



**Basingstoke  
and Deane**

DAC Beachcroft LLP  
100 Fetter Lane  
London  
EC4A 1BN

Our Ref: MOS/BJR001  
Your Ref: Manydown Site (BAS098)



SENT BY FAX:020 7831 6630  
(please quote our reference on all future correspondence )  
21 December 2011

Dear Sirs

**Proposed Claim for Judicial Review**

The council has responded to your letter within the 7 day time limit, although it should be noted that in accordance with the Judicial Review Pre Action Protocol the council should have been permitted 14 days.

**The Claimant**

DAC Beachcrofts LLP  
100 Fetter Lane  
London  
EC4A 1BN  
on behalf of  
Save our Loddon Valley Environment ("SOLVE") and Country Watch

**From**

Basingstoke and Deane Borough Council  
Civic Offices  
London Road  
Basingstoke  
Hampshire  
RG21 7EA

**Reference Details**

Manydown Site (BAS098)

Mos/BJR001  
Melanie O'Sullivan  
Solicitor

**The Details of the matter being challenged**

**Shared Legal Services**

**Basingstoke and Deane Borough Council  
Hart District Council**

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INVESTOR IN PEOPLE

The matter being challenged appears to be the decision of the Council (as the local planning authority) made by its Cabinet on 17 October 2011. More particularly, the challenge appears to relate to the following decision, as minuted in the Decision Notice Appendix 1 (for clarity a copy of this decision notice is attached):

(iv) Cabinet approves the recommended sites and locations for development as set out in the table at para 7.72 and Appendix 4 of the Report to Cabinet, for inclusion in the Borough Council's draft Core Strategy which will be the subject of future public consultation.

## **Response to Proposed Claim**

### **Prematurity**

1. The decision of the Council is to include certain sites (and therefore to exclude others) from its current version of the draft Core Strategy. This will allow the Core Strategy to progress to a pre-submission Core Strategy, on which there will be publication under regulation 27 of the Town and Country Planning (Local Development)(England) Regulations 2004 (as amended) ("the Regulations") so that representations may be made.
2. It is open to the proposed Claimant to make representations on the pre submission Core Strategy in accordance with the Regulations. These representations will duly be considered by the Council and, following submission of the Core Strategy for independent examination, by the Secretary of State. Thereafter, the Core Strategy can only be adopted in line with recommendations made by the inspector appointed by the Secretary of State following the independent examination (section 23 of the 2004 Act). The purpose of the independent examination is explicitly to determine in respect of the development plan document whether it satisfies the requirements of sections 19 and 24(1) of the 2004 Act and whether it is sound (section 20(5)). There will therefore be in due course direct consideration of the question raised in this proposed claim, namely whether the draft Core Strategy is sound and based on a robust evidence base. This is the proper forum for this question to be addressed.
3. Further, section 113 of the 2004 Act precludes the questioning of the validity of a development plan document in any legal proceedings other than those brought under that section. This procedure becomes available only after the relevant development plan document has been adopted.
4. Finally, the decision of the Cabinet of 17 October 2011 does not give legal effect to the Core Strategy or even confirm it as the proposed submission draft Core Strategy. The Council did not fetter its decision in this way. Further, for similar reasons, it is not possible for the Council to

submission draft Core Strategy. The Council did not fetter its decision in this way. Further, for similar reasons, it is not possible for the Council to agree to your requested course of action, namely simply to include the Manydown in the 2012 Core Strategy. As the decision of the Cabinet makes clear the decision was to include those sites within the draft Core Strategy as part of an iterative process which will be the subject of further public consultation.

5. There is no reason to depart from the approach taken on the predecessor section to section 113 of the 2004 Act, namely section 284 of the Town and Country Planning Act 1990 that where the plan-making process has commenced and there is a draft development plan document, challenge to the validity of that document is precluded until it is formally adopted and the statutory review process engaged (**R v Cornwall County Council ex parte Huntingdon** [1994] 1 All ER 6964). In this regard it is noted that the ground of challenge goes to the substance of the development plan document, that is whether a particular site should be included.
6. In short, this claim is premature, there is an alternative remedy and the challenge to the document at this stage is precluded by section 113 of the 2004 Act.

#### **Merits**

7. In any event, and without prejudice to any further arguments which may be advanced by the Council, the Council's position is that your clients' Judicial Review claim is entirely without merit.
8. At the outset the Council clarifies that the decision of Cabinet dated 17 October 2011 was a decision of the Council acting as local planning authority. This response to your pre-action protocol therefore responds as local planning authority.

#### **Treatment of Manydown in draft Core Strategy**

9. As set out above the Council has not yet resolved to publicise its proposed submission Core Strategy. It is correct that as part of the iterative process of drafting the emerging Core Strategy the Cabinet on 17 October 2011 approved the recommended sites and that this did not include Manydown.
10. The Council (at present) considers that Manydown should not be included assessed against the test of developability as set out in PPS3 paragraphs 53 to 56. This is not, as you assert, simply a question of

current availability, but also as to whether the site is in a suitable location for housing development and whether there is a reasonable prospect that the site is available for, and could be developed at the point envisaged.

11. In relation to paragraph 4 of your letter dated 14<sup>th</sup> December 2011 we would re-iterate that this response is provided on behalf of the Council acting as local planning authority and in relation to the decision of the Cabinet of the local planning authority of 17 October 2011. This decision was not taken by the Council as landowner and did not constitute an action as landowner to which any fiduciary duty would apply. We also take this opportunity to point out that the Manydown land was not acquired for the purpose of delivering housing development in any particular time period and it was not, in fact, acquired simply for housing development but for the proper planning of the area.
12. In relation to paragraph 5(c) of your letter it is denied that the Council as local planning authority did not consider whether to include Manydown in the emerging Core Strategy. The Council did consider this question prior to 17 October 2011 and will consider it again on the basis of the up to date information prior to approving the submission draft Core Strategy.
13. In relation to paragraph 5(d) and (f) of your letter it is denied that the Council has in any way fettered its discretion. The Council exercises its functions as local planning authority entirely separately from its functions as landowner. In considering the prospects of the Manydown land becoming available the Council has had regard to the known intentions of the landowners and reached a judgment as to the developability of the site in light of the prospects of the site being available for development and being capable of being developed at a point envisaged during the plan period. This is a proper and lawful approach, and the judgment reached was not irrational.
14. There is nothing inconsistent as between the consideration of Manydown in the SHLAA as a potential housing site, and the present position of the Council that the site is not developable in the plan period.
15. We have endeavoured to respond to the alleged grounds of unlawfulness. For the sake of completeness, it is the Council's views that none of the points raised disclose an arguable ground of claim.

#### **Details of Action Requested**

16. As set out above under the heading of Prematurity the Council has not yet approved the pre-submission draft Core Strategy. The Council cannot agree to include the Manydown land in that document as this would be an unlawful fetter of the Council's discretion.

17. Regarding your request for correspondence all the decisions of the council are available on the council website [www.basingstoke.gov.uk](http://www.basingstoke.gov.uk) .

**Details of any other interested Parties**

Hampshire County Council

Manydown Trustees

**Address for further correspondence and Court documents.**

Basingstoke and Deane Borough Council  
Civic Offices  
London Road  
Basingstoke  
Hampshire  
RG21 7EA

**If you require further information please contact the writer, Melanie O'Sullivan on (01256) 845475 or by emailing [melanie.o'sullivan@basingstoke.gov.uk](mailto:melanie.o'sullivan@basingstoke.gov.uk).**

Yours faithfully



**Melanie O'Sullivan**  
Solicitor, for Chris Guy, Head of Legal and Democratic Services  
Common Law  
Shared Legal Services  
Basingstoke and Deane Borough Council & Hart District Council

[www.basingstoke.gov.uk/council/legal/](http://www.basingstoke.gov.uk/council/legal/)