Date: 02 June 2016

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Mr M Moore

The Planning Inspectorate

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Dear Mr Moore

**Response to your letter dated 13 May 2016 re- Court of Appeal judgment**

On 13 May 2016, you wrote with regard to the Court of Appeal’s judgment of 11 May 2016 in *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441*

Your letter is saved at <https://www.canterbury.gov.uk/planning/local-plan/emerging-local-plan/examination-documents/>

as [CDLP 16.29.33 Letter to CCC from Inspector regarding Matter 8 13 May 2016](https://www.canterbury.gov.uk/media/1155898/Letter-to-CCC-from-insp-13-May-16.docx)

In brief, you asked for the Council’s comments on the implications of this judgment on the Local Plan. We also note you will be adding an additional question to Matter 8 of the Stage 2 examination to enable other parties to comment.

**Council’s Comments on Implications**

The judgment of 11 May 2016 reinstates the Secretary of State’s Written Ministerial Statement (WMS) of 29 November 2014 relating to thresholds for seeking affordable housing from development as national planning policy.

Shortly thereafter the DCLG restored the relevant parts of the Planning Practice Guidance (Section 23b on Planning Obligations) on 19 May 2016 which had been amended to reflect the High Court judgment of 31 July 2015 declaring the WMS unlawful.

The effect of the Court of Appeal’s ruling was to allow for the reintroduction of the ‘more than 10 dwelling’ threshold for seeking s106/affordable housing contributions (or 5 dwellings in a ‘designated rural area’ such as Kent Downs AONB).

It should be noted that the timing of the WMS meant that the Council had no opportunity to take into account or reflect this threshold within its evidence base or indeed within the Local Plan. In addition, given that the policy was withdrawn until very recently there has been no reason or lawful basis for the Council to recalculate its affordable housing assumptions or policies based on this threshold.

It is acknowledged nevertheless that the threshold sought and encouraged by the Government in the WMS is not in line with the Council’s current draft Policy HD2 of the Local Plan, which seeks affordable housing provision on schemes of 7 or more units, and provision/contribution to affordable housing from schemes of 2 to 6 units.

The council understands that the test of soundness for the Local Plan as set out in the NPPF requires consistency with national policy but which is then defined as meaning that “*the plan should enable the delivery of sustainable development in accordance with the policies in the Framework”.* The NPPF as yet does not reflect the WMS and the PPG (which does reflect the WMS) is as we understand it not to be treated as policy in any event. In addition, the Court of Appeal’s judgment confirms that the policy should not be interpreted as requiring a blanket imposition as a matter of law upon local authorities (and decision makers) (see paras 29 and 30 of the judgment).

In addition, the Inspector is asked to note that the judgment specifically does not address the question of the test of soundness and how to approach the legal test under s.20 of the PCPA 2004.

It is our understanding therefore that the consequence of the CA judgment is that the WMS is to be treated as a material consideration but that in all the circumstances (including in particular what is set out in the NPPF) local planning authorities have a discretion as to the application of the WMS and are therefore still entitled to pursue a lower threshold in affordable housing policy terms. This can of course be supported where there is evidence of a level of affordable housing need which could not be met (in light of constraints) if the WMS threshold was applied.

In light of the evidence base the Council considers its draft policy requirement is justified and sound and will retain its current position as to affordable housing contributions.

Yours sincerely

*Karen Britton*

Planning Policy Manager