INSPECTOR’S INITIAL CONCERNS AS TO THE SOUNDNESS OF THE SOUTH OXFORDSHIRE CORE STRATEGY

RESPONSE TO SOUTH OXFORDSHIRE DC’S SUBMISSION
(PRODUCED ON BEHALF OF COMMERCIAL ESTATES GROUP)

Summary

1. This written submission has been produced on behalf of Commercial Estates Group, to address the initial concerns that the Inspector has identified as to the soundness of the South Oxfordshire Core Strategy, and the subsequent response produced by South Oxfordshire District Council (“the Council”) on 9th May 2011. We understand that the Inspector’s identified concerns, together with the written submissions from the Council and objectors, will form the basis for discussions/decisions at the Exploratory Meeting to be held on 17th May 2011.

2. In summary, we continue to have very serious concerns about the approach taken by the Council in preparing this Core Strategy. We consider that the document and its preparation betray several, fundamental legal failings. The Council’s response to the Inspector’s initial concerns does not resolve our concerns. The Core Strategy is not fit to proceed to examination, and we respectfully ask the Inspector to formally invite the Council to withdraw it. If, despite our concerns, the Inspector feels that the examination of the Core Strategy should proceed, we urge the Inspector to suspend the examination timetable, for a period of several months, to enable the Council to take requisite steps to cure the failings that have been identified, and to permit interested parties and the public adequate opportunity to be consulted on whatever amendments the Council may seek to make to the Core Strategy, or to the Council’s purported justification for its contents.

The Position of Commercial Estates Group Generally

3. For clarity, and to provide an appropriate context to this submission, the key arguments we have previously advanced as to the soundness of the Core Strategy,
and the extent to which it complies with the requirements of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") are as follows:

(1) The Core Strategy is in breach of s.24(1) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), as the housing distribution strategy is not in general conformity with the South East Plan.

(2) The explicit acceptance at paragraph 1.21 of the Core Strategy that the Council has, where it considered it appropriate, put to one side the conclusions of its own Sustainability Appraisal, is in breach of the binding requirements of the SEA Regulations, contrary to paragraph 4.43 of PPS12, and fails to satisfy proper consultation processes. The Council is effectively seeking to promote a Core Strategy without complying with its statutory and public law duties to engage in a proper environmental appraisal and statutory consultation process in respect of material changes to the submission draft Core Strategy;

(3) The housing distribution strategy ("proportional growth") is very simplistic and simply seeks to allow development at a scale commensurate with that of existing settlements. This has no proper regard to the sustainability credentials of the larger towns such as Thame; the housing and employment needs of specific towns and villages; the constraints which do or do not affect the various towns and villages; or the availability/deliverability of land;

(4) The reliance on windfalls during the plan period is not justified and directly contrary to PPS3, resulting in a significant under-allocation of housing land in the Rest of District area;

(5) By focusing too much growth at villages instead of towns, particularly largely unconstrained towns such as Thame, the strategy unnecessarily and avoidably requires (at the Council’s own admission) the review of Green Belt boundaries and incursions into the AONB. No exceptional circumstances exist to warrant such an approach;

(6) The reliance on the delivery of 400 houses at Henley, to be allocated in a subsequent DPD, is not deliverable and not supported by evidence in the SHLAA.
(7) The allocation of land to the north west of Thame, in preference to land to the south, is not based on robust and credible evidence. The Council should either remove the allocation and seek to allocate in a later development plan document or discharge its statutory duties now and ensure that the evidence is in place to justify the proposed allocation;

(8) The proposed phasing of housing development is not in general conformity with the South East Plan;

(9) There has been an abject failure on the part of the Council to justify the proposed allocation

4. For the avoidance of doubt, this current submission is made without prejudice to our written representations previously submitted during the Core Strategy consultation process, by which we continue to stand. The present submission only addresses those individual soundness concerns raised by the Inspector which relate directly to the previous written representations we have submitted, or where there have been material changes in circumstance since our representations were submitted. For clarity and ease of reference, we have used the numbering and titles adopted by the Inspector in his note (and adopted subsequently by the Council).

1 Status of the South East Plan

1a Central Oxfordshire

5. s.24(1) requires the Core Strategy to be in “general conformity with” the Regional Strategy (in this case, the South East Plan). The Court of Appeal considered what is meant by this in the case of Persimmon v. Stevenage BC [2006] 1 WLR 332, ¹ where it was held that the requirement of “general conformity” will permit “measures [to] be introduced into a local plan to reflect the fact, where it arises, that some aspect of the structure plan is itself to be subject to review.” However, the Court of Appeal explicitly added that “this flexibility is not unlimited. Thus measures of this kind may not pre-judge the outcome of such a review. They must respect the structure plan policies as they are, while allowing for the possibility that they may be changed.” See

¹ Although the Persimmon case concerned the requirement of “general conformity with” structure plans under the legislation pre-dating the 2004 Act, Regional Strategies under the 2004 Act essentially fill an equivalent role to structure plans under the previous legislation, and in any event there is no reason at all why the words “general conformity with” should have any different meaning now from that given to it by the Court of Appeal in Persimmon.
paragraph [28] of the *Persimmon* judgment. On any view, the requirement of “general conformity with” the South East Plan, (“SEP”) cannot allow the Council to produce a Core Strategy which presumes that the SEP is no longer in force. Nor is it open to the Council to produce a Core Strategy which is not in “general conformity” with the SEP (in the sense clarified by the Court of Appeal in the *Persimmon* case) on the basis that it is inevitable that the SEP will shortly be revoked: the Core Strategy “must respect the [SEP] policies as they are”.

6. The Council’s recent submission to the Inspector reveals quite clearly that the Council has fallen foul of those binding principles in several fundamental respects. Thus, the Council says at para 1.2 of their recent submission to the Inspector that in producing the Core Strategy it “had regard to” the SEP, in response to “the uncertainties that existed last year” as to the status of the SEP. But merely “having regard” to the SEP was plainly not enough. In any event, whatever the “uncertainties” may have been prior to November 2010 as to the status of the SEP, it has been perfectly certain since Mr Justice Sales delivered judgment in the High Court on 10 November 2010 in the first *CALA Homes* case\(^2\), that the Secretary of State’s purported revocation was unlawful: on any view the SEP remains in force as part of the development plan, and this was clear for several months before the Core Strategy was submitted for examination.

7. Next, the Council makes clear (para 1.3 and 1.4 of their response) its view that “references [to the SEP] will shortly be out of date and out of place”, and concedes that “the language of the core strategy therefore accepts the premise that the SEP will be revoked”. Surely this flies in the face of the Court of Appeal’s analysis of the requirement of “general conformity” in the *Persimmon* case, which requires the Council to “respect the [SEP] policies as they are”.

8. Significantly, the Council’s approach also ignores the announcement by the government Minister Mr Bob Neil MP on 5 April 2011 that the Government intends to undertake a strategic environmental assessment (“SEA”) of the abolition of each RS. It simply cannot be assumed – as the Council evidently has done if it has considered this ministerial announcement at all – that the Government would, upon consideration of an SEA, revoke the SEP. Such an assumption would be to assume that the Government has fettered its discretion and is simply going through the motions of undertaking an SEA as part of some “tick box” exercise. In the circumstances, a

\(^2\) *R (CALA Homes (South) Ltd) v. Secretary of State for Communities and Local Government* [2010] EWHC 2866 (Admin)
Core Strategy which assumes that the SEP will be revoked at all, let alone “shortly” is clearly founded on a wrong premise.

9. The Council’s approach to the production of this Core Strategy betrays a further serious error, in that the Council appears to treat the High Court judgment in the second CALA Homes case (on 7 February 2011) as authority that “the stated intention of the government to formally revoke regional spatial [sic] strategies as part of the Decentralisation and Localism Act... is currently a material consideration”. Mr Justice Lindblom’ decision in that case that the intention to revoke regional strategies is a material consideration on the consideration of planning applications has in fact been appealed to the Court of Appeal. But in any event, we certainly do not read Mr Justice Lindblom as having decided that the intention to revoke regional strategies is relevant to the examination of Core Strategies or the requirement that they be in general conformity with regional strategies. At para 69 of his judgment, Mr Justice Lindblom actually said:

“While Regional Strategies subsist a local planning authority will have to make sure to discharge its duty to achieve general conformity with them. Failure to do so would expose the offending plan to the risk of challenge in the courts.”

In any event, even if Mr Justice Lindblom did say in February 2011 that the intention to revoke regional strategies may be a material consideration when it came to the requirement of “general conformity” (something we dispute), surely no weight can be attached to such a consideration now, given the nature of Bob Neil MP’s ministerial announcement on 5 April 2011.

10. Most fundamentally, the Council ultimately seeks to argue that, regardless of the approach it took to the status of the SEP, the Core Strategy as produced is still in “general conformity with” it. We strongly dispute this proposition. The Council accepts (at paragraph 1.5 of its most recent submission) that the Core Strategy does not plan for growth in accordance with the ‘three compartment split’ set out in the SEP (Didcot, Rest of Central Oxfordshire and Remainder of District). The Council seeks to argue that this does not materially affect the strategic objectives behind the

---

3 R (CALA Homes (South) Ltd) v. Secretary of State for Communities and Local Government [2011] EWHC 97 (Admin).

4 The Court of Appeal heard the appeal against Mr Justice Lindblom’s judgment on 5 and 6 May 2011, but has not yet delivered judgment.
aim of the SEP’s definition of the Central Oxfordshire Sub-Region. But this argument is seriously flawed, and unsustainable.

11. The Council's argument (at paragraph 1.7 and Table 2 of its response to the Inspector) is that the approach in the Core Strategy results in provision of 172 (or 7.3%) fewer units in South Oxfordshire’s part of Central Oxfordshire (excluding Didcot) than are required in the SEP, and that this is not a significant or material departure from the SEP. But that analysis is flawed and apt to seriously mislead, for the following reasons.

(1) The Council’s reliance on a windfall allowance (considered elsewhere in this submission) seriously distorts the true picture of how significant is the degree of variance between the Core Strategy and the SEP. In order to arrive at its calculation of 172 units (7.3%) the Council’s supply figures rely (Table 2) on a windfall allowance of 403 units. If this is removed in accordance with guidance in PPS3 – as we say it must be – the actual shortfall in the Central Oxfordshire area would be 575 units, or 24.4%. This level of variation is plainly significant and a clear departure from the strategic focus set out in the SEP i.e. it is not in general conformity. As such the spatial distribution is contrary to the requirements of Section 24(1)(a) of the 2004 Act; it is unlawful and any decision to adopt the Core Strategy in its current form would, as a consequence, be open to challenge under Section 113 of the 2004 Act;

(2) In any event, the Council has adduced no evidence to justify its decision to depart from the spatial approach required by the SEP. Furthermore the Council provides no evidence to indicate why it now considers that such flexibility exists at a local level, given that it did not previously consider this to be possible in its Issues and Options Core Strategy, its Preferred Options Core Strategy or the initial version of its Submission Core Strategy (which was withdrawn in June 2010). The lack of a robust and credible evidence base and convincing reasons why the current approach is the most appropriate strategy (considered against the alternative contained in the SEP) make the Core Strategy fundamentally unsound;

(3) The Council’s submission fundamentally fails to acknowledge that the amalgamation of the area of the District that is within Central Oxfordshire and the Remainder of the District (into a single Rest of District area) necessarily creates a single 5-year land supply requirement for this area. In the event of a 5-year supply shortfall in this area this could theoretically lead to the approval, on
appeal, of developments in the former Remainder of District area at the expense of development in Central Oxfordshire. As a consequence there is the potential for an even greater proportion of South Oxfordshire’s housing to be delivered outside the Central Oxfordshire area as defined in the SEP, and the Council would have no control in this regard. This is a fundamental flaw – apparently not considered by the Council – that unnecessarily facilitates potential material deviation from the spatial objectives of the SEP.

(4) Finally, when gauging the true significance of the Council’s deviation from the SEP in this regard, one must remember that this Council is not the only LPA in Central Oxfordshire. There is a clear risk that adoption of a Core Strategy which deviates from the SEP’s spatial objectives in this way will create a dangerous precedent. If all LPAs in Central Oxfordshire adopted the same approach as the Council, the total quantum of housing being moved from the sub-region to other areas would cumulatively seriously undermine the objectives of the SEP.

12. For these reasons we do not consider that the submission from the Council satisfactorily addresses the concerns identified by objectors and the Inspector. The Core Strategy is not in general conformity with the SEP and therefore contravenes the requirements of Section 24(1) (a) of the 2004 Act and is unlawful. There is also no justification for the lack of conformity nor is there any robust and credible evidence that the distribution model adopted in the Core Strategy is the most appropriate strategy when considered against the alternatives, which means that the Core Strategy is unsound.

13. Whilst the Council has provided information on household projections since 2003 as requested by the Inspector, and has made reference to the Ministerial Statement on 23 March 2011 relating to ‘Planning for Growth’, the Council’s response is wholly inadequate and fails to properly address the key issue identified by the Inspector: i.e. whether evidence indicates that the housing figures for South Oxfordshire should be either higher or lower than those set out in the SEP.

14. In terms of whether the 2008-based household projections indicate that housing numbers should be reduced, we agree with the Council (paragraph 1.19) that it is not appropriate to plan just for the additional households identified in the CLG projections (be it 2003-based or 2008-based) as this takes into account only current growth
trends and does not relate to the Council’s economic growth strategy or have regard to issues of housing demand and need.

15. However the submission from the Council glosses over the issue of whether the housing requirement should in fact be higher.

16. The Ministerial Statement of 23 March is clear that the government’s top priority in reforming the planning system, is to promote sustainable economic growth, and that LPA’s should therefore be proactive in driving and supporting growth. To do so, the Statement specifically requires LPA’s to:

   “... make every effort to identify and meet the housing, business and other development needs of their areas”.

17. The most recent, locally-derived evidence in this regard is contained in the Council’s Housing Needs Assessment Study (2008). This confirms at paragraph 1.9.3 that the shortfall in market housing provision is 883 dwellings per annum (“dpa”), and the shortfall in affordable housing is 530 dpa. This indicates that the local need for housing in South Oxfordshire (as identified by the Council), that the Ministerial Statement is clear that the Council should make ‘every effort’ to meet, is a total of 1413 dpa. This is substantially higher than the 547 dpa set out in the more dated SEP and adopted in the Core Strategy.

18. The Council seem to have largely ignored the fact that local evidence suggests that housing requirements should be higher than the SEP, and the fact that the SEP itself (paragraph 7.6) states that the housing figures contained therein are significantly below the forecast growth of households, and that the review of the SEP would need to provide for an increased housing provision.

19. In the circumstances, the Council’s approach to the overall quantity of growth is not at all robust. Nor has it had appropriate regard to the objectives of the recent Ministerial Statement which seeks to ensure that LPA’s identify and meet their local needs, and are proactive in delivering growth.

2 Reliance on ‘unallocated sites’ (windfalls)
20. We continue to have very serious concerns as to the Council’s approach to the issue of windfall sites. It is common ground that PPS3 requires that LPA’s should not include a windfall allowance in the first 10 years of the plan period. This is national planning policy to which section 19(2)(a) of the 2004 requires the Council to have regard in the preparation of the Core Strategy. Any material inconsistency with this policy must be fully justified on the basis of local circumstances, based on relevant evidence.

21. The Council’s response to the Inspector claims that the Core Strategy does not rely on windfalls in the first 10 years and argues that the Core Strategy therefore accords with PPS3.

22. The Council’s ‘Strategy Development Background Paper’ makes clear at paragraph 1.7 that the Council did make an allowance for windfalls during the first 10 years, and that this was based on an anticipated change in national policy that would allow them to do so. This change in policy has never materialised and no clarity has been provided to identify what led the Council to believe that it would. Importantly, this statement by the Council demonstrates its inherent acceptance that the Core Strategy does rely on windfalls, and that this reliance does not accord with current national policy.

23. The Council’s rationale for the inclusion of windfalls is clear to anyone involved in the Core Strategy process to date but for the Inspector’s benefit, it is neatly summarised in paragraphs 133 to 135 of the Council’s ‘Housing Background Paper’. In short, given local concern about the scale of development required in some towns, the Council concluded that:

"Making an allowance for unallocated sites for the towns in years 6 to 10 has the effect of reducing the number of houses we need to allocate in the towns." (para 135)

24. What is now evident is that in the light of objections received to the submission draft Core Strategy which was published in December 2010, and the fact that a national change in policy relevant to windfalls did not materialise, the Council has amended its housing trajectory in the subsequently produced Submission Core Strategy Strike-through Version (March 2011).

25. Table 18.1 of the Strike-through version shows clearly that the Council has amended the trajectory of housing from proposed allocations in Henley and the Larger Villages
to materially increase the supply in Years 6-10, apparently to remove the previous reliance on windfalls in years 6-10 that existed in the Submission Core Strategy (December 2010).

26. We note that the Council has not drawn this change to the attention of the Inspector or objectors and has provided no evidence to justify the change.

27. Importantly, this material change to the Core Strategy was made after the conclusion of the formal consultation process and, as such, objectors have had no opportunity to comment upon it to date. Consultation periods, in accordance with the Council’s Statement of Community Involvement (“SCI”) would normally extend for a period of 6 weeks, giving all respondents the chance to fully consider the issues. Indeed, the Council’s SCI actually provides that the Council ought to hold a consultation on the submitted document and site allocations (see e.g. Table 1 on page 10 of the SCI, which according to page 9, para 4.3 “shows... when and how you may expect to be involved and consulted at different stages”) – but no such consultation has yet been offered or proposed. In this instance, this change has been introduced via the backdoor and respondents are only being given 72 hours to respond. Not only ought any proposal to make a change of this nature to be the subject of proper consultation in accordance with the statement of community involvement in order to comply with section 19(3) of the 2004 Act, with the guidance contained in PPS12, and with the interested parties’ legitimate procedural expectations as a matter of public law. On any view, a change such as this must be the subject of further sustainability and strategic environmental impact assessment (“SEA”) in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 (the “SEA Regulations”). We remind the Inspector of the recent High Court decision in Save Historic Newmarket Ltd and others v. Forest Heath District Council [2011] EWHC 606 (Admin) (25 March 2011). There, the High Court quashed Forest Heath DC’s core strategy, reasoning that it would only have been open to the Council to include certain site allocations in the core strategy – without having reappraised them against alternatives since an initial appraisal carried out a very early stage of the long preparation process – if all three of the following criteria had been met:

1. sound reasons had to have been given for rejecting those alternatives at that early stage;
2. if there had been a material change in the proposals or any other material change in circumstances, the reasons originally given had to remain valid; and
(3) in any event, consultees needed to be able to know from the strategic environmental assessment ("SEA") accompanying the core strategy when submitted for examination (which in that case was the sustainability appraisal), what those original reasons were – whether because the SEA referred to the part of the earlier assessment giving those reasons, or because the SEA summarised those reasons, or because the SEA, if necessary, repeated those reasons.

In this case, the Council has materially amended the trajectory of housing from proposed allocations in Henley and the Larger Villages after the sustainability appraisal was completed (and after the formal consultation process had concluded) without any adequate explanation at all. This cannot be permissible.

28. On any view, if the examination process for this Core Strategy is to proceed at all, it should at any rate be deferred until the Council has produced further sustainability appraisal to comply with the requirements of the SEA regulations, and has then consulted upon the issue of how the Council proposes that the housing supply will be met.

29. The Council’s amendment to the Core Strategy in this way can only be seen for what it is – a rather cynical, last minute attempt to paper over a significant failing of the Core Strategy housing distribution strategy, a fundamental part of which involves a reliance on windfalls. It is policy making on the hoof, without consultation or evidence to support it. It is not robust or credible and is wholly unsatisfactory.

30. In any event, we have a further, fundamental concern in relation to windfall sites. Notwithstanding the issue specific to windfall allowances in the first 10 years of the plan, it is common ground that the Core Strategy does rely on windfalls totalling 1060 units in the plan period as a whole. This is contrary to PPS3 paragraph 55 which is clear that LPA’s should:

"Identify a further supply of specific, developable sites for years 6-10 and, where possible, for years 11-15. Where it is not possible to identify specific sites for years 11-15, broad locations for future growth should be indicated."

31. As such it is clear that PPS3 expects LPA’s to allocate sites for 15 years unless this ‘is not possible’.
32. This approach is supported by the guidance produced by PINS ‘Learning from Experience’ (2009) which states at paragraph 19 that Inspectors have only accepted an allowance for windfalls in the 11 plus years period where:

“.. authorities have been able to convincingly show that it is the only practical approach in the circumstances.” (our emphasis)

33. As such it is clear that a LPA can only rely on windfalls in the 11 plus years period if they can convincingly demonstrate that it is not possible or practical to allocate specific sites.

34. South Oxfordshire District demonstrably has sufficient land which is both suitable and available for housing development, to allow it to allocate specific sites to meet its housing requirements. At Thame, for example, in addition to the proposed allocation to the north west of the town (and putting to one side our objections to that allocation), there is land available with a capacity of approximately 1,000 additional homes to the south of the town, the suitability of which has already been highlighted by the Council’s decision to identify the majority of it as its preferred allocation in the Core Strategy Preferred Options (and the withdrawn Submission draft Core Strategy – June 2010).

35. For the reasons identified above, it is demonstrably the case that it is both possible and practical to allocate sufficient sites in South Oxfordshire to address its requirements for the whole of the plan period. As such there is no basis for including an allowance for windfalls in any part of the plan period. The Council’s decision to make such an allowance conflicts with PPS3 paragraph 55, cannot be justified and, as a consequence, the Core Strategy has failed to adhere to the statutory requirements of section 19(2)(a) of the 2004 Act and is therefore unlawful.

36. In terms of the implications of deleting this windfall allowance, the Council’s figures (Core Strategy Table 7.3) identify that it would necessitate the allocation of additional sites in the Rest of District area (the District excluding Didcot) to accommodate a further 1060 units.

37. On a separate but related point, we note that the Council relies on its windfall allowance to provide the Core Strategy with any element of contingency (as required by PPS12). Contingency planning is a requirement not an option. Accordingly the deletion of the windfall allowance would therefore require the Council to additionally
plan properly for contingency provision, with the allocation of additional sites/reserve sites.

**Delivery Rates from Windfall Sites**

38. For the reasons identified above, we do not consider that there is any case for a windfall allowance in any part of the plan period. However, we note that in response to the Inspector’s concerns that future windfall rates are likely to be lower than historically was the case, that the Council seek to suggest that the re-classification of residential gardens from brownfield to greenfield land status, and the fact that SHLAA’s are now requirements whereas they previously were not, will not reduce the supply from windfalls and that in fact the allowance made is conservative (para 1.22).

39. But even here, there is conflict in the Council’s response. At paragraph 1.26, they state clearly that the change in the status of residential gardens removed the automatic presumption for development and enabled proposals to be considered on their merits. By definition this must therefore increase the likelihood of schemes that would previously have been approved, being refused. As a consequence, supply from this source will inevitably be reduced. The only sensible solution is for the Council to withdraw the Core Strategy and start the process afresh with the aim of complying with the statutory duties and policy guidance.

3 **Proportional Growth**

40. As set out in our representations to the Core Strategy, we agree with the Inspector’s concern regarding the Council’s ‘proportional growth’ approach to housing distribution which is unclear, overly simplistic and has little or no regard to social and economic needs, constraints and opportunities and the availability of sites.

41. The Council is clear in its document entitled ‘Methodology for distributing the housing figures’ (October 2010) that this ‘proportional growth’ approach emerged only as a response to the purported revocation of the SEP in July 2010. On the basis that it is common ground that the SEP remains as part of the development plan currently, there has been no material change in circumstance in this regard. We are therefore unclear why the Council considers that its ‘proportional growth’ approach is now appropriate where previously it was not.
42. More fundamentally, however, the Council’s response to the Inspector fails rather abjectly to justify the proportional growth as a credible and robust approach to housing distribution.

43. In effect the Council’s response to the Inspector in this regard is that producing a robust, locally-responsive, evidence-based housing distribution strategy, that has regard to the sustainability of various settlements, constraints and opportunities and the availability of land, resulted in local objection that put “communities in conflict with one another” (para 142). As such the Council determined that an alternative approach was appropriate to placate local communities, determining that proportional growth at towns and villages would be “easy to understand and can be seen as relatively fair” (para 142) and would presumably reduce local conflict by spreading the pain amongst all settlements.

44. We appreciate that distributing housing is one of the most difficult and controversial elements of any Core Strategy. However that is what LPAs are there to do, and Core Strategy’s are the place to make the difficult decisions.

45. It is wholly unacceptable, and a total abdication of planning responsibility, to fail to adhere to a robust and credible housing distribution strategy on the basis that it is too difficult or too controversial. It is similarly unacceptable to draw support for a lack of a robust and credible strategy from the fact that some other Core Strategies may have adopted certain approaches (without full explanation of the circumstances in those Districts and clarification as to why that is also applicable in South Oxfordshire.)

46. The Council’s ‘proportional growth’ approach to housing distribution is fundamentally flawed. We do not consider that the Inspector can take any comfort from the Council’s response in this regard, which in fact highlights even further the lack of credibility to the approach. This housing distribution is clearly and demonstrably not robust or credible and is therefore unjustified and unsound.

47. This issue, in isolation, warrants the withdrawal of the Core Strategy and a review of the housing distribution strategy to ensure that it is justified, effective and consistent with national policy.

4 Phasing of development

48. We welcome the Council’s agreement that Table 18.1 and Policy CSC1 should not seek to phase housing development, as phasing is not supported by the SEP which
in fact encourages LPA’s to frontload development where possible. Accordingly we support the proposed changes to the plan that are suggested by the Council, which would amend the title of Table 18.1 to clarify that it shows an anticipated delivery of housing, not a phasing.

49. However for consistency, it is essential that the Council also amends paragraph 18.6 of the Core Strategy (which refers to Table 18.1) and refers specifically to phasing.

50. On the basis that this paragraph is also amended, to delete any references to phasing, our objection to the Core Strategy in this regard would be overcome by these changes.

Updated Table 18.1

51. Through its response to the Inspector, the Council is seeking to replace Table 18.1 in the submitted Core Strategy and replace it with this updated version (Table 6). Whilst we of course do not object to the Core Strategy containing the most up to date information, any review/updating must of course be done holistically. Partial updates are particularly dangerous as they can be extremely confusing for all involved and can often be highly misleading.

52. Accordingly if the Council wishes to update its housing figures to take on board monitoring information to the end of March 2011, it must update Tables 7.2 and 7.3 of the Core Strategy to include, inter alia, completion figures to 2011 and the updated position relevant to the supply of deliverable sites and likely trajectories. Importantly, this information must be available for parties to consider and comment upon, as it would of course differ to that which was available for consultation in December 2010.

Conclusion and Proposed Way Forward

53. Section 20 (5) of the 2004 Act provides that the purpose of the independent examination of this Core Strategy is to determine (a) whether the Core Strategy satisfies the requirements of sections 19 and 24(1) of the 2004 Act and all relevant regulations including the SEA Regulations; and (b) whether it is sound.

54. The requirements of Sections 19 and 24(1) of the 2004 Act are clear: inter alia, the Core Strategy must have been prepared with regard to national policy and guidance.
The duty to have regard to such policy and guidance requires that good reasons must be advanced for any departure from it (Carpets of Worth Ltd v Wyre Forest District Council (1991) 62 P. & C.R. 334).

55. In addition, the Core Strategy must not merely have regard to the SEP; it must be “in general conformity” with the SEP. As the Court of Appeal has made clear (in the Persimmon case), the flexibility allowed by the requirement of “general conformity” is limited: any measures introduced into the Core Strategy “to reflect the fact, where it arises, that some aspect of the structure plan is itself to be subject to review.... may not pre-judge the outcome of such a review. They must respect the structure plan policies as they are...”

56. To be sound, the Core Strategy must be justified, effective and consistent with national policy. Specifically, this requires that the Core Strategy must (inter alia) be founded on robust and credible evidence and be the most appropriate strategy when considered against the reasonable alternatives.

57. The Inspector has raised concerns about the extent to which the Core Strategy satisfies these statutory requirements. His concerns reflect matters raised by third parties, including Commercial Estates Group, in their representations.

58. The Council’s response to those concerns fails to overcome numerous, fundamental legal flaws and aspects of unsoundness in the Core Strategy.

59. We respectfully submit to the Inspector that the Core Strategy as submitted is so clearly unsound, and the process by which it has been prepared betrays such fundamental legal errors, that examination of the Core Strategy ought not to proceed at all. The PINS document “Examining Development Plan Documents: Procedure Guidance (August 2009, 2nd Edition) (“the PINS Procedure Guidance”) makes clear at para 2.5 that:

“In looking at matters and issues, Inspectors will seek to identify any fundamental or cumulative flaws at the first possible opportunity. This will avoid wasted time and money if the submitted DPD has major problems (or may even on the face of it appear unsound)...” [emphasis added]
60. To rectify the key issues in the Core Strategy relevant to windfalls, housing distribution (including appraisal of amendments to the Henley and larger villages allocations) and general conformity with the South East Plan, the Council will either need to:

(1) revert to the originally drafted Submission Draft Core Strategy as a starting point for progression (which was published but immediately withdrawn in June 2010) on the basis that it did not generally rely on windfalls; did compartmentalise the District in accordance with the spatial requirements of the SEP; and did not adopt the ‘proportional growth’ approach; or

(2) review its housing strategy fully ensuring that it is robust and credible, in general conformity with the SEP, has regard to national policy.

61. Either option will of course require adequate Sustainability Appraisal (not least so as to comply with the SEA Regulations) and adequate further public consultation. We consider that the current, flawed process must be abandoned, and that the only realistic option available to the Council is to withdraw the Core Strategy. Failure to do so will simply result in significant wasted time and expense for all parties, delay the proper planning of the District and hinder the delivery of development. Given the recent Ministerial Statement on 23 March 2011, such unnecessary delay in identifying and meeting the development requirements for South Oxfordshire would be wholly unacceptable. We ask the Inspector to invite the Council, formally, to consider abandoning or withdrawing the submitted Core Strategy.

62. If, despite our serious concerns, the Inspector feels that the Core Strategy should proceed to examination, we are seriously concerned that the range of issues that require proper re-consideration, re-appraisal, and re-consultation by the Council, to ensure compliance with their legal duties, is so extensive that it is not possible for the Examination safely to proceed as indicatively scheduled for July 2011. On the question of suspending the timetable to address issues relating to general conformity with the SEP, we remind the Inspector of the PINS advice entitled “Advice produced by The Planning Inspectorate for use by its Inspectors” on the subject of “Regional Strategies – Revocation”, Annex B of which sets out advice to Inspectors on handling casework concerning DPDs which involves policy areas covered by RSs.\(^5\) Paragraph 1 of Annex B says that:

---

\(^5\) More generally on the issue of suspending the examination timetable, we refer the Inspector to paragraphs 9.20 to 9.24 of the PINS Procedure Guidance.
“The first guiding principle in development plan work is where possible to ensure that housing and other sessions that respond directly to RS policy do not proceed immediately, or that space is provided for relevant issues to be revisited before the examination is closed. PINS will monitor this advice and amend it if necessary.”

63. We understand that, despite amendments to other parts of that Advice, Annex B has not been amended since first published. Paragraph 2 of Annex B then gives the following advice to Inspectors in relation to preparation before the pre-hearing meeting:

“Preparation before the pre-hearing meeting (PHM) – Through your [programme officers] seek clarification from the LPA about whether they wish to proceed on the basis of the submitted document. In the event that they wish to revise the submitted plan establish whether they will seek to withdraw or adjourn. If the latter, for how long. Be flexible about the length of adjournment that would be acceptable but normally seek to limit adjournments to no more than 9 months”

64. Either way, given the serious concerns we have outlined in this submission, we respectfully suggest that it would be beneficial to all parties if the Inspector could formally decide, at the Exploratory Meeting itself or immediately thereafter, whether the examination process should proceed at all. If (despite our submissions) the Inspector decides that examination should proceed, then we respectfully suggest that it is imperative the examination timetable should be suspended for sufficient time to enable the Council time to seek to remedy the fundamental errors that have been identified, and to allow interested parties and the public sufficient time to be consulted on whatever amendments the Council may seek to make to the document, or to the Council’s purported justification for its contents.