

Local Plans – where are we now?

A review of recent s.113 challenges:
successes and failures

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Recent s.113 challenges

- *CPRE Surrey v Waverley*
BC [2019] EWCA Civ 1826
– **Failure**
- *Jopling v Richmond-upon-Thames*
LBC [2019] EWHC
190 (Admin) - **Success**
- *R (Bond) v Vale of White Horse*
DC [2019] EWHC
3080 (Admin) – **Failure** (not
technically a s.113 case...)



CPRE Surrey (1)

BACKGROUND

- In 2015 Waverley, Woking and Guildford published West Surrey Strategic Housing Marketing Assessment (housing need for all 3 authorities' areas)
- 2016 Waverley submitted plan for examination (Woking further behind in local plan process)
- Inspector recommended modification to Waverley's plan – increase in annual housing requirement
- To address 50% of the unmet housing need in neighbouring area of Woking (in the context of Waverley being the least constrained of the three areas)
- CPRE challenged Inspector's recommendation

CPRE Surrey (2)

BASIS OF CHALLENGE

- CPRE argued Inspector made recommendation on basis of out-of-date evidence re Woking's unmet need (at time Waverley's plan examined, Woking had not yet gathered evidence necessary to determine its housing need figure)



CPRE Surrey (3)

COURT'S APPROACH

- CA upheld judgment at first instance
- Assessment of housing need a question of planning judgment for decision-maker (i.e. the Inspector), not court
- Planning policy provides for LPA to incorporate in plan a proportion of unmet housing need from neighbouring area
- Difficult task for Inspector as evidence of Woking's unmet housing need incomplete. Entitled to proceed on evidence there was, applying policy, listening to representations and exercising planning judgment in the circumstances

- Inspector entitled to request further information and to

Jopling (1)

BACKGROUND

- Claimant campaigned for designation of playing fields as Local Green Space (LGS)
- LPA initially designated the fields as LGS in the draft plan
- Inspector rejected the designation but the main modifications did not clearly record this
- Therefore, not appreciating the position had changed, the Claimant did not respond to the consultation on main modifications that followed
- LPA de-designated the fields and a planning application to build 107 flats on them was subsequently made

Jopling (2)

BASIS OF CHALLENGE

- Claimant argued the main modifications to the plan did not make clear that the proposal was to de-designate the fields. Had it understood this, it would have made representations on the point and submitted further evidence.



Jopling (3)

COURT'S APPROACH

- LPA's consultation on the main modifications was so unfair so as to be unlawful in circumstances where the proposed modifications were not clear (and it was therefore unclear what was actually being consulted on)
- Substantial prejudice made out because the Claimant had not been given the opportunity to present its full case on the designation issue. Had the opportunity arisen, considerable further evidence to be submitted including details of prior use of the fields (used for sporting activities since 1919) and ecology report indicating a high likelihood of bat roosting and protected species on the site

Bond (1)

BACKGROUND

- Prior to adoption of local plan the relevant land was in Green Belt. LPA proposed removing land from GB in plan but ultimately decided not to (in accordance with recommendation of Inspector)
- BUT the LPA's adopted policies map had not been updated and continued to show (wrongly) the land outside the GB
- LPA subsequently resolved to amend the map to reflect the local plan (i.e. to show land in GB)

Bond (2)

BASIS OF CHALLENGE

- C's primary argument that simple resolution could not be used to amend map – needed to follow statutory procedures for modifying a development plan (involving public participation and independent scrutiny)

Bond (3)

COURT'S APPROACH

- Policies map did not form part of the local plan (in accordance with Regs 5 and 6 of the Local Planning Regs 2012), despite the requirement that it “illustrate geographically the application of the policies in the adopted development plan” (Reg 9)
- Therefore no need to embark on formal process for revising the local plan to amend the map

Concluding thoughts

- Plainly, the easiest way of influencing a local plan is by participating as fully as possible in the examination process (short and focussed contributions work best)
- If that fails, give serious consideration to a s.113 challenge – they can succeed
- BUT be wary of the high threshold – need error of law and substantial prejudice
- Far more likely to succeed by identifying a procedural failing that matters to your client (i.e. that could have made a difference to the outcome). Challenging the exercise of planning judgment inadvisable bar exceptional circumstances



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