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Dear Mr Boulton,

**RE: Appeal at land south of Leadon Way, Ledbury (3009456)**

As per your recent email, since the Inquiry in early February, the *Suffolk Coastal District Council v Hopkins Homes Ltd & Anor [2016] EWCA Civ 168 (17 March 2016)* Court of Appeal Judgement, referred to below as the *Richborough case/Judgement*, has been handed down. The Appellant welcomes the opportunity to provide brief submissions on its relevance to the above appeal, to enable these matters to be carefully considered by the Inspector in the final decision.

**The Richborough case**

As the Inspector will be aware, the Court of Appeal considered in detail whether the phrase "relevant policies for the supply of housing" in NPPF §49 should be given a 'narrow' or 'wider' meaning, defining the latter thus:<sup>1</sup>

*The "wider" or "comprehensive" interpretation includes both policies providing positively for the supply of new housing and other policies, to which Ouseley J. referred in Barwood Land (in paragraph 47 of his judgment) as "counterpart" policies whose effect is to restrain the supply by restricting housing development in certain parts of the authority's area.*

Lindblom LJ concludes this 'wider' interpretation is correct:<sup>2</sup>

*The contentious words are "[relevant] policies for the supply of housing". In our view the meaning of those words, construed objectively in their proper context, is "relevant policies affecting the supply of housing". This corresponds to the "wider" interpretation, which was advocated on behalf of the Secretary of State in these appeals. Not only is this a literal interpretation of the policy in paragraph 49; it is, we believe, the only interpretation consistent with the obvious purpose of the policy when read in its context. A "relevant" policy here is simply a policy relevant to the application for planning permission before the decision-maker – relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's area or because it bears upon the principle of the site in question being developed for housing.*

Beyond these matters of interpretation, the Judgment makes clear both whether a particular Development Plan policy does fall within this 'wider' definition, and the weight to be given to any conflict with such a policy in the planning balance, are matters of planning judgment for the decision maker.

<sup>1</sup> §21

<sup>2</sup> §32

### **Interpretation**

The key conclusion from the Court of Appeal case is that Paragraph 49 of the Framework should be interpreted widely, and that it applies to all policies which are restrictive of where development can go. Therefore, if a Local Planning Authority cannot demonstrate a five year supply of housing its settlement boundary policies and countryside policies cannot be judged as up to date. The Court of Appeal made clear that the phrase “should not be considered up-to-date” in Paragraph 49, should be seen in this context, as meaning the same as “out of date” in Paragraph 14 of the Framework. So if there is no 5 year supply of housing land, environmental policies are to be seen as out of date.

Read in its proper context, including the need to boost significantly the supply of housing, Paragraph 49 of the Framework is about the delivery of housing and ensuring local planning authorities are not able to use environmental policies to restrict housing when it cannot itself demonstrate the minimum five year supply of housing.

Importantly, the Judgement held that the phrase extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed and goes further to acknowledge that such policies could include policies for:

- the Green Belt;
- the general protection of the countryside;
- conserving the landscape of Areas of Outstanding Natural beauty and National Parks;
- wildlife;
- cultural heritage; or
- other policies whose purpose it is to protect the local environment by limiting development<sup>3</sup>.

### **Application to the above Appeal**

#### **Five year supply**

The Appellant demonstrated during the Inquiry that the LPA could not demonstrate a five year supply of housing land. It was concluded in the Appellant’s closings that overall, the Appellant’s position is that the Council’s supply stands at about 3.41 years and is nowhere close to being at the five year requirement figure. As outlined in the evidence of Mr Lomas, this 1.59 year shortage of housing land equates to a significant shortfall of 1,812 units.

Consequently, in line with §49 of the NPPF ‘the relevant policies for the supply of housing’ should be considered out of date. In light of this, and in the context of the Richborough case, it is pertinent to consider what are deemed to be the ‘relevant policies’ for the purposes of this Appeal.

#### **Relevant Policies**

It was already common ground that there is currently no settlement boundary for Ledbury contained within the adopted Development Plan and that policies SS2: Delivering new homes, SS3: Ensuring sufficient housing land delivery and LB1: Development in Ledbury are policies relating to the supply of housing<sup>4</sup>.

In the context of the recent Richborough Judgement is clear that Policies SS6: Environmental quality and local distinctiveness and LD1: Landscape and townscape fall within the ‘wider definition’ and are ‘relevant policies’ for

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<sup>3</sup> §33

<sup>4</sup> §3.14 & 3.15 of the Statement of Common Ground, January 2016

the supply of housing, as per NPPF §49. The purpose of the policies are to protect the local environment and landscape, as well as the setting of settlements and settlement pattern, by limiting development. These are essentially environmental policies that are in this case being used by the Council to 'restrict housing'.

In the Appellant's evidence, it was made clear that it was considered (even if policies SS6 and LD1 were considered up to date) that the site specific factors, presented during the Inquiry, meant that the policy conflict with these policies was not determinative in this case.

Consequently, it is the Appellant's case that the above policies, including those already agreed through common ground, are to be considered as policies relating to the supply of housing. Given the Council cannot demonstrate a five year housing land supply these policies cannot be judged as being up to date. Reduced weight should therefore be given to any perceived conflict of the development proposal with these policies.

Where the relevant policies of the development plan are out-of-date, paragraph 14 of the Framework and Core Strategy Policy SS1: Presumption in favour of sustainable development requires permission to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It is the Appellant's case, as presented at the Inquiry, that any harm which the appeal scheme would cause would not significantly and demonstrably outweigh the scheme's benefits.

#### Weight

The weight to be given to any conflict with the policies outlined above, which are considered 'out of date' in the planning balance, are matters of planning judgment for the decision maker. The Appellants position in this regard is set out in the Closing Statement.

#### Conclusion

For the reasons set out above, it appears that considerable parts of the case relied upon by the Council, namely those relating to policies SS2, SS3, LB1, SS6 & LD1 are now 'out of date' and wholly untenable in the light of the recent Judgment.

In line with paragraph 14 of the Framework where the development plan, or relevant policies are out-of-date, planning permission should be granted as there are no adverse impacts of doing so which would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.

The Inspector is respectfully asked to consider the above in making a decision in respect of the Appeal Site.

Yours sincerely



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