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Your ref:

Our ref: Z1700632/JUS/B5

20 January 2017

Dear Sirs

Richborough Estates Limited and Others v SSCLG

1 The claimant

As per your own correspondence.

2 From

Contact details have been supplied separately and all further correspondence, or issued proceedings, should be served at the above address. Service of proceedings will be accepted by hard copy only.

3 Reference details

As above.

4 The details of the matter being challenged

My client has nothing to add in this regard and has considered your correspondence dated 30 December 2016.

5 Response to the proposed claim

Ground One

1. It is strongly denied that there is any legitimate expectation that there would be consultation on the WMS. As we understand it you accept that there is no statutory duty to consult and no statement made by any Minister that there would be consultation on any WMS relating to planning decisions, let alone this one.
2. Although we accept that in principle it might be possible to infer a duty to consult from past conduct this will only arise very rarely and in very clear cases.
3. In relation to Government statements affecting planning decisions generally, and housing decisions in particular, there is no course of conduct which could possibly give rise to a legitimate expectation. There are

Lee John-Charles - Head of Division
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numerous examples of statements effecting planning policy, including highly controversial areas, where no consultation has occurred. Recent examples include, but are not limited to, the WMS on hydraulic fracturing.

4. In the specific area of housing policy there have been previous WMSs where no consultation has taken place, including the WMS on previously developed land of 9 June 2010 and the WMS on economic growth following the coalition government taking office in 2011.

5. The reality is that there are instances where consultation has taken place, as you set out in your letter, and instances where it has not. The choice is one for Ministers. There is certainly not a clear course of conduct which could give rise to a legal expectation of consultation

Ground Two

6. With respect, you and your clients have simply misunderstood the policy in the WMS under this ground. The requirement in the WMS is, in appropriate circumstances, to show a three year housing land supply. It is quite clear both from the NPPF and the universal practice in planning decisions since the NPPF was introduced, that a three year housing land supply means three year supply as against the five year requirement. So if the annual requirement is 500 houses, and the local authority can show a supply of 1500 dwellings over the next five years, they will have a three year housing land supply. In every s.78 decision, or local authority report, that we are aware of this is the meaning of "3 year housing land supply" and we are entirely confident this is the way the WMS is understood and is being interpreted.

7. In these circumstances the issue that you raise in ground two falls away.

Ground Three

8. It is entirely a matter for the SoS what evidence he relies upon in the formulation of policy. The recent analysis referred to in the WMS included the October 2015 research paper, as well as its update dated October 2016. Given the date of the research papers, and the relatively small number of NDPs created, the analysis is plainly provisional and of limited weight. The research does however indicate a provisional finding and the SoS is perfectly entitled to take it into account.

9. This is particularly the case where the WMS is expressly stated to be an interim measure before the White Paper, and any new policies consequential upon it are in place.

Ground Four

10. This ground involves a very partial reading of the NPPF. The NPPF does indeed support the need for the delivery of more houses, but it also strongly supports localism and the neighbourhood planning system. The WMS is a policy statement to highlight the importance of supporting local communities with a qualifying plan in place, whilst continuing to support the delivery of housing. For the reasons in the WMS those objectives are not seen to be in conflict with each other. The balance between policies is entirely a matter for the SoS and there is nothing irrational in the WMS in this or any other regard.

11. A neighbourhood plan is part of the development plan, and as such falls within s.38 (6). It cannot be irrational for the SoS to promote policy which ensures that the NP has a material impact on the outcome of housing proposals.

Ground Five

12. The SoS did have regard to the PSED. He did not consider that there would be any deferential treatment of those with protected characteristics save perhaps on a very short term basis, because the policy as set out in the WMS is intended to boost the supply of housing through the provision of more NDPs with allocations for housing.

6 Details of any other Interested Parties

Not applicable.

7 ADR proposals

My client agrees that this is not appropriate in this case.

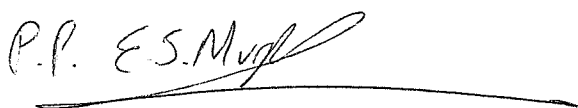
8 Response to requests for information and documents

As has been discussed, my client is not currently in a position to reply to your very extensive and broad request for disclosure at this time. A full response will be provided in due course and in compliance with my client's duty of candour.

9 Address for further correspondence and service of court documents

As above.

Yours faithfully

A handwritten signature in black ink, appearing to read "P.P. E.S. Mugh", with a long horizontal flourish underneath.

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