Local Plan Examination - South Downs National Park

Position Statement filed on 23 October 2018

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1. Introduction

I have lived at the foot of Harting Down since 1956. I am Chair of the Friends of Harting Down.

2. Summary of Key issues

The focus of this Position Statement is threefold:

2.1 The Authority's failure to give priority in the submitted Local Plan ("the Plan") to conserving and enhancing the landscape of the National Park, as it is required to do by Parliament (paragraphs 4 onwards);

2.2 The Authority's failure properly to consult on site allocations and settlement boundary changes (paragraphs 5 onwards); and

2.3 The Authority's failure to recognize and respond to the impact which development at Loppers Ash (SD90) will have, a direct and inevitable consequence of the erroneous approach identified above (paragraphs 6 onwards).

To respect the word limit of the Position Statement, authorities relied upon are cited at greater length in the annexes at the end of this document.

3. Key Facts

3.1 The Loppers Ash site abuts a lane that is the single thread linking the village of South Harting with its main natural asset, Harting Down. Viewed from any vantage point on the South Downs the building of 6-8 houses at the Loppers Ash site will be highly visible, and have an impact on the landscape. It cannot, by any stretch of the imagination, be said to "enhance or conserve the landscape" in the ordinary sense of the words.

3.2 The South Downs National Park Authority ("the Authority") has overlooked these matters and has arrived at allocating such a site only as a result of failing (i) to make or follow policy that adequately reflects the statutory purposes of national park designation, and (ii) to consult adequately or at all on the site concerned and the village's settlement boundary. Nor has the Authority entertained the alternative site proposed by the Harting Parish Council.

4. SD 25 and The Environment Act 1995

4.1 Section 61(1) of the Environment Act[1] states National Parks are designated for the purpose of

> "*conserving and enhancing the natural beauty, wildlife and cultural heritage of [the National Park]; and of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public*". (emphasis added)

4.2 Section 62(1) of the Environment Act[2] provides, inter alia,

> *"In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to* [these purposes] *and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park."* (emphasis added)

4.3 This section gives statutory force to the Sandford Principle: *"There will be situations where the two purposes are irreconcilable... Where this happens, priority must be given to the conservation of natural beauty."*[3] (emphasis added)

4.4 The Authority's statutory duty is, in short, to afford priority to conserving and enhancing natural beauty etc., whether in the context of plan-making or development control decision-taking. The statutory duty should, therefore, be a golden thread running through all policies in the Plan.

4.5 The Authority has, in designating the Plan as 'landscape-led,'[4] rightly, incorporated these two purposes in the forefront of the Local Plan.

4.6 In reality, however, the allocation of site SD90 neither conserves nor enhances the landscape.

4.7. The Outcomes of the SD 90 allocation listed below at paragraph 6.3, far from conserving and enhancing, are unquestionably detrimental to (i) the landscape, (ii) its enjoyment by the local community and public at large, and (iii) the social well-being of the village (contrary to the duty contained in section 62(1) to seek to foster the economic and social well-being of local communities).

4.8 In short, the site allocation SD90 demonstrates that policies used to select sites are contrary to the Authority's clear statutory purposes. This difficulty is confirmed by a careful analysis of the relevant development policies in the Plan.

4.9 The Plan (Key Messages on page iii) states: "*This is a landscape led Local Plan…*". This statement is repeated - "*whilst we end up with site allocations, these are driven by landscape focused assessments…".*

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[1] Section 61 of the Environment Act 1995, amending section 5 of the National Parks and Access to the Countryside Act 1949.

[2] Section 62(1) of the Environment Act 1995, amending section 11A of the National Parks and Access to the Countryside Act 1949.

[3] Sandford, Lord (1974). Report of the National Parks Policy Review Committee. (Sandford Report). http://www.nationalparks.gov.uk/students/whatisanationalpark/aimsandpurposesofnationalparks/sandfordprinciple

[4] See pages iii, 4, 35, Policy SD5 etc. of the Plan.

4.10 This is wholly inconsistent with the criteria on which sites for village development were in practice selected by the Authority:

> *"Strategic Policy SD25: Development Strategy*
> *1. The principle of development within the following settlements, as defined on the Policies Map*, will be supported, provided that development:*
> *a) Is of a scale and nature appropriate to the character and function of the settlement in its landscape context;*
> *b) Makes best use of suitable and available previously developed land in the settlement; and*
> *c) Makes efficient and appropriate use of land.*
> *…"*
> …
> *"Principles of Development*
> *7.7 The purpose of Policy SD25 is to identify towns and villages across the broad areas and river corridors of the National Park that are able to accommodate growth of a scale and nature appropriate to the their character and function. These have been identified in line with two principle criteria:*
> - *The future sustainability of the settlement, in terms of its facilities and services; and*
> - *The form and character of the settlement within its landscape context."*

(Policy SD25 on page 117, Paragraph 7.7 on page 118 of the Plan)

4.11 The Local Plan is supposed to be a landscape-led plan, thereby reflecting the Authority's statutory purposes. In selecting sites on the basis of the criteria in Policy SD25 (paragraph 1) and paragraph 7.7 the Authority is in breach of the statutory duties referred to above.

4.12 To be in accordance with its statutory duty to prioritise the aforementioned purposes, landscape must be afforded priority. That is not the case in this important policy of the Plan, which puts (a watered down) landscape criteria on equal footing with settlement sustainability and housing needs. The first criteria in paragraph 7.7 (sustainability of the settlement…) should instead be secondary and subservient to the landscape criteria.

4.13 Furthermore and in any event, the second criteria in paragraph 7.7 (form and character of the settlement…) itself fails to give adequate force to the statutory purposes, because it improperly gives equal importance to the built environment and the natural. Whilst the concept of natural beauty does not preclude areas where the natural landscape, flora and fauna are the result of human intervention (e.g. through agriculture) (see section 99 of the Natural Environment and Rural Communities Act 2006), there is a clear and established distinction between natural beauty on the one hand, and issues of form, character and cultural heritage of settlements on the other (see *Meyrick Estate Management v Secretary of State for the Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin), per Sullivan J. at paragraphs 45-62).

Examples in case law and other local plans

4.14 The inadequacy of the Plan in this regard can be confirmed by reference to relevant case law, as well as adopted and emerging National Park Plans. Full citations and excerpts from the following authorities is given in the annex at the end of this document.

4.15 The approach taken in the Plan does not satisfy the required standard for giving effect to the statutory duties as approved by Sullivan J. in *Dartmoor National Park Authority.*[5] Nor does it provide the same kind of protection of national park purposes approved by the Inspector in *South Lakeland Caravans Ltd.*[6]

4.16 The 2010 National Parks Circular makes clear that in delivering sustainable development, the "Authorities' primary responsibility is to deliver their statutory purposes."[7]

4.17 This is properly given effect to in the adopted local plan of the Yorkshire Dales,[8] and the emerging Local Plan for the New Forest National Park.[9]

4.18 Notwithstanding this residual protection afforded by the statutory duties as material considerations (see *Council for National Parks v The Pembrokeshire Coast National Park Authority*[10]*),* due to the inadequacies of Policy SD25, adoption of the Authority's Plan in current form would set a dangerous precedent for all national parks: the aforementioned statutory duties, and the purposes which they protect, being rendered toothless in practice, relegated to little more than strategic aspirations.

4.19 The appropriate solution is to re-write SD25 to match exemplar policy text from other National Park plans (as mentioned above) so as to give proper effect to the statutory purposes at the detailed level of individual policies. To be sound, SD25 must afford priority to conservation and enhancement of natural beauty.

5. Settlement Boundary Changes

5.1 The Authority moved the settlement boundary of South Harting after *The Preferred Options* consultation. It is clear that it did so in order to accommodate the proposed development. There has been no consultation with the Harting community on these changes, nor was there any indication whatsoever in the *Preferred Options* consultation that such a change was possible.

5.2 The Authority is required by Regulation 18 to consult with those effected before moving a settlement boundary. It has not done so.

5.3 The Authority has failed to comply with the relevant legal and procedural requirements. The purpose of the regulations is to ensure that the Authority is fully aware of local views and interests. That such consultation takes place is all the more important when the Authority is not an elected body and subsequently has no democratic accountability.

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[5] *Dartmoor National Park Authority v Secretary of State for Transport, Local Government and The Regions* [2003] EWHC 236 Admin (paragraphs 15 and 30)

[6] *South Lakeland Caravans Ltd v Lake District National Park Authority* [2006] P.A.D. 40 (Decision Letter: 30 January 2006, Inspector: Elizabeth Hill) (paragraph 7.10)

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221086/pb13387-vision-circular2010.pdf

[8] Pages 10-11: http://www.yorkshiredales.org.uk/__data/assets/pdf_file/0011/857558/Yorkshire-Dales-National-Park-Local-Plan-2015-30.pdf

[8] http://www.yorkshiredales.org.uk/__data/assets/pdf_file/0005/857714/Inspectors-Final-Report-Dec-2016.pdf

[9] see https://www.newforestnpa.gov.uk/planning/local-plan/

[10] *R. (Council for National Parks Ltd) v The Pembrokeshire Coast National Park Authority & Others* [2005] EWCA Civ 888, per Maurice Kay L.J. at paragraph 22-23

5.4 The Authority's obligation to consult is embedded in public law principles of fairness in decision-making. This is enshrined in the '*Gunning Principles,'* as recently expanded by the Supreme Court in *R. (Moseley) v London Borough of Haringey* [2014] UKSC 56, per Lord Wilson at paragraphs 25-26.

5.5 Six essential elements emerge:[11]

i) *Consultation must be undertaken at a time when proposals are still at a formative stage;*
ii) *It must include sufficient reasons for the particular proposals to allow those consulted to give intelligent consideration and an intelligent response;*
iii) *Adequate time must be given for this purpose;*
iv) *The product of consultation must be conscientiously taken into account when the ultimate decision is taken.*
v) *The degree of specificity regarding the consultation should be influenced by those who are being consulted; and*
vi) *The demands of fairness are likely to be higher when the consultation relates to a decision which is likely to deprive someone of an existing benefit.*

5.6 The consultation process in relation to settlement boundaries has been inadequate and, it is submitted, unlawful. There has been no public meeting about the proposed development. We were not allowed to attend the site meeting last summer (we asked to do so). This failure to consult is unlawful and constitutes, in our submission, adequate grounds on its own to reject the allocation of SD90 and movement of settlement boundaries in South Harting.[12]

5.7 Silber J. in *R. (Capenhurst) v Leicester*[13] emphasised that consultees must be "aware of the basis on which a proposal put forward for the basis of consultation has been considered and will thereafter be considered by the decision-maker…".

5.8 The absence of information provided concerning settlement boundary changes has led to consultees being unable to understand the basis on which the proposal (the Loppers Ash site) has been put forward, and therefore unable to provide intelligent consideration and response, contrary to the second of the necessary elements, and the remarks of Silber J. referred to above. The following paragraphs establish the unlawfulness of the approach taken:

5.9 The 'Issues and Responses' document (SDNPA.4) (August 2018) states at page 6 "changes to the settlement boundaries were consulted on at both Preferred Options and Pre-Submission stages." This is demonstrably untrue: page 224 of the 2015 Preferred Options consultation document makes no mention of the settlement boundary; pages 334-335 of the Pre-Submission Local Plan do not mention settlement boundaries, only site allocation.

5.10 The document: 'Settlement Boundary Review: 2017 Update, Background Paper' (TSF-05) (September 2017) (a document referred to as part of the Local plan evidence base on page 119 of the Pre-Submission Local Plan, paragraph 7.9) proposes, for the first time, expanding the settlement boundary for South Harting to include site reference 61 (Loppers Ash, now SD90).

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[11] See *Moseley* at paragraphs 25-26; see also the remarks of Lord Woolf in *R. v North and East Devon Health Authority, ex p. Coughlan* [2001] QB 213 at p.108

[12] And, presumably, wherever else the same unlawful approach has been taken.

[13] See *R (on the application of Capenhurst) v Leicester City Council)* [2014] EWHC 2124 (Admin), per Silber J., at paragraph 46.

5.11 Paragraph 3.3 of TSF-05 reveals that amendment of settlement boundaries to reflect site allocations "was left to the end of the review process, to allow time for the list of potential allocations to be finalised," thereby proving the point that the allocation of sites has driven boundary changes, without consultation. This point is reinforced by the Interim Consultation Statement document (September 2017), which admits at page 181 that "Settlement boundaries have now been amended to include within the boundary all sites being allocated for development…".[14]

Irrational approach to site allocations and settlement boundaries

5.12 Whilst we are told the settlement boundary review methodology is "landscape led" at page 3 of TSF-05, this is undermined by the fact that in practice site allocations have, on the face of it, dictated settlement boundaries.

5.13 Because the approach to site allocations has followed the text of draft policy SD25, which, as indicated above, falls far short of adhering to the statutory purposes, the settlement boundary changes which have resulted cannot have been landscape led. They have been site-allocation led. This mechanism has not been made clear at any stage of the consultation process to members of the public.

5.14 This approach undercuts the very purpose of having distinct settlement boundary policies. For example, the distinction within policy SD25 between development outside and inside settlement boundaries is rendered otiose by the Authority's sole focus on site allocations, with the result that such a policy is entirely circular. There need be no distinction between development sites inside and outside of settlement boundaries where the Authority can move the settlement boundaries at will, without consultation, and entirely as a result of its decisions on site allocation.

6. Site-specific comments: the Loppers Ash Development

6.1 For the reasons given above, the process of allocating the Loppers Ash site (SD90) was ostensibly unlawful. Further, the site itself is inappropriate, for the following reasons.

6.2 The Loppers Ash site sits at the north end of New Lane. New Lane is a small, single track Historic Rural Road (as envisaged by the 2nd paragraph of Policy SD21 of the Plan), with barely enough room for a car and pedestrian to pass (including next to the proposed site). It runs due south for approximately half a mile from the Harting-Elsted road to the foot of the downs. From there the road ends and a footpath continues which takes walkers up to the top of Harting Down, one of the National Park's most popular sites. This route is the only conduit from the village of South Harting to Harting Down, itself a central feature of the village's identity.

Outcomes:

6.3 Development on the Loppers Ash site would:

(a) Alter substantially the view from Harting Down: (it would protrude well beyond North-South line which marks the edge of the existing houses. This would create a domestic sprawl which would be readily visible from the top of Harting

[14] Furthermore, It is evident that the Authority itself is confused about whether settlement boundary change has taken place: page 333 of the Responses document (SDNPA.4) assumes that the site (SD90) is outside the settlement boundary

Down and a long stretch of the South Downs Way which runs along the brow of the slope. The impact would be significant);
(b) Double (at least) the volume of traffic;
(c) Radically alter the character of New Lane. It would cease to be rural.
(d) Discourage pedestrians (who are themselves crucial to the village's economy);
(e) Require New Lane to be doubled in width up to the entry to the new estate, if access to the dwellings to the south is not to be impeded;
(f) Block decisively the view to the East from the northern end of New Lane;
(g) Block decisively the view to the South – ie the Downs - from the residential properties on the Elsted Road;

6.4 The Issues and Responses document states that the concerns over the Historic Rural Road status and significant pedestrian use can be dealt with in a highways assessment as and when a planning application is made. This is an inadequate means of dealing with serious concerns which are not ancillary to the appropriateness of the site, but central to it. That this has been overlooked, and that the Plan does not feature any protection for the status of the road as the single conduit between village and downs shows the inadequacies of the policies which have been deployed at the site allocation stage.

6.5 The development plan documents leave the issue of access to the Loppers Ash site entirely unclear. Page 47 of Schedule of Changes to the Pre-Submission plan document states that the 'single vehicular access to the allocation site from New Lane' part of the SD90 policy text has been removed. Policy SD90 itself, at page 343 of the Plan, gives no other indication as to access.[15]

7. Summary and proposed remedy

7.1 In reality the Authority has set a housing target for Harting and made site allocations without applying the relevant landscape constraints policy as required by its statutory duties. It has furthermore failed to consult at all on settlement boundary changes.

7.2 This unlawful approach can be remedied simply. Policy SD25 must be altered to reflect the statutory purposes explained above; if it is accepted that the settlement boundary changes were made in the unlawful way described above, it is right that the policy be rolled back to those who should have been consulted. Further, Loppers Ash (SD90) and sites like it which would clearly not be allocated pursuant to a policy which was compliant with the Authority's statutory duties must be de-allocated, or at the very least taken out of the Plan pending review.

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[15] https://www.southdowns.gov.uk/wp-content/uploads/2018/04/SDLP-01.1-Schedule-of-Changes-to-the-SDLP.pdf]

ANNEX 1 – Statutory Purposes:

A1 - This annex relates to section 4 of Position Statement and shows the authorities for the propositions relied on.

A1.2 - In *Dartmoor National Park Authority v Secretary of State for Transport, Local Government and The Regions* [2003] EWHC 236 Admin, Sullivan J. approved a decision of an inspector which concerned policies in a national park's local plan relating to the statutory duties referred to above. The policies in that local plan relating to development were drafted in appropriately restrictive terms given the statutory duties: Dartmoor's Policy C2 provided "…development will only be provided for where it would: 1. Conserve and enhance the natural beauty, wildlife and cultural heritage of the National parks…" Sullivan J. was clear at paragraph 30 that the explanatory text to this policy "makes it clear that (in accordance with the 1995 Act) priority is to be given to conserving and enhancing the natural beauty, wildlife etcetera of the park."

A1.3 - At paragraph 15, Sullivan J. stated "I conclude that the policies identified by the inspector reflected the statutory duties imposed by section 61 and 62 of the 1995 Act."

A1.4 - The approach taken in the present Plan gets nowhere near this required standard for giving effect to the statutory duties.

A1.5 - In the Inspectorate Appeal decision *South Lakeland Caravans Ltd v Lake District National Park Authority* [2006] P.A.D. 40 (Decision Letter: 30 January 2006, Inspector: Elizabeth Hill) the decisive matter (and ultimately the reason for refusal of planning permission) was the need to give greater weight to conservation of natural beauty than to the benefits of development (in that instance, for recreation). At paragraph 7.10, the inspector considered that the remit to conserve and enhance the natural beauty of the national park legitimately required resisting "change that has an adverse impact on the visual amenity and character of the National Park."

A1.6 - The present Plan provides for no similar such protection of the national park purposes.

A1.7 - The 2010 National Parks Circular makes clear that in delivering sustainable development, the "Authorities' primary responsibility is to deliver their statutory purposes."[16]

A1.8 - As an example of an acceptable approach in adopted policy, the Yorkshire Dales National Park 2016 plan defines sustainable development in its Policy SP1 as development that either achieves or does not prejudice the achievement of, amongst other things, conservation or enhancement of the landscape character of the National park. Yorkshire Dales' Policy SP2 is even more explicit, stating that "development that prejudices these [statutory] purposes will not be permitted."[17] Subject to minor amendments, the Inspector, Simon Berkeley, recommended the Yorkshire Dales National Park Local Plan as sound.[18]

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[16] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221086/pb13387-vision-circular2010.pdf

[17] Pages 10-11: http://www.yorkshiredales.org.uk/__data/assets/pdf_file/0011/857558/Yorkshire-Dales-National-Park-Local-Plan-2015-30.pdf

[18] http://www.yorkshiredales.org.uk/__data/assets/pdf_file/0005/857714/Inspectors-Final-Report-Dec-2016.pdf

A1.9 - A further example of the statutory purposes operating at the level of detail which is appropriate can be found in the emerging New Forest National Park Local Plan (at deposit stage). The relevant equivalent policy (the strategic overarching policy for development) to the SDNP Plan Policy SD25 can be found at policy SP1 of the New Forest Plan (page 21):[19]

> *"sustainable development proposals that will conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park and its special qualities…"*

A1.10 - Further examples of National Park Local Plans across the country, whether emerging or adopted, all afford similar priority to the statutory purposes in setting the agenda for development, and selecting sites. It is this crucial emphasis which is absent from the SDNP Plan in its current form.

A1.11 - Even if the Plan is adopted in its currently inadequate form in this regard, the statutory duties will still be material considerations for any planning application that falls to be determined following adoption of the local plan (confirmed by the Court of Appeal in *R. (Council for National Parks Ltd) v The Pembrokeshire Coast National park Authority & Others* [2005] EWCA Civ 888, per Maurice Kay L.J. at paragraph 22-23).

A1.12 - Notwithstanding this residual protection afforded by the statutory duties as material considerations, adoption of the Plan in current form would, due to the inadequacies of Policy SD25, set a dangerous precedent for all national parks: the aforementioned statutory duties, and the purposes which they protect, being rendered toothless in practice, relegated to little more than strategic aspirations.

A1.13 - The only acceptable solution is to re-write SD25 to match exemplar policy texts from other National Park plans (as mentioned above) so as to give proper effect to the statutory purposes at the detailed level of individual policies. To be sound, SD25 must afford priority to conservation and enhancement of natural beauty.

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[19] see https://www.newforestnpa.gov.uk/planning/local-plan/

ANNEX II – EXPANDED CITATIONS/QUOTES/AUTHORITIES

A2 – This annex contains excerpts from the following documents:

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A2.1 - The Environment Act 1995 sections 61-62

61 Purposes of National Parks.

(1)In section 5 of the National Parks and Access to the **M1**Countryside Act 1949 (National Parks) for subsection (1) (which provides that Part II of that Act has effect for the purpose of preserving and enhancing the natural beauty of the areas specified in subsection (2) of that section and for the purpose of promoting their enjoyment by the public) there shall be substituted—

"(1)The provisions of this Part of this Act shall have effect for the purpose—

(a)of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and

(b)of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public."
…"

62 Duty of certain bodies and persons to have regard to the purposes for which National Parks are designated.

(1)After section 11 of the National Parks and Access to the **M1**Countryside Act 1949 (general powers of local planning authorities in relation to National Parks) there shall be inserted—

"11A Duty of certain bodies and persons to have regard to the purposes for which National Parks are designated.

(1)A National Park authority, in pursuing in relation to the National Park the purposes specified in subsection (1) of section five of this Act, shall seek to foster the economic and social well-being of local communities within the National Park, but without incurring significant expenditure in doing so, and shall for that purpose co-operate with local authorities and public bodies whose functions include the promotion of economic or social development within the area of the National Park.

(2)In exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to the purposes specified in subsection (1) of section five of this Act and, if it appears that there is a conflict between those purposes, shall attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.
…"

A2.2 - Policy SD25

S**trategic P**o**licy SD25: Development Strategy**

1. The principle of development within the following settlements, as defined on the Policies Map*, will be supported, provided that development:

a) Is of a scale and nature appropriate to the character and function of the settlement in its landscape context;

b) Makes best use of suitable and available previously developed land in the settlement; and

c) Makes efficient and appropriate use of land.

[…]

…[including] South Harting…

[…]

Principles of development

7**.7 T**he purpose of Policy SD25 is to identify towns and villages across the broad areas and river corridors of the National Park that are able to accommodate growth of a scale and nature appropriate to the their character and function. These have been identified in line with two principle criteria:

☐ The future sustainability of the settlement, in terms of its facilities and services; and

☐ The form and character of the settlement within its landscape context.

[…]

Settlement Boundaries 7**.9 S**ettlement boundaries are defined on the Policies Map. They have all been comprehensively reviewed as part of the Local Plan process unless this was done through an NDP. The methodology for determining the boundaries is set out in the S*ettlement Boundary Methodology Paper6****9,*** which forms part of the Local Plan evidence base. Policy SD25 sets a clear distinction between land within a settlement boundary and open countryside. Within the settlement boundary, the principle of further development is established subject to other policies in this Plan. Outside of settlement boundaries, land will be treated as open countryside. Settlements that are more scattered or diffuse in their form have not been given settlement boundaries, and will be treated as open countryside for the purposes of Policy SD25. E**xceptional development outside settlements 7.10 Po**licy SD25 acknowledges exceptional circumstances whereby development outside settlements may be acceptable. For example, particular uses of land relating to agriculture or countryside recreation may only be able to function successfully in fully rural locations. Community uses that are crucial for sustaining thriving communities, such as extensions to schools or health centres, may only be achievable through minor incursion into the countryside. Other exceptions to the development strategy are set out in other policies in this Local Plan, for example Policies SD23: Sustainable Tourism and SD29: Rural Exception sites. Robust evidence will need to be provided to support applications for such developments to demonstrate that an exceptional approach is fully justified."

A2.3 - Policy SD90 (as modified)

"L**AND AT LOPPERS ASH, SOUTH HARTING S**ite area: Approximately 0.6ha
Current Use: Arable land
9.204 **This s**ite forms part of a much larger arable field on the eastern edge of the village. The allocated area is along the frontage of New Lane, a narrow country lane which leads away from Elsted Road towards the South Downs ridge, forming a popular route for walkers and cyclists. The site is set around one metre above the lane, which is slightly sunken. There is a gentle but noticeable slope up from the northern to the southern end of the site.
9.205 T**o prot**ect ~~a~~ glimpsed views of the Downs from ~~the north end of~~ New Lane to some extent, the dwellings should be limited in size and potentially arranged as semi-detached pairs, and should respond to the development immediately to the north and south, with ample space between them providing glimpses of the South Downs. ~~the space between the access road and the northern end of the site should either be retained as agricultural land, or converted to use for a small number of community allotments or other local green space, in such a way as to retain the view of the South Downs across the land.~~
9.206 Th**e site** is immediately to the west of the main core zone for the Dark Night Sky Reserve and this should be accounted for in design proposals, with south and east facing fenestration minimised. The site is also prominent in views of South Harting village from the east and south-east including Harting Down, and the quality of these views, including key landscape features, must be protected through the design and landscaping of development. High archaeological potential has also been identified on the site.
9.207 The**re is** an area of surface water flood risk in the lane adjacent to the site. Suitable mitigation should be used to ensure the development addresses this flood risk.
9.208 Deve**lopmen**t proposals should therefore be informed by the following evidence studies:
☐ Archaeological Assessment;
☐ Highways Assessment; and
☐ Landscape Assessment.

Allocation Policy SD90: Land at Loppers Ash, South Harting
1. Land at Loppers Ash, South Harting is allocated for the development of 6 to 8 residential dwellings (class C3 use). Planning permission will not be granted for any other uses. Detailed proposals that meet the following site specific development requirements will be permitted:
~~a) A single vehicular access to the allocation site from New Lane;~~
b) To provide all necessary vehicular parking on-site to avoid additional on street parking in adjacent roads;
c) The site layout must not include opportunities for future vehicular access into adjacent fields; and
d) Development to ~~incorporate open space in the centre of the site to~~ retain ~~wider glimpsed~~ landscape views from New Lane.
2. In order for the development to have an overall positive impact on the ability of the natural environment to contribute to ecosystem services, development proposals must address the following:
a) Minimise hard surfaced areas on site; and
b) New planting should be suitable for pollinating species."

A2.4 - Section 99 of Natural Environment and Rural Communities Act 2006

Natural beauty in the countryside

The fact that an area in England or Wales consists of or includes—

(a)land used for agriculture or woodlands,

(b)land used as a park, or

(c)any other area whose flora, fauna or physiographical features are partly the product of human intervention in the landscape,

does not prevent it from being treated, for the purposes of any enactment (whenever passed), as being an area of natural beauty (or of outstanding natural beauty).

A2.5 - *Meyrick Estate Management v Secretary of State for the Environment, Food and Rural Affairs* [2005] EWHC 2618 (Admin), per Sullivan J. at paragraphs 45-62:

"…

45. Although the Assessor said in the final sentence of paragraph 3.8 of Appendix 1 that the weight to be attached to factors such as history and cultural associations "should be carefully considered" if they were "not to be given undue attention in reaching judgments on natural beauty under the Act", it is clear from paragraph 3.9 that she did consider that (subject only to the question of weight) such factors could be taken into account, and that she agreed with the Agency's approach to the factors mentioned in section 114(2):

> "The strict terms of the designation criteria in section 5(2) should be informed by the extended definition of natural beauty in section 114(2) even if the latter only relates to the statutory purposes set out in subsection 5(1)."

46. Mr Elvin submitted that in determining the extensive tracts of country to be designated under subsection 5(2) the Agency and the Secretary of State were furthering the purposes in section 5(1)(a), and hence the expanded meaning of "natural beauty" in section 114(2) was applicable also to subsection 5(2). He further submitted that it would be surprising if "natural beauty" had a wider meaning in subsection (1) than it had for the purposes of subsection 5(2).

47. I do not accept those submissions. Parliament could easily have made provision for an expanded meaning of "natural beauty" which would have been of general application throughout the Act:

> "References in this Act to the natural beauty of an area shall be construed as including references to its flora, fauna and geological and physiographical features."

48. If possible, subsection 114(2) should be interpreted in such a way as to give effect to all of the words used by Parliament, and not an interpretation which would, in effect, render the two references to "the preservation or [as the case may be] the conservation of ..." otiose.

49. While at first sight it may appear strange that "natural beauty" is given an extended meaning in subsection (1) as substituted by the Environment Act 1995, but not in subsection (2) of section 5, I accept Mr McCracken's submission that one does not have to look far for a sensible justification. Once an extensive tract of country has been designated as a National Park, that will have been not merely because of its natural beauty, but also because of the opportunities it affords for open air recreation, and the latter may well threaten not merely the natural beauty that those seeking open air recreation come to enjoy, but also the flora, fauna, geological and physiographical features within the area, even if those

features do not contribute to the area's natural beauty. To take a simple example, visitor pressures may threaten the continued existence of rare flora or geological features which are of great scientific interest, or physiographical features that are of great historic interest, but are wholly lacking in beauty.

50. It will also be noted that the ambit of what should be conserved and enhanced pursuant to section 5(1) (as amended) once a National Park has been designated extends beyond "natural beauty" to include the "wildlife and cultural heritage" of the areas in question. By contrast, the wildlife and cultural heritage of an area are not made relevant considerations for the purpose of deciding whether that area should be designated as a National Park under subsection 5(2).

51. It is therefore not surprising to find that once an area has been designated as a National Park, on the basis of its "natural beauty" and the opportunities it affords for open air recreation, the duty of the Park's Authority to conserve and enhance is extended to a wider range of the area's special qualities, including, but not limited to, its natural beauty.

52. Mr Elvin submitted that the Inspector did not err in any event since he did not rely on the extended definition in section 114(2).

53. I would accept that the issue between the claimants and the Agency did not simply turn on the extended definition in section 114(2), because the Agency's approach went further and included a wider range of factors, not limited to those mentioned in section 114(2), in its assessment of the "natural beauty" criterion: see Mrs MacIlwaine's evidence (above). Ms Reynolds had identified the two principal criteria for the NFHA boundary drawing exercise:

> "To incorporate the land of outstanding national importance for its natural beauty, including flora, fauna and geological and physiographical features, and elements that arose from human influences on the landscape, including archaeological, historical, cultural, architectural and vernacular features [and] To incorporate essential grazing land ..."

She had also referred to the fact that the criteria in the Agency's draft consultation report (CD104) had included, for example, the proposition that "features of scientific, historical or architectural value situated on the margins of the National Park should be included where practicable." She had argued that rather than defining a National Park boundary upon an approach to "natural beauty" that the Agency itself had said in CD104 was "more generous and inclusive" than that which had been adopted in defining the boundary of the NFHA, the test should have been harder and the area more tightly defined (see paragraph 4.111 of the Inspector's report).

54. I have set out the Assessor's response to the claimants' case in respect of the "natural beauty" criterion. What is perhaps of more importance than her response in section 3 of Appendix 1 to the conceptual arguments, is her justification for concluding that the land at Hinton Park "more than adequately satisfies the natural beauty criterion" (see paragraph 4.168). First, in paragraph 4.165 the Assessor found that the land at Hinton Park and the surrounding associated countryside "has long been recognised for its natural beauty having been part of the NFHA".

55. The claimants' argument that a number of the factors considered in designating the boundary of the NFHA were irrelevant for the purposes of deciding whether the "natural beauty" criterion in section 5(2)(a) had been met was either ignored, or more probably, in view of paragraph 4.167 of the report, rejected.

56. Paragraph 4.167 began by referring to the "highly regarded designated landscape of the parkland, which is recorded and detailed on the Hampshire County Register of Historic Parks of Gardens, with English Heritage Grade I listing for the buildings it contains". Although the Assessor goes on to say that the "wider landscape" within which the parkland sits, "includes all the characteristics of its Heath Associated Landscape type which is a classic New Forest type found elsewhere within the NFNP", there is no suggestion that she considered that the undoubted historic or architectural interest of the Grade I house and its parkland setting, whilst highly relevant for many planning purposes, were not relevant for the purpose of paragraph (a) in subsection 5(2). Indeed it would appear that the Assessor was, in practice, endorsing the criteria in the Draft Boundary Consultation Report (CD104) which had stated *inter alia* that features of scientific, historical or architectural interest situated on the margins of the National Park should be included where possible.

57. The Inspector agreed with the Assessor. His approach is best summarised in paragraphs 4.190 and 4.191 of his report. The full text is set out above. For convenience I repeat the following extracts (with emphasis added):

"From our extensive accompanied visit I am satisfied that the area has a very high quality, intact, well-maintained landscape containing considerable elements of variety from broad parkland to intimate wooded valleys to the well-ordered woodland-fringed fields of the dairy farms. ... This area of Heath-Associated Estates landscape is extensive and forms an important and integral part of the highly attractive ring of landscapes immediately surrounding the perambulation."

58. If the criterion in subsection 5(2)(a) was a "highly attractive landscape" or the old development plan designation of Great or High Landscape Value, now more often described as Special Landscape Areas, one could well understand a conclusion that "well maintained" parkland on the Register of Historic Parks and Gardens and "well-ordered" fields of dairy farms, were a "highly attractive" or "high quality" landscape. But the criterion for designation as a National Park is an extensive tract of countryside that has the quality of natural beauty, not simply "dairy". In some contexts "natual" might simply mean rural, as opposed to urban, but "natural beauty" has to be understood in the context of section 5 which is concerned with the designation of "extensive tracts of country" which have the particular quality of natural beauty. I would endorse the approach of the Assessor in paragraph 3.7 of Appendix 1 to the Inspector's report. For the reasons she gives, what is required is "a high degree of 'relative naturalness'". Since the concept of naturalness is a relative one, there will be a spectrum with the "wildest" areas or the "more rugged areas of mountain and moorland" at one extreme. However, if the concept is one of relative "naturalness" (rather than visual attractiveness) "well-maintained" historic parkland providing the setting for a Grade I Listed building, and "well-ordered" dairy fields of dairy farms would seem to be the antithesis of naturalness. In such landscapes man has very obviously and deliberately tamed nature. As Ms Reynolds said "the parkland is a designed landscape and created for ornamental beauty and the control of nature ..." This argument is nowhere addressed by either the Assessor or the Inspector.

59. The Assessor and the Inspector's approach effectively discarded the requirement for a high degree of relative naturalness and substituted a test of "visual attractiveness" or "landscape quality". The distinction between natural beauty and attractive landscape is well illustrated in terms of planning policy by the contrast between Areas of Outstanding Natural Beauty ("AONB"), which were originally designated under section 87 of the Act and now designated under section 82 of the Countryside and Rights of Way Act 2000, with the Areas of Great Landscape Value ("AGLV") designated by local planning authorities in the old-style Development Plans. There may or may not be a degree of overlap between the boundaries of an AONB and an AGLV (or its successor designation recognising an area of attractive landscape in the new Development Plan system).

60. Before leaving ground (2) I should make it clear that the proper interpretation of subsection 114(2) (whether it extends the meaning of natural beauty in subsection 5(2) as well as in subsection 5(1)) is not the determining issue. The Agency was contending that a broader range of factors, including, for example, historical and cultural factors, could be taken into consideration in deciding whether the "natural beauty" criterion in subsection 5(2) was met. While such factors were relevant (as the Assessor said) to an understanding of how a particular tract of countryside had evolved to its present state, they were not relevant when it came to deciding whether it possessed the necessary quality of natural beauty so as to justify designation as a National Park.

61. I realise that the defendant may well consider that this is an unduly restrictive approach to the ambit of her and the Agency's powers under section 5(2). However, it must be remembered that the question is not what factors should, as a matter of good countryside planning practice in the 21st century, be taken into consideration in designating a National Park, but what factors may lawfully be taken into consideration under an enactment that is now over 55 years old. It might well be the case that "more modern" legislation would not be satisfied with such a straightforward and simple concept as "natural beauty". As an example of a more up-to-date approach to countryside planning the claimants mentioned the provisions of the National Parks (Scotland) Act 2000, which provides that an area may be designated for "outstanding national importance because of its natural heritage or a combination of its natural and cultural heritage". Recognition of the concept of cultural heritage is also to be found in subsection (1) of the Act, as substituted by the 1995 Act. Parliament had the opportunity in 1995 to bring subsection (2) up to date if it wished to do so. It did not. It left the "natural beauty" criterion in subsection (2) unchanged.

62. The 1949 Act was a contemporary of the New Towns Act 1946 and the Town and Country Planning Act 1947. The new towns are no longer new, and a brief perusal of today's planning Acts would be sufficient to demonstrate the extent to which relatively simple provisions which sufficed in 1947 have been repealed and replaced by far more elaborate and sophisticated controls in response to the many changes that have taken place over the last 50 years. Views as to which tracts of countryside have the quality of "natural beauty" may (or may not) have changed over the last 50 years, but the "natural

beauty" criterion in subsection 5(2)(a) of the Act has not been changed to embrace wider considerations such as "cultural heritage". If the "natural beauty" criterion in subsection 5(2)(a) is to be changed to reflect 21st century approaches to countryside and leisure planning then the change must be effected by Parliament, and not by administrative action on the part of the Agency in adopting a wider range of factors for the purposes of designation. This application therefore succeeds on ground (2).”

A2.6 - *Dartmoor National Park Authority v Secretary of State for Transport, Local Government and The Regions* [2003] EWHC 236 Admin (paragraphs 15 and 30)

"...
15. During the course of his submissions, Mr Wadsley accepted that although his skeleton argument raised the issue of whether the inspector had applied the correct test under section 54A , the proposition that he had not done so rested upon his proposition three, that the inspector had erred in interpreting development plan policies. Having so erred had had necessarily failed to carry out a correct balancing exercise under section 54A . Secondly, I conclude that the policies identified by the inspector reflected the statutory duties imposed by section 61 and 62 of the 1995 Act. It was no doubt for this reason that the Authority did not refer to the 1995 Act in its written representations. The sections require the Secretary of State to have regard to the purposes of designation, to conserve and enhance the natural beauty, wildlife and cultural heritage of the park and to promote opportunities for the public to understand and enjoy its special qualities. If these two purposes conflict, then greater weight is to be attached to the former. It was not suggested that there was any distinction of substance between the development plan policies referred to at the outset of the decision letter and those statutory purposes, indeed it would be surprising of there were any conflict between the Development Plan and the 1995 Act.
[...]
30. The explanatory text makes it clear that (in accordance with the 1995 Act) priority is to be given to conserving and enhancing the natural beauty, wildlife etcetera of the park."

A2.7 - *South Lakeland Caravans Ltd v Lake District National Park Authority* [2006] P.A.D. 40 (Decision Letter: 30 January 2006, Inspector: Elizabeth Hill) (paragraph 7.10)

7.10 "In para.6.7 of their statement the authority say that it will resist change that has an adverse impact on the visual amenity and character of the National Park. I consider that this is part of its remit to conserve and enhance the natural beauty of the National Park set out in s.61 of the Environment Act 1995 . There is a wide appreciation of the landscape of the Lake District. It attracts many visitors every year and it also appears in books and on television programmes. Whilst individual expectations of what might be seen in the Lake District might vary, in my view it is valid to make reference to public expectation of the landscape character of the Lake District."

A2.8 - National Parks Circular – paragraph 28

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221086/pb13387-vision-circular2010.pdf

"**Sustainable Development**

28. The principles of sustainable development include living within environmental limits, achieving a sustainable economy and ensuring a strong, healthy and just society. There are wide ranging demands and needs within the Parks, including, for example, conservation, public access, local employment and affordable housing. The Authorities' primary responsibility is to deliver their statutory purposes. In doing so, they should ensure they are exemplars in achieving sustainable development, helping rural communities in particular to thrive. Such models can offer wider application to other areas beyond the Park boundaries, and Authorities are encouraged to disseminate their experience to other rural authorities. For example, through the use of resources such as the Sustainable Development Fund,
the Authorities have piloted initiatives which have tested new approaches and, in doing so, they have become examples of best practice."

A2.9 - Yorkshire Dales Plan – Policies SP1 & SP2

http://www.yorkshiredales.org.uk/__data/assets/pdf_file/0011/857558/Yorkshire-Dales-National-Park-Local-Plan-2015-30.pdf

"**SP1**
The Yorkshire Dales National Park Authority will presume in favour of development that is sustainable. Sustainable development in the Local Plan area is development that either achieves or does not prejudice the achievement of the following:
a) makes the National Park a high quality place to live and work – including: improving and supporting the use and retention of existing services, infrastructure and facilities, including the housing stock and workplaces;
b) encourages mixed uses, reducing the need to travel;
c) contributes positively to the built environment by having regard to the site context, and conforms to the National Park Design Guide;
d) conserves or enhances the landscape character6 of the National Park through use of high quality design, appropriate landscaping, and removal of unsightly development;
e) improves biodiversity by enhancing existing priority habitats and species or creates new priority habitat;
f) improves public access to, and enjoyment of, the National Park's special qualities7;
g) reduces waste and greenhouse gas emissions through compliance with the spatial strategy, improved energy efficiency and making full use of small-scale renewable energy;
h) avoids areas at risk of flooding and is resilient and responsive to the impacts of climate change;
i) conserves or enhances the historic environment and helps secure a sustainable future for the assets at risk.
Development will be deemed to be unsustainable if it would reduce:
j) the health and well-being of local communities;
k) the diversity, quality and local distinctiveness of the natural and cultural landscape, wildlife, historic environment or other special qualities of the National Park;
l) the strength, diversity or vitality of the local economy;
m) the supply of housing to meet local needs;
n) access to local services and community facilities.

SP2
Development will be permitted that furthers the statutory National Park purposes of:
a) conserving and enhancing natural beauty, wildlife and cultural heritage;
b) promoting opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.
Development that prejudices these purposes will not be permitted, although an exception may be made where development can demonstrate an overriding need and the harm can be mitigated or, as a last resort, compensatory measures can be agreed."

A2.10 - New Forest Plan – Policy SP1

"Policy SP1: Supporting sustainable development
The National Park Authority will support sustainable development proposals that will conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park and its special qualities; promote opportunities for their understanding and enjoyment by the public, and when doing so, will foster the social and economic well-being of local communities. Where there is an irreconcilable conflict between the statutory purposes, greater weight will be attached to the conservation and enhancement of the National Park (in line with Section 62(2) of the Environment Act 1995[5]).

Sustainable development in the National Park is considered to be that which:

a) Makes the National Park a high quality place to live, work and visit – including appropriate new housing to address local needs; accessibility to local employment opportunities; improved public transport links; local infrastructure provision; and enhanced community and recreational facilities;

b) Has a positive impact on the ability of the natural environment to positively contribute to society through the provision of food and water, regulation of floods, soil erosion and disease outbreaks, and non-material benefits such as recreation;

c) Enhances the landscape of the New Forest through high quality design and responding to the local distinctiveness of the area;

d) Contributes positively to the built and historic environment of the New Forest;

e) Does not impact on the integrity of the protected habitats of the New Forest, including its coastline;

f) Is resilient and responsive to the impacts of climate change through improved energy efficiency and making appropriate use of small scale renewable energy; and

g) Makes use of sustainable building techniques, local materials and minimises energy use and waste.

4.5 This approach is consistent with the NPPF which sets out a presumption in favour of sustainable development and indicates where development should be restricted. National policy is clear that objectively assessed needs should be met unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Specific policies indicating where development should be restricted include those relating to sites protected under the Habitats Directive, Sites of Special Scientific Interest (SSSI); and land within a National Park."

A2.11 - *R. (Council for National Parks Ltd) v The Pembrokeshire Coast National Park Authority & Others* [2005] EWCA Civ 888, per Maurice Kay L.J. at paragraph 22-23

"22 In addition, as I have set out, section 11A of the 1949 Act obliges the Authority to "seek to foster the economic and social wellbeing of local communities within the National Park". 23 It is not and cannot be disputed that these were material considerations. At one point, Mr Wolfe seemed to submit that, whilst they are capable of being material considerations, they can only trump the provisions of the development plan if there has been, for example, an unforeseeable change of circumstances since the development plan. However, in my judgment that is first to paraphrase and then to take out of context the words of Lord Hope. The fact is that national policy has changed as *Planning Policy Wales (2002)* shows."

A2.12 - *R. (Moseley) v London Borough of Haringey* [2014] UKSC 56, per Lord Wilson at paragraphs 25-26

“…

25. In *R v Brent London Borough Council, ex p Gunning*, (1985) 84 LGR 168 Hodgson J quashed Brent's decision to close two schools on the ground that the manner of its prior consultation, particularly with the parents, had been unlawful. He said at p 189:

"Mr Sedley submits that these basic requirements are essential if the consultation process is to have a sensible content. First, that consultation must be at a time when proposals are still at a formative stage. Second, that the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response. Third,… that adequate time must be given for consideration and response and, finally, fourth, that the product of consultation must be conscientiously taken into account in finalising any statutory proposals."

Clearly Hodgson J accepted Mr Sedley's submission. It is hard to see how any of his four suggested requirements could be rejected or indeed improved. The Court of Appeal expressly endorsed them, first in the *Baker* case, cited above (see pp 91 and 87), and then in *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213 at para 108. In the *Coughlan*case, which concerned the closure of a home for the disabled, the Court of Appeal, in a judgment delivered by Lord Woolf MR, elaborated at para 112:

"It has to be remembered that consultation is not litigation: the consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response. The obligation, although it may be quite onerous, goes no further than this."

The time has come for this court also to endorse the Sedley criteria. They are, as the Court of Appeal said in *R (Royal Brompton and Harefield NHS Foundation Trust) v Joint Committee of Primary Care Trusts* [2012] EWCA Civ 472, 126 BMLR 134, at para 9, "a prescription for fairness".

26. Two further general points emerge from the authorities. First, the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting. Thus, for example, local authorities who were consulted about the government's proposed designation of Stevenage as a "new town" (*Fletcher v Minister of Town and Country Planning* [1947] 2 All ER 496 at p 501) would be likely to be able to respond satisfactorily to a presentation of less specificity than would members of the public, particularly perhaps the economically disadvantaged. Second, in the words of Simon Brown LJ in the *Baker* case, at p 91, "the demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit".”

A2.13 - *R. v North and East Devon Health Authority, ex p. Coughlan* [2001] QB 213 at p.108

"108. It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken (R v Brent LBC ex parte Gunning [1986] 84 LGR 168)."

A2.14 - *R (on the application of Capenhurst) v Leicester City Council)* [2014] EWHC 2124 (Admin), per Silber J., at paragraph 46.

"46. It is important that any consultee should be aware of the basis on which a proposal put forward for the basis of consultation has been considered and will thereafter be considered by the decision-maker as otherwise the consultee would be unable to give, in Lord Woolf's words in Coughlan, either "intelligent consideration" to the proposals or to make an "intelligent response" to it. This requirement means that the person consulted was entitled to be informed or had to be made aware of what criterion would be adopted by the decision-maker and what factors would be considered decisive or of substantial importance by the decision-maker in making his decision at the end of the consultation process.

47. I do not think that a consultee would not have been properly consulted if he ought reasonably to have known the criterion, which the decision-maker would adopt or the factors, which would be considered decisive by the decision-maker but that the only reason why the consultee did not know these matters was because, for example, he had turned a blind eye to something of which he ought reasonably to have been aware. Thus, consultation will only be regarded as unfair if the consultee either did not know the criterion to be adopted by the decision-maker or ought not reasonably to have known of this criterion. Of course, what a consultee ought reasonably to have known about the factors, which will be considered decisive by the decision-maker depends on all the relevant circumstances, which may well be different in each case."