

Clerk's Ruling CR01/17

Withdrawal of the Northumberland Council Core Strategy

Issue

Mr Eric Goodyer, Chair of the Neighbourhood Plan Working Group, asked the Town Clerk to include an, at that point undrafted, paper on the next Town Council agenda. The paper was intended to provide reflections, and guide council debate, upon the withdrawal of the core strategy.

Background

At its meeting on 5th July 2017 NCC passed a resolution moved by Cllr Peter Jackson. That resolution proposed that Northumberland County Council:

- Rescinds its previous decision to approve the Northumberland Local Plan Core Strategy Pre Submission Draft Plan (as modified) for submission to Government for independent examination;
- Formally withdraws the Core Strategy from the independent examination process and advises the Secretary of State of this decision;
- Instructs Officers to undertake a full review of the housing and employment numbers, and strategic land use allocations, required during the Plan period to sustain County-wide and regional economic growth; and
- Resolves to undertake the work required to carry out the review and progress any necessary associated work and public consultation to enable the Council to reconsider approval of the Core Strategy for submission to Government as soon as practicable”.

The resolution was accompanied by a background and issues report prepared by Mr Mark Ketley, Head of Planning for NCC.

Paragraphs 12 -15 of Mr Ketley's report set out the basis of some arguments adopted in the Town Clerk's reasoning in declining to accept a paper on the topic at this stage. Para 12 sets out that advice would be required from various bodies and legal advisors, after the notice of withdrawal of the Draft Strategy is given. That is to say, as at 5th July, that advice had not been sought, because the decision had not yet been made. Paragraph 13 similarly sets out a need for future discussion with government and advisors about how NCC should proceed. Paragraph 14 lays out NCC's hope that a Ministerial visit will be undertaken to help inform NCC's forward planning. Paragraph 15 lays out the risks for NCC, some of which are, at the time of the report being written, apparently unmitigated.

It is therefore clear that, whilst NCC was informed of the risks involved in its choice, it also left a number of issues unclear by its decision to adopt Cllr Jackson's resolution. It is possible, and impossible to discount, that NCC might face judicial review of its decision, not least because it was taken without any significant public consultation. The belief of NCC's administration that it has an electoral mandate for its decision needs to be considered in the light of Lord Diplock's judgement in the Bromley vs GLC case in 1982. Bluntly, an electoral mandate does not suffice to make a decision that requires consultation automatically lawful, and, reading Lord Diplock's reasoning, it also appears apparent that a decision taken on the basis of an electoral mandate must still consider the views of those who did not vote for the ruling party, as well as those who did.

Your Town Clerk makes this point not because they have an opinion either way on this decision, but because, in the immediate aftermath of a controversial decision, a rush to act on that decision can be very risky, purely because of the risk of challenge to the decision. Adding that risk to the uncertainties detailed above, it is hard to see how council could, in the circumstances, make a reasoned decision.

Ruling

It is inappropriate for Berwick Town Council to debate the issue of the future housing allocations under the Neighbourhood Plan before NCC has made clear the stage of the process that the Core Strategy is returning to, and the likely future consultation process. In order to facilitate the Neighbourhood Plan process Council will be asked, separately, to endorse the Town Clerk writing to NCC to ask for early confirmation of the likely process, and for it to share any advice received.