

**Important  
Recent Appeal  
Decision  
Regarding  
Neighbourhood  
Plans**

**DLP BRIEFING NOTE 185**

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**DLP Planning Ltd**

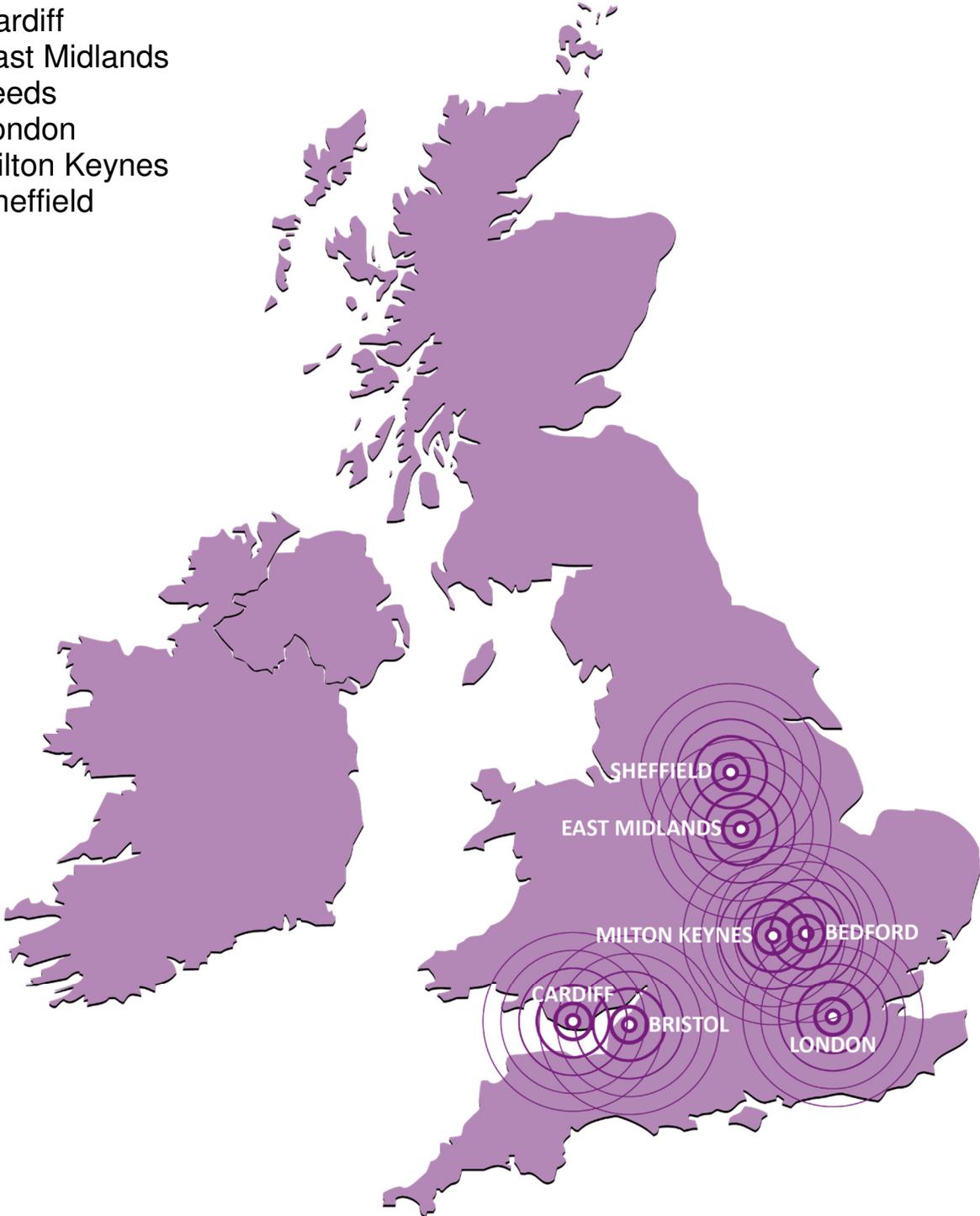
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## **Important Recent Appeal Decision Regarding Neighbourhood Plans**

The Secretary of State, Eric Pickles MP, has recently issued a number of appeal decisions which place localism above the National Planning Policy Framework requirement for an up-to-date housing land supply and the presumption in favour of sustainable development.

The most recent decision issued by Mr Pickles was to recover and dismiss an appeal by MacTaggart and Mickel for up to 350 dwellings, a local centre, retail uses, open space and infrastructure in Devizes. The decision was contrary to the recommendations of the Planning Inspector.

Whilst agreeing with the Inspector that the scheme would represent an appropriate size of development to meet the outstanding housing requirement for the Devizes area and that the actual harm caused to the countryside's visual character and other important qualities would be negligible, the Secretary of State disagreed with the Inspector with regard to the weight to be given to the emerging Neighbourhood Plan in reaching the decision:

*"The Secretary of State has given significant weight to the opportunity which the Neighbourhood Plan process gives local people to ensure they get the right types of development for their community.*

*While accepting the need to plan positively to support strategic development needs, the Secretary of State considers that, in view of the stage of preparation reached by the Devizes Area Neighbourhood Plan, it would not be appropriate to conclude that its provisions are outweighed by the opportunity which the appeal scheme presents to contribute to meeting the overall housing land requirement."*

It appears that Mr Pickles has firmly concluded that the desirability of entrusting decisions to local communities via community-led planning initiatives outweighs the need to rectify the shortfall of housing land.

The Secretary of State concluded that he took into consideration the proposal's non-conformity with the current draft of the Devizes Area Neighbourhood Plan, its stage of preparation, the content of the consultation statement, the quality and effectiveness of the three consultations undertaken prior to the submission of the Neighbourhood Plan, the evidence of local support and that the site came second bottom in the site preference exercise.

It should be noted, however, that the Neighbourhood Plan had only reached the stage of being submitted to the Council for examination; with the formal publicity period not ending until the 12<sup>th</sup> November 2014. This means the Neighbourhood Plan was still to be considered by an Independent Examiner and subjected to a referendum, if so recommended. This represents a number of hurdles to be overcome prior to adoption and a real chance the Plan may not be adopted in its current form. However, the Secretary of State still felt this document carried more weight than the lack of housing supply.

The Secretary of State recovered the appeal using powers set out within the Written Ministerial Statement on Neighbourhood Planning from the 10<sup>th</sup> July 2014 stating that:

*"The Secretary of State is keen that all planning appeal decisions should reflect the Government's clear intention when introducing neighbourhood planning, which was to provide a powerful set of tools for local people to ensure they get the right types of development for their community, while also planning positively to support strategic development needs. He is therefore keen to give particular scrutiny to planning appeals in, or close to, neighbourhood plan areas to enable him to consider the extent to which the Government's intentions are being achieved on the ground."*

This appeal decision clearly has the potential to have a major impact on decisions in any location that has a Neighbourhood Plan, even at draft stage, and represents a significant departure in the application of emerging policies. It would appear that the Secretary of State has decided that a draft (un-adopted) Neighbourhood Plan carries more weight than a lack of housing supply, as required by the Framework. Quite whether this stance can, or will, be maintained is open to debate, given the obvious inherent implications for the weight to be attached to all draft planning policy documents as they emerge. It may be that the position will change after the 2015 general election, if not undermined sooner by decisions taken in the Courts.

In this regard, DLP Planning is currently acting on behalf of a client in respect of a Judicial Review of the Uppingham Neighbourhood Plan, in Rutland.

In this example, Rutland County Council have not made any land use allocations in Uppingham within their Core Strategy or Site Allocations and Policies DPD; instead relying upon land allocations to come forward within the Neighbourhood Plan.

The Judicial Review has been sought primarily on that basis that the legislation underpinning the making of Neighbourhood Plans explicitly states that they are not development plans and accordingly, they cannot perform the function of the development plan. Moreover in the Rutland case, the Core Strategy states that land allocations will be made in the development plan, in the form of a Site Allocations DPD. Whilst the Framework indicates an expectation that site allocations may be made in Neighbourhood Plans, this, together with more recent Government statements and decisions, have the status of policy which cannot usurp or outweigh the provisions of legislation. Accordingly, we say that the effect of section 17(7)(za) of the Planning and Compulsory Purchase Act 2004 and Regulation 5(2)(b) of the Town and Country Planning (Local Planning) (England) Regulations 2012 is clear: any document which includes a site allocation policy must, if prepared, be prepared as a Local Development Document - that is, by the local planning authority - and not as a Neighbourhood Development Plan.

To highlight the importance of this, the case in Uppingham is further complicated by the Council's acceptance that a review of the Local Plan will shortly be commenced and which is likely to result in revised housing targets. The net effect of this will likely mean that the current Neighbourhood Plan will not be in conformity with the revised targets set out in the new Local Plan, leaving an immediate shortfall in identified housing land in the area at that point.

In addition, should the Judicial Review be successful, there will be an immediate policy vacuum in the settlement, given the lack of site allocations in the strategic plan. This further reinforces the point that Neighbourhood Plans are ill equipped to manage the development needs of an area, and further calls into question the Secretary of State's recent decisions.

We would, therefore, urge developers and promoters to exercise caution when considering the preparation of schemes where the possibility of a Neighbourhood Plan exists, and seek expert advice before proceeding with such sites. With active engagement in the field, DLP Planning Ltd are ideally placed to provide assistance in all such matters.

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