

Case Name: *Lochailort Investments Ltd v Somerset Council* [2023] EWHC 1776 (Admin) (14 July 2023)

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Commentary: This was an unsuccessful claim against the Council's decision to publish a revised policies map, with a formerly allocated site outside the development limits for Norton St Philip, following an order given by Holgate J on 16th December 2022.

Background

The Council adopted a new local plan in 2014 which set out overarching strategies and policies ("LPP1"). In 2021, the Council adopted a second part to the plan, which set out the sites allocated for additional housing across the district ("LPP2"). LPP2 was successfully challenged in 2022 in the case of Norton St. Philip Parish Council v Mendip District Council [2022] EWHC 3432, where Holgate J held that the Council and the Inspector had misinterpreted LLP1 in determining which sites should be allocated for additional housing. As a result, Holgate J ordered for a part of LPP2, namely the section which set out the additional housing allocation sites, to be remitted. One of the five sites which were originally allocated for additional housing in LPP2 ("NSP1") belongs to the Claimant. Holgate J ordered the Council to review and reconsider which sites should be allocated for additional housing following the proper interpretation of the relevant LPP1 policy having been determined in that case. This was the order given by Holgate J on 16th December 2022 ("the 2022 Order").

The Council proceeded to alter LPP2 in order to give effect to the 2022 Order. In doing so, it struck out those policies in LPP2 which allocated the five sites for additional housing and, in an attempt to reflect this change geographically, it proceeded to also alter the accompanying policies map ("the Adopted Policies Map"). It did so by redrawing the development boundary limits such that the five sites were placed outside the development limits for Norton St Philip ("the Revised Policies Map"). The Claimant's challenge centred around the Council's decision to redraw the boundary limits in this way and, specifically, the exclusion of NSP1.

Issue

The Claimant contended that when attempting to change the Adopted Policies Map to reflect the 2022 Order, the Council should not have changed the development boundaries such that NSP1 was now outside of the development limits for Norton St Philip, instead, the limits should have been drawn such that the site fell neither within nor outside the development limits. In other words, no boundaries should have been drawn around NSP1 (i.e. it should have been "white land") since it was yet to be determined, through review and reconsideration by both the Council and the Inspector, whether NSP1 is going to be allocated for additional housing. The Claimant submitted that the Revised Policies Map should reflect the policies in the adopted LLP2 (as amended in accordance with the 2022 Order). Those policies do not set a development

limit for the part of Norton St Philip in which the former NSP1 was located, therefore, the Revised Policies Map cannot lawfully determine the development limits without the review and reconsideration required by the 2022 Order.

Judgement

Holgate J noted that the claim related to a temporary concern only. To meet the requirement for 505 dwellings, the Council will reconsider the development limits on the Revised Policies Map in forthcoming modifications of LPP2. The Revised Policies Map will not have any bearing on the submission policies map prepared as part of that process, nor will it impact the Claimant's chances of getting NSP1 allocated again. There will be a call for sites across the whole district, followed by the identification of proposed allocations by the Council and further consultation. As such, the issue only relates to any applications for planning permission on the formerly allocated sites in the interim period until the outcome of the modification of LPP2 is known.

With reference to relevant development plan policies, Holgate J noted that land outside development boundary limits (including NSP1 in the interim period following the Council's publication of the Revised Policies Map) are subject to "strict control". However, if NSP1 were to be shown as "white land" it would neither be inside nor outside of the development limits, neither subject to the "strict control" policy nor the policy supporting suitable development inside development limits. In determining any applications for planning permission, Holgate J noted that the Council will not only have to have regard to the presumption in favour of the development plan (with "strict control" applying to NSP1 in the interim period), it will also have to consider the history of the allocations (why development boundaries were extended and why those allocations were unlawful), the fact that the Revised Policies Map has not been the subject of a lawful examination process, the fact that development limits will be reconsidered in forthcoming modifications of LPP2, and the merits of the proposal itself.

Holgate J did not accept the Claimant's submission that the Revised Policies Map is unlawful since it does not reflect any part of the adopted LPP2 (as amended by the 2022 Order). He accepted that there was no wording in the LPP2 that states that development boundaries should be altered, but he noted that it did not consist of any wording to the contrary either (i.e. policies which stated that the development boundary limits should be extended). Notwithstanding, Holgate J held that what is illustrated on a policies map does not have to be described in the plan itself.

In the early stages of LPP1 through to the submission of the plan for examination, NSP1 was shown outside the development limits of Norton St Philip. The Revised Policies Map returns the boundary of the settlement to the position which it was in before the unlawful allocation of NSP1 took effect. Holgate J held that the Council has the power to correct a polices map by resolution without having to go through the procedure of modifying the plan itself when making corrections to deal with the consequences of a

court order.

Finally, Holgate J recognised that there were three actions the Council could have taken in relation to the Adopted Policies Map:

- a) to keep the development limits as they were;
- b) to return the boundary to its position prior to the unlawful allocation; or
- c) to delete the boundary around the former allocated sites (i.e. a “white land” notation).

Holgate J held that option b), which the Council followed, cannot be said to be unlawful due to the absence of a lawful independent examination procedure because that criticism would apply to all three options. Option a) would have conflicted with the 2022 Order, which was given as a result of the finding that there had been a misinterpretation of policy, and option c) would give the five sites a planning status that they would not have had in the absence of the unlawful allocations. Therefore, Holgate J held that option b) was the truly compatible method for ensuring compliance with the 2022 Order.

For the above reasons, Holgate J concluded that the actions taken by the Council to alter the development limits on the Adopted Policies Map were lawful and accorded with the 2022 Order. As such, the claim was dismissed.

Case summary prepared by Chatura Saravanan