

## Housing: Effective Land Supply vs. Prematurity (No.2)

*Taylor Wimpey UK Limited v Scottish Ministers* [2016] CSIH 94

Last month, I commented on the case of *Angus Estates v Angus Council* where a challenge based upon prematurity was refused by a judge in the Court of Session. This case was also unsuccessful before the Court of Session on appeal in relation to the same issue but for opposite reasons.

Whereas the *Angus Estates* case challenged the grant of planning permission for 872 units by the local authority to a rival developer shortly before the adoption of the Fife Local Plan on the grounds of prematurity, Wimpey challenged the refusal of a development of up to 250 houses where prematurity was cited as the sole reason for refusal of their permission. The Wimpey site is 11ha to the west of Maybury Road within the West Edinburgh area which is eventually expected to deliver 2,700 units in terms of the applicable strategic policy (SESplan). It therefore would have made a relatively modest but important contribution to that shortfall.

A matter which must have been greatly frustrating for Wimpey is that the Reporter concluded that the proposed development accorded with the existing development plan, the proposed development plan and some provisions of Scottish Planning Policy. This was against a background of an established housing need, an accepted need to modify the green belt and an identified shortfall in the housing land supply in terms of SESplan. However, she also concluded that in light of the guidance contained within paragraph 34 of SPP, granting the permission sought would undermine the plan-making process which was well advanced, given that the target date for the submission of the local plan report of examination was 27 February 2016. The decision of the Reporter was 4 December 2015. By the time this application came before the Reporter, six months had passed since the Scottish Ministers' decision in relation to the Cammo site (for 670 units) which I mentioned in last month's article.

Therefore the same tension as between the need for additional housing units and the maintenance of a five year effective housing land supply on the one hand and the requirements of a plan-led system as arose in the *Angus* case also arose here. However, the approach taken by the decision maker in each case was diametrically opposite.

The legal challenge largely centred around the decision making process. It was claimed that the Reporter's decision was partly influenced by factors which were either factually incorrect or which had not been properly canvassed by the parties to

the appeal. These arguments were rejected by the Court. It was also claimed that the Reporter did not provide an adequate basis for the decision on prematurity. As with the Angus case, the Court emphasised that whether the grant of permission for the proposed development would undermine the emerging local plan process is ultimately a matter of planning judgment which is within the sole province of the decision maker. In relation to this the Court noted that the Reporter set out her reasoning, noted outstanding issues regarding infrastructure requirements and also noted that the far larger Cammo site had been refused by the Scottish Ministers previously. In these circumstances, her discretion had been exercised reasonably, she reached a decision she was entitled to reach and therefore her decision was upheld.

Despite the opposite approach being taken on the question of prematurity as between the Reporter and Angus Council, in each case their respective decisions were upheld on the basis that they were valid exercises of planning judgment. Such decisions may only be challenged in very extreme instances where the reasoning is clearly irrational, known as *Wednesbury* unreasonableness.

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