

Case No: C1/2014/4310

17/06/2015

**David Elvin QC and Charles Banner (instructed by Marrons Shakespeares)
for the Appellant**

**Alan Evans (instructed by Head of Legal Services, Peterborough City Council)
for the Respondent**

**Nathalie Lieven QC (instructed by the Government Legal Department)
for the Intervener**

**The Interested Party did not appear and was not represented at the
hearing of the appeal**

Hearing date : 4 June 2015

Lord Justice Richards :

1. The primary issue in this appeal is whether a neighbourhood development plan made pursuant to section 38A of the Planning and Compulsory Purchase Act 2004 as amended (“the 2004 Act”) may include site allocation policies.
2. The appellant (“Larkfleet”) is a house-building company with a commercial interest in land to the west of Ayston Road in the town of Uppingham in the county of Rutland (“the Ayston Road land”).
3. The respondent (“the Council”) is the local planning authority for Rutland. In July 2011 the Council adopted a Core Strategy in which Uppingham was identified as a sustainable location for new development. Early versions of the related Site Allocations and Policies Development Plan Document (“the Site Allocations and Policies DPD” or “the SAPDPD”), which were the subject of consultation in 2011 and 2012, made provision in respect of Uppingham and in the 2011 version listed the Ayston Road land as a potential site. Such provision was not, however, carried forward into the version published for consultation in April 2013 and submitted to the Secretary of State for public examination in July 2013. This was because Uppingham Town Council had by then put in motion the process for making a neighbourhood development plan for the area pursuant to the statutory regime introduced by the Localism Act 2011 (“the 2011 Act”). The position was explained as follows in the April 2013 version of the Site Allocations and Policies DPD:
 - “1.9 A separate Neighbourhood Plan for Uppingham is being prepared by Uppingham Town Council. This will cover Uppingham town and parts of the surrounding area and will be subject to separate consultation, examination and referendum under the Neighbourhood Planning process.
 - 1.10 The Uppingham Neighbourhood Plan will consider proposals for residential, employment and other land use allocations in its area and allocate sites where appropriate. Consequently no sites are allocated for development in Uppingham in this Site Allocations and Policies DPD although all other policies of the plan will apply in this Area.
 - 1.11 Sites for residential and employment development in Uppingham that were previously identified in the Preferred Options version of this Site Allocations and Policies DPD are not carried forward in this version of the plan but will be put forward to Uppingham Town Council together with the responses to consultation that have been received for consideration through the Uppingham Neighbourhood Plan.”
4. Larkfleet made detailed representations objecting to the omission of allocations relating to Uppingham from the Site Allocations and Policies DPD, but those representations were rejected by the inspector and there was no material change to the document as adopted by the Council in October 2014.
5. The initial draft of the Uppingham Neighbourhood Plan (“the UNP”) was published in May 2013 and was the subject of public consultation in June-July 2013. The draft contained a policy allocating three sites for housing development at Uppingham. There were certain differences from the allocation previously proposed in the Site Allocations and Policies DPD. The three sites were retained in a revised draft consulted on later in the year, and in the final draft approved by Uppingham Town Council in December 2013. The Council then appointed an independent examiner who issued a report in May 2014, recommending that, subject to certain

proposed modifications, the UNP should proceed to a referendum. The referendum took place in July 2014 and produced a strong majority vote in favour of the proposal.

6. At all material stages of the UNP process, Larkfleet made submissions, repeated in these proceedings, that adoption of the UNP would be unlawful. The UNP is now “on hold” pending the determination of the proceedings.
7. The proceedings take the form of a claim for judicial review of the Council’s decision of 29 May 2014 to proceed to a referendum on the UNP. The claim was dismissed by Collins J. Permission to appeal was granted by Sullivan LJ on two grounds, to the effect that (1) pursuant to regulations under section 17(7)(za) of the 2004 Act, site allocation policies may be contained only in a local development document adopted under section 17, not in a neighbourhood development plan made under section 38A, and (2) the decision not to carry out a strategic environmental assessment (“SEA”) in respect of the UNP was legally flawed by a failure to consider whether the plan was likely to have significant positive effects on the environment. Permission was subsequently granted to the Secretary of State to intervene on ground (1) alone.
8. At the hearing of the appeal, submissions were addressed to us by Mr David Elvin QC on behalf of Larkfleet, Mr Alan Evans on behalf of the Council, and Ms Nathalie Lieven QC on behalf of the Secretary of State.

Ground (1): whether a neighbourhood development plan may contain site allocation policies

The legislative provisions

9. In considering the relevant legislative provisions, it is important to keep in mind the structure of the 2004 Act. In particular:
 - i) Part 2 is headed “Local development”. It includes a group of sections under the sub-heading “Documents”, one of which is section 17, relating to local development documents. It also includes, in section 37, provisions concerning the interpretation of terms used in Part 2.
 - ii) Part 3 is headed “Development”. It starts, in section 38, with a set of provisions relating generally to the development plan. That is followed by sections 38A to 38C, relating specifically to neighbourhood development plans.
10. It is also relevant to note the legislative history. Substantial changes to the local planning regime in the 2004 Act, including the introduction of section 17(7)(za), were made by the Planning Act 2008 (“the 2008 Act”). Further changes, including the introduction of the regime for neighbourhood development plans, were made by the 2011 Act.
11. A helpful starting point for consideration of the individual provisions is section 38 which provides, so far as material:

“38. Development plan

- (1) A reference to the development plan in any enactment mentioned in subsection (7) [which includes the 2004 Act and other planning Acts] must be construed in accordance with subsections (2) to (5).

...

- (3) For the purposes of any [area other than Greater London] in England the development plan is –

- (a) the regional strategy for the region in which the area is situated (if there is a regional strategy for that region), and
- (b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area, and
- (c) the neighbourhood development plans which have been made in relation to that area.

...

- (6) If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

...

- (9) Development plan document must be construed in accordance with section 37(3).

- (10) Neighbourhood development plan must be construed in accordance with section 38A.”

- 12. By section 37(3), a development plan document is “a local development document which is specified as a development plan document in the local development scheme”. By section 37(2), “local development document must be construed in accordance with Section 17”. Section 17 provides, in turn:

“17. Local development documents

...

- (3) The local planning authority’s local development documents must (taken as a whole) set out the authority’s policies (however expressed) relating to the development and use of land in their area.

...

- (7) Regulations under this section may prescribe:-

- (za) which descriptions of documents are, or if prepared are, to be prepared as local development documents

- (a) which descriptions of local development documents are development plan documents ...

- (8) A document is a local development document only in so far as it or any part of it:

- (a) is adopted by resolution of the local planning authority as a local development document;

- (b) is approved by the Secretary of State under section 21 or 27”.

- 13. Regulations under section 17 are to be found in the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the Local Planning Regulations”). Regulation 5 provides, so far as material:

“5. Local development documents

- (1) For the purposes of section 17(7)(za) of the Act the documents which are to be prepared as local development documents are –
 - (a) any document prepared by a local planning authority individually or in co-operation with one or more other local planning authorities, which contains statements regarding one or more of the following –
 - (i) the development and use of land which the local planning authority wish to encourage during any specified period;
 - (ii) the allocation of sites for a particular type of development or use;
 - (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and
 - (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permissions.

...

- (2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are –
 - (a) any document which –
 - (i) relates only to part of the area of the local planning authority;
 - (ii) identifies that area as an area of significant change or special conservation; and
 - (iii) contains the local planning authority’s policies in relation to the area; and
 - (b) any other document which includes a site allocation policy.”

By regulation 2(1), “site allocation policy” means a policy which allocates a site for a particular use or development.

14. The provisions governing neighbourhood development plans are contained in sections 38A to 38C of the 2004 Act [inserted by sch.9 of the 2011 Act]:

“38A. Meaning of ‘neighbourhood development plan’

- (1) Any qualifying body is entitled to initiate a process for the purpose of requiring a local planning authority in England to make a neighbourhood development plan.
- (2) A ‘neighbourhood development plan’ is a plan which sets out policies (however expressed) in relation to the development and use of land in the whole or any part of a particular neighbourhood area specified in the plan.
- (3) Schedule 4B to the principal Act [the Town and Country Planning Act 1990], which makes provision about the process for the making of neighbourhood development orders, including –

(a) provision for independent examination of orders proposed by qualifying bodies, and

(b) provision for the holding of referendums on orders proposed by those bodies,

is to apply in relation to neighbourhood development plans (subject to the modifications set out in section 38C(5) of this Act).

(4) A local planning authority to whom a proposal for the making of a neighbourhood development plan has been made –

(a) must make a neighbourhood development plan to which the proposal relates if in each applicable referendum under that Schedule (as so applied) more than half of those voting have voted in favour of the plan, and

(b) if paragraph (a) applies, must make the plan as soon as reasonably practicable after the referendum is held.

...

(12) For the purposes of this section –

...

‘qualifying body’ means a parish council, or an organisation or body designated as a neighbourhood forum, authorised for the purposes of a neighbourhood development plan to act in relation to a neighbourhood area as a result of section 61F of the principal Act, as applied by section 38C of this Act.

38B. Provision that may be made by neighbourhood development plans

(1) A neighbourhood development plan –

(a) must specify the period for which it is to have effect,

(b) may not include provision about development that is excluded development, and

(c) may not relate to more than one neighbourhood area.

(2) Only one neighbourhood development plan may be made for each neighbourhood area.

(3) If to any extent a policy set out in a neighbourhood development plan conflicts with any other statement or information in the plan, the conflict must be resolved in favour of the policy.

(4) Regulations made by the Secretary of State may make provision –

(a) restricting the provision that may be included in neighbourhood development plans about the use of land,

(b) requiring neighbourhood development plans to include such matters as are prescribed in the regulations, and

(c) prescribing the form of neighbourhood development plans.

...

- (6) Section 61K of the principal Act (meaning of ‘excluded development’) is to apply for the purposes of subsection (1)(b).”
15. None of the exclusions in section 61K of the 1990 Act, to which section 38B(6) refers, covers site allocation policies of the kind in issue in this case.
16. Similarly, the Neighbourhood Planning (General) Regulations 2012 (“the Neighbourhood Planning Regulations”), made *inter alia* pursuant to section 38B, contain no material restriction on the provision that may be included in neighbourhood development plans.

The judgement below

17. Having referred to the legislative provisions and certain policy documents, Collins J rejected Larkfleet’s case on ground (1) for the following reasons:
- “21. In the light of all this material, I must now seek to construe s.17(7)(za) and regulation 5 of the 2012 Regulations. Both counsel submitted that s.17(7)(za) dealt with documents which had to be prepared and those which could be prepared as local development documents. I can see no other sensible construction. Regulation 5(1) thus deals with documents which need to be prepared as local development documents. These include in 5(a)(ii) allocation of sites for a particular type of development or use. There is an obligation to deal with strategic considerations in LDDs [local development documents] and this as it seems to me is what 5(a)(ii) is concerned with. It does not mean that precise sites within the scope of the required policy approach need to be identified so that local communities have no say in that. The UNP is limited in this case to the sites being to the west or north west, to a provision of about 16 per annum to 2026 and to 25% being if possible on previously developed sites.
22. However, it is regulation 5(2)(b) which creates, it is submitted, the problem since it is not limited to documents prepared by a local planning authority. Section 17 is concerned with local development documents and what they must contain so that even without the specific reference in regulation 5(1) the regulation is aimed at documents which are to be or may be prepared by local planning authorities. However, there is in my view no reason to construe regulation 5(2)(b) in wider terms than 5(1)(a)(ii). The language is not the same, but a ‘site allocation policy’ is wider than an identification of a particular site within a policy. The regulation is badly drafted, but it would be surprising, indeed contrary to what a neighbourhood plan is supposed to achieve, if allocation of precise sites were not able to be dealt with in a neighbourhood plan. Accordingly, I have no doubt that Mr Banner’s submission on his first ground must be rejected.”

The appeal

18. Mr Elvin accepted that the language of sections 38A and 38B is wide enough to encompass site allocation policies within neighbourhood development plans, but he submitted that the question is not what those provisions allow but what other provisions, in particular the regulations under section 17(7), require. Section 17(7)(za) allows the Secretary of State to prescribe what documents must be prepared as local development documents. It was introduced by the 2008 Act at a time when neighbourhood development plans did not exist and it was not altered when the provisions relating to neighbourhood development plans were introduced by the 2011 Act. The Local Planning Regulations made under it were made at much the same time as the Neighbourhood Planning Regulations made under section 38B. The clear intention of regulation 5(2) of the Local Planning Regulations is to prescribe the documents that, if prepared, must be prepared as local development documents. They extend to any document which includes a site allocation policy. Regulation 5(2), unlike regulation 5(1), is not limited to documents prepared by a local planning authority and it contains no exclusion for

neighbourhood development plans, although the Secretary of State must have had such plans in mind at the time (indeed, the monitoring provisions in regulation 34(4) of the Local Planning Regulations include reference to neighbourhood development plans). It follows that any document which includes a site allocation plan must be prepared as a local development document and that site allocation policies may not be included in neighbourhood development plans.

19. The submission was attractively presented but I have no doubt that it is wrong and that the judge's conclusion was correct. Section 17 has nothing to do with neighbourhood development plans. It falls within a part of the 2004 Act dealing with local development and the functions of local planning authorities. Subsection (3) shows that the section is concerned with local development documents setting out the policies *of the local planning authority* relating to the development and use of land in their area. The power in subsection (7)(za) to make regulations prescribing "which descriptions of documents are, or if prepared are, to be prepared as local development documents" relates to what a local planning authority may or may not do as regards its planning policies, in particular what it must include in local development documents (thereby limiting reliance on supplementary planning guidance which has not gone through the full formal process). The structure of regulation 5 of the Local Planning Regulations reflects the wording of the subsection: regulation 5(1) deals with documents which "are to be prepared" as local development documents, regulation 5(2) with documents which "if prepared, are to be prepared" as local development documents. I think it plain that in each case the regulation relates to documents prepared or to be prepared by a local planning authority, even though express reference to a local planning authority is made only in regulation 5(1).
20. Neighbourhood development plans, by contrast, are not prepared by a local planning authority and the statute does not even use the term "prepared" in relation to them: they are *proposed* by a qualifying body under section 38A and are *made* by a local planning authority on completion of the process so initiated. More important, however, is the contextual point that neighbourhood development plans are governed by a separate statutory regime. This is underlined by the fact that the relevant statutory provisions, sections 38A to 38C, were inserted into a different part of the 2004 Act from that dealing with local development documents; and the relevant definition of "development plan" in section 38(3) draws a clear distinction between, on the one hand, development plan documents (which, by section 37, are local development documents) and, on the other hand, neighbourhood development plans.
21. The provisions relating specifically to neighbourhood development plans are plainly wide enough, as Mr Elvin accepted, to allow site allocation policies to be included in such plans. It would indeed be very surprising if site allocation policies could not be included in them, since the location of housing is likely to be the single most important planning issue for a neighbourhood. In any event, section 38B deals in terms with the provision that may be made or may not be made by neighbourhood development plans. There is nothing in the section itself to restrict the inclusion of site allocation policies. There is an express power in subsection (4) for regulations to restrict the provision that may be made, yet the regulations under the section, the Neighbourhood Planning Regulations, contain no material restriction. In short, the statutory regime governing neighbourhood development plans clearly allows such plans to include site allocation policies.
22. Larkfleet's case amounts to the proposition that the statutory power to make neighbourhood development plans that include site allocation policies has been cut down by regulations made under a power conferred by a section located in a different part of the statute and dealing with a different subject-matter, namely local development documents. For the reasons I have given, the proposition is in my judgement unfounded.
23. In reaching his conclusion on this issue, Collins J took into account governmental policy guidance contained in the National Planning Policy Framework and the Planning Practice

Guidance. I have not found it necessary to refer to the guidance, which is not a permissible aid to construction of the statute or the regulations made under it. It is fair to observe, however, that the guidance is fully in accordance with the conclusion reached by Collins J, and endorsed by me, as to the proper construction of the relevant provisions. The Secretary of State's intervention in support of the judge's conclusion is therefore unsurprising.

Ground 2: lawfulness of the SEA screening decision

24. Regulation 5 of the Environmental Assessment of Plans and Programmes Regulations 2004 ("the SEA Regulations"), implementing the SEA Directive (Directive 2001/42/EC), imposes a requirement to carry out an SEA for, *inter alia*, a plan or programme which sets the framework for future development consent of projects listed in Annex I or II to the EIA Directive (formerly Directive 1985/337/EEC, now Directive 2011/92/EU). The UNP fell within that description. The requirement to carry out an SEA is, however, subject to exceptions, including that set out in regulation 5(6):

"An environmental assessment need not be carried out –

- (a) for a plan ... of the description set out in paragraph (2) or (3) which determines the use of a small area at local level ...

unless it has been determined under regulation 9(1) that the plan ... is likely to have significant environmental effects."

25. It is common ground that the assessment of likely significant effects on the environment should include *positive* as well as *negative* effects. That view is supported by a footnote to paragraph (f) of Annex I to Directive 2001/42/EC and by the judgement of Elias J (as he then was) in *BT v Gloucester City Council* [2001] EWHC Admin 1001, [2002] 2 P&CR 33, at paragraphs 64-70, in relation to the analogous provisions of the EIA Directive. Given the concession, however, it has not been necessary for us to give any separate consideration to the point.
26. It is also common ground that the Council's Core Strategy and Site Allocations and Policies DPD required SEAs and that such SEAs were duly carried out, in each case as part of a wider Sustainability Appraisal. Those appraisals looked at the respects in which policies contributed positively to, as well as the respects in which they detracted from, the achievement of the objectives of sustainable development, including various environmental effects. A coding scheme adopted for the appraisal of the Core Strategy included a "strongly positive" category, indicating a significant contribution to the achievement of the relevant objective, and a "positive" category, indicating a contribution that contributed to such achievement but not significantly. A similar approach was adopted for the appraisal of the Site Allocations and Policies DPD.
27. A screening report dated January 2014 concluded that the UNP was not likely to have significant environmental effects and that an SEA was therefore not required in respect of it. Larkfleet challenges the lawfulness of that decision on the ground that the author of the report looked only at *negative* effects on the environment and failed to have regard to the likelihood of significant *positive* effects.
28. Whilst criticising the language of the report, Collins J rejected Larkfleet's contention:
- "29. It is, I think, not surprising that possible 'significant' negative effects should have been at the forefront of the author's mind, particularly as he was aware of the previous reports and findings. As I have said, it is unfortunate that he has given the opportunity in the way he has expressed himself to the contention that he failed to consider whether there were any positive significant effects. But I am not persuaded that on an overall reading and

knowledge of the author's clear recognition of what the legislation required of him and his familiarity with the previous reports on the Core Strategy and the SAPDPD he did not, however badly he expressed himself, fail to consider positive when he concluded that there were no significant effects."

29. Mr Elvin submitted that the judge's conclusion takes judicial benevolence too far and is wrong. The reader of the screening report is entitled to take it at face value, and on its face the report had regard only to negative effects. There is no witness statement asserting that positive effects were in fact considered. It is impermissible to assume that the author must have had the right test in mind. The failure to consider positive effects vitiates the decision not to carry out an SEA. The UNP itself shows that the policies were perceived as having environmental benefits. If the screening report had found those benefits to be significant, it would have been necessary to carry out an SEA, opening up a process in which alternatives could have been considered.
30. I confess to having doubts about the materiality of this alleged legal error. It was, however, common ground before the judge and before us that, if the need for an SEA was screened out without regard to whether there was a likelihood of significant positive effects on the environment, the screening decision was unlawful and the court would not be entitled to withhold relief. Mr Elvin said that in the absence of that concession, Larkfleet would have wished to file evidence on the issue and would have advanced legal arguments as to the scope of the court's discretion in this context (see, in particular, the discussion in *Walton v Scottish Ministers* [2012] UKSC 44, [2013] PTSR 51). In the circumstances it is not open to us to go behind the concession.
31. So the sole issue for us is whether the judge was entitled to conclude that positive effects were taken into account by the author of the screening report. In order to assess that issue, it is necessary to refer in some detail to relevant parts of the report.
32. Section 4 of the report deals with "SEA screening". Paragraph 4.1 sets out correctly the criteria for determining the likely significance of environmental effects, as listed in Schedule 1 to the SEA Regulations (reproducing the relevant part of the SEA Directive): those criteria refer simply to "effects", without distinguishing between positive and negative effects.
33. Paragraphs 4.2 and 4.3 refer to the SEAs carried out for the Core Strategy and for the Site Allocations and Policies DPD and to the need for conformity of the UNP with those documents. They state:
 - "4.2 ... The Core Strategy was subject to a full Sustainability Appraisal which included a SEA assessment. This ensured that there were no likely significant effects which would be produced from the implementation of the Core Strategy and if so ensured mitigation measures were in place. An assessment of the UNP policies and their conformity to the adopted Core Strategy has been undertaken and can be viewed in Appendix 1. This confirms that there is general conformity between the Core Strategy DPD and the UNP and there are no significant changes introduced by the UNP. **It is therefore concluded that the implementation of the UNP would not result in any likely significant effects upon the environment.**
 - 4.3 ... [The Site Allocations and Policies DPD] has been subject to a Sustainability Appraisal which included a SEA assessment. This ensured that there were no likely significant effects which would be produced from the implementation of the Site Allocations and Policies DPD and if so ensured mitigation measures were in place. An assessment of the UNP policies and their conformity to the emerging Site Allocations and Policies DPD (submission document) (April 2013) has been undertaken and can be viewed in Appendix 1. This confirms that there are no significant changes introduced by

the UNP. Again, it is concluded that the implementation of the UNP would not result in any likely significant effects upon the environment.” (Emphasis in the original.)

34. Those paragraphs make clear that the author of the screening report has given detailed consideration to the SEAs for the Council’s Core Strategy and Site Allocations and Policies DPD and to the question whether the UNP introduces significant changes. I think it improbable in the extreme that anyone considering the SEAs for the Council’s documents would have failed to appreciate that they examined positive as well as negative effects or would have failed to have regard to both aspects when considering whether there were any significant changes introduced by the UNP.
35. Appendix 1 to the screening report, to which paragraphs 4.2 and 4.3 refer, is detailed. It goes through each of the UNP policies and proposals in turn, compares them with the relevant policies in the Core Strategy and the Site Allocations and Policies DPD, and makes relevant comments in a column headed “Difference in Policy to Core Strategy DPD/Site Allocations and Policy DPD (April 2013) and likely effects of the policy/proposal in regards to SEA criteria”. The comments contain the repeated statement that “no significant effects are identified”. Only in one entry, relating to “Policy 12 – Environment and Preservation of Open Space”, is the comment couched in terms that the policy “will not result in any negative effects”. By contrast, the following entry, relating to “Proposal 16 – Tods Piece”, states:

“This policy is in conformity with local plan policies encouraging the improvement and retention of a valuable community facility – Tods Piece. The policy supports the development of additional facilities to support Tod’s Piece, however it is not identified that this will create a significant effects [*sic*].”

That passage is plainly considering a positive effect of the proposal, concluding however that the effect is not significant. Looked at overall, the exercise undertaken in Appendix 1 appears to me to give strong support to the view that the author had regard to positive as well negative effects.

36. Mr Elvin submitted that the reference to “mitigation measures” in paragraphs 4.2 and 4.3 shows that the author was thinking only of negative effects, since mitigation is relevant only to adverse effects. I disagree. Mitigation measures were simply one aspect of the overall picture to which the author was referring. The reference to them is a neutral factor.
37. Paragraph 4.4 does, however, lend support to Mr Elvin’s case. It states:

“The UNP allocates sites for residential development. The sites allocated are in conformity with the Core Strategy policies as they are located to the west/north west of Uppingham (as identified in Core strategy para 2.17) and the total number of potential dwellings does not exceed the 250 figure stated in policy CS9. The sites were originally assessed through the Sustainability Appraisal/Site Appraisals for the Site Allocations and Policies DPD at the preferred options stage. The evidence base work to support the Site Allocations and Policies DPD and the site appraisals have been used to inform the assessment and allocation of sites in the UNP. The site allocated to the south of Leicester Road was not a preferred option in the Site Allocations and Policies DPD, due to its location outside of the settlement limits and several physical constraints to sustainable development identified. However the site has been reassessed by the Uppingham Town Council following its inclusion within the settlement limits and found that the site scored green on Topography, Biodiversity, Cultural Heritage, Townscape, Public Open Space, Water Conservation, Contamination, Proximity to services, Access to Public Transport, Availability, Transport and Available Infrastructure. It was concluded as an appropriate site for allocation and no significant negative effects were identified as a result of its allocation. The other sites allocated for development in the UNP were found to be suitable and no significant negative effects were identified when assessed

through the Site Allocations and Policies DPD preferred options Sustainability Appraisal and Site Appraisals. **Following these findings it is therefore concluded that the implementation of the UNP would not result in any likely significant effects upon the environment**". (Emphasis in the original.)

38. As Collins J observed, that paragraph clearly concentrates on and rules out any significant *negative* effects. It refers twice to the absence of significant "negative" effects, following which it is "therefore" concluded that the implementation of the UNP would not result in "any likely significant effects upon the environment".
39. Paragraph 4.5 refers to departmental guidance on the process for screening to ascertain whether a full SEA is required. That process is set out accurately in figure 1. Paragraph 4.6 states that the process in figure 1 has been undertaken and the findings can be viewed in Table 1, which "shows the assessment of whether the UNP will require a full SEA". The relevant question in Table 1 is: "Is it likely to have a significant effect on the environment? (Art 3.5)", referring to the appropriate article of the SEA Directive. The answer given is: "No likely significant effects upon the environment have been identified". There is nothing in paragraphs 4.5 and 4.6 or in the figure and table to suggest that the exercise carried out has been done otherwise than in conformity with the legal requirements.
40. The paragraphs setting out the conclusions of the screening report contain language that again lends support to Mr Elvin's case:

"Screening Outcome

- 4.7 As a result of the assessment in Table 1, it is unlikely there will be any significant environmental effects arising from the UNP. The UNP is in conformity with the Core Strategy (2011) and the proposed Site Allocations and Policies DPD, which have both had a full Sustainability Appraisal, incorporating a SEA, finding no negative significant effects. The assessment of the UNP policies identifies no significant negative effects and as such, the UNP does not require a full SEA to be undertaken.

...

Conclusions and recommendations of the Screening Assessments

SEA

- 6.1 A screening assessment to determine the need for a SEA in line with regulations and guidance was undertaken and can be found in chapter 4 of this report. The assessment finds no negative significant effects will occur as a result of the UNP. The assessment also finds many of the policies are in conformity with the local plan policies which have a full SA/SEA which identified no significant effects will occur as a result of the implementation of policies.
 - 6.2 From the findings of the screening assessment it is recommended that a full SEA does not need to be undertaken for the UNP."
41. Where does all this leave one? The references in paragraphs 4.4, 4.7 and 6.1 to the absence of significant *negative* effects do suggest a limited focus on the part of the author of the report. On the other hand, other parts of the report, including in particular paragraphs 4.2 and 4.3 and Appendix 1, indicate that the author had regard to positive as well as negative effects; and whilst paragraphs 4.7 and 6.1 refer to the absence of significant negative effects, they also refer in general terms to the absence of any significant effects. Further, nothing in paragraph 4.5 or 4.6, or in the figure and table to which they refer, suggests any error of approach. This is on any

view a badly expressed report, but documents of this kind are to be read as a whole and with a degree of benevolence. Looking at the report as a whole, I am not persuaded that the judge was wrong to reject the argument that the author failed to consider positive effects as well as negative effects in finding that the UNP was not likely to have significant environmental effects. The judge's conclusion did not take benevolence beyond its permissible limits.

Conclusion

42. For those reasons I would dismiss the appeal.

Lady Justice Sharp :

43. I agree.

Lord Justice Moore-Bick :

44. I also agree.