

**Central Bedfordshire
Development Strategy**

–
**High Court Judicial
Review Hearing**

DLP BRIEFING NOTE 210

Prepared by
DLP Planning Ltd

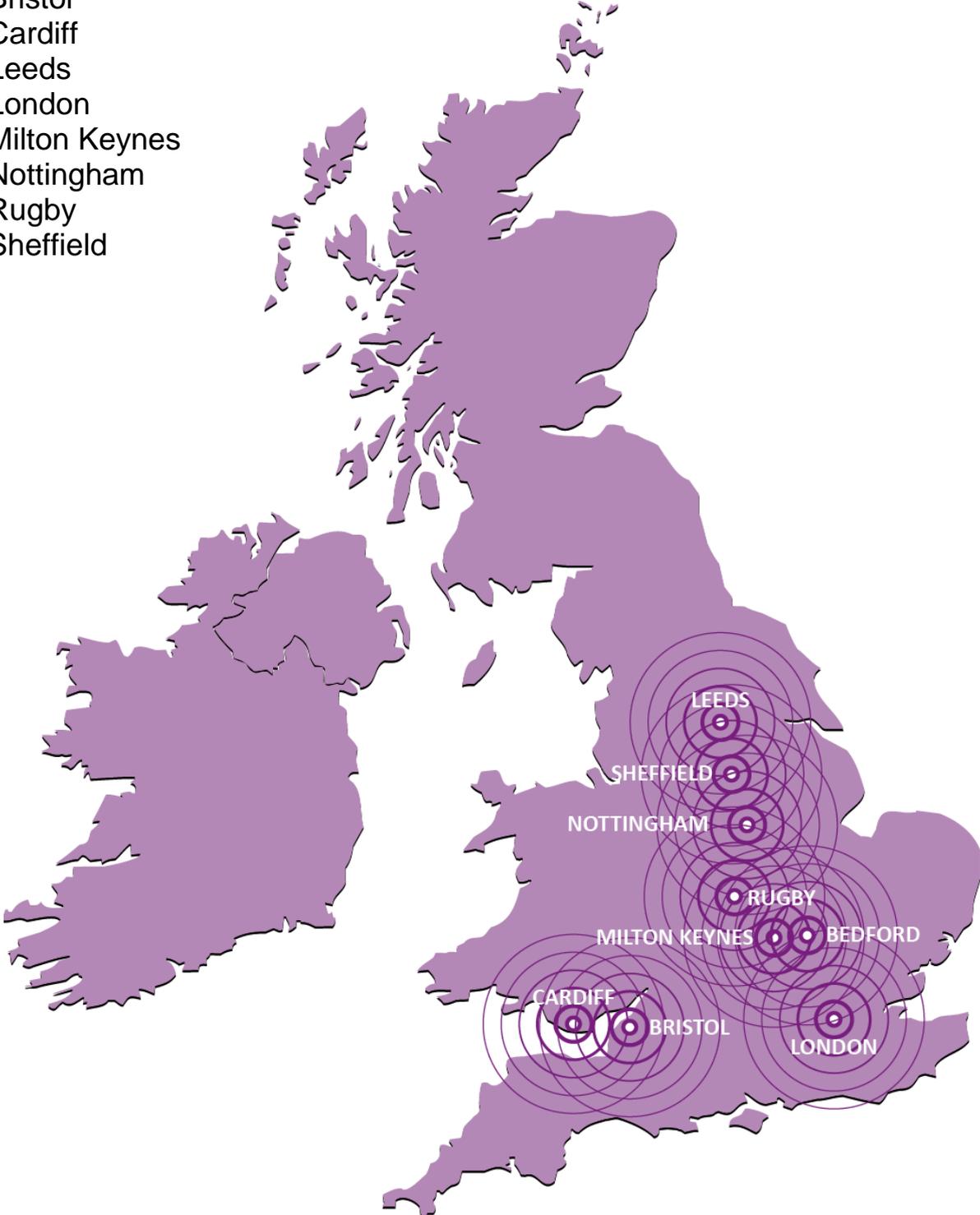
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Introduction

On Tuesday 16th June 2015, Central Bedfordshire Council's application for Judicial Review of an Inspector's decision to find the Development Strategy unsound was heard in the Planning Court, an Administrative Court within the High Court of Justice.

Background – Development Strategy Examination in Public (EiP)

On 16th February 2015, following two days of initial examination hearing sessions held at the beginning of February, the Inspector, Mr Brian Cook, issued his decision letter to the Council which found that the Council had failed to comply with the statutory 'Duty to Cooperate' under Section 33A of the Planning and Compulsory Purchase Act (the Act) and therefore deemed the plan to be 'unsound'.

On 26th February 2015 the Council formally took the decision to challenge the Inspector's decision in the High Court via a process known as 'Judicial Review'. The first stage of this is seeking permission from the court as to whether the case is arguable and therefore worthy of a full hearing – also known as 'seeking leave'.

Judicial Review

The Council's Grounds of Challenge were threefold:

- 1. The Inspector misinterpreted the standard of cooperation required**
- 2. The Inspector failed to allow CBC a 'margin of appreciation'**
- 3. The Inspector failed to have sufficient regard to a material consideration**

In respect of Ground 1, the Council argued that in coming to his conclusions on whether the Council had met the key tests of the Duty to Cooperate (DtC), the Inspector had falsely and unfairly applied a standard of cooperation higher than that intended by Parliament in either the legislation or supporting planning guidance. CBC claimed that in effect the DtC had been interpreted by the Inspector as being a 'duty to agree' - particularly in respect of the distribution of housing growth within the Housing Market Area (HMA).

CBC's view was that it was impossible for the Inspector to conclude as he did on the DtC without hearing the Council's full evidence relating to housing numbers, employment etc – i.e. the overall soundness of the plan and the evidence base which underpins it.

The sitting Judge, The Hon. Justice Patterson DBE, dismissed this claim stating that the Inspector did have an evidential basis for making his decision and there were “*noticeable gaps*” in what should have been “*active and ongoing engagement*” particularly between CBC and Luton BC. There were, in her view, “*ample reasons*” for the Inspector to conclude that the DtC had not been adhered to.

She also emphasised that the Inspector’s decision was a matter of planning judgement, which had in this case been exercised appropriately. The Council’s assertion that soundness and DtC should be considered together was rejected, as the Inspector had written to the Council prior to the hearings setting out his agenda and intention to split the hearings to deal with DtC as a separate matter first, something which the Council explicitly agreed to.

In Ground 2, the Council claimed that in his decision the Inspector failed to allow the Council a reasonable ‘margin of appreciation’. The claim was that Section 20(7b) of the Act requires the Inspector to consider whether “*in all circumstances, it would be reasonable to conclude that the local planning authority complied with any duty imposed by section 33A in relation to the document’s preparation*”. CBC contended the question shouldn’t be; ‘*Can the Inspector reasonably conclude that CBC has failed to comply with the DtC*’; but rather, ‘*Whether it cannot be reasonably said that CBC has complied with the DtC*’.

In response to this, Justice Patterson concluded that there was no evidence to suggest that the Inspector did not afford CBC a margin of appreciation in coming to his decision.

Finally, **in respect of Ground 3**, CBC argued that the Inspector failed to give sufficient regard to the potential for other authorities within the Luton Housing Market Area (HMA), including Luton BC itself, to meet unmet housing need in the future. CBC contended that the Inspector’s decision letter unlawfully asserted that all of this unmet need should be met within Central Beds.

Justice Patterson dismissed this claim, noting that the Inspector had acknowledged that LBC was heavily constrained by Green Belt and to a large part surrounded by CBC. She highlighted that the Inspector did say that *in the first instance* this unmet need should fall to CBC, but that this should only be interpreted as ‘*the starting point*’.

Further, the fact that Luton BC did not sign the Memorandum of Understanding (MoU) suggests that it is doubtful whether some of the commitments within that MoU could ever be delivered.

She therefore concluded that the Inspector did not omit any material decision in coming to his decision and therefore his verdict in this regard is one that is legal and justified.

All three Grounds of Challenge were dismissed by Justice Patterson and therefore CBC have not been granted leave to appeal the Inspector's decision. An application for costs was made by the defendant for in the order of £5,000.

What next?

At the time of writing the intentions of CBC have not been made clear, although one remaining option open to the Council is to lodge a further appeal to the Court of Appeal against the Planning Court's refusal to grant leave. However, this obviously carries the risk of further costs to the taxpayers of Central Bedfordshire, and whether there is the political will to take the matter further after such a resounding judgement from Justice Patterson remains to be seen.

Should the Council decide not to progress a further appeal, the Inspector's decision will stand and the Development Strategy will remain unsound. As such, the Council will have to consider the preparation of a new plan which addresses their proven lack of cooperation with neighbouring authorities, in particular, Luton Borough.

In the meantime, there remains a need for new development within both Luton and Central Bedfordshire and the continued lack of an up-to-date plan in either authority represents an opportunity to test the authority's ability to demonstrate an up-to-date supply of deliverable housing sites to provide 5 years' worth of housing against their targets.

DLP Planning Ltd has considerable knowledge of planning issues in Central Bedfordshire and Luton. Senior staff within the Practice are well versed with the planning process and policy changes, which allows us to deliver the best results for our clients. We have excellent working relationships with the Local Planning Authorities, making the process clearer and smoother for our clients. If you require any further advice regarding the above, please do not hesitate to contact us. Senior staff within the practice would be very happy to assist you with regards to your enquiry.

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