

# Cala Homes (South) Limited v Secretary of State for Communities and Local Government and Winchester City Council

The High Court in the very recent case of *CALA Homes (South) Limited v Secretary of State for Communities and Local Government and Winchester City Council* [2010] EWHC 2866 Admin has ruled that the Secretary of State's (Eric Pickles) decision to abolish the Regional Strategies (what were previously the Regional Spatial Strategies) in July 2010 was unlawful.

The Secretary of State had sought to rely on his discretionary power to revoke Regional Strategies contained in section 79(6) of the Local Democracy, Economic Development and Construction Act 2009.

CALA (an Edinburgh based housing developer) argued that this was an improper use of this power, and that the Secretary of State had used it to disregard primary legislation without having sought the approval of Parliament. The judge, Mr Justice Sales, agreed with CALA, and ruled that if Parliament had intended the Secretary of State to have power to "denude primary legislation of its practical effect" then it would have made that abundantly clear in the legislation.

The judge also agreed with CALA's second ground of challenge that the Secretary of State should have conducted a Strategic Environmental Assessment ("SEA") under the Environmental Assessment of Plans and Programmes Regulations 2004 before revoking the Regional Strategies. Regional Strategies were subjected to SEA prior to adoption, and the judge could find no good reason why the subsequent revocation of them should not require similar treatment.

Although there is no indication as yet that they will appeal the Court's decision, Eric Pickles' Department has taken a bullish stance, declaring that they will press on with the revocation of the Regional Strategies through the Localism Bill, which is due to be published next week. In addition, the Department is to issue a letter to all planning authorities in England reiterating their advice from earlier this year that the intention to abolish the Regional Strategies is a material consideration for planning authorities when making planning decisions.

For the development industry, this decision could have wide ranging implications, although this will depend on what stage the relevant Regional Strategy had reached before the

revocation announcement on 6<sup>th</sup> July. Where the Regional Strategy had already been adopted (as was the case with CALA) then that document will, for now, continue to form part of the development plan. In those cases planning decisions will need to be made in accordance with the adopted Regional Strategy unless material considerations require otherwise. However where the Regional Strategy has yet to be adopted it will simply be a material consideration rather than part of the development plan, similar to the Secretary of State's announcement that the Regional Strategies are to be revoked. The challenge for developers, planning authorities and inspectors will be how to resolve the question of what is the appropriate weight to apply to these two competing factors. It is to be hoped that DCLG or the Planning Inspectorate will provide guidance on the issue.

With the Localism Bill imminent, all agree that the Regional Strategies will not survive for much longer, but the Court's decision has provided a window of opportunity for developers until their obituary is finally settled.

Whilst people focus on the Regional Strategy point let us not forget that it will take more than Ministerial guidance to dismantle any strategy or plan that came about with the help of an SEA. There is an irony in the fact that SEA, which had successfully been used by opponents of the Regional Strategies to delay their adoption, may be the very tool that prevents their speedy revocation. A case of what lives by the SEA, dies by the SEA.

For more information please contact:



**Fergus Charlton**

Solicitor

+44(0) 117 902 7705  
fergus.charlton@burges-salmon.com



**Craig Whelton**

Solicitor

+44(0) 117 902 2790  
craig.whelton@burges-salmon.com

© Burges Salmon LLP 2010. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged.

Disclaimer: This information sheet gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting [marketing@burges-salmon.com](mailto:marketing@burges-salmon.com).

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX  
Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
Chancery Exchange, 10 Furnival Street, London EC4A 1AB  
Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266  
[www.burges-salmon.com](http://www.burges-salmon.com)

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

