

KNOWSLEY LOCAL PLAN: CORE STRATEGY

POLICY SUE 2

RE: OBJECTION BY JUNCTION PROPERTY LIMITED

A D V I C E

1. I advise Knowsley Council with regard to the preparation of its Local Plan.

Background

2. Junction Properties Limited has been involved in the preparation of the Core Strategy and are represented by Barton Willmore. The company has an interest in land that is proposed to be a Sustainable Urban Extension ("SUE") in the Local Plan.
3. Examination Hearings have taken place. Barton Willmore in their original representations on the Proposed Modifications to the Knowsley Local Plan: Core Strategy argued that the wording of Policy SUE 2 was unsound and potentially unlawful. Inspector Martin Pike is responsible for the conduct of the Examination Hearing. His letter dated 14th August 2014 followed the Hearing Sessions that were made in July 2014.
4. Inspector Pike's letter refers to the undertakings given by Knowsley Council to prepare a schedule of further modifications to the Core Strategy in the light of the evidence given. Those changes were published on 11th August 2014. The

Examination Inspector had indicated that he would set out his interim findings on the modifications made since November 2013 to enable the Council, if necessary, to make further adjustments to the Plan before undertaking consultation on all the modifications made to the submission Core Strategy.

5. One of the matters specifically addressed by Inspector Pike related to Policy SUE 2. In order to assist the Council, one suggested minor revision to the wording of Policy SUE 2, Clause 4 was suggested. The wording of the policy as amended would be:

“Proposals for development within each of these locations will only be granted planning permission where they are consistent with a single detailed master plan for the whole of the Sustainable Urban Extension which is approved by the Council. The master plan should accord with development plan policy and any associated Supplementary Planning Document and may be submitted prior to or with the application ...”

6. Self evidently it did not appear to contain a form of wording that was unlawful as he uses the words that are of concern to Barton Willmore.
7. In November 2014 Barton Willmore raised an objection on behalf of Junction Properties Limited to the wording of Policy SUE 2. Specifically the wording published in the August 2014 modifications. At Paragraph 2.1.6 their representation asserts:

“To assist the Inspector, we attach Counsel’s Written Opinion which confirmed that the provisions of Policy SUE 2 so far as they relate to the proposed Supplementary Planning Documents would be potentially unlawful and may be capable of successful challenge in the Courts.”

For the reasons contained in that Opinion, they consider that the proposed modification in this respect fails the tests of soundness and would be potentially unlawful.

8. There is nothing in the suggested wording of SUE 2 as proposed by Knowsley Council or as proposed to be slightly amended following the suggestion by Inspector Pike that would lead an informed observer to conclude that the proposed modification would fail the test of soundness and would be potentially unlawful. I will set out my reasons for that conclusion.

9. The high watermark of the criticism contained in the Advice of Martin Carter dated 20th October 2014 relates to the potential unlawfulness of a SPD that is to be prepared in the future. The SPD is, as anticipated by Policy SUE 2, to be prepared following adoption of the Core Strategy.
10. The very simple point to express is that the lawfulness or otherwise of a SPD prepared by Knowsley Council is a completely separate exercise from the consideration of whether the Core Strategy is itself sound. The prospect, even if it were to be regarded as a realistic one, of the SPD being found at some future High Court hearing to be declared unlawful is a wholly separate consideration to the issue of whether the Core Strategy is sound.
11. The Town and Country Planning (Local Planning) Regulations 2012 recognise that a SPD as a development management tool has a legal existence and status. Whilst it is different from a Statutory Development Plan to which Section 38(6) of the 2004 Act undoubtedly applies in the determination of planning applications, it is nevertheless capable of being a material consideration in the determination of planning applications (in exactly the same way as the NPPF and PPG can be material considerations).
12. The SPD, provided it meets the 2012 Regulations, will be lawful as the SPD can be anticipated to comply with Regulation 5(1)(a)(iii). It is perfectly lawful for it to contain statements relating to environmental, social, design and economic objectives relevant to the development and use of land that is, of itself, the subject of SUE 2 in that there is a specific allocation for residential/employment use associated with the implementation of that policy. This point appears to have been accepted by Junction Properties Limited as the advice at Paragraph 18 states:

“I accept that SPDs can be used to prescribe further detail to a policy set out in the DPD ...”

The criticism then goes on to assert that the “vagueness” of Policy SUE 2 means that it cannot be said that the policy is setting out requirements at a general level to which the SPD will add further detail. I disagree. Policy SUE 2

read in the context of the Core Strategy is a general policy for the allocation of land and its future development within the period of the Core Strategy.

13. One can anticipate the SPD, consistent with the role of such development management documents, to provide a further level of detail that flows from the general allocation for development and the release of such land from the Green Belt.

14. In short, there are two very clear reasons why the criticism is misguided:
 - (a) The future potential unlawfulness of a SPD that has not come into existence does not render the Core Strategy that simply refers to the preparation of a SPD itself unsound; and

 - (b) There is nothing to suggest unlawfulness either in the 2012 Regulations or the wording of this particular policy that would lead one to the conclusion that the SPD is other than a document to be prepared outwith the development plan system that will provide a level of detail in respect of a development proposal that is already contained within a statutory development document. SUE 2 is a strategic level development allocation policy. One can anticipate that SPD will provide an appropriate level of detail to assist with the application of the policy.

Conclusion

15. In conclusion I advise as follows:
 - (a) The wording as currently formulated by Knowsley Council at Policy SUE 2 is, in my view, lawful.

 - (b) There is nothing in the wording of the policy that would suggest that it would be "unsound".

(c) The Examination Inspector has suggested a minor variation that would address an issue in relation to the Master Plan. The adoption of that suggestion (or something very much like it) would not alter the thrust of the point made in SUE 2 in relation to compliance with the SPD.

(d) Consequently, the policy as currently formulated or proposed to be slightly amended that is SUE 2 would be both lawful and sound.

16. I believe I have dealt with all the matters raised, but if I can assist further do not hesitate to contact me.

KINGS CHAMBERS

36 Young Street
MANCHESTER M3 3FT
DX 718188 (MCH 3)

5 Park Square East
LEEDS LS1 2NE
DX 713113 (LEEDS PK SQ)

Embassy House
60 Church Street
BIRMINGHAM B3 2DJ
DX 13023 BIRMINGHAM

JOHN BARRETT

29th May 2015

KNOWSLEY LOCAL PLAN: CORE STRATEGY

POLICY SUE 2

**RE: OBJECTION BY JUNCTION PROPERTY
LIMITED**

A D V I C E
