

**Case Name:** *Jones v Wrexham County Borough Council & Ors* [2024] EWCA Civ 1603 (20 December 2024)

**Full case:** [Click here](#)

### **Commentary:**

The Court of Appeal (Sir Keith Lindblom, Lord Justice Baker, and Lord Justice Holgate) held that an LPA in Wales does have discretion as to whether to adopt a Local Development Plan following a recommendation of adoption by an examining Inspector and that the LPA is therefore not under a duty to adopt such a plan.

The original claim for judicial review had been brought by a consortium of developers in May 2023 after the Full Council of Wrexham County Borough Council voted in April 2023 to resolve not to adopt the LDP following the recommendation by the examining Inspectors of adoption of the LDP with modifications.

Following the claim for judicial review being made, the Full Council met again in June to reconsider their decision. The officers again recommended approval and stated that following advice from counsel, the authority had "*no plausible option but to concede that an unlawful decision had been made on 19th April*". However, the Full Council again resolved not to adopt the plan.

The judicial review was not opposed by the Council or the Welsh Ministers. Eyre J allowed the claim, quashing the Council's decisions of April and June and remitted the adoption of the LDP to the Council with a direction to reconsider the matter in accordance with the judgment of the court. In the judgment, Eyre J said "*To be clear: the only decision which would be capable of being a decision in accordance with the judgment of the court would be the passage of a resolution adopting the LDP as modified.*" Following this, Members were advised that they had no choice but to adopt the LDP and that a failure to do so could expose the individuals concerned to punishment for contempt of court. The members resolved to adopt the LDP in December 2023.

The appellant is a member of Wrexham County Borough Council and a leader of one of the political parties in the Council. He applied to be added as a party to the proceedings following the December resolution and was given permission to appeal to the Court of Appeal. He has also brought a challenge under s133 of the PCPA to the adoption of the LDP which was stayed pending determination of this appeal.

### **Judgment**

It was common ground that in England a LPA has discretion as to whether to adopt a DPD which the examining Inspector has recommended for adoption. The relevant legislation

for both Wales and England is the Planning and Compulsory Purchase Act 2004 but there are differences between the statutory schemes as they relate to each country, particularly following amendments in respect of England made by the Localism Act 2011.

In the High Court, the judge had accepted that s67 of the PCPA 2004 imposed a duty on a LPA in Wales to adopt a LDP which has been through examination in light of a number of features of the PCPA which point towards the LPA being under such a duty namely: the s62 requirement to prepare a plan, the s64 requirement for independent examination, the WM's power to direct withdrawal of a plan and the restriction in s66A on the power of the LPA to withdraw its plan. The judge had held that the words "may adopt" in s67 referred to the LPA's choice to adopt either of the two different forms of the plan (as originally prepared or with the Inspector's modifications).

The Court of Appeal did not agree that the provisions referred to in the High Court and relied on by the respondent nor the language of s67 imposed a duty rather than a discretionary power. The restrictions on withdrawal of a plan in s66A did not apply a duty to adopt. Further, s67 did not allow an LPA to choose between the two different forms of an LDP. The provisions were mandatory as to which form may be adopted depending on the Inspector's recommendation. The Court also noted that the legislation refers to "recommendations" by the Inspector and a recommendation is advisory. This was also contrasted with language in s67(4) which applies if the WM "direct" the LPA not to adopt the LDP in which case they "must" not do so. In addition, s67(3) requires a resolution which again suggest that the LPA is to make a decision as to adoption. The judgement states that *"If Parliament had intended to impose an obligation on LPAs in Wales to adopt a LDP in accordance with the recommendations of the Inspector, it would have said so expressly."*

It was common ground that prior to the PCPA 2004, LPAs in both countries had a discretion rather than a duty to adopt development plans following examination. The respondent had argued that the PCPA 2004 had changed this position and had had the effect of imposing a duty on LPAs to adopt development plans and that the position in England had been subsequently altered by the Localism Act 2011 so that only LPAs in England now had this discretion. However, the Court agreed with the appellant that the PCPA 2004 had not changed this position and that in both countries the LPA had continued to have discretion as to whether to adopt a development plan.

The resolutions passed by the Council in April and June 2023 not to adopt the LDP following the examining Inspectors recommendation were therefore not unlawful and the appeal succeeded.

*Case summary prepared by Susannah Herbert*