

Case Name: *Aspire Luxury Homes (Eversley) Ltd v Hart District Council* [2020] EWHC 3529 (QB) (21 December 2020)

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Commentary:

The application by a Defendant local authority to strike out the claim by Aspire Luxury Homes (Eversley) Ltd (the "Claimant") for a declaration and damages was dismissed.

The Claimant issued a claim seeking a declaration that obligations relating to affordable housing in a section 106 agreement were exhausted and no longer applied (and therefore all dwellings could be sold on the open market). This was on the basis that no registered provider could be found to take the two affordable housing units required and the Council did not accept the invitation to take a transfer of the units. The Claimant also advanced a damages claim on the basis that the Defendant wrongfully prevented it from developing and marketing the land without providing affordable housing and that it is sustaining a continuing loss as a result.

The Defendant applies for this claim to be struck out as it contends determining the meaning of the section 106 agreement is an issue of public law which should be raised by way of a claim for judicial review and not by this civil claim under CPR Part 7.

Mr Justice Bourne rejected the Defendant's contention that the choice of an ordinary civil claim was an abuse of process. He states: There is a dispute about the meaning of the agreement and/or about whether, on the facts, the Claimant has discharged its obligations under the agreement. That being so, a claim under CPR Part 7 is an available route...Nor do I consider that any abuse is apparent from the Claimant having also lodged a planning appeal. The appeal is against a refusal to vary the section 106 agreement.

Mr Justice Bourne finally concludes that determining whether the Claimant's s.106 obligations have been discharged raises disputes of fact as well as law and these should be resolved at trial rather than by this summary application. This application to strike out the Claimant's claim is therefore dismissed.

Case summary prepared by Amy Fender