

## Cala Homes II: where do we now stand with Regional Strategies?

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**With David Cameron's Big Society being one of the major talking points in domestic politics, its implications through the proposed Localism Bill are already being felt in the planning world. The proposed abolition of Regional Strategies in the forthcoming Bill has been the subject of two recent judicial review cases, that I will call Cala Homes I and Cala Homes II. Despite the High Court ruling in Cala Homes II that the intention of the Secretary of State for Communities and Local Government to abolish Regional Strategies should be a material consideration for planning decision makers, the early signs are that for the moment Regional Strategies will still be relevant.**

Had the Secretary of State for Communities and Local Government, Eric Pickles, got his way last year Regional Strategies would already be obsolete. The Secretary of State announced in July 2010 that Regional Strategies were to be abolished with immediate effect in order to avoid a period of uncertainty over planning applications. The Secretary of State used section 79(6) of the Local Democracy Economic Development and Construction Act 2009 which allowed him to "revoke all or any part of a regional strategy".

This was challenged through judicial review by Cala Homes (South) Limited in November 2010; in the case of Cala Homes I. Cala Homes argued that the Secretary of State had no power to revoke all Regional Strategies under the 2009 Act in advance of securing legislation to expressly provide for their abolition i.e. the Localism Bill. The Court agreed and found that the Secretary of State's action had been unlawful. Regional Strategies had survived for the time being.

However this was not the end of the matter. In response to the Court's decision the Secretary of State issued a letter stating that Regional Strategies would be abolished in the Localism Bill anyway and that he expected Local Planning Authorities and the Planning Inspectorate to take this into account as a material consideration in decisions that they were making. Therefore although Regional Strategies had survived, the Secretary of State wanted them to have little relevance as the Localism Bill loomed larger on the horizon.

Cala Homes then challenged this letter through judicial review, in the case of Cala Homes II. This time they argued that having the future abolition of Regional Strategies as a material consideration in decision making would undermine existing legislation by asking decision makers to take into account future legislation, i.e. the Localism Bill, that had not yet been passed.

This time however Cala Homes lost. In coming to this decision the Court held that the Secretary of State had not said to Local Authorities that regional strategies had been revoked but merely that they should take into account that there is an intention to revoke them in the Localism Bill. Stating that Regional Strategies are to be abolished and that this should be a consideration for planning decision makers was not in itself unlawful. Instead it is up to planning decision makers as to how much weight they should give to this material consideration when making decisions. Cala Homes has been given leave to appeal to the Court of Appeal on Cala Homes II and so the situation may change yet further.

The outcome of these two judicial review cases is that Regional Strategies are still here, for now. Furthermore despite the decision in Cala Homes II it is arguable whether the "material consideration" of the Government's strategy to abolish Regional Strategies is actually going to have much effect on planning decisions in the short term. Advice given by the Planning Inspectorate published on 18 February 2011 stated that the decision maker's role in considering the weight of the material consideration should bear in mind "the time frame in which a particular need material to the matter...in regional policy is expected to be met, in comparison with the timetable for the (Localism) Bill". With the Localism Bill at an early stage of the Parliamentary process it is likely that at the moment the material consideration will be given little weight.

Such a view is perhaps surprisingly supported by two recent appeal decisions made by the Secretary of State. In two recent non housing cases the future abolition of Regional Strategies has been held to be a matter to be taken into account but given little weight because the Localism Bill is at an early stage of the Parliamentary process.

Therefore, despite the decision in Cala Homes II, the proposed abolition of Regional Strategies, “the material consideration”, has yet to be given a great deal of weight in decisions. However it is significant that the reason why it has been given little weight so far is because the Localism Bill is still at an early stage of the Parliamentary process.

Nevertheless it is worth bearing in mind that the Localism Bill is the Big Society put into practice, and so David Cameron in particular will be keen for it to be pushed through Parliament and become law as quickly as possible. It is highly likely that the closer the Bill becomes to being made into law, the more weight the material consideration is likely to be given in planning decisions.

The recent decision in Cala Homes II is not the death of Regional Strategies. The early signs are that consideration of their impending abolition is being given little weight by planning decision makers but this is only due to the Localism Bill still being at an early stage in its passage through Parliament. Regional Strategies are still relevant but their diminution in importance in planning decisions is likely to be felt over the next few months as the Localism Bill progresses through Parliament. They have been given a stay of execution, but the period may be a relatively short one.

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