

Briefing note

Egle Gineikiene
01908 252068
Egle.Gineikiene@milton-keynes.gov.uk

26th June 2019

To: Councillors

Re: Outcome of the Judicial Review proceedings for Land North of Cranfield Road Woburn Sands - 16/00672/OUT

Wavendon Properties Limited v Secretary of State for Housing, Communities and Local Government (1) and Milton Keynes Council (2)

Background

An outline planning application was made to Milton Keynes Council by Wavendon Properties Limited for the residential development of up to two hundred and three (203) residential units, doctors surgery, open space, landscaping, pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure on 14 March 2016.

The application went before the Council's Development Control Committee (DCC) on 1 December 2016, with an officer recommendation that planning permission be granted subject to the completion of a s106 agreement. At the time the application was considered at DCC, the Council was not able to demonstrate a 5 year housing land supply.

The DCC refused the planning application.

An appeal was lodged to the Planning Inspectorate by the applicant Wavendon Properties Limited. The inquiry was held in July 2017.

Prior to the outcome of the Inquiry the Chair and Vice Chair of DCC wrote to the Secretary of State to request the recovery the appeal, but this request was refused. A further letter requesting the recovery of the appeal was written by MP Iain Stewart and the request to recover the appeal was allowed.

The Inspectors decision of the Inquiry allowed the appeal in favour of Wavendon Properties Limited and allowed planning permission. However, this was recovered by the Secretary of State and planning permission was refused – the appeal was therefore dismissed by a decision letter of the Secretary of State dated 5th December 2018.

Subsequently, a Judicial Review claim was made by Wavendon Properties Limited against the Secretary of State's decision. The Judicial Review sought to quash the decision of the Secretary of State under Section 288 of the Town and Country Planning Act 1990 (the Act). This was on the grounds that the decision was flawed and not within the powers conferred by the Act and that the relevant requirements were not complied with. The Judicial Review was heard on 7 and 9 May 2019.

The key grounds of the Judicial Review were:

1. The Secretary of State has erred in reaching the conclusion that the Council has been able to demonstrate a 5 year housing land supply.
2. The Secretary of State has reached a conclusion which does not accord with the evidence submitted either during or after the inquiry on behalf of the Claimant or the Second Defendant.

Outcome of Judicial Review

The High Court quashed the Secretary of State's decision, on the basis that the Secretary of State has:

- Erred in reaching the conclusion that the Council has been able to demonstrate a 5 year housing land supply; and
- Reached a conclusion which does not accord with the evidence submitted either during or after the inquiry on behalf of the Claimant or the Council.

Next Steps

The matter will be sent back for redetermination to the Secretary of State. Further submissions or re-opening of the inquiry may be required, however this will be decided by the Secretary of State in due course and members will be updated accordingly. The decision will be determined taking into account the policies that are in place at the time a fresh decision is made.

Legal Issues

The Judgment has clarified the interpretation of the National Planning Policy Framework (NPPF) paragraph 11 and the extent to which the Secretary of State was required to provide reasons for arriving at the range of deliverable housing land supply available to the Council.

- Interpretation of NPPF Paragraph 11 following High Court decision - Decision makers will have to apply what may be described as a "holistic" approach to decision making. Firstly, they will have to establish which policies are the most important for determining an application and having examined each of them, consider whether or

not they are up to date or out of date. They will then need to form an overall judgment a “holistic” approach, as to whether or not taken as a whole, these policies are to be regarded as out of date for the purpose of the decision.

- Reasons – it was held that the Secretary of State was required to provide some reasoning to explain how he had treated the material before him, so as to arrive at his conclusion as to the range of the deliverable housing land supply available to the Council. Mr Justice Dove was *“satisfied that the Claimant has been prejudiced by the absence of those reasons since without them the Claimant is unable to understand why the conclusions of the SPRU [Strategic Planning Research Unit of DLP Planning] Report have not been accepted, and what was done in relation to either the Inspector’s conclusions or the material in that report so as to arrive at the conclusion which had the significant effect upon their case of depriving them of the tilted balance when the decision came to be forged.”*

For any queries please do not hesitate to contact Egle Gineikiene.

Egle Gineikiene
Legal Services