

Duty to co-operate and legal update

Presented by
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S33A and all that:

- strategic matters affecting sustainable development or transport issues in two or more planning authorities
- maximising the effectiveness of forward planning
- a test which cannot be resolved by modifications

The courts are not going to get involved in the nitty gritty

- Ashdown Forest Economic Development LLP v SoS and Wealdon DC [2014] EWHC 406 para 79
- Zurich Assurance v Winchester City Council [2014] EWHC 758 paras 109-114
- ‘strategic matter’ is a question of planning judgment
- maximising the effectiveness is a planning judgment
- the court has a limited role

But the issue can be relevant as a secondary matter

- Gallagher Estates & Lioncourt Homes v Solihull MBC [2014] EWHC 1283
- Para 105: an endorsement of Zurich
- Para 107: as a result of the legal errors in assessing OAN the point did not arise

Conclusions

- the time to make an impact in relation to DTC is at the submission and examination stage
- the thresholds remain undefined
- the structural imperfections remain: will the DTC mechanism ensure that in accordance with para 47 of the NPPF housing needs will be met in full?

Tesco Stores and the Framework

- since March 2012 the interpretation (not application) of national planning policy has been a matter of law
- there have been decisions with wide-reaching consequences in housing: Hunston Properties; Gallagher Estates
- but also in other important aspects of the Framework

The presumption in favour of sustainable development

- William Davis v SoS [2013] EWHC 3058 para 37
- para 14 of the Framework only applies to sustainable development
- you decide first, if the development is sustainable, and only then does the adjusted planning balance when the development plan is absent, silent or out of date apply

Following numerous appeal decisions this false impression has been ironed out

- Dartford BC v SoS [2014] EWHC 2636
- Para 52 to 54: the approach is an unduly legalistic interpretation of William Davis
- What is required is a holistic assessment of sustainability

When is a housing policy a housing policy?

- William Davis (supra) para 47
- A policy for the supply of housing is only a policy for the supply of housing if it contains reference to housing supply
- Therefore a Green Wedge policy, which precludes additions to the supply of housing is not a housing policy

This proposition also required further explanation

- South Northamptonshire DC v SoS [2014] EWHC 573
- Para 47 there is spectrum of potential policies that might be housing policies
- General countryside policies that define countryside after development requirements have been met and are the counterparts of housing requirements are within the ambit of para 47
- By contrast, other policies may have a specific role, eg protecting gaps, which are free-standing of housing requirements and these are not housing policies for the purpose of para 47

Did GB policy change with the introduction of the Framework?

The answer is: ‘yes’

- Timmins v Gedling BC [2014] EWHC 645 para 31 the Framework does not mirror the policy in PPG3
- a cemetery is an inappropriate development in the GB which must be justified by vsc’ s
- Redbridge Aerodrome v SoS [2014] EWHC 2476 para 34 the phrase ‘any other harm’ means any other harm to the GB, and not all other sorts of harm as well
- Newlyn Dean & Sons Ltd v SoS [2014] EWCA Civ 193 para 22 outdoor sport and recreation are not necessarily outside the scope of inappropriate development but can take a variety of forms, some of which involving the construction of extensive facilities, which could be inconsistent with the objective of preserving openness.

The genie is now out of the bottle

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