Neutral Citation Number: [2017] EWHC 1711 (Admin)

Case No: CO/5690/2016

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/07/2017

Before :

JOHN HOWELL QC
(Sitting as a Deputy High Court Judge)

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Between :

DR ANNA HOARE	**Claimant**
- and -	
THE VALE OF WHITE HORSE DISTRICT COUNCIL	**Defendant**
and	
(1) OXFORDSHIRE COUNTY COUNCIL	**Interested**
(2) FARINGDON DISTRICT COUNCIL	**Parties**

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Mr Pavlos Eleftheriadis (instructed by **Fortune Green Legal Practice Limited**) for the **Claimant**
Ms Suzanne Ornsby QC and Mr Hugh Flanagan (instructed by **the Defendant's Head of Legal and Democratic Services**) for the **Defendant**
The Interested Parties were not represented

Hearing dates: 14 and 15 June 2017

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Approved Judgment

Mr John Howell QC :

1. This is a claim for judicial review of the decision of the Vale of White Horse District Council to accept modifications to the draft Faringdon Neighbourhood Plan (which had been recommended by Mr Andrew Ashcroft following his independent examination of that Plan) and to proceed with a referendum on the Plan. That decision was taken on September 16th 2016 by Councillor Roger Cox under powers delegated to him. In effect he simply accepted the modifications proposed, and the recommendation to proceed, contained in Mr Ashworth's report. A decision notice, accompanied by an Appendix listing the modifications to the Plan, was published on the District Council's website on October 6th 2016. The referendum was subsequently held on November 24th 2016. It was approved by 944 of the 1,038 residents of Faringdon who voted. The Neighbourhood Plan was adopted by the District Council on December 14th 2016.

2. This claim for judicial review is not one made under section 61N(1) of the Town and Country Planning Act 1990 ("*the 1990 Act*") in respect of the decision to adopt the Faringdon Neighbourhood Plan ("*the FNP*"). It is made, with permission granted by Lang J, in accordance with section 61N(2) of that Act in respect of the earlier decision of the District Council. The Claimant, Dr Anna Hoare, seeks an order quashing the decision to accept the modifications proposed by Mr Ashworth ("*the Examiner*") and to proceed with a referendum and a declaration that the allocation of Wicklesham Quarry for employment uses in the Plan was unlawful.

3. The Claimant is a local resident whose objection to the FNP is directed at its Policy 4.5B. That policy seeks to safeguard Wicklesham Quarry for employment uses following completion of quarrying and restoration activities on the site and to support such development on it provided that there is a demonstrable need for it, no other suitable site closer to the town centre is available and certain other conditions are met.

4. On behalf of the Claimant, Mr Pavlos Eleftheriadis contended that the District Council's decision to accept the modifications proposed by the Examiner and to proceed with the referendum was unlawful given that Policy. Mr Eleftheriadis submitted (a) that Policy 4.5B in the FNP is about a "county matter", which is one form of "excluded development" that cannot lawfully form part of a neighbourhood development plan; and (b) that the District Council's conclusion that the FNP met the "basic conditions" (which such a plan must meet) was flawed for three reasons. When considering Policy 4.5B, he submitted (i) that the District Council erred in treating the Quarry as "previously developed land" for the purpose of the National Planning Policy Framework ("*NPPF*"); (ii) that the District Council was not lawfully satisfied the FNP was in general conformity with the strategic policies contained in the development plan for the area; and (iii) that the District Council ought to have found that making the FNP would breach obligations under Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ("*the SEA Directive*") and the Environmental Assessment of Plans and Programmes Regulations 2004 ("*the 2004 Regulations*") which transpose the provisions of the SEA Directive into national law.

THE STATUTORY FRAMEWORK

5. The "development plan" is central to the administration of development control in England. In dealing with any application for planning permission, planning authorities must have regard to "the provisions of the development plan, so far as material to the application" and other material considerations: see section 70(2) of the 1990 Act. Moreover "if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise": see 38(6) of the Planning and Compulsory Purchase Act 2004 ("*the 2004 Act*").

6. In England outside Greater London, the "development plan" now includes (in addition to any "saved policies" in an earlier development plan) the development plan documents (taken as a whole) which have been adopted or approved in relation to the area and any "neighbourhood development plan" which has been made in relation to that area: see section 38(3) of the 2004 Act. "If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan": see section 38(5) of the 2004 Act.

7. Section 38A(2) of the 2004 Act provides that "a "*neighbourhood development plan*" is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan." Such policies may include site allocation policies: *R (Larkfield Homes Ltd) v Rutland County Council* [2015] EWCA Civ 597, [2015] PTSR 1369.

8. However "a neighbourhood development plan may not include provision about development that is excluded development": see section 38B(1)(b) of the 2004 Act. For this purpose "excluded development" is defined by section 61K of the 1990 Act[1] as:

> "(a) development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1 [to the 1990 Act],
>
> (b) development that consists of the carrying out of any operation, or class of operation, prescribed under paragraph 1(j) of that Schedule (waste development) but that does not consist of development of a prescribed description,
>
> (c) development that falls within Annex 1 to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),
>
> (d) development that consists (whether wholly or partly) of a nationally significant infrastructure project (within the meaning of the Planning Act 2008),

[1] by virtue of section 38B(6) of the 2004 Act.

> (e) prescribed development or development of a prescribed description, and
>
> (f) development in a prescribed area or an area of a prescribed description."

9. A proposal for the making of a neighbourhood development plan may be made by a qualifying body (such as a parish council). Before doing so it must consult locally and with certain bodies who may be affected by it[2]. Having received the relevant documentation[3], the local planning authority must then consider whether the draft plan complies with various enactments, including sections 38A and 38B: see section 38C(1) and (5)(b) of the 2004 Act and paragraph 6(3) of schedule 4B to the 1990 Act. If satisfied that the matters mentioned there have been complied with, and having publicised the proposals and details of how to make representations[4], the local planning authority must submit the draft and any prescribed documents for independent examination.

10. The examiner must consider *inter alia* whether the draft meets "the basic conditions" and complies with enactments such as sections 38A and 38B[5]. It will meet "the basic conditions" (which are set out in paragraph 8(2) of Schedule 4B to the 1990 Act) only if:

> "(a) having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the [plan],
>
> ... .
>
> (d) the making of the [plan] contributes to the achievement of sustainable development,
>
> (e) the making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area),
>
> (f) the making of the [plan] does not breach, and is otherwise compatible with, EU obligations, and
>
> (g) prescribed conditions are met in relation to the [plan] and prescribed matters have been complied with in connection with the proposal for the [plan]."

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[2] see regulation 14 of the Neighbourhood Planning (General Regulations) 2012.
[3] see regulation 15 of the Neighbourhood Planning (General Regulations) 2012}.
[4] see regulation 16 of the Neighbourhood Planning (General Regulations) 2012.
[5] see paragraph 8(1) of Schedule 4B to the 1990 Act.

11. The examiner is required to make a report on the draft plan containing his recommendations in accordance with paragraph 10 of Schedule 4B to the 1990 Act and no other recommendations. This paragraph[6] provides that:

> "(2) The report must recommend either—
>
> (a) that the draft [plan] is submitted to a referendum, or
>
> (b) that modifications specified in the report are made to the draft [plan] and that the draft [plan] as modified is submitted to a referendum, or
>
> (c) that the proposal for the [plan] is refused.
>
> (3) The only modifications that may be recommended are—
>
> (a) modifications that the examiner considers need to be made to secure that the draft [plan] meets the basic conditions mentioned in paragraph 8(2),
>
> ....
>
> (c) modifications that the examiner considers need to be made to secure that the draft [plan] complies with the provision made by or under sections [38A and 38B of the 2004 Act],
>
> ... , and
>
> (e) modifications for the purpose of correcting errors.
>
> (4) The report may not recommend that an order (with or without modifications) is submitted to a referendum if the examiner considers that the order does not—
>
> (a) meet the basic conditions mentioned in paragraph 8(2), or
>
> (b) comply with the provision made by or under [38A and 38B of the 2004 Act].
>
> ....
>
> (6) The report must—
>
> (a) give reasons for each of its recommendations, and
>
> (b) contain a summary of its main findings."

[6] as adapted in accordance with section 38C(5) of the 2004 Act.

12. Paragraph 12 of Schedule 4B provides that, having received the report the local planning authority must consider, and decide what action to take in response to, each of the recommendations made. If the authority are satisfied that the draft plan meets the basic conditions and complies with the provision made by or under sections 38A and 38B, or would do so if modifications were made to it (whether or not recommended by the examiner), a referendum must be held on the plan subject to such modifications (if any) as they consider appropriate. Otherwise the authority must refuse the proposal. The authority has to publish the decisions they make under this paragraph and the reasons for them.

13. Further, by virtue of section 38A(4) of the 2004 Act,

> "(4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made—
>
> (a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and
>
> (b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held and, in any event, by such date as may be prescribed[7].
>
> (6) The authority are not to be subject to the duty under subsection (4)(a) if they consider that the making of the plan would breach, or would otherwise be incompatible with, any EU obligation or any of the Convention rights (within the meaning of the Human Rights Act 1998)."

14. Section 61N of the 1990 Act (as modified by section 38C(2)(c) and (4) of the 2004 Act) provides that:

> "(1) A court may entertain proceedings for questioning a decision to act under [38A(4) or (6) of the 2004 Act] only if—
>
> (a) the proceedings are brought by a claim for judicial review, and

[7] The date prescribed for this purpose is the date which is the last day of the period of 8 weeks beginning with the day immediately following that on which the last applicable referendum is held unless proceedings for questioning anything relating to an applicable referendum are brought in accordance with section 61N(3) before the neighbourhood development plan is made: see regulation 18A of the Neighbourhood Planning (General) Regulations 2012. The date is not postponed, however, if proceedings are brought in accordance with section 61N(2) as in this case.

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the decision is published.

(2) A court may entertain proceedings for questioning a decision under paragraph 12 of Schedule 4B (consideration by local planning authority of recommendations made by examiner etc)...only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the decision is published.

(3) A court may entertain proceedings for questioning anything relating to a referendum under paragraph 14 or 15 of Schedule 4B only if—

(a) the proceedings are brought by a claim for judicial review, and

(b) the claim form is filed before the end of the period of 6 weeks beginning with the day after the day on which the result of the referendum is declared."

THE FACTUAL BACKGROUND

i. the FNP

15. Faringdon is a market town, with an extensive rural hinterland, between Oxford and Swindon in the Vale of the White Horse in Oxfordshire. A significant number of local villages, hamlets and farms have historically used Faringdon as a market town and local service centre. It is one of the five main settlements in the Vale of White Horse District.

16. The FNP was initially proposed by Faringdon Town Council in July 2014. It covers Great Faringdon Parish and the period until 2031.

17. When the FNP was proposed in July 2014 the development plan for the area comprised the Saved Policies of the Vale of White Horse Local Plan 2011 ("*the Local Plan 2011*") and the saved policies of the Oxfordshire Minerals and Waste Local Plan 1996. However it was also prepared in the context of the emerging Vale of White Horse Local Plan 2031 ("*the Local Plan 2031*") which was to replace the Local Plan 2011. It was then expected that Part 1: Strategic Sites and Policies of the Local Plan 2031 would be adopted in late 2014. In the event it was adopted by the District Council on December 14th 2016, the same day on which that Council adopted the FNP.

18. After the FNP was submitted by the Town Council in July 2014, there was formal consultation on, and an independent examination of, it. Following a report on that

examination, it was decided to accept the recommendations made by the examiner with one exception and, as a result of that exception, instead to revise the Plan to amend the section on Green Space designation. Following further public consultation, the revised FNP was submitted by the Town Council to the District Council in October 2015 with certain supporting information. This information included a "Basic Conditions Statement February 2015" ("*the Basic Conditions Statement*") and a "Evidence Base Review" that had been revised in September 2015. There was then formal consultation on the Plan and an independent examination conducted by the Examiner.

19. The background to the FNP is the town's growing population. It was estimated that it had grown to 8,000 by December 2013 and that, with planned housing developments, approved or under construction, it was likely to grow by a further 22% to almost 10,000. It was also anticipated that the development of the additional sites allocated for residential development in the emerging Local Plan 2013 would increase Faringdon's population in the next 10 years and beyond to around 11,000 (an increase of 55% since 2011)[8]. Against that background, the FNP identified a number of headline local issues, of which out-commuting and local employment were two. It stated that "a high proportion of residents travel more than 30 km from the parish to work. Key employment destinations are Swindon (20 km) and Oxford (30 km)". "Opportunities for Faringdon residents to work locally are limited; therefore, it is essential to ensure that employment land is available for businesses to grow and residents to work locally"[9].

20. Thus, in the FNP[10],

> "The vision for Faringdon is of an inherently sustainable town with a high degree of self-containment that enables a wide range of people to live, work and socialise, and that meets their day-to-day needs."

21. It was considered[11] that:

> "As part of being a town that supports and promotes sustainable lifestyles it is important that more employment opportunities are provided in and around Faringdon. This will bolster the general vitality of the town and the town centre, and also help to reduce out-commuting....Local analysis suggests that the "do-nothing option" would result in a net loss of potential jobs despite a predicted population growth of ca. 3,000 people.....This is felt to be unsustainable. Faringdon would like over a third of the working age population to have the option for local employment or at least a third of those in employment to be employed locally to reduce out commuting. (According to the 2011 census, 50% of the total population were in

[8] see the FNP at [2.1] and [4.2].
[9] see the FNP 2 Local issues.
[10] See the FNP Section 3 "The vision for family Faringdon".
[11] see the FNP at [4.5].

> employment.) This would translate to a minimum aspiration of ca. 1,500 jobs for residents or a target of ca. 2,000 based on a final population figure of ca. 11,000."

22. Two of the objectives for local employment, therefore, were

> "• Ensure that the total number of jobs in Faringdon matches 38% - 44% of the working population of the Faringdon parish;
>
> • Allocate enough employment land to meet the requirements of at least 38% of the working population of the Faringdon parish within a 5 km radius of the centre of the town".

23. The two Local Plans, which are the responsibility of the District Council, allocated or protected three sites for employment uses in the town. However, as these sites were felt to be insufficient to bring forward the number of jobs needed locally, the Plan proposed the allocation of a further four sites for employment. One of these was Wicklesham Quarry. It was stated[12] that "each of these sites is essential to the town's future employment development and must be protected for such growth."

ii. Wicklesham Quarry

24. Wicklesham Quarry is within, and surrounded by, open countryside immediately to the south of the A420 Faringdon Bypass. It is about 1km south of Faringdon. It lies significantly beyond the development boundary for Faringdon in the Local Plan 2011, but it is opposite the development boundary in the Local Plan 2013 which has been extended to the A420 in this area.

25. The Quarry is within the landscape character area of the "North Vale Corallian Ridge", where the specific landscape character type in the immediately surrounding area is defined as Rolling Farmland. The site also lies within the Wicklesham and Coxwell Pits Site of Special Scientific Interest, an area notified under section 28 of the Wildlife and Countryside Act 1981 as being of special geological interest given the good exposures created as a result of quarrying which it provides through the Faringdon Sponge gravels of the Lower Cretaceous (Aptian Age). The Quarry is also included, by virtue of that notification, within the West Oxfordshire Heights Conservation Target Area ("*the CTA*").

26. The Quarry is long established. Within the area of approximately 10.67 hectares to which Policy 4.5B in the FNP relates, the quarrying activities have lowered the landform by some 8 metres over an area of approximately 8 hectares. Planning permission was granted on December 11th 2015 by Oxfordshire County Council, the minerals planning authority, under section 73 of the 1990 Act, effectively to vary the conditions previously imposed on planning permissions for the site. Condition 3 prohibited any further winning and working of mineral or sale of processed mineral and it required the site to be "completely restored by 30 September 2016 in accordance with" an approved restoration and aftercare scheme and plan. Condition 1 also required compliance with them.

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[12] see the FNP at p48.

27. The approved scheme stated that its aim was to reinstate the land to its full potential and to a condition where it does not need to be treated differently to similar undisturbed land. It was proposed to restore the site to agriculture at the lower level of the Quarry floor, using original soils that had been stored and, if necessary the importation of inert material, in three phases. Once replaced, the soil would be prepared and seeded to establish an agricultural grassland for sheep and cattle grazing. Where appropriate suitable arable crops were also to be planted. The approved plan showed two ponds with fenced buffer zones to protect the Great Crested Newt population which they supported. The scheme also provided for additional woodland planting in areas on the northern and southern boundaries of the site. The scheme envisaged an aftercare period of 5 years during which grass was to be cut annually for hay; groundwater and surface water would be monitored and, if necessary, a suitably sized soakaway drainage system would be installed and inorganic fertilisers were to be applied to rectify any plant nutrient deficiencies identified in annual monitoring. An annual meeting was also to be held to discuss the coming seasons agricultural operations. In the woodland areas weed control was to be maintained for three years after planting or until the trees were suitably established and other steps were to be taken to maintain the effectiveness of the planting. The four geological conservation faces were also to be monitored for stability and any growth of vegetation controlled at approximately two year intervals.

iii. Policy 4.5B as modified

28. The proposed allocation of the Quarry for employment uses attracted objections, including objections from the Claimant, that the Examiner considered. He stated that:

> "5.6 The Minerals and Waste plan does not impact in any particular way on the FNP and it does not include matters that relate to policies of that plan. Indeed, minerals and waste are excluded matters for the purposes of policy making in neighbourhood plans. I will take this opportunity to confirm that the Neighbourhood Plan does not relate to any excluded matters, meeting that requirement. I have recommended modifications to policy 4.5B (Wicklesham Quarry) in order to clarify supporting text that had generated representations on this point.
>
> 7.41 In general terms I am satisfied that the policy meets the basic conditions. The NPPF (paragraph 28) is supportive of the promotion of new economic opportunities in rural areas. The site is on the edge of the town and is adjacent to the existing employment area at Wicklesham Farm. Its promotion in the Plan reflects the Town Council's view that new employment opportunities should be sought and promoted in a development plan context to balance the future new housing growth in the town. To this extent it will contribute to sustainable development.
>
> 7.42 Several comments made on this policy question the appropriateness of the inclusion of such a proposal in a neighbourhood plan. Some commentators have commented that

> it constitutes 'excluded' development (due to its references to quarrying and mineral extraction). The language used in the Plan unhelpfully refers to the existing planning permission for quarrying and the aftercare conditions. However, the policy itself, in supporting employment use, is not excluded development and can appropriately be included in a submitted neighbourhood plan. I recommend extensive modifications to the policy to ensure that it meets the basic conditions. In particular it is beyond the remit of a neighbourhood plan to seek to interfere with the County Council's monitoring and enforcement of conditions on minerals related planning permissions. In the event that development proposals for employment development come forward on this site there will need to be appropriate discussions between the District and the County Councils.
>
> 7.43 The submitted policy is also unclear on the range of environmental and landscape safeguards that will be necessary to ensure satisfactory development on this site. My recommended modifications to the policy set out important issues that will need to be addressed in any detailed proposals. They include transport mitigation measures, landscape, ecology and the safeguarding and accessibility of the geological interest on the site. This reflects the policy advice set out in paragraphs 109 and 113 of the NPPF. Paragraph 109 comments that the planning system should protect and enhance valued landscapes, geological conservation interests and soils. Paragraph 113 comments that local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged."

29. The reasons for the policy, as stated in the FNP and as redrafted by the Examiner and accepted by the District Council, are that:

> "Of the new sites, Wicklesham Quarry is considered by local stakeholders to be a significant opportunity site that would expand the provision of local jobs. Quarrying activities have finished on this site and it is now being restored to agricultural use with some woodland planting and ponds. This is in accordance with its current permission which requires the removal of the buildings, plant, machinery and structures and the completion of restoration of the site by 30 September 2016.
>
> However, in locational terms it is considered that this site could accommodate some employment use to provide B2/B8 industry in the town with the associated jobs. In addition, it would help to reduce the number of heavy goods vehicles and general traffic currently using Park Road. A site of this scale could also encourage new types of businesses into the parish to help diversify the range of local jobs on offer. The development of

> the site would need to also deliver a safe crossing over the A420 to serve pedestrians, cyclists and horse riders. This is addressed in the first criterion of the policy. There would be an expectation for a pedestrian crossing of the A420 and which would need to be controlled by traffic signals. Such a pedestrian crossing would be required pursuant to a S278 agreement upon a planning application. Any development on the site would need to be sensitively designed so as to be hidden within the landscape, and as it is designated as a Site of Special Scientific Interest (SSSI). It could only proceed following completion of a geological assessment in consultation with Natural England.
>
> Any future proposals for employment development would need to ensure a sensitive relationship between the former quarrying restoration conditions and the scale, nature and the location of any proposed employment development within the site. Policy 4.5B requires that any employment development of the site provides access to visiting members of the public with an interest in its geological importance. This will ensure that the special geological interest is better revealed and provision made for the protection and enhancement of the geodiversity interest of Wicklesham Quarry."

30. Before issuing his report, the Examiner had consulted the minerals planning authority, Oxfordshire County Council, to ascertain whether that authority were satisfied *inter alia* that Policy 4.5B (as he proposed that it should be modified) resolved the confusion about whether it addressed excluded development. He was told that the authority was satisfied with the proposed text.

31. As redrafted by the Examiner and accepted by the District Council, Policy 4.5B provides that:

> "Wicklesham Quarry will be safeguarded for employment uses (Classes B2 and B8) following the completion of quarrying and restoration activities on the site. Employment development will be supported on this site if no other suitable sites closer to the town centre are available, providing there is demonstrable need and subject to the following criteria:
>
> i) appropriate transport mitigation is provided; and
>
> ii) appropriate provision is made within the site for pedestrians and cyclists; and
>
> iii) the proposed employment development does not have a detrimental impact on the relationship between the site and the wider landscape in which it sits; and
>
> iv) appropriate ecological mitigation and enhancement measures are incorporated into the proposals; and

> v) any development would not result in demonstrable harm to the geological special interest of the site; and
>
> vi) employment proposals should incorporate measures to provide access to the protected site for the visiting public."

WHETHER POLICY 4.5B OF THE FNP IS A PROVISION ABOUT EXCLUDED DEVELOPMENT

32. As I have mentioned, section 38B(1)(b) of the 2004 Act provides that a neighbourhood development plan "may not include provision about development that is excluded development". Such excluded development includes " development that consists of a county matter within paragraph 1(1)(a) to (h) of Schedule 1" to the 1990 Act. Such a county matter includes not merely the winning and working of minerals but also (by virtue of sub-paragraph (h) of that paragraph)

> " the carrying out of operations in, on, over or under land, or a use of land, where the land is or forms part of a site used or formerly used for the winning and working of minerals and where the operations or use would conflict with or prejudice compliance with a restoration condition or an aftercare condition."

33. Mr Eleftheriadis contended that any policies which are about or concern "excluded development" have no place in a neighbourhood development plan. Policy 4.5B is impermissible because it is about or concerns a mineral site in restoration. A neighbourhood plan may not allocate to employment use a former mineral site that is subject to restoration and aftercare conditions. Thus, so he submitted, Policy 4.5B is a provision about development that is a county matter. That construction was supported, so he submitted by the general nature of the developments treated as "excluded development" (which I have set out in paragraph [8] above and are listed in section 61K of the 1990 Act). These are all developments that raise the most important, environmentally sensitive strategic decisions which should be the subject of the more detailed examination, which considers whether the policy is "sound", required when other types of development plan are made. Development on a former mineral site subject to restoration and aftercare conditions involves such a decision.

34. In my judgment this construction of these provisions is untenable. The provision which is excluded from a neighbourhood plan is not any provision about any development in respect of land which is the subject of a restoration condition or an aftercare condition. It is any provision about development which "would conflict with or prejudice compliance with" such a condition. There may be operations or uses that can be carried on on such land without doing so. Moreover there is nothing to preclude a neighbourhood development plan making provision about a development that may be carried out on land subject to such conditions but only after they have been complied with. That may in fact be desirable in order to provide guidance about the future use of the land. Thus in my judgment the mere existence of such conditions applicable to an area of land does not mean that no provision about that land may be made in a neighbourhood plan.

35. There is equally no bar on a neighbourhood plan containing policies for development that may have significant effects on the environment. It is true that one form of "excluded development" is development that falls within Annex 1 to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (which has now been replaced by Directive 2011/92/EU) . But development which falls within Annex II to that Directive and is likely to have significant effects on the environment, is not "excluded development". Nor is any other development "excluded development" merely because it is likely to have a significant effect on the environment, whether positive or negative. Plans and programmes that are likely to have significant effects on the environment, including neighbourhood plans, are to be subject of environmental assessment in accordance with the SEA Directive and 2012 Regulations. There may, or may not, be one common feature that links the specific developments that are identified in section 61K, or may be prescribed under that section, as "excluded development". If there is one linking those specific developments that are identified (other than county matters), however, it would appear to be that their significance or effects are necessarily not limited to the area of a particular neighbourhood and, in the case of county matters, that they are or will affect matters which are the responsibility of the county planning authority.

36. Whether Policy 4.5B is a provision about "excluded development" falling within section 61K(a) of the 1990 Act depends, therefore, on whether it is about any operations or use which "would conflict with or prejudice compliance with a restoration condition or an aftercare condition".

37. Such conditions have a defined meaning in the 1990 Act by virtue of section 336 of, and paragraph 2 of Schedule 5 to, the 1990 Act. Paragraph 2 of that Schedule provides that:

> "(1) Where—
>
> (a) planning permission for development consisting of the winning and working of minerals...is granted, and
>
> (b) the permission is subject to a condition requiring that after the winning and working is completed...., the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material,
>
> it may be granted subject also to any such condition as the mineral planning authority think fit requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—
>
> (i) use for agriculture;
>
> (ii) use for forestry; or
>
> (iii) use for amenity.

(2) In this Act—

(a) a condition such as is mentioned in paragraph (b) of sub-paragraph (1) is referred to as "a restoration condition"; and

(b) a condition requiring such steps to be taken as are mentioned in that sub-paragraph is referred to as "an aftercare condition".

(3) An aftercare condition may either—

(a) specify the steps to be taken; or

(b) require that the steps be taken in accordance with a scheme (in this Act referred to as an "aftercare scheme") approved by the mineral planning authority.

(4) A mineral planning authority may approve an aftercare scheme in the form in which it is submitted to them or may modify it and approve it as modified.

(5) The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.

(6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.

(7) In sub-paragraph (6) "the aftercare period" means a period of five years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part."

38. The required standard to which land may be brought by steps in after-care condition is defined by paragraph 3 of Schedule 5 which provides that:

"(1) In a case where—

(a) the use specified in an aftercare condition is a use for agriculture; and

(b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant been used for any authorised purpose since its use for agriculture ceased; and

> (c) the Minister has notified the mineral planning authority of the physical characteristics of the land when it was last used for agriculture,
>
> the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.
>
> (2) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.
>
> (3) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.
>
> (4) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.
>
> (5) In this paragraph—
>
> "authorised" means authorised by planning permission;
>
> "forestry" has the same meaning as in paragraph 2; and
>
> "the Minister" means—
>
> (a) in relation to England, the Minister of Agriculture, Fisheries and Food....."

39. It should be noted that a "restoration condition" as so defined is thus merely one that requires the use of subsoil, topsoil or other soil-making material. It is not one that of itself would necessarily bring the land to the required standard for any one of the three specified uses. The steps required for that are the subject of what is referred to as an "after-care condition". It should also be noted that what an after-care condition is aimed at is bringing the land to a state in which it is reasonably fit or suitable for the relevant use (that is the required standard) and the steps that may be specified for that purpose (in accordance with paragraph 2(5) of the Schedule) are ones for "treating" the land in some way. Thus a "restoration condition" as thus defined may involve rather less than may ordinarily be understood as restoration. As Peter Gibson LJ has said, "the verb "restore"...connotes bringing something back to a previous, original or normal condition or something like that": see *Ebbcliffe Ltd v Commissioners of Customs and Excise* [2004] EWCA Civ 1071, [2005] Env LR 8, at [37]. Merely using soil-making material may not achieve that. Steps contained in an "after-care" condition may also be required to complete the land's restoration as a matter of ordinary English.

40. Policy 4.5B seeks to safeguard the Quarry for employment uses "following the completion of quarrying and restoration activities on the site". Mr Eleftheriadis submitted that, even if the Policy does not apply until the completion of the

restoration activities, the Policy is nonetheless unlawful as it allocates the Quarry for employment after restoration but during the aftercare period. Different conditions relate to each type of activity (as the provisions cited illustrate) and the approved scheme for this Quarry itself provides separately for restoration and after-care. That scheme envisages continuation of the uses for which the site has been restored at least until the end of the five year after-care period it specifies. Employment use would conflict with agricultural use. Accordingly, so he submitted, the policy contradicts and prejudices compliance with an aftercare condition, since the Quarry is not safeguarded from employment uses during that period. That construction of the Policy is supported by reference to the (modified) reason for the Policy which refers to the fact that the site was being restored to agricultural use with some woodland planting and ponds in accordance with the current planning permission requiring restoration of the site by September 30th 2016. As that had not been achieved, the aftercare scheme will now last until 2022 at the earliest. The Policy should be construed in the light of that permission. This construction of the Policy was also supported, so he submitted, by the reference, in paragraph [7.42] of the Examiner's Report[13], to the need for discussions between the District and County Councils if employment proposals came forward, discussions which would not be necessary once the after-care period had expired.

41. On behalf of the Council, Ms Suzanne Ornsby QC submitted that Policy 4.5B does not conflict or prejudice any restoration or aftercare condition. There is no suggestion in Policy 4.5B that it was intended to draw a distinction between the activities necessary to comply with the restoration and aftercare conditions. The site is in fact safeguarded for employment use only after completion of the activities to which such conditions relate. The "restoration activities" referred to in the Policy are those contained in the restoration and aftercare scheme and accompanying plan referred to in the conditions imposed on the planning permission in this case. They are not limited merely to replacing the soil stored on the site. They embraced all the activities necessary to achieve the required standard. The aftercare programme in the scheme is clearly part of the "restoration activities" that are intended to bring about full restoration of the Quarry site. Accordingly the safeguarded or proposed use for employment purposes cannot conflict with or prejudice the only remaining relevant conditions relating to restoration and aftercare. The Examiner proposed modifications to the Policy including the insertion of the reference to "restoration activities" specifically in order to meet the detailed objections that he had received that the Policy related to "excluded development". Ms Ornsby further submitted that an employment use did not give rise to any inherent conflict with, or prejudice to, any relevant condition since account must be taken of how that might be avoided, namely by not permitting the employment use until after compliance with the restoration and aftercare conditions. Whether there would be any such conflict or prejudice was a matter of planning judgment for the Examiner and the Council. Their judgment that there would not be could not be said to be irrational. She noted that the minerals planning authority, Oxfordshire County Council, had had no objection to the policy as modified and were happy with the proposed policy wording.

42. In a development plan "policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context": *Tesco Stores*

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[13] See paragraph [28] above.

Ltd v Dundee City Council [2012] UKSC 13, [2012] PTSR 983, per Lord Reed at [18] and per Lord Gill at [72]. This means that subjective views of the author of the document about what it means are irrelevant and also that resort to extrinsic materials (such as comments on, and revisions to, any draft made by an Inspector or examiner) is in principle impermissible: see *R (TW Logistics Ltd) v Tendring District Council* [2013] EWCA Civ 9, [2013] 2 P&CR 9, per Lewison LJ at [13]-[15]. Thus, "unless there is a particular difficulty in construing a provision in the plan, which can only be resolved by going to another document either incorporated into the plan or explicitly referred to in it,...one must look only to the contents of the plan itself, read fairly as a whole": see *Phides Estates (Overseas) Limited v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin) per Lindblom J at [56]; *JJ Gallagher Ltd v Cherwell District Council* [2016] EWHC 290 (Admin) per Patterson J at [46]; and *Cherwell District Council v Secretary of State for Local Government and Communities* [2016] EWHC 2925 (Admin) per Singh J at [27]. However, supporting text contained within the Plan itself, such as a reasoned justification for the policy in question, may be relevant to its interpretation, although it cannot add to, or alter, that policy: see *R (Cherkley Campaign Limited) v Mole Valley District Council* [2014] EWCA Civ 567 per Richards LJ at [16]-[17].

43. It follows that, in considering the construction of Policy 4.5B, what the Examiner said in his Report (other than his recommended modifications to the FNP which were accepted) and the views of the County Council on the Policy are irrelevant.

44. In my judgment the ordinary meaning of the phrase "the completion of quarrying and restoration activities on the site" in the context of a quarry is the completion of those activities that will bring the land back to a condition that fits it for another use: see paragraph [39] above. The question is whether the context requires a narrower interpretation of that phrase.

45. Mr Eleftheriadis sought to rely on the definition of a "restoration condition" in the 1990 Act, and on the conditions imposed on the current planning permission for the Quarry and the approved restoration and aftercare scheme to which they refer, to support a narrower construction of what "restoration activities" in Policy 4.5B may involve.

46. I accept that part of the context for the interpretation of Policy 4.5B is provided by the fact that it is included in a development plan made under the 2004 Act. Where an Act confers a power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning they bear in that Act: see section 11 of the Interpretation Act 1978. A development plan would not normally be regarded as subordinate legislation. However that term has an extended meaning in the 1978 Act. By virtue of section 21(1), it means "Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act". Although this might suggest that the instruments concerned are limited in nature to legislative instruments, it has been treated as including other instruments, in particular an authorisation given under an Act: see *R v Inspectorate of Pollution Ex p. Greenpeace Ltd* (No.2) [1994] Env LR 76 per Otton J at p91. It could be argued, therefore, that the expressions, "restoration condition" and "aftercare condition", as defined in the 1990 Act have the same meaning in a neighbourhood

development plan as they do in the 1990 Act[14]. This is not an argument, however, that Mr Eleftheriadis advanced. In my judgment he was right not to do so, since those expressions are not the relevant expression used in Policy 4.5B, which is "restoration activities".

47. Moreover, had the intention been to safeguard the Quarry for employment uses following "compliance with the restoration condition on the site", Policy 4.5B could have so provided.

48. The planning permission and the approved scheme and plan are extrinsic materials. The current permission and its "restoration conditions", however, are both referred to in the explanatory text to Policy 4.5B as redrafted[15]. Mr Eleftheriadis relied particularly on the statement in the explanatory text that the "current permission...requires...the completion of restoration of the site by 30 September 2016". He contended that this reference supported his submission that the "restoration activities" referred to in the Policy would be completed when that state has been achieved. In his submission it would be achieved once the topsoil and subsoil or other soil making materials required by the scheme had been used. The site would then be "completely restored". Mr Eleftheriadis alternatively suggested that the reference to "restoration activities" could be construed as referring to those activities described under the heading "restoration" in the approved scheme referred to in the "restoration conditions" in the current permission (to which the explanatory text also refers).

49. In my judgment there is no such difficulty or ambiguity in Policy 4.5B that requires resort to these extrinsic materials, even though the current permission and its restoration conditions are referred to in the explanatory text. However in any event the references in the explanatory text are themselves ambiguous. Thus the explanatory text also stated that the Quarry was "being restored to agricultural use with some woodland planting and ponds". That would suggest that the restoration activities would be completed when the land was fit for use as agriculture. In my judgment the references to restoration and the restoration conditions in the explanatory text itself do not show that the Policy was intended to be read as referring to something other than the ordinary, non-technical meaning of "restoration activities", namely those activities which will bring the former quarry back to a condition that fits it for another use. They merely seek to describe what the current planning position with respect to the Quarry involves.

50. Moreover the references to "restoration" in the permission and the approved scheme (if followed through) are themselves not consistent. (a) Ms Ornsby did not suggest that the condition requiring the site to be "completely restored" by September 30th 2016 "in accordance with the approved restoration scheme" refers to anything more than the activities that would be required to comply with a "restoration condition".

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[14] Although expressions used in this 2004 Act and in the 1990 Act have the same meaning in 2004 Act as in the 1990 Act (by virtue of section 117 of the 2004 Act), the 2004 Act does not itself contain those expressions nor is the 2014 Act to be construed as one with the 1990 Act. Nonetheless it could be argued that, since section 61K of the 1990 Act (which requires reference to those expressions) applies for the purpose of section 38B(1)(b) of the 2004 Act, they are in fact "used" in the 2004 Act.

[15] See paragraph [29] above.

Moreover some of the references to "restoration" in the approved scheme, in particular the statement that "the aftercare scheme will cover a five year period following restoration of the area concerned", may also be read as limited to the use soil, top-soil and soil-making material[16]. But (b) the activities described under the heading "restoration" in section 2 of that scheme are not so limited. They also include, for example, preparing the soil to accept a seed bed followed initially by the sowing of a low intensity grass mix to establish an agricultural grassland, an activity which might be the subject of an aftercare condition, and "the aim of the restoration scheme" is said to be "to reinstate the land to its full potential and to a condition where it does not need to be treated any differently to similar undisturbed land", a description that echoes the aim of an after-care condition which is to make the land reasonably fit or suitable for the relevant uses.

51. In my judgment, therefore, the legal context and the explanatory text do not provide sufficient justification to give "restoration activities" a technical meaning in Policy 4.5B. That is to be interpreted in accordance with its ordinary meaning of that phrase, namely that the restoration activities at the Quarry will be completed when the land is fit for the purposes for which it is to be restored.

52. Even if "restoration activities" are to be regarded as completed in an ordinary, non-technical sense when the Quarry has been made fit for agricultural use, however, it is clear from the terms of approved scheme and plan that making the Quarry fit for agricultural use will not be achieved merely by using soil, top-soil and soil-making material. The scheme manifestly requires more than that. But it does not necessarily follow that such restoration activities will only be completed once the five year aftercare period specified in the scheme has expired. Mr Eleftheriadis pointed out that the scheme envisages agricultural use throughout the "aftercare periods" with, for example, the grass being cut annually and proposals for the coming seasons agricultural operations being discussed early in the year with the minerals planning authority. This might suggest that the land has reached the required standard well before the end of the five year period. But planting and cultivation may be a step required to treat the land (under paragraph 2(5) of Schedule 5 to the 1990 Act[17]) in order to improve the structure and stability of the soil and to bring it to a satisfactory standard. That would appear to be the purpose of the relevant parts of the approved scheme, as Ms Ornsby accepted. It would also make the agricultural activities prescribed reasonably related to the development on which the conditions were imposed, as being conditions for remedying the effects of the permitted quarrying activities when they are completed by making the land fit for another use[18]. If so, the activities required to bring the land to the required standard for agricultural use would continue throughout the relevant five year periods.

53. In my judgment, therefore, the restoration activities at the Quarry will be completed for the purpose of Policy 4.5B when the land is fit for the purposes for which it is to

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[16] For example see paragraph [2.5]. It is not clear in what sense "restoration" is used in paragraph [3.4] of the scheme that says that "the sward [in the grass areas] will be topped during spring and summer as required and incorporated with the *following year's restoration* into the arable rotation."

[17] See paragraph [37] above.

[18] cf section 72(1)(a) and (5) of the 1990 Act.

be restored and that will be (if the current planning position remains unchanged) once the steps required in the approved restoration and aftercare scheme and plan have been completed at the end of the five year aftercare periods. So construed Policy 4.5B is *intra*, rather than, *ultra vires* which is itself a reason that supports that interpretation.

54. On this basis it is not necessary to consider whether any B2 or B8 use in those periods of any of the land to which the Policy relates "would conflict with or prejudice compliance with a restoration condition or an aftercare condition" (assuming that the approved scheme is to be treated as forming part of such conditions). Had it been necessary to do so, however, I would have found that such uses would conflict with or prejudice areas in which agricultural use or woodland was to be established in those periods. Ms Ornsby's submission that any such conflict or prejudice could be avoided by the refusal of permission is no doubt accurate but it is in my judgment irrelevant. The issue is whether such uses and any operations which they would involve would do so.

55. Nonetheless, for the reasons given, the first ground on which this claim is made fails.

WHETHER THE DISTRICT COUNCIL WERE SATISFIED LAWFULLY THAT THE FNP MET THE BASIC CONDITIONS

i. general approach

56. Ms Ornsby submitted that it is for examiner and then the local planning authority, not the court, to decide whether a neighbourhood plan meets "the basic conditions": see *R (Kebbell Developments) v Leeds City Council* [2016] EWHC 2664 (Admin) per Kerr J at [42]. Accordingly, so she submitted, the only question for the court is whether any judgment they make was irrational.

57. Given their nature, it is self evident that the question whether a neighbourhood plan meets each of the "basic conditions" involves a question of judgment that an examiner and local planning authority must make. But in my judgment it does not follow that the only flaw that may invalidate their conclusion that it does is whether that conclusion is irrational.

58. In considering, for example, whether "having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the" plan, an examiner or the local planning authority may misdirect themselves as to the meaning of such national policy and advice, whose interpretation, like the development plan, is a matter of law for the court, recognising that it is guidance not an enactment: see eg *Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141 per Lewison LJ at [6]; *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 WLR 1865 per Lord Carnwath JSC at [22]-[23] and [26] and Lord Gill at [73]. Similarly, in considering whether "the making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)", an examiner or the local planning authority may misdirect themselves as to the meaning of "general conformity" in this context, whose construction is also a matter of law for the court: see *Persimmon Homes (Thames Valley) v Stevenage Borough Council* [2005] EWCA Civ 1365 per Laws LJ

at [24]-[29], *R (Kebbell Developments) v Leeds City Council* supra at [43]. Similarly an examiner or local planning authority may misdirect themselves in law when considering whether "the making of the [plan] does not breach, and is otherwise compatible with, EU obligations". Nor are these the only possible legal errors they may make. They may also, for example, have regard to a legally irrelevant consideration or fail to have regard to a consideration which no reasonable person would fail to take into account.

59. Subject to any more stringent requirements that may be associated with a breach of an EU obligation, whether any such error invalidates the conclusion reached about a particular "basic condition" will depend on whether or not the error was immaterial[19]. It will be immaterial if the conclusion would necessarily have been the same regardless of the error. It will not be immaterial merely because the conclusion was one that a reasonable person could have reached had the error not been made, which would be the consequence of Ms Ornsby's submission if correct. Such an approach would permit the court to substitute its own judgment for that of the person in whom it is vested by enactment.

ii. whether it was appropriate to make the FNP given the NPPF's Core Planning Principle for previously developed land

a. background

60. The first basic condition is that "having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the" plan[20].

61. One of the twelve core planning principles in the NPPF is that planning should "encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value". The definition in the glossary to the NPPF excludes from the definition of "previously developed land" "land that has been developed for minerals extraction or waste disposal by land fill purposes where provision for restoration has been made through development control procedures." The Quarry plainly falls within this exception and is this not "previously developed land" as so defined.

62. In the Basic Conditions Statement, the FNP's response to this principle was that:

> "Although housing site allocation is not considered in the FNP, Section 4.2 and specifically Policy 4.2A Residential Development Within the Development Boundary, that apart from the proposed strategic site allocations set out in the Local Plan 2011, and the emerging Local Plan 2031, further

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[19] see eg *R v Lord President of the Privy Council ex p. Page* [1993] AC 682 at 702C-D; *R v Governor of Brixton Prison ex p Levin* [1997] AC 741 at 749A; *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13; [2012] PTSR 983 at [31]. Recognition that this question goes to the legal effect of the error rather than merely to discretion about relief is of particular significance when the legal effect of some action purportedly done under statutory powers is in issue in a claim in respect of which the court or tribunal has no discretion.

[20] see paragraph 8(2)(a) of Schedule 4B to the 1990 Act.

residential development should be within the existing development boundary. As there is little undeveloped space within the development boundary, apart from protected green spaces, this implies that development will require the re-use of existing sites as in the former factory site at 5 Lechlade Road.

Of more importance in Section 5 Local Jobs is the allocation of two worked out quarries for employment use. Rogers Quarry is allocated as employment land as is Wicklesham Quarry. The latter is specified in Policy 4.5B: Wicklesham Quarry for B2/B8 use with various caveats (the quarry walls are a SSSI) rather than returning it to agricultural use."

63. When dealing with the relationship between the Neighbourhood Plan as a whole and National Planning Policies and Guidance the Examiner stated in his Report that:

"6.4 The NPPF sets out a range of core land-use planning principles to underpin both plan-making and decision-taking. The following are of particular relevance to the Faringdon Neighbourhood Plan:

- a plan led system - in this case the relationship between the neighbourhood plan and the adopted local plan.
- recognising the intrinsic character and beauty of the countryside and supporting thriving local communities.
- proactively driving and supporting economic development to deliver homes, businesses and industrial units and infrastructure.
- actively managing patterns of growth to make the fullest possible use of public transport, walking and cycling.
- taking account of and supporting local strategies to improve health, social and cultural well-being.
- Conserving heritage assets - in this case recognising the importance of the very distinctive conservation area
- Supporting the transition to a low carbon future and taking account of flood risk

The Basic Conditions Statement helpfully lists these and other core principles. It identifies how the FNP addresses and conforms to these important planks of national policy.

6.5 Neighbourhood plans sit within this wider context both generally, and within the more specific presumption in favour

> of sustainable development, which is identified as a golden thread running through the planning system. Paragraph 16 of the NPPF indicates that neighbourhoods should both develop plans that support the strategic needs set out in local plans and plan positively to support local development that is outside the strategic elements of the development plan.
>
> 6.6 In addition to the NPPF I have also taken account of other elements of national planning policy including Planning Practice Guidance and the ministerial statements of March, May and June 2015.
>
> 6.7 Having considered all the evidence and representations available as part of the examination I am satisfied that the submitted Plan has had regard to national planning policies and guidance in general terms. It sets out a positive vision for the future of the plan area and promotes sustainable growth. At its heart is an extensive suite of policies that aim to bring forward sustainable development in general, and new economic growth in particular. At the same time, it sets out to safeguard the rich built and natural heritage in the Plan area."

His remaining concern was that modifications were required to certain policies to ensure that the FNP fully accorded with the advice that they should be concise and precise.

64. In relation to the policy for the Quarry the Examiner stated in his Report (at [7.41]) that:

> "In general terms I am satisfied that the policy meets the basic conditions. The NPPF (paragraph 28) is supportive of the promotion of new economic opportunities in rural areas. The site is on the edge of the town and is adjacent to the existing employment area at Wicklesham Farm. Its promotion in the Plan reflects the Town Council's view that new employment opportunities should be sought and promoted in a development plan context to balance the future new housing growth in the town. To this extent it will contribute to sustainable development."

b. submissions

65. Mr Eleftheriadis submitted that the relevant basic condition requires regard to be had first to national policies and then to whether it is appropriate to make the plan: see *BDW Trading (t/a Barratt Homes) v Chester West & Chester Borough Council* [2014] EWHC 1470 (Admin) per Supperstone J at [81]. He contended that the District Council misdirected itself with respect to policy and advice in the NPPF. Paragraph 17 of the NPPF states that a set of 12 core land-use planning principles should underpin both plan-making and decision-taking. These include the principle that planning should "encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental

value". In this case the "Basic Conditions Statement" prepared in February 2015 indicated the plan's response to this principle. One such response was the allocation of Wicklesham Quarry for employment use rather than returning it to agricultural use. That showed that the Quarry was being treated as "previously developed land". But that was a mistake, as had earlier been recognised by the consultants who prepared the Plan's Sustainability Appraisal and as the Claimant pointed out in her representations to the Examiner. Mr Eleftheriadis submitted that the District Council had failed to have regard to national policy to the effect that, when provision for restoration and aftercare are being made through development control procedures, a former mineral site is not a previously developed site. The Plan thus failed basic condition (a) because the Council failed to have regard to national policy.

66. Ms Ornsby submitted that there was no misunderstanding in this case about the classification of the land. The Basic Conditions Statement did not state that the Quarry was previously developed or brownfield land. Further the Examiner was well aware that the Quarry was not "previously developed land", as the correct position had been put clearly before him both in the Sustainability Analysis and in the Claimant's own submissions, both of which he stated that he had considered. He nowhere states that the Quarry is "previously developed land".

c. Discussion

67. In *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* supra, Lord Carnwath JSC said (at [25]) that "the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly". That approach applies equally in my judgment to independent examiners of neighbourhood plans. That presumption is reinforced in this case by the fact that the Examiner had in fact been informed by the Claimant in her objections to the FNP that the Basic Conditions Statement wrongly treated Wicklesham Quarry as "previously developed land".

68. In this case the Examiner nowhere stated that he considered that the Quarry was to be regarded as "previously developed land" for the purpose of the NPPF. He did state, however, that "the Basic Conditions Statement helpfully lists…[the] core principles. It identifies how the FNP addresses and conforms to these important planks of national policy." The natural reading of this statement in its context is that he thought that the Basic Condition Statement correctly identified how the FNP conformed to the core principles, thus dispensing with any need for him to explain why it did so. But in my judgment it is clear from the terms of the response in that document to the core principle relating to the encouragement of brownfield development that Wicklesham Quarry was treated as "previously developed land". In it the allocation of the two worked out quarries for employment use, one of which was Wicklesham Quarry, was "of more importance" in responding to that principle than the Plan's proposals with respect to housing. That statement makes no sense unless it was regarded as "previously developed land" to which the principle applied. Notwithstanding Ms Ornsby's submissions on the point, Wicklesham Quarry was plainly treated, therefore, as "previously developed land" in the Basic Conditions Statement and thus by the Examiner (and the District Council which simply endorsed his views).

69. The question is then whether or not that was a material error that invalidates his conclusion, in respect of this basic condition, that "having regard to national policies

and advice contained in guidance issued by the Secretary of State, it is appropriate to make the" plan.

70. The consequence of such an error was that the Examiner may have thought that safeguarding the Quarry for employment use was a proposal that should be encouraged on the ground that it made use of previously developed land. But it does not follow that its use for employment purposes would not otherwise be supported by national planning policies and guidance. Indeed it is clear from the Examiner's report that he thought national planning policies and guidance encouraged such development on the other grounds that he specifically relied on in paragraph [7.41] of his report (that I have quoted in paragraph [65] above), in particular the provision of new economic opportunities in rural areas (supported by paragraph 28 of the NPPF) and its contribution to sustainable development (which he had, earlier in paragraph [6.5] of his Report stated, had been identified in the NPPF "as a golden thread running through the planning system"). The question against that background is whether recognition of any error about the quarry being "previously developed land" might have changed the overall conclusion (in paragraph [6.7] of his report) that

> " the submitted Plan has had regard to national planning policies and guidance in general terms. It sets out a positive vision for the future of the plan area and promotes sustainable growth. At its heart is an extensive suite of policies that aim to bring forward sustainable development in general, and new economic growth in particular. At the same time, it sets out to safeguard the rich built and natural heritage in the Plan area."

71. In my judgment recognition of any such error would plainly not have changed that conclusion and his answer to the question whether having regard to national planning policies and guidance it was appropriate to make the FNP. Nor might it have caused him to conclude that the FNP should be modified to exclude Policy 4.5B, which was one of the suite of policies for sustainable development and in particular new economic growth that he found had regard to national planning policies and guidance in general terms.

72. Given that the District Council simply accepted the Examiner's recommendations for the reasons he gave, any mistake about the Quarry being "previously developed land" would not have made any difference to their answer to the question whether having regard to national planning policies and guidance it was appropriate to make the FNP.

73. Accordingly in my judgment any such error was in itself immaterial.

iii. whether the FNP was in general conformity with the strategic policies contained in the development plan for the Council's area

a. general approach

74. As I have mentioned another basic condition is that "the making of the [plan] is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)".

75. Mr Eleftheriadis submitted (i) that any site specific allocation, not merely the neighbourhood plan as a whole, must be in general conformity, relying on *R (Swan Quay LLP) v Swale Borough Council* [2017] EWHC 420 (Admin) per Dove J at [33], and (ii) that it has to be in general conformity with the strategic policies of the development plan, not the development plan as a whole. He submitted that the decision that the FNP satisfied this "basic condition" condition was irrational on *Wednesbury* grounds if the basic condition is interpreted on this basis but also, alternatively, if the FNP as a whole had to be in general conformity with the strategic policies in the development plan. In support of these contentions he relied on policies in the Local Plan 2011 on (a) the location of the development, (b) conservation, and (c) landscape, and (d) policies in the minerals and waste local plan. In support of the contention that such policies were to be regarded as "strategic" he referred to parts of the NPPF and of the Planning Policy Guidance Notes.

76. Ms Ornsby submitted that the relevant test is one of "general conformity" only: see *DLA Delivery v Lewes District Council* [2017] EWCA Civ 58 per Lindblom LJ at [23]. The strategic policies in the development plan need to be considered as a whole when addressing whether a neighbourhood plan is in general conformity with them. Moreover the requirement for "general conformity" may allow "considerable room for manoeuvre" between the two plans: see *R (Kebbell Developments) v Leeds City Council* supra at [44]-[45]. The Claimant would have to show that the conclusion reached on general conformity was irrational. A tension or conflict between one policy in a neighbourhood plan and one policy in the development plan is not the matter at stake: see *Swan Quay LLP v Swale BC* supra per Dove J at [67], *BDW Trading Ltd (t/a Barratt Homes) v Cheshire West and Chester BC* supra per Supperstone J at [82].

77. In my judgment this "basic condition" requires a comparison between (a) the neighbourhood plan and (b) any "strategic policies" contained in the development plan for the area in order to ascertain whether the neighbourhood plan is in general conformity with such strategic policies. The absence of strategic policies in respect of a particular type of development does not preclude the making of a neighbourhood plan that meets this basic condition: see *R (DLA Delivery Ltd) v Lewes District Council* supra per Lindblom LJ at [16], [18]-[23].

78. The neighbourhood plan will inevitably contain a number of policies for the development and use of land and the development plan is likewise likely to contain a number of "strategic policies". It follows that what has to be determined is whether the neighbourhood plan is in general conformity with such strategic policies *as a whole*, as Dove J observed in *R (Swan Quay LLP) v Swale Borough Council* supra at [27]-[29].

79. The question whether the two are in general conformity, however, is not "entirely a matter of planning judgment", as Dove J at one point suggested: *ibid* at [30]. As noted above, the Court of Appeal held in *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council* [2005] EWCA Civ 1365, [2006] 1 WLR 334 (Lloyd LJ dissenting[21]) that "the meaning of the term "general conformity" is a question of construction for the court": see per Laws LJ at [21]-[23]. As Laws LJ (with whom

[21] He agreed, however, that the meaning of "general conformity was a matter for the court as did Wall LJ: see at [68] and [91].

Wall LJ agreed) put it (at [24], [26] and [28]), given that there is no statutory definition,

> "The court must therefore apply its ordinary meaning as a matter of language, taking into account, however, the practicalities of planning control which are inherent in the statutory scheme....there may be a conflict between the structure plan and the local plan...even though the two are in general conformity...The adjective "general" is there "to introduce a degree of flexibility"...[But] to read "general conformity" as simply meaning that the proposals of the local plan should be "in character" with the structure plan would be to accept too broad a construction...on its true construction the requirement may allow considerable room for manoeuvre within the local plan in the measures taken to reflect structure plan policy, so as to meet the various and changing contingencies that can arise....[But] This flexibility is not unlimited."

80. Given that the phrase, "general conformity", is inherently imprecise, however, in my judgment it is not for the court to seek to give it a spurious degree of precision.

81. In reviewing any conclusion about the general conformity of a neighbourhood plan with the strategic policies in the development plan, therefore, the question is whether the independent examiner or local authority could reasonably have reached it given its ordinary meaning within the inherently imprecise limits indicated: cf *Moyna v Secretary of State for Work and Pensions* [2003] UKHL 44, [2003] 1 WLR 1929, per Lord Hoffmann at [20]-[28]. Ultimately that will depend on the particular neighbourhood plan and the particular relevant strategic policies of the development plan. There may, of course, be legal errors made by them in reaching a conclusion on compliance with this "basic condition" and, if there are, their materiality to it will require consideration.

82. Given that the planning judgment to be made is concerned with whether the neighbourhood plan is in general conformity with the relevant strategic policies of the development plan as a whole, it has been suggested that, whether there is a tension between one policy of the neighbourhood plan and a strategic policy in the development plan is not a matter for the independent examiner or local planning authority to determine and even that there is no need to consider whether or not there is any such tension: see eg *BDW Trading v Cheshire West and Chester Borough Council* [2014] EWHC 1470 (Admin) per Supperstone J at [82]; *R (Maynard) v Chiltern District Council v Chalfont St Peter Parish Council* [2015] EWHC 3817 (Admin) per Holgate J at [13(3)] and [61]-[62], [64]; *R (Kebbell Developments) v Leeds City Council* supra per Kerr J at [48]. In my judgment, however, any conflict between such individual policies may well be relevant when considering the more general relationship with which the "basic condition" is concerned between the neighbourhood plan and the strategic policies as a whole. As Lloyd LJ put it in *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council* supra at [59], "one plan may be in general conformity with another despite there being particular points of conflict. The question would be to what does the conflict relate and how important is it."

83. Mr Eleftheriadis went further, however, submitting that any site specific allocation, not merely the neighbourhood plan as a whole, must be in general conformity, with the strategic policies of the local plan. He relied on the judgment of Dove J in *R (Swan Quay LLP) v Swale Borough Council* supra where he stated at [33],

> "The basic condition at paragraph 8(2)(e) does not refer to the neighbourhood plan..."as a whole". Clearly evaluating the overarching policies and proposals of a neighbourhood plan will be a necessary exercise, but where, as here, a neighbourhood plan contains site-specific proposals, then it will be proper, if not essential, for the examiner additionally to consider those proposals individually against the basic conditions."

84. While I agree that it is "proper" for individual policies in the neighbourhood plan to be considered against the strategic policies in the development plan (whether or not those individual polices involve site-specific proposals), it is not those policies individually that have to meet this "basic condition": it is the neighbourhood plan (that is to say the policies in that plan collectively) which are required to be in general conformity with the strategic policies in the development plan as a whole. As Mr Eleftheriadis correctly conceded at one point during the hearing and as is apparent from the judgment of Laws LJ in *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council*, the fact that a policy in a neighbourhood plan may be in conflict, or not in general conformity, with a strategic policy in the development plan does not necessarily mean that the plan itself may not be in general conformity with the strategic policies as a whole. Indeed, as has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable. Since this may equally be true of the strategic policies such plans contain, avoiding any conflict may not be possible, not least when the development plan comprises a number of documents.

85. In determining which policies in the development plan should be regarded as "strategic policies", Mr Eleftheriadis submitted that parts of the NPPF and of the Planning Policy Guidance Notes were relevant. Section 34 of the 2004 Act provides that "in the exercise of any function conferred under or by virtue of this Part the local planning authority must have regard to any guidance issued by the Secretary of State." It has been found by the Court of Appeal, however, that the NPPF and the Planning Policy Guidance are "not a permissible aid to the construction of [the 2004 Act] or the regulations made under it": see *R (Larkfield Homes) v Rutland County Council* [2015] EWCA Civ 597, [2015] PTSR 1369, per Richards LJ at [23]; *R (DLA Delivery Ltd) v Lewes District Council* supra per Lindblom LJ at [26]. Government guidance cannot alter the meaning of an enactment.

86. Ms Ornsby submitted that a strategic policy was one that set out an overarching objective and direction for development (which echoes one of the considerations that are said to be useful for identifying such policies in the Planning Policy Guidance) and that development control policies to be applied at the development control stage (rather than at an allocation stage) are not strategic policies.

87. In my judgment such formulae are not helpful as definitions. The allocation of a particular site for a nationally important development (such as a nuclear power

station) might not unreasonably be regarded as a strategic policy, even if it did not constitute an overarching objective and direction for development generally in the plan area. Green Belt policy could, not unreasonably, be regarded as "strategic" but it is one which is applied at the development control stage.

88. The phrase "strategic policies" is, like "general conformity", inherently imprecise, and it is not one in my judgment to which the court should seek to give a spurious degree of precision. Which policies in a development plan warrant that classification will inevitably involve a question of planning judgment that will be framed (but not necessarily exhausted) by the objectives of the particular plan and the policy's significance in relation to their achievement and to the character, use or development of land in the area to which the plan relates which it seeks to promote or inhibit. The more central or important the policy is in relation to such matters the more likely it will be that it may be a "strategic policy" in that plan. Its identification as "strategic" or as part of the "strategic policies" in that plan may well provide a good indication of its significance. But the fact that it is not so identified does not necessarily mean that it is not a strategic policy and its identification as such does not necessarily mean that it is.

89. In reviewing any classification of a policy by an independent examiner or local planning authority as, or as not, being a "strategic policy" of a development plan, therefore, the question is whether or not that classification was one that the examiner or authority could reasonably have made.

90. Against that approach it is necessary to consider the four areas of the development plan which Mr Eleftheriadis contended contained strategic policies with which Policy 4.5B would not be consistent or in general conformity.

b. locational policies in the Local Plan 2011

91. Mr Eleftheriadis submitted that Policy 4.5B violated policies GS1 and GS2 of the Local Plan 2011. Both policies form part of Chapter 3 of that Plan, entitled "the Local Plan Strategy". Ms Ornsby QC accepted that both policies were correctly classified as "strategic".

92. Policy GS1 provided that:

> "the General Locational Strategy is to: i) concentrate development at the five main settlements of Abingdon, Botley, Faringdon, Grove and Wantage, which are designated as local service centres and are defined by the development boundaries on the proposals map .....Development which accords with this strategy will be permitted provided there is no conflict with other policies in this plan."

Policy GS2 provided that:

> "Outside the built-up areas of existing settlements (covered by policies GS1, GS3, H11, H12 and H13) new building will not be permitted unless it is on land which has been identified for

> development in the local plan or is in accordance with other specific policies below."

93. The Basic Conditions Statement stated that:

> " GS1 is out of date whilst there is no five year housing land supply. Until this is adopted NPPF paragraph 14 applies. The FNP does not allocate housing sites. Policy 4.2A is in accord with that identified in the Vale of White Horse Local Plan 2031(parts 1 and 2) or its successor document(s).
>
> GS2 is out of date whilst there is no five year housing land supply. The FNP does not allocate housing sites, but is in conformity with GS2. FNP Policy 4.5G is in accord with the Development Plan. Until this is adopted NPPF paragraphs 14 and 55 apply."

94. The Examiner did not refer to these two policies in his Report. But he stated at [5.7], however, that:

> "The Basic Conditions Statement includes an assessment of the general conformity of the Neighbourhood Plan with the relevant strategic policies of the Vale of White Horse Local Plan 2011. It is extremely thorough in its assessment of each neighbourhood plan policy against the saved policies in the 2011 Local Plan. I am satisfied that the Neighbourhood Plan is in general conformity with strategic policies contained in the Development Plan for the area."

95. When he later specifically addressed the question of general conformity he referred back to this paragraph among others as setting out the context and added (at [6.12]) that

> "I consider that the submitted FNP delivers a local dimension to this strategic context and supplements the detail already included in the adopted development plan. The FNP is in general conformity with the strategic policies in the development plan.

96. Ms Ornsby submitted that Policy 4.5B on Wicklesham Quarry reflects, rather than conflicts with, the general locational strategy in the development plan. GS1 aims to "concentrate" development within the five main settlements: it does not require that development be located exclusively within them. The supporting text indicates that development on greenfield land on the edges of these settlements may take place when account has been taken of development already within the built up areas in towns and villages. That is reflected in Policy 4.5B which only contemplates development at the Quarry if no other suitable site closer to the Town Centre is available.

97. In my judgment, however, Policy 4.5B is unarguably in conflict with Policy GS2. Wicklesham Quarry lies outside the development boundaries of Faringdon on the

Proposals Map of the Local Plan 2011 within the settlement of which GS1 seeks to concentrate development. Policy GS2, therefore, requires permission for new building (such as that required for B2 or B8 uses) to be refused unless the land has been identified for development in the local plan (which the Quarry was not) or unless its development would be in accordance with other specific policies (which Ms Ornsby does not now contend that it would be).

98. The assertion in the Basic Conditions Statement, that the FNP "is in conformity with GS2", therefore, is one that is manifestly flawed. The Statement was not that, despite this conflict, the Plan was in general conformity with Policy GS2.

99. The Examiner regarded the assessment of each neighbourhood plan policy against the saved policies in the 2011 Local Plan in the Basic Conditions Statement as being "extremely thorough". The natural inference from what he said in paragraph [5.7] of his Report is that he relied on it and this erroneous statement in it, when forming his conclusion that "the Neighbourhood Plan is in general conformity with strategic policies contained in the Development Plan for the area."

100. I shall return to the question whether this error was material or immaterial to that conclusion.

c. conservation policies in the Local Plan 2011

101. Mr Eleftheriadis submitted that conservation and enhancement of the natural environment is a strategic matter, as it is one of topics that it is recommended that local plans should have strategic policies to deliver in paragraph [156] of the NPPF. Wicklesham Quarry is a site of special scientific interest ("*a SSSI*"). Policy NE2 in the Local Plan had provided that development would not be permitted in such an area if it "would result in destruction or damage to" it. As he accepted, however, that policy is not one of the "saved" policies in the Local Plan 2011. But other "saved" policies deal with development likely to harm sites of nature conservation importance. These include Policy NE3 and NE4.

102. Policy NE3 in the Local Plan 2011 provided that:

> "Development that would destroy or damage a regionally important geological site will not be permitted unless the damage can be prevented or acceptably minimised."

Policy NE4 provided that:

> "Development likely to harm a site of nature conservation importance not covered in policies NE2 and NE3 will not be permitted unless it can be clearly demonstrated that the reason for the development clearly outweighs the need to safeguard the nature conservation value of the site and adequate compensatory habitats will be provided."

103. Mr Eleftheriadis contended that, in allowing for B2 or B8 development provided it would not result in demonstrable harm to the geological special interest of the site, Policy 4.5B was in breach of policies NE3 and NE4 as it allows for some damage to

it. He further submitted that the Quarry is within the West Oxfordshire Heights Streams, Hills, Woods and Parks CTA and that no regard has been had to the need for special protection for it under Policy NE4 as an area of wildlife conservation.

104. Ms Ornsby submitted that these two policies were not strategic policies of the Local Plan 2011. Such policies were only to be found in Chapter 3 of the Local Plan 2011 which set out its strategy. Moreover both policies merely seek to control development at the development control stage and on that basis each was also not a "strategic policy". In any event Policy 4.5B does not conflict with these policies. It requires that "any development would not result in demonstrable harm to the geological special interest of the site" and that "appropriate ecological mitigation and enhancement measures are incorporated into the proposals". Policy NE2 no longer survives but, in any event, so Ms Ornsby submitted, the Claimant's attempt to extract a distinction between "destruction or damage" which is referred to in it and "demonstrable harm" which is referred to in Policy 4.5B was misconceived and semantic. Policy 4.5B seeks to ensure no material harm to the SSSI. Natural England did not object to it. The CTA covers some 2,631 hectares. The Quarry was only included in it because it was an SSSI and it was only notified as a SSSI because of its geological interest. In any event Policy 4.5B does seek to safeguard and indeed enhance any ecological interest the Quarry may have. But in any event the requirement is only for the FNP or Policy 4.5B to be in general conformity with such policies in the Local Plan 2011 which they are.

105. The Basic Conditions Statement identified Policies NE3 and NE4 as among the "strategic policies" of the Local Plan 2011 against which the general conformity of the FNP was to be assessed. I have already quoted (in paragraph [94] above) the Examiner's observations on that document in paragraph [5.7] of his Report. He did not dissent from that classification, and relied on the analysis, in that document. In my judgment it cannot be said that that classification was not one that the Examiner could reasonably have made. True it is that both policies do not appear in that chapter of the Local Plan 2011 entitled "the Local Plan Strategy". But it would be absurd to suggest that the chapter in that Plan entitled "Natural Environment" contains no strategy for safeguarding it. One part of that strategy is that the District Council wanted, as it explained in paragraph [7.26] of the Plan, "to ensure that areas of importance to nature conservation are not lost through development. It wishes to safeguard, maintain and enhance nature conservation value wherever it exists and particularly to encourage biodiversity." Policy NE3 gives effect to that strategic aim in the case of regionally important geological sites. Policy NE4 seeks equally to do so. As paragraph [7.40] of the Local Plan explained, "the District Council is determined to do all it can to protect and enhance the nature conservation heritage of the Vale and to this end will apply [NE4] to other sites of nature conservation value in the district." The fact that both policies fall to be applied in development control is in my judgment no bar to their classification as "strategic".

106. The Basic Condition Statement considered the relevance of Policies NE3 and NE4 to the FNP in these terms:

> NE3: "Policy 4.5B regarding Wicklesham Quarry specifies that employment development would be supported on this site if no other suitable sites closer to the town centre are available, providing there is demonstrable need and the following criteria have been satisfactorily addressed there is a clear

> demonstration that any development would not harm the geological special interest of the site in consultation with Natural England and the District Council. The proposals shall incorporate measures to provide access to the protected site for the visiting public so that the special geological interest is better revealed and provision made for the protection and enhancement of the geodiversity interest of Wicklesham Quarry. This is in conformity with NE3."
>
> NE4: "FNP Policy4.5C emphasises that any development of this site (NW of Gloucester St car park) must incorporate appropriate ecological mitigation measures and compensation in conformity with NE4."

107. Policy NE3 is directed at any "regionally important geological site". Given that, as a SSSI, Wicklesham Quarry is of national importance, it must at least also be of regional importance. It is in fact referred to in the explanatory text to Policy NE3. That states (at paragraph 7.34) that:

> "English Nature is promoting the identification of Regionally Important Geological Sites through the establishment of local groups. These sites will be non-statutory, locally based sites which will be designated and informally and voluntarily managed. Regionally Important Geological Sites are proposed at [certain identified sites] and Wicklesham Quarry, Faringdon. Four of these sites are also identified as Sites of Special Scientific Interest".

This text implies that there may be some process of designation to identify regionally important sites. Neither Mr Ms Ornsby nor Mr Eleftheriadis was able to say whether or not any sites had been designated as such. But, whether or not they have, Policy NE3 itself does not require such designation: provided that the geological interest is sufficiently important (which in this case it was not unreasonably regarded as being), the policy is applicable.

108. Mr Eleftheriadis submitted that the requirement in Policy 4.5B of the FNP, that any development must "not result in demonstrable harm to the geological special interest of the site", is inconsistent with the Policy in NE3 that development should not "destroy or damage" the site of interest. In my judgment such a submission treats planning policies in different plans as if they were separate enactments in the same Act where differences in the precise choice of words used may well be of significance. Even in such a different context it would be extremely doubtful that "damage" to the special interest of a site would not constitute "demonstrable harm" to it or that such harm would not involve such damage. But in my judgment any suggestion that no reasonable person could have thought that Policy 4.5B was in conformity with Policy NE3, when both are merely policies and each is contained in a different plan drafted by different persons at different times, is devoid of merit.

109. As is clear from the explanatory text, NE4 is essentially concerned with the protection of habitats that may be of value themselves or for the wildlife which they support (which may explain the exclusion of geologically important sites from its scope and

the requirement for the provision of "compensatory habitats"). If the Wicklesham Quarry could be regarded as containing any such habitat, the comments in the Basic Conditions Statement about Policy 4.5C would have been equally applicable to it[22]. But, in any event, given that Policy NE3 applies to Wicklesham Quarry, Policy NE4 does not given its terms.

110. For these reasons in my judgment the Examiner was entitled to treat Policy 4.5B in the FNP as being in conformity with Policy NE3. Policy NE4 was inapplicable. But, even if Policy NE4 had been applicable, in my judgment he would also have found that Policy 4.5B was in conformity with it for the same reasons as he found Policy 4.5C to be in conformity with it.

d. Landscape policies

111. Section 4.12 of the FNP contains an analysis of the landscape in the area. It notes that

> "Faringdon's landscape derives from its setting in a dip at the crest of a ridge. It is, therefore important that Faringdon does not spill over the surrounding hills, or into the Thames Valley, or the Vale of White Horse."

When dealing with design in section 4.7, it notes that:

> "Several of the key sites, including the Wicklesham Quarry site..., are visible from elevated vantage points such as Folly Hill and the Folly Tower. Protecting views from these locations needs careful management. The integration with any development with the landscape and particularly the nature of the roof forms will play an important role in achieving successful development."

112. Policy 4.7E provided *inter alia* that:

> "...new build of commercial buildings and especially those that form gateways to Faringdon, should be of a scale and form appropriate to their location and landscape setting...."

113. The Explanatory text to Policy 4.5B relating specifically to the Quarry stated that "any development on the site would need to be sensitively designed so as to be hidden in the landscape". The Policy itself requires that "any proposed development does not have a detrimental impact on the relationship between the site and the wider landscape in which it sits".

114. Mr Eleftheriadis contended that Policy 4.5B was inconsistent with Policy NE7 of the Local Plan 2011. The explanatory text to that Policy stated that:

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[22] The Claimant contends that the Quarry supports a population of Great Crested Newts around certain ponds. Policy NE5 of the Local Plan 2011 addresses the protection of that among other species. But that policy is not one identified as a strategic policy in the Basic Conditions Statement; its classification was not impugned by the Claimant and Mr Eleftheriadis did not rely on it.

> "The North Vale Corallian Ridge has a striking landform with a steep north facing scarp slope separating the clay vale from the Thames valley. In the west the ridge has been dissected by streams, which have eroded steep slopes to hills such as Badbury Hill and Faringdon Folly. The ridge is characterised by woodland, including a significant proportion of ancient woodland, country houses designed to look out over the scarp, villages built of the local coral ragstone, and expansive views."

Policy NE7 itself stated that:

> "Development which would harm the prevailing character and appearance of the North Vale Corallian Ridge, as shown on the proposals map, will not be permitted unless there is an overriding need for the development and all steps will be taken to minimise the impact on the landscape."

115. Mr Eleftheriadis submitted that Policy 4.5B envisages that development will be permitted if "the proposed employment development does not have a detrimental impact on the relationship between the site and the wider landscape in which it sits". He submitted that this formulation is obscure and that it may invite a distinction between (a) harm to the character and appearance of the North Vale Corallian Ridge and (b) the relationship between the site and the wider landscape in which it sits. He contended that the Policy downgraded the level of protection which Policy NE7 requires and thus departs from the strategic approach in the Local Plan 2011.

116. Ms Ornsby submitted that Policy NE7 is not a strategic policy to be applied at the allocation stage in a plan but that it is merely a development control policy to be applied at the development control stage. But in any event she submitted that the policies are plainly consistent in seeking to protect the relevant landscape from harm and that to suggest there was a lack of general conformity between them is fanciful.

117. The Basic Conditions Statement identified Policy NE7 as among the "strategic policies" of the Local Plan 2011 against which the general conformity of the FNP was to be assessed. I have already quoted (in paragraph [94] above) the Examiner's observations on that document in paragraph [5.7] of his Report. He did not dissent from that classification, and relied on the analysis, in that document. In my judgment again it cannot be said (as Ms Ornsby would have to show) that that classification was not one that the Examiner could reasonably have made. True it is that Policy NE7 does not appear in that chapter of the Local Plan 2011 entitled "the Local Plan Strategy". But, as I have already pointed out, it would be absurd to suggest that the chapter in that Plan entitled "Natural Environment" contains no strategy for safeguarding it. One part of that strategy is to protect the local landscape character of the area from damage and in particular, as the explanatory text states at [7.61], "the Council remains committed to protecting the North Vale Corallian Ridge from development which would harm its special character". Policy NE7 is a policy that can, not unreasonably, be regarded as expressing that strategic aim.

118. The Basic Conditions Statement addressed Policy NE7 in these terms:

> "Policy 4.7E requires development to be sensitive to its landscape setting. Section 4.12 gives further information about the importance of the Corallian Ridge setting to the town and sets objectives to ensure the important [landscape] setting is protected. This is in conformity with NE7."

119. Mr Eleftheriadis did not seek to impugn this analysis about the relationship generally between the policies in two plans (which is ultimately what the relevant "basic condition" is concerned with). Policy 4.12 is one applicable to development in the FNP area including Wicklesham Quarry. In fact Policy 4.5B is in terms more stringent than Policy 4.7E and in my judgment does not downgrade the protection which Policy NE7 provides to "the *prevailing* character and appearance of the North Vale Corallian Ridge". Mr Eleftheriadis's attempt to draw a distinction based on a difference in wording in the policies in the two different plans demonstrates once again the same erroneous approach as he followed when comparing Policy 4.5B with Policy NE3. Policy NE7 generally requires development "which would harm" that prevailing character to be refused permission. In practice Policy 4.5B does the same. It requires that "any proposed development does not have a detrimental impact on the relationship between the site and the wider landscape in which it sits". It would no doubt have that effect if it harmed the prevailing character and appearance of the North Vale Corallian Ridge.

120. It may be that the practical result of Policy 4.5B is, as the explanatory text to it states, that "any development on the site would need to be sensitively designed so as to be hidden in the landscape". But in my judgment it cannot be said that Policy 4.5B is not consistent with Policy NE7 or that the policies in the FNP that govern development that may affect the prevailing character and appearance of the North Vale Corallian Ridge do not conform with Policy NE7 of the Local Plan 2011.

e. Minerals and Waste Local Plan

121. Mr Eleftheriadis further contended that the allocation of the Quarry was not in conformity with the strategic policies in the Oxfordshire Minerals and Waste Local Plan (1996) which forms part of the Local Plan.

122. In the introduction to that Plan it was stated (at 1.11)

> "The County Council considers that mineral working is not acceptable without satisfactory restoration and after-use. This applies not only to the establishment of after-uses but to their long-term management and maintenance."

Mr Eleftheriadis relies on Policies PE13 and PE14. These provide that:

> "PE13. Mineral workings and landfill sites should be restored within a reasonable timescale to an after-use appropriate to the location and surroundings. Proposals for restoration, aftercare and after-use should be submitted at the same time as any application for mineral working. Planning permission will not be granted for mineral working or landfill sites unless

> satisfactory proposals have been made for the restoration and after-use, and means of securing them in the long term.
>
> PE14 Sites of nature conservation importance should not be damaged. Proposals which would affect a nature conservation interest will be assessed by taking into account the importance of the affected interest; the degree and permanence of the projected damage; and the extent to which replacement habitat can be expected to preserve the interest in the long-term."

123. Mr Eleftheriadis contended that the Examiner failed to discuss any matters relating to restoration and aftercare and ignored the Council's strategic aim "to complete restoration and aftercare as a matter of sound minerals policy".

124. Ms Ornsby submitted that there is no conflict between the policies. The two policies in this Plan, which cannot in any event be regarded as "strategic", relate to the grant of permission for minerals working and landfill sites, ensuring that appropriate restoration and aftercare provisions are in place. Policy 4.5B only permits employment uses once all restoration activities have been complied with.

125. In my judgment Policies PE13 and PE14 could both be regarded as strategic policies but in any event it is plain that they are policies governing the determination of applications for planning permission for mineral working. And landfill Policy 4.5B of the FNP is not concerned with applications for planning permission of that character. Thus, for example, Policy NE13 may contemplate that planning permission for mineral working should only be granted if the application provides "means of securing [after-uses] in the long term". But that says nothing about how any subsequent application for planning permission to change any such use should be determined, a matter which may well fall (as it does in the case of B2 and B8 development) outwith the scope of the plan in which these two policies are contained. Accordingly in my judgment the question of the conformity of Policy 4.5B of the FNP with Policies PE13 and PE14 does not arise: they are dealing with different subject matters.

f. conclusion

126. It follows that the only error which the Claimant's can show the Examiner (and thus the District Council made) when examining whether the FNP was in general conformity with the strategic policies of the development plan is the failure to recognise that Policy 4.5B of the FNP was in conflict with Policy GS2. The question is thus whether the Examiner and the District Council would necessarily (not might) nonetheless have concluded that the FNP was in general conformity with the strategic policies in the development plan, even though Policy 4.5B was in conflict with Policy GS2.

127. The mere fact that there is a conflict between one policy in a neighbourhood plan and one strategic policy in the development plan does not necessarily mean that the policies in the neighbourhood plan collectively are not in general conformity with the strategic policies in the development plan as a whole. It is necessary to consider what the conflict relates to and how important it may be in the context of the policies in the

neighbourhood plan collectively and the strategic policies in the development plan as a whole.

128. The Local Plan was initially adopted in July 2006. GS2 is one the "saved policies in it. It is a strategic policy about the location of development in the District that seeks to support the policy in GS1, directing development up to 2011 to within the development boundaries of five settlements in the District of which Faringdon is one, "to reduce the need to travel, enhance the vitality and viability of the towns and to protect the rural character of the Vale": see paragraph [3.2] of the Local Plan 2011. Policy 4.5B is one of a number of proposals for employment development in the FNP in the period up to 2031, a considerably longer period. The FNP considers that "more employment opportunities...provided in and around Faringdon....will bolster the general vitality of the town and town centre, and also help to reduce out-commuting": see the FNP at paragraph [4.5]. Policy 4.5B can thus be seen as one of a number promoting the first two of the three objectives underlying Policies GS1 and GS2 in the period up to 2031. Policy 4.5B also only supports employment development at Wicklesham Quarry if "there is a demonstrable need", "no other suitable sites closer to the town centre are available" and it does not have "a detrimental impact on the relationship between the site and the wider landscape in which it sits". It might be said, therefore, that Policy 4.5B is a policy that, with others, carries forward the underlying aims of Policy GS1 and GS2 in the period up to 2031 and that it will only do so if there is no other suitable site closer to the centre to meet a demonstrable need. To adapt what Laws LJ stated in *Persimmon Homes (Thames Valley) Ltd and others v Stevenage Borough Council* supra at [28], "the requirement [of general conformity] may allow considerable room for manoeuvre within the [neighbourhood] plan in the measures taken to reflect [development] plan policy, so as to meet the various and changing contingencies that can arise" when the times at which the two plans are adopted and the periods to which they relate differ. Furthermore it is also the case (a) that Policy 4.5B is only one of a number of policies in the FNP not merely for the provision of new employment but also for other development in Faringdon and (b) that GS1 and GS2 are but two of the 44 strategic policies in the development plan identified in the Basic Conditions Statement against which the general conformity of the FNP has to be considered.

129. I am acutely conscious, however, that it is not for any court to substitute any view it may have about the general conformity of a neighbourhood plan with the relevant strategic policies of a development plan. For the reasons given above, it appears to me to be highly likely that the Examiner and the District Council would have considered that the FNP was in general conformity with those policies, even though Policy 4.5B of the FNP conflicted with Policy GS2 in the Local Plan 2011. But that is not of itself sufficient to make the error made immaterial. To be satisfied that the result would necessarily (not might) have been the same regardless of an error more than that is required if the court is not to substitute its own judgment for the planning judgment which the relevant enactments require others to make. I am not satisfied that the result would necessarily have been the same regardless.

130. It follows that neither the Examiner nor the District Council were lawfully satisfied that the FNP satisfied the basic condition (specified in paragraph 8(2)(e) of Schedule 4B to the 1990 Act) that the making of the plan was in general conformity with the strategic policies contained in the development plan.

iv. strategic environmental assessment

a. introduction

131. As I have mentioned, another of the "basic conditions" is that "the making of the [plan] does not breach, and is otherwise compatible with, EU obligations".

132. Among such obligations applicable to neighbourhood plans may be those arising under the SEA Directive. Its objective "is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment"[23]. Such "environmental assessment" involves "the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of [certain] information on the decision[24]. The process of assessment thus starts with the preparation of an environmental report by the responsible authority on the basis of which consultations with other authorities and the public must be carried out.

133. In this case Faringdon Town Council considered that the FNP should be subject to environmental assessment. It arranged for consultants to produce a "Sustainability Appraisal (SA) for the Faringdon Neighbourhood Plan" ("*the SA*"). Mr Eleftheriadis contended that the Examiner (and thus the District Council) could not reasonably have been satisfied that the SA met the requirements for an environmental report and thus that making of the FNP would not breach these EU obligations for its environmental assessment. That was because, so he submitted, (a) the SA suffers from such manifest and grave errors of fact that no reasonable authority could have regarded it as an environmental report and (b) the SA failed to examine reasonable alternatives as it was required to do.

134. The 2004 Regulations transpose the requirements of the SEA Directive into English law. Regulation 12(1) requires the responsible authority to prepare an environmental report in accordance with paragraphs (2) and (3) of that regulation. Paragraphs (2) and (3) of Regulation 12 provide that:

> "(2) The report shall identify, describe and evaluate the likely significant effects on the environment of–
>
> (a) implementing the plan or programme; and
>
> (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme.

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[23] see article 1 of the SEA Directive.
[24] see article 2(b) of the SEA Directive.

> (3) The report shall include such of the information referred to in Schedule 2 to these Regulations as may reasonably be required, taking account of–
>
> (a) current knowledge and methods of assessment;
>
> (b) the contents and level of detail in the plan or programme;
>
> (c) the stage of the plan or programme in the decision-making process; and
>
> (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment."

135. The information referred to in Schedule 2 comprises:

> "1. An outline of the contents and main objectives of the plan or programme, and of its relationship with other relevant plans and programmes.
>
> 2. The relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme.
>
> 3. The environmental characteristics of areas likely to be significantly affected.
>
> 4. Any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Council Directive 79/409/EEC on the conservation of wild birds(a) and the Habitats Directive.
>
> 5. The environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation.
>
> 6. The likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as—
>
> (a) biodiversity;
>
> (b) population;
>
> (c) human health;

(d) fauna;

(e) flora;

(f) soil;

(g) water;

(h) air;

(i) climatic factors;

(j) material assets;

(k) cultural heritage, including architectural and archaeological heritage;

(l) landscape; and

(m) the inter-relationship between the issues referred to in sub-paragraphs (a) to (l).

7. The measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme.

8. An outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.

9. A description of the measures envisaged concerning monitoring in accordance with regulation 17.

10. A non-technical summary of the information provided under paragraphs 1 to 9."

b. The alleged errors of fact

136. The "manifest and grave errors of fact" in the SA which, so Mr Eleftheriadis contended, meant that no reasonable authority could have regarded it as an environmental report, were (i) that the SA did not mention that Wicklesham Quarry was part of the West Oxfordshire Heights CTA; (ii) that it failed to report that it is a habitat for the Great Crested Newt, a European Protected Species under Schedule 2 to the Conservation of Habitats and Species Regulations 2010; (iii) that it failed to discuss matters relating to Quarry Restoration and Biodiversity, making no reference for example, to the County Council's background paper on quarry restoration (April 2012) or to the habitat and species data of the Great Crested Newt Refresher Surveys (2013); and (iv) that it failed to take into account the Local Plan 2011, considering only the emerging draft Local Plan 2031. Mr Eleftheriadis submitted that, by failing

to provide an accurate assessment of the most important environmental site allocated by the FNP, the SA was manifestly inadequate.

137. Mr Eleftheriadis did not identify to which paragraphs in Schedule 2 to the 2004 Regulations these "errors" were alleged to relate. Ms Ornsby accepted, however, that the fourth alleged error might relate to paragraph 1, and other alleged errors might relate to paragraph 3, of that Schedule. But Ms Ornsby submitted that each of these matters was not an error of fact but involved an allegation that the SA had not dealt with a particular issue adequately or at all. In considering that question, so she submitted, (i) the obligations in regulation 12 are to be applied with pragmatism and flexibility without imposing excessive strictures on strategic-level decision making: as Carnwath LJ put it in *R (Jones) v Mansfield District Council* [2013] EWCA Civ 1408, [2004] 2 P&CR 14, at [58], the production of an environmental report is not intended to be "an obstacle course"; (ii) there is a distinction between deficiencies that show that the document cannot reasonably be regarded as an environmental report (which would justify intervention by the court) and deficiencies that result from the omission of a topic or its inadequate treatment; and (iii) the question is whether there has been substantial compliance with the information required: *Seaport Investments Ltd* [2007] NIQB 62, [2008] Env LR 23. She further submitted that, even if the deficiencies described did exist (which she denied) that would not mean that the SA could not properly be described as an environmental report or that it would be irrational to conclude that it was.

138. In my judgment it is important to note that an environmental report is only required to include such of the information referred to in Schedule 2 to the 2004 Regulations "as may reasonably be required", taking account of the matters listed in regulation 12(3), in order to identify, describe and evaluate the likely significant effects on the environment of (a) implementing the plan and (b) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme. What that requirement involves in the case of any neighbourhood plan will necessarily involve an evaluative judgment that it is for the responsible authority to make. It is inevitable that there may be disputes about the extent of the information reasonably required for those purposes and that the information which a published report contains may be deficient in certain respects. The legislation governing environmental assessment recognises that the information provided may be inaccurate, inadequate or incomplete by providing for there to be consultation with other authorities and the public on the report which may serve to remedy any deficiencies in the information it contains. If the process of environmental assessment is to be treated as fatally flawed on the basis that the information in the published report is deficient, therefore, in my judgment any such deficiencies must be such, that the published report cannot reasonably be described as an environmental report containing the information which, given that process of assessment, any reasonable authority would have thought was reasonably required, taking account of the specified matters, in order to identify, describe and evaluate the likely significant effects on the environment of implementing the plan and any reasonable alternatives: cf *R (Edwards) v Environment Agency* [2008] UKHL 22, [2008] Env LR 34, per Lord Hoffmann at [38] and [61].

139. The Examiner considered whether making the FNP would be compatible with the requirements for strategic environmental assessment. He stated in his Report that:

> "2.6 SA is in line with the SEA regulations and also widens the scope of the assessment from a focus on environmental issues to also consider social and economic issues. The SA report satisfies all requirements.
>
> 2.9 Having reviewed the information provided to me as part of the examination I am satisfied that a thorough, comprehensive and proportionate process has been undertaken in accordance with the various regulations. The information provided is succinct and proportionate to the FNP. The whole process provides confidence both in general and in terms of the associated consultation process in particular. None of the statutory consultees have raised any concerns with regard to either neighbourhood plan or to European obligations. I am satisfied that the submitted FNP is compatible with this aspect of European obligations."

140. The Claimant's first "error of fact" is that the SA did not mention the fact that Wicklesham Quarry was within the West Oxfordshire Heights CTA. It is true that that fact is not mentioned. But it is an omission, not an error of fact. It is necessary, however, to consider the legal significance of that omission.

141. The main aim within CTAs is to restore biodiversity at a landscape scale through the maintenance, restoration and creation of UK priority habitats. The West Oxfordshire Heights CTA extends to some 2,631 hectares. Included within it are areas notified as SSSIs, including Wicklesham Quarry which was notified for its geological interest. In addition to the management of geological interest in the area, the main aim of targeted conservation work in the area concerns the management of certain habitat types, such as lowland dry acid grassland. The CTA Statement records that "there are small remnant patches of acid grassland, sometimes with lichen heath, often associated with quarries. Although small and scattered, these areas often support an interesting invertebrate fauna." The target for that type of habitat was "management and restoration". The Claimant contended in her objections, which were before the Examiner, that Wicklesham Quarry was within a tetrad (an area of 2 km by 2km) that hosted this habitat type. While recognising that quarrying had removed much of the living plant biome associated with this tetrad from the Quarry base, she suggested that it could be restored, by using the substantial bunds around its edges, so that its biodiversity could reflect that of its surroundings with some modification.

142. When considering the complaint that the SA did not mention the fact that Wicklesham Quarry was within the West Oxfordshire Heights CTA, however, it is necessary first to identify the type of information listed in Schedule 2 to 2004 Regulations to which this complaint relates.

143. The information referred to in paragraph 1 of that Schedule comprises "an outline...of [the Plan's] relationship to other relevant plans and programmes".

144. In section 6.3, the SA sets out the framework set for the FNP in relation to biodiversity by other plans including the CTA. It makes plain at [7.3.5] that the plan area includes two CTAs and describes the types of habitat the West Oxfordshire Heights CTA include and the targets for them in the CTA statement (with a footnoted

hypertext link) as well as, at [7.3.2], the fact that it contains the geological SSSI at Wickesham Quarry). It also states (at [7.3.7]) that "there is a need to further support measures to help meet targets in the Conservation Target Areas". In my judgment such references plainly do provide an outline of the FNP's relationship to the West Oxfordshire Heights CTA.

145. The information referred to in paragraph 3 of Schedule 2 is "the environmental characteristics of areas likely to be significantly affected" and among the information referred to in paragraph 6 of that Schedule is "the likely significant effects on the environment...on issues such as (a) biodiversity.. [and] (e) flora".

146. Assuming that the Quarry is one of the areas likely to be significantly affected by the FNP, the relevant information is not its inclusion in CTA or the fact that it is an SSSI as such but such information about the environmental characteristics of the site as is reasonably required in order to identify, describe and evaluate the likely significant effects (including the effects on biodiversity) of implementing the plan and any reasonable alternatives taking account of the matters listed in regulation 12(3). In considering Wicklesham Quarry in particular in Appendix III, the SA understandably gives significant attention to the geological interest that warranted its inclusion as an SSSI but the SA also noted that its development had the potential to reduce the future availability of agricultural land to which it was due to be restored in an area classified as grade 2 agricultural land. As I have mentioned the approved restoration and after-care scheme was intended to establish grassland for sheep and cattle grazing and provided that "where it is appropriate suitable arable crops will be planted". The Claimant's substantive complaint is thus that the SA should have also included information about whether, or the extent to which, the Quarry will be likely to support lowland dry acid grassland with and without the development envisaged in Policy 4.5B which itself required "appropriate ecological mitigation and enhancement measures to be incorporated in the proposals". But Mr Eleftheriadis did not advance this complaint on that basis. It was advanced simply on the basis that the fact that the Quarry was in the CTA was not mentioned.

147. The second alleged "error of fact" is that the SA failed to report that the Quarry is a habitat for the Great Crested Newt, a European Protected Species under Schedule 2 to the Conservation of Habitats and Species Regulations 2010. Again, if anything, this is an omission, rather than an error of fact.

148. The planning permission granted in December 2015 in respect of the Quarry required compliance *inter* alia with the "2013 Great Crested Newt Refresher Surveys (enzygo 2013) dated 5 July 2013". This confirmed the presence of Great Crested Newt in two definable water bodies in the Quarry and envisaged that two ponds would be preserved in the restoration scheme with a 7m buffer around the pond margins and gently battered slopes away from the pond buffers. These ponds and the fenced buffer zones were shown on the approved site restoration plan.

149. The information referred to in paragraph 3 of Schedule 2 is "the environmental characteristics of areas likely to be significantly affected" and among the information referred to in paragraph 6 of that Schedule is "the likely significant effects on the environment...on issues such as (a) biodiversity..[and] (d) fauna".

150. The SA does not mention the presence of Great Crested Newts at Wicklesham Quarry. But whether it should have been depends on whether that information was reasonably required in order to identify, describe and evaluate the likely significant effects of implementing the plan and any reasonable alternatives taking account of the matters listed in regulation 12(3). One of those is the extent to which certain matters are more appropriately assessed at different levels in the decision making process in order to avoid duplication of the assessment. Given that Policy 4.5B required "appropriate ecological mitigation and enhancement measures to be incorporated in the proposals" for any employment uses on the site, in my judgment a reasonable authority could have thought that the assessment of whether such development would be likely to have any significant effect on any Great Crested Newt population which there may be after restoration activities at the Quarry are completed was more appropriately considered when proposals for any such development were made. This would not preclude the authorities and the public consulted raising the issue during the process of environmental assessment if they disagreed.

151. The third alleged "error of fact" in the SA is that it fails to discuss matters relating to Quarry Restoration and Biodiversity, making no reference for example, to the County Council's background paper on quarry restoration (April 2012) or to the habitat and species data of the Great Crested Newt Refresher Surveys (2013).

152. Again in any event these are omissions, not "errors of fact". The latter survey adds nothing to the previous alleged "error of fact" about Great Crested Newts. The background paper on quarry restoration outlines a scheme that had been set up by the County Council under which developers were asked to fund the management of any restored mineral site for nature conservation purposes for a minimum of 20 years after the five year after-care period. The funding arrangement is said to be discussed at pre-application meetings. There is no evidence that there was any such funding arrangement in place at Wicklesham Quarry when SA was issued (possibly because it was to be restored for agriculture). If there was no such arrangement, it could not be referred to.

153. More generally the SA plainly does discuss the restoration of the Quarry and biodiversity at Wicklesham Quarry, for example in Appendix III. Given that Policy 4.5B required "appropriate ecological mitigation and enhancement measures to be incorporated in the proposals" for any employment uses, a reasonable authority could have thought that the assessment of whether such development would be likely to have any significant effects on biodiversity after restoration activities at the Quarry are completed beyond those which were discussed was more appropriately considered when proposals for any such development were made. Again this would not preclude the authorities and the public consulted raising the issue during the process of environmental assessment if they disagreed.

154. The final alleged "error of fact" is that the SA failed to take into account the Local Plan 2011, considering only the emerging draft Local Plan 2031.

155. The SA which was issued in July 2014 recognised that the development plan included the Local Plan 2011 and that that Plan was to be replaced by the Local Plan 2031 (which was then expected to be adopted later in 2014). It understandably then said that the FNP would be prepared in the context of the Local Plan 2031. In my judgment that was sufficient to provide "an outline...of [the FNP's] relationship to"

those two plans, bearing in mind that, when an environmental report is submitted with a proposed neighbourhood plan, it must also be accompanied by a statement explaining how the proposed plan is in the general conformity with the strategic policies of the development plan: see regulation 15(1) of Neighbourhood Planning (General) Regulations 2012.

156. Having considered the four alleged "errors of fact" individually, it is necessary to consider whether such omissions as there were in the SA at which they were directed were such, that the SA cannot reasonably be described as an environmental report containing the information which, given the process of environmental assessment, any reasonable authority would have thought was reasonably required, taking account of the matters specified in regulation 12(3) of the 2004 Regulations, in order to identify, describe and evaluate the likely significant effects on the environment of implementing the plan and any reasonable alternatives.

157. In considering the answer to that question I have assumed in favour of the Claimant that one reasonable alternative would be the absence of a policy safeguarding the Quarry for employment uses.

158. In my judgment it cannot be said that the SA could not reasonably be described as such an environmental report. The SA deals with the FNP as a whole, not merely Wicklesham Quarry. No complaint is made of its content other than in respect of the Quarry. With respect to the Quarry it addresses what it considered to be the significant environmental consequences, for the purposes of deciding whether the site should be safeguarded for employment uses, if the quarry was restored for agricultural use (as it was to be) and if it was developed for employment uses. The assessment of the impact of development for employment uses on any priority habitat and population of Great Crested Newt that there may be once restoration activities at the Quarry are complete is a matter that it may not unreasonably been thought would be more appropriately addressed once it is known what the site will contain after such restoration activities have been completed and when any application for planning permission for any proposed development accompanied by proposals for ecological mitigation and enhancement measures are submitted. In my judgment the Examiner was entitled to find that "the information provided [in the SA] is succinct and proportionate to the FNP." But in any event, if there was any deficiency in the information supplied in the SA on such matters, in my judgment it did not mean that the SA could not reasonably be regarded as such an environmental report. They are deficiencies about the information relating to a particular site which could be remedied in the course of consultation, as the Claimant herself sought to do. This part of this ground on which judicial review is sought accordingly fails.

c. the alleged failure to consider reasonable alternatives

159. Mr Eleftheriadis also submitted that the SA was required to address all alternatives that are capable of meeting the relevant policy objectives, not a selection of such alternatives, and to give reasons for selecting and rejecting those it did: see *R (RLT Built Environment Limited v Cornwall County Council* [2016] EWHC 2817 per Hickinbottom J at [44]. In her grounds for seeking judicial review, the Claimant contended that the relevant alternative that had not been explored was that Wicklesham Quarry should not be allocated to employment use. In his skeleton argument Mr Eleftheriadis contended that the reasonable alternative that had not been

explored was that no additional employment sites, other than those identified in the emerging Local Plan, may be needed in the area of the FNP. During the hearing he appeared at different times to rely on each as an omission. In respect of each he relied on the fact that the District Council had seen no need to allocate further sites, and in particular no need to allocate the Quarry, for employment uses in its Preferred Options in 2009, in its Employment Land Review Update in 2013 and in the Local Plan 2031 adopted in December 2016. But, so he submitted, the SA takes it for granted, without providing any analysis, that more employment sites are needed in Faringdon: it only compares for "economy and enterprise" making the plan as a whole and not making it.

160. Ms Ornsby submitted that the reasonableness of any alternative will be informed by the objectives of the Plan. That has, as a central objective, making Faringdon more self sustaining, improving the balance to enable local residents to work close to where they live. In that context a "do nothing more scenario" was not a reasonable alternative, although it was considered. The Sustainability Analysis assessed the likely effects of developing and not developing the Quarry as one of several options and against the baseline "do nothing" scenario. Whether the District Council's allocation of land for employment was sufficient having regard to the objectives of the FNP was considered in the FNP's Evidence Base Review.

161. Regulation 12(2) of the 2004 Regulations requires an environmental report to identify, describe and evaluate the likely significant effects on the environment of reasonable alternatives taking into account the objectives and the geographical scope of the plan. It must include such of the information referred to in Schedule 2 to those Regulations, which includes "an outline of the reasons" for selecting the alternatives dealt with, as may reasonably be required for that purpose.

162. A reasonable alternative is one (a) that will, or sensibly may, achieve the objectives of the plan and (b) that is potentially environmentally preferable or equal: see *R (RLT Built Environment Ltd) v Cornwall County Council* [2016] EWHC 2817 per Hickinbottom J at [40]-[41], [46]. As Richards LJ stated in *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* [2015] EWCA Civ 681, [2016] PTSR 78, at [9], "the requirement to assess reasonable alternatives applies most obviously to matters such as the type of development proposed or the selection of areas for development...It can relate to the plan or programme as a whole or to specific policies within the plan or programme."

163. All reasonable alternatives, not merely a selection of them, have to be identified and assessed and an outline of the reasons for selecting them provided. But, as Richards LJ also found in *Ashdown Forest Economic Development LLP v Secretary of State for Communities and Local Government* (at [42]), however, "the identification of reasonable alternatives is a matter of evaluative assessment...., subject to review by the court on normal public law principles".

164. The starting point for considering what may be relevant alternatives is thus the objectives of the FNP. I have set in paragraphs [19]-[23] above, some of the statements in the plan about the anticipated growth in Faringdon's population, its vision for Faringdon as a sustainable town with a high degree of self containment and two of its objectives, namely, to:

> "• Ensure that the total number of jobs in Faringdon matches 38% - 44% of the working population of the Faringdon parish;
>
> • Allocate enough employment land to meet the requirements of at least 38% of the working population of the Faringdon parish within a 5 km radius of the centre of the town".

I have also set out references in the Plan to the analysis that the three sites that were to be allocated in the Local Plan 2031 would be insufficient to meet those objectives. (That analysis was supplemented when the FNP was resubmitted in 2015 by a revised Evidence Base Review which, among other things, criticised the two studies on which Mr Eleftheriadis relied.) As I have mentioned the conclusion in the FNP was that, given these objectives and analysis, each of the further four sites it identified for employment was "essential to the town's future employment development and must be protected for such growth."

165. Against this background the SA stated, when considering reasonable alternatives, that:

> "11.1.5 A central element of the FNP is a focus on the self-containment and economic and community vitality of Faringdon. To support this, it was considered by plan-makers that a range of potential employment sites should be put forward by the FNP over and above the strategic sites included in the Vale of White Horse Local Plan 2031 Part 1 (LPP1). A key element of the FNP preparation process has therefore been to identify potential additional sites in Faringdon which, in the period to 2031, may be appropriate for the development and/or intensification of employment uses.
>
> 11.1.6 Further to extensive consultation with the local community and stakeholders, and discussion within the FNP Steering Group, a 'long list' of sites was proposed for consideration through the FNP development process...
>
> 11.1.7 To inform the choice of sites to be taken forward in the draft plan, the relative sustainability performance of the eleven sites highlighted above were considered by the SA process as reasonable alternatives as it was not necessary to develop all the sites and therefore a choice between them was necessary.
>
> 11.1.11 Appendix III presents the detailed findings of the appraisal of the eleven sites proposed for employment uses outlined above. Each site has been appraised against the SA Framework."

166. The analysis in Appendix III considered for each site whether its development would have likely positive effect or likely adverse effect (without mitigation measures), or would have neutral or no effect or uncertain effects, on (a) air quality (b) biodiversity (c) climate change (d) historic environment and landscape; (e) land and soil resources; (d) water resources and flood risk (e) population and communities; (e) health and wellbeing; (f) education and skills; (g) transportation and (h) economy and enterprise.

It also provided a summary of such anticipated effects. Thereafter Table 11.1 in the SA identified which sites were to be taken forward in the FNP, and which were not, together with reasons for those choices.

167. The SA also considered what significant effects of the draft plan were likely to be assessed against the baseline identifying measures that might prevent, reduce or offset them. The baseline for economy and enterprise was making and not making the Plan.

168. Logically the first of Mr Eleftheriadis's contentions is that allocating no more sites for employment uses than the District Council proposed to do in the Local Plan 2031 was a reasonable alternative that could not reasonably not have been assessed. In my judgment this contention is flawed.

169. First, not allocating any further sites for employment uses was not something in the Town Council's view that would achieve its objectives. It was not a reasonable alternative, therefore, that required examination unless its view was one no reasonable authority could have held. Mr Eleftheriadis did not advance any such contention. In the Claimant's grounds, however, it was suggested that it was for the SA to address the conflict of opinion between the two councils over the need for additional employment sites. In my judgment the SA was not required to do that. But in any event the SA provided the reason why the SA looked at sites in addition to those envisaged in the Local Plan 2031, namely the assessment that more were needed to meet the objective of the FNP. It was not required to justify that reason. That justification was in fact provided in the draft FNP and in the Evidence Base Review (an earlier version of which was referred to in both the FNP and the SA).

170. Secondly the SA did assess the environmental effects of making the plan against a baseline that involved the allocation of no further sites for employment uses. Thus, if not allocating any further sites was a reasonable alternative, the likely significant environmental effects of it were assessed.

171. That is sufficient to dispose of this contention. But in my judgment it is plain that the overall information made available when the FNP was resubmitted enabled those consulted to ascertain what the justification for the alleged need to allocate more sites was in detail (both in the FNP and the revised Evidence Base review) and to see what the likely environmental effects of those allocations was assessed to be. Although it can always be said that more information could have been provided, in my judgment any contention that the Town Council provided insufficient information to enable an informed consultation to occur on the environmental and other aspects of the employment proposals would be devoid of any merit.

172. Mr Eleftheriadis's other main contention is that not allocating Wicklesham Quarry was a reasonable alternative that should have been identified and assessed. Given that sites in addition to those envisaged in the Local Plan 2031 were required, this contention might be either (a) that other sites should have been considered for allocation instead of the Quarry or (b) that fewer sites should have been allocated and that the Quarry was an allocation that should have been omitted.

173. Mr Eleftheriadis never suggested the first of these alternatives, understandably since the SA considered other sites and he had no criticism of the selection of the sites to be

considered or of the reasons for rejecting the ones that were not selected for allocation.

174. In my judgment the latter complaint, however, is equally unsustainable. The likely environmental effects of using the Quarry for employment uses as against its continued agricultural use was assessed in Appendix III to the SA. While it can always be said that further information could have been included in that assessment, in my judgment it cannot be said, if omitting the Quarry was a reasonable alternative, that no reasonable authority would have thought that it did not contain such information as was reasonably required, taking account of the matters specified in regulation 12(3) of the 2004 Regulations, given the process of environmental assessment to identify, describe and evaluate the likely significant effects on the environment of implementing Policy 4.5B and not doing so.

175. Mr Eleftheriadis also sought to suggest that the SA should have addressed the need for Policy 4.5B given the allocations envisaged in the Local Plan 2031 and the other allocations for employment uses in the FNP. He submitted that information ought to have been provided about the likely number of jobs the sites might support. In my judgment the SA did not need to do so. What an environmental report is concerned with are the likely significant environmental effects of what a neighbourhood plan proposes and of reasonable alternatives to it. It is not intended to be an exhaustive justification of whatever it contains. The process of environmental assessment is designed to contribute to the integration of environmental considerations into the preparation and adoption of plans. It is not intended to be a substitute for, or to provide an exhaustive source of considerations relevant to, decisions whether or not to adopt a plan. Moreover Mr Eleftheriadis's suggestion ignores what Policy 4.5B actually involves, namely safeguarding the Quarry for employment uses following completion of the restoration activities on the site and only releasing it for such uses "providing that there is a demonstrable need" and that "no other suitable sites closer to the town centre are available".

d. conclusion

176. The complaint that the SA cannot reasonably be described as an "environmental report" that complied with the requirements of the SEA Directive and the 2004 Regulations must according be rejected.

RELIEF

177. For the reasons given above, only one of the complaints made by the Claimant about the FNP has merit. Neither the Examiner nor the District Council were lawfully satisfied that the FNP satisfied the basic condition that the making of the plan was in general conformity with the strategic policies contained in the development plan (specified in paragraph 8(2)(e) of Schedule 4B to the 1990 Act), since they erroneously considered that Policy 4.5B was not in conflict with Policy GS2 of the Local Plan 2011.

178. Section 31(2A) of the Senior Courts Act 1981 provides, however, that:

> "The High Court—

> (a) must refuse to grant relief on an application for judicial review,
>
> ....
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

179. In this case, while I am not satisfied that the Examiner and the District Council would necessarily have concluded that the FNP was in general conformity with the strategic policies of the development plan had they realised that Policy 4.5B of the FNP conflicted with Policy GS2, again for the reasons given above, it appears to me to be highly likely that the Examiner and the District Council would have done so. In those circumstances it appears to me to be highly likely that the outcome for the Claimant would not have been substantially different if the legal error I have identified had not occurred. In those circumstances I must refuse relief on this claim for judicial review.

180. I have had no regard to the policies in what is now the adopted Local Plan 2031 in reaching these conclusions about general conformity with the strategic policies in the development plan and in particular the conflict between Policy 4.5B and Policy GS2. The Local Plan 2031 moves the development boundary of Faringdon to the A420 opposite the Quarry, allocating the land for housing and some employment, and Core Policy 28 indicates that new employment will be supported on unallocated sites in or on the edge of the built up area of settlements such as Faringdon provided that the benefits are not outweighed by any harmful effects. Policy 4.5B in the FNP may be, as Ms Ornsby suggested, compatible with the equivalent strategic policy in what is now the adopted Local Plan and that would certainly be relevant if the Policy had to be reconsidered. But it is irrelevant to my decision on the denial of relief in accordance with section 31(2A) of the 1981 Act, whatever its significance had it otherwise been possible to grant relief.

181. Ms Ornsby also submitted, however, that relief should in any event be refused as no claim for judicial review had been brought, or could now be brought in accordance with section 61N(1) of the 1990 Act, questioning the District Council's decision under section 38(4) of the 2004 Act to make the FNP. Accordingly, so she submits, no purpose would be served by quashing the decisions impugned in this claim. The FNP cannot be challenged in legal proceedings and it will remain part of the development plan, regardless of any order quashing those decisions.

182. Mr Eleftheriadis submitted that, if the decision to accept the modifications and to hold the referendum on the FNP were flawed, that necessarily meant that the referendum and the FNP could not lawfully have been held and made. Accordingly, so he submitted, in such a case it followed, as Holgate J had observed in relation to the referendum in *R (Maynard) v Chiltern District Council* supra at [114], that they should be quashed. He contended that Ms Ornsby's submissions failed to distinguish between the validity of a decision and the validity of a document such as a neighbourhood plan. There is no rational point in requiring a claimant seeking to impugn a plan to bring more than one judicial review.

183. When considering these submissions, the starting point is section 61N of the 1990 Act. That section is set out in paragraph [14] above. It governs when proceedings may be entertained by a court for questioning certain decisions. Each sub-section provides a "window" within which any claim questioning a decision to which it relates must be brought if it is to be entertained by the court: see *Enterprise Inns plc v Secretary of State for the Environment, Transport and the Regions* (2001) 81 P&CR 18; *R (Hillingdon LBC) v Secretary of State for Transport* [2017] EWHC 121 (Admin), [2017] 1 WLR 2166. Such a limitation is not necessarily inconsistent with EU law (where relevant) provided that it meets the principles of equivalence and effectiveness. Ms Ornsby is thus correct when she submits that this claim was not brought under section 61N(1) in respect of the decision to adopt the plan under section 38A(4), as it was not brought within the "window" for doing so provided by that subsection, and that a court cannot now entertain proceedings for questioning the District Council's decision to adopt the FNP in accordance with the time limits prescribed in that subsection. In my judgment it follows that the court may not entertain any questioning of that decision in these proceedings for judicial review.

184. It is, of course, possible in theory to distinguish a decision to do something from what that decision does. But in my judgment such a distinction makes no sense in terms of section 61N(1) of the 1990 Act. In this case, however, the decision to make the plan makes it. Moreover, if such a distinction was drawn, a claim for judicial review to question the decision to make the plan could only be brought within the six week period specified in that sub-section but a claim for judicial review to question the validity of the plan could be brought outside that period on the same grounds. That would defeat the evident intention to limit the period within which the legality of the plan made by the decision of the local planning authority may be questioned in proceedings that the court may entertain.

185. In my judgment it follows that any contention that the decision to adopt the FNP was unlawful, and thus that plan was not lawfully made, cannot be entertained in this claim for judicial review and accordingly that no order quashing the FNP could be made in these proceedings.

186. Although Holgate J appears to have adopted a different approach in *R (Maynard) v Chiltern District Council* supra, there appears to have been no argument on the point before him and no reference to, or analysis, of the statutory provisions in his judgment on this point. I recognise, however, that this analysis of section 61N of the 1990 Act is one that may have unfortunate consequences for an unwary claimant that it is hard to imagine that Parliament intended. For that reason I am reluctant to reach the conclusion that the legislative scheme appears to require for the reasons I have given. But ultimately Parliament's intention must be discerned from what it has enacted, not from what I might think it might have been sensible for Parliament to enact. This conclusion undoubtedly serves to indicate, however, the importance for a claimant, who brings proceedings for questioning any earlier decision or the referendum, of obtaining interim relief or of bringing a further claim to question the decision to make the neighbourhood plan within the period prescribed for bringing such proceedings if a local planning authority proceeds to do so.

187. The question in this case, however, remains whether the fact that a court may not now entertain proceedings for questioning a decision to make a neighbourhood plan makes the grant of relief to which a claimant would otherwise be entitled in a claim brought

in accordance with section 61N(2) or (3) of no practical purpose such that it should be refused as a matter of discretion.

188. Given that I have decided that relief must be refused in any event given section 31(2A) of the Senior Courts Act 1981, the answer to that question is not necessary for the disposal of this claim. But, had it been necessary to determine it, I would have been minded to find that making a declaration that some part of a neighbourhood plan was unlawful or that the District Council were not lawfully satisfied that the Plan met some requirement could serve to uphold the rule of law and it might have practical significance in subsequent consideration of what weight should be attached to certain provisions in it, even if the validity of the FNP or any part of it could not be questioned.

189. Whether the validity of a neighbourhood plan or any part of it could be questioned otherwise than in proceedings in court is a more difficult question. If it can be, section 61N(1) would not serve to protect a plan from being questioned outside the period it specifies and that that might deprive the enactment of some effect. But section 61N only constrains the proceedings that a "court" may entertain. It says nothing about what questions planning authorities may entertain when determining planning applications. Moreover section 61N may be contrasted with section 113 of the 2004 Act (which does not apply to a neighbourhood plan). That provides that a development plan document "must not be questioned in any legal proceedings" except insofar as is provided by that section. That provision (which is arguably wider as such proceedings would include those before a tribunal) may not itself exclude planning authorities entertaining questioning of the validity of a plan[25]. Given that there is no need to answer this question, however, and in the absence of full argument, I prefer to express no view about its answer.

CONCLUSION

190. For the reasons given, although I have found one of the Claimant's complaints well founded, relief must be refused in accordance with section 31(2A) of the Senior Courts Act 1981.

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[25] As David Widdicombe QC stated in *Westminster City Council v Secretary of State for the Environment and City Commercial Real Estates Investments* [1984] JPL 27 when considering section 242 of the Town and Country Planning Act 1971 (which became section 284 of the 1990 Act). The 1990 Act distinguished between "questioning in any legal proceedings" (referred to in section 284) and something being "questioned in any proceedings" (in section 285) and calling something into question "in any legal proceedings, or in any proceedings under this Act which are not legal proceedings" (in section 286).