

**IN THE MATTER OF**

**BATH AND NORTH EAST SOMERSET  
CORE STRATEGY EXAMINATION**

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**ADVICE FROM COUNSEL**

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**No5**  
**CHAMBERS**

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## **Introduction**

1. In this matter I am instructed on behalf of the Hignett Family Trust (hereinafter “the Client”) in respect of the Bath and North East Somerset Core Strategy Examination (hereinafter “BANES CSE”).
2. The Client owns land to the south of the City of Bath at a location known as Odd Down (hereinafter “the Site”).
3. I have previously advised in respect of the Site and its promotion through the BANES Core Strategy.
4. The site is located in the Green Belt and in the Cotswold Area of Outstanding Natural Beauty.
5. The site has now been identified as an allocation in the latest version of the BANES CS.

## **Advice Sought**

6. I am asked to advise in light of recent events highlighted by the CS Inspector.

## **ADVICE**

7. Given that the site is a new allocation, along with others, the CS Inspector has sensibly suggested the need for a further session of the Examination to explore the choice of sites which have now been selected. This was precisely what occurred at the South Gloucestershire Core Strategy earlier this year, where my clients (Bloors in that case) had a site which was selected by the Council as an additional allocation to address its own identified shortfall in the five year housing land supply.
8. The CS Inspector has however, also made clear his concerns about the housing requirement in the BANES CS. His concerns have already led to an adjournment of the Examination. Following that adjournment, he has now raised further concerns about the scope of the Council's new SHMA. The issue is relatively straightforward. At the moment, the Council's SHMA does not address the housing needs of Bristol which inevitably generates households looking to locate in BANES. Located so close to the large urban areas of Bristol and South Gloucestershire BANES plainly does not form a single

Housing Market confined to its administrative boundary. Indeed the HMA covers a number of local authority areas.

9. The concern is that the BANES CS does not address the full, objectively assessed needs of the District because it is ignoring part of the relevant housing needs. The requirement to address such needs is explicitly identified in the National Planning Policy Framework.
10. There are however practical problems. Bristol City Council and the other relevant LPA's are not looking to agree a SHMA to cover the whole HMA in the short term. Work on this is due to take place, but the results will not fit with the timescale of the Examination unless there is another lengthy suspension. The Inspector has understandably made clear he does not favour this after one long adjournment.
11. This situation presents BANES Council with a problem in that it cannot force its neighbours to co-operate and conclude matters relating to housing need on its own timescale.
12. As I understand matters, this is not a plan to which the statutory duty to cooperate applies. If it were the situation would be very different. But in these present circumstances, one has to look at the reality of whether the Council can sensibly address cross boundary housing needs at this juncture. The evidence I have seen suggests clearly that it cannot. As such, the rather unpalatable options which the Inspector is forced to contemplate are either to suspend the BANES CSE yet again, or to abandon it altogether.
13. Unencumbered by the statutory Duty to Cooperate, which recent case law confirms is not to be applied retrospectively, there is a third way. That is to accept that the CS will not address the full objectively assessed needs of the District, but allow the plan to be adopted and insist on an early review. The requirement for that review must be written in the Plan as must a date by which tangible progress is required. Failure to meet that timeline will no doubt assist developers who wish to submit applications and appeals.
14. The CSE Inspector will be familiar with this approach. He may also know that it has been applied in a number of locations usually for exactly the same reasons as pertain in this instance. In the case of the recently adopted Suffolk Coastal District CS (adopted July 2013), the Inspector gave considerable thought to whether it was better to save the plan

or seek its abandonment in circumstances where it did not address objectively assessed needs. In his report of 6 June 2013, Inspector Mike Moore set out his reasoning on why it was better to put a Development Plan in place with a housing requirement of up to 7,590 new homes, rather than require further work to secure the full, objectively assessed need of 11,000 new dwellings. The relevant period being from 2010 to 2027 (paragraphs 31 – 35 and 46 – 53).

15. His overall conclusion was as follows: ***“As such, I conclude that in this case having the CS in place at an early stage would support the achievement of sustainable development and bring forward sites to meet the housing needs of the area.”***  
(paragraph 53)
  
16. It will be matter for Mr Emerson to decide whether the circumstances of the BANES CS are sufficient to warrant this approach. I have seen some suggestions that he may need further persuading on that issue. In that regard, it is plainly worth emphasising that if the Plan is adopted there will be sufficient certainty in place for my Client to consider submitting a planning application to secure the early delivery of housing. But, absent the adopted plan, that becomes rather more uncertain given the site is in the Green Belt. That uncertainty has not been assisted by the recent appeal decision at Thundersley in Essex. That is not to say an application would not be submitted. But for the Client and others the certainty of being allocated in an adopted plan is often what helps encourage timely applications. Submitting any planning application for major housing is expensive. Doing so on land not allocated in a Development Plan, especially land in the Green Belt, carries with it inevitable risk. The same obviously applies with regard to the cost of an appeal, which is something that must always be contemplated on unallocated sites, even when LPA’s have a significant shortfall in its five year housing land supply.
  
17. If Inspector Emerson were minded to allow the CS to progress, mindful of the practical problems that exist in this instance, then a policy similar to that recently adopted in the Suffolk Coastal CS would seem appropriate. The requirement for an early review of that CS is set out explicitly in policy SP2 – Housing Numbers and Distribution, the last part of which reads as follows:

***“An early review of the Core Strategy will be undertaken, commencing with publication of an Issues and Options Report by 2015 at the latest. The review will***

***identify the full, objectively assessed housing needs for the District and proposals to ensure that this is met in so far as this is consistent with policies in the National Planning Policy Framework.” (page 45)***

### **Conclusion**

18. Plainly, this situation is far from ideal. Full, objectively assessed needs should be address through the Core Strategy. But unless all the other authorities within the HMA are willing to cooperate at the same time, this sort of problem is inevitable. One might have thought some form of regional planning might solve the problem, but it may be some time before that comes back into fashion.
  
19. I trust I have dealt with all the matters concerning my instructing consultant, but needless to say if there are any other matters arising please do not hesitate to contact me, upon the telephone if necessary. Plainly I intend that this advice should be disclosed to PINS.

**8 August 2013**

**CHRISTOPHER YOUNG**

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10 August 2013