

BRIEFING



CALA Homes wins High Court challenge: Revocation of RSS

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Secretary of State Eric Pickles' decision to revoke the Regional Spatial Strategies has been quashed in the High Court, following a judicial review by Cala Homes. The RSS are effectively reinstated for the time being. The Secretary of State will not appeal against the decision.

What are Regional Spatial Strategies?

RSS are part of the "development plan" and contain policies on eg the number of homes and the amount of employment to be created in each region. By law, planning decisions have to be made in accordance with the development plan, unless "material considerations indicate otherwise".

What was the problem with RSS being revoked?

When Mr Pickles announced in July that he was revoking the RSS he effectively tore a hole in all development plans up and down the country. He said that he planned to abolish them in his forthcoming Localism Bill (which will create far reaching changes in the planning system). He issued guidance to local planning authorities saying that they might wish to review planning applications which were currently being processed, and their own local development plan policies. There has been much confusion and uncertainty caused as a result with planning applications and appeals failing, being withdrawn or having to be postponed.

Why did the court quash the decision to revoke RSS?

The Secretary of State purported to revoke RSS under s79(6) of the Local Democracy Economic Development and Construction Act 2009.

The Court held that the 2009 Act broadly maintains the "whole elaborate machinery set up by Parliament... to create RSS" under the Planning and Compulsory Purchase Act 2004. There is no indication that Parliament intended to give the Secretary of State power to set that structure aside if in his opinion it was expedient or necessary to do so because the RSS was not operating in the public interest.

Whilst there is a power of revocation under s79 (6) is found in the section of the Act dealing with revisions to the RSS. It is to deal with situations where unforeseen circumstances call into question the desirability of maintaining a particular RSS at any one time, so that the procedures in the Act for bringing forward a new RSS can be put in motion. There is no power for the Secretary of State to decide that all RSS should in principle be dispensed with.

Parliament has declared in the Act that each region should have a regional strategy and has not indicated that the principle may be set aside by a contrary policy judgment by the Government of the day. The court had regard to other provisions in the Act concerning the need to allow representations and undertake consultation with regard to RSS, and their role as part of the development plan. It said that this indicated the importance and centrality Parliament intended the RSS to have in the planning system.

In discussing the costs application relating to the matter the judge said "the legal argument was not intrinsically difficult", which should give pause for thought to the lawyers and other civil servants advising the Secretary of State on this and other aspects of the Localism agenda.

Strategic Environmental Assessment

Cala had made a second ground of claim. It argued that the decision to revoke the RSS should have been subject to a screening as to whether there should have been a strategic environmental assessment pursuant to 2004 Regulations (pursuant to the Strategic Environmental Assessment Directive). The Secretary of State had not done this.

The judge said that "All the RSS were the subject of environmental assessment before they were adopted...I can see no sound basis for the contention put forward by the Secretary of State that revocation does not equally require at least consideration [as to] whether similar detailed environmental assessment is required....revocation of an RSS may have as profound practical implications for planning decisions as its adoption in the first place"

Conclusion

There has been no effective change to regional planning policy guidance. The RSS are reinstated as part of the development plan.

It was also unlawful for the Secretary of State to purport to revoke the RSS without first, at least, screening for environmental assessment

Whilst Mr Pickles has already announced that the court's decision "makes no difference" to him as he plans to abolish the RSS via the Localism Bill he intends to introduce later this month. He has had a letter issued to local planning authorities telling them that his proposed abolition of the RSS policies are a material consideration which they are required to take into account in making planning decisions. However, planning decision makers are, of course, required to take decisions in accordance with the provisions of the development plan (which now includes the RSS again) unless material considerations indicate otherwise.

It will take around a year for the Bill to be scrutinised in Parliament, pass into law and come into operational force. This judgment has therefore created the transition between the current planning system and the forthcoming and radically different localism system which most developers, some local authorities and many of their advisers have been advocating for months.

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