



Neutral Citation Number: [2023] EWHC 1776 (Admin)

Case No: CO/709/2023 and CO/323/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14/07/2023

**Before :**

**THE HON. MR JUSTICE HOLGATE**

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**Between :**

<b>LOCHAILORT INVESTMENTS LIMITED</b>	<u>CO/709/2023</u>
<b>- and -</b>	<b><u>Claimant</u></b>
<b>SOMERSET COUNCIL</b>	
<b>(FORMERLY MENDIP DISTRICT COUNCIL)</b>	<b><u>Defendant</u></b>
<b>- and -</b>	
<b>NORTON ST. PHILIP PARISH COUNCIL</b>	<u>CO/323/2022</u>
<b>- and -</b>	<b><u>Claimant</u></b>
<b>SOMERSET COUNCIL</b>	
<b>(FORMERLY MENDIP DISTRICT COUNCIL)</b>	<b><u>Defendant</u></b>
<b>- and -</b>	
<b>(1) SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES</b>	<b><u>Interested Parties</u></b>
<b>(2) LOCHAILORT INVESTMENTS LIMITED</b>	
<b>(3) REDROW HOMES LIMITED</b>	

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**James Findlay KC and Ben du Feu** (instructed by **Town Legal LLP**) for the **Claimant**  
**David Forsdick KC** (instructed by **Somerset Council**) for the **Defendant**  
**Jonathan Welch** (instructed by **DLA Piper UK LLP**) for the **Claimant**  
**The Secretary of State for Levelling Up, Housing and Communities** and  
**Redrow Homes Limited** did not appear in **CO/323/2022** and were not represented.

Hearing date: 29 June 2023

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**APPROVED JUDGMENT**

**Mr Justice Holgate:**

**Introduction**

1. On 16 December 2022 I handed down judgment allowing the application by Norton St. Philip Parish Council (“NSPPC”) under s.113 of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”) for statutory review of the adoption by the former Mendip District Council (“MDC”) of the Mendip District Local Plan 2006-2029 Part II: Sites and Policies (“LPP2”) ([2022] EWHC 3432 (Admin)). That decision had been taken on 20 December 2021.
2. The court ordered that 5 allocations of housing sites be remitted and that MDC should reconsider which sites should be allocated and then submit modifications of LPP2 for examination by an independent Inspector. MDC was required to amend LPP2 and the accompanying Policies Map. These proceedings are concerned with the legality of a change made by MDC to the Policies Map. I am grateful to counsel for their helpful written and oral submissions.
3. LPP2 complements the Mendip District Local Plan 2006-2029 Part I: Strategy and Policies (“LPP1”) which was adopted on 15 December 2014. LPP1 sets out an overall spatial strategy for the District, specific policies for the five main towns and broad principles for directing development across the rest of the District. LPP1 also made strategic allocations of land and identified Future Growth Areas. LPP2 contains more detailed policies and makes non-strategic allocations.
4. On 1 April 2023 Somerset Council (“SC”) was formed as a unitary authority and successor to Somerset County Council, MDC and three other district councils. SC is substituted for MDC as the defendant in CO/323/2022 and in CO/709/2023.
5. The factual context and legal framework for the present dispute was set out in some detail in my earlier judgment and need not be repeated here. I will summarise the background briefly.
6. Policy CP2 of LPP1 sets an overall housing requirement figure for the district of 9,635 dwellings over the period 2006-2029. This included an additional 505 dwellings, the provision of which was left to LPP2.
7. In the draft version of LPP2 submitted to the Secretary of State for Levelling Up, Housing and Communities for examination by an independent Planning Inspector MDC did not propose any allocations of land to meet the need for 505 additional dwellings. They considered that this requirement had largely been met through “unplanned commitments”, that is by the grant of planning permissions rather than by allocations.
8. The Inspector examining LPP2 disagreed. He considered that LPP1 required additional allocations of land to provide for 505 dwellings and that they should be in the north-east quadrant of the district. He stated that unless “main modifications” were made to LPP2 under s.20(7B) and (7C) of the PCPA 2004

to meet those requirements, the plan would be unsound and therefore legally incapable of being adopted (s.20(7A) and s.23(2A), (3) and (4)).

9. MDC accepted the Inspector's interpretation of LPP1 and proposed modifications of LPP2 to allocate land on 5 sites in the north-east of the district, providing 510 dwellings. Policy NSP1 proposed to allocate as one of those sites land at Mackley Lane, Norton St. Philip for 27 dwellings. Lochailort Investments Limited ("Lochailort"), a developer, owns that site. Policy BK1 proposed to allocate a site for 28 dwellings at Beckington. Redrow Homes Limited has an option to acquire that site. In addition three allocations were proposed at Midsomer Norton, MN1, MN2 and MN3, providing another 455 dwellings in total. Previously those five areas of land had been shown on the policies map accompanying the submission version of LPP2 as lying outside the development limits of the settlements and therefore subject to restraint policies.
10. In his report following the completion of the Examination of LPP2 the Inspector concluded that the Plan would be unsound, and therefore incapable of adoption, unless main modifications were made, including the allocation of the 5 sites in the north-east of the district. MDC agreed with those modifications and were therefore able to adopt LPP2 on that basis.
11. NSPPC brought a challenge to the policies in the plan for the allocation of those 5 sites. They sought an order remitting policies NSP1, MN1, MN2, MN3 and BK1 and related text of LPP2. In my judgment I upheld two grounds of challenge falling within s.113(6) of the PCPA 2004:
  - (1) The Inspector and MDC misinterpreted LPP1 as requiring the additional housing of 505 units to be allocated in the north-east part of the district, rather than in the district as a whole in accordance with the spatial distribution strategy, policy CP1 of LPP1;
  - (2) MDC had failed to consider any "reasonable alternatives" to allocating the additional sites in the north-east of the district in breach of reg.12(2)(b) of the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633).

### **The order made on 16 December 2022**

12. In order to give effect to the judgment, the court had a discretion either to quash or to remit LPP2 as a whole or relevant parts thereof (s.113(7) and (7C)). Where the court remits a plan or part of a plan it may give directions as to the actions to be taken in relation to that document (s.113(7A)). Those directions may include *inter alia* treating the plan (or parts thereof) as not having been adopted, or requiring action to be taken by a person or body with a function relating to the preparation, publication or approval of the plan.
13. A quashing order results in the local authority having to recommence the plan-making process from the beginning to the extent that the plan is quashed (*South Northamptonshire District Council v Charles Church Developments Limited* [2000] PCLR 46). The powers to remit with directions provide the court with

an alternative remedy to quashing the whole or part of a plan. These powers are broad and flexible, subject to the principle that the court may not intrude upon the role of the plan-making authority, or as the case may be the Inspector, on matters of planning judgment. The court's power to make directions enable it to fit the relief it grants to the particular error of law in the particular circumstances which have occurred. In some cases directions may be made to give proper effect to a planning judgment already exercised lawfully by an authority or by an Inspector, to ensure that it is properly reflected in the outcome of the process, but the relevant consequences of that judgment must be plain (see *Woodfield v JJ Gallagher Limited* [2016] 1 WLR 5126 at [24]-[34]).

14. Here there was no dispute about the legality of the conclusions by the Inspector and MDC that the 505 units should be provided as allocations in LPP2, and that unless main modifications were made to achieve that outcome, LPP2 would be unsound and therefore incapable of being adopted lawfully at all. The key error had been to confine the area of search for those allocations to the north-east of the district, on an erroneous reading of LPP1.
15. Given that the legal flaws related to a limited number of policies, the question for the court was whether it was possible to avoid quashing or remitting the whole of LPP2 while giving effect to the lawful conclusions of the Inspector and MDC on what needed to be done in order to overcome the "unsoundness" bar on adoption, namely to allocate sites for 505 dwellings.
16. The submissions made by the Secretary of State on the draft order were very much alive to this point. He submitted that the court's directions would be incomplete unless they required MDC not only to consider making district-wide allocations of sites to provide 505 dwellings in accordance with CP1 and CP2 of LPP1, but also to submit formal modifications to LPP2 to the Secretary of State for examination, and upon completion of the examination process to take a decision on the modifications and the new Inspector's report in accordance with s.23 of the PCPA 2004.
17. Counsel then appearing for MDC suggested that those additional directions were unnecessary. He said that "the inevitable consequence" was that MDC or its statutory successor would have to submit proposed modifications to LPP2 for examination.
18. Although MDC accepted that consequence, I did not agree that it was inevitable and so it was necessary for the court to make directions on the lines proposed by the Secretary of State. However, given the Inspector's unchallenged finding that the plan was unsound, which could only have been overcome by a main modifications process properly carried out, I decided that there must be modifications to LPP2 specifically to address the allocation of 505 dwellings. I did not accept the suggestion that that issue could be left to be dealt with by an overall review of LPP2 *as a whole* at some time in the future.
19. As a result, the order I made on 16 December 2022 included the following directions:

“2. Policies MN1, MN2, MN3, NSP1 and BK1 of Mendip District Local Plan 2006-2009 Part II: Sites and Policies (“LPP2”), their supporting text and other related text, tables and diagrams, as set out in Schedule 1 to this order, shall be remitted to the Defendant.

3. The remitted parts of LPP2 shall be treated as not having been adopted as part of the local development plan. The rest of LPP2 is unaffected by this order.

4. The Defendant shall publish a revised version of LPP2 on its website within 28 days which explains the effect of this order, and shows the remitted parts of the plan as being struck through.

5. The Defendant shall amend the Policies Map within 28 days so that it properly reflects the terms of this order and any consequential changes to LPP2 as set out in Schedule 1.

6. The defendant shall:

a. review and reconsider allocations to meet the district wide requirement for an additional 505 dwellings in accordance with Core Policies 1 and 2 of Mendip District Local Plan 2006-2009 Part 1: Strategy and Policies and the judgment of the court;

b. in light of their review, prepare and publish modifications to LPP2 which allocates sites to meet the additional requirement. The preparation and publication of these modifications shall be in accordance with requirements of section 19 of the Planning and Compulsory Purchase Act 2004 (“2004 Act”), and Regulations 18 and 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

c. submit the proposed modifications to LPP2 to the First Interested Party, who shall appoint an Inspector to carry out and report on an independent examination of them, which shall be carried out in accordance with section 20 of the 2004 act; and

d. once it receives the Inspector’s report, the Defendant must make a decision in accordance with section 23 of the 2004 Act.”

There was no appeal against that order.

20. It is common ground that MDC has complied with paragraphs 2, 3 and 4 of the court’s order.

**The issue between the parties.**

21. Paragraph 5 of the court's order required the Adopted Policies Map accompanying LPP2 to be amended so as to reflect the terms of that order. The present dispute relates to the manner in which MDC altered that map on 12 January 2023.
22. The notation showing policy NSP1, the allocation for housing, has been removed. The four other allocations to address the requirement for 505 dwellings have also been deleted. Those deletions from the Policies Map which had been adopted on 20 December 2021 are compatible with the directions in paragraphs 3 and 5 of the order dated 16 December 2022. The dispute relates to the alteration made to the "development limits" of Norton St. Philip.
23. In the draft of LPP2 submitted to the Secretary of State for examination each of the five allocated sites were shown on the accompanying Policies Map as lying outside the development limits for the relevant settlement. This had been the position shown on earlier versions of the Policies Map going back at least as far as 2002. The significance of this boundary is that land falling outside "development limits" is subject to policies of restraint, whereas land falling within those limits generally benefits from permissive policies. Accordingly, when LPP2 was the subject of main modifications to include the five allocations, initially in draft form and finally as an adopted plan, the boundaries of the development limits shown on the Policies Map were extended so as to include those five sites.
24. Following the order dated 16 December 2022, Lochailort sent to MDC a Note prepared by Mr. James Findlay KC, who appeared before me on their behalf. He contended that, applying the decision in *Cummings v Weymouth and Portland Borough Council* [2007] EWHC 1601 (Admin), the effect of remitting the allocations to MDC was to leave those areas of land without any designation. In planning jargon such areas are often referred to as "white land." He said that the land should be treated as neither within nor without the development limits of the relevant settlement. Policies which depend on whether land is inside or outside development limits would not be applicable, whether for or against development. Mr. Findlay said they would be neutral in effect.
25. Mr. David Forsdick KC, who appeared before me on behalf of MDC, advised the Council on these issues in an advice dated 6 January 2023. He said that the *Cummings* case was distinguishable. The five allocations had resulted from a misinterpretation of LPP1. MDC had been required by LPP1 to allocate sites for 505 dwellings from an area of search covering the district and not confined to the north east quadrant. There was no indication in LPP1 that any such sites would be allocated in Norton St. Philip or that the development limits of that settlement would be altered. The deletion of the allocations removed the only justification for having extended the development limits. The boundaries should be readjusted accordingly.
26. On 12 January 2023 LPP2 was altered in accordance with the court's order. The court was told that this was dealt with by senior officers. No point is taken on whether they were authorised under MDC's constitution to take such action. In

any event, the steps taken and advice on the way forward were reported to a meeting of the Full Council on 9 February 2023.

27. The same officers also caused the Policies Map to be altered to delete the five allocations and to redraw the development limits of each settlement so as to exclude areas of land formerly allocated.
28. Lochailort applies in a new claim for judicial review (CO/709/2023) to quash the decision to publish the Policies Map showing land formerly referred to as NSP1 outside the development limits for Norton St. Philip. They also ask for an order requiring Somerset Council to republish the Policies Map so as to comply with the order of 16 December 2022, which, according to them, would require the site to be shown as white land. In summary it is said that MDC acted unlawfully because:
  - (1) The purpose of the revised Policies Map is to reflect the policies in the adopted LLP2 as amended in accordance with the court's order. Those policies do not set a development limit for the part of Norton St. Philip in which the former NSP1 was located;
  - (2) The Revised Policies Map cannot lawfully determine the development limits without the review and reconsideration which is required by the court's order for that part of Norton St. Philip;
  - (3) The Revised Policies Map does not accord with the court's order.
29. There has been no legal challenge to MDC's decision to redraw development limits elsewhere so as to exclude the other areas of land formerly allocated.
30. In paragraph 2 of their Detailed Grounds of Resistance MDC submitted that if and in so far as Lochailort contends, expressly or by implication, that the court's order was ambiguous in relation to the Policies Map the appropriate course was for them to apply under the provision in the order for liberty to apply. However, Lochailort's stance is that MDC had no power to alter the development limits of the settlement and they have been granted permission to apply for judicial review to argue that point.
31. Nevertheless, NSPPC took up MDC's point. On 1 June 2023 they applied in CO/323/2022 for an order varying the order made on 16 December 2022 so as to make it clear that the Policies Map was to be amended (in summary):
  - (1) By removing any depiction such as colouring used to indicate allocations which have been remitted to MDC;
  - (2) Where the development limits of a settlement were extended so as to include land comprised within a remitted allocation, by restoring those limits to their position immediately prior to that extension.



For reasons set out below there is no need for the court to make any order on this application.

32. NSPCC submit, in agreement with MDC, that the intention of the order dated 16 December 2022 was to require the removal of all consequential changes to LPP2 and the Policies Map associated with the five unlawful allocations. The development limits had only been redrawn in the first place to accommodate those allocations which had been found to be unlawful.
33. The parties agree that the outcome of those arguments in relation to Lochailort's land would, as a matter of principle, apply equally to the other former allocations. Indeed, that was the basis upon which the court's order dated 16 December 2022 was drawn up without any subsequent objection.
34. Since that order, planning permission has been granted for 270 dwellings on what was formerly allocation MN1 at Midsomer Norton. The court was told that planning applications have been made for residential development on the other three former allocations.

### **Statutory framework**

35. The relevant legislation is surprisingly convoluted. I gratefully adopt the helpful, clear analysis by Lang J in *R (Bond) v Vale of White Horse District Council* [2020] PTSR 724 at [34] to [53] and [58]. That analysis was common ground between the parties in the two applications before me.
36. Section 17(3) of the PCPA 2004 requires a local planning authority to have local development documents ("LDDs") which "set out the authority's policies (however expressed) relating to the development and use of land in their area."
37. By s.15 of PCPA 2004 a local planning authority is required to prepare and maintain a "local development scheme" which must specify *inter alia* ... which LDDs are to be development plan documents ("DPDs"). The presumption in favour of the statutory development contained in s.38(6) of the PCPA 2004 applies to the adopted or approved DPDs for an area, together with any neighbourhood plans (s.38(3)).
38. Section 20(1) of PCPA 2004 requires every DPD to be submitted to the Secretary of State for independent examination. Section 23(2) to (4) delimits the circumstances in which a submitted DPD may be adopted following examination, including by reference to the statutory requirement for the plan to be judged "sound" by the examining Inspector.
39. A LDD which is not a DPD is not required to undergo the process of examination. Instead, by s.23(1) a local planning authority may adopt a LDD (other than a DPD), either as originally prepared or as modified to take account of any representations made in relation to the document and any other matters they think relevant. Section 19 of the PCPA 2004 also contains provisions regarding the preparation of LDDs other than DPDs, which is supplemented by the Town and Country Planning (Local Planning) (England) Regulations 2012 (SI 2012 No. 767) ("the 2012 Regulations").

40. A LDD is adopted for the purposes of s.23 if it is adopted by resolution of the authority (s.23(5)).
41. A local planning authority may at any time prepare a revision of a LDD (s.26(1)) Part 2 of the PCPA 2004 applies to the revision of a LDD as it applies to the preparation of such a document (s.26(3)).
42. Regulation 6 of the 2012 Regulations defines which of the documents specified in regulation 5 is to be treated as a local plan. A DPD is synonymous with a local plan as so defined (reg. 2(1)).
43. When a local plan is submitted to the Secretary of State for examination under s.20(1) of the PCPA 2004 it must be accompanied by a “submissions policies map.” Such a map shows how an already “adopted policies map” would be amended by that local plan if it were to be adopted (s.20(3) and regs.2(1) and 22(1)(b) of the 2012 regulations). By reg.9:

**“9.— Form and content of the adopted policies map**

(1) The adopted policies map must be comprised of, or contain, a map of the local planning authority's area which must—

- (a) be reproduced from, or be based on, an Ordnance Survey map;
- (b) include an explanation of any symbol or notation which it uses; and
- (c) illustrate geographically the application of the policies in the adopted development plan.

(2) Where the adopted policies map consists of text and maps, the text prevails if the map and text conflict.”

44. The combined effect of regs. 2(1), 5 and 6 is that an adopted policies map is a LDD but not a supplementary planning document (“SPD”). However, it does not form part of the local plan itself. In other words, it is a LDD which is subject to s.23(1). A policies map is not *itself* required to be submitted for examination under s.20(1). Instead, it is required to be submitted to the Secretary of State as a document which must accompany a local plan submitted under s.20(1). As the Court of Appeal said in *Fox Land and Property Limited v Secretary of State for Communities and Local Government* [2015] EWCA Civ 298 at [28], a policies map (then referred to as a proposals map) is relevant to the geographical scope of the application of a policy and thus a proper understanding of the policy.
45. In *Bond*, a draft local plan proposed to remove from the Green Belt land to create four strategic allocations, and also other areas of land around settlements. The examining Inspector accepted the proposal to alter the boundaries of the Green Belt for the strategic allocations, but rejected all other alterations proposed to the extent of the Green Belt. In order to make the plan sound, main modifications were proposed and ultimately adopted as part of the plan, the text

of which only referred to the alterations of the Green Belt to accommodate the strategic allocations ([9] and [12] to [14]). However, because of an administrative error, the adopted policies map was not updated from the submission version to show the areas of land which were now to be retained within the Green Belt. Subsequently, the authority decided to correct the adopted policies map by resolution. The owner of the areas of land retained within the Green Belt challenged that decision on the basis that the authority was obliged to follow the statutory procedures for modifying the local plan itself.

46. Lang J rejected the challenge, holding that the alteration to the adopted policies map could be made by resolution pursuant to s.23(1) and (5) and s.26(1) of the PCPA 2004. The adopted policies map does not form part of the local plan. A new submission policies map would only be required if a new draft local plan was proposed which, if adopted, would necessitate the amendment of the existing adopted policies map. But in this case no policy of the local plan policy required to be amended ([58]). I note that it does not appear that there was any wording in the adopted local plan in that case specifying that the relevant part of the Green Belt boundary would remain unaltered or describing where that particular part of the boundary should run. That appears to have been left to the policies map. So the alteration which the Council made to the boundary shown on the adopted policies map, and which the court upheld, was made in order to give effect to the Inspector's reasoning in his report that there had been no justification for removing land from the Green Belt other than for the strategic allocations, an issue which went to the legal test for adoption of the plan as to whether it was sound.

### **Relevant policies**

47. Core Policy 1 ("CP1") of LPP1 sets out the spatial strategy for Mendip. In summary, the policy provides that to enable the most sustainable pattern of growth for the District:
- (1) The majority of development will be directed towards the five principal settlements, the towns of Frome, Glastonbury, Shepton Mallet, Street and Wells to reinforce their roles as market towns. Specific policies for each town were set out in Core Policies 6 to 10;
  - (2) In the rural parts of the District new development to meet local needs will be provided in :
    - (i) Sixteen "primary villages", including Beckington and Norton St. Philip. These villages offer key community facilities and some employment opportunities, making them best placed to accommodate more new rural development;
    - (ii) Thirteen "secondary villages". These villages offer some services making them appropriate for development to meet more localised housing, business and service needs;

- (iii) In other villages and hamlets, development in line with Policy CP4 to meet specifically identified local needs.

(3) Development in the open countryside will be strictly controlled, but may exceptionally be permitted in accordance with Policy CP 4.

48. Policy CP1 also provides:

“In identifying land for development the Local Plan’s emphasis is on maximising the re-use of appropriate previously developed sites and other land within existing settlement limits as defined on the Policies Map, and then at the most sustainable locations on the edge of the identified settlements. Any proposed development outside the development limits, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities.”

49. Mr. Jonathan Welch, who appeared on behalf of NSPPC pointed out that CP1 relies upon the Policies Map accompanying the local plan to define “settlement limits” or “development limits”. However, the local plan does not define “open countryside” referred to in the preceding part of CP1, or rely upon the Policies Map to define the areas of open countryside. He submits that it is left to the judgment of a decision-maker as to whether land qualifies as “open countryside”. Generally land outside the development limits of a settlement will form part of the open countryside, but that may not necessarily be the case. Land beyond the limits of a settlement may have been developed so intensively as not to qualify as *open* countryside. Mr. Forsdick accepted this approach and I agree that it is correct. He asks the court to note that the Policies Map does not designate areas of open countryside. So far as is relevant to this case it simply defines the development limits of a settlement.
50. Policy CP2 sets out the amount of new housing required for the district and how it is to be distributed across the settlement hierarchy. Policy CP2 states that delivery of housing will be secured from *inter alia* infill, conversions and redevelopments within the development limits shown on the Policies Map.
51. A predecessor local plan, the Mendip District Local Plan was adopted in 2002. The Adopted Policies Map accompanying that document, showed Lochailort’s land as falling outside the development limits of Norton St. Philip. Likewise the Adopted Policies Map accompanying LPP1 (which superseded the 2002 Map) showed the site as lying outside those limits. The same applies to the Submission Policies Map which accompanied the Submission version of LPP2.
52. The adopted LPP2 which gave effect to the main modifications regarding the “505 dwellings” issue, contained allocation policies for each of the five allocations. Paragraph 11.20.6 of the supporting text for NSP1 explains where the development limits had been amended to deal with other issues, but did not address the NSP1 site. Paragraph 11.20.4 states that the site “is outside but adjacent to the adopted development limit.” NSP1 simply contained a plan showing the extent of that allocation. It was left to the Adopted Policies Map to

show both the extent of the allocation and a consequential extension of the development limits so as to include the site. There was no wording in NSP1 or its supporting text which specified that alteration. Nevertheless, it was appropriate for MDC to alter the boundary of the development limits on the policies map to reflect the allocation.

53. On 12 January 2023 the Adopted Policies Map was amended so as to delete the notation showing the five allocations and to reduce the development limits so as to exclude those areas.

## **Discussion**

54. Mr. Forsdick confirmed that Somerset Council will modify LPP2 in order to address the allocation of 505 dwellings, rather than roll the issue into the preparation of a new plan for the whole of the Council's area covering the four former districts and not just Mendip. This is necessary to comply with para. 6 of the order dated 16 December 2022, not least because MDC's legal ability to adopt LPP2 in December 2021 depended upon the making of lawful main modifications to allocate the 505 dwellings. Because the eventual adoption of the new policies will result in the Adopted Policies Map being amended, the submission of modifications to LPP2 will have to be accompanied by a submission policies map (reg.22(1)(b) of the 2012 Regulations).
55. On 10 July 2023 the Executive Committee resolved to set a timetable for the preparation and submission of modifications to LPP2 in compliance with the court's order of 16 December 2022. Those modifications will be submitted to the Secretary of State for examination by no later than 1 July 2024. Paragraph 6 of the court's order will be amended to reflect that timetable.
56. Mr. Findlay accepted that if the submission policies map accompanying the modifications to LPP2 were to show the Lochailort site outside the development limits for Norton St. Philip, on the basis that the site is not to be allocated, his client would not be able to allege any error of law. Their remedy would be to make representations in the examination process that the site be allocated for housing.
57. Accordingly, Lochailort's complaint relates to the way in which the development limits have been drawn on the Adopted Policies Map in relation to the former NSP1 site. This is a temporary concern whilst the 505 dwelling issue is being resolved through the modifications of LPP2. The current Adopted Policies Map will have no bearing on the future submission policies map. This is because there will be a separate process involving a call for sites across the whole district, the identification of proposed allocations by the Council and consultation.
58. Instead, in both legal and practical terms the issue raised in this judicial review is simply relevant to the handling of any applications made for planning permission on Lochailort's site (or other unlawfully allocated sites) in the interim, before the outcome of the modification of LPP2 is known. The effect of MDC's alteration of the Adopted Policies Map is that the "strict control" which policy CP1 requires for development outside development limits would

apply to the Lochailort site for the purposes of (*inter alia*) s.38(6) of the PCPA 2004. But if the site were to be shown as “white land”, and therefore neither inside nor outside the development limits, neither the negative policy in CP1 nor the policy in CP2 supporting suitable development inside development limits would apply in determining the planning application.

59. However, on either basis it would be relevant to have regard to other considerations in addition to the presumption in favour of the development plan, such as:
- The history of the allocations in LPP2, why development boundaries were extended to accommodate the allocations and why those allocations were unlawful;
  - The fact that the revised notations (that is either of the two alternatives) shown on the Adopted Policies Map have not been the subject of a lawful process of examination through to adoption;
  - The fact that development limits will be reconsidered in the forthcoming modifications of LPP2 to allocate sites to meet the requirement for 505 dwellings;
  - The intrinsic merits of the proposal and the land as a development site.
60. Mr. Findlay placed a good deal of reliance on *Cummings*, not to derive a legal principle applicable to this case, but as a factual analogy. In that case the claimant had failed to persuade the Inspector at a local plan inquiry that his land should be allocated for development in preference to a rival site and the defined development boundary for the settlement redrawn accordingly. He had also sought the deletion of designations of his site as being subject to a “gap” policy and a landscape protection policy. The High Court upheld his challenge to the parts of the local plan dealing with the two sites. At that time the Court’s powers under s.287 of the Town and Country Planning Act 1990 were limited to quashing the plan as a whole or in part, either generally or in relation to particular property. There was no power to remit with directions. The Court quashed the defined development boundaries in so far as they excluded the claimant’s land and included the rival site, other designations affecting the claimant’s land and the allocation of the rival site.
61. Paragraph 76 of *Cummings* cannot be taken as laying down a general principle that the effect of a quashing of a local plan is that the relevant land becomes white land. That will depend upon precisely what was quashed. In *Cummings* the two sites became white land because all of the policies designating the land for different purposes were quashed. There remained no designation to be shown on the Proposals Map. That was simply the inevitable effect of the particular terms of the quashing order made in that case. I therefore gain no real help from *Cummings*.
62. Similarly, the decision of the High Court in *Persimmon Homes (Thames Valley) Limited v Stevenage Borough Council* [2006] JPL 84 does not assist. There the

Inspector failed to deal with an objection seeking the exclusion of land from the Green Belt. Under s.287 the only remedy available was to quash the relevant policy. Such an order has the effect that the relevant policy is quashed from the inception of the plan (the *South Northamptonshire* case). The local authority has to restart the plan-making process from the beginning if it wishes to be able to include that policy in its plan. It appears that the effect of the quashing order in the *Persimmon* case was that the local plan provided no designations for the area in question. I infer that the previous development plan had ceased to be in force and so the land was “white land.”

63. Mr. Forsdick relied upon a fundamental feature of LPP1 that land in the rural areas of the district is either inside or outside the defined development limits as shown on the Adopted Policies Map. There is no third category of land which is neither within nor without those limits. He then submitted that the court has no power to create, in effect, white land by an order under s.113. With respect that is incorrect. If the court finds it appropriate to quash all the designations which apply geographically to an area of land, the absence of any designations on the amended Policies Map will mean that the land is white land. That would plainly be the consequence if, for example, the court were to quash a decision to remove an area of land from the developments limits of a settlement and no other designation applies to the land geographically.
64. I do not accept Mr. Findlay’s submission that the redrawing of the development limits is unlawful because it does not reflect any part of the adopted LPP2 as amended by the court’s order. True enough, LPP2 as amended does not contain any wording that deals with the alteration of the development limits as the result of the deletion of the allocation. But in this respect the adopted LPP2 was not materially different. It did not contain any wording for the extension of the development limits so as to include the allocation site. In either case did this matter? In my judgment it did not.
65. By reg.9 of the 2012 Regulations the adopted policies map must “illustrate geographically the application of the policies in the adopted development plan.” This provision should not be taken to mean that what is illustrated on a policies map must be described in words in the plan. As Richards LJ said in *Fox Land* at [28], the map is relevant to the geographical scope of the application of a policy. Green Belt policy is a classic example of this point. In *Fox Land* the Green Belt policy in the local plan set out the usual development control policies and applied them to “the Green Belt identified on the Proposals Map.” Richards LJ said it is a fallacy to treat that policy as defining the Green Belt. To see what is the area of the Green Belt, so as to understand the geographical scope of the application of that policy, it is necessary to look at the policies map. The same is true of other policies which do not cross-refer to the map in terms ([29]). The decision in *Bond* also illustrates this point. The same analysis applies here where Policy CP1 refers to development limits as defined on the policies map.
66. The power to remit as an alternative to quashing was introduced by the Planning Act 2008 in order to provide more flexibility in the grant of relief, so that the court can take into account such matters as the stage at which a legal error occurs, the extent to which the plan or the plan-making process has been tainted, whether it is necessary for that process to be repeated from the beginning or can

recommence from some later stage, the ambit of the remedial actions needed to be taken and the status of policies in the adopted plan in the meantime. As Lindblom LJ said in *Woodfield* the court is able to fit the relief it grants to the particular error of law, in the particular circumstances which have occurred, whilst avoiding intrusion on the proper role of the local planning authority or an Inspector to deal with those matters which involve planning judgment.

67. The parties agreed in December last year that the need to allocate 505 dwellings should re-commence from the reg. 18 stage of the 2012 Regulations. In the unlawful process leading up to the adoption of LPP2 the search for sites was confined to the north-east quadrant of Mendip district. Now the exercise will be opened up to include also the remaining three quarters of the district. Somerset Council will make a “call for sites” throughout Mendip. It may or may not choose to promote one or more of the former allocations in its submission draft modifications of LPP2. The Council may prefer to select other sites in other parts of the district which have not so far had an opportunity to take part in the selection process. These are matters for the Council.
68. Instead of quashing the unlawful parts of LPP2 including the allocations, the parties agreed that those parts should be remitted to the Council as part of the process of reconsideration. In the meantime they are treated as not having been adopted as part of LPP2.
69. Paragraph 5 of the order required MDC to amend the Policies Map within 28 days so that it properly reflected (a) the terms of the Order and (b) any “consequential changes to LPP2 as set out in Schedule 1”. In drafting the order the parties did not address specifically the subject of the development limits shown on the Map. However, that does not pose any problem as a matter of principle.
70. As we have seen a local plan can rely *entirely* upon its accompanying Policies Map to define the area or areas to which a policy relates (*Fox Land*). Furthermore, a local planning authority has a power to correct the Policies Map by resolution without having to go through the procedure of modifying the plan itself. Such a correction may be made to deal with an administrative error (as in *Bond*). In my judgment a correction of this kind may also be made by a local planning authority to deal with the consequences of an order made by the court under s.113. This is consistent with para. 5 of the court’s order in the present case.
71. In my judgment MDC was entirely justified in considering that (a) the development limits at Norton St. Philip would not have been extended but for the allocation at NSP1 and (b) in the light of paras. 2, 3 and 4 of the court’s order, that extension ceased to be justified and so should be deleted. Up to that point the parties are in agreement. Mr. Findlay accepted that the red line showing the development limits on the Policies Map as including the former NSP1 could lawfully be deleted. Indeed, on his case the development limits shown as including the former allocation have to be deleted if that area is to become white land. Unless that deletion is made the positive policy in Policy CP2 supporting development inside the development limits would continue to apply to the former allocation. It is therefore common ground between the



parties that, as a matter of law, at least some change to the development limits on the Adopted Policies Map had to be made in order to give proper effect to the court's order.

72. Therefore, the narrow issue between the parties is whether MDC acted unlawfully by going one step further, that is by altering the development limits to their former position on the Submission Policy Map for LPP2, before the allocation of NSP1 began to be considered under the main modifications procedure.
73. In the early stages of LPP2 through to the submission of the plan for examination the Lochailort site was shown as being outside the development limits of the settlement. MDC's action returns the boundary of the settlement to the position in which it was in before the unlawful approach to the allocation of 505 dwellings supervened.
74. Lochailort submit that what MDC has done is nevertheless unlawful because they have shown the boundary of the amended development limits on the Adopted Policies Map and not on a fresh submissions policies map. Lochailort has therefore had no opportunity to make an objection to that revised adopted map through an examination process.
75. This issue comes about because the reconsideration of policies pursuant to an order for remittal and any consequential alteration of the policies map has effect going forward from the time when the order is made (or the alteration is made in accordance with the order). There is no time machine available so that the remedial action is begun and completed before the date when the local plan and its policies map were originally adopted.
76. Here, it is essential to remember that issues of the present kind involve not just the owner of the site in question and the local planning authority. They are likely to involve, for example, the owners of nearby properties, residents of the settlement and, in this case, owners of potential allocation sites in other parts of the former Mendip district. There is generally a wide public interest involved.
77. Just as Lochailort complains that MDC's "restoration" of the development limits in the revised Adopted Policies Map cannot be the subject of challenge through an examination process, the same applies to the white land notation which Lochailort contends should be inserted in that Map. The Council, local residents and others would be unable to challenge that notation through an examination. The restraint policy in CP1 could not apply to an area shown as white land. Accordingly, the two competing positions of the parties are counter-balanced.
78. Putting the court's order to one side for the moment, the only possible actions which MDC could have taken on the Adopted Policies Map were (1) to leave the boundary of the development limits unamended, (2) to return the boundary to its position before the allocation, or (3) to delete the boundary around the site's perimeter (i.e. a white land notation). In those circumstances, I do not see how it can be said that it was unlawful for MDC to choose to alter the Adopted Policies Map as it did, simply because that decision has not been subject to an

independent examination procedure leading up to a lawful adoption. That criticism would apply to all three alternatives.

79. The object of the court's order was firstly, to remove from LPP2 and the Policies Map the consequences of the unlawful decision to make the five allocations and secondly, to provide on a lawful basis for the reconsideration of the allocation of 505 dwellings on sites in the district as a whole. Alternative (1) above would conflict with the purposes of the court's order in December 2022, but so would alternative (3). I agree with Mr. Forsdick that alternative (3) would give the Lochailort site a planning status that it would not have had in the absence of the unlawful allocation. Moreover, that status is advantageous or preferential in that the restraint policy in CP1.3 would not be applicable to a site with a white land notation. It would not be a proper purpose of the court's order to confer that benefit on the landowner. It is alternative (2) that is truly compatible with the court's order. The future of the site can properly be considered through the process for modifying LPP2 to allocate the 505 dwellings.
80. The approach I have taken does not involve this court trespassing on the role of the plan-making authority on matters of planning judgment. It is plain from the material before the court that in January 2019 MDC made the planning judgment that the areas which subsequently became the 5 allocated sites should be shown as lying outside the development limits of the settlement. In January 2023 MDC decided that that judgment should be restored on the policies map subject, of course, to the modification procedure that the local planning authority is obliged to follow. If when the modifications of LPP2 are submitted to the Secretary of State the authority continues to maintain that, for example, the Lochailort site should be shown as unallocated land outside the development limits, that judgment, and any rival views, can be tested through the examination process. Lochailort's complaint therefore comes down to the point that MDC has altered the development limits on the *Adopted* Policies Map, but that would be the case whatever the authority had done (see [75]-[79] above). Taking into account also [59] above, I consider that MDC's alteration of the Map was a rational response to the court's order and judgment.
81. For all these reasons I conclude that the action taken by MDC to alter the development limits on the Adopted Policies Map cannot be criticised as unlawful in any way. It simply addressed the unlawful consequences of the unlawful allocation of NSP1 and lay well within the ambit of MDC's powers as explained by the Court of Appeal in *Fox* and by Lang J in *Bond*. Furthermore, I agree with Mr. Forsdick that that action accords with the order dated 16 December 2022, as well as the judgment to which it gave effect.

## **Conclusion**

82. The application by Lochailort for judicial review is dismissed.