

Case Name: Dylon 2 Ltd v London Borough of Bromley [2019] EWHC 2366 (Admin) (06 September 2019)

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Commentary: The court dismissed the application to have all or certain parts of the Bromley Local Plan ("BLP") quashed. The court held that the claimant had failed to show that the inspector's judgment was unreasonable.

The claimant submitted that the inspector had misinterpreted Policy 3.3 of the London Plan and that it should have been interpreted as requiring that a local plan contain a specific policy for its revision if the housing targets in the London Plan are superseded by figures in a new London Plan. The Judge did not accept the claimant's interpretation. There is no London Plan policy requirement for a specific local plan review to consider new figures when available. The Judge did see scope for an argument that when the revised housing figures are adopted, they are then treated as transposed into the various local plans after 2025, however, the Judge realised significant planning problems if the figure is adopted without review.

The Judge took this to be a challenge to "general conformity" rather than one dealing with "soundness". The Judge was satisfied that no one (including Bromley Borough Council, the GLA and the inspector, whose "views matter most"), thought any conflict between the two policies could prevent the BLP being in general conformity with the London Plan: "A mere textual conflict, lacuna, or inadequacy in the reflection of a strategic policy would not necessarily prevent the local plan being in general conformity with the strategic plan". The Judge concluded that there was no basis for supposing that any of them thought that there was any inconsistency at all so dismissed this ground.

The Judge also dismissed the claimant's submission that the inspector had misinterpreted Policy 3.3Da of the London Plan and paragraph 47 of the NPPF (2012 version), which obliged Bromley Borough Council to "boost significantly the supply of housing as far as is consistent with the policies set out in the Framework." There was no policy bar in the BLP to suitable sites being promoted for housing, even if not allocated or identified, nor of suitable allocations being refused.

The Judge was satisfied that the inspector had complied with her duty to give reasons. The obligation on a local plan inspector to give reasons focusses on the reasons for her recommendation only, here that the BLP was "sound". The local plan inspector's duty to give reasons did not extend to dealing expressly with all the views expressed by an appeal inspector about other sites because they were not critical to her conclusions on "soundness".

The test of whether the decision was unlawful is whether the inspector considered it reasonable to conclude that the plan in question was in "general conformity" with strategic plan, and reasonable to conclude that it was "sound" (s20(5) and s20(7) PCPA 2004). On the grounds set out above, the Judge concluded that the claimant had failed to show that the

inspector's judgment was unreasonable. The Judge therefore dismissed the application to have all or certain parts of the BLP quashed.

Case summary prepared by Nikita Sellers