

Case Name: *Wainhomes (North-West) Ltd v Secretary of State for Housing Communities and Local Government* [2020] EWHC 2294 (Admin) (21 August 2020)

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Commentary:

The case was a statutory challenge against a Planning Inspector's refusal of an appeal in respect of the refusal by South Ribble Borough Council of an outline planning application for a 100-home scheme in Whitestake, Preston.

The key issues giving rise to the challenge were whether or not the Council could demonstrate a five-year housing land supply and hence whether the tilted balance should apply in favour of the development. Central to this was whether or not the strategic policies for housing had been reviewed for the purposes of footnote 37 of the NPPF. In sum, if a review had been undertaken and the strategic policies had not been found to require updating, then those strategic policies would have been the basis for calculating the five-year housing land supply. However, if a review had not been undertaken, then since the strategic policies were more than five years old, the five-year housing land supply would be assessed by reference to local housing need calculated using the standard method prescribed by national Planning Practice Guidance ("PPG"). These calculations produced very different outcomes with the standard method significantly reducing the number of homes required.

The claimant (*Wainhomes (North-West) Ltd*) contended at the public inquiry that the effect of various exercises undertaken by the Council along with other Central Lancashire authorities (most particularly preparation of a 'Joint Memorandum of Understanding and Statement of Cooperation relating to the Provision of Housing Land ("MOU")') was that there had been a review for the purposes of footnote 37 such that housing land supply should continue to be calculated against the figure contained within the relevant strategic policy (Core Strategy Policy 4(a)). The Council's case concerning whether or not there had been a review changed during the course of the inquiry with it being acknowledged, in closing, that there were only limited arguments in support of the contention that the MOU had not constituted a review. However, the Council contended as a fallback position that, if the MOU and its associated processes were a review, the change between the strategic housing requirement contained in Core Strategy Policy 4(a) and the figure provided by using the standard method was a 'significant change' for the purposes of the PPG and hence necessitated a further update. As such, the Council contended that this provided a second justification for using the standard method.

The other key issue pertaining to the application of the tilted balance was the claimant's contention that another key development plan policy for determining the appeal (Policy G3) was out of date. Policy G3 identified areas of safeguarded land for the purposes of future development, with the application site falling within one such area. The land was safeguarded in order to ensure that Green Belt boundaries would not need altering at the end of the plan period to meet longer term development needs. The claimant argued that, if the Council were to use the standard method, this would lead to a very different distribution of housing requirements between the Central Lancashire authorities and hence undermine the

safeguarded land provisions which were predicated on the housing distribution contained within Policy 4(a). A redistribution of housing requirements would need to be undertaken across the Central Lancashire authorities and the conclusions reached as to the need to safeguard land on the basis of Policy 4(a) could no longer hold. As such, Policy G3 would be out of date.

The Inspector found that Policy 4(a) was out of date. She concluded that there had not been a review of the strategic policy for housing, relying on matters including a lack of consultation on the MOU, doubts concerning whether a 'full review' had been undertaken, and the fact that the other Central Lancashire authorities continued to use the Core Strategy figures for other reasons, not because they considered that the MOU constituted a review. She also concluded that there had been a 'significant change' arising from the introduction of the standard method leading to a significantly lower housing figure for the purposes of the PPG. On the second issue, however, the Inspector concluded that Policy G3 (the key policy for determining the appeal in her view) was not out-of-date on the basis of the distributional consequences that would arise if the Central Lancashire authorities were to apply the standard method or for any other reason. In sum, she found that this was not a case in which the titled balance was engaged, and that the Council was able to demonstrate a five-year supply of housing. The appeal was dismissed.

The claimant's challenge to the Inspector's decision was made on five grounds: (1) that the Inspector fell into error in concluding that the MOU and the processes which proceeded it did not amount to a review under footnote 37, relying on an error of fact (in suggesting that Policy 4(a) was not mentioned in relevant committee reports which supported her conclusions) and reasoning which was unintelligible and inadequate; (2) that the Inspector's reasoning was unclear in connection with the conclusion that the other Central Lancashire authorities were using the housing requirement from Policy 4(a) for various other reasons, not solely related to the MOU and their view that this had constituted a review; (3) that the Inspector had misinterpreted the PPG in concluding that it covered a situation where an existing plan figure was found to be significantly above (rather than significantly below) the standard method figure; (4) that the Inspector failed to follow through the 'convincing arguments' which she acknowledged had been made by the claimant for retaining the Core Strategy requirements in view of the redistribution which might result from the use of the standard method and her conclusion that these consequences were a matter for the other authorities' decision-making; and (5) (conceded by the Council) that the Inspector's reasons in relation to her conclusion that Policy G3 was not out of date were unclear and incoherent.

Dove LJ allowed the claim and quashed the Inspector's decision. In relation to Ground (1), Dove LJ found that the Inspector's reasons for concluding that the MOU and the processes which proceeded it did not properly constitute a footnote 37 review were not legally adequate and were affected by illegality in the form of an error of fact. In particular, the Inspector erred in failing to explain why the whole of Policy 4 (and not just 4(a)) needed to be reviewed for the exercise to constitute a review for the purposes of footnote 37 and why the MOU did not constitute that review of the whole policy bearing in mind the contents of the

MOU. Further, in relation to Ground (5), Dove LJ found that the Inspector's reasons were inadequate in that they failed to grapple with and explain adequately her answer to the point raised by the claimant in relation to the consequences for the distribution of housing set out in the Core Strategy for the Central Lancashire authorities, upon which Policy G3 depended, arising from her adoption of the standard method for the purpose of taking her decision. Her earlier conclusion in relation to the need to use the standard method reinforced the point that G3 was out of date and required review at the time of making the present decision if the housing requirement from the standard method were to be deployed. Dove LJ did not find any merit in Grounds (2) and (4) and, in relation to Ground (3), noted that the language of the PPG and its proper interpretation did not preclude the Inspector from concluding that the significant difference between the housing requirement in Policy 4(a) and that generated by the standard method was capable of amounting to a 'significant change' rendering Policy 4(a) out of date (even in circumstances where the standard method led to a reduction). This was a planning judgment which she was entitled to reach.

Case summary prepared by Victoria McKeegan