

Unitary Update: East Devon Judicial Review

A High Court judgement in response to a judicial review sought by East Devon District Council has largely found in favour of the Boundary Committee.

Mr Justice Cranston dismissed East Devon's grounds with the exception of whether the Committee should consult on more than one unitary proposal and, if it did, whether it should assess if such combined proposals meet the Government's five criteria – affordability, value for money, neighbourhood empowerment, strategic leadership and a broad cross section of support -- “in aggregate”.

He made it clear that whilst he did not agree with the Boundary Committee's view that legally they were only able to consult on one proposal, the issue of whether to actually consult on more than one proposal was a matter of discretion for them and refused to quash the Devon review.

He said the case brought by East Devon was “premature” because the Secretary of State for Communities and Local Government has already extended the deadline by which the Committee must make its final recommendation to February 13. He said that this additional time may enable the Committee to meet its statutory duties if it chooses to advance more than one proposal.

East Devon has been granted leave to appeal. The Secretary of State and the Boundary Committee have yet to respond to this latest High Court ruling.

The case dealt with six areas of challenge:

- Was the Boundary Committee correct in deferring consultation on the question of affordability until after publication of its draft proposal, a single unitary council for Devon, excluding Plymouth and Torbay?

The judge, Mr Justice Cranston, has ruled: ***“In my judgement it was open to the Committee, in performing its statutory task, to choose to defer consideration of affordability until publication of its draft proposal.”***

- Was its decision to defer this stage of the consultation “irrational”?

Mr Justice Cranston said: ***“In the circumstances that was not irrational, since the Committee did not wish to impose undue burdens on local authorities at an earlier stage, and also needed to collate information from them in the form of the workbooks with relevant financial information.”***

- Did the Committee consult the public in “a meaningful and timely manner”?

The judge said: ***“In my judgment the Boundary Committee has fulfilled its statutory duty to afford those interested the necessary information to make meaningful representations on affordability. For the future the Boundary Committee may well modify its approach in the light of lessons learnt from the current exercise, but that is no basis for judicial review in the present case.”***

- Did Committee incorrectly rule out consideration of a) the existing two-tier system and b) the original Exeter City Council unitary proposal?

In respect of a) the judge referred to his earlier judgement in a similar case brought by Breckland District Council in Norfolk, and said: ***“In Breckland I held that the issue of status quo was irrelevant to the Boundary Committee's consideration under the 2007 Act: paragraphs [60]-[64]... Nothing has been advanced by East Devon before me to lead me to reverse my earlier view. As pointed out in Breckland, the Boundary Committee will consider any representations about the retention of the existing two-tier system since one of the criteria is whether the Committee's draft proposal enjoys a good cross-section of support. Admittedly that does not go to whether the existing two-tier system is preferable to a possible alternative, but it does mean that views about the merits of a two-tier system of local government have not been shut out by the Boundary Committee.”***

With regard to b) the judge said he found no evidence that the Boundary Committee had simply accepted the views of the Secretary of State that she was not minded to adopt the Exeter unitary proposal because of problems of affordability. Mr Justice Cranston explained: ***“In my judgment, the Boundary Committee has gone as far as necessary... Given the terms of the Request, and given that the affordability criterion was one capable of being readily measured in objective terms, the director (of the Boundary Committee) says that the Committee reached the view, at an early stage, that it should not involve itself with further investigation of the Exeter proposal...It is obvious that it gave quite considerable weight to the Secretary of State's view, but in my view there was no public law flaw in this regard. Once it had made its decision it was entitled, in the interests of good administration, to draw a line under the Exeter proposal, whatever later financial information might have indicated, unless there was good reason to reconsider it.”***

- Should the Boundary Committee have consulted on more than one proposal?

Mr Justice Cranston ruled that the Committee had misdirected itself on what it could consult on and propose. But while it could consult on more than one proposal if it wished, it was not bound to do so. He said it was a matter of discretion for the Committee adding: ***“The Devon exercise has incurred considerable time, effort and expense on the part of the Committee, local authorities in Devon and those who have responded to the consultation exercise. Were the matter to begin afresh, the public may***

be at a point of satiation, so that any new consultation would be relatively unproductive. In my judgment what must happen is that the Boundary Committee should consider with care whether it would be right to make further alternative proposals for Devon. If it were to decide that that course were appropriate, it would need to comply with the statutory requirements, including that under section 6(4) of consulting on such further proposals. However, the nature of complying with that obligation would be conditioned by what has already occurred. The Boundary Committee could decide, in its discretion, that responses already received were such that a more limited, further consultation was all that was necessary.”

- Did the Boundary Committee misunderstand the concept of “aggregation” in assessing the ability of unitary proposals to meet the Government’s five criteria.

The judge said the question would only arise if the Boundary Committee decided it wanted to recommend more than one unitary proposal, but:
“Consideration of the manner in which the Boundary Committee used the notion of aggregation does not persuade me that its approach was erroneous... At the present, the only draft alternative proposal on the table is a proposal for one unitary authority for the area. Thus there is no issue of looking at more than one authority and considering whether they, in aggregate, meet the five criteria.”

Click here to view the judgement in full:

<http://www.bailii.org/ew/cases/EWHC/Admin/2009/4.html>

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