

Case Name: *Mid Suffolk District Council v Secretary of State for Levelling Up, Housing and Communities & Anor* [2024] EWHC 930 (Admin) (23 April 2024)

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Commentary:

This was a statutory challenge under section 288(4A) of the Town and Country Planning Act 1990 ("the 1990 Act"). Mid-Suffolk District Council ("the Claimant") challenged a decision dated 26 July 2023 ("the Decision") of a planning inspector ("the Inspector") to allow an appeal made under section 78 of the 1990 Act by Gladman Developments Ltd ("Gladman").

The appeal was against the non-determination of Gladman's application for outline planning permission in respect of Land east of Ixworth Road, Thurston, Suffolk ("the Appeal Site") for *"up to 210 dwellings and new vehicular access to include planting and landscaping, natural and semi natural greenspace(s), children's play area and sustainable drainage system (SuDS), to include 35% affordable dwellings"* ("the Development").

The Claimant challenged the Inspector's decision to allow the appeal on two grounds:

Ground 1: the Inspector misinterpreted the emerging Babergh and Mid Suffolk Joint Local Plan ("the EJLP"), or in dealing with that emerging policy, the Inspector failed to take into account relevant factors, acted irrationally, or failed to provide adequate reasons; and

Ground 2: the Inspector erred in his approach to carrying out the balancing exercise required under section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), in circumstances where it was agreed that the Development was contrary to the statutory development plan taken as a whole.

The Appeal Decision

In 2020, the Appeal Site had been proposed for allocation as a residential development site in the EJLP under Policy SP03. In September 2020 the Claimant's Planning Committee resolved to grant outline planning permission for the Development, subject to the completion of a S106 agreement.

Before the permission could be issued, the EJLP was submitted for examination in March 2021. The Examining Inspectors concluded that the Plan would not be found sound and, amongst other matters, Policy SP03 required significant modification to make clear where new housing development would be permitted. The Claimant agreed the way forward in its letter to the Examining Inspector in December 2021 and progressed to modify the EJLP.

By October 2022 permission still had not been issued and the Claimant had changed its stance in respect of the Development on the basis that the planning context had changed in several ways, including due to the EJLP Examination – the Claimant published Main Modifications to the EJLP in March 2023 which included demonstration of an increased 10.88 years' supply of housing (almost double that which had been stated in the previous version). Gladman subsequently appealed the non-determination. The Claimant's Planning Committee considered the application again in March 2023 and resolved that permission would have been refused if the applicant had not already appealed the non-determination.

At the appeal inquiry, it was common ground that, by reason of its location in the countryside, the proposed Development was contrary to the statutory development plan when taken as a whole.

However, in allowing the appeal, the Inspector concluded that the benefits of the appeal scheme would significantly and demonstrably outweigh the harm identified when assessed against the policies of the Development Plan.

Grounds of Challenge

There were two grounds of challenge.

Ground 1 related to a contention that the Inspector misinterpreted Policy SP03 of the emerging EJLP, or in dealing with that emerging policy, failed to take into account relevant factors, acted irrationally, or failed to provide adequate reasons.

In considering the individual elements to Ground 1, Mr James Strachan KC, sitting as a High Court Judge, concluded that it was clear from the Inspector's decision that he agreed with the main parties that the Development was in conflict with the EJLP, and provided adequate reasons in relation to this matter in his decision. Similarly, the Judge concluded:

- there is no basis for suggesting that the Inspector failed to take into account relevant factors in finding that the EJLP should be accorded very limited weight;
- the Inspector did not misinterpret Policy SP03; and
- the Inspector did not adopt an irrational approach to Policy SP03 or the weight to be accorded to it.

Ground 1 of the challenge failed accordingly.

Ground 2 related to a contention that the Inspector erred in his approach to carrying out the balancing exercise to determine whether the benefits of the scheme outweighed the harms, as required in circumstances where the Development was contrary to the

statutory development plan, including that the Inspector had failed to take into account material considerations.

The Judge concluded that the terms of the Decision properly read revealed that the Inspector was well aware of the relevant matters and took them into account when making his Decision in a way which he was entitled to as a matter of law. In particular:

- the Inspector was well aware of the updated housing land supply position given his specific reference to it throughout his decision.
- the Inspector was aware of the EJLP and the Claimant's relevant evidence, meaning it was unrealistic to suggest that he failed to take that into account.
- the Inspector was also informed of the specific housing position in Thurston and took it into account in reaching his Decision relating both to weight to be attached to delivery of market and affordable housing, and conflict with the development plan.

Ground 2 of the challenge also having failed, the Inspector's decision was found to be lawful and the claim was dismissed.

Case summary prepared by Victoria Porter