

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT IN BIRMINGHAM
BEFORE THE HON MR JUSTICE HICKINBOTTOM

Case No: CO/17668/2013

BETWEEN:

(1) GALLAGHER HOMES LIMITED
(2) LIONCOURT HOMES LIMITED

Claimants

- and -

SOLIHULL METROPOLITAN
BOROUGH COUNCIL

Defendant

ORDER

UPON HEARING Counsel for the Claimants and for the Defendant

IT IS ORDERED THAT

1. This Order comprises the formal terms of the Order, observations (including reasons), a schedule and a map.
2. Those parts of the Local Plan, adopted by the Defendant on 3 December 2013, listed in the Schedule to this order be treated as not adopted and remitted to the Planning Inspectorate for re-examination by an Inspector other than Mr Stephen Pratt.
3. Permission to appeal is refused.
4. The Defendant to pay the Claimant's costs of the claim, to be assessed if not agreed.

DATED this 15th day of May 2014

OBSERVATIONS

On 30 April 2014, I handed down judgment in this case, allowing the application. The parties asked for time to lodge representations with regard to the form of the Order, which they have now made.

In terms of the scope of the Order, there are two areas of disagreement. It is submitted on behalf of the Claimants that, as a result of the judgment, the whole of the provisions relating to housing are infected; and they must be set aside. For the Council, it is submitted that (i) the judgment only requires limited parts of the Local Plan to be reconsidered, and (ii) these parts should not be quashed, but sent back to the Planning Inspectorate (where the legal error was made) for reconsideration and redetermination in accordance with the law.

On those issues, I prefer the submissions made on behalf of the Council. In the event that the court allows a section 113 application, section 113(7)-(7C) gives the court wide powers including powers to order that part of a plan be treated as not being adopted, and the power to remit part of the plan to anyone with a function relating to its preparation with directions as to what that person must do. University of Bristol v North Somerset Council [2013] EWHC 231 (Admin) was a different case from this, but in that judgment HHJ Alice Robinson identified the benefits of remitting a plan in an appropriate case. In my judgment, it is eminently appropriate to remit this plan. Although I found that the Council did not approach the question of housing need and thus housing provision correctly in arriving at the numbers they used in the plan sent for examination, the matter need not be remitted back to them: an Inspector is capable of assessing housing need and provision, if necessary obtaining further evidence to do so.

Furthermore, I am persuaded that the parts of the plan that are remitted to those that were the focus of this application. There are other land interests involved here, and the owners of those interests have not had an opportunity to make representations in this claim.

I have therefore made a substantive order mostly in accordance with that proposed on behalf of the Council. With regard to permission to appeal, I have refused the Council's application for the reasons given in the separate form

SCHEDULE

The parts of the Solihull Local Plan referred to at paragraph 1 of the Order are as follows:

Within policy P5

- (i) “The Council will allocate sufficient land for 3,960 net additional homes to ensure sufficient housing land supply to deliver 11,000 additional homes in the period 2006 –2028.”
- (ii) “The annual housing land provision target is 500 net additional homes per year (2006–2028). A trajectory showing how this target will be delivered from all sources of housing land supply is included in the Strategic Housing Land Availability Assessment and will be subject to annual review.”

Within section 8.4

- (iii) 8.4.1: the entire paragraph
- (iv) 8.4.2: “The Council has assessed housing land supply throughout the development of the West Midlands Regional Spatial Strategy taking a “bottom-up” approach through detailed site assessment and the Strategic Housing Land Availability Assessment. It is considered that 11,000 (net) additional homes can be delivered towards meeting projected household growth of 14,000 households (2006–2028). This is the level of housing provision that the Council considers can be provided without adverse impact on the Meriden Gap, without an unsustainable short-term urban extension south of Shirley and without risking any more generalised threat to Solihull’s high quality environment. Substantial housing growth beyond this would:
 - adversely impact on infrastructure which sustains regional assets (eg, the airport, the NEC, Jaguar Land Rover, Birmingham Business Park and Blythe Valley Park), prejudicing their attractiveness and viability and so the success of the Borough as a driver of the regional economy.
 - undermine growth and regeneration objectives in other parts of the region, particularly North Solihull, Birmingham and the Black Country where environmental improvements and high quality market housing is being provided to attract economically active and mobile households to; and to stay in these areas.
 - undermine the strategically important Green Belt gap between the Birmingham and Coventry conurbations (the Meriden Gap).”
- (v) 8.4.3: “This can be delivered through sites with planning permission, suitable deliverable sites identified within the Strategic Housing Land Availability Assessment, sites within the North Solihull Regeneration area, broad location sites proposed for allocation by this policy and unidentified sites, predominantly within South Solihull.”

- (vi) Fig 14: “to meet the overall target of 8665 additional dwellings (2012–2028)”
- (vii) 8.4.4: “The following table establishes the five year housing land requirement from the anticipated date of Local Plan adoption (2013)”
- (viii) Housing Land Requirement Table: delete in entirety, leaving Deliverable Housing Land Supply table
- (ix) Housing trajectory schedule and graph: delete in entirety.
- (x) 11.6.6 “The safeguarded land at Tidbury Green was removed from the Green Belt in the UDP 1997 for possible long-term housing needs. Following assessment in the Strategic Housing Land Availability Assessment, this land is no longer considered suitable for development and is proposed to be returned to the Green Belt.”

Proposals map

- (xi) The land hatched on the attached plan is to be removed from Green Belt notation on the proposals map.