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Our Refs: APP/L5810/W/16/3142005
3155064
3151789
3148614
3156689

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Dear Ms Kitzberger-Smith

CONSIDERATION OF AFFORDABLE HOUSING CONTRIBUTIONS FROM SMALL SITES IN APPEAL DECISIONS

Thank you for your emailed letter of 13 December to our Chief Executive, Sarah Richards, raising concerns about consistency of approach by Inspectors regarding five appeal decisions made in 2016, regarding the weight applied to the Written Ministerial Statement where affordable housing contributions were a material consideration. Your correspondence has been passed to me for reply. Please accept my sincere apologies for the delay in replying.

You will appreciate that there will always likely be some material differences between proposals that are outwardly similar, which are capable of resulting in different outcomes. Moreover planning legislation and case law require that each appeal is determined on its own merits and on the basis of the evidence put before the Inspector. The law does not require all decisions to be "consistent" or the same, rather that, where proposals are similar, explanations are given for the differences. That said, and with the above principles in mind, I would nevertheless assure you that we do take complaints about lack of consistency of approach by our Inspectors most seriously and therefore my investigations have taken into account not only the comments of the individual Inspectors but also the views of our Director of Inspectors.

Of the five decisions that you have cited as examples of your concerns, I consider the approaches taken by the Inspectors in appeal references 3142005, 3155064 and 3151789 to be reasonable. In particular, the Inspector in 3142005 appears to encapsulate the current position succinctly in decision para 24:

> *"The statutory position is that planning applications must be decided in accordance with the development plan unless material considerations indicate otherwise. I have therefore had regard to the WMS as a material consideration and having taken account of the views of the main parties on this matter I attach great weight to the WMS".*

This, in my view, mirrors the findings of the Court of Appeal, in terms of the approach that should be adopted. Having established the correct approach, he then

went on to consider the local evidence of affordable housing need. He gave this significant and substantial weight and concluded, on balance, that this outweighed the WMS. I consider that the approach of the Inspectors in appeals 3155064 and 3151789 to be broadly similar and within the scope of discretion available to Inspectors under the statutory regime of S.38(6) of the Act.

In respect of the decisions for appeals 3148614 and 3156689, affording considerably lesser weight to relevant local policies because they are now, in part, inconsistent with national planning policy, is arguably not an appropriate one, as the effect of the WMS was not to reduce the weight that should be given to the statutory development plan, or automatically to outweigh relevant development plan policies. Local policies still have weight as the starting point from S.38(6) and the WMS comes into play as a material consideration which post-dates the plan, and which has to be balanced against the plan and the evidence base supporting the LPA's application of the policy. The decision maker therefore has discretion in applying his or her judgment as to where the balance should lie, drawing on the evidence presented. For those reasons, I also consider that the Inspector's reasoning in the Costs decision for appeal 3148614, that the LPA's objections in respect of an affordable housing contribution should have "fallen away" when the WMS was published, was flawed, as the decision-maker's discretion, alluded to above, remains.

The correct approach, if minded to allow an appeal in such circumstances, would be for an Inspector to start with the development plan and any evidence presented by the LPA supporting the need for an affordable housing contribution, establish whether the proposal is in conflict with those policies if no contribution is provided for, and, if there is conflict, only then go on to address the weight to be attached to the WMS as a national policy that post-dates the development plan policies. An Inspector would then be entitled to find in the balancing exercise that the WMS outweighs the development plan policies, as opposed to discounting the development plan's weight at the outset.

I also fully accept that in appeal reference 3156689, the Inspector should have referenced the earlier appeal decision (3142005) that the LPA had submitted in evidence as a material consideration supporting their position, and explained why his findings were different from those of his colleague. His failure to do so in this instance represents a failure to demonstrate that he had taken this relevant material consideration into account – a significant oversight. That case appears to be the only one to which you have drawn my attention where other Inspectors' decisions had been drawn to the relevant Inspector's attention.

In conclusion, I fully accept that there are errors in approach and judgement in appeals 3148614 and 3156689. Please accept my sincere apologies on behalf of the Planning Inspectorate for the flaws in these decisions and for any consequent frustration or inconvenience that this may have caused. We do aim to take forward lessons such as this constructively - the Inspectors concerned and their respective managers will be informed that your complaints have been upheld and, going forward with the wider picture in mind, our internal Inspector guidance is already in the process of being updated and strengthened as a direct result of your feedback, so as to ensure as far as a possible that such errors do not occur again.

Yours sincerely

Ashley K Gray

Customer Quality Team