

**Abolition of Regional
Spatial Strategies and
Secretary of State's
Statement of Intent -
UPDATE**

DLP BRIEFING NOTE 42

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Abolition of Regional Spatial Strategies and Secretary of State's Statement of Intent - UPDATE

DLP's Client Briefing entitled '*Localism Bill*' (December 2010), provided an update of the situation with regard the status of Regional Spatial Strategies (RSS), following publication of the Localism Bill.

The Briefing explained the Bill's purpose, i.e. to enact the Government's commitment to abolish the RSS, this later being successfully challenged in the courts by Cala Homes. Following a second challenge in the Courts by Cala, in response to the now infamous Chief Planner (Steve Quartermain) letter, this Briefing seeks to explain the current position vis-à-vis the role and function of RSS and their associated guidance, and the weight to be attributed to them.

The second challenge in the Courts, as outlined above, was directed at the CLG Secretary of State's '*Statement of Intent*' and Chief Planner's letter that advised councils that the Government's intention to abolish Regional Strategies (through the Localism Bill) was a material consideration in circumstances where "restored" RSS policies were relevant.

Cala Homes challenged the CLG Statement and associated letter on the grounds that it could not as a matter of law constitute a material consideration and that it failed to comply with requirements relating to undertaking a Strategic Environmental Assessment. The High Court however decided that the Statement was capable of being a material consideration, but that the weight to be attached to it was a matter for the decision maker, subject to the usual public law principles. The High Court also held that, as the intention to repeal the Regional Strategies did not constitute a "plan or programme" to which the SEA Directive and Regulations applied, there had been no failure in this regard.

Following the decision, Planning Minister Bob Neill said:

"The government made a firm pledge to sweep away these controversial strategies that have proved that top-down targets do not build homes. All they have produced is the lowest peacetime house building rates since 1924 and fuelled resentment in the planning process that has slowed everything down."

The decision of the High Court, which Cala Homes have now appealed, followed an earlier interim judgement, and ruled that the Government's intention to revoke Regional Strategies **is** a material consideration for decision makers.

Consequently, whilst RSS remain a part of the *development plan*, at least in the interim and until the Court of Appeal rules, the Government's stated intention to revoke them is something that most local planning authorities are very likely to take into account both in dealing with planning applications and formulating planning policy. How this will be dealt with by the Planning inspectorate is uncertain and will depend on the ruling of the higher court, however, again it is likely that the *pre-cautionary principle* will prevail and inspectors will give weight to the declared intention. This leaves applicants/appellants having to demonstrate such a course is outweighed by other material considerations, or that harm will arise. Either option means that very careful thought needs to be given to the assessment of material planning matters and a thorough explanation of a proposal's planning merits is given.

No date has yet been given for the further court hearing, and there is some uncertainty when the Localism Bill will receive *royal assent* and pass into law.

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