HBBC did not contend that the CS contained an assessment of or figure for FOAN in line with the requirement in paragraph [47] NPPF. Nonetheless HBBC argued that the evidence before the inquiry supported a conclusion that there was a housing requirement of 450 dpa.
4. In Ground I the Claimant contends: (a) that the Inspector failed to have due regard and/or to understand the requirements of paragraph [47] NPPF; and/or (b) that she failed to understand and follow the principles of the Court of Appeal in *City and District of St Albans v Hunston Properties and SSCLG* [2013] EWCA Civ 1610 (“*Hunston*”) and that of the High Court in *Gallagher Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1238, affirmed on appeal [2014]

EWCA Civ 1610 (“*Gallagher*”); and/or (c) that the Inspector failed to give proper reasons for concluding that there was a five year supply; and/or (d) that in any event the Inspector’s approach to the identification of the FOAN was irrational and confused.

5. In Ground II the Claimant contends that the Inspector erred in not addressing and/or giving reasons for her conclusion that the Claimant make a contribution to the costs to be incurred by the police in providing additional police services to meet incremental demand for policing arising from the new development.

B. Legal and Policy Framework

(i) The test on appeal

6. The case comes before the Court by way of statutory application pursuant to section 288 Town and Country Planning Act 1990 (“TCPA 1990”). The legal principles which fall to be applied on such an application are well established. They are summarised in the judgment of Lindblom J, as he then was, in *Bloor Homes East Midlands Limited v SSCLG* [2014] EWHC 754 (Admin) at paragraph [19]. Because, one way or another, most are raised in this case, I set out the summary in full below:

“19. The relevant law is not controversial. It comprises seven familiar principles:

(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to “rehearse every argument relating to each matter in every paragraph” (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the “principal important controversial issues”. An inspector’s reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter* (No. 2) [2004] 1 WLR 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A

local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] PTSR 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J. in *Sea Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

(7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the

judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145).”

(ii) Evidential considerations relating to the assessment of a FOAN

7. The approach that inspectors should apply to the evidential tasks confronting them when assessing the FOAN has been considered on a number of occasions in recent case law. In *Shropshire Council et ors v BDW Trading et ors* [2016] EWHC 2733 (Admin) Mrs Justice Lang was confronted with an Inspector’s decision which stated:

“It is therefore clear that there is no recent evidence in line with the above requirements of the Framework and the PPG that offers any reliable support to the CS housing requirement, which is, in my view out-of-date being based on the RSS. Further, the Council accept that it is not suggested that the CS housing requirement will be the FOAN for their plan review and that the evidence will ultimately tell what their FOAN is. This confirms that the Council are not at the current time sure what its FOAN is and that this work is yet to be undertaken. In such circumstances, I consider that if the Council does not have a FOAN, then it does not have a robust housing requirement and therefore it must follow that it cannot demonstrate it has a five year housing land supply...”

8. In view of this the Inspector did not go on to assess the evidence and determine, for the purpose of resolving the issue arising, what a workable FOAN was. This omission was challenged. Shropshire Council argued:

“The Claimant submitted that the Inspector erred in failing to engage with the evidence in respect of the FOAN or the Claimant’s ‘housing requirements’, as referenced in bullet points 1 and 2 of NPPF 47. He was required to exercise his judgment on this issue, doing the best he could on the available evidence, even if it was unsatisfactory. In this case, there was sufficient material to enable him to do so, whether or not he could identify precise figures. He was also required to explain his reasons for arriving at his conclusions, which he failed to do.”

9. Mrs Justice Lang agreed with this submission. She held:

“21. There is substantial authority in support of the Claimant’s submission that, in an appeal concerning housing development, an Inspector must address the issues of housing requirements and housing supply in his decision as they are likely to be material considerations and his judgment on those issues is an essential part of the application of the NPPF.”

10. The conclusion that she arrived at is consistent with: *South Northamptonshire Council v Secretary of State for Communities and Local Government & Ors* [2014] EWHC

573 (Admin) at paragraph [19] per Ouseley J; *West Berkshire District Council v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 267 (Admin) at paragraph [52] per Supperstone J; and, *(Gladman) v Secretary of State for Communities and Local Government & Ors* [2016] EWHC 683 (Admin) at paragraph [7(v)] per Patterson J.

11. In *Shropshire (ibid)* Mrs Justice Lang summed up the authorities in the following way:

“27. In my judgment ... Inspectors generally will be required to make judgments about housing needs and supply. However, these will not involve the kind of detailed analysis which would be appropriate at a Development Plan inquiry. The Inspector at a planning appeal is only making judgments based on the material before him in the particular case, which may well be imperfect. He is not making an authoritative assessment which binds the local planning authority in other cases.”

12. In paragraphs [28] – [30] she set out various observations about the evidence collation process which, in my view, are pragmatic and sensible and accord with good administrative practice and with case law.
13. I summarise these points as follows: (a) an Inspector is required to make judgments as to the Claimant's current FOAN or housing requirements and its housing supply in order to decide the issues in an appeal; (b) paragraph [49] NPPF requires the Inspector to form his/her own judgment on the equation between housing needs and housing supply based upon the relevant evidence provided by the local planning authority and any other parties to the inquiry; (c) where a Local Plan is outdated other sources of information can and should be considered; (d) where there is no robust recent assessment of full housing needs, the household projections published by the DCLG should be used as the starting point; (e) an inspector must do the best possible with the material adduced and if needs be the Inspector must make the best of an unsatisfactory situation, making a choice between unsatisfactory sources; (f) if an Inspector is unable to identify a specific figure a bracket or range or an approximate uplift on the departmental projections suffice; (g) an inspector is not required to undertake the kind of detailed analysis which would be appropriate at a Development Plan inquiry; (h) an Inspector deciding an appeal on the best evidence available is not making a finding that is an authoritative assessment which binds the local planning authority in other cases; (e) in an exceptional case where the evidence before the Inspector is so lacking that it is impossible to perform an assessment the inspector must say so and give reasons to explain why it was not possible to determine a working FOAN figure or range.

(iii) Relevant provisions of the NPPF and Policy Guidance

14. The relevant policy and guidance material which applies to the setting of a “FOAN” is principally found in section 6 of the NPPF entitled “*Delivering a wide choice of high quality homes*”. This introduces the concept of the “full objectively assessed need” for market and affordable housing in a “housing market area”. These are the “FOAN” and the “HMA” concepts. Paragraphs [47] and [49] provide as follows:

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

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land;
- identify a supply of specific, developable sites or broad locations for growth, for years 6-10 and, where possible, for years 11-15; for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

“49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

15. In the section of the NPPF entitled “*Plan-making*” under the heading “*Housing*”, paragraph [159] urges local planning authorities to have a clear understanding of housing needs in their area and requires them to prepare a “*Strategic Housing Market Assessment*” (“*SHMA*”). It provides:

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

- prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. The Strategic Housing Market Assessment should identify the

scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which:

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

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

- caters for housing demand and the scale of housing supply necessary to meet this demand;

- prepare a Strategic Housing Land Availability Assessment to establish realistic assumptions about the availability, suitability and the likely economic viability of land to meet the identified need for housing over the plan period.”

16. Guidance makes clear that the setting of figures for a FOAN is not an exact science and no single approach will provide a definitive answer. Local authority plan makers should avoid expending significant resources on primary research but should, instead, seek guidance from secondary data. The most important source is housing projections produced by the DCLG. This is trend based data. It will need adjustment to take account of local conditions. This is made clear in formal guidance which is provided in PPG2(a)-014-20140306. Some relevant paragraphs from this Guidance are set out below:

“Housing and economic development needs assessments

Methodology: assessing housing need

Paragraph: 014 Reference ID: 2a-014-20140306

What methodological approach should be used?

Establishing future need for housing is not an exact science. No single approach will provide a definitive answer. Plan makers should avoid expending significant resources on primary research (information that is collected through surveys, focus groups or interviews etc and analysed to produce a new set of findings) as this will in many cases be a disproportionate way of establishing an evidence base. They should instead look to rely predominantly on secondary data (eg Census, national surveys) to inform their assessment which are identified within the guidance.

Revision date: 06 03 2014

Paragraph: 015 Reference ID: 2a-015-20140306

What is the starting point to establish the need for housing?

Household projections published by the Department for Communities and Local Government should provide the starting point estimate of overall housing need.

The household projections are produced by applying projected household representative rates to the population projections published by the Office for National Statistics. Projected household representative rates are based on trends observed in Census and Labour Force Survey data.

The household projections are trend based, ie they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances or other factors might have on demographic behaviour.

The household projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing. As household projections do not reflect unmet housing need, local planning authorities should take a view based on available evidence of the extent to which household formation rates are or have been constrained by supply.

Revision date: 06 03 2014

Paragraph: 016 Reference ID: 2a-016-20150227

How often are the projections updated?

The Government's official population and household projections are generally updated every two years to take account of the latest demographic trends. The most recent published Household Projections update the 2011-based interim projections to be consistent with the Office for National Statistics population projections. Further analysis of household formation rates as revealed by the 2011 Census will continue during 2015.

Wherever possible, local needs assessments should be informed by the latest available information. The National Planning Policy Framework is clear that Local Plans should be kept up-to-date. A meaningful change in the housing situation should be

considered in this context, but this does not automatically mean that housing assessments are rendered outdated every time new projections are issued.

The 2012-2037 Household Projections were published on 27 February 2015, and are the most up-to-date estimate of future household growth.

Revision date: 27 02 2015 See revisions

Related policy

National Planning Policy Framework

- Paragraph 17, bullet 1

Paragraph: 017 Reference ID: 2a-017-20140306

Can adjustments be made to household projection-based estimates of housing need?

The household projections produced by the Department for Communities and Local Government are statistically robust and are based on nationally consistent assumptions. However, plan makers may consider sensitivity testing, specific to their local circumstances, based on alternative assumptions in relation to the underlying demographic projections and household formation rates. Account should also be taken of the most recent demographic evidence including the latest Office of National Statistics population estimates.

Any local changes would need to be clearly explained and justified on the basis of established sources of robust evidence.

Issues will vary across areas but might include:

- migration levels that may be affected by changes in employment growth or a one off event such as a large employer moving in or out of an area or a large housing development such as an urban extension in the last five years
- demographic structure that may be affected by local circumstances or policies eg expansion in education or facilities for older people

Local housing need surveys may be appropriate to assess the affordable housing requirements specific to the needs of people in rural areas, given the lack of granularity provided by secondary sources of information.

Revision date: 06 03 2014 See revisions

Paragraph: 018 Reference ID: 2a-018-20140306

How should employment trends be taken into account?

Plan makers should make an assessment of the likely change in job numbers based on past trends and/or economic forecasts as appropriate and also having regard to the growth of the working age population in the housing market area. Any cross-boundary migration assumptions, particularly where one area decides to assume a lower internal migration figure than the housing market area figures suggest, will need to be agreed with the other relevant local planning authority under the duty to cooperate. Failure to do so will mean that there would be an increase in unmet housing need.

Where the supply of working age population that is economically active (labour force supply) is less than the projected job growth, this could result in unsustainable commuting patterns (depending on public transport accessibility or other sustainable options such as walking or cycling) and could reduce the resilience of local businesses. In such circumstances, plan makers will need to consider how the location of new housing or infrastructure development could help address these problems.

Revision date: 06 03 2014

Paragraph: 019 Reference ID: 2a-019-20140306

How should market signals be taken into account?

The housing need number suggested by household projections (the starting point) should be adjusted to reflect appropriate market signals, as well as other market indicators of the balance between the demand for and supply of dwellings. Prices or rents rising faster than the national/local average may well indicate particular market undersupply relative to demand. Relevant signals may include the following:

- Land Prices

Land values are determined by the demand for land in particular uses, relative to the supply of land in those uses. The allocation of land supply designated for each different use, independently of price, can result in substantial price discontinuities for adjoining parcels of land (or land with otherwise similar characteristics). Price premiums provide direct information on the shortage of land in any locality for any particular use.

- House Prices

Mix adjusted house prices (adjusted to allow for the different types of houses sold in each period) measure inflation in house prices. Longer term changes may indicate an imbalance between the demand for and the supply of housing. The Office for National Statistics publishes a monthly House Price Index at regional level. The Land Registry also publishes a House Price Index and Price Paid data at local authority level.

- Rents

Rents provide an indication of the cost of consuming housing in a market area. Mixed adjusted rent information (adjusted to allow for the different types of properties rented in each period) shows changes in housing costs over time. Longer term changes may indicate an imbalance between demand for and supply of housing. The Office for National Statistics publishes a monthly Private Rental Index.

- Affordability

Assessing affordability involves comparing house costs against the ability to pay. The ratio between lower quartile house prices and the lower quartile income or earnings can be used to assess the relative affordability of housing. The Department for Communities and Local Government publishes quarterly the ratio of lower quartile house price to lower quartile earnings by local authority district.

- Rate of Development

Local planning authorities monitor the stock and flows of land allocated, permissions granted, and take-up of those permissions in terms of completions. Supply indicators may include the flow of new permissions expressed as a number of units per year relative to the planned number and the flow of actual completions per year relative to the planned number. A meaningful period should be used to measure supply. If the historic rate of development shows that actual supply falls below planned supply, future supply should be increased to reflect the likelihood of under-delivery of a plan. The Department for Communities and Local Government publishes quarterly planning application statistics.

- Overcrowding

Indicators on overcrowding, concealed and sharing households, homelessness and the numbers in temporary accommodation demonstrate un-met need for housing. Longer term increase in the number of such households may be a signal to consider increasing planned housing numbers. The number of households accepted as homeless and in temporary

accommodation is published in the quarterly Statutory Homelessness release.

Revision date: 06 03 2014

Paragraph: 020 Reference ID: 2a-020-20140306

How should plan makers respond to market signals?

Appropriate comparisons of indicators should be made. This includes comparison with longer term trends (both in absolute levels and rates of change) in the: housing market area; similar demographic and economic areas; and nationally. A worsening trend in any of these indicators will require upward adjustment to planned housing numbers compared to ones based solely on household projections. Volatility in some indicators requires care to be taken: in these cases rolling average comparisons may be helpful to identify persistent changes and trends.

In areas where an upward adjustment is required, plan makers should set this adjustment at a level that is reasonable. The more significant the affordability constraints (as reflected in rising prices and rents, and worsening affordability ratio) and the stronger other indicators of high demand (e.g. the differential between land prices), the larger the improvement in affordability needed and, therefore, the larger the additional supply response should be.

Market signals are affected by a number of economic factors, and plan makers should not attempt to estimate the precise impact of an increase in housing supply. Rather they should increase planned supply by an amount that, on reasonable assumptions and consistent with principles of sustainable development, could be expected to improve affordability, and monitor the response of the market over the plan period.

The list of indicators above is not exhaustive. Other indicators, including those at lower spatial levels, are available and may be useful in coming to a full assessment of prevailing market conditions. In broad terms, the assessment should take account both of indicators relating to price (such as house prices, rents, affordability ratios) and quantity (such as overcrowding and rates of development).

Revision date: 06 03 2014.”

C. The Inspector's Decision and the evidence relied upon

17. In this section I address two principal matters. First, the SHMA which was relied upon by HBBC and by the Inspector to identify a range of figures for housing need which was then used as a benchmark for measuring the “need” for the proposed development. Second, the reasoning adopted by the Inspector.

(i) The Leicester and Leicestershire Strategic Housing Market Assessment Report, June 2014 (“the SHMA”)

18. In her Decision the Inspector relied, as a central and important source of data, upon the Leicester and Leicestershire Strategic Housing Market Assessment Report, June 2014 (“the SHMA”). The Report was prepared by consultants instructed on behalf of the various relevant authorities. It is appropriate to start by describing the methodology applied by the consultants to the exercise. The consultants explained that they had undertaken a comprehensive assessment of potential population and household growth. The starting points for the projections developed, in accordance with the PPG, were the latest (2011-based) CLG Household Projections updated to take account of the latest population data and to ensure that household formation rates did not project forward the recent falling trend in household formation brought about by the economic recession. The projections indicated a need for an average of 3,626 dpa to 2036 (with a slightly higher average of 3,774 dpa to 2031) across the Leicester and Leicestershire HMA. In line with the PPG the consultants tested these figures to see whether an additional uplift was required to respond to market signals and improve housing affordability, to enhance the delivery of affordable housing to meet identified needs, and to support some degree of growth in jobs at a local level. The consultants considered the state of the housing market including prices and transactions and whether there were signs of recovery. They also considered the level of housing needed to support baseline full costs of employment growth and differentiated local patterns of living and working and, in the light of their conclusions upon these matters, made some localised adjustments to assess housing need at a local authority level. Taking into account these factors the SHMA identified a need for between 3,630 – 4,060 homes per annum to 2036 across the HMA. The lower end of the range supported demographic projections whilst the higher end of the range supported strong delivery of both market and affordable housing taking account of the need for affordable housing and market signals and relative rates of economic growth in different parts of the area.

19. In an Executive Summary the authors set out a table entitled “*Conclusions regarding Overall Housing Need*”:

	Housing Need to 2031		Housing Need to 2036	
	Lower	Upper	Lower	Upper
Leicester	1250	1350	1230	1330
Blaby	360	420	340	400
Charnwood	810	820	770	780
Harborough	415	475	400	460
Hinckley & Bosworth	375	450	350	420
Melton	200	250	195	245
NW Leicestershire	285	350	270	330
Oadby & Wigston	80	100	75	95
Leicester & Leicestershire Total	3,775	4,215	3,630	4,060

(Emphasis added)

20. For the purpose of this judgment it is convenient to highlight at this early juncture two particular sets of figures which are set out in bold in the table above. First the range for HBBC (for the period to 2031) was 375-450. This was the range ultimately chosen by the Inspector to represent the FOAN. But it is also important for reasons which I set out later in some detail (see paragraphs [54ff] below) to observe that the equivalent range for Oadby & Wigston was 80-100. This is because in separate litigation that range was rejected by an Inspector and his findings were later upheld by both the High Court and by the Court of Appeal. The reasoning which led to the approval of the Inspector’s alternative figure in that case is of some material significance to the analysis in the present case.
21. The conclusions, as set out in the table, did not take into consideration land supply, development or infrastructure constraints and the SHMA makes clear that local authorities would need to consider these issues in deriving a “*policy on*” distribution of housing provision i.e. a figure which is not the actual assessed need but a figure which is considered to be actually deliverable and which therefore takes into account a variety of policy criteria which might constrain the higher actual need figure. As such the figures in the SHMA purportedly amounted to a “*policy off*” assessment of housing need. I explain the significance of “*policy off*” and “*policy on*” more fully in paragraph [41] below. The SHMA also drew conclusions concerning the need for different types of homes. It identified that 21% of the need for affordable housing could be met by intermediate equity-based products with 79% of need for rented affordable housing (either at social or affordable rent levels). Taking into account expected changes to population structure, existing housing mix and market evidence, the SHMA identified strategic targets with a mix of housing needed within the HMA against which delivery could be monitored. The recommendations regarding the sizes of home need were incorporated into the following table:

	1-bed	2-bed	3-bed	4+ bed
Market	5-10%	30-35%	45-50%	10-15%
Affordable	35-40%	30-35%	20-25%	5-10%
All Dwellings	15-20%	30-35%	35-40%	10-15%

22. The needs of specified groups were considered, including elderly households, students, BME household and families. The SHMA indicated the need for between 240 – 720 additional housing units to be specialist accommodation across the HMA to meet the needs of the “older person” population each year. It further identified the need for 222 residential care bed spaces per annum.
23. Chapter 9 of the Report, in relation to “*Overall Housing Need*” makes clear that the “policy off” overall housing need would take into account both affordable and market housing. It described the approach adopted in paragraphs [9.4] – [9.7]:

“9.4 The NPPF sets out that plans should be prepared on the basis of meeting full needs for market and affordable housing. Planning Practice Guidance sets out that the latest national projections should be seen as a starting point but that authorities may consider sensitivity testing projections in response to local circumstances and the latest demographic evidence.

9.5 In accordance with the Planning Practice Guidance, the 2011-based Sub-National Population Projections (SNPP) and related CLG Household Projections have formed the starting point for our assessment. When extended beyond 2021, these projections indicate household growth of 3,335 households per annum across the HMA between 2011 and 2031 and 3,159 between 2011 and 2036. However these projections assume that household formation rates seen over the 2001-11 period continue moving forward. These trends arguably build in a degree of suppression of household formation, a point which is acknowledged by CLG in the Planning Practice Guidance on Assessment of Housing and Economic Development Needs.

9.6 Against this context a sensitivity analysis has been developed exploring different projections of household formation rates and to take account of the latest migration data. This analysis concludes that the most appropriate means of projecting household formation would be based on the midpoint between the household formation rates in the 2008 and 2011 Household Projections. These updated projections indicate a need for 3,774 households per annum between 2011 and 2031 and 3,626 between 2011 and 2036. This represents a robust starting point for assessing housing needs in Leicester and Leicestershire based on population trends.

9.7 The guidance then sets three key tests which should be applied in order to identify whether there is a case to adjust the starting point. We see these tests as:

- Do market signals point to a need to increase housing supply in order to address affordability and high demand?
- Is there a need to increase overall housing supply in order to boost delivery of affordable homes to meet identified needs?
- Is there evidence that an increase in housing supply is needed to ensure a sufficient labour supply to support forecast economic and employment growth in different parts of the HMA?”

24. In defining the FOAN for housing in an HMA the consultants adopted the following approach:

“9.20 We have sought to draw the range of evidence together to define objectively-assessed need for housing. In doing so we have followed the following approach:

- Define the base level of need with regard to the demographic projections;
- Consider the case for adjustments in response to market signals. This points to a case for upwards adjustment in Melton and Harborough Districts;
- Compare the demographic projections against the proportionate economic-led projections in regard to the scope to encourage local living and working;
- Overlay the affordable housing evidence in regard to the % supply based on the demographic projections needed to support full affordable housing delivery;
- Identify the higher level of the range to take account of the market signals, economic evidence and affordable housing need.”

25. I turn now to Table 84 which is central to the dispute in this case. Paragraph [9.22] draws together, in Table 84, the consultants’ conclusions over the period 2011-2031. It is in the following form:

“The table below draws together our conclusions over the 2011-31 period. We consider that housing need over the 2011-31 period would fall between 3,775 – 4,215 homes per annum across the HMA. Local authority level figures are shown in the table.

Table 84: OAN Conclusions 2011-2033

Homes Per Annum 2011-2031	Demographic-Led Household Projections to 2031	Higher Market Affordability Pressures	Supporting Proportionate Economic Growth	Affording Housing Need Per Annum	Affordable Need as % Demographic-Led Projection	OAN Range	
Leicester	1,249		1,057	527	42%	1,250	1,350
Blaby	356		388	352	99%	360	420
Charnwood	814		690	180	22%	810	820
Harborough	415	✓	454	212	51%	415	475
Hinckley & Bosworth	375		467	248	66%	375	450
Melton	202	✓	253	74	36%	200	250
NW Leicestershire	284		372	212	75%	285	350
Oadby & Wigston	79		173	163	206%	80	100
LLPA	3,774		3,854	1,966	52%	3,775	4,215

The figures for HBBC are set out in the column headed “OAN Range”. They are 375-450. The equivalent figures for Oadby are 80-100.

(ii) The Inspector’s decision (“the Decision”)

26. I turn from the SHMA to the reasoning adopted by the Inspector in her Decision. In the text below I summarise, in relatively narrative form, the Decision. I have, where appropriate, added references to the evidence which was referred to in the Decision.
27. The Inspector commenced her analysis by recording that local planning authorities were required to use their evidence base to ensure their Local Plans met the FOAN for market and affordable housing in the housing market area, in accordance with paragraph [47] NPPF. She observed that the HBBC Core Strategy (“CS”) was adopted in 2009, predating the publication of the NPPF in 2012. The CS target was to delivery 9,000 dwellings up to 2026, i.e. 450 units per annum. This requirement, however, was derived from the East Midland Regional Plan which had been revoked. That particular plan based its dwelling targets upon 2004 household projections; in consequence, the CS requirement was not the FOAN and was therefore inconsistent with the NPPF. In paragraph [6] the Inspector therefore sought an alternative source of data. In this she turned to the SHMA:

“6. The starting point for the calculation of OAN is demographic calculations based on the most recent, available population projections. This is made clear in paragraph 159 of the Framework which states that the strategic housing market assessment (SHMA) should identify the scale and mix of housing and the range of tenures that the local population is likely to need over the plan period which meet household and population projections, taking account of migration and demographic change. The Council, together with the

other Leicestershire district and borough councils and Leicester City Council, commissioned a SHMA which was published in June 2014.”

28. In paragraph [7] the Inspector identified the demographic calculations which resulted in the total number, expressed as a range, of people and households likely to live in the HMA during the relevant period irrespective of the type of dwelling which they might require. She stated that *“those needs”* (which included affordable housing) *“are the products of separate and different calculations and assessments. In theory, they are included within the total population arising from population projections and a demographic methodology and should be consistent with them”*.
29. In paragraph [8] the Inspector identified that the principal dispute between the parties was whether affordable housing need was required to be fully *“met”* by the FOAN. I emphasise the phrase *“met”* because, as I discuss later, the Claimant alights upon this word as one of the pieces of evidence said to prove that the Inspector misdirected herself to the test to be applied. She recorded, albeit in outline, the Claimant’s contention that the FOAN arising from the SHMA was a constrained *“policy-on”* figure and that, in consequence, the upper end of the range was not properly identified as it should be in an unconstrained, *“policy-off”* FOAN. She recorded the position of HBBC in the following terms:
- “8. ... On the other hand, the Council concurs with the guidance set out in the Planning Advisory Service’s technical advice note on the matter³. This describes those factors which should not contribute to OAN as being ‘below the line’; they are matters which should not be included in the OAN calculation but which should be taken into account at a later stage when formulating provision targets. The technical advice note argues that affordable housing need is not measured in a way that is directly comparable with OAN and should not be a constituent of it; affordable housing should thus be below the line and a policy consideration.”
30. In paragraph [9] the Inspector identified the relevant figures. Based upon demographic led household projections the bottom end of the FOAN range for HBBC up to 2031 was 375. This is set out in the first substantive column in Table 84 of the SHMA cited at paragraph [19] above. The Inspector then stated that due to the mechanism by which the vast majority of affordable housing was delivered (i.e. as a percentage of all residential schemes over a threshold of units, and subject to viability) it was always necessary to consider whether to increase the number of dwellings required overall in order to maximise the provision of affordable housing. She observed that this measure, which is referred to in the PPG (see paragraph [16] above), was a policy decision and was therefore appropriately calculated *“outside”* of the FOAN. The Inspector recorded that in HBBC the number of homes needed to support proportionate economic growth was identified in the SHMA as 467. This can be seen from the fourth column in Table 84 (*supra*) and the affordable housing need (in the fifth column) was 248 per annum. In order to support the provision of additional affordable housing, and a growth in employment/labour supply, therefore, the top end of the range was identified at 450. She said: *“... that is therefore a policy-on figure”*.

31. In paragraph [10] she stated that there was no dispute but that there was a significant need for affordable housing in HBBC and that the most recent analysis was the SHMA which put the figure at approximately 250 dpa (see the fifth column, which sets out a figure of 248). She stated that in increasing the demographic produced figure of 375 to 450, which amounted to a 20% uplift, specifically to provide for affordable housing and economic growth the FOAN “properly” took account of that need.
32. The Inspector then addressed the Claimant’s principal argument which was that the top end of the FOAN range should be at least 980 dpa since this was the figure identified in Table 48 of the SHMA as the total amount of housing necessary to deliver the indicated housing need under current policy. Table 48 is contained within paragraph [6.63] of the SHMA Report. It is set out in the following terms:

Table 48

LA	Affordable Need	Affordable Housing Policy	Affordable Housing Policy (Mid-Point)	Annual Housing Need	Total Housing Required Based on Current Policy
Leicester	496	15 – 30%	23%	2,157	53,925
Blaby	349	10 – 30%	20%	1,396	34,900
Charnwood	174	30%	30%	696	17,400
Harborough	208	30%	30%	832	20,800
Hinckley & Bosworth	245	20 – 40%	30%	980	24,500
Melton	71	40%	40%	176	4,400
NW Leicestershire	209	20 – 30%	25%	836	20,900
Oadby & Wigston	160	10 – 30%	20%	800	20,000
LLLPA	1,913			7,873	196,825

(Emphasis added)

33. For present purposes (the issue is analysed in detail below) the salient figures (in bold in the table above) to note from this table are (i) the “Annual Housing Need” figure of 980 for HBBC; and (ii) the equivalent Annual Housing Need figure of 800 for Oadby. The 980 figure is important because it was a key part of the Claimant’s case that in relation to HBBC the SHMA recorded that there was an Annual Housing Need of 980 houses and that the Inspector therefore erred in failing to give this objectively arrived at figure any weight or credence at all. The 800 figure for Oadby is important because it is the equivalent of the 980 figure for HBCC. It is of relevance to this case because in the Oadby litigation the 800 figure was rejected as being relevant to FOAN so that, by parity of reasoning, if that is so for Oadby it should equally be so for HBCC, and as such throws the Claimant’s key argument into doubt.

34. The Inspector rejected the argument based upon the 980 figure robustly. She described it as “*Clearly impracticable and unreasonable*”. She came to this conclusion by extrapolating that 980 dba represented a requirement of 196,825 units in the HMA as a whole. This amounted to: “... *a considerable, inconsistent and thus unjustifiable increase on the 75,000 or so dwellings calculated from household projections to be needed by 2031*”. The important point to observe here is the discrepancy of the 980 dpa figure with the figures based on household projections.
35. Of the figure of 980 dpa for housing needs set out in Table 48 the Inspector concluded:
- “11. ... The 980 figure identified in the SHMA is thus purely theoretical although it could be used as a pointer to further policy adjustments, such as a change in the percentage of affordable housing required. Significant issues in the area such as shortcomings in housing provision, including affordable housing, should be addressed through the Local Plan.”
36. The Inspector benchmarked her conclusion that Table 84, which included the 450 dpa figure, was appropriate by reference to population projections produced subsequent to the SHMA. The SHMA figure was based upon 2011 data (see paragraph [18] above). The new population projections were for 2012. Analysis of these demonstrated a need for 364 dpa in HBBC derived from the total figure for Leicestershire. The Inspector stated that this was lower than the bottom end of the SHMA FOAN but was generally consistent with it. The Inspector thus stated:
- “12. ... In my opinion the figure confirms the Council’s approach and validates the CS housing provision of 450 dwellings which is about 24% above that needed to meet demographic increases.”
37. In paragraph [13] the Inspector stated that it was not her role, in the Decision, to identify an alternative FOAN. She did record, however, that the Appellant had calculated that, all things being equal, the housing land supply would fall below five years where the FOAN was 539 dpa. That figure would represent a 44% uplift on the 375 demographically-led household projection which, in the Inspector’s opinion, would represent a considerable number of additional affordable dwellings. She therefore stated that had she (hypothetically) considered that the 450 dpa housing requirement was inadequate or “*wanting*” it would still not have been necessary to increase that figure beyond the 539 threshold whereby a five year supply was unavailable. The significance of this is that it is a good deal lower than the Claimant’s figure of 980 for inclusion in the FOAN range.
38. In paragraphs [14] – [16] the Inspector cited various authorities. In particular she recited that in the Oadby litigation (*Oadby & Wigston Borough Council v SSCLG, and, Bloor Homes Limited* [2015] EWHC 1879 (Admin) per Hickinbottom J (“*Oadby*”)) the Court had found that the Inspector, in that case, had been entitled to exercise his planning judgment upon the basis of the evidence before him when arriving at the conclusion that the range for Oadby arising from the Leicestershire SHMA, i.e. the same document that was before the present Inspector, was “*policy-on*” and that it therefore failed properly to reflect the affordable housing need and the need generated by economic factors. The Inspector observed that a significant difference

between that case and the one before her was that in *Oadby* the Council's housing requirement figure of 80 – 100 dpa was well below the SHMA affordable housing need of 160 dpa. That judgment of the High Court in *Oadby* was subsequently endorsed by the Court of Appeal: [2016] EWCA Civ 1040 (27th October 2016).

39. Finally, the Inspector noted that in the Charnwood CS Examination concluded in September 2015, in the light of a thorough assessment, the Inspector there had recorded that the SHMA provided an up-to-date and robust assessment of housing need for the HMA and that the HBBC FOAN of 375 – 450 was a component of that overall figure.
40. In paragraphs [53] – [55] the Inspector set out her overall conclusions for dismissing the appeal:

“53. I have found that there is a five year supply of housing land in the Borough at this time; relevant policies for the supply of housing are not, therefore, considered out-of-date. In these circumstances it is not necessary for me to determine which those policies are. The proposed development would not protect or preserve the open landscape to the east of Burbage which, whilst not specifically designated, is an important setting for the village and separates it from the M69 corridor.

54. The benefits of the proposed development include the provision of market and affordable housing in an area where the latter is much needed. The site is also close to the village centre, where there are local services, and within easy reach of Hinckley town centre by public transport. New public open space would be created and there would be other social and economic benefits such as additional support for local facilities and businesses. Nonetheless, these benefits are not sufficient to outweigh the harm to the landscape. I do not agree that the proposal would improve access to the countryside.

55. I am aware that Burbage is part of Hinckley Sub Regional Centre and that the CS strategy is that the majority of housing will be located in and around it. The positive aspects of the scheme, including the benefits referred to above and also factors such as the lack of harm to ecological interests or the living conditions of nearby occupiers, make it consistent with several CS policies, as will be the case with the vast majority of proposed development. Since this proposal is clearly contrary to CS Policy 4, which is most relevant to proposals in Burbage and thus most important in this case, compliance with other, more general policies carries little weight. The proposed development would therefore be contrary to the development plan as a whole. I have taken into account all the matters raised but found no compelling arguments to allow the appeal.”

D. Ground I: Analysis

(i) FOAN is “policy-off”: The distinction with “policy-on”

41. The starting point for analysis is the distinction between “policy-on” and “policy-off”. In this case the nub of the Claimant’s argument (the details of which are set out at paragraph [46] – [51] below) is that the Inspector should have been calculating a “policy-off” FOAN but, in fact, wrongly calculated a constrained “policy-on” figure and in so doing misapplied relevant guiding principles. In *Gallagher (ibid)* in the High Court at paragraph [37] Hickinbottom J. made three observations about the process of establishing housing need which provide an explanation for the distinction which has emerged as between policy “on” and “off”. These were approved of by the Court of appeal in that case and, more recently, have been further approved of by the Court of Appeal in *Oadby* (see paragraph [38] above). In particular it is now well established that FOAN is closely related to relevant demographic, trend based projections; but that the ultimate “housing requirement” may well be quite different to FOAN in that it is modified, and often constrained, by policy considerations. This has led, as I have already observed (cf paragraph [1] above), to FOAN being described as “*policy off*” and housing requirement as “*policy on*”. The three observations of Hickinbottom J, which reflect these distinctions, were as follows:

"(i) Household projections: These are demographic, trend-based projections indicating the likely number and type of future households if the underlying trends and demographic assumptions are realised. ...

(ii) Full Objective Assessment of Need for Housing: This is the objectively assessed need for housing in an area, leaving aside policy considerations. It is therefore closely linked to the relevant household projection; but it is not necessarily the same. An objective assessment of housing need may result in a different figure from that based on purely demographics ...

(iii) Housing Requirement: This is the figure which reflects, not only the assessed need for housing, but also any policy considerations that might require that figure to be manipulated to determine the actual housing target for an area. For example, built development in an area might be constrained by the extent of land which is the subject of policy protection, such as Green Belt or Areas of Outstanding Natural Beauty. Or it might be decided, as a matter of policy, to encourage or discourage particular migration reflected in demographic trends. Once these policy considerations have been applied to the figure for full objectively assessed need for housing in an area, the result is a "policy on" figure for housing requirement. Subject to it being determined by a proper process, the housing requirement figure will be the target against which housing supply will normally be measured."

(ii) The judgment of the Court of Appeal in *Oadby*

42. Before turning to the particular issues arising in this case it is necessary to say a word about the judgment of the Court of Appeal in *Oadby*. The Court of Appeal was concerned with the self-same SHMA that is in issue in this case and which was relied upon by the Inspector. The Appellant Council appealed the order of Hickinbottom J dismissing its application under section 288 of the TCPA 1990 against the decision of the inspector allowing an appeal of the developer against the council's refusal of an application for outline planning permission for a development of up to 150 dwellings on land at Oadby in Leicestershire. Hickinbottom J. rejected the council's challenge to the decision on all grounds. The central issue in the appeal was whether the judge erred in holding that the Inspector had not misinterpreted paragraphs [47], [49], [157], [158] and [159] NPPF. In giving judgment Lindblom LJ observed that this was a case upon its facts and did not raise novel issues of points of principle. Nonetheless because of its strong evidential resonance in the present case it is of more than passing interest. It is also an informative case in that it highlights the robust deference that the Courts attach to the genuine planning judgments of Inspectors and, in particular, it exemplifies the workings of the statement in the PPG (see paragraph [16] above) that the calculation of FOAN is not an exact science.
43. The general tenor of the judgment is that, in accordance with well established principles, the judgment of an Inspector is not to be easily interfered with. If a conclusion is one of judgment the hurdle represented by irrationality is a very high one.
44. The judgment is also informative in that it highlights a number of evidential issues which reflect the principles that I have summarised at paragraph [13] above. An Inspector can, but need not, accept the analysis in an SHMA. So for instance an Inspector when confronted with an SHMA for a HMA is not bound to accept the apportionment in the SHMA as between different local authority areas if the Inspector considers that the criteria for apportionment are not adequate, bearing in mind that the analysis in a SHMA has not been subject to the sort of thorough testing that would occur in the formulation of a Local Development Plan (cf paragraphs [38] – [42]).
45. The NPPF is a broad statement of national policy and it requires an exercise of evaluative judgment when being applied to particular, local, decisions. The Court stated: *“This should come as no surprise to those familiar with the basic principles governing claims for judicial review and statutory applications seeking orders to quash planning decisions. As this appeal shows very well, the NPPF contains many broadly expressed statements of national policy, which, when they fall to be applied in the making of a development control decision, will require of the decision-maker an exercise of planning judgment in the particular circumstances of the case in hand.”* (ibid paragraph [33]).

(iii) The Claimant's submissions

46. I turn now to the Claimant's submissions. Mr Lockhart-Mummery QC started his submissions on behalf of the Claimant with four propositions.
47. First, in this case where there is no post-NPPF housing need requirement set out in a Local Plan the duty of the Inspector is to determine a “policy-off” (i.e. unconstrained)

figure for the number of dwellings to meet need for both market and affordable housing (to then be set against supply).

48. Second the theoretical figure is to be identified in full because FOAN is a “full” figure. It is not a figure to be “*met*” or actually “*provided*” which is the “*policy on*” figure which should come later in the Local Plan.
49. Third, in the present case the CS figure of 450 (see paragraph [27] above) is accepted by all concerned not to be the FOAN. However it was no coincidence that the Inspector arrived at a figure of 450 as the upper end of the FOAN range because in fact the Inspector had not derived a proper FOAN figure but had, in substance, simply adopted the old, irrelevant CS figure.
50. Fourth, the SHMA with its identification of 450 in Table 84 is a “*policy on*” figure and therefore not reliable. Mr Lockhart-Mummery QC based this submission upon the judgment of the High Court in *Oadby* (endorsed by the Court of Appeal) where Hickinbottom J held that the SHMA for Leicester incorporated various “*policy on*” considerations and that therefore the Inspector in that case had been right to adjust the SMHA based figures in order to arrive at an end figure which was not the same as that in the SHMA. At first instance Hickinbottom J had held that the SHMA was “*policy-on*” in two key respects. First, the figures used by Oadby BC were based upon its policy decision not to accommodate additional workers drawn to its area by increased employment opportunities. The Judge said that this was a “*policy-on*” consideration because “... *it affects adjacent areas who would be expected to house those additional commuting workers*”, (ibid paragraph [34(i)]). He said that it might be policy off if there was evidence or a development plan or an agreement between the authorities to the effect that adjacent authorities agreed to increase their housing accommodation accordingly. But there was no such evidence. Second, he referred to the fact that the SHMA took into account the availability of private rented accommodation which did not meet the definition of affordable housing and this was therefore also a “*policy-on*” consideration (ibid paragraph [34(ii)]). Mr Lockhart-Mummery QC, armed with these examples, contended that the SHMA was (in essence) systematically flawed because its figures were not pure “*policy-off*”.
51. Mr Lockhart-Mummery QC dissected the Decision of the Inspector and he highlighted various passages in which he argued that it could be seen that the Inspector had applied a thoroughly muddled approach to the calculation of FOAN in which she had variously confused “*policy-on*” with “*policy-off*”, had taken account of data sources which themselves were confused and misleading, and had ignored highly relevant data which directly correlated to the total housing need for the area.

(iv) The proper approach to the interpretation of the Inspector’s Decision

52. Notwithstanding the considerable forensic skill which this analytical exercise was conducted I do not agree with the analysis or the conclusion of Mr Lockart-Mummery QC. In coming to my own conclusion it is important that I stand back and apply to the Decision a substance over form analysis. The Inspector’s decision is, with respect to her, quite dense. She uses professional shorthand to describe ideas and concepts and she cross refers, without elaborating, to different sources for both the evidence she relies upon and the policy guidance she considers to be relevant. I remind myself that such decisions are to be read and understood in their context and it is the task of the

Court to avoid semantic nit picking. I also bear in mind that the audience is a sophisticated and professional audience which will (or should) understand the short hand that the Inspector uses and which will also have an understanding of the relevant legislative and policy framework and context. In the text below I have highlighted the main criticism of the Decision and my response.

(v) “Met”: Decision paragraph [8]

53. Mr Lockhart-Mummery QC argued that the Inspector erred when she said in paragraph [8] (see above at paragraph [29]) that a main area of dispute between the parties was whether affordable housing need “*should be fully met by the FOAN*”. It was argued that by using the expression “*met*” she was confusing an affordable housing *requirement* with the (“*policy-on*”) *meeting* of that requirement. In my view this is far too unforgiving an approach to interpretation. It is clear from the Decision read fairly as a whole that the Inspector was seeking to establish a working “policy off” FOAN for the purpose of resolving the dispute before her and she was doing this in accordance with demographically led, trend based, projections which took account of affordable housing need. There was in my view no confusion between absolute (policy off) need and actual (policy on) fulfilment.

(vi) The Inspector erred in ignoring the figure of 980 dpa for Annual Housing Need in Table 48: The dog that did not bark

54. The Claimant next argued that the upper end of the FOAN range should have been 980 or even more. They take this figure from Table 48 SHMA which is set out at paragraph [32] above. They argue that since in the SHMA this figure of 980 is under the heading “Annual Housing Need” then it is an objectively derived basis for housing need and to ignore it or reject it in the cursory way that the Inspector did and thereby not to use it as part of the FOAN range was irrational and/or reflected a misdirection and misunderstanding of the NPPF. In his reply submissions Mr Lockhart-Mummery QC clarified that it was not his case that the Inspector was *bound* to accept that figure but, rather, that she was required to take it into account.
55. I do not accept Mr Lockhart-Mummery QC’s analysis of the 980 figure.
56. First, the 980 figure is derived from Table 48 SHMA. This is not a figure based upon demographic, trend-based, projections indicating the likely number and type of future households (See the articulation by Hickinbottom J above at paragraph [41]). It is a much looser and imprecise calculation premised upon affordable need and as such is not calculated according to the methodology identified in paragraph [159] NPPF and in the relevant Guidance.
57. Second, it will be seen that, in Table 48 (paragraph [32] above), the Annual Housing Need in HBBC of 980 has been determined to be exactly four times (4X) the “Affordable Need” figure (in column 2) of 245; put another way HBBC apply a precise 25% figure to “Annual Housing Need” to arrive back at the affordable need figure. It was explained by counsel for HBBC, and not challenged by the Claimant, that the 980 figure was very much a policy based figure which flows from the choice of the percentage or figure to be used to describe the relationship between affordable housing and Annual Housing Need. That multiplier or percentage could vary for all

sorts of perfectly rational yet transient policy considerations. It was for this reason that it was not a figure which could, sensibly, be used as part of a FOAN calculation.

58. Third, confirmation of these conclusions comes from the fact that the Annual Housing Need figure in Table 48 was not relied upon in the High Court and in the Court of Appeal in *Oadby*. There is for this reason a real probative significance in the dog that did not bark: The *Oadby* case concerned exactly the same SMHA as is in issue in this case and it also involved an analysis of the figures in Tables 48 and 84. As such there is an “Annual Housing Need” figure for Oadby which equates to the 980 figure for HBBC. In the case of Oadby the figure is 800 (see at paragraph [32] above). If Mr Lockhart-Mummery QC is correct in his elevation of the 980 figure in relation to HBBC into a figure of signal importance for the calculation of FOAN in relation to HBS then, *a fortiori*, the figure of 800 should equally have loomed large in the analysis in *Oadby*. Yet it did not.
59. Mr Lockhart-Mummery QC argued that, in effect, “Homer nodded”. For inexplicable reasons the parties in that case, and the Court, overlooked the 800 figure and no doubt if his team had been arguing the *Oadby* case they would have relied upon the 800 figure. As such there was no significance at all in the dog that did not bark.
60. Ms Blackmore for the Secretary of State and Ms Osmund Smith for HBCC in the light of this undertook a forensic deconstruction of the point, which to my mind is wholly convincing. They pointed out that the 800 figure had in fact briefly emerged in the *Oadby* case only to be rapidly and deliberately submerged. This is clear from the judgment of Hickinbottom J where he recorded that in the SHMA the authors had not applied a percentage figure to housing need to arrive at a sensible FOAN because to have done so would have created an annual housing need figure of 800dpa which “*was clearly unrealistic and unviable*” ([2015] EWHC 1879 at paragraph [26(i)]). The Judge cross-referred to the SHMA itself (at paragraphs [6.80]) where the authors acknowledged that a total housing need figure based upon the assessment of affordable housing was “*unrealistic*”. Thus it is not correct to say that the 800 figure was not part of the analytical fabric of the *Oadby* case. It was, but it was discarded as irrelevant: Homer did not nod. This is the context in which the Court of Appeal then came to endorse the Judge’s finding that the Inspector acted correctly in finding that a figure of 147 sufficed as the FOAN for the purpose of the decision. It is worth setting out paragraphs [47] and [48] of the judgment of the Court of Appeal because they formerly endorse the 147 figure which is, plainly, a very far cry from a figure of 800:

“47.Faced with making his own assessment of the appropriate level of housing need to inform the conclusion he had to draw under the policy in paragraph 49 of the NPPF, and doing the best he could in the light of the evidence and submissions he had heard, the inspector adopted an approximate and “indicative” figure of 147 dwellings per annum (paragraphs 33 and 34 of the decision letter), making no “specific allowance” for affordable housing (paragraph 35). Again, his conclusions embody the exercise of his own planning judgment, and I see no reason to interfere with them. He might simply have adopted a rounded and possibly conservative number to represent the global need for market and affordable housing in the council’s area, such as the figure of 150 dwellings per annum, which in

closing submissions for Bloor Homes Ltd. was said to be well below the actual level of need, or a higher figure closer to the 173 dwellings per annum referred to in the Strategic Housing Market Assessment. I accept that. But as Hickinbottom J. concluded, I do not think the court could conceivably regard the inspector's figure of 147 dwellings per annum as irrational, or otherwise unlawful.

48. Taken as a whole, therefore, the inspector's approach was in my view consistent with the decision of this court in *Hunston Properties Ltd.*, and lawful.”

61. To further place the judgment into context the figure of 147 which was upheld was itself derived from the part of Table 84 which the Inspector in the present case takes as her point of departure. It is true that the “147” figure is not *itself* found in Table 84 but that is because the Inspector did not agree with the way in which the figures had been computed for Oadby in Table 84 so carried out his own assessment and modified the figure in the SHMA to arrive at the new figure. But the important point is that the logic used by the Inspector in the *Oadby* case, endorsed by the Courts, is the same logic as has been used by the Inspector in the present case. And both Inspectors rejected the “Annual Housing Need” figure set out in Table 48 (the Inspector in *Oadby* adopting a figure of 147 and the Inspector in this case expressly rejecting the 980 figure). The rejection of the 800 figure in *Oadby* was rational and sound, just as the rejection by the Inspector of the 980 figure in paragraph [11] of her decision is rational and sound in this case. When set in the above context it is plain that the Inspector was well within the legitimate scope of her judgment to conclude that the use of a 980 figure was “*clearly impractical and unreasonable*” (see paragraph [34] above).
62. In short the Inspector addressed herself to the 980 figure. She did not ignore it. But she did reject it upon the basis of her assessment that it was impractical and unreasonable. When measured against the analysis of the equivalent figure in *Oadby* and when it is understood that the 980 figure is not based upon a computational methodology that it is the norm for assessing FOAN, her view is mainstream, rational and correct.

(vii) Did the Inspector use unreliable sources and ignore affordable housing?

63. The Claimant next complains that the Inspector took into account unreliable evidence sources. In my judgment the Inspector applied a perfectly adequate test relying upon an adequate body of evidence. The approach she adopted was consistent with the approach to evidence collation and appraisal approved of in case law: See paragraph [13] above.
64. The relevant guidance makes it clear that there is no universally approved way of calculating FOAN and that the answer in each locality will be dependent upon local condition and the exigencies of the available evidence. Indeed, authorities are urged to rely upon secondary sources and not primary sources upon the basis that to conduct own-research would not be a proportionate use of resources: See paragraph [16] above.

65. In this case Ms Blackmore for the Secretary of State described the data sources before the Inspector as “*a messy basket of evidence*” and “*a large and somewhat unwieldy basket of evidence*”. The approach adopted by the Inspector can be summarised as follows:
- i) First she analysed the figures in Table 84 of the SHMA based on demographic trend based population figures which she explained how, in her view, the range set out there (of 375-450) was arrived at (Decision paragraphs [9] – [10])
 - ii) Then she rejected the Claimants figure of 980 which rejection I have concluded was entirely proper.
 - iii) Next she observed that the SHMA was based upon 2011 data. So the Inspector then examined the 2012 population projections. This data showed a 364 dpa for the HBBC area which was lower than the figures in the SHMA FOAN but was “*generally consistent with it*” (Decision paragraph [12]).
 - iv) Then she found that the 2012 data confirmed the 450 figure in the SHMA and in the CS which she noted was “*about 24% above that needed to meet demographic increases*”.
 - v) Next she benchmarked her conclusion against a figure of 539dpa which was the point at which the Claimants calculated in their evidence to her that the housing land supply would fall below the five year threshold. So, taking the Claimant’s figures as accurate, she concluded that on her assessment of the range there was an ample safety margin: See paragraph [37] above.
 - vi) Finally, she pointed out that in another Inspector’s decision which she treated as comparable for the purpose (See Decision paragraph [17] - Charnwood) the Inspector had treated the SHMA as up to date and robust.
66. In my view this approach was rational and well within the Inspector’s ordinary margin of judgment. I should deal briefly with a number of particular criticisms made by the Claimant.
67. It is said that in relying upon the CS figure of 450, when it was common ground that the CS was pre-NPPF and non-FOAN, the Inspector was in fact applying an incorrect and non-NPPF compliant methodology. I reject this argument. The Inspector compared her conclusions about the FOAN range with the CS simply as a possible benchmarking exercise. This is clear from Decision paragraph [12]. She accepted that the CS was not a FOAN but as a matter of logic this did not render it wholly inadmissible as a piece of evidence which could then be used to calculate, independently, the FOAN. So, for instance, if the 2009 figures had remained valid and not subject to change over time then there is no reason why that fact should not be accorded at least *some* proper degree of probative weight. I reject the suggestion that in using the CS as a benchmark the Inspector was improperly using that figure as the FOAN.
68. Next it is said that because the Inspector referred a document entitled “Objectively Assessed Need and Housing Targets Technical Advice Note” (July 2015, 2ed) which

suggested that affordable housing was a “*below the line*” (i.e. “policy-off”) this proved that she had treated affordable housing as extrinsic to her assessment of the FOAN. This was because case law has now made clear that the FOAN was a measure of total housing need which necessarily included affordable housing and is “policy-off”. As to this it is true that in the Decision the Inspector does refer to the Technical Advice (in Decision paragraph [8] and footnote [3]). This is not an official document and the relevant paragraphs cited do appear not to be consistent with case law. But this is in my view a classic illustration of the need to avoid directing an overly finely tuned forensic microscope at the reasoning in the decision. It would, of course, have been better had the Inspector either not referred to the Advice at all or recognised that it was (at least arguably) inconsistent with case law. But when one stands back it is not clear that she was doing any more than reciting an argument made to her. But more importantly, when one examines the approach actually taken it is clear that she did not ignore affordable housing from the FOAN.

69. The Inspector is also criticised for saying in Decision paragraph [13]: “*It is not my role in this decision to identify an alternative FOAN*”. It is argued by reference to *Oadby* in the Court of Appeal that it is precisely the Inspector’s job to calculate the FOAN where there is no up-to-date Local Plan (cf e.g. Paragraphs [38ff]). I am not entirely certain what the Inspector meant by this since she *did* go on and determine a FOAN range which in the circumstances she held to be sufficient for the task before her i.e. determining the appeal. I suspect she was saying no more than that she did not have to decide upon a definitive FOAN but that she did have to calculate a FOAN range sufficient to enable her to resolve the dispute arising before her on the appeal which is a proper approach to take: see paragraph [13] of this judgment above. Her conclusion in paragraph [13] of the Decision that her selected range was well below the figure that would put having a five year supply in jeopardy is consistent with this. But be that as it may this is an immaterial objection which does not go to the root of the Decision.

E. Conclusion on Ground I

70. In conclusion on Ground I it is my judgment that the Inspector’s Decision was squarely within the scope of the margin of discretion or judgment which must be accorded an Inspector in circumstances such as these. The application on this ground fails.

F. Ground II: Failure on the part of the Inspector to ensure that potential section 106 contributions to Leicestershire Police complied with regulation 122 of the Community Infrastructure Levy Regulations 2010

(i) The regulatory framework

71. Pursuant to Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (“the Regulations”), a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c), fairly and reasonably related in scale and kind to the development. Paragraphs [203] – [206] NPPF address planning conditions and obligations. They provide that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of

conditions or planning obligations but that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph [204] states that planning obligations should only be sought where they meet conditions which, in essence, mirror those in Regulation 122(2). Paragraph [206] states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

(ii) The reasoning in the Decision

72. In the present case Leicestershire Police (“LP”) sought a significant monetary contribution under Section 106 upon the basis that the proposed development would give rise to additional demands upon police services. The Inspector concluded that the LP had demonstrated adequately that the sums requested were to be spent upon a variety of essential equipment and services the need for which arose directly from the new households occupying the proposed developments. She set out her reasons in paragraphs [44] – [47] of the Decision. The reasons were in the following terms:

“44. Leicestershire Police (LP) has demonstrated adequately that the sums requested would be spent on a variety of essential equipment and services, the need for which would arise directly from the new households occupying the proposed development. It would be necessary, therefore, in order to provide on-site and off-site infrastructure and facilities to serve the development commensurate with its scale and nature consistent with LP Policy IMP1. The planning contribution would also enable the proposed development to comply with the Framework’s core planning principle of supporting local strategies to improve health, social and cultural well being and delivering sufficient community facilities and services to meet local needs.

45. In respect of compliance with CIL Regulation 123(3) the proposed spending has been apportioned to individual projects and procurement, such as property adaptation and a contribution towards a vehicle, in order to ensure no need for the pooling of contributions. In addition a clause of the undertaking which, in requiring written confirmation prior to payment that it would only be spent where there were no more than four other contributions, would provide a legal mechanism for ensuring full compliance with Reg. 123(3).

46. Evidence was submitted in the form of two maps with types of criminal incidents plotted on them. The first of these shows that there were several burglaries and thefts in the housing area adjacent to the appeal site during the year up to July 2014. The second map covers a larger area, this time in Blaby, and indicates a steady rate of incidents, mainly forms of stealing, in all types of residential area. I have no reason to believe that levels of crime differ significantly between Hinckley/Burbage and Blaby.

47. I consider this to be a no less realistic and robust method of demonstrating the criminal incidents likely to arise in a specific area than the analysis of population data which is normally used to calculate the future demand for school places. The evidence gives credence to the additional calls and demands on the police service predicted by LP.”

(iii) The Claimant’s submission

73. The Claimant argued, during the planning appeal, that as the population of an area increased so the overall rate of crime in a police area, and hence the demands placed upon resources, declined. This proposition was advanced upon the basis of official, statistical, information and was set out in a proof of evidence adduced on behalf of the Claimant.
74. For their part LP accepted that in the Leicester, Leicestershire and Rutland areas crime was at its lowest point for many years said to be due “... *to the excellent efforts of the police and its partners*”.
75. LP, in its evidence, produced two maps the purpose of which was to establish that there was a pattern of crime in new housing estates. The Claimant did not challenge that evidence but LP did not, so it was argued, generate any evidence to establish that increased levels of housing produced more crime and, in consequence, increased demand upon services in the relevant LP area.
76. In the course of argument Mr Lockhart-Mummery QC said that the nub of the Claimant’s objection was that the Inspector had failed properly to address the Claimant’s evidence. He said that had the Inspector, acting properly within the scope of her margin of discretion and judgment, addressed but rejected the evidence, then the Claimant could have no objection. However, he argued, that there was no evidence that this analytical process had ever occurred since the Decision did not address the Claimant’s evidence. He thus contended that the Inspector misdirected herself as to the evidence and/or had failed to give proper reasons for her Decision.

(iv) Analysis

77. I do not accept this submission.
78. First, it must be remembered that the Inspector had already dismissed the appeal and she was dealing with disputes relating to contributions upon an alternative basis only. In the circumstances it is not reasonable to have expected a detailed exegesis of the sort that might possibly have been expected had this been the true crux of the issue.
79. Second, and in any event, in my judgment her reasons were perfectly adequate. There was no reason for her to do other than explain why she accepted the evidence of LP. The Inspector was clearly aware of all the evidence because it had been tendered in the course of a public inquiry before her and had been the subject of cross examination, debate and submissions. The gist of the Inspector’s reasons are adequately set out in paragraphs [44] – [47] (see above). She records that LP has adequately demonstrated that the sums would be spent on equipment and services which arose “... *directly from the new households occupying the proposed*

development”. Accordingly she concluded, in terms of causality, that there was a proper nexus between the expenditure and the new development. She also records that the proposed spending was properly attributed between individual projects and procurement such as property adaptation and contributions towards a vehicle in order to prevent a need for pooling of contributions. She also observed that there was a clause of the undertaking which required written confirmation prior to payment that it would only be spent where there was no more than four other contributions which, she concluded, provided a legal mechanism for ensuring compliance with the Regulations of 123(3). She accepted the evidence tendered in the form of the two maps which she found established a “*steady rate of incidents*” in the Blaby area which she considered to be an adequate comparable. She also referred to predicted increases in calls and demands.

80. I have read all of the evidence placed before this Court which is said to be relevant to the issue. This includes, *inter alia*, a statement from Mr Michael Lambert on behalf of LP which sets out the justification for the contribution. In a section entitled “*The policing impact of 73 additional houses at the site*”, Mr Lambert explains why, in the view of LP, the overnight population of the proposed development would be 170 persons and that, in terms of the relevant counterfactual, that represented an increase over demand “*from what is currently open fields*”. Mr Lambert cited empirical data based upon existing crime patterns and policing demand and deployment from nearby residential areas which established the direct and additional impacts of the development upon local policing. That data established that there would be an incremental demand in relation to such matters as: calls and responses per year *via* the police control centre; an increase in annual emergency events within the proposed development; additional local non-emergency events which trigger follow-up with the public; additional recorded crimes in the locality based upon beat crime and household data and a proportionate increase in anti-social behaviour incidents; an increase in demand for patrol cover; and, an increase in the use of vehicles equating to 12% of an additional vehicle over a six year period. I have set out merely examples of the incremental costs which would be incurred by the development. It is apparent from Mr Lambert’s report that the increase in cost is primarily of a variable nature; but there are some elements of fixed costs which need to be covered as well. Reading the document as a whole there can be no doubt but that LP tendered sufficient evidence to justify the Inspector’s conclusions.
81. In short, the reasons given by the Inspector were brief but sufficient; and the evidence base before the Inspector, and adduced before the High Court, establishes that there was an ample evidence base upon which the Inspector was entitled to base her conclusion.

G. Conclusion

82. For all the above reasons the application does not succeed.

£/m2 study

Description: Rate per m2 gross internal floor area for the building Cost including prelims.

Last updated: 17-Mar-2018 12:20

› Rebased to South East Region (excluding Greater London) (111; sample 1994)

Maximum age of results: Default period

Building function (Maximum age of projects)	£/m² gross internal floor area						Sample
	Mean	Lowest	Lower quartiles	Median	Upper quartiles	Highest	
New build							
374. Police stations (15)	2,561	2,037	2,584	2,631	2,655	2,837	6
374.1 Police admin/control buildings (15)	2,443	1,834	2,232	2,342	2,696	3,067	7
374.2 Police patrol bases with vehicle bays (5)	2,056	-	-	-	-	-	1
374.3 Police patrol bases without vehicle bays (25)	2,409	-	-	-	-	-	1
374.4 Police stations with social and welfare services (10)	3,239	-	-	-	-	-	1