

1. First and Second Defendants

2. Steven Opacic

3. First Witness Statement

4. Exhibits SO1-SO20

5. Dated 7 June 2013

IN THE HIGH COURT OF JUSTICE

Claim No: CO/5057/2013

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

ZURICH ASSURANCE LTD

Claimant

and

(1) WINCHESTER CITY COUNCIL

(2) SOUTH DOWNS NATIONAL PARK AUTHORITY

Defendants

WITNESS STATEMENT OF STEVEN OPACIC

on behalf of

THE FIRST AND SECOND DEFENDANTS

I, STEVEN OPACIC, Planning Officer, of City Offices, Colebrook Street, Winchester, Hampshire, SO23 9LJ, WILL STATE as follows.

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1. Introduction to the Witness

- 1.1. My name is Steven Opacic. I have a Diploma in Town and Country Planning (with Distinction) and am a Member of the Royal Town Planning Institute. I have been employed by the First Defendant, Winchester City Council ("the Council") for over 31 years, in both the Forward Planning and Development Control Teams. I am the Council's Head of Strategic Planning and led the Team responsible for producing the Winchester District Local Plan Part 1 – Joint Core Strategy ("the JCS"). I am duly authorised by the Council and by the Second Defendant, the South Downs National Park Authority ("SDNPA") to make this Witness Statement on their behalf.
- 1.2. I have led the production of the current JCS and previous Local Plans within the District and have extensive experience of the development of Local Plans in Winchester District and involvement in Structure Plans and the Regional Spatial Strategy affecting the District. I have a very good working knowledge of the District, of the policies applying, and of the development of planning policies in the area. I am also familiar with relevant past and present Government advice, including the National Planning Policy Framework.
- 1.3. I led the Council's Team of planning officers, consultants and other professionals that developed the JCS from its initial preparatory stages starting in 2006 to its adoption in March 2013. This included giving evidence at the majority of examination hearing sessions during October and November 2012, including all the topics for which Barton Willmore were involved.
- 1.4. I have read the Witness Statement of Robin David Shepherd ("Mr Shepherd") of Barton Willmore made on 9 March 2013. Mr Shepherd produces a series of documents in his Exhibit "RS1". These include most of the relevant documents and I refer to these where possible, rather than duplicating them. Where I call upon additional documents I include them as my own exhibits (SO1 – SO20). I confirm that the contents of this Statement are true where they relate to matters within my own knowledge and in all other respects are

true to the best of my knowledge, information and belief. I have set out the contents of this Statement above.

2. Summary

2.1. The Council contests the Claim on the following grounds, which are amplified in the subsequent parts of this Statement:

- i. The Claimant has no locus/status in the Local Plan process and cannot, therefore, be a *'person aggrieved'* by its adoption. Whilst the Claimant made some initial representations at earlier stages of the plan-preparation process, it elected to make no representations at the key stage when the JCS was published as the Pre-Submission JCS. It is the representations made at this stage which are then to be considered in the Examination. The Claimant made no such representations and took no part in the Examination. Moreover, the Claimant has not taken advantage of the numerous opportunities to promote its proposal for development at Micheldever Station at any of the proper stages during the JCS's production, including the development of housing requirements and the development strategy. Barton Willmore participated in the Examination on its own behalf and did not purport at any stage to be representing the Claimant. In any event Barton Willmore has not brought any legal challenge to the adoption of the JCS. Any grievance the Claimant may have results from its own failure to engage in the process either openly or at all;
- ii. The housing provision in the adopted JCS is in general conformity with the South East Plan and met the legal requirements that were in place at the time of adoption. In producing the JCS the Council produced extensive technical evidence and considered all the reasonable alternatives in coming to a reasoned conclusion on the scale of 'objectively assessed need' for housing. It also had regard to the putative revocation of the South East Plan in 2010 and to the advice published at the time, as well as the outcome of subsequent decisions of the Courts in relation to challenges by Cala Homes.

The JCS was subject to extensive consultation and testing, including at the Examination, and Barton Willmore have raised no material new

points beyond those put in evidence to the Examination. The Examination Inspector's Report illustrates that he considered the evidence, including on any alleged 'backlog', and has reached a reasoned conclusion which takes account of the (then) requirement for general conformity with the South East Plan. The Inspector did not proceed on the basis of a "*methodological error*" but took into account the evidence in the housing trajectories presented to him which showed the South East Plan's requirements would be met. In any event, the South East Plan has now been revoked, and with it the legal requirement to test the JCS's conformity, making this ground of the claim purely academic.

- iii. The Council has met the legal requirements under the Duty to Co-operate. Most of the alleged shortcomings in the Claimant's statement relate to events that took place before the Duty came into effect on 15 November 2011. The Council produced a Duty to Co-operate statement which described the actions it had taken to cooperate with various bodies, including neighbouring authorities, even though there was no formal Duty at the time. Even if these actions were inadequate (which the Council disputes), they derive from a period when there was no Duty to Co-operate. The Council sought and took account of advice as to best practice on this newly-introduced requirement. Once the Duty came into effect it applied only in so far as the JCS plan-preparation was concerned with "*strategic matters*" with cross-boundary implications. All of the cross-boundary implications were fully considered via the South East Plan and were taken forward by the Council in its joint working with the South Downs National Park Authority, and in its participation in the Partnership for Urban South Hampshire. Cross-boundary working on "*strategic matters*" was not required beyond this in order to satisfy the Duty. The Inspector specifically considered the question of whether the Duty had been met and, based on the evidence and legal requirements, it was reasonable for him to conclude that it had.

iv. The Council has commissioned and published Sustainability Appraisals and Strategic Environmental Assessments of the JCS at every key stage of its development. The results of this have been justified and were taken into account in developing the Plan. They were, however, not the only factor in producing the Plan and were related to the level of detail of the Plan and the stage that it had reached, as required in legislation. In relation to the testing of alternative levels of housing provision, the SA/SEAs reached entirely reasonable conclusions for the 'strategic' level of the Plan and there was also considerable technical evidence, consultation and testing of the Plan's provisions in this respect. The Inspector was entitled to come to the reasoned conclusion that the requirements for SA/SEA had been met and that the changes he proposed fell within the scope of assessments that had already been undertaken. The Inspector was clear that he found the Plan's overall strategy sound and that the increase in housing provision that he proposed was within ranges that were either already in the Plan's policies or which had been anticipated.

2.2. Accordingly, the Council considers that the Claim is unreasonable as the Claimant has no basis for claiming to be a 'person aggrieved'.

2.3. In any event, the procedures up to and including the adoption of the Plan were all carried out lawfully and the adoption of the JCS was patently within the powers of the adopting Authorities.

3. Background to Micheldever Station Market Town Proposal

- 3.1. The Claimant includes a very brief and selective section in relation to Micheldever Station and the Claimant's aspirations for the development of 12,000 dwellings there. It is important that the Court understands that this proposal has a long history and has been considered on numerous occasions through the formal plan-making process. It has been rejected at every stage, including during the development of the South East Plan. Whilst it is not for the Court to assess the planning merits of the Claimant's continued aspirations, some understanding of the history is necessary in order to put the events in their proper context. The history is also relevant to the Claimant's decision not to promote its aspirations for the land at Micheldever at any stage of the JCS plan-making process, and to its decision not to participate once the JCS reached the formal Pre-Submission stage.
- 3.2. The proposal for a Micheldever Station new settlement was first put forward by Eagle Star Estates for consideration as part of the development of the Hampshire County Structure Plan during the late 1980s and early 1990s. Its promoters euphemistically named it the Micheldever Station Market Town (MSMT) and vigorously promoted the proposal (for 5,000 dwellings) at the Examination in Public of the Hampshire County Structure Plan in 1991. The proposal was rejected by the Examination in Public (EIP) Panel, which concluded that there was no requirement for a new settlement. The Secretary of State endorsed this view and the proposal was not, therefore, included within the Structure Plan, which was adopted in March 1994.
- 3.3. The proposal was again promoted by Eagle Star in relation to the Hampshire County Structure Plan Review during the late 1990s. On this occasion the MSMT proposal was for 3,000 dwellings and was again promoted at the Examination in Public into the Structure Plan Review, in 1996. The Examination in Public (EIP) Panel considered that the key issue was how to accommodate the development needed in association with the growth potential of Winchester. The Panel recommended in its report that the County Council should consider the alternative options of a new settlement at Micheldever Station of 3,000 dwellings, or an urban extension of 3,000

dwellings at Winchester. There was further assessment and consultation on these options and the adopted Structure Plan rejected development at Micheldever Station and included a series of 'strategic reserve site' allocations, one of which was for major development to the north of Winchester (now a JCS strategic allocation and with planning permission). The Structure Plan Review was adopted in March 2000.

- 3.4. The MSMT was again promoted by Eagle Star through the **South East Plan**, for a new settlement of 12,500 dwellings. The Examination in Public (EIP) Panel's report shows that full consideration was given to this option, but concludes by listing various important reasons why such a proposal would not be appropriate, sustainable or consistent with the Plan's strategy (paragraph 26.33). The Panel recommended in its report that a new settlement at Micheldever Station should not be included in the South East Plan - see the Claimant's Exhibit RS1 / Vol.9 / paragraphs 26.32-26.34 (my underlining):

"Micheldever Station

26.32 A proposal for Micheldever Station Market Town was put to the EIP for a new community of about 12,500 homes, employment, shopping, community and other facilities based around Micheldever Station and the existing settlement. Micheldever is to the north of the M3 motorway, roughly mid-way between Basingstoke and Winchester. Notwithstanding its location and its rail station, it is a relatively remote rural area with very few facilities for the existing population.

26.33 A new settlement proposal at Micheldever has been promoted by developers since the 1980s and was considered at the Hampshire County Structure Plan 1996-2011 Review EIP. Although the Panel recommended it as a preferred development option for 3,000 dwellings, it was not included in the Structure Plan when it was adopted in 2000. The scale of development now proposed is more than four times greater and in our view the policy context is also significantly different because:

- much greater potential for delivering the required housing has been identified in the region's urban areas, lessening the need to consider new settlements;
- the sharper focus strategy of the draft Plan would not support a new settlement in a remote rural area of Central Hampshire;
- we are satisfied that the sharper focus strategy has emerged from a sound evaluation of the alternative options;
- Micheldever would have a significant impact on the WCBV [Western Corridor Blackwater Valley] and S Hampshire sub-regional strategies by diverting resources away from the sub-regions and undermining the regeneration aims for South Hampshire;
- the proposal would be unable to make any significant contribution to meeting the pressing need for new housing for many years;
- compared with the other options for SDAs in South Hampshire and urban extensions to Basingstoke and other towns in WCBV, together with maximising urban potential, it would offer insufficient locational choice; and
- the most likely scenario is that it would become a focus for long-distance commuting, not a sustainable community.

26.34 Taking all of these factors into account, we find insufficient justification for the inclusion of Micheldever Station Market Town in the regional strategy."

- 3.5. The Panel Report was submitted to the Secretary of State in August 2007 and the Secretary of State published Proposed Modifications to the Plan in 2008. These accepted the Panel's recommendations in relation to Micheldever Station, which was not therefore included in the Modifications.
- 3.6. It is notable that nowhere in Mr Shepherd's extensive description of the evolution of the South East Plan is there any mention that MSMT was specifically considered as part of the process and convincingly rejected by the EIP Panel. This illustrates the Claimant's very selective approach to the

presentation of evidence, which I further demonstrate in subsequent parts of my Statement.

- 3.7. Following representations from the City Council, the Secretary of State accepted that the Proposed Modifications' dwelling increase resulted from a misinterpretation of the EIP Panel Report. Accordingly, the South East Plan was adopted in May 2009 with a District requirement of 12,240 dwellings (6,740 in PUSH and 5,500 in the rest of the District) and with no provision for development of MSMT.
- 3.8. Despite the Panel's conclusive rejection of MSMT in its August 2007 Report, Eagle Star Estates submitted an application (December 2007) in response to the Government's invitation to suggest 'Eco Towns'. This was again for a new community of 12,500 dwellings at Micheldever Station. Not surprisingly, given the clearly unsustainable nature of the scheme, as noted by the EIP Panel, this proposal was not shortlisted as a potential Eco Town and was rejected by the Government in April 2008.
- 3.9. In the meantime, work on the JCS had started with a 'front-loading' consultation aimed at identifying issues and options in early 2007. The Council was aware from its involvement in the Structure Plan and the South East Plan that Eagle Star was promoting MSMT. This was referred to in the Issues and Options version of the JCS, published in December 2007, but was rejected as a 'reasonable alternative' as it had by then been dismissed by the South East Plan EIP Panel and would exceed the whole of the housing allocation recommended for Winchester District by the Panel - see the Claimant's Exhibit RS1 / Vol. 2 / Tab 11/ pages 21-22 (my underlining):

"These factors need to be considered against the challenges expressed in the South East Plan primarily in relation to the need to provide sites for over 12,000 dwellings in the next twenty years. The spatial strategy proposed in the South East Plan places an emphasis on the existing urban areas with the identification of regional hubs to be the focus for growth. Whilst none of the settlements within the District have been recognised in the South East Plan as being of strategic importance, the role of Winchester Town is specifically

mentioned as expecting to make a wider contribution to the regional strategy. Indeed the strategy proposed below reflects the spirit of the South East Plan, accordingly we have not included options that would be considered contrary to the aims of this spatial strategy.

This includes any reference to proposals at Micheldever Station for a new settlement of some 12,500 dwellings, which not only was rejected by the South East Plan Panel Inspectors, but would exceed the whole of the Winchester District housing provision over a twenty year period. Consequently this is a matter to be considered and determined at the regional level rather than through this Core Strategy.”

- 3.10. The South East Plan Panel Report was subsequently endorsed in relation to Winchester District through the adoption of the Plan in 2009. It is, therefore, clear that the nature and history of the MSMT is such that no Council or Inspector could possibly conclude that a JCS that contained it would even approach conformity with the South East Plan.
- 3.11. It is important to bear this in mind, given the importance the Claimant attaches to SE Plan conformity. The non-conformity alleged by the Claimant for the JCS (less than 600 dwellings, even if it were appropriate to roll forward the SE Plan requirement, which as I later explain is not correct) is negligible in comparison with the severe conflict that its own ‘solution’ would result in, MSMT having been specifically rejected by the Secretary of State, being in conflict with the ‘urban centred’ approach of the SE Plan, and amounting to more than the whole housing allocation for Winchester District.

4. Locus/Status of the Claimant

- 4.1. The Council challenges the suggestion at paragraph 22 of the Grounds of Challenge ("the Grounds") that the Claimant is a *'person aggrieved'*.
- 4.2. The Grounds assert, at paragraph 4, that the Claimant owns the freehold of land in the Council's area comprising the Sutton Scotney Estate, and that it has development aspirations in relation to this land. Mr Shepherd refers, at his paragraphs 5 and 6, more loosely to land "*owned and controlled*" by the Claimant. It is unclear from the evidence presented by Mr Shepherd what the Claimant's land interest is or the precise area to which it relates.
- 4.3. Given this uncertainty, the Council has undertaken Land Registry searches of the land it understands to comprise the Sutton Scotney Estate to establish to ownership position. This shows that the Claimant owns an area of land in the vicinity of Micheldever Station. The title plans are extensive but in broad terms the title embraces a large area of farm land between the A33 and the A303 from Micheldever Station in the north, southwards to South Wonston. The small village of Micheldever is surrounded by the Claimant's land.
- 4.4. Whilst the Claimant does own land within the JCS area, I do not accept that that fact alone is a sufficient basis to make the Claimant a "*person aggrieved*". The Council's administrative area is extensive, covering some 66,107 hectares (or 225 square miles) (Exhibit RS1/Vol. 6/Tab 13/p24). All of that land is obviously owned by somebody. There are many agricultural estates in the District because it is a largely rural area, and some are considerable in extent. The JCS does not make any particular land use proposals for the Claimant's land. Nor is that land located close to any area of proposed significant development which might potentially impact on the Claimant's land. There is nothing in the JCS to prevent or inhibit the continuing use of the Claimant's land for its present agricultural purposes. Any development proposals will fall to be considered in the light of the policies of the JCS (and any relevant saved Local Plan policies), as would be the case for any other land within the District.

- 4.5. In so far as the Claimant identifies any connection between the JCS and its land, the only points made are (i) that the Claimant "*intends*" to secure housing development on all or part of its land (paragraph 3 of the Grounds) and (ii) if the JCS stands "*any planning application at the Micheldever Station site*" would fall to be assessed against the adopted JCS (paragraph 4 of the Grounds). Thus, the Claimant is in exactly the same position as any other landowner in the Council's district with development aspirations. However, that is insufficient to make the Claimant a "*person aggrieved*". To be properly aggrieved by the content of the JCS the Claimant needs to have participated in the processes for its production, and to have expressed its concerns in that context, and to have put forward its land as part or all of the suggested solution to those concerns. What is striking about this case is that the Claimant has done no such thing.
- 4.6. The JCS process started in late 2006 and the Council has undertaken numerous consultation processes through which the Claimant could have promoted MSMT or raised its concerns about the housing strategy of the JCS. These include consultations specifically on the level of housing and other development which should be planned for once the long-anticipated revocation of the South East Plan took place, and on the development strategy. Government advice is clear that planning should be plan-led and that residents and businesses need to get involved in the process.
- 4.7. In 2007 the Council held a series of community workshops and stakeholder events across the District, together with a questionnaire and web-based publicity. The Council has no record of any involvement by the Claimant in these events or activities. The first consultation stage for the JCS was the publication of the Core Strategy Issues and Options Paper in December 2007 (Exhibit RS1/Vol. 2/Tab 11). This invited responses in the period up to 15 February 2008.
- 4.8. The Claimant did respond to this consultation via a representation from its agents, Cluttons LLP, as set out in a letter dated 13 February 2008 (Exhibit SO1). This referred to the Claimant having land holdings "*in and around the villages of Sutton Scotney and Micheldever*". The representation queried the

approach to identifying the settlement hierarchy, and argued that there could be scope for “sustainable” growth at some rural villages. It also suggested that more should be done to provide for affordable housing, including allowing market housing on rural exception sites. No suggestion was made that a large scale release of land should be made involving the Claimant’s land.

4.9. Barton Willmore also made representations in response to the Issues and Options consultation. This was in a letter dated 14 February 2008 (Exhibit SO2) on behalf of clients identified as Eagle Star Estates. The representation sought to promote MSMT via the then Government’s eco-towns initiative and sought the withdrawal of the Issues and Options Paper and that the plan preparation process be “*put on hold until, at least, the SEP is adopted.*” There was nothing in this representation to indicate that Barton Willmore was acting for anyone other than Eagle Star Estates, or that its representations were being made on behalf of the Claimant (which was separately represented by Cluttons LLP).

4.10. As a result of these representations, the Claimant was recorded on the Council’s database and was consulted on subsequent iterations of the JCS. The same was true for Eagle Star Estates. In May 2009 the Council wrote to the Claimant (via its agent Cluttons LLP) to invite it to comment on the Preferred Option of the JCS (letter and mailing list provided at Exhibit SO3). Responses were sought by 3 July 2009. No response was submitted by the Claimant. Once on the mailing list the Claimant’s agent Cluttons LLP, and Barton Willmore would have been notified of all future formal consultation stages.

4.11. In October 2010 the Council launched its “Blueprint” consultation on how to identify a locally-derived housing need in the wake of the then abolition of the South East Plan. No response was submitted by the Claimant.

4.12. In 2011 the Council consulted on “Plans for Places”. This was a consultation on the level of housing provision that should be included in the JCS, and it put forward various scenarios to identify a locally-derived level of housing need. The consultation took place between June 2011 and August 2011.

Representations were submitted by the Claimant acting through its agent, Cluttons LLP (Exhibit SO4) on 8 August 2011. The first representation suggested that the overall level of housing provision was insufficient and that the spatial distribution relied too much on Winchester itself. The second representation sought a wider distribution of growth to other towns and villages. The third representation concerned the appropriate approach to identifying growth at rural villages. There was no suggestion in any of those representations that the Claimant considered its land should be identified for a large scale release of housing land.

4.13. Throughout all of the subsequent stages of the JCS preparation no further representations were submitted by the Claimant, either in its own name or by agents stating that they were acting on the Claimant's behalf. Thus, the only representations made by the Claimant to the whole of the JCS process were the letter of 13 February 2008 at the Issues and Options stage and the 3 representations in August 2011 in response to Plans for Places. The Claimant elected not to participate in any of the subsequent stages. In particular, the Claimant did not make any representations when the Pre-Submission JCS was published for representations to be made in March 2012. This is a key stage of plan-preparation because it is the representations made at this stage which are considered as part of the Examination by the independent Inspector. The Inspector has no obligation or responsibility to consider the consultation responses made at earlier stages of the process. Those earlier responses are, of course, considered by the Council in preparing the Pre-Submission JCS, but the Examination relates to the JCS as submitted and not to prior iterations of it. Any professionally advised landowner would be well aware of this and of the importance of making representations in response to the Pre-Submission JCS, if it still has outstanding concerns.

4.14. However, the Claimant made no such representations and therefore there were no representations from the Claimant to be referred to the Inspector for him to consider as part of his Examination of the JCS. Nor did the Claimant submit any representations in response to the Proposed Modifications published on submission of the JCS in June 2012 or the Proposed Further

Modifications in December 2012. Nor did the Claimant participate in any of the hearing sessions that were held by the Inspector as part of the Examination. The Claimant's absence from the whole of the Examination process was clearly a deliberate decision on its part and means that it cannot now claim to be a "person aggrieved" by the outcome of that process.

- 4.15. Barton Willmore did not have further involvement in the JCS between their letter of 14 February 2008, written on behalf of Eagle Star Estates, and commenting on the Pre-Submission Plan in March 2012. No further representations were made on behalf of Eagle Star Estates but Barton Willmore was informed at each consultation stage because it was already on the Council's database. Barton Willmore did not participate in the consultations stages that took place between 2008 and 2011 but Mr Shepherd became the Barton Willmore contact in December 2011 (in place of Mr Surtees who had submitted the letter of 14 February 2008).
- 4.16. Barton Willmore submitted a series of representations in March 2012 to the Pre-Submission JCS (Exhibit RS1/Vol.6/Tab 40). Whilst Mr Shepherd completed the "Agent's Details" of Part A of the standard representation form, the only organisation he then identified as making the representation was "Barton Willmore". No indication was given that Barton Willmore was acting on behalf of clients, let alone that it was acting for the Claimant. Indeed, the content of the representations made it clear that they were being made by Barton Willmore on its own behalf.
- 4.17. In this connection I draw attention to the Barton Willmore covering letter dated 12 March 2012 (in the same Exhibit) which states (p1) *"Our response is provided on the official response forms (see attached). In addition, and in support of our response to the JCS, Barton Willmore has produced a report 'Winchester District-wide Housing Assessment' (March 2012) which provides an up-to-date assessment of Winchester District's future housing requirements (see attached)..."*, (p2) *"To set the context for Barton Willmore's objection to the JCS..."*, (p3) *"Of particular relevance to Barton Willmore's response to the JCS..."*, (p7) *"Barton Willmore wishes to see economic growth delivered..."*, (p7) *"Barton Willmore considers the JCS to be*

unsound..., (p7) *"We consider Barton Willmore has legitimate concerns over the contents and direction of the JCS..."*, (p8) *"We trust that Barton Willmore's response to the draft Core Strategy will be taken into consideration..."*.

- 4.18. I also refer to the following parts of the representations: Box 6 (p10) *"Barton Willmore's main objection to the JCS is..."*; Box 6 (p11) *"To explain in greater detail Barton Willmore's objection..."*; Box 7 (p13) *"Barton Willmore considers the JCS to be unsound..."*; Part B (p14) *"We consider that Barton Willmore has legitimate concerns over the contents and direction of the JCS and we are well placed to make an essential contribution to the Examination Process...Barton Willmore has extensive experience in contributing to Inquiries and Examinations..."*
- 4.19. The representations attached the Barton Willmore report, "Winchester District-Wide Housing Assessment", which stated that *"This report has been prepared by Barton Willmore..."* (paragraph 1.1, p24), *"This assessment needs to be read together with Barton Willmore's general response to the Core Strategy Pre-Submission Draft housing requirements"* (paragraph 1.2, p24), and *"This report also informs Barton Willmore's consultation response to the current public consultation exercise being carried out by Winchester City Council in respect of its Pre-Submission Local Plan Part 1- Joint Core Strategy"* (paragraph 8.1, p54). Thus, this supporting report confirmed, as did the covering letter, that Barton Willmore was not putting forward representations on behalf of others but was acting in its own name and on its own behalf and in support of what it regarded as its own *"legitimate concerns"* about the JCS.
- 4.20. In September 2012 I received a letter dated 5 September 2012 from Mr Shepherd (Exhibit RS1/Vol.6/Tab 41). This referred to Barton Willmore writing *"on behalf of clients of Barton Willmore"* but did not identify any clients and made no mention of the Claimant. Given this lack of clarity, at the Examination hearing session on 30 October 2012 I commented in my opening remarks in relation to Issue 1 (Strategy/Vision/Sustainability) on the fact that Barton Willmore had not stated who, if anyone, they were acting for. This led to an oral response from Mr Shepherd that Barton Willmore was representing a *"consortium of developers"*. No other details were provided and there was

no indication that Barton Willmore was acting for the Claimant (which is a single landowner rather than a developer or group of developers). At no stage did Mr Shepherd indicate that the Barton Willmore representations should be seen in the context of the release of land at Micheldever, whether for the MSMT or otherwise.

4.21. I note that Mr Shepherd states at paragraph 5 of his Statement that he has been advising the Claimant on development opportunities at Micheldever Station "*for the past 18 months*". This would imply that Mr Shepherd has been advising the Claimant since about December 2011. However, at no stage in that period until the bringing of the present legal action has Mr Shepherd seen fit to inform either the Council or the JCS Examination Inspector that his (and his firm's) involvement in the JCS should be understood as being on behalf of the Claimant.

4.22. For whatever reason the Claimant has deliberately eschewed any overt involvement in the plan-making process. Whilst Barton Willmore has been involved, no legal challenge has been brought by Barton Willmore. Barton Willmore has never claimed to speak on behalf of the Claimant at any stage of the JCS process, despite having the opportunity to volunteer this information if it so wished at the Examination. I cannot therefore accept that the Claimant, which has stood aside from engagement in the plan-making process, is a body which can be properly regarded as a "*person aggrieved*" by the processes resulting in the adoption of the JCS.

National Planning Policies

4.23. Although the Claimant quotes extensively from the NPPF, this was not in existence for the majority of the JCS plan-preparation period. This is another example of the Claimant's selective approach and, rather than seek to retro-fit the process to later guidance, I also consider the guidance that was extant when the JCS was being prepared, principally Planning Policy Statement 12: Local Spatial Planning (PPS12). The Claimant's Statement does not even mention PPS12 or any others of the suite of Planning Policy Statements and Guidance Notes (PPSs and PPGs) in place prior to the NPPF, at the time

when the JCS was being prepared. I therefore append PPS12 as Exhibit SO5.

4.24. Both PPS12 and now the NPPF lay great importance on consultation and joint working. While the advice primarily deals with the responsibilities of the Council to engage with stakeholders, businesses and the public, this should work both ways, as illustrated by the following extracts (my underlining):

PPS12:-

“PREPARATION OF CORE STRATEGIES

Participation

4.19 The UK government has signed up to the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Århus Convention). Article 7 states:

“Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.”

4.20 The production of core strategies should follow the Government’s principles for community engagement in planning. Involvement should be:

- ***appropriate*** to the level of planning;
- ***from the outset*** – leading to a sense of ownership of local policy decisions;
- ***continuous*** – part of ongoing programme, not a one-off event, with clearly articulated opportunities for continuing involvement;
- ***transparent and accessible*** – using methods appropriate to the communities concerned; and
- ***planned*** – as an integral part of the process for making plans.

4.21 The council must produce a Statement of Community Involvement (SCI) which should follow these principles. The involvement of the public in preparing the core strategy must follow the approach set out in the SCI.”

NPPF:-

“Plan-making

Local Plans

150. Local Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities. Planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise....

....155. Early and meaningful engagement and collaboration with neighbourhoods, local organisations and businesses is essential. A wide section of the community should be proactively engaged, so that Local Plans, as far as possible, reflect a collective vision and a set of agreed priorities for the sustainable development of the area, including those contained in any neighbourhood plans that have been made.”

4.25. It is clear from both contemporary and current guidance that consultation should be an on-going, open and transparent process. Where landowners and developers have aspirations for development it would be expected that they should follow the same principles, both in relation to their dealings with the local authority and with the local community. The Claimant’s approach has been the opposite, having taken no overt part in the Plan-preparation process (beyond the initial representations by Cluttons LLP), and now seeking to take advantage of points raised in evidence by Barton Willmore which is an organisation that has not challenged the adoption process.

4.26. The Council’s SCI was adopted in 2007 and sets out how the Council will involve the public and stakeholders in the preparation of development plan documents and planning applications. The SCI is also not mentioned by the Claimant so I append it as exhibit SO6. It is one of the legal compliance tests

of the JCS that it conforms with the SCI and section 5.18 / Diagram 4 of the SCI set out the requirements, which have been followed.

- 4.27. The SCI also has clear expectations of applicants for planning permission (Part B, paragraphs 5.21 – 5.31). The Claimant's Grounds state that *'the Claimant intends to secure housing development on all or part of this land'* (paragraph 3) and that *'any application for planning permission at the Micheldever Station site would fall to be assessed against the adopted plan...'* (paragraph 4). The expectations at Part B of the SCI therefore apply to the Claimant's proposals for Micheldever Station. These include the following expectations (my underlining):

"5.25 For small-scale or minor applications, it may be sufficient to rely on neighbour notification and other means of attracting local attention such as site notices, the Council's website, published lists of planning applications received each week and direct notification to Town and Parish Councils. More significant planning proposals, which are likely to give rise to degrees of controversy, are located on sensitive sites, or are of a significant scale, will require more extensive community consultation and involvement. In such cases, consultation should be undertaken by the prospective applicant before an application is made.

5.26 The Council expects all applicants to carry out pre-application discussions and early community involvement, appropriate to the scale and nature of the proposed development and to provide evidence of this with an application. To achieve this will require cooperation and participation on the part of the applicant or developer. In the case of householder or minor applications, likely to generate little if any public interest, requests for informal preliminary advice can normally be responded to by the Council with a degree of sensitivity and/or respect for reasonable commercial confidentiality. However, in the case of larger schemes or those likely to have significant public interest or impact on the wider public realm, we believe that such proposals should be brought into the public domain at the earliest possible opportunity. In such circumstances, the Council could not guarantee to

maintain confidentiality with regard to providing preliminary advice on such proposals.

5.27 For its part the Council will ensure that it complies with the purpose and provision of the SCI. It will be necessary for the Council be satisfied that the applicant has maintained an open approach in carrying out notification and consultation and that any concerns or issues discussed by participants have been fairly considered and responded to. In order to demonstrate this, the Council may require reasonable access to information, resulting from such involvement exercises, to be satisfied that the procedures followed have complied with the Council's Statement of Community Involvement.

5.28 There are already examples in the District where developers have initiated and/or participated in community engagement both before and during the course of their planning application, and this now needs to become normal practice. In terms of the upper tier of major developments the Council, working with applicants and its partners, has taken a firm lead, both in consulting and involving the local community and other stakeholders from the outset and in using the latest techniques for achieving a meaningful dialogue and direct engagement. Instances where this has happened are the proposed Major Development Area at West of Waterlooville and the proposed city centre redevelopment in the Silver Hill area of Winchester.

5.29 Although this draft Statement does not seek at this stage to be prescriptive about the types of community involvement techniques that applicants should be adopting for different types of application, we do expect certain standards to be met and for such practices to become far more widespread. We will, therefore, encourage developers to adopt more innovative and enjoyable approaches so as to encourage wide involvement. We will expect all applicants to provide reliable and comprehensive information, in order to help local communities consider and address issues at the earliest practicable stage in the planning process. In terms of the quality and effectiveness of planning decisions subsequently being made, it is in the interests of all concerned that time and effort should be invested at the beginning of the process, to help to clarify misunderstandings, approach and

discuss schemes in a constructive way and resolve potential difficulties, where possible.

5.30 Most applications, especially those for planning proposals of a significant size or potential for controversy, should be accompanied by a supporting statement of public participation. This should set out what initial consultations were carried out in the area likely to be affected by the scheme or proposal and how the results of this have been reflected in the planning application. For medium and large scale applications, the Council considers it sufficiently important to give every encouragement to a transparent process and clear sequence, in which the applicant undertakes to: make contact with all relevant individuals and groups, sufficiently early in the process for their views to have an influence on the scheme; conduct appropriate consultations; accurately record the results of these consultations and; make an altered application, as necessary. Failure by a developer to conduct adequate or appropriate community consultation could lead to matters being raised or objections being made which could be material to the eventual determination of the application. Additionally, for certain types of proposal, early contact with relevant statutory consultees will inform both preapplication discussions and early community involvement."

4.28. I can confirm that the Council has received no request for pre-application advice or consultation, nor any request for an EIA screening opinion from the Claimant (or from anybody purporting to act for the Claimant). Nor is the Council aware of any intentions by the Claimant to submit a planning application for MSMT in the foreseeable future. In fact a spokesperson on behalf of the Claimant is quoted in a recent press report as confirming that the Claimant has no intention of submitting a planning application in the foreseeable future and is merely seeking to 'keep all options open'. I attach a copy of the press article as Exhibit SO7 and reproduce the relevant extracts below (my underlining):

"A company spokesman said: "Zurich Assurance Ltd recognises the potential for housing development at Micheldever Station, to the north of Winchester. Whilst we have no immediate plans to take forward any development proposal

there, if we had not launched a challenge, we will have forfeited our optionality for the land until 2031. We fully understand the sensitive nature of this matter and are carefully considering our position. If successful, the challenge allows us to keep all options open.

4.29. A landowner's desire to 'keep all options open' is very clearly no justification for setting aside a Plan that has been developed over many years with a comprehensive evidence base, consultation process and public examination. Indeed, the option of developing MSMT has never been 'open' in the sense that it has consistently been rejected through the proper plan-making processes. Putting in place a JCS that fails to keep open a non-existent option is no basis for the Claimant to claim that it is 'aggrieved'.

4.30. I am not aware of any consultation having taken place with the local community over many years on either the principles or detail of the MSMT proposal. Indeed, the opposite has been the case as the Claimant has stayed silent so far as the JCS is concerned as to its identity, proposal and aims. The Grounds submitted by the Claimant were the first time at which it was disclosed that the Claimant took issue with the JCS as submitted for Examination, whether in relation to MSMT or at all, or that it had any intention to submit a planning application for the development of that site.

4.31. As well as totally failing to meet the expectations of the SCI, this approach also prevents the Council from meeting its commitment to work with applicants and take a firm lead in consulting and involving the local community and other stakeholders from the outset (SCI paragraph 5.28).

5. South East Plan Housing Requirement

- 5.1. The Claimant suggests that that JCS housing provision as submitted was inadequate to meet the “*general conformity*” requirement of the South East Plan and that the Inspector made a “*methodological error*” in addressing the conformity question and also failed to properly have regard to the NPPF in relation to its advice on assessing ‘*objectively assessed need*’. It is therefore alleged that the Council acted unlawfully in adopting the Plan in accordance with the Inspector’s recommendations.
- 5.2. The Council rejects these allegations. Notwithstanding the details of the Claimant’s arguments, which I deal with below, this amounts simply to a disagreement with the Inspector’s conclusions, not a matter relating to the lawfulness of the process. It is inevitable, given the variety of views being expressed, that some parties to the public Examination will be disappointed, including the Council. Whatever the merits of the various participants’ arguments, the key legal requirements are for the Inspector to reach a reasoned conclusion and for the Council to follow the necessary publicity and Committee processes for adoption. These requirements have been met.
- 5.3. Like the rest of the claim, this section presents a highly selective summary of the situation. For example, there is an extensive section on the derivation of the South East Plan’s housing requirements (which is of negligible relevance given these have were tested, adopted by the Secretary of State and now revoked), yet Mr Shepherd is totally silent when it comes to the past promotion of MSMT through the SE Plan and the fact that it was comprehensively rejected by the EIP Panel and Secretary of State. Similarly there is only passing reference to the revocation of the SE Plan, with no mention that for all practical purposes (which the Council could not ignore) it was revoked for a period in 2010 before being reinstated after a legal challenge. These matters are highly relevant as they were the main reason why the Council set out to develop its locally-derived housing target and undertook a substantial level of technical work and consultation to do this (none of which the Claimant engaged with).

- 5.4. I need make little further comment on the requirements of the NPPF that the Claimant quotes, other than to say that these have been fully met. The Council delayed the submission of the JCS following the publication of the NPPF to ensure that it could be found compliant with the new guidance. It received an advisory visit from the Chief Planning Inspector and acted on the advice it received – see the note of the advisory meeting at Mr Shepherd's Exhibit RS1/Vol. 5/Tab 31. The Council consulted on the various changes made in response to publication of the NPPF at the Submission JCS stage, prior to the start of the Examination. The Claimant did not comment at this stage (or at all).
- 5.5. The Council was fully aware of the need to meet the '*objectively assessed needs*' of the District, this having been highlighted during the advisory visit and was also a key focus of Examination participants' statements and the Council's own Background Papers and submitted evidence. The Claimant's case essentially revolves around different interpretations of what the '*objectively assessed need*' is and how it should be derived, which is ultimately for the Inspector to consider and recommend on. This he did.
- 5.6. In looking at this issue, it is sensible to start with the housing requirement of the SE Plan. Before dealing with the figures it is worth identifying some key dates:
- 5.7. (i) May 2009: the publication of the SE Plan, at which point it became part of the statutory development plan (Exhibit RS1/Vol.7/Tab 63);
- (ii) April 2006 to March 2026: the period covered by the housing requirement of the SE Plan (Exhibit RS1/Vol. 7/Tab 63/Policy H1);
- (iii) 6 July 2010: the date when the Secretary of State announced that he had "*revoked*" all Regional Strategies (including the SE Plan) "*with immediate effect*" (Exhibit RS1/Vol. 10/Tab 71/p1);
- (iv) 10 November 2010: the date when the High Court ruled in R (Cala Homes (South) Ltd) v SSCLG [2010] EWHC 2866 (Admin) that the "*revocation*" of 6 July 2010 was beyond the Secretary of State's powers;

(v) 10 November 2010: the date of a statement by the CLG Chief Planner (on behalf of the Secretary of State) that the prospect of the abolition of Regional Strategies through proposed primary legislation could be a material consideration (Exhibit SO8);

(vi) 7 February 2011: the date when the High Court ruled in R (Cala Homes (South) Ltd v SSCLG (No. 2) [2011] EWHC 97 (Admin) that the Secretary of State's statement of 10 November 2010 was not unlawful;

(vii) 27 May 2011: the date when the Court of Appeal ruled in R (Cala Homes (South) Ltd v SSCLG (No. 2) [2011] EWCA Civ 639 that the statement of 10 November 2010 (Exhibit SO8) did not apply to the formulation of development plans;

(viii) 15 November 2011: the date when section 109(3) of the Localism Act 2011 came into force giving the Secretary of State the power to make an order revoking a regional strategy;

(ix) 26 February 2013: the date when the Regional Strategy for the South East (Partial Revocation) Order 2013 was made (Exhibit RS1/Vol. 10/Tab 72);

(x) 19 March 2013 and 20 March 2013: the dates when the SDNPA and the Council respectively adopted the JCS (Exhibit RS1/Vol.1/Tab 9);

(xi): 25 March 2013: the date when the South East Plan (so far as it applies to the Council's area) was revoked.

5.8. It is apparent from the above chronology that there was a period from July 2010 until November 2010 when ostensibly the SE Plan had been "revoked" but that at all other times the SE Plan was understood by all parties (including the Council) to be part of the statutory development plan and that the JCS would need to be in "general conformity" with it for as long as it remained in existence.

5.9. The housing provision for the District was set out in Table H1b of Policy H1 of the SE Plan (Exhibit RS1/Vol. 7/Tab 63). This related to the 20 year period from April 2006 to March 2026. Policy H1 expected local planning authorities

to prepare plans, strategies and programmes to deliver an annual average net additional dwelling requirement as set out in Table H1b. For Winchester the relevant "Annual Average" was 612 and the "Total" was 12,240 (which is 612 multiplied by 20).

5.10. Paragraph 7.8 of the supporting text of the SE Plan stated:

"Policy H1 sets out the total amount of housing that is expected to be delivered in the region over the years 2006 – 26. It includes an annual average figure for each local authority area. These figures should not be regarded as annual targets and are intended to be used in monitoring progress towards achieving plan objectives, and to inform management of housing supply..."

5.11. The provision in the Council's area was then split between the "South Hampshire" part of the District and the "Areas outside Sub-Regions" part of the District by Policies SH5 and AOSR2 of the SE Plan. However, this subdivision is not material to the present issue.

5.12. There is no dispute between the Council and the Claimant that in the 5 year period from April 2006 to March 2011 there were 2,206 new additional dwellings completed in the Council's area (Exhibit RS1/Vol.5/Tab 32/Background Paper 1/p26; paragraph 59 of the Grounds). This meant that the amount of housing required by the SE Plan that remained to be provided in the remainder of its period up to March 2026 was 12,240 minus 2,206 or 10,034 dwellings. I deal separately with the Claimant's suggestion that the SE Plan requirement somehow continued to apply after March 2026 and should be "rolled forward" to 2031 but I make it clear here that I do not accept that unjustified proposition.

5.13. The submitted JCS included a housing trajectory in its Appendix F showing the completions expected if the JCS proposals were put in place (see extracts from submitted JCS at exhibit SO19). A detailed version of this is included in Background Paper 1 – Housing Provision, Distribution and Delivery (RS1/Volume 5/Tab32, Appendix C, page 96) and the Background Paper also deals with delivery issues in detail at section 6 (Exhibit RS1/Volume 6/Tab

32/pp49-65). It set out two potential trajectories at Appendices C (p96) and D (p99), one based on the submitted JCS housing provision of 11,000 dwellings and another based on what might be achieved under '*stronger market conditions*' (12,572 dwellings). It also set out a year-by-year assessment of the 5-year housing land supply to demonstrate to the Inspector that an adequate land supply could be maintained throughout the Plan period (Background Paper 1, pages 62-63).

- 5.14. The trajectories and land supply tables were updated for the hearing sessions of the Examination in Background Paper 1B – Updated Statistics (RS1/Volume 6/Tab 34). This provided information which took into account the monitoring of housing delivery that had been completed up to 31 March 2012 and so was able to provide a completions figure for the year 2011/12 (which ran from 1 April 2011 to 31 March 2012). The updated JCS trajectory was in Appendix A (p10). This showed that there had been 317 net additional dwelling completions in 2011/12. Based on the Council's assessment of the future delivery of the supply, expected completions were identified for each successive year. By 2025/26 (the end of the SE Plan period) the cumulative completions from April 2011 were shown as 9918 dwellings. This was only 116 dwellings short of the figure of 10,034 required to achieve absolute conformity (rather than "*general conformity*") with the outstanding housing requirement of the SE Plan. Total provision in the SE Plan period would be 12,124 dwellings (2206 completions to 2011 plus 9918 expected completions thereafter).
- 5.15. The alternative scenario referred to as "*Stronger Market Conditions*" was shown in Appendix B (p12). This trajectory showed that by the end of the SE Plan period in 2025/26 the completions from April 2011 would be 11,995, which would be some 1,961 dwellings in excess of the outstanding SE Plan requirement of 10,034 dwellings. Total provision in the SE Plan period would be 14,201 dwellings (2206 completions to 2011 plus 11,995 expected completions thereafter).
- 5.16. The Appendix A trajectory was then published by the Council as a Further Modification to the JCS in September 2012. This was then republished with

other Further Modifications in November 2012 (Exhibit RS1/Vol.1/Tab 3/p27). This enabled those participating in the JCS process to make representations about its content. The Claimant, of course, did not make any representations. Barton Willmore did submit a response to the Further Modifications generally (largely addressing employment matters), but did not make any representations about the updated trajectory known as FM 2.45 (Exhibit RS1/Vol.6/Tab 54).

- 5.17. The Inspector was aware of and considered the updated trajectory FM 2.45. The Inspector refers to the Further Modification produced by the Council in his Appendix of Main Modifications. The Inspector recommended (as his "*Main Modification 29*") that the Council should "*Update Housing Trajectory as in Council Schedule of Further Modifications 12 November 2012, modified in accord with other recommendations in this Report*" (Exhibit RS1/vol.1/Tab 1/Appendix/p3). Thus, the starting point for the Inspector's recommendation in MM29 was the trajectory showing that by 2025/26 the Council's expected housing delivery would be only some 116 dwellings short of the SE Plan housing requirement.
- 5.18. The Inspector's other recommendations were that the Council should increase the supply expected from the Market Towns and Rural Area ("MTRA") by 1,000 dwellings over the plan period to 2031 and at North Whiteley by a further 500 dwellings (at paragraphs 50 and 51 of his report). It was in the light to those recommendations that the Inspector recommended revising the trajectory in Appendix F (paragraph 63).
- 5.19. Whilst the Inspector left it to the Council to determine how the trajectory should be adjusted to accommodate the uplift of 1,500 dwellings that he recommended, it is wholly implausible to suggest that he considered that all of the additional dwellings would be provided in the last 5 years of the plan period (i.e. post-2025/26) and that none would be achieved before then. The Inspector was well aware of and expressly had in mind the trajectory based on the "*stronger housing market*" scenario in Appendix D of Background Paper 1 (Exhibit RS1/Vol.5/Tab 32/p99) and he regarded his uplift as "*generally consistent*" with that trajectory (paragraph 56). As noted above, this

had shown a substantial surplus against the outstanding SE Plan housing requirement by 2025/26. It showed completions substantially in excess of an annual average rate of 625 for the middle years of the plan period, particularly from 2016/17 to 2022/23. It suggested that 3,500 dwellings could be achieved at North Whiteley, with higher completions (compared to the Appendix C trajectory) commencing in 2016/17. It also showed that the Local Plan Part 2/windfall sites contribution would deliver some 150 dwellings per year from 2016/17 onwards.

5.20. The revised trajectory produced by the Council is at Appendix F of the adopted JCS (Exhibit RS1/Vol.1/Tab 10). This shows that the Council has not relied on any of the Inspector's 1,500 dwelling uplift being translated into additional completions until 2016/17 (some 3 years away). In that year 130 additional completions are expected in the MTRA part of the District, based on the fact that by then the Local Plan Part 2 will have been in place since May 2015 (Exhibit RS1/Vol. 11/Tab 74/Item F/p13) and will have identified suitable additional housing sites. There will also be windfall provision on unidentified sites. A proportion of those identified and windfall sites are expected to come forward during the course of the following year so as to deliver completions in 2016/17. In subsequent years further supply is expected to be achieved from that source and also additional completions are expected from North Whiteley from 2017/18 onwards. Thus, if anything, the final trajectory produced by the Council in response to MM29 is more conservative than the trajectory (i.e. Appendix D) that the Inspector had in mind.

5.21. Even if the Council's expectations in relation to when the 1,500 dwelling uplift will come on-stream are not realised in line with the published trajectory in Appendix F of the JCS, I stress again that only an additional 116 dwellings would be needed (less than 8% of the total) to achieve absolute conformity with the outstanding dwelling requirement of the SE Plan by 2025/26 (ignoring the fact that that requirement has now been revoked). I can therefore see no basis on which the Inspector could not have considered that the Council's housing supply, as increased by his uplift, would not achieve "*general conformity*" with the SE Plan.

5.22. The Claimant asserts that the Inspector made a *“methodological error”* in his approach to the SE Plan housing requirement. The Claimant asserts that the Inspector’s uplift would still leave a shortfall of some 659 dwellings by the end of the SE Plan period. However, this is because the Claimant has ignored the evidence from the housing trajectories (that were available to and accepted by the Inspector) and has focused instead only on an assumed average annual provision rate across the whole of the JCS plan period. What the Claimant has done is to simply pro rata the total provision recommended by the Inspector (12,500 dwellings) by the total JCS plan period (20 years) and assumed that the supply achieved in each year of that period will never be more than the resulting arithmetic average (625). Thus, in every 5 year tranche no more than 3,125 dwellings will be provided (625 multiplied by 5). On this simplistic basis the arithmetic would show that the SE Plan deficit would not have been eliminated by 2025/26.

5.23. However, it is perfectly plain that the Inspector did not proceed on this basis. Whilst it is correct that he did use annual average rates to test the Council’s level of provision in the submitted JCS (paragraph 49) and referred to his own uplift as 625 dwellings *“per year on average”* (paragraph 56) he clearly did not proceed on the basis that only 625 dwellings would be achieved in any given year. The Appendix F trajectory that he recommended be modified (to include his uplift) showed projected completions of 763 (2015/16), 955 (2016/17), 909 (2017/18), 937 (2018/19), 940 (2019/20), 690 (2020/21), 793 (2021/22), 764 (2022/23), and 666 (2023/24) (Exhibit RS1/Vol.1/Tab 3/p27). All of these years exceeded the annual average of 625 dwellings.

5.24. In addition, the Appendix D trajectory, with which he found his uplift to be *“generally consistent”*, had projected completion rates of well over 1,000 dwellings per annum, all in the period covered by the SE Plan (for as long as it remained in being) (Exhibit RS1/Vol.5/Tab 32/p99). Since the Inspector expressly referred to both of these trajectories and, in essence, wanted the Appendix F trajectory to be adjusted to accord more closely with the Appendix D trajectory, it would have been quite inconsistent for the Inspector at the same time to be proceeding on the basis that no more than 625 dwellings

would be achieved per year. The Inspector clearly understood that expressing the housing requirement in this way was no more than an average. An average is just that, it is not a ceiling. His approach to the annual averages was also consistent with the text of the SE Plan itself, which had made the point that the annual averages were not housing targets for individual years.

- 5.25. It was the trajectories that identified the expected delivery on a year by year basis. They clearly showed that the supply would exceed the annual average rate in the earlier years of the JCS period, not least because of the contributions expected from a number of large scale strategic housing sites.
- 5.26. The legal requirement for general conformity with any regional strategy existing is acknowledged, but that would only apply to the period covered by the regional strategy (here up to 2026). The JCS plan period was from 2011 to 2031 so only partly overlapped with the SE Plan period. Even where the 2 plan periods overlap, the requirement is "*general conformity*" not absolute conformity. There is clearly the option for local authorities to develop their own housing target, within the limits of "*general conformity*" when within the SE Plan period and without that restriction when going beyond the SE Plan period, but whichever route they select will need to be tested through the Examination as to whether it meets objectively assessed needs in line with the NPPF.
- 5.27. Mr Shepherd's views on the evolution or merits of the SE Plan housing requirements are not relevant. The SE Plan was subject to the proper processes of preparation, including consultation, examination and approval by the Secretary of State. If the Claimant had any issues with the SE Plan it should have challenged its adoption at the time.
- 5.28. As noted above, the Claimant has conspicuously omitted to make any reference to the fact that Eagle Star at least was fully involved in the South East Plan during its initial stages and examination and that MSMT was specifically and comprehensively rejected by the EIP Panel and the Secretary of State. Mr Shepherd further creates a misleading impression by quoting at his paragraphs 22 and 23 from a City Council report on the SE Plan's housing

requirements. This is set in the context of his description of the evolution of the SE Plan during 2005-2006, whereas the report he quotes was dated July 2010 (Exhibit RS1/Vol. 3/Tab 15). The report was in fact discussing the situation following the Secretary of State's putative revocation of the SE Plan in July 2010 and was therefore produced at a time when the SE Plan had apparently been abolished (it was subsequently reinstated following the first Cala Homes case referred to above).

5.29. While dealing with factual matters in relation to the SE Plan, I would point out that Mr Shepherd's statement that the Proposed Modifications did not increase the housing requirement for Winchester District above the Panel's recommendation is factually incorrect (Mr Shepherd's paragraph 35). In fact the Proposed Modifications increased the requirement for that part of Winchester District outside PUSH by 500 dwellings (from 5,500 to 6,000), but this was corrected in the adopted SE Plan. Also, Mr Shepherd's paragraph 27 purports to list the sub-regions identified in the SE Plan, but is incorrect in including (in the final bullet point) the 'Areas Outside Sub-Regions'. As the name says, these are outside any sub-regions, not a sub-region in their own right.

5.30. As with other parts of his Statement, Mr Shepherd's description of the evolution of the JCS is a patchwork of selective information and quotes. I set out below all of the key stages involved in the preparation and adoption of the JCS and how the housing target was integrated with these:

Date	JCS Stage	SE Plan Stage	District Housing Requirement of SE Plan/JCS
October 2006	Commencement of work on JCS	Submitted Plan SE	10,440 (Submitted SE Plan)
January 2007	'Live for the Future' Front loading / issues	SE Plan underway EIP	10,440 (Submitted SE Plan)

January 2008	Issues and Options	SE Plan Panel Report	12,240 (SE Plan Panel rec)
May 2009	Preferred Option	SE Plan Proposed Modifications	12,740 (Proposed Mods SE Plan)
May 2009		SE Plan Adopted	12,240 (Adopted SE Plan)
July 2010		SE Plan "Revoked"	Not specified
July 2010	WCC resolves to develop locally-derived target	-	-
October 2010	'Blueprint' Consultation on Locally Derived Needs	-	-
November 2010		South East Plan Reinstated (Cala decision)	12,240 (Adopted SE Plan)
June 2011	'Plans for Places' Consultation on Blueprint Results	SE Plan	11,000 (Housing Technical Paper) 12,240 (Adopted SE Plan)
January 2012	Pre-Submission	SE Plan	11,000 (Pre-Submission JCS) 12,240 (Adopted SE Plan)
June 2012	Submission	SE Plan	11,000 (Submitted JCS) 12,240 (Adopted

			SE Plan)
October 2012	Examination	SE Plan	11,000 (Submitted JCS) 12,240 (Adopted SE Plan)
November 2012	Further Modifications	SE Plan	11,000 (Submitted JCS) 12,240 (Adopted SE Plan)
February 2013	Inspector's Report	SE Plan	12,500 (Inspector's Report) 12,240 (Adopted SE Plan)
March 2013	Adoption	SE Plan	12,500 (Inspector's Report) 12,240 (Adopted SE Plan)
March 2013		SE Plan Revoked	12,500 (Adopted JCS)
April 2013	S113 Challenge	-	12,500 (Adopted JCS)

5.31. It should be noted that a simplistic comparison of the housing requirement figures in the final column between the SE Plan and the JCS is not appropriate because the SE Plan and the JCS (from 'Plans for Places' onwards) have different plan periods.

5.32. It can be seen from the above table that there have been substantial changes in the strategic planning context during the evolution of the JCS. At the start of the JCS plan preparation process the SE Plan was itself still evolving,

having been submitted to the Secretary of State to be examined. Shortly after the Preferred Option version of the JCS was published the SE Plan was approved as the regional strategy by the Secretary of State. However, before the JCS reached its next stage (due to be the Pre-Submission Plan) the SE Plan was apparently revoked by the new Coalition Government. It was then re-instated following the first Cala Homes judgement, although the Government was clear as to its continued intention to abolish regional strategies, which the Courts held was capable of being a material planning consideration in the second Cala Homes judgment. Only later (in May 2011) did the Court of Appeal clarify that the Government's stated intention did not apply to the plan-making process. The SE Plan was finally revoked on 25 March 2013, less than a week after the JCS was adopted.

5.33. Given this complex situation, the Claimant's contention that the Council had never intended to plan for the SE Plan housing requirement and neither the Council nor Inspector had achieved general conformity with it is simplistic and misleading in the extreme. It is clear even from the quotes and documents that the Claimant refers to that the Council has been absolutely clear all along that the JCS must be in general conformity with the SE Plan for so long as there is a regional strategy. The Inspector took the same approach.

5.34. Mr Shepherd's Statement (paragraph 41) confirms that the Council noted in its Local Development Scheme in 2007 that the SE Plan would be part of the Development Plan (this also being the factual/legal situation). As also noted by Mr Shepherd (paragraph 42), this was also stated in the Council's 2009 Local Development Scheme. It is, therefore, nonsense for Mr Shepherd to allege that the SE Plan requirement '*came as a complete shock to Winchester Council in 2009*' (Mr Shepherd's paragraph 45), when he himself more than adequately demonstrates that the Council had consistently recognised that the housing target would be set by the SE Plan and that the JCS would need to be in general conformity with it. The only (limited) uncertainty until the final approval of the SE Plan (in May 2009) was as to the precise figures it would set out.

- 5.35. If any further confirmation were needed, one has only to look at the various early versions of the JCS. The Issues and Options JCS (Exhibit RS1/Vol. 2/Tab 11) sets out the strategic context at section 2.1 (pages 13-15), including specific reference to the then SE Plan target of 12,240 dwellings. Similarly, the Preferred Option JCS (Exhibit RS1/Vol.3/Tab 13), which refers to the links with the SE Plan at paragraphs 1.7 – 1.10 (page 12), followed by further references in the Spatial Strategy section (paragraph 4.2, page 27) and a specific policy requirement to provide for the SE Plan requirement in Policy CP15 (page 95) and Table 3 (page 94). This was the increased requirement of 12,740 dwellings as set out at the time in the Secretary of State's Proposed Modifications.
- 5.36. However, Mr Shepherd then completely ignores the key events between 2009 and 2012 and jumps to quotations from the Council's 2012 Background Paper 1 (Mr Shepherd's paragraph 44). During this 'missing' period a new Government had been elected and had made clear its intention to abolish regional strategies, including the SE Plan. Indeed, it apparently did this in July 2010 and there was a period, from July 2010 until the first Cala case ruling in November 2010, when for day to day planning purposes (whatever may be the position as a matter of abstract legal theory) the SE Plan no longer existed.
- 5.37. The situation is explained in a report to the Council's Cabinet (LDF) Committee on 22 July 2010 (Exhibit RS1/Vol.3/Tab 15). It is very clear from this report that the situation in relation to the revocation of the SE Plan was explained, along with the advice from Government on how to proceed in the circumstances (section 3 of the report). The report then considered the options available to the Council to progress the JCS in the situation that existed at the time (section 4 of the report). The paragraphs taken and used out of context by Mr Shepherd (paragraphs 22-23 of his Statement) can be seen to explain the background when read in their proper context, and lead into the reasoned discussion of the options available at paragraphs 4.6 – 4.13 of the report.

- 5.38. The report also considered the implications of the South Downs National Park, which had just come into existence (section 5). It then set out a reasoned discussion of the options and the likely timescale for continuing the development of the JCS (Sections 6 and 7) before reaching a conclusion and recommendations (section 8/page 2). Clear recommendations are set out (page 2 of the report) setting out the way forward and these were agreed. They included delaying the Core Strategy programme *'to undertake research and consultation to determine the local housing needs and requirements for the 'Winchester Town' and 'Market Towns and Rural Area' parts of the District (including that part within PUSH).'*
- 5.39. It must be borne in mind that at the time of this report (July 2010) regional strategies had suddenly been removed and there was therefore no established housing target for the District. Neither the Council nor anyone else could have known at that time that regional strategies would be reinstated and that the apparent revocation would be found to have been unlawful. Nevertheless, the Council quickly took the decision to develop a locally-derived housing target to enable progress on adopting the JCS to be made as quickly as possible in the circumstances. It is, therefore, not the case that the Council simply *'had a change of heart'* as alleged in Mr Shepherd's Statement (paragraph 47). The situation was that there was a fundamental change to the planning policy system, with the regional strategy level being suddenly removed and local authorities being advised that they could develop their own locally-derived housing targets.
- 5.40. Specific advice was given to planning authorities on this in the CLG Chief Planner's letter regarding RSS Revocation (Exhibit RS1/Vol. 10/Tab 71). This was in fact the only relevant advice on taking forward the JCS in the non-regional strategy situation that was applicable following the apparent revocation of regional strategies. This Government advice was clear that authorities should carry on delivering local development frameworks and, in relation to housing provision, its 'question and answer' section said at Questions 10 - 12:

“10. Who will determine housing numbers in the absence of Regional Strategy targets?”

Local planning authorities will be responsible for establishing the right level of local housing provision in their area, and identifying a long term supply of housing land without the burden of regional housing targets. Some authorities may decide to retain their existing housing targets that were set out in the revoked Regional Strategies. Others may decide to review their housing targets. We would expect that those authorities should quickly signal their intention to undertake an early review so that communities and land owners know where they stand.

11. Will we still need to justify the housing numbers in our plans?

Yes – it is important for the planning process to be transparent, and for people to be able to understand why decisions have been taken. Local authorities should continue to collect and use reliable information to justify their housing supply policies and defend them during the LDF examination process. They should do this in line with current policy in PPS3.

12. Can I replace Regional Strategy targets with “option 1 numbers”?

Yes, if that is the right thing to do for your area. Authorities may base revised housing targets on the level of provision submitted to the original Regional Spatial Strategy examination (Option 1 targets), supplemented by more recent information as appropriate. These figures are based on assessments undertaken by local authorities. However, any target selected may be tested during the examination process especially if challenged and authorities will need to be ready to defend them.”

- 5.41. The Council's Cabinet (LDF) Committee was advised of the situation in the 22 July 2010 report (Exhibit RS1/Vol.3/Tab 15) and the CLG advice was specifically referred to in that report. In fact the full advice was appended to the report (Appendix A). Mr Shepherd opines at paragraph 52 of his Statement that the Council's assessment was flawed as the CLG letter cannot be interpreted as permitting a departure from the SE Plan housing

requirement. What Mr Shepherd does not acknowledge is that there was, to all intents and purposes, no SE Plan at the time of the 22 July 2010 report – it had been “revoked” by the Secretary of State on 6 July 2010 (and was not reinstated until November 2010). Therefore, while it is correct that the legislation requiring general conformity with regional strategies continued to apply, there were on the face of it no regional strategies to conform with at that time because they had all been apparently abolished. Whilst the High Court subsequently clarified that this was not the case as a matter of law, I cannot accept it is fair to criticise the content of the 22 July 2010 report on the basis of such legal hindsight. It was not for the Council to take it upon itself to decide that the Secretary of State had acted beyond his powers.

5.42. Following the apparent revocation of regional strategies in July 2010 the Council embarked on a process to develop a locally-derived housing target, as allowed for within the CLG letter (Exhibit RS1/Vol.10/Tab 71). This was a 2 stage process, with extensive public involvement through the ‘Blueprint’ exercise and a technical exercise to assess housing needs, through the Housing Technical Paper. Blueprint encouraged local communities and groups to consider the development needs of their areas and won a Royal Town Planning Institute award as an innovative planning policy tool. The Claimant did not make any response to Blueprint, despite the purpose of Blueprint being to help assess local development needs.

5.43. The Housing Technical Paper (Exhibit RS1/Vol.3/Tab 16) was produced alongside the Blueprint exercise and the results of both areas of work were put together into a ‘non-technical’ consultation document on development needs and strategy in the District – ‘Plans for Places’. The Claimant omits to make any reference to the important stages of ‘Blueprint’ and ‘Plans for Places’ so I attach the Plans for Places consultation document as Exhibit SO9. Plans for Places was published for consultation in June 2011 and the Housing Technical Paper was published alongside it as an evidence document. I have already noted that the Claimant did make 3 responses to Plans for Places (via its agent Cluttons LLP), albeit not in relation to the promotion of MSMT. Mr Shepherd has elected not to refer to this matter.

5.44. Although the SE Plan had been reinstated in November 2010 it remained the Government's intention to abolish regional strategies at the earliest opportunity, although it was unclear when exactly this would be. The Council therefore recognised that it could be unwise to rely solely on the SE Plan housing requirement as this may disappear even before the JCS was submitted or examined, and certainly after the JCS was adopted. The Council therefore continued to develop its locally-derived housing target, but recognised that this would also need to be in general conformity with the SE Plan for so long as that was in place. The following extract from Plans for Places sets out the position generally:

“4.2 Since we published our Preferred Option document in 2009, there has been a major recession and as a result the Council has updated a number of its technical studies in relation to the economy and retailing. In addition it has been necessary to roll forward population and household projections to 2031 and to re-adjust the Plan period from 2006 – 2026 (in accordance with the South East Plan), to 2011 – 2031 to allow for the Core Strategy to provide at least 15 years of planning policy certainty post adoption (as required by Government policy).

4.3 The District's housing requirement was originally set out in the adopted South East Plan: to provide for 12,240 new dwellings in the period 2006 – 2026. This was then split between PUSH and non-PUSH parts of the District as 6,740 and 5,500 dwellings respectively. The Government's intention to remove this layer of planning guidance has yet to be finally resolved through the Localism Bill, but the intention is that targets such as how many houses to build should now be locally derived.

4.4 Blueprint was a response to this, to allow local people to discuss the needs of their local communities looking ahead 20 years or so. Whilst, the many comments from Blueprint acknowledge the need for development – particularly for certain sectors of communities such as older people, few suggested the number of new homes that should be built.

4.5 A Housing Technical Paper has been prepared which examines in more detail a range of scenarios for population and housing change. This forms part of the Council's evidence base. This considers the assumptions, aspirations and current/future policy guidance, as these factors also influence and direct the amount of new homes that should be planned for."

5.45. Plans for Places went on to set out a proposed housing target of 11,000 dwellings for the period 2011 -2031. It will be noted that this is a different period to the South East Plan (which covered 2006 – 2026), in order to meet Government advice on the need for plans to cover a period of at least 15 years from adoption (set out in PPS12 paragraph 4.13 at that time – Exhibit SO5). As noted by Mr Shepherd (paragraph 55 of his Statement), the Council's expectation was that housing delivery over the SE Plan period (2006 – 2026) would amount to some 12,175 dwellings, compared to the SE Plan requirement of 12,240 over the same period. This was a difference of only 65 dwellings. These figures are set out and explained fully in the Council's Background Paper 1 (Exhibit RS1/Vol. 5/Tab 32), which deals specifically with conformity with the SE Plan at paragraphs 4.3 – 4.11. While Mr Shepherd may disagree, the Council remains absolutely of the view that the 0.5% difference between its expected completions of 12,175 and the SE Plan requirement of 12,240 absolutely met the legal requirement for the JCS to be '*in general conformity*' with the SE Plan.

5.46. These figures are based on the Local Plan Trajectory (exhibit SO19 and Background Paper 1, Appendix C), but Mr Shepherd fails to note that the table at paragraph 4.8 of the Background Paper also looks at the situation in relation to the '*Stronger Housing Market Trajectory*' (Background Paper 1, Appendix D). This suggests that some 13,997 completions could be achieved within the JCS's policies, if the housing market were strong enough to provide it. This would exceed the SE Plan requirement by 1,757 dwellings, or 12.5%. Therefore, while on the face of it the submitted JCS housing requirement of 11,000 dwellings (550 per annum) would appear to be 10% lower than the SE Plan requirement of 12,240 (612 per annum), when the SE Plan period of 2006-2026 is examined in detail the expectation is that the JCS will at worst

under-provide by 0.5%, and could over-provide by 12.5%, depending on market conditions.

- 5.47. That the “*general conformity*” test was met continued to be the case when the JCS trajectory was updated for the hearing sessions and the divergence increased from 65 dwellings to 116 dwellings (as shown in the updated Appendix F trajectory). In percentage terms this was still no more than 0.9% difference between the expected completions of 12,124 and the SE Plan requirement of 12,240. Whether as an absolute number or as a percentage the Council remains confident that its provision achieved “*general conformity*”.
- 5.48. In any event, the adopted JCS of course includes the uplift of a further 1,500 dwellings as recommended by the Inspector. I have already set out the Inspector’s comments on the trajectories as presented at the Examination and his recommendation that the additional dwellings should be added to the trajectory in Appendix F. Given the Inspector’s general endorsement of the “*stronger market conditions*” trajectory, it is absolutely plain that he considered the additional housing would be more than enough to ensure that there would be no failure to achieve “*general conformity*”, even if he had thought that a 0.5% or 0.9% divergence was a matter of concern.
- 5.49. It is accepted that there was a theoretical ‘backlog’ between the SE Plan provision expressed as an annual requirement (rather than as an annual average) and actual completions in the 2006-2011 period, although the SE Plan was not of course finalised until mid-2009. But it will be noted that the figures above relate to the period 2006 – 2026, so they take account of the ‘backlog’ that is alleged to exist between the SE Plan’s requirements and the period now covered by the JCS (2011-2031). The extracts from Background Paper 1 and Background Paper 1A quoted at Mr Shepherd’s paragraphs 56 - 57 explain the approach taken by the Council, which was entirely reasonable in the circumstances applying. While Mr Shepherd accuses the Council of failing to take account of the alleged shortfall, it can be seen that the submitted JCS would at worst fall 0.9% short of meeting it and may substantially exceed it.

5.50. Therefore, the Council maintains its view that the submitted JCS was 'in general conformity' with the SE Plan. However, this was clearly a matter on which the Claimant and other Examination participants challenged the Council and which the Inspector spent some time considering, both at the Examination, and in his Report. It is clear from the Report that the Inspector recognised that the Plan had to be in general conformity with the SE Plan for so long as it remained in place and that he spent some time assessing how the Plan measured up to this and whether it met 'objectively assessed needs'. Paragraphs 47 – 49 are quoted by Mr Shepherd although, selective as ever, he omits to mention paragraphs 8 – 13 of the Inspector's Report (Exhibit RS1/Vol.1/Tab 1). Here the Inspector summarises his conclusions on conformity with the SE Plan and the following paragraphs are particularly pertinent:

"8. At the time of writing, the South East Regional Spatial Strategy to 2026 (RS) (SE Plan) is extant and forms part of the development plan. Whilst very likely to be abolished soon, it must, for the time being at least, nevertheless still be taken into account by the Council (and everyone else involved). The plan must be in general conformity with its content and have regard to the evidence which supported it, if it is to be found sound. All references in this report to "the Council" should be taken to include the South Downs National Park Authority (SDNPA) as the plan has been submitted jointly....

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11. The plan's spatial vision and objectives are consistent with the SE Plan and the Council's Community Strategy, having evolved alongside the latter since 2007. They take into account the existing characteristics of the district as a whole and define its constituent parts, including in terms of community needs and aspirations, as well as the duties and responsibilities associated with the SDNP. It is essentially common ground that Winchester is the single most sustainable location in the district for growth, with a strong local need for new housing. This has been acknowledged in the recent decision (October

2012) to grant planning permission for largely residential development at Barton Farm, to the north of the city centre, consistent with policy WT2 of this plan.

12. However, the general balance of distribution of new housing across the district also properly acknowledges the potential of the two other strategic housing land allocations at West of Waterlooville (SH2) and North Whiteley (SH3) as sustainable extensions to existing urban areas. These are in the PUSH growth area to the south of the district along the M27 corridor, with its existing and developing major employment opportunities and proximity to Havant, Portsmouth, Fareham and Southampton.

13. Taken in the round the strategy is capable of achieving general conformity with the SE Plan, although it does not follow a PUSH/non PUSH split as the three spatial areas identified are locally distinctive and compatible with key objectives. This also helps avoid overlaps and potential confusion with the PUSH strategy in clarifying what is required in each part of the district."

5.51. The crux of the Claimant's case in relation to the regional strategy compliance point is that there was a backlog of housing which was not made up and that the SE Plan annual requirement should be projected to 2031, whereas neither assumption applies. Firstly, it can be seen from the paragraphs above that there is no backlog. As I have already commented above Mr Shepherd's paragraph 64 (Table 4) simply breaks the JCS Requirement (12,500) into 5-year bands and assumes that an equal number of houses will be completed in each period. This totally ignores the evidence of the Housing Trajectory (which his evidence shows is a requirement of the NPPF) which illustrates that there will, at worst, be a shortfall against the SE Plan requirement of 0.9% (116 dwellings) before any account is taken of the Inspector's uplift.

5.52. Similarly, there is no basis for extending the SE Plan annual average requirement beyond the SE Plan end date of 2026. The Claimant projects the annual rate to the JCS end date of 2031, but the one thing that was patently obvious, even at the time of the Examination, was that the SE Plan would not exist for a further 19 months, let alone a further 19 years. That has now been

confirmed with the revocation of the SE Plan, so it is totally illogical to project a now-nonexistent requirement beyond its already-expired sell-by date.

5.53. Even with these unsupportable assumptions, the most Mr Shepherd can claim as a shortfall in provision is less than 600 dwellings to 2031. His 'solution' of a new settlement of 12,000 dwellings is totally disproportionate, even if there was a 'problem'. It is also notable that, despite being asked on several occasions by the Examination Inspector what he would suggest in order to make the JCS sound, Mr Shepherd repeatedly refused to disclose the identity of any client or any site, and would say only that Inspector should conclude that the Plan is 'unsound'. Thus, even if the Claimant is regarded as having the locus to bring this challenge (which I do not accept), the position adopted by Mr Shepherd was wholly disingenuous. The plan-preparation process should not be a guessing game where local authorities and Inspectors have to wait for 'solutions' to be 'pulled out of the hat', in this case after the adoption of the Plan. The Claimant has had every opportunity to make its points throughout the Plan-making process and to promote its solution, but has elected not to do so.

6. **Duty to Cooperate**

- 6.1. The Claimant suggests that that the Council failed to satisfy the requirements under the Duty to Co-operate ('the Duty'), that the Examination Inspector failed to test this legal requirement adequately and that the adoption of the JCS was therefore unlawful.
- 6.2. The Council rejects these allegations.
- 6.3. The Duty came into effect on 15 November 2011, through the enactment of the Localism Act, and guidance on it was published in March 2012 (in the NPPF). It is, therefore, a Duty which was imposed towards the end of the lengthy Plan-preparation process, whereas the Claimant's Statement refers predominantly to events that took place at earlier stages of the process.
- 6.4. It is relevant to set out what the purpose of the Duty is. It was brought into effect through the Localism Act 2011 (which introduced the new section 33A into the Planning & Compulsory Purchase Act 2004), which also gave the Secretary of State the powers to abolish regional strategies. The Duty (introduced by Section 110 of the Localism Act 2011) was intended to ensure that cross-boundary and strategic issues were not over-looked in the 'non-regional strategy world'. This is illustrated by the position within the Act of the provisions relating to the Duty, following immediately from Section 109 on the abolition/revocation of regional strategies. It is also reflected in the NPPF guidance (paragraphs 178-181), which is under the heading of '*Planning strategically across local boundaries*' and the PAS guidance on the Duty to Co-operate (Exhibit RS1/Vol.12/Tab 78, sections 4 and 5).
- 6.5. The JCS, on the other hand, was prepared and adopted entirely within the 'regional strategy world', having been commenced in 2006 after the submission of the SE Plan for examination and ending with adoption in March 2013, after the adoption of the SE Plan in 2009 and prior to its abolition. The Claimant has made much of the requirement for general conformity with the

SE Plan and the previous section of this Statement confirms that the JCS was prepared in accordance with this requirement.

- 6.6. Therefore, the Duty has applied only since November 2011 and was intended to cater for a situation which never actually existed during the preparation or adoption of the JCS (i.e. the abolition of the SE Plan). The references contained in the Council's Duty to Co-operate Statement (Exhibit RS1/Vol.4/Tab 24) to the period before this are intended simply to illustrate the cooperative nature of much of the preceding work. They are therefore relatively brief because the Duty did not exist, so nor did any requirement to comply with it - the Court has held in the University of Bristol v North Somerset Council case (referred to at paragraph 70 of the Grounds) that the Duty is not retrospective.
- 6.7. The Claimant does not point out that the Duty does not apply to all aspects of plan-preparation but only "*so far as relating to a strategic matter*" (as set out by section 33A(3) of the Planning & Compulsory Purchase Act 2004). To the extent that the Claimant refers to any strategic matters or potentially strategic matters, it is only in relation to the question of strategic housing and employment provision (paragraph 121 of Mr Shepherd's Statement). However, it was precisely these issues which had already been addressed by the policies of the SE Plan, which had looked at how housing and employment needs with cross-boundary implications should be distributed across the different districts of the former South East region (see in particular Policies H1 and RE3 of the SE Plan (Exhibit RS1/Vol7/Tab 63)). It was the settled position established by the SE Plan which provided the context in which the Council had to discharge the new Duty from 15 November 2011 onwards (given that it also had to achieve a result in the JCS that remained in "*general conformity*" with the SE Plan).
- 6.8. Nevertheless, the Council's Duty to Cooperate Statement (Exhibit RS1/Vol. 4/Tab 24) does refer to the Council's involvement in the preparation of the SE Plan, both in relation to the PUSH area and the Central Hampshire Area. While no Duty existed at that time, it is intended to show that joint working did take place. However, that joint working reflected the fact that regional

planning was a statutory requirement at the time and the work on this was being led by the regional planning body (SEERA), which had in turn commissioned the strategic planning authorities to lead this work locally (Hampshire County Council, Southampton City Council and Portsmouth City Council).

- 6.9. The City Council was not a strategic or regional planning body but was nevertheless actively involved in contributing to the development of the SE Plan and to helping to address cross-boundary issues. It was working within the framework of the SE Plan, which was the proper means of dealing with cross-boundary issues at the time. Inevitably, this work was done during the formative stages of the SE Plan and was then tested and finalised through the examination and adoption of that Plan. There was no need to comply with the Duty to Cooperate at that time because, apart from the fact that it did not exist, the regional strategy was the statutory means by which cross-boundary issues were addressed.
- 6.10. The importance of ensuring adequate housing provision within housing market or sub-regional areas is acknowledged. Again, for the duration of the JCS's preparation this function was provided by the SE Plan, with which the JCS had to remain in general conformity throughout its development and adoption. The NPPF refers to 'a proportionate evidence base' (heading at paragraph 158) and the content of the Council's Duty to Cooperate Statement reflects the need for evidence to be 'proportionate' (NPPF) and 'succinct' (PAS guidance on the Duty to Cooperate – Exhibit RS1/Vol.12/Tab 78, section 9). There was no Duty prior to November 2011, so no reason for the Council's Duty to Cooperate Statement to go into detail or produce detailed documents in relation to any of the pre-Duty history – commentary on this period was provided for information to show that there had been joint strategic working, even before any Duty existed.
- 6.11. One of the main purposes of the Duty is to ensure that authorities work together to *'meet development requirements which cannot be met wholly within their own areas'* (NPPF paragraph 179). It is notable that none of the Council's neighbouring Districts have raised any issues regarding a failure of

Winchester to accommodate either its own development needs, or those identified by other authorities which they are incapable of accommodating. There is, therefore, no evidence put forward by the Claimant which would suggest that any of the Council's neighbouring authorities has raised the issue of the Council meeting their unmet needs, or that the Council has failed to meet any of its own needs so displacing them to neighbouring areas.

- 6.12. In the PUSH area the SE Plan had adopted a sub-regional strategy that addressed housing needs in that area and this was also reflected in the South Hampshire Strategy 2012 (Exhibit RS1/Vol.6/Tab 38). The SE Plan and the updated 2012 Strategy reflect the fact that the housing requirements for some of the rural Districts (such as Winchester) will accommodate some housing which certain urban areas (such as Portsmouth) could not accommodate within their own boundaries. Therefore, in the PUSH area a formal joint-working process has been developed and the PUSH Joint Committee is constituted to deal with these matters.

Central Hampshire

- 6.13. The Claimants are particularly critical of the Council's approach in relation to Central Hampshire. The key point to make in response to this is that there are no cross-boundary needs of a strategic nature outside of the PUSH area that require to be addressed by any formal joint plan-making. This was set out in the DtC Statement at paragraph 4.4. In addition, no Duty existed for most of the Plan-preparation period, so it is appropriate that the DtC Statement is 'proportionate' and 'succinct', in relation to the period up to November 2011. Also, Central Hampshire is not identified in the SE Plan or elsewhere as a sub-region (see section 5 above) and nor is there any reference to 'Urban Central Hampshire' in the DtC Statement, contrary to the suggestion at paragraph 84 of Mr Shepherd's Statement.
- 6.14. Whilst Mr Shepherd is critical that the DtC Statement is not explicit in listing the local planning authorities within Central Hampshire, anyone with any familiarity with Hampshire would be well aware that the District adjoins Havant Borough, Portsmouth City, Fareham Borough, Eastleigh Borough, Test Valley

Borough, Basingstoke and Deane Borough, and East Hampshire District. All of these areas are identified on the Location Plan on p3 of the DtC Statement. The first 4 districts are all members of PUSH, as are Test Valley Borough and East Hampshire District in relation to the southern parts of their administrative areas. Thus, Central Hampshire is a reference to Basingstoke and Deane Borough and the non-PUSH parts of Test Valley and East Hampshire (as well as to the Council's own area). Much of East Hampshire lies within the SDNPA and it is the latter which is the relevant planning authority. The SDNPA was of course a joint author of the JCS.

- 6.15. The Central Hampshire and New Forest Strategic Housing Market Assessment (SHMA) 2007 (Exhibit RS1/Vol.2/Tab 12) was commissioned by the authorities in Central Hampshire (including Winchester) together with New Forest District Council in order to consider issues such as the housing market area, particular housing needs, etc. At that time it did not consider the number of houses needed as that would be resolved in the SE Plan and there was no opportunity for the authorities to change that situation. It is notable, however, that the consultants had some difficulty in defining a single housing market area for Central Hampshire. For example, Section 2 of the SHMA (Exhibit RS1/Vol.2/Tab 12), on defining the spatial extent of the sub-regional housing market, states (my underlining):

"2.11 Using the methodology outlined above DTZ concluded that there existed a 'North Hampshire' (as opposed to Central Hampshire) housing market associated with the M3/A303 and related rail corridors (see Figure 2.1). The consultations conducted during the study also produced broad agreement on this market.

2.12 However the precise extent of this housing market area, and the degree of integration it exhibits were subject to debate. The data analysis undertaken for the 2004 study also did not answer all of the issues that arose. In particular the view was expressed that the area comprises three relatively small housing markets focused on Andover (the northern part of Test Valley), Basingstoke and the Blackwater Valley area. New Forest is not functionally part of the

Central/North Hampshire market but does have overlaps with South Hampshire.

2.13 It is therefore an important requirement of this study to examine the extent of the housing market associated with Central/North Hampshire in more detail than was the case in the 2004 SEERA work.”

- 6.16. The SHMA therefore undertook a detailed assessment of the factors that may indicate what the housing market areas were (Section 2) and came to the following conclusions:

“Implications for the SHMA

2.30 The analysis contained within this section suggests that in the northern part of Central Hampshire there are a number of localised but interconnected housing markets operating across it, with Basingstoke, Winchester and Andover forming the sub-region's key nuclei. It is clear that the labour market is more integrated than the housing market, which is suggestive that people make decisions about which settlement they wish to live in, and a high proportion will continue to live there, but there is much more flexibility in where people choose to work. This particular aspect of the live work balance is made possible in Central Hampshire by the existence of good road and rail links, and a relatively low density of population.

2.31 By way of contrast the settlements in the southern fringes of the districts of Test Valley, Winchester and East Hampshire, together with the eastern fringe of New Forest district, quite clearly relate to the urban parts of South Hampshire in both labour market and housing markets terms. The central and western area of New Forest district also shows limited connectivity to the wider Central Hampshire area or to urban South Hampshire.

2.32 The analysis confirms therefore the definition of the South Hampshire market area, as shown in Figure 2.11. Broadly in terms of a ward definition of the Central Hampshire housing market, those areas of Winchester, Test Valley, East Hampshire and all of Basingstoke and Deane can be regarded as the Central Hampshire market area. The west and central parts of New Forest

excluding the Waterside are referred to as the New Forest West and Central market area. Where reference is made in later sections to the Central Hampshire market area and New Forest West and Central market area, the analysis is for the ward defined market areas shown in Figure 2.11.

2.33 It should also be noted that the analysis in this section shows Winchester City to have close functional alignment with South Hampshire, with particularly sizeable travel to work movements into Winchester originating from Eastleigh in particular. However, given the links between Winchester and Basingstoke and the relationship between Winchester City and its rural hinterland it is appropriate to consider Winchester City within this study, although it has an important relationship to the western pole market area in South Hampshire.

2.34 It is also important to note that the Central Hampshire market area is not a tightly integrated market (as the evidence in this section demonstrates) so it will be important to present data, as far as possible for the individual authority areas and, through the use of GIS mapping, the more localised areas within them. The remainder of this HMA therefore also contains data on whole districts and how these relate to adjoining areas.

2.35 Given its dislocation from urban South Hampshire and Central Hampshire, the western and central area of the New Forest (excluding the urban settlements on its eastern fringe) is considered separately from the core Central Hampshire area shown in Figure 2.11.

2.36 The remainder of this SHMA uses the spatial definition of Central Hampshire shown in Figure 2.11 for purposes of data compilation as far as possible. Thus data is presented for the following areas:

- Central Hampshire Market Area (based on wards and excluding the part in the South Hampshire market area)
- New Forest West and Central (based on wards and excluding the part in South Hampshire market area)
- New Forest District

- *Basingstoke and Deane Borough*
- *East Hampshire District*
- *Test Valley Borough*
- *Winchester District*
- *The South East Region*
- *England*

2.37 It should however be noted that where data is not available, pro-rated or whole district level data is used. Where whole district data is used for the Central Hampshire benchmark area this is indicated in the title of the chart or table."

- 6.17. Therefore, while the SHMA sought to draw together and present information about the whole area covered, it is clear that it did not identify a single or strongly-integrated housing market area for Central Hampshire. Accordingly, the subsequent sections of the study present information on a District-by-District basis, sometimes including reference to the 'Central Hampshire Market Area', sometimes not (see for example, tables 4.7, 4.10, 4.28, 5.17, 6.5, etc).
- 6.18. The evidence and conclusions of the SHMA were important for future evidence work and Plan-making, as they showed that there was no basis on which to assess the development needs of the Central Hampshire Market Area as a whole, given the variations and different markets within it and the linkages with PUSH. Accordingly, the JCS developed a spatial strategy based on 3 'spatial' areas (Winchester Town, South Hampshire Urban Areas, and the Market Towns and Rural Area) which were heavily influenced by the results of the SHMA and an economic study, also in 2007. The fact that Central Hampshire was a considerably less integrated and identifiable market area than South Hampshire, covering large rural areas, also influenced the Central Hampshire authorities' conclusion that they did not need a formal joint working arrangement of the type adopted in PUSH.

- 6.19. Therefore, rather than there being a lack of objective assessment of housing needs in the Central Hampshire area, the situation is actually that there is not a clearly defined housing market area covering Central Hampshire. This also explains why subsequent SHMAs undertaken by the Council concentrated mainly on the Council's area and needs. These updates were undertaken on a regular basis, contrary to the claims by Mr Shepherd, there having been updated SHMAs in 2010 (Exhibit RS1/Vol.3/Tab 14), 2011 (Exhibit RS1/Vol.3/Tab 17) and 2012 (Exhibit RS1/Vol.4/Tab 29). These are in addition to other important and relevant evidence studies, including the Housing Technical Paper (Exhibit RS1/Vol.3/Tab 16) and the Review of Employment Prospects, etc (Exhibit RS1/Vol.3/Tab 18).
- 6.20. It can be seen that each of the SHMA updates (2010, 2011 and 2012) contains a section on the wider housing market area, but then focuses in on the needs and characteristics of the District and its sub-areas. Most of the text references and tables refer to the 'Central Hampshire Area', not the 'Central Hampshire Market Area', recognising that the original SHMA found there is not actually a single market area covering Central Hampshire. It is, therefore, clear that it was appropriate for the Council to look mainly at its own District's needs and how they should be apportioned between the spatial areas within the District, as opposed to undertaking joint SHMAs with neighbouring Central Hampshire Districts. Hence the Housing Technical Paper (Exhibit RS1/Volume 3/Tab 16), for example, looks at Winchester District's needs, although it clearly refers to the evidence within the original and updated SHMAs (see HTP Section 3).
- 6.21. The DtC Statement refers to various evidence studies which were jointly commissioned by one or more of the Central Hampshire authorities. Contrary to the assertions at Mr Shepherd's paragraph 81, these specifically address the 'strategic priorities' listed in the NPPF. As well as the original SHMA itself, the work on affordable housing viability, gypsies and travellers and local connections housing is all aimed at addressing housing needs (NPPF paragraph 156, first bullet). The strategic priorities listed at paragraph 156 of the NPPF also include provision of infrastructure, specifically flood risk, and

the provision of community facilities, which would include open space. Therefore, the correct conclusion is that all of the evidence work listed relates to the 'strategic priorities' covered by paragraph 156 of the NPPF.

6.22. Mr Shepherd's paragraph 82 alleges inaccuracies in the DtC Statement relating to this evidence work, which I refute as follows:

- i. The Strategic Flood Risk Assessment (SFRA) results from a common approach agreed with the Environment Agency by the Central Hampshire Councils. The SFRAs for these authorities, including Winchester, were therefore carried out by the same consultant to a common methodology and presented in the same format. This is demonstrated by the Council's acceptance letter which I attach as Exhibit SO10. This clearly refers to the consultant's proposal meeting *'the joint requirements of the Central Hampshire Local Authorities and the Environment Agency'*. For completeness I also attach the consultant's proposal summary and covering letter (Exhibit SO11). Clearly the consultants were able to highlight any cross-boundary issues;
- ii. As the DtC Statement says (paragraph 3.12), the evidence was *'developed or commissioned jointly with one or more of the other Central Hampshire authorities'*. East Hampshire is one of the other Central Hampshire authorities and the Claimant acknowledges that the Open Spaces study was jointly commissioned with East Hampshire District Council. The Claimant does not identify any respect in which open space issues required any wider cross-boundary assessment;
- iii. The 'Local Connections Housing Study' arose directly from the joint working that Central Hampshire Authorities had undertaken through HARAH (the Hampshire Alliance for Rural Affordable Housing), looking at the effectiveness of different policy approaches to rural affordable housing provision. HARAH had jointly agreed an Affordable Housing Planning Statement in 2008 which I attach as exhibit SO12. It can be seen that this was agreed by all the rural Hampshire authorities and

had the primary aim of promoting an increase in the provision of affordable housing. It committed the authorities to share research and best practice and developed a number of policy options. The Local Connections Study was aimed at developing one of these options. The Local Connections Study was commissioned by Winchester to explore the potential of a local connections policy and East Hampshire District Council then commissioned its own study on the same basis, having worked with Winchester and other authorities through HARA. Each authority received a 'personalised' version of the results, but common or cross-boundary issues were addressed.

- 6.23. In conclusion with regard to joint working between the Central Hampshire authorities, it is clear that the DtC Statement is not seeking to demonstrate that the Duty was met in the period before 2011, because no such Duty existed. It is therefore 'proportionate' and 'succinct' and is simply pointing out that much joint working and evidence production had taken place and that the authorities had therefore actively worked together, even before there was any indication of a Duty to do so.
- 6.24. The evidence arising from joint working showed that, when it came to producing a locally-derived housing target, it was appropriate to do this at a District level rather than at a Central Hampshire level. It is not, therefore, a case of the Central Hampshire authorities failing to work jointly together on their housing needs, but rather that their joint working had indicated that in this part of the County housing needs are best addressed at the District level. This approach is reflected in the work undertaken by the other Central Hampshire authorities, each of which is in the process of promoting its own locally-derived housing target through its own Plan. This consistency of approach further illustrates the cooperation that is taking place and that there is no need for a joint approach to setting housing requirements.
- 6.25. Given the entirely appropriate and evidence-based approach of each authority planning to accommodate its own needs, the Council's objection to Basingstoke's emerging Local Plan can be seen to be justified and to carry forward the approach developed by the Central Hampshire authorities. The

authorities are working on the basis that they should each identify and accommodate their own housing needs without needing a PUSH-style formal joint working arrangement. Therefore, the Council's objection to Basingstoke and Deane's emerging plan was felt necessary to flag up concerns that Basingstoke appeared not to be following the approach that had been expected from the discussions that had previously been held.

- 6.26. The DtC Statement identifies that there are a number of working partnerships between the officers of the various Hampshire planning authorities which allow for on-going discussions of policy matters. These are referred to at paragraph 8.1 of the DtC Statement. They include the Hampshire & Isle of Wight Planning Officers Group (HIPOG), and its sub-groups, the Development Plans Group and the Planning Research Liaison Group. The Development Plans Group, in particular, met in December 2011, February 2012, and April 2012, after the Duty came into effect and before the JCS was submitted for Examination. At each of these meetings there was an update on on-going development plan preparation and there was the opportunity for any issues of concern to be raised.
- 6.27. Officers of the Council and Basingstoke and Deane met on 29 February 2012 to discuss progress on their respective Core Strategies and any potential cross boundary issues. I attach as exhibit SO13 the agenda for this meeting but it does not seem that formal notes of it were made. However, it can be seen from the agenda that the authorities' respective Core Strategy progress and timescales were considered, along with cross boundary issues. These specifically refer to "housing strategies" and I can confirm that this included discussion of the Council's concerns about the housing provision proposed by Basingstoke in its emerging Core Strategy.
- 6.28. Basingstoke officers understood the City Council's concerns and pointed out the 'political' nature of the process. Obviously at that time the Basingstoke Pre-Submission Core Strategy had been published and it was accepted that the only way forward in the circumstances was for Winchester to object to that Plan.

- 6.29. The Basingstoke and Deane Pre-Submission Core Strategy promoted a 'zero net migration' housing strategy that the City Council was concerned could potentially fail to meet Basingstoke's housing needs. This did not appear to the City Council to reflect the agreed approach of each Central Hampshire authority identifying and accommodating its development needs. It was felt that if a 'zero net migration' strategy failed to meet Basingstoke's needs this could have implications for Winchester and other neighbouring authorities. It was, therefore, quite appropriate for the City Council to point out its concerns.
- 6.30. In fact the housing provisions of the Basingstoke Plan which drew comment from the Council had been developed before the Duty to Cooperate applied to either authority. This is illustrated by the Statement of Consultation for the Basingstoke and Deane Pre-Submission Core Strategy, extracts of which are included at exhibit SO14. This is illustrated by the 'Summary of Consultation' (table at paragraph 1.8) and the following extract from Section 11:

"11.21 The future housing requirement for the Core Strategy was considered by Councillors of the Planning and Infrastructure OSCOM on 16 July 2011. The Committee resolved to recommend support for the Hybrid Zero Net Migration number of 594 dpa (dwellings per annum) as a maximum, but requested that officers work up a further option of 400 dpa to be considered by the Portfolio Holder prior to making a formal decision on housing numbers, sites and distribution. The background information presented to Members in the officer report highlighted the findings of the New Homes Consultation, alongside other demographic and economic information."

- 6.31. The City Council was far from being alone in making these points, which were also made by numerous other objectors, including development interests and other authorities. These included Barton Willmore (on behalf of clients), Reading Borough Council, West Berkshire Council and Wokingham Borough Council. The Duty to Co-operate is not a 'duty to agree' and the fact that neighbouring authorities may sometimes feel the need express concerns about each other's plans does not in itself demonstrate a failure to meet the Duty (even if it had existed at the time the plan was prepared). Since the Council (and others) made these representations, Basingstoke and Deane

has commissioned further work in relation to the evidence required to support its emerging Core Strategy.

- 6.32. Returning to the main issue of the Council's JCS, Basingstoke did respond to the Pre-Submission JCS and made it clear that they were content with its contents (Exhibit SO15). It is far from clear how the Claimant can conclude that Basingstoke's acceptance of the housing provision in the JCS shows a failure to meet the Duty.

South Hampshire

- 6.33. The representations from Eastleigh Borough Council and Fareham Borough Council referred to by Mr Shepherd relate to matters of detail rather than "*strategic matters*". Although infrastructure is one of the 'strategic priorities' listed in the NPPF, the objections are concerned principally with the level of detail the JCS should include in relation to infrastructure requirements for major development, particularly North Whiteley. Hence the Fareham representations are concerned with the prospects and timing of infrastructure delivery, not with whether key infrastructure items will be provided: *'in particular with regard to the timing and location of both education provision (primary and secondary) and transport provision (road access)'*. Whilst Fareham does refer to the Duty in this regard, this is not the same as demonstrating that the Duty applied to the issue in question. The Council set out its position on education and transport infrastructure for the North Whiteley development in its Hearing Statement on Issue 6 Questions i and iii (Exhibit SO16). Fareham did not submit a further statement.
- 6.34. Similarly, Eastleigh's comments relate to detailed transport matters, principally the Botley Bypass and whether this should be a requirement of the Winchester JCS and be funded by development at North Whiteley. It is notable that the comment form submitted by Eastleigh Borough Council (Exhibit RS1/Vol.4/Tab 19) does not anywhere refer to the Council failing in its Duty to Co-operate and the changes that are sought by the Borough Council are clearly matters relating to the level of detail that should be included in the

policy allocating North Whiteley (policy SH3). Again, the Council's position was set out in its Hearing Statement on Issue 6.

- 6.35. Both Fareham and Eastleigh Borough Councils are members of the North Whiteley Development Forum, which was established in March 2010. This acts as an informal advisory body which receives regular up-dates from both Winchester City Council and the developers on progress in developing the policy framework and preparing a masterplan and background material to support an outline planning application. Membership of the Forum includes local Winchester City Council Members, Members of the County Council, Eastleigh Borough Council, Fareham Borough Council, and adjoining parish councils (see RS1/Vol. 6/Tab 36, paragraph 2.47). This formal mechanism for joint working has, therefore, existed since before the Duty came into being and has enabled issues of concern to be aired and resolved so far as possible.
- 6.36. The Inspector was clearly keen to actively explore the objections from Eastleigh and Fareham and both authorities were invited to and attended the Examination hearings in relation to North Whiteley. The Inspector's Report addresses the issues raised in the section on policy SH3 (paragraphs 76 – 98), particularly at paragraphs 77 – 79 (infrastructure) and 80 – 82 (transport and Botley Bypass). Having actively explored these issues in detail the Inspector was clearly content that the concerns raised by those 2 authorities had been adequately addressed by the JCS. Since he was satisfied that infrastructure matters would be adequately addressed by the JCS, there was no basis for him to find that the Duty to co-operate had not been met in relation to this, or any other, aspects of the JCS.

Inspector's Report

- 6.37. Barton Willmore raised objections to the JCS in relation to the Duty in its submissions to the Examination and it is clear that the Inspector has addressed these. As noted above, the issues in relation to North Whiteley are discussed in some detail in the Inspector's Report and housing provision is similarly thoroughly examined. The fact that the Inspector does not mention

Central Hampshire in relation to the Duty is no doubt because he recognised that the references to this area in the DtC Statement generally pre-date the Duty and that the issue of housing provision is one which he needed to give full consideration to elsewhere. As already noted, the DtC Statement made the point that there were no cross-boundary issues for Central Hampshire to engage the Duty. There was therefore no need for the Inspector to mention the Duty in that context.

- 6.38. Bearing in mind that Inspector's reports are now 'short-style' reports, there is no reason to expect that the Inspector should discuss every issue raised by participants at length. There is no requirement for the Inspector to document his consideration of each objection, as the Examination is of the soundness of the Plan, not of individual objections to it. Neither can it be inferred that there is a failure on the part of the Inspector because he does not discuss matters at length, especially when he specifically states that *'the Council has satisfactorily documented where and when cooperation has taken place, with whom and on what basis'* (Inspector's report paragraph 5).
- 6.39. It is nevertheless clear that the Inspector considered objections such as Barton Willmore's, as he refers to the Duty being met *'in the absence of any indication to the contrary'* (Inspector's Report paragraph 6). This indicates that the Inspector considered the evidence on the matter and concluded that the evidence of cooperation outweighed any accusations of a failing in this respect. Rather than suggesting a 'passive' treatment of the Duty, it indicates that the Inspector examined the evidence but concluded that the suggestions of a failure to meet the Duty lacked substance.
- 6.40. Other Inspector's reports or conclusions are of considerably less relevance to the situation in Winchester than the report of the Inspector charged with examining the Winchester JCS. It is clear from the JCS Inspector's Report that he was well aware of his responsibilities in terms of assessing the Duty and there is a section of his report specifically on this. The Inspectors' reports on other plans quoted by the Claimants clearly reflect the circumstances that the Inspectors found in those areas. It is understandable that the Inspectors in the Coventry and North London cases went into some detail as to the Duty

because they found that the North London Waste Plan was unsound in this respect and had significant reservations about the Coventry Plan.

6.41. Understandably the respective Inspectors needed to set out their conclusions in some detail, but the requirements against which they judged those Plans, and the process, was the same as the JCS. The difference is that, having undertaken his examination in the proper way, the JCS Inspector found that Winchester's Plan met the requirements, so did not need to report at length on this matter, whereas the other Plans had failed in that respect.

6.42. The Claimants also refer to the situation in relation to the East Hampshire Plan. It is clear from the Inspector's letter in relation to that Plan (Exhibit RS1/Vol.12/Tab 82) that his concerns are with matters of soundness, not with legal compliance with the Duty. As the PAS guidance on the DtC states: *'just because a local plan passes the legal test of the duty, it does not mean that it will be found 'sound' in dealing with strategic matters.'* The East Hampshire case is one where the Inspector has raised no issue in terms of the Duty, and therefore presumably believes it is capable of being met, but has raised issues relating to soundness. The fact that both areas can potentially cover housing provision or the need for adequate evidence does not make them interchangeable.

6.43. It is important to note that the Inspector refers to *'Possible Ways Forward'* at his paragraph 31. The first point to make is that it would he have been unable to consider 'ways forward' if he thought the Plan failed the legal requirements of the Duty. This is further clarified (in the 3rd bullet of paragraph 31, where there is reference to discussions with neighbouring authorities but only *'in relation to meeting an unmet need in the District'*). East Hampshire is not, therefore, a comparable situation.

7. Sustainability Appraisal/SEA

7.1. The Claimant suggests that that the Council failed to undertake a proper Sustainability Appraisal (SA) of the JCS and that the Examination Inspector failed to test this properly, or the implications of the 'soundness' changes he recommended. It is therefore alleged that the Council adopted the Plan unlawfully.

7.2. The Council rejects these allegations. The criticisms seem to be that the Council failed to consider Scenario 3 "properly" as an alternative, failed to consider as a "reasonable alternative" what the Claimant asserts the SE Plan would require if it was projected forward to 2031, failed to subject to SA the development arising from the South Hampshire Strategy, and that the Inspector failed to require SA to be undertaken of his recommended uplift in the housing provision.

7.3. Mr Shepherd's Statement sets out the legislative requirements at length, but there are parts which need to be drawn to the Court's attention, other than those that he highlights. It is acknowledged that the JCS is a qualifying plan and that Article 5 therefore applies. The requirements of paragraph 2 of the Article are as important as those highlighted by the Claimant, as follows:

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

7.4 Regulation 12 (3) of the Environmental Assessment of Plans and Programmes Regulations 2004 similarly refers to what may 'reasonably' be required and the relevance of the '*level of detail in the plan or programme*'. Clearly, these matters are not absolutes but require a judgment to be made, in the first instance by the relevant decision maker, as to how much information and detail it is "reasonable" to require, having regard to the particular circumstances of the plan in question.

7.5 The JCS is a strategic level plan and does not set out in detail where and how each of the dwellings in its housing requirements will be provided. The adopted JCS allocates three 'strategic allocations' for between 2,000 and 3,500 dwellings each. It is possible to undertake a more specific assessment of these allocations, but even these reflect the fact that this is a 'plan-level' assessment, not a 'project-level' assessment. The SA/SEA undertaken of the strategic locations identified the likely significant effects, acknowledged any uncertainties and/or need for further information that would be more appropriately dealt with at the lower project level of assessment, and including suggestions for planning briefs/masterplans. A key feature of the plan level assessment is that it should assess impact so far as possible and identify where requirements need to be set to mitigate potential impacts or to require further assessment when more details are available. This is what the JCS has done.

7.6 It is not, therefore, necessary or realistic to assess the detailed impact of every matter that is subject to the provisions of the JCS, because the details of how they may impact the environment cannot be assessed properly at this stage. This is the situation in relation to the alternative scenarios that were tested for housing provision. The representations made by Barton Willmore at the Examination hearings (which the Claimant now seeks to rely on) related simply to the overall housing provision that should be planned for and matters of broad distribution, rather than anything site specific. Similarly, the JCS sets out an overall housing requirement and its broad distribution and, apart from the strategic allocations, does not specify precisely where the necessary sites will be.

7.7 It is, therefore, not possible to assess the effects of the JCS at a detailed level, even if it were appropriate, and this is clearly an accepted situation in relation to strategic level plans. It is perfectly normal for regional strategies and core strategies to be subject to plan-level SA. This is what is allowed for by the references to '*information that may reasonably be required taking into account the contents and level of detail of the plan or programme*'.

Similarly, the NPPF recognises that assessments (and evidence) should be *'proportionate'* (NPPF paragraph 167).

7.8 The Claimant is critical of the Sustainability Appraisal in relation to the options considered by the Housing Technical Paper (HTP). Mr Shepherd's particular focus is Scenario 3, which was employment-led, and which suggested a higher number of dwellings than Scenario 1, which was ultimately preferred. However, Mr Shepherd's Statement quotes only from the 'Conclusions and Summary Reasons for Selecting/Rejecting Alternatives' section (Exhibit RS1/Vol.5/Tab 30, pages 309 - 310). As the heading implies, this section is a summary of the conclusions, so it is not surprising that it is not detailed. The SA contains a more detailed 'Sustainability Appraisal Findings' section (pages 307 - 309) as well as Appendix A (pages 312 - 321), setting out a much more detailed assessment of the alternatives against each of the 15 SA Objectives. Whilst the Claimant may disagree with the judgments set out in Appendix A on the deliverability and infrastructure implications of Scenario 3, these were matters that were assessed and reasons were given for the conclusions reached. It is, therefore, misleading to imply that the SA was insufficiently detailed when it quite clearly assessed the HTP options to the same level of detail as the rest of the JCS and followed the relevant Government guidance and High Court judgments. The SA of the HTP was then reported in the main SA of the JCS (in section 11, at pages 91- 93). The SA therefore clearly set out how it had addressed Scenario 3 and why it was not preferred.

7.9 It should be noted that the SA that appears in Exhibit RS1/Vol.5/Tab 30 is not the complete version of the SA and only includes some of its appendices. Also parts of sections 5, 6, 7, and 8 of the report appear in the wrong order (at pages 124 to 145 instead of following page 56). The SA does set out how it complied with the SEA Directive in its Appendix I and also summarised the consultation comments from statutory consultees including the Environment Agency, Natural England, and English Heritage in its Appendix II (Exhibit SO17).

7.10 With regard to the level of detail in the SA, the relevant guidance was provided in the ODPM publication "A Practical Guide to the Strategic Environmental Assessment Directive". I produce relevant extracts as Exhibit SO18. Section 2 deals with the overall process. Paragraph 2.22 indicates that *"An SEA need not be done in any more detail, or using any more resources, than is useful for its purpose."* Paragraph 2.25 advises that *"It is not usually appropriate in SEA, and is often impracticable, to predict the effects of an individual project-level proposal in the degree of detail that would normally be required for an EIA of a project. If, however, a plan or programme proposes a specific development or type of land use for a particular area or location, the Environmental Report should include information which can reasonably be provided on the likely significant effects of that proposal and alternatives to it."* Appendix 6 gives advice on alternatives, including that *"The assessment of alternatives may be made in broad terms against the SEA objectives, provided that there is sufficient detail to identify the significant environmental effects of each alternative."*

7.11 It is also not surprising that the SA came to broad conclusions about matters such as infrastructure, as the HTP options relate to overall housing numbers, not specific sites. It is not, therefore, possible for the SA to assess specific infrastructure needs or costs at the plan-level assessment and it is unrealistic for the Claimant to expect it to. Barton Willmore's contribution to the JCS Examination is notable for its complete lack of reference to a client or site, so it too had not assessed its infrastructure requirements and this would not be expected at this strategic level.

7.12 It would not, therefore, be necessary or appropriate for the SA to attempt a more detailed assessment. Nor could the consultants undertaking the SA be expected to necessarily share the Claimant's view, which is disputed by the Council anyway, that Scenario 1 would be likely to import workers. With regard to the Infrastructure Study, this similarly cannot be expected to go into great detail for a strategic plan. Nevertheless, where the JCS makes strategic allocations, at West of Waterlooville, North Whiteley and North Winchester, the Study can and does include substantial detail.

7.13 It also has to be borne in mind that the SA of the HTP reported on 2 different situations in relation to Scenario 3. It did this by setting out its conclusions in plain text for the position as at the time of the HTP (June 2011) and then in italics for the updated position. At the time of the HTP itself Scenario 3 had projected a higher number of dwellings than Scenario 1 in order to support its greater levels of employment provision. However, even at that time it was recognised that the employment projections might be optimistic because of prevailing economic conditions. The Council therefore commissioned a further study in the summer of 2011 to examine that issue. This was the report from DTZ 'Review of Employment Prospects, Employment Land and Demographic Projections' published in August 2011 (Exhibit RS1/Vol.3/Tab 18). This evidence led to a reduction in the employment projections and as a consequence a reduction in the dwelling requirement that would be needed to support an employment-led Scenario 3. The result was that in terms of dwellings there was little difference between Scenario 1 (11,000 dwellings) and Scenario 3 (11,600 dwellings). This was reported at paragraph 3.10 of the SA of the HTP (p309) and was derived from the jobs/dwelling forecasts in the DTZ Review (section 4.4.2). Thus, Scenario 3 had ceased to be a real alternative to Scenario 1.

7.14 Mr Shepherd's Statement criticises the Infrastructure Study (Exhibit RS1/Vol.11/Tab 75) and the Infrastructure Delivery Plan (although he does not include or quote from the latter) on the basis that they do not test the housing scenarios (Mr Shepherd's paragraph 142). That is because the purpose of these documents is not to test scenarios but to consider infrastructure provision, shortfalls and commitments for each of the key infrastructure types and for the strategic allocations. It is difficult to understand why Mr Shepherd believes (paragraph 143) that the information sourced from the infrastructure providers should be seen as not "*objective*". Appendix 2 of the Infrastructure Study sets out the identity of the wide range of public and private sector bodies which provided the information. Again, the Claimant's criticism of the documentation is unreasonable and irrelevant given the requirements of the legislation and for evidence and SA to be proportionate and succinct. Far from failing to be founded on a proportionate evidence base

(Mr Shepherd's paragraph 146), the evidence and SA are absolutely proportionate to the level of detail and strategic nature of the JCS.

7.15 It is very clear from a proper reading of the SA of the Housing Technical Paper that its starting point was the 4 scenarios in the Housing Technical Paper (SA page 306, paragraph 2.4). The SA did not 'jump' straight to the revised Scenario 3 numbers, which were found to be similar to Scenario 1, it considered each Scenario in detail in Appendix A and noted (in italics) where there was an update in the light of the DTZ 2011 work. Therefore, the Inspector was neither 'misled' nor mistaken in believing that each of the Scenarios had been properly assessed, as they obviously had been.

7.16 The reason the SE Plan housing provisions were not considered as a 'reasonable alternative' was because the whole point of undertaking Blueprint, the Housing Technical Paper and Plans for Places was to develop a locally-deriving housing requirement for the JCS, to replace the SE Plan's target and meet objectively assessed needs. During the JCS preparation period the SE Plan had been "revoked" and then reinstated, but it remained a clear Government intention to revoke regional strategies at the earliest opportunity. As I have already noted the SE Plan only covered the period to 2026 and yet was expected to have been removed well before then. The JCS would cover the period to 2031. It would, therefore, have been nonsensical to use the SE Plan's provisions as a 'reasonable alternative' for the purposes of the JCS, although it was always recognised that any submitted Plan would need to be in general conformity with the SE Plan for so long as it remained in place.

7.17 The Claimant suggests that because the South Hampshire Strategy of October 2012 had not been subject to formal SA so it should have been tested as a 'scenario' by the Council and in some way subjected to a distinct SA by the Council. However, what was required was a SA of the JCS, and all of its housing provision was adequately subject to SA. There was no need for any separate assessment to be undertaken of this one strand of the overall housing provision.

7.18 So far as the Inspector's changes to the housing requirements, these too were not a significant change from what had already been subject to SA. The increase recommended by the Inspector amounted to 1,500 dwellings in total, the majority of which (1,000) were within the 'MTRA'. The submitted JCS included policy MTRA2, with a range of housing requirements for the larger villages (either 400-500 dwellings or 150-250 dwellings). The Inspector recommended that these ranges were replaced by targets set at the top of the ranges (500 dwellings or 250 dwellings). Therefore, the 1,000 'additional' dwellings that the Inspector recommended for the MTRA area was in fact already planned for in the submitted JCS, having been part of the range within policy MTRA2. This policy (and all other JCS policies) was assessed in the SA of the Pre-Submission JCS (Exhibit RS1/Vol.5/Tab 30).

7.19 With regard to the increase at North Whiteley, this was also already alluded to within the JCS. Paragraph 3.65 of the submitted JCS stated that *'the site should be capable of delivering at least 3,000 new dwellings. The final figure may exceed 3,000 and this will be dependent on the preparation of a comprehensive masterplan, based on sound urban design principles, and the ability of the site to either avoid or mitigate its potential environmental impacts'* (Exhibit SO19). The Inspector drew attention to this part of the JCS in his report (paragraph 90). In addition, the development consortium promoting North Whiteley was promoting it for 3,500 dwellings. The consortium's submissions and evidence to the Examination on Issue 6 – Policy SH3 (Exhibit SO20), which went into substantial detail on SA/Habitats Regulations Assessment issues, all related to a scheme of 3,500 dwellings.

7.20 Therefore, far from plucking the 3,500 figure out of the air, the Inspector accepted what was being promoted to him by the development consortium, along with substantial evidence as to its impacts in terms of the environment, transport and infrastructure. This evidence included a viability assessment summary report which assessed 3,500 dwellings and showed that the increased provision would have little impact on the amount of infrastructure required, but would improve the viability of the development and assist in securing early provision of infrastructure. Although the Council did not

promote reference to 3,500 dwellings in the JCS, it readily accepted that the allocated site may be able to accommodate more than 3,000 and had no issue with this in principle. In the light of the evidence available to him, the Inspector was perfectly entitled to conclude that the scale and extent of the mitigation/avoidance measures resulting from an increase from "at least 3,000 dwellings" to "about 3,500 dwellings" would be unlikely to be significant and so that no further SA was required at the plan-making stage.

7.21 The Inspector was, therefore, very much following the strategy of the submitted JCS, which he specifically acknowledges is 'essentially sound' at paragraph 18 of his Report. He goes on to appreciate that the housing numbers can be increased whilst maintaining this strategy, at paragraphs 50 and 51. It is, therefore, quite clear that the Inspector's recommendations maintain the locally-derived strategy resulting from work on Blueprint, the Housing Technical Paper and Plans for Places, even though the housing figure was increased. Accordingly, it is not credible for the Claimant to suggest that the JCS no longer has a locally-derived housing target although, even if this were true, there is no requirement that it should. The key point is that it is a target that has been thoroughly tested, through examination and SA, and found to meet objectively assessed needs and have an acceptable environmental impact.

7.22 Therefore, the Council does not accept that there has been any failure of the SA process, whether during the development of the JCS or during the Inspector's examination of it.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true.

Dated:

7 June 2013

Signed:



Exhibit List for Steven Opacic's Witness Statement	
SO1	Letter from Cluttons (13 February 2008) on behalf of Zurich Assurance Ltd in response to Winchester LDF Core Strategy Issues and Options Consultation
SO2	Letter from Barton Willmore (14 February 2008) on behalf of Eagle Star Estates Limited in response to Winchester LDF Core Strategy Issues and Options Consultation
SO3	Letter dated 12 May 2009 from WCC advising the start of consultation on the Winchester District Core Strategy Preferred Option + mailing list
SO4	Completed response form from Cluttons LLP on behalf of Zurich Assurance Ltd (8 August 2011) in response to WCC consultation on Plans for Places.
SO5	Planning Policy Statement 12 : Local Spatial Planning DCLG 2008
SO6	WCC Statement of Community Involvement
SO7	Hampshire Chronicle article 16 May 2013
SO8	CLG Chief Planner Letter 10 November 2010
SO9	WCC Plans for Places ..After Blueprint 2011
SO10	Letter from WCC to Halcrow Group Ltd 30 March 2007 accepting the proposal for the Winchester Strategic Flood Risk Assessment
SO11	Letter and proposal summary from Halcrow 12 March 2007 in relation to the Winchester Strategic Flood Risk Assessment
SO12	HARAH Affordable Housing Planning Statement 2008
SO13	Agenda of Cooperation Meeting on 29 Feb 2012 between Basingstoke and Deane Borough Council and Winchester City Council
SO14	Extracts from Statement of Consultation for the

	Basingstoke and Deane Pre-Submission Core Strategy
SO15	Completed response form from Basingstoke and Dean Borough Council 9 March 2012 in response to Winchester District Local Plan Part 1 – Joint Core Strategy pre-submission
SO16	WCC Examination Hearing document Issue 6 questions i) & iii)
SO17	Winchester District Local Plan Part 1 Sustainability Appraisal / Strategic Environmental Assessment – Appendices 1 and 2, June 2012
SO18	Extracts from ODPM Practical Guide to the Strategic Environmental Assessment Directive
SO19	Extracts from Submitted Local Plan Part 1 – Joint Core Strategy (Tracked Change Version 1)
SO20	Hearing document (plus Appendices) from Terence O'Rourke Ltd on behalf of North Whiteley Consortium Issue 6 North Whiteley Policy SH3