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## Report of the Director of City Development

### Executive Board

**Date:** 21 July 2010

**Subject:** Housing Appeals – High Court Decision

#### Electoral Wards Affected:

All

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

## EXECUTIVE SUMMARY

1. The Council has been faced with a series of planning appeals concerning residential proposals on greenfield sites. The appeals are a consequence of the housing targets set in the Regional Spatial Strategy and concern matters of interpretation of national, regional and local policy.
2. The appeals heard to date have all been lost by the Council. However, following legal advice it was considered that there were grounds to challenge those decisions in the Court. Judgement on the first of the Court cases was handed down on 17 June and went against the Council.
3. The Council has had to decide whether to further challenge this decision in the Court of Appeal and the implications of this decision for the four other cases still subject to legal challenge.
4. The analysis of the issues and the recommendations are included in the confidential report elsewhere on this agenda.

## **1.0 Purpose of this Report**

- 1.1 This report complements a further report on this agenda involving proceedings before the Courts, and in respect of which a claim to legal professional privilege could be maintained in legal proceedings and which is therefore exempt information under Access to Information Rule 10.4 (5). The purpose of the report is to update Executive Board on progress with a number of appeals against the Council's refusal of planning permission for housing on Greenfield sites. In particular to advise Members of the recent outcome of a High Court case relating to land at Greenlea, Yeadon and to endorse the way forward on this and to agree the approach to other pending cases.
- 1.2 It is proposed that the decision of Executive Board be exempt from call-in given the need to advise the Court of the Council's stance on these matters at the earliest opportunity.

## **2.0 Background Information**

- 2.1 Members will be aware that we have been faced with a number of planning appeals for housing on Greenfield allocations. The Council has been opposed to the release of Greenfield housing sites and has been arguing that such sites are not needed given the land supply that already exists and the need to support urban regeneration. The Council's stance has been confirmed in various resolutions to Council.
- 2.2 The Council is faced with this series of applications/appeals as house-builders have been seeking to exploit the opportunity presented by the substantially increased housing targets in RSS to challenge the Council's stance. When RSS was published in May 2008 the housing target went up overnight from an annual average of 1930 units gross to 4740 units p.a. At the same time national guidance requires that the local authority can at all times demonstrate the availability of a supply of housing land that is 5 times the RSS requirement. Not only was there a step change in the requirement but the changing economic climate has meant that sites that might previously have counted towards supply are no longer included as they are now unlikely to be built within the next 5 years. A huge leap in the land supply target has been accompanied by the removal of sites that were previously considered available. National guidance suggests that where a 5 year supply cannot be demonstrated then proposals should be favourably considered.
- 2.3 Numerous policy arguments have been advanced by the Council in support of its stance. The Council has also argued that the reality of the housing market should be taken into account. We are being asked to have a 5 year land supply for over 20,000 dwellings at a time when new starts are running at less than 1,000 p.a. and many of these are only going ahead because of HCA subsidy. In effect we are being asked to release land for which there is no immediate market.
- 2.4 To date all our arguments have been unsuccessful. On Counsel's advice the first three cases lost by the Council at Greenlea, Yeadon; Selby Road, Garforth and Pudsey Road, Swinnow were the subject of legal challenge. The cases were all due to be heard in the High Court in Leeds on 20/21 April.
- 2.5 Two further appeal decisions have been recently received relating to sites at Milner Lane, Robin Hood and Bagley Lane, Farsley. In both cases the appeals were again upheld and planning permission granted and in the Bagley Lane case the appellant sought and won an award of costs against the Council. The Inspector took the view

that in using the same arguments rejected in earlier cases the Council's position was 'weak'. In doing so, with an even weaker land supply, she took the view that the Council had acted unreasonably. It is not yet known what the costs order will amount to.

2.6 The Coalition Government is clear that it intends to abandon RSS and regional planning. The position in the Conservative Party Green Paper No.14: Open Source Planning (OSP). This states very clearly that it is intended to eliminate bureaucracy by,

*"abolishing the entire bureaucratic and undemocratic tier of regional planning, including Regional Spatial Strategies and national and regional building targets."*

2.7 This intention is confirmed in the post-election statement by the new government "The Coalition: our programme for government". This advises that,

*"We will rapidly abolish Regional Spatial Strategies and return decision-making powers on housing and planning to local councils...."*

2.8 More recently, and fundamentally, the new Secretary of State, Eric Pickles, sent a letter to all chief planners on 27 May 2010 confirming this intention and that a formal announcement would follow shortly. He added that,

*"I expect Local Planning Authorities and the Planning Inspectorate to have regard to this letter as a material planning consideration in any decisions they are currently taking".*

### **3.0 Main Issues**

3.1 The High Court case went ahead on 20 and 21 April 2010 before Mr. Justice Keith. In the event the judge decided that while the three cases had similarities, each needed to be considered on its merits and in the time available only the first case, at Greenlea, Yeadon, was heard. Having said that the three cases needed to be considered separately the judge went on to comment that,

*"To the extent that this judgement decides any issues of principle which are common to all three applications, that could well shorten, if not dispose altogether of the need for, hearings in the other two applications."*

3.2 Judgement on the Yeadon case was handed down on 17 June. There were 6 grounds of appeal. Four of these related to matters of policy interpretation and RSS and the other two to the use of conditions and provision of greenspace. The judge found against the Council on all grounds and the appeal was dismissed. The main lines of argument considered at the various stages of the process are set out below.

#### **The Appeal Decision**

3.3 The Inspector's reasons for granting planning permission included the following:-

- there was a deficit in the future anticipated land supply for homes in the area;
- the Council had failed to demonstrate that there was already an adequate supply of land suitable for housing,
- the site had already been identified as suitable for residential development,
- it was inevitable that some new housing would have to be provided on Greenfield sites,
- the site was too small to have a significant direct effect on the regeneration of urban areas

- it was appropriate to grant outline planning permission subject to conditions

### **Grounds of Challenge**

3.4 The Council's case in the High Court was based on the following criticisms of the way in which the Inspector had come to his decision:-

- he had not determined the appeal in accordance with the development plans because he had not considered whether the site was in a location that accorded with the 'core' planning approach in the area;
- he had ignored the requirement in PPS3 to consider the effective and efficient use of the land and the spatial vision for the area;
- he had not made a finding that "existing housing land supply" was "demonstrably short" as required by local planning policy;
- he had been wrong to find that the Council had failed to demonstrate that there was already an adequate supply of land suitable for housing for the next five years;
- he had been wrong to deal with affordable housing considerations by imposing a condition on the grant of planning permission instead of entering into an affordable housing planning obligation.

### **The High court Decision**

3.5 The Judge decided not to quash the decision of the inspector for the following reasons:-

- the Inspector had determined the application in accordance with the statutory development plans. The core approach in the statutory development plans did not require all housing development to take place in the cities and towns it identified –it had to be the "main" or "prime" focus but this did not rule out housing development taking place elsewhere. The fact that the Inspector had permitted such a development did not mean that he had ignored the relevant policies.
- as the wording of the inspector's decision tracked the language of PPS3 it was unlikely that he had ignored it. Also, the fact that a planning inspector had to have "regard" to certain considerations did not mean that they were decisive. It was a matter of balance and planning judgement.
- the Inspector's decision to release of the land for housing was precisely because the supply of land for housing was demonstrably short
- the inspector had not identified the number of new homes likely to become available in the five years from 2009 but he did not have to. All he had to do was decide whether the number of new homes likely to become available was likely to meet anticipated demand, and if not, whether the shortfall was likely to be significant
- it was appropriate to attach a planning condition relating to the provision of affordable housing

3.6 In the written judgement the Council was given 7 days to decide whether to seek leave to appeal this decision and 21 days within which to file formal notice of such appeal. The 21 day period expired on 8 July.

3.7 The Council has had to decide on the basis of the judgement and further legal advice whether to challenge the outcome in the Court of Appeal. If no challenge is

pursued the Council will be liable for the Secretary of State's costs. In coming to a conclusion it is necessary to consider the chance of success and therefore the risk of further significant costs to the Council. Given the deadline for challenge both the Leader of the Council and Leader of the Opposition have been consulted on the issue. If no further challenge is made then the outcome will be that planning permission is granted for the Greenlea, Yeadon site consistent with the planning inspector's appeal decision.

- 3.8 The Council has also to decide whether to continue with the four outstanding court cases in the light of the judgement on Greenlea and its decision on whether or not to challenge that judgement. Not to pursue the challenges would again mean that planning permission is granted for the sites at Pudsey Road, Swinnow; Milner Lane, Robin Hood; Selby Road, Garforth and Bagley Lane, Farsley. In these circumstances the Council would be liable for the costs incurred by the Secretary of State to date and also for the outstanding costs award in the Bagley Lane case.

#### **4.0 Implications for Council Policy and Governance**

- 4.1 The issues in this report stem from the Council's refusal of planning permission for residential development on a number of greenfield housing allocations. This arises from the Council's approach to the policies and targets set out in RSS which have been the subject of a number of resolutions in Council. The outcome of the Court case and the decisions of inspectors at appeal run counter to the Council's approach.

#### **5.0 Legal and Resource Implications**

- 5.1 Costs have already been incurred in defending the Council's position at various appeals and in the Court. This report highlights the need to consider the prospects of successfully challenging the Court's judgement and notes the risk that significant further costs could be incurred if such challenge proved unsuccessful. This also applies to the consideration of the implications of the Court's decision for the four High Court cases that have still to be heard.

#### **6.0 Conclusions**

- 6.1 This report highlights the issues around a series of housing appeals and a recent decision in the High Court. It is concluded that the Council needs to consider its response to that decision and the implications for a number of similar cases currently before the Court. The analysis of the issues and the recommendations are included in the confidential report elsewhere on this agenda.

#### **7.0 Recommendations**

- 7.1 Executive Board is requested to note this report.

#### **Background Papers**

1. Written judgement of Mr Justice Keith in the case between Leeds City Council and The Secretary of State Communities and Local Government and Libra Demolition Ltd
2. Conservative Party Green Paper No.14: Open Source Planning