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Government reform stumbles as Court reverses abolition of regional planning

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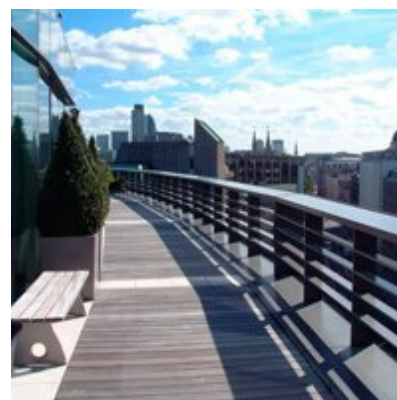
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The Government's reform of the planning system suffered a set back yesterday as the High Court quashed its decision to abolish the regional planning framework.

On 6 July Secretary of State Eric Pickles announced his decision to revoke all regional spatial strategies with immediate effect. The move proved controversial, leaving developers short on certainty and councils struggling for direction within what was seen by many as a damaging policy vacuum. Now, only four months later, Cala Homes, promoter of a large site outside Winchester, has succeeded in getting the decision reversed in the High Court.

The case for Cala, heard in a packed High Court before Mr Justice Sales on 22 October, relied on two grounds.

- First, it was argued that the legislative provision relied on by the Government - section 79 of the Local Democracy, Economic Development and Construction Act 2009 - despite empowering the Secretary of State "at any time to revoke all or any part of a regional strategy" did not in fact confer a power to abolish the regional planning regime in its entirety. Sales J. agreed. The point of the legislation is to create and maintain a regional planning system, and section 79 regulates the revision of regional strategies whilst ensuring that they are maintained in place. Parliament had plainly not "intended to reserve to the Secretary of State a power to set that whole elaborate structure at nought..." and to do so had been unlawful.
- Second, Cala suggested it was wrong of the Government not to conduct a proper strategic environmental assessment, as required by European legislation. Again, Sales J. agreed. Regional strategies form part of development plans which, for the purposes of the relevant law, trigger a requirement for SEA when subject to modification. Revocation of a regional strategy amounted to such a modification and, as no SEA was carried out, that revocation was unlawful.



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Cala's case, therefore, succeeded on both grounds.

Unsurprisingly, the Government has been quick to play down the importance of these events. "Whilst respecting the court's decision, this ruling changes very little" said Secretary of State Pickles in a ministerial statement shortly afterwards. "Later this month the Coalition Government will be introducing the Localism Bill to Parliament, which will sweep away the last Government's controversial regional strategies. [...] Today, the Government's chief planner has written to all local planning authorities and the Planning Inspectorate confirming that they should have regard to this material consideration in any decisions they are currently taking."

The implications of this are complex and, unsurprisingly, rather uncertain. A number of points may, however, be made.

- First, the Government's claim that this "changes very little" is somewhat implausible. In fact these events are of considerable significance. Whatever the long-term plan, the immediate effect is that the 6 July decision is quashed, and it is as if regional strategies were never revoked. They continue, therefore, to form part of development plans - in accordance with which planning decisions must be taken unless material considerations indicate otherwise. The Government's "advice" to councils to treat its legislative intentions as such a material consideration will be seen by many as premature and akin to second guessing the parliamentary and SEA processes. Those who seek to rely on RSSs will be urging decision-makers to treat the Government's plans as a material consideration of very little weight.
- Second, the result of this unfortunate episode (commencing with the Secretary of State's letter of 27 May, announcing his intention to "rapidly abolish" regional planning, and culminating in yesterday's ministerial statement) is widespread confusion across the planning regime. The current situation and the events leading to it will be interpreted differently by LPAs, in many cases confounding the reasonable expectations and assumptions of developers and their professional advisors. In the current climate such a marked lack of certainty is likely to be a very real constraint on investment.
- Nevertheless, on a practical level, yesterday's judgment presents an opportunity of sorts. For those promoting housing sites at an advanced stage of preparation, there is now a window within which an application based on RSS figures has a greater chance of success, because even an unreceptive LPA will need to have regard to RSS provisions. Meanwhile, hostile LPAs will cling to the support provided by the ministerial statement and dig their heels in, perhaps hoping to delay matters - including the finalisation of core strategies - until the Localism Bill becomes law. We may well see, in the short term, a return to planning by appeal, and the outcome of early cases will be eagerly awaited. Cala's Winchester appeal, for example, is set to be

heard in February - it will be particularly interesting to see whether the Secretary of State can resist the temptation to intervene by 'recovering' such appeals, or indeed by using his call-in powers on applications.

- Fourth, in the longer term, there appears every prospect that the Government will continue to give effect to its promise to abolish the regional planning regime.

This unhappy episode has, in the eyes of many, damaged this Government's credibility. In the end, no doubt, it will secure the reforms it promises, but today there is in some quarters silent rejoicing that its uncompromising determination to tear up the planning rule book has been frustrated, even if only temporarily.

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