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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT
[2024] EWHC 833 (Admin)



No. AC-2024-LON-000538

Royal Courts of Justice

Wednesday, 13 March 2024

Before:

MRS JUSTICE LANG DBE

B E T W E E N :

THE KING
(on the application of)
WAVERLEY BOROUGH COUNCIL

Claimant

- and -

WAVERLEY BOROUGH COUNCIL
COUNTING OFFICER

Defendant

- and -

ELSTEAD PARISH COUNCIL
CRANLEIGH PARISH COUNCIL

Interested Parties

MR P COPPEL KC and MISS O DAVIES (instructed by Legal Services, Waverley Borough Council) appeared on behalf of the Claimant.

MISS V SEDGLEY (instructed by Legal Services, Guildford Borough Council) appeared on behalf of the Defendant.

The Interested Parties did not appear and were not represented

J U D G M E N T

(Transcript prepared without the assistance of documentation)

MRS JUSTICE LANG:

- 1 The claimant (“the Council”) has applied for judicial review of the referendum processes in respect of the proposed Elstead and Weyburn Neighbourhood Plan and the Cranleigh Neighbourhood Plan (hereinafter “the proposed NPs”).
- 2 The defendant is the Council’s Counting Officer, within the meaning of Regulation 9 of the Neighbourhood Plan (Referendums) Regulations 2012 (“the Regulations”) who has responsibility for conducting the referendums in accordance with the Regulations. Because of the urgency of the matter, this has been listed as a rolled-up hearing.
- 3 In summary, the facts are that on 9 January 2024 and 17 January 2024 respectively, the Council issued two decision statements confirming that it accepted all the independent examiner’s recommendations in relation to the proposed NPs. On accepting those recommendations, the Council was required to hold referendums on the adoption of both the proposed NPs: see para.12 of Schedule 4B of the Town and Country Planning Act 1990 (“TCPA 1990”).
- 4 The procedure to be followed is prescribed in the Regulations. Pursuant to Regulation 4 of the Regulations, on 22 January 2024 the claimant provided the Proper Officer with an information statement and specified documents, including the proposed NPs. The Proper Officer was required to publish these documents no later than 28 days before the referendum was scheduled to be held. Those documents were duly published on 22 January 2024 on the Council’s website and made available for inspection at the Council’s offices.
- 5 On 25 January 2024, the Council gave public notice that both referendums would be held on 29 February 2024. On 30 January 2024 and 5 February 2024 respectively, the Council discovered that the versions of the Neighbourhood Plans that had been given to the Proper Officer and then published were materially incorrect. In the draft Elstead and Weyburn plan, the key diagram did not accord with the version approved by the examiner and included erroneous changes to site allocations and the settlement boundary. In the draft Cranleigh plan, the Local Green Spaces map did not accord with the version approved by the examiner, and included an erroneous settlement boundary.
- 6 The Regulations required the defendant to continue the referendum processes unless restrained by this court. In line with the timetable, postal ballots were sent out by the Council’s agents, Civica, on 16 February 2024.
- 7 Following exchanges with the Counting Officer, the Council applied to this court for judicial review, urgent consideration and relief. According to the court records, the claim was filed and issued on 16 February 2024. The application was, in fact, sent after working hours on 15 February at 17:01 but was not considered until the following day, 16 February.
- 8 On the same day, 16 February 2024, I made an order restraining the defendant from proceeding with the referendum processes until the determination of the claim or further order. I also made directions for an expedited rolled-up hearing.
- 9 In his legal submissions, Mr Coppel KC, who acts for the Council, submits that the legislative framework for the conduct of Neighbourhood Plan referendums provides no mechanism by which the claimant or defendant can either correct the significant mistake that has been made, or stop the process altogether. I have considered the alternative

procedures suggested by Ms Sedgley, but I do not consider that they would have been either appropriate or effective in this case.

- 10 In relation to electoral matters, the court must be slow to exercise its discretionary power to grant an injunction in advance of an election unless exceptional circumstances can be demonstrated: see *R (Begum) v Tower Hamlets LBC* [2006] EWCA Civ 733 per Sir Anthony Clarke MR at [21].
- 11 In my judgment, there are exceptional circumstances in this case. If the referendums had proceeded, the outcome would have been an unlawful result. The proposed NPs would not have been provided to voters prior to the referendums, as required by Regulation 4 of the Regulations. Furthermore, the electorate would have voted on draft plans which were not the proposed NPs which had been approved by the independent examiner, and upon which the Council had decided to hold the referendums.
- 12 For these reasons I grant the Council permission to apply for judicial review and I allow the substantive claim for judicial review.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.