



Neutral Citation Number: [2014] EWHC 751 (Admin)

Case No: CO/16997/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 25th March 2014

Before :

THE HONOURABLE MRS JUSTICE LANG DBE

Between :

- (1) LONDON BOROUGH OF ISLINGTON
- (2) LONDON BOROUGH OF CAMDEN
- (3) LONDON BOROUGH OF BRENT
- (4) LONDON BOROUGH OF ENFIELD
- (5) LONDON BOROUGH OF GREENWICH
- (6) LONDON BOROUGH OF HACKNEY
- (7) LONDON BOROUGH OF LAMBETH
- (8) LONDON BOROUGH OF SOUTHWARK
- (9) LONDON BOROUGH OF TOWER HAMLETS

Claimants

- and -

THE MAYOR OF LONDON

Defendant

- and -

**THE SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT**

Interested Party

**Nathalie Lieven QC and Heather Sargent (instructed by London Borough of Islington
Legal Services) for the Claimants**

**Paul Brown QC and Graeme Keen (instructed by Transport for London Legal) for the
Defendant**

The **Interested Party** did not appear and was not represented

Hearing dates: 13th & 14th March 2014

Approved Judgment

MRS JUSTICE LANG:

1. The Claimants apply to quash the decision of the Defendant, the Mayor of London, to publish certain Revised Early Minor Alterations (“REMA”) to the London Plan on 11th October 2013, under section 113(3) of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”), on the grounds that the Defendant exceeded his powers.
2. Under sections 41 and 334 of the Greater London Authority Act 1999 (“GLAA 1999”), the Defendant is required to prepare and publish a London “spatial development strategy” for matters which are of strategic importance to London. This document is known colloquially as the ‘London Plan’. The Defendant is under a duty to keep the plan under review (section 340), and he may at any time prepare and publish alterations (section 341(1)). The current London Plan was published by the Defendant in 2011. The REMA are intended to update the plan, particularly in regard to the National Planning Policy Framework (“NPPF”) introduced in 2012.

The Claimants’ Grounds

3. The Claimants are local planning authorities in London who consider that the provisions in paragraphs 3.63 and 3.68 of the REMA unlawfully preclude them from imposing Borough-wide caps on rent for affordable rented housing.
4. Paragraphs 3.63 and 3.68 provide:

“3.63 In view of the particular priority the Mayor gives to provision of new affordable homes to meet London’s very pressing need, boroughs should give particular weight to the criteria set by national government for the allocation of public resources for affordable housing in setting local plan targets (Policy 3.11) or negotiating provision in private housing or mixed-use developments (Policy 3.12) and should avoid imposing any requirements (such as borough-level caps on rent levels for affordable rented housing) that might restrict the numbers of new affordable homes.”

“3.68 Boroughs should enable the range of affordable rents to be applied and should not set rent targets for affordable rented housing in their local development frameworks as this is likely to impede the maximisation of affordable housing provision Londonwide. The Mayor may provide details of where variations to affordable rent can apply in his London Housing Strategy and other relevant documents.”

5. The Claimants have commissioned evidence which shows that, if affordable rents are set at or close to 80% of market rent, the properties will not be affordable for a large proportion of the eligible households, who have low incomes or are on benefits and

subject to the benefits cap. They submit that the Defendant's aim of achieving a 65% of market rent average will not be realisable or enforceable. Land valuations will be based on the development plan, which provides for rents up to 80% of market rent, and there will be no incentive for developers to agree to rent at lower levels.

6. The Claimants submit that the restrictions on imposing rent caps in local policies will prevent them from meeting the requirements of the NPPF because they will be unable to meet objectively assessed housing needs. According to the introduction to the NPPF, the goal of sustainable development is to be met, in part, "by providing the supply of housing required to meet the needs of present and future generations" (paragraph 7). Paragraph 47 provides (so far as is material):

"47. To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, identifying key sites which are critical to the delivery of the housing strategy over the plan period."

7. "Affordable housing" is described in the Glossary as follows:

"Affordable housing. Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing.

Social rented housing is owned by local authorities and private registered providers ... for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Home and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable rented housing is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans),

other low cost homes for sale and intermediate rent, but not affordable rented housing...”

8. It is important to note that this claim is only concerned with “affordable rented housing”, as defined above, not social housing nor intermediate housing.
9. The Claimants submit that the Defendant has failed to have proper regard to the requirements of the NPPF. Indeed, he has mis-interpreted the NPPF when he claims that rent caps would undermine the deliverability of affordable housing, contrary to the objective of the NPPF. He was also mistaken in treating London as a single housing market. Each Borough had to assess its own needs, and develop its own targets and policies to meet them.
10. The Claimants rely upon the report of the Inspector, dated 19th June 2012, following the public examination into the REMA. The Inspector found compelling evidence about the lack of affordability of homes at 60% – 80% for many of the poorest residents, possibly resulting in a major shift of affordable housing away from inner London. NPPF policy was to deliver a wide choice of homes, including meeting affordable needs, and a policy framework which precluded genuinely affordable housing in parts of London “could be argued to be inconsistent with the thrust of policy in the NPPF”. “Planning requirements at borough level to provide for affordable housing need not breach the thrust of NPPF policy but would have to be justified locally by sound evidence”. He concluded that it was “overly prescriptive” to prohibit rent caps – there was no need for the Defendant to direct Boroughs how to meet their needs in accordance with the NPPF. He was not satisfied that the policy restrictions on Boroughs could be justified on the basis of a single housing market in London, as there were a number of sub-markets within one regional market. The Claimants submit that the Defendant erred in refusing to accept the Inspector’s recommendation that paragraphs 3.63 and 3.68 should be amended to remove the ban on rent caps.
11. The Claimants also submit that the Defendant erred in relying upon statements from Government Ministers (letter from Grant Shapps MP, Minister for Housing and Local Government, 2nd August 2012; letter from Bob Neill MP, Minister for Planning, 16th March 2012) as aids to construction of the NPPF. The interpretation of planning policy is an objective matter for the courts not the policy maker: see *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13. If this were not the position, the meaning of planning policy could change according to the views of different Ministers. Therefore it was not open to the Defendant to rely upon the Ministerial letters.

Conclusions

12. In my judgment, the real issue in this claim is a profound disagreement between the Claimants and the Defendant about economics, planning and housing policy. All parties agree that more affordable rented housing is needed in London, at levels below 80% of market value, but they disagree about how best to realise this aim. The Claimants wish to have power to introduce local planning policies imposing rent caps on affordable rented housing at levels below 80% of market value; low enough to make the housing affordable to a wider class of potential tenants. The Defendant considers that rent control imposed via the planning system will compromise his

policy to maximise the provision of affordable rented homes, by rendering delivery of new housing units unviable for developers and registered providers.

Affordable Housing Strategy

13. Against a backdrop of decreased housing development during the post-2008 recession, Grant Shapps MP, Minister for Housing and Local Government, introduced in February 2011 the ‘2011-15 Affordable Homes Programme Framework’ promising some £6.5 billion for affordable housing. The aim was to increase the amount of affordable housing provision by, among other things, offering a new Affordable Rent product (set at up to 80% of the property’s gross market rent). It was to be delivered by registered providers with four year contracts with the Homes & Communities Agency (“HCA”), to deliver affordable rented housing, funded as required by borrowing, cross subsidy and HCA grants.
14. In the London area, the functions of the HCA were devolved to the Defendant, in April 2012. The Defendant has strategic responsibility for housing in London, and is required by section 333A GLAA 1999 to publish the ‘London Housing Strategy’. By section 41(5) GLAA 1999, the Defendant must ensure that his strategies are consistent with one another; thus the London Plan should be consistent with the London Housing Strategy.
15. The ‘Housing Supplementary Planning Guidance’ (November 2012) issued by the Defendant as part of the London Plan 2011 Implementation Framework explains that rent levels for affordable rented housing are set by registered providers on a scheme-by-scheme basis, in negotiations with the local planning authority and developer. It states:

“4.2.16. For investment purposes, the Mayor has agreed a strategic, London-wide average rent at 65% of market rent across the 2011-15 affordable housing investment programme, taking into account the need to provide family-sized housing at a lower proportion of market rents (further details are provided in the London Housing Strategy). To achieve this 65% pan London **average**, the business plans of the 63 Registered Providers which will deliver the programme require the flexibility to operate on a scheme by scheme basis which is sensitive to local variations in market rents, and within each scheme, the scope to enable smaller units to effectively cross subsidise family homes.”

“4.2.17 For planning purposes, site by site flexibility and scope to address a wide range of needs, including those of families who require homes at around target rents (the priority group), are essential if the Affordable Rent product is to function effectively as intended. This will be compromised if general local rental or income thresholds are introduced to control operation of the Affordable Rent Product as described above eg to seek to focus it just on meeting the needs of particular income groups or to cap maximum rents at levels below 80%.”

“4.3.28 Given the clear national definition of affordable rent, guidance from the Government and the HCA, and NPPF and LP policy supporting the use of available resources to maximise output, boroughs are strongly advised not to set rent/income levels for this product through the planning system, as to do so would compromise their capacity to meet identified needs and raise serious questions of conformity both with national policy and with the LP. Similar advice is being provided against setting such thresholds in local housing strategies and plans. The Mayor will give particular attention to this issue in considering matters of general conformity with the London Plan and London Housing Strategy.”

16. In my view, these extracts indicate that the Defendant’s Strategy has been carefully planned. It is consistent with national policy. It has adopted the national model of appointing registered providers to deliver affordable rented housing, and giving them some flexibility on how to achieve this, within agreed parameters. It does not envisage rent levels at 80% of market rent across the board, and the model proposed will allow for variations by area and by type of housing unit, recognising particular problem sectors. The Strategy focuses upon the objective of maximising output.
17. The Claimants complain that in ‘The Revised London Housing Strategy Draft for Consultation’ issued in November 2013, the detail of the affordable rent policy has changed, and larger homes will no longer be subsidised. Half of the affordable rent properties will be capped at rents up to 50% of market rent, and will be prioritised for those in the greatest need and those in low income employment. For the purpose of this investment period only, the GLA will promote smaller homes to enable those affected by housing benefit social size sector criteria (the ‘bedroom tax’) to downsize. The remaining half will be at discounted rents, set at the lower of up to 80% of market rent or the local housing allowance available.
18. In my view, the proposed revisions to the Strategy illustrate the flexibility of the affordable rent scheme, in responding to significant housing benefit changes, and different types of housing needs. This document confirms that some rents will continue to be set at under 80% of market rent. Mr Brown explained that the net average will remain in the region of 65%. It also allows for local variation:

“The GLA will ensure that there continues to be flexibility at a local level for providers and boroughs to negotiate further variations, while maximising affordable housing supply. Providers are also encouraged to make provision for much larger homes of four or more bedrooms where there is specific local need.”
19. The London Plan sets out strategic policy as well as giving advice to Boroughs in the preparation of their local plans. At paragraph 3.14A, the Plan recognises “the pressing need for homes in London and to help boost significantly the supply of housing this Plan sets out the average annual housing targets for each borough until 2021”. It cross-references to the NPPF and other GLA Strategies. Policy 3.8 on ‘Housing

Choice’ requires Boroughs to identify the range of needs in their area and ensure that new developments offer a range of housing choices.

20. Under Policy 3.10 on ‘Affordable Housing’, paragraph 3.61 provides:

“ .. Affordable Rent is subject to rent controls that require a rent of no more than 80% of local market rent ... In practice, the rent required will vary for each scheme with levels set by agreement between developers, providers and the Mayor through his housing investment function. In respect of individual schemes not funded by the Mayor, the London boroughs will take the lead in conjunction with relevant stakeholders, including the Mayor as appropriate, but in all cases particular regard should be had to the availability of resources, the need to maximise provision and the principles set out in policies 3.11 and 3.12.”

The final sentence above was added on the recommendation of the Inspector. It clarifies the role of boroughs in relation to affordable rented schemes which are outside the scope of the agreements between registered providers and the Mayor.

21. Policy 3.11 advises that the Mayor, boroughs and other relevant agencies and partners should seek to “maximise affordable housing provision” to deliver 13,200 more affordable homes per year in London. 60% of affordable housing provision should be for social and affordable rent and 40% for intermediate rent or sale. Boroughs should set targets for different types of affordable housing, in absolute or percentage terms, reflecting strategic and local needs, targets and priorities. It is in this context that the disputed paragraphs 3.63 and 3.68 appear (set out at paragraph 4 above) which indicate that boroughs should enable the range of affordable rents to be applied, and not impose rent caps in their own local plans, as this is likely to impede (i.e. deter) developers and providers.
22. Policy 3.12 advises that boroughs should seek the maximum reasonable amount of affordable housing when negotiating on individual private residential and mixed used schemes. Paragraph 3.71 sets out the key role which boroughs play, together with registered providers, in delivering affordable housing at affordable rents on a scheme-by-scheme basis:

“In estimating provision from private residential or mixed use developments, boroughs should take into account economic viability and the most effective use of private and public investment, including the use of developer contributions. To expedite the planning process, developers should engage with a registered provider prior to progressing the scheme and secure from them a commitment to provision. In doing so, they should require the provider to identify the resources it is bringing to the scheme and to demonstrate that the proposed affordable housing provision make optimum use of the resources applied in terms of Policy 3.12 and provides the range of affordable rents indicating in the London Housing Strategy. Boroughs should evaluate these appraisals rigorously, drawing on the GLA development control toolkit and other independent

assessments. Boroughs are encourage to review and bring forward surplus land in their ownership to maximise their contribution to affordable housing provision, including the provision of land to registered providers on a nil cost or discounted basis.”

23. The Defendant’s response to the representations made by the Claimants in response to the REMA was set out in the reasons supporting MD1268:

“7.16 In respect of Islington’s point b), the Mayor is advised that the allegation that he is putting “delivery above needs” creates a false dichotomy. Affordable housing needs can only be met if affordable housing is delivered. If affordable rents are capped at a rate which makes schemes unviable, development will clearly not take place and there will no housing available to meet needs. Moreover, NPPF paragraph 47 is not simply about meeting full, objectively assessed needs; it also has, as a recurring theme, the need to deliver a housing strategy. As footnote 11 to NPPF paragraph indicates, deliverability is tied in particular to the need to ensure that the development of sites is viable. Paragraph 47 also has to be read in the context of the NPPF as a whole, including, the guidance in paragraph 173 concerning viability and deliverability.

7.17 The Mayor is advised that there is a further, important point here. Islington’s letter creates the impression that the REMA effectively requires all affordable rent units to be brought forward with a rent of 80% of market rent, and thereby prevents any affordable rent units with the lower rents which Islington and the other boroughs regard as “genuinely” affordable. This is simply not the case. It is Government that has defined the product at up to 80% market rent. However, this figure is a maximum: the actual rent will vary depending on local market circumstances. The Mayor’s investment policy is predicated on a London-wide average of 65%, from which it is self-evident that some affordable rent is expected to come forward with a rent level that is less than 65%.

7.18 In this regard, it should be noted that the Mayor has accepted the Inspector’s recommendation that the wording of paragraph 3.61 should be amended to make it clear that, where schemes are not funded by the Mayor, Boroughs have a role in relation to the deciding of rent levels *on a scheme-by-scheme basis*. While REMA will prevent boroughs from setting rent caps through planning policy, it does not mean that boroughs cannot work with developers and Registered Providers on a case-by case basis to ensure that the best mix of housing is achieved on individual sites. In such negotiations, the Boroughs will be able to consider the impact of a lower rent on the viability of each scheme individually, and whether allowing a

proportion of the affordable rent units in that scheme to come forward with a rent of up to 80% would assist in maximising the amount of affordable housing which is delivered while at the same time ensuring that a proportion of the units are available at rents closer to target rents.

7.19 The affordable rent product was introduced by Government in 2011 in order to continue to deliver affordable housing in a decreased funding environment. The London-wide 65% average is based on investment rather than planning policy. It was born out of a strategic programme that seeks to maximise delivery while ensuring that all rents remain below the local housing allowance rate, and that the programme continues to deliver a significant proportion of family sized housing. This approach is already working with nearly 16,451 homes to rent delivered between April 2011 and July 2013, of which 37% were family sized, alongside 9,546 new homes to rent started. Contrary to the implications of Islington's letter, this means that many family sized units are being delivered at rents which are the same as, or very close to those charged for social rent. Due to densities, it is not unexpected that higher proportions of larger homes are delivered in some outer London Boroughs. However, there are high levels of family sized homes in some inner London Boroughs such as Westminster (58%), Tower Hamlets (46%), Islington (37%) and Southwark (35%).

7.20 In the Mayor's view, this is the way in which concerns about affordability should be addressed. Achieving the London-wide average of 65% will only be possible if a proportion of affordable rent units come forward with rents which are between 65 and 80%. It will be significantly more difficult (if not impossible) to achieve this if individual Boroughs are allowed to adopt inflexible borough-wide policies which cap affordable rent at the levels proposed by Islington and others.

7.21 For these reasons, the Mayor's view continues to be that the approach taken in the REMA represents the most realistic and robust way of ensuring that London continues to deliver the maximum number of affordable homes for those who need them. The Mayor is advised that this approach is lawful and reflects government policy, makes the best use of available resources and will deliver a significant number of family units at lower rent levels."

24. I consider that the Defendant was exercising his statutory powers to make a series of policy and planning judgments in deciding upon the content of the REMA. They do not, in my view, disclose any error of law.

25. The Defendant is under a statutory obligation under section 334 GLAA 1999 to prepare a spatial development strategy for London (known as the London Plan). The spatial development strategy is part of the statutory development plan for the purposes of section 38(6) PCPA 2004, as well as the local development documents prepared by the Boroughs.
26. By section 24 PCPA 2004, local development documents must be “in general conformity” with the London Plan. Thus the London Plan takes precedence over the Boroughs’ development plan documents on matters of strategic significance. Where, as here, there is a policy conflict, the Defendant’s strategy, as expressed in the London Plan, can lawfully prevail.
27. In preparing the London Plan and any alterations to it, the Defendant must have regard to the wide range of factors listed in section 41 GLAA 1999, including “the need to ensure that the strategy is consistent with national policies”.
28. In my view, the Claimants have failed to establish that the Defendant’s strategy is contrary to the NPPF. The NPPF is a national policy framed in terms of broad policy objectives. Detailed decisions on how those objectives can be best achieved have to be made at a regional and local level. The only reference to rent caps for affordable rented housing is in the definition of affordable rented housing, which provides that the rent must be “no more than 80% of the local market rent”. Paragraph 47 of the NPPF does not speak either for or against local rent caps. Nor does it prevent the Defendant from adopting a London-wide policy against rent caps with which local boroughs must comply. There are other ways in which the Claimants can and should “use their evidence base” to ensure their local plans meet “objectively assessed needs” for affordable housing, as illustrated in the extracts from the revised London Plan which I have referred to above.
29. I consider it is unarguable that the Defendant’s strategy is so misguided or flawed that it will effectively prevent the Claimants from making appropriate provision for affordable rented housing. The points made by the Claimants on, for example, land values, the difficulty of persuading developers to accept lower rents, and the uneven distribution of affordable rented housing across London, are reasons for disagreeing with his strategy, not grounds for finding the strategy unlawful. The Defendant has a carefully considered strategy, in line with national policy, for delivery by registered providers. In his reasons, he pointed to proven success, though the extent of this is in dispute. I accept that the strategy may be open to legitimate criticism, but it is plainly within the band of reasonableness.
30. The Defendant considers that his strategy will give effect to the NPPF’s objective of increasing the supply of housing (in this instance, for lower income groups) whereas the Claimants’ policies will impede it, and so are contrary to the objectives of the NPPF. The Defendant has concluded that local rent caps will make affordable housing schemes unviable, contrary to paragraph 173 of the NPPF which provides:

“Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable. Therefore the sites and scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be

developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standard, infrastructure contributions or other requirements, should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”

The Defendant also relies on paragraph 182 of the NPPF which requires a local plan to be “sound” and “deliverable”.

31. It is not the Court’s role to decide upon the respective merits of the conflicting views of the parties on how best to implement the objectives of the NPPF. These are policy issues. I am satisfied that the Defendant’s strategy is not contrary to the terms of the NPPF or otherwise unlawful.

The Inspector’s Report

32. Before publishing alterations to the Plan, the Defendant is required to consult every London Borough and the Secretary of State, and to cause an examination in public to be held. He must take into account the report of the Inspector conducting the examination but he is not required to accept his recommendations. Further safeguards are provided by the requirement to lay the draft plan before the London Assembly, and not to publish it if the Assembly rejects it. The Defendant fully complied with all these requirements.
33. The Defendant did not agree with the recommendations of the Inspector. On 14th August 2013, the Defendant published the Inspector’s report on the GLA website and sent copies to all Boroughs. He also published the draft REMA, together with reasons for disagreeing with the Inspector’s report, which included the following:

“The remaining elements of this recommendation are not accepted as, in the Mayor’s view, they give inadequate weight to national policies, the extent of resources for affordable housing and the basis on which they are made available, and to Mayoral housing policies and the need for planning policies to be consistent with them.

[...]

The Mayor’s position at the EiP was that the NPPF did not support the setting of rent caps for the affordable rented housing product. At the first stage of public consultation [...] the Mayor received a letter from the then Minister for Planning, Bob Neill MP, confirming that this approach as carried forward in the proposed alterations was in accordance with national policy. At the second stage, a similar letter was received from the then Minister for Housing, Grant Shapps MP.

[...]

In the Mayor's view, these clear ministerial statements should have been given greater weight by the Inspector. Contrary to the Inspector's conclusion that the REMA are not in accordance with national policy, the Mayor considers these letters clearly demonstrate that accepting the second and third parts of the Inspector's recommendation would not be consistent with national policy and would as such fall foul of one of the NPPF tests of "soundness" (that the plan should enable the delivery of sustainable development in accordance with the policies in the NPPF).

[...]

In the Mayor's view, the Inspector's report (paras 18 – 22) and the recommendations do not sufficiently recognise the importance of this policy on the Affordable Rent product of the arrangements for investment in it across London agreed with CLG.

[...]

The Inspector's report also gives insufficient weight to the availability of resources for different forms of affordable housing, and to the effects on development viability of local planning authorities setting rent caps at levels which would not be supported by the level of subsidy available."

34. The Defendant plainly gave proper consideration to the Inspector's recommendations. As a matter of law, he was entitled not to adopt them.

The Views of Ministers

35. Contrary to the Claimants' submissions, I consider that the Defendant was entitled to have regard to the views of the Secretary of State and other Ministers on whether the REMA was consistent with the NPPF, provided that ultimately he made up his own mind about the proper interpretation of the NPPF (with the benefit of the expertise of his advisers). The Secretary of State for Communities and Local Government was a statutory consultee. Grant Shapps MP, Minister for Housing and Local Government in the Department of Communities and Local Government, was particularly well-placed to respond to the consultation on the topic of affordable rented housing since he had responsibility for launching it. Bob Neill MP was Parliamentary Under-Secretary of State in the Department of Communities and Local Government who was given responsibility for replying to the consultation on behalf of the Secretary of State.
36. In my view, there is no proper basis upon which to impugn the Defendant's assertion that he formed his own interpretation of the NPPF and did not rely on Ministerial advice to construct his policy: see MD1268, paragraphs 7.13, 7.14.
37. The Secretary of State also had power to intervene by publishing a direction prohibiting publication of the plan if he considered it was inconsistent with national

planning policies. The Secretary of State said, in his letter dated 13th August 2013, confirming that the REMA was not inconsistent with national policy:

“As Grant Shapps noted in his letter to you of 2nd August 2012, the approach set out in your revisions is aligned to my Department’s objective of increasing the delivery of affordable housing. Imposing rent controls through local planning policies would hinder this objective, and risk letting Londoners down by limiting the supply of affordable housing, and reducing choice for tenants.”

38. The Court is entitled to take into account as evidence that the Secretary of State did not consider that the REMA was inconsistent with the NPPF. However, the view of the Minister cannot be determinative, as the objective meaning of the policy is ultimately a matter for the Court (*Tesco Stores Limited v Dundee City Council* [2012] UKSC 13).

Single Housing Market

39. Turning to the next issue, I accept the Defendant’s submission that he was entitled to conclude, in the exercise of his planning judgment that London represented a single housing market.
40. The term “housing market area” appears in the NPPF, but is not defined. That a “housing market area” within the meaning of the NPPF does not necessarily equate to LPA administrative boundaries is plain from paragraph 159:

“159. Local planning authorities should have a clear understanding of housing needs in their area. They should:

prepare a Strategic Housing Market Assessment to assess their full housing needs, working with neighbouring authorities where housing market areas cross administrative boundaries. [...]”

41. The view that London should be regarded as a single housing market is not new. As the reasons supporting MD1268 noted at paragraph 7.22:

“[...] since at least the establishment of the GLA, London has always been regarded as a single market for strategic planning purposes. Both the London Plan and the Mayor’s Housing Strategy are based on this accepted approach.”

42. The February 2008 London Plan stated, at paragraph 3.48:

“Housing need is a strategic issue, in that some boroughs cannot meet need within their own boundaries. Each borough does not represent a distinct housing market nor is London made up of a homogenous housing market. Affordable housing targets should be sensitive to the economic and social circumstances of London. The Mayor has set the overall strategic framework for establishing borough-level targets to provide a consistent basis for seeking affordable housing and for estimating future levels of provision.”

43. The Draft Replacement London Plan, Report of Panel, March 2011 stated at 3.28:
- “As it was not disputed that London is a single Strategic Housing Market Area with complex sub-markets that spread across Borough boundaries and has constrained land supply the use of which has to be optimised, we agree with the Mayor that it is not only appropriate but necessary to include Borough provision targets.”
44. Paragraph 3.15 of the London Plan 2011 stated:
- “Though there are differences in the type, quality and cost of housing across London, the complex linkages between them mean that for planning purposes, London should be treated as a single housing market”
45. Paragraph 3.45 of the London Plan 2011 stated:
- “These [affordable housing] requirements across London have little regard to administrative boundaries. It is essential that new provision anticipated in LDFs reflects strategic as well as local needs. This will require close working between the GLA and boroughs to ensure local, sub regional and the Londonwide SHMAs are co-ordinated and that effective account is taken of sub-regional and strategic needs, especially when setting affordable borough housing targets. [...]”
46. The Housing Supplementary Planning Guidance, November 2012 stated at 4.3.12:
- “For planning purposes, London is a single housing market, rather than a collection of thirty three self contained borough ones; indeed, it can be seen as part of a market area that extends out into the wider south east. The new LP recognises this, while acknowledging there is very considerable local variation within it, and that these variations pay little heed to administrative boundaries...”
47. It is apparent that London was identified as a single housing market in the London Plan published in 2011. Thus, if the Claimants had valid grounds for challenging this approach, they should have done so when the London Plan was published. They are now well outside the time limits prescribed by section 113 PCPA 2004 for bringing any such challenge.
48. In questioning the relevance of the single housing market to the provision of affordable housing, the Inspector stated in paragraph 19 of his Report:
- “the reality is that within one regional market there are a number of sub-markets in inner and outer sectors that have their own characteristics, with considerable variations in types of accommodation, tenure, rents and sale prices”

49. However, the fact that local variations will exist in a single housing market is self-evident. Local variations would also exist in a housing market in a single Borough. As paragraph 2.21 of Annex 1 to MD1268 observed:

“Even accepting the point made by the Inspector that there are variations within this market (which would be true of any housing market area) there was no evidence before the EiP or cited in the report which shows these variations are meaningfully correlated with borough boundaries.”

50. In addition, as recorded at paragraph 4.09 of MD1268, the Defendant was concerned that:

“the operation of 33 different rent policies across London would inhibit delivery of a London-wide programme where registered providers operate across borough boundaries.”

51. The Defendant set out his reasons for differing from the Inspector’s views:

“In the Mayor’s view, the REMA EiP Inspector’s report is also incorrect in its approach to the London housing market area. [...] the NPPF (para 159) states that when considering housing needs, planning authorities should work “with neighbouring authorities where housing market areas cross administrative boundaries”. It has long been accepted that London represents a single housing market area, and both the London Plan and Mayor’s Housing Strategy are based on this accepted approach.”

52. The Defendant gave proper consideration to the Inspector’s views and reached a rational conclusion, even if it was one with which the Claimants disagree.

Conclusions

53. For the reasons set out above, the claim is dismissed.