

North Somerset Core Strategy High Court Challenge

Summary of the judgment

The challenge

Following an examination conducted by an independent Inspector, the North Somerset Core Strategy was found 'sound' and was formally adopted in April 2012. Plan adoption is followed by a prescribed period during which an aggrieved party can lodge a legal challenge under S.113 of the Planning and Compulsory Purchase Act 2004.

Any legal challenge is not about the merits of the case, but whether the correct statutory processes had been complied with.

The claimants

Bristol University challenged the adoption of the Core Strategy on three grounds - all related to what they considered were defects in the Inspector's Report.

Bristol University has aspirations to built approximately 1000 dwellings in the Green Belt to the south of the village of Long Ashton which is not supported by the local planning authority. They were aggrieved by the Inspector's Report which endorsed the North Somerset dwelling requirement of a minimum of 14,000 dwellings 2006-2026 and which did not require the use of Green Belt land.

The three grounds of the challenge were as follows:

Ground 1: Failure to comply with its duty to co-operate and adopting the failure of the Inspector who concluded that the duty to co-operate did not apply.

Ground 2: Relying upon an unsound evidence base in the calculation of numerical housing requirements and adopting the Inspector's failure to provide adequate reasons as to why the council's evidence was to be preferred over the Claimant's evidence.

Ground 3: Failure to ensure conformity with RPG10 and adopting the Inspector's failure in respect of the same.

The Judgment

The Judgment is dated 14 February 2013. The main findings are summarised as follows:

Ground 1: Failure to apply the duty to co-operate. Challenge failed.

The duty to co-operate was not introduced until after the Core Strategy was submitted for examination and therefore the Inspector was right that he did not have to consider the duty retrospectively.

Ground 2: Reliance on an unsound evidence base in the calculation of the housing requirement and the Inspector's failure to provide adequate reasons why the Council's evidence was preferred. Challenge succeeded in part.

The Inspector gave clear reasons for rejecting the draft RSS housing requirement of 26,750 dwellings and concluding there should be a fresh appraisal of housing need. He explained his reasoning in respect of the use of household forecasts. However he failed to give 'adequate or intelligible reasons' for his conclusion that the Council's housing target of 14,000 dwellings made sufficient allowance for latent demand (ie demand unrelated to the creation of new jobs).

Ground 3: Failure to ensure conformity with RPG10 in respect of a need for Green Belt review. Challenge failed.

The Inspector was entitled to conclude that there was sufficient housing land supply, there was no need for an urban extension to meet the housing needs of Bristol and therefore a Green Belt review was not required.

Addendum Judgment

The Core Strategy remains an adopted document. However, Policy CS13 (housing requirement) was found to be unlawful given that its adoption was as a consequence of the Inspector's recommendation.

The Judge indicated that if the housing requirement was amended then it could have a knock on effect on other policies. "It is possible that an alternative housing requirement figure for North Somerset excluding an urban extension may necessitate the release of land in the Green Belt or otherwise affect spatial or area policies of the Core Strategy."

The Addendum Judgment setting out the remedy was dated 7 March 2013. This required that the following policies are remitted back to the Planning Inspectorate for re-examination:

CS13 Scale of new housing
CS14 Distribution of new housing
CS6 Green Belt
CS19 Strategic gaps
CS28 Weston-super-Mare
CS30 Weston Villages
CS31 Clevedon, Nailsea and Portishead
CS32 Service villages
CS33 Infill villages, smaller settlements and countryside

The Judge is clear that while it is only CS13 which was found to be unlawful, because the re-examination of the total housing requirement may result in consequential alterations for other policies, then these policies are also remitted. However, “the policies can still be accorded appropriate weight in any decision making and housing can be brought forward through the development control process” (paragraph 20).

In paragraph 24 the Judge stated that “in the light of the fact that the Council may have to carry out further work on its housing figures in the light of the lapse of time, I do not consider that it would be appropriate to restrict the examination to the question of whether the figure of 14,000 dwellings in CS13 makes adequate provision for latent demand”.

The High Court Order confirming the outcome of the case was dated 7 March 2013.