

Mrs Helen Wilson BA(Hons)
Programme Officer
Email: progofficer@aol.com

2nd December 2010

Dear Helen

Thank you for for your letter dated 11th November 2010.

At the time your letter was written, the Cala Homes decision had complicated the publication of the Inspector's report. That complication has now been compounded by the new challenge by Cala Homes against the direction of the Secretary of State that the new Localism Bill be regarded as a material consideration.

The Oxford Core Strategy was already a confused and confusing document and until the last hearings, made no mention of the abolition of the Regional Strategy ("RS"). The inspector quite rightly, required that the document be amended to remove references to the the South East Plan ("SEP") and RS but that left it even more messy and unintelligible. The possible effect of the Cala Homes decision stirs even more confusion into the mix. We now have a document from which the plan has been deleted but a real world where it has, or may have been, reinstated.

Since the last hearings the Government has confirmed that 'Access to Oxford' will not receive funding, making it quite impossible to mitigate some of the extremely serious traffic problems produced by the Core Strategy. This materially affects the evidence base behind the Core Strategy.

Plainly too, Oxford City Council have now been aware of the contents of the the Inspector's report for some weeks now and are able to make decisions and responses based on that superior knowledge. Despite the Inspector's express direction, it appears that the council has leaked or let slip part of the contents of the Report in the meantime.

The legal and planning structure behind the Core Strategy is now impossibly confused and would we believe, be open to endless legal challenge if the Report were published. The withdrawal of 'Access to Oxford' also makes it impossible to achieve any of the planning conditions the Inspector may have suggested.

We believe that the Inspector now has no alternative but to delay issuing his report until the new Localism Bill is in place and a revised and improved Core Strategy drafted. This will involve more time and effort but will mean that the City is able to rely on a proper framework for its development. If the plan were to be issued now then the result would be confusion, legal conflict and paralysis.

Yours Sincerely

Jonathan Gittos, Engage Oxford

ATT : Mr Stephen J Pratt
RE : Effects of Current RSS Status
Date : 29/11/2010

Dear Mr Pratt

With reference to your letter of 11/11/2010 regarding the Oxford Core Strategy please consider this submission. I am mainly concerned with Barton West.

The Background

The RSS SE Plan was conceived to provide more housing for the UK in general rather than addressing local needs and constraints.

There were two fundamental material flaws in the plan in relation to Oxford.

Housing

The RSS predicates very crudely, the number of houses equates, or is at least closely proportional to the accommodation need, therefore the goal was housing delivery.

Whereas this is simplistic, it is reasonable for the UK in general yet this relationship can be decoupled in the case of the very special nature of Oxford.

A high proportion of Oxford's population has specific, specialist, housing needs for example, students, key/medical workers, temporary workers such as consultants, visiting academics, language students, many on short term secondments.

To summarise and simplify, they will generally require higher density accommodation, shorter leases, simpler setup such as serviced accommodation where one bill is paid for all services, and will not have any access to car parking in the city, and travel to large institutions in the city.

As a result, less infrastructure such as roads and schools etc is required, leading to less traffic and environmental problems and a higher land value for developers of such facilities, allowing the Council to fund say 70% social housing in small sites in rich areas.

The provision of accommodation of this nature, with sports and social facilities at Barton would release housing, and alleviate traffic and social problems in Cowley, St Clements and Headington and reduce social apartheid and will effectively provide more homes for local people in Oxford.

The level of social housing in any particular development is irrelevant provided the total provision in the city is, say 50%.

The RSS's goal was to provide housing for the UK, Barton, as conceived, will achieve this by providing 60% of its housing for consultants who need a

centrally located base between London and Birmingham that does not involve a 30 minute drive to exit the ring road.

Using an Oxford centric approach, it is clearly better to free homes in the city, to alleviate the local housing shortage rather than assist others.

Designation as Diamond For Growth

Whereas the position of Oxford on the map may have lead to the erroneous assumption that it should be a "Diamond for Growth" from a national perspective, it is clear that Oxford has neither space nor infrastructure to support more housing or population increase.

Current Legal Position

The above is a material consideration as the goals defined by RSS, therefore the outcome of the Core Strategy were not appropriate for Oxford which needs appropriate accommodation, not extra housing.

The Core Strategy has not as yet, been accepted, therefore is not valid at this point.

The Core Strategy was conceived to last ten years, and although Parliament has yet to express its will via the Localism Bill, it seems certain that the RSS and its goals will be rescinded only months after it commences.

No government may bind its successor, yet the logic of accepting RSSes, the Core Strategy and the Barton AAP, would do exactly that.

One could argue that the judgement of the soundness of the Core Strategy should also be based on a point of time decision, judged on the situation as it stands now, knowing it will certainly rescinded or changed in the near future.

A basic principle of English law is that if a clause or term of a contract is found to be unsound, then the entire contact is declared void as the whole is intimately linked, one cannot cherry pick clauses.

In this case, as the Core Strategy ten year term will be changed, then so must the whole, therefore it cannot stand. It is not a contract as such, yet the logic and principles remain the same.

The Cala Homes case is based specifically on the principle that a *planning application* should be determined using the RSS housing targets as the RSS had not been legally revoked.

A planning application requires a point in time decision, which is very different to an expression of intent which comprises the Core Strategy, which would last longer than the period in which the legislation will exist.

Oxford has not yet made any planning application regarding Barton, nor is likely to before a change in the law.

To take an analogy – a bank conceives of a risky financial product, the systems are made ready, the marketing is done, the staff trained (RSS/The Core Strategy). The government then bans the product from use. (Localism)

Has the bank broken the law? No, the planning took place prior to the change – would the bank break the law by proceeding ? Yes of course. (The implementation of the Core Strategy)

Put more crudely, I cannot plan to rob a bank when the maximum penalty is 10 years, and then complain about a 13 year sentence because the law changed the day before the robbery.

The Council would argue this is irrelevant as the housing need in Oxford is in any case high, but as argued above, this has been an assumption based on housing targets, not local accommodation needs, which have never been properly assessed due to the target of building houses, not providing accommodation.

As the Barton AAP was allocated to housing without any meaningful consultation, site DPD, and prior to any Core Strategy against which it could be scientifically judged, it is hardly surprising the result is the most environmentally, socially divisive, and financially irresponsible outcome conceivable.

The report to the Head of Corporate Assets to the Executive Board on the 10/11/2010 stated the Council had considered similar usages as above, but the report by King Sturge/Evershed, "Non Technical Report – Land at Barton, Oxford, October 2010" is confidential. Not only was there no consultation, the reasoning and data the Council used is kept secret, and the conclusions appear to be erroneous.

Summary

As the effect of the Core strategy were to last ten years, and its legal framework will be changed in the near future, and it is essentially a statement of intent, rather than a specific act such as a planning application, it must be declared invalid on the grounds above.

The Cala Homes judgement also draws attention to the need for another environmental assessment of any change in planning policy – as the Barton West development, and the simplistic social housing strategy would fail any basic environmental analysis, it is highly likely to fall foul of any new assessment.

As indicated in previous communications, it is in any case unsound socially, environmentally and financially.

Yours faithfully

Mark Pitt

Oxford Core Strategy Hearing in Public

REVOCATION OF SE RSS INSPECTOR'S INVITATION TO COMMENT OF NOVEMBER 11 2010

RESPONSE OF OXFORDSHIRE ARCHITECTURAL AND HISTORICAL SOCIETY WITH OXFORD CITY AND COUNTY ARCHAEOLOGICAL FORUM

Very significant weight should still be given to the Government's intention to abolish the regional plans and RSSs as it is not just a declared intention but they have actually tried to do it, and moreover will shortly be publishing draft legislation actually to do so. Furthermore, as we understand it, the Government has indicated that it is not going to challenge the findings of the judicial review into the S of Oxford housing allocation that was challenged by S Oxfordshire and the CPRE. This also should be a material consideration. In our view it would be ludicrous for Oxford to be tied to targets that were not only already defunct from any practical planning purpose, but also completely out dated by the economic situation - as already covered in the extra hearing.

The only area where there might be some question is whether more weight should now be given to general policies which are not the main objective of abolishing the Plan and RSS. We have already suggested that the SE Plan heritage policies should continue to be reflected in the Core Strategy, not least because they are in line with PPS5 - which now applies anyway. At the last hearing the Inspector asked Mr Lambrick whether, in suggesting improvements to the heritage policy and provisions the draft core strategy was contrary to PPS5 with what seemed to be an implication that if they are not inconsistent there is no reason to improve them. We may be reading too much into this exchange, but the impression left with was that a minimalist approach might be adopted. On this basis it may be relevant to note, as already done in submission for the last session that attention should be paid to the heritage policies in the SE Plan. One of our members who has cause to use them has especially drawn attention to the following passage in the plan:

"POLICY BE6: MANAGEMENT OF THE HISTORIC ENVIRONMENT

When developing and implementing plans and strategies, local authorities and other bodies will adopt policies and support proposals which protect, conserve and, where appropriate, enhance the historic environment and the contribution it makes to local and regional distinctiveness and sense of place. The region's internationally and nationally designated historic assets should receive the highest level of protection. Proposals that make sensitive use of historic assets through regeneration, particularly where these bring redundant or under-used buildings and areas into appropriate use should be encouraged.

Para. 12.15: The historic environment includes the physical evidence of past human activity. It is all around us as part of everyday life, and it is therefore dynamic and continually subject to change. It is not limited to the built environment and archaeological sites, but includes landscapes, both urban and rural and as an example of its great diversity, marine heritage sites around the coast. These environments are fragile and require protection, but also have an enormous potential to contribute to a sense of place and identity and add to the quality of our daily lives through

understanding and appropriate management and access."

The proposals we have made to the Core Strategy, if adopted will help to ensure fulfilment of this element in the SE plan - as is entirely appropriate to Oxford as a city of international historic importance.



OXFORDSHIRE GREEN PARTY

Secretary: Judy Chipchase

06 December 2010

Dear Inspectors Pratt and Fenton,

Thank you for consulting on our views on Regional Strategies following the legal challenge (Cala Homes case 2010 EWHC 2866).

We presume you will be taking advice on the finer legal implications following this decision.

As we understand it Regional Plans even when revoked are a material consideration in planning decisions, as are also statements made in Parliament by the Secretary of State which include his intention to abolish regional strategies of this kind. Also we presume is material the Government's intention to bring in a Localism Bill which we understand is to appear shortly. It must surely also be a consideration that this may not be the best time to rule favourably on a problematic and contentious Core Strategy when possibly fundamental changes may be about to be brought in to the local planning process.

Planning decisions obviously involve fine considerations of the weightings given to all material considerations and in our view there are very strong material considerations against the acceptance of this plan, that in this case are more influential than just the regional planning framework.

We have opposed the Core Strategy on the grounds of soundness and deliverability since it was first finalised. Since then our fundamental objections have been re-enforced by the enormous changes in circumstances since both the South East Plan and the Core Strategy were both drawn up.

This has been born out in our opinion by both the changing economic situation, the changed position on SOSDA, and the new Government's emphasis on Localism, and not least the increasing urgency of climate change considerations.

Moreover we consider highly material the length of time this Core Strategy has been under consideration and the level of local opposition to a large number of its policies on grounds of unsoundness and deliverability. Significant objections have been made by residents and other groups from all over the city, and by city wide bodies concerned with both the built and natural environment. They have also not only involved our Party and our councillors but a Conservative M.P., The Lord Mayor and most of the other Liberal Democrat councillors.

The City Council undertook an apparent consultation exercise this year, when it had an opportunity to revisit the plan in a more considered manner taking into account the changed circumstances and the volume of objections. However this resulted in little more than the removal of any references to SOSDA from the Plan, this course of action having been largely forced upon the Council by outside circumstances.

We would therefore continue to press you to rule that this Core Strategy is unsound and not deliverable as it stands. This latest legal ruling shows how very necessary it can be to have a robust plan that will withstand challenges and changed circumstances legal or otherwise.

Localism in planning to us involves participating with the wider community in the preparation of a plan. We think that the present time offers an opportunity for the Council to go back and start to draw up a sounder, more deliverable, more acceptable and more robust plan that safeguards and enhances the future of Oxford.

Yours sincerely

Judy Chipchase

For Oxfordshire Green Party

85 Lonsdale Road, Summertown, Oxford OX2 7ET

Telephone: [REDACTED] Mobile: [REDACTED] Email: [REDACTED]

1st December 2010

Inspector Stephen Platt
c/o Mrs. Helen Wilson
Programme Officer
By email: progofficer@aol.com

Dear Inspector Pratt

OXFORD CORE STRATEGY: PUBLIC EXAMINATION

I refer to the letter dated 11th November 2010 issued by the Programme Officer, inviting further representations on the Examination process, and the merits or otherwise of issuing the Inspectors' Report at this time. Of course, in addition to the events to which you refer, regarding the successful legal challenge to the revocation of the Regional Spatial Strategy, there has been a further development, in that the legality of the instruction, issued on behalf of the Secretary of State, to the effect that it should be regarded as a Material Consideration in any Planning matters, that it is the intention to revoke the Regional Spatial Strategy upon the passing into law of the forthcoming Localism Bill, has also been challenged.

The grounds for this challenge appear to be that nothing should be capable of being regarded as a Material Consideration while uncertainty exists as to whether it will, in fact, eventuate. The content of the Localism Bill has yet to be made public, and the political and administrative process has not yet commenced. Particularly in the current circumstances wherein the Government comprises a coalition of uncertain stability, the passage of this Bill through all the various necessary stages remains unpredictable. There are many potential opportunities for its amendment, and even for it to be derailed or abandoned. It is thus, at best, highly premature for it to be suggested that one of the subjects of an as-yet unpublished Parliamentary Bill has sufficient certainty of adoption to merit the instruction that it should be regarded as a Material Consideration in matters relating to the Planning process. It therefore seems likely that the latest legal challenge has a high probability of success; in any event, there is evidently significant uncertainty as to whether or not the RSS will, in fact be revoked, and, if so, when.

Another recent more positive development has been the confirmation of acceptance by the Government of the Oxfordshire City Local Enterprise Partnership, covering the area of the whole county of Oxfordshire. The LEP is intended to drive and coordinate economic development across the area, which is clearly much larger and more diverse than that to which the Oxford Core Strategy relates. Clearly, Planning strategy within the LEP area must be closely linked to and consistent with emerging economic strategy; none of the Core Strategies of any of the other Planning Authorities within the LEP area have yet been adopted, and it would be unhelpful for the Oxford Core Strategy, uniquely within the LEP area, to be adopted, and perhaps determine policies which may well be inconsistent with, or restrict

the consideration by the LEP of desirable economic strategies. It is self-evident that a genuine consideration material to the development of the Oxford Core Strategy is the policy for social and economic development across the wider area of the county, but of which Oxford city is a crucial part. Such consideration has not been given, since the OCLEP is newly-formed and its policies are yet to be formulated, but it would be much more constructive for adoption of the Oxford Core Strategy to at least be delayed, and possibly adjusted, until the policies of the OCLEP emerge.

Although details of the Localism Bill have not yet been disclosed, it has been made public that the concept of 'neighbourhood planning' is to be introduced, with a 'bottom-up' approach to the development of strategy. It remains obscure how this may be implemented, but, clearly, much more weight is intended to be given to local opinion and community enterprise. In the situation prevailing in Oxford, where local community representation is very strong, and where enormous antipathy to the proposed Core Strategy has been engendered, it would be unhelpful and unfair to pre-empt emerging legislation by permitting the adoption of a Core Strategy, the status and future of which may be uncertain. This uncertainty must be of equal concern to landowners and potential developers as it is to Local Authorities and residents. The fact is that the Core Strategy process may well be significantly amended, if not rendered effectively obsolete by the forthcoming legislation; it is unhelpful and counter-productive to progress with this potentially-obsolete process at this time; indeed, it is unnecessary to do so, since the existing Local Plan remains valid until 2016. A better course would clearly be to delay any decision on the further progress of the Core Strategy Examination until the terms and effects of the Localism Bill become evident.

Meanwhile, and to return to the matter of the significance of the South East Plan RSS, the plaintiffs in the earlier successful case against the Secretary of State, which concluded that the process for inclusion of the South Oxford Special Development Area was defective, have re-activated negotiations on the terms of the Consent Order relating to that legal decision, but the outcome of these remains uncertain also.

To summarise, at the moment there is uncertainty about the status of the RSS, about whether or not the SOSDA might be included, about the likely content and implications of the forthcoming Localism Bill, about the economic and social strategies likely to be developed by the newly-formed OCLEP, and even about the future status of the Core Strategy itself. There is no over-riding imperative for the early adoption of the Oxford Core strategy, indeed, none of the Core Strategies for the surrounding authorities making up the OCLEP area have been adopted, and the current Local Plan is less than halfway through its period of validity.

I therefore conclude that it is inappropriate in these circumstances to proceed with the Oxford Core Strategy Examination.

Yours sincerely,

Peter Thompson

In a message dated 03/12/2010 16:38:00 GMT Standard Time, [REDACTED] writes:

At the invitation of the Inspector, I would make the following comments:

1. Regional Spatial Strategies no longer exist. Legislation earlier in 2010 combined a Regional Spatial Strategy and a Regional Economic Strategy into one document entitled the Regional Strategy. It is therefore inappropriate to refer to the SEPRSS which no longer exists as a statutory document in the planning process.

2. Notwithstanding the above, the Regional Strategy for the South East Region no longer complies with the Town and Country Planning (Regional Strategy) (England) Regulations 2010 and PPS11 guidance and therefore its authority as a statutory document is questionable. To explain, in order to comply with the legislation, a “responsible regional authority” is required to implement, monitor and revise the Regional Strategy (RS). The definition of “responsible regional authority” comprises a Regional Development Agency and the Leaders Board. Leaders Boards have been abolished and, pending their abolition, Regional Development Agencies have no funding to resource implementation, monitoring or revision of the RS.

3. I was unable to attend the final day of the latest round of hearings at which a new document was presented CD16/78 “Examination Changes”. The document was not sent to me and I have been afforded no opportunity to make any representation thereon.

4. The Inspector is now asking for comments on matters outside the scope of the examination “to invite the Council and all representors for their views on the latest situation in terms of the status of the regional strategy”. I am not

legally qualified and nor am I a party to any legal challenges. It is up to the Courts to determine the status of the regional strategy and any comments made by representors or the Council to the Inspectorate will have NO effect thereon.

5. This whole process has been a circus minus the humour!

Mrs R Harris

Oxford Core Strategy: Representation of 00090 Sean Feeney for 3 December 2010

–Fog everywhere. Fog up the river, where it flows among green aits and meadows; fog down the river, where it rolls defiled among the tiers of shipping and the waterside pollutions of a great (and dirty) city. Fog on the Essex marshes, fog on the Kentish heights. Fog creeping into the cabooses of collier-brigs; fog lying out on the yards, and hovering in the rigging of great ships; fog drooping on the gunwales of barges and small boats. Fog in the eyes and throats of ancient Greenwich pensioners, wheezing by the firesides of their wards; fog in the stem and bowl of the afternoon pipe of the wrathful skipper, down in his close cabin; fog cruelly pinching the toes and fingers of his shivering little 'prentice boy on deck. Chance people on the bridges peeping over the parapets into a nether sky of fog, with fog all round them, as if they were up in a balloon, and hanging in the misty clouds...

“Jarndyce and Jarndyce drones on.”

Charles Dickens, *Bleak House* (1852).

1. Cala Homes' New Judicial Review

–When I use a word,” Humpty Dumpty said, in a rather a scornful tone, –it means just what I choose it to mean—neither more nor less.”

–The question is,” said Alice, –whether you *can* make words mean so many different things.”

–The question is,” said Humpty Dumpty, –which is to be master that’s all.”

Lewis Carroll, *Through the Looking Glass: and what Alice found there* (1871), Chapter VI, Humpty Dumpty.

This is my latest response in the longest running Core Strategy Examination in the country (two years is it so far?), invited in a letter from the Programme Officer dated 10 November 2010 requesting:

–the Council and all representors for their views on the latest situation in terms of the status of the regional strategy and the policy implications for the Core Strategy.”

<http://www.oxford.gov.uk/Direct/CSExaminationLetterfromProgrammeOfficer11Nov2010.pdf>

The latest situation (as I informed the twin Inspectors in my email dated 29 November) is that on 25 November 2010, Mr Justice Lindblom ordered in the High Court that the statement of the Secretary of State for Communities and Local Government dated 10 November 2010 and the letter of his Chief Planner of the same date (incorporating by reference the Chief Planner's letter dated 27 May 2010) be:

-stayed until further order."

http://www.4-5.co.uk/uploads/docs/section5/Cala_Lindblom_J_order_26nov10.pdf

Mr Peter Village QC again acts for Cala Homes; his barristers-chamber's website states:

4-5 NewsCourt orders stay and expedition in second Cala Homes challenge

Date: 26 Nov 2010

Peter Village QC, James Strachan and Sarah Hannett have been instructed in further judicial review proceedings for Cala Homes.

On 26 November 2010 Lindblom J ordered expedition and made other directions with respect to Cala Homes' claim for judicial review of, inter alia, the Secretary of State for Communities and Local Government's Statement of 10 November 2010 regarding the materiality of the Government's intention to abolish Regional Strategies. Lindblom J also ordered a stay of the effect of the Secretary of State's statement, and the letter of the Chief Planner of the same date.

Peter Village QC, James Strachan and Sarah Hannett are instructed by Macfarlanes (Ian Ginbey) on behalf of Cala Homes (South) Limited.

A copy of Lindblom J's order can be seen here by clicking on the icon below.

Documents



[Lindblom J's Order \(PDF 368 kb\)](#)

I suggest the twin Inspectors note the High Court's order (and its application to the Oxford Core Strategy Examination) staying the allegedly unlawful actions, and the effects, of the Secretary of State and his Chief Planner.

So the latest situation is that the matters I am invited to comment on are formally within the jurisdiction of the High Court and are therefore sub-judice. Given this, it is, in my opinion

foolish for the twin Inspectors not to have suspended this latest round of representations into a Core Strategy which I believe is fundamentally legally flawed and unsound, because the logically consistent thing for the for the Inspectors to do is to invite a further round of representations when the High Court delivers its judgment on matters invited in the current representation, which is therefore redundant.

The effect of the staying order (unless *and until* it is rescinded after the substantive hearing listed for 20 December 2010) is that the hearings in September 2010 were a waste of time and money because:

1. SOSDA remains allocated by the Regional Strategy following Cala Homes previous successful judicial review;
2. the previous CPRE/Oxford University et al judicial review was stayed without a Court order deciding the judicial review so the Regional Strategy is currently unaltered by this action (according to a written representation by the CPRE, one of the parties to the action); and
3. the twin Inspectors' draft ~~confidential~~ report cannot be issued because it cannot contain SOSDA - as it must do to to fulfill the *statutory duty* to be in general conformity with the Regional Strategy.

Incidentally, I believe the answer to Humpty Dumpty's question

~~The question is,~~ said Humpty Dumpty, ~~which is to be master that's all.~~

is that the High Court is master not Eric Pickles, MP, and not Chief Planner Steve Quartermain and not Inspector Fenton and not Inspector Pratt.

2. District Auditor's £9000+ investigation of Core-Strategy-approval processes

The 22/11/2010 meeting of the Council's Audit and Governance Committee contained two reports on my formal objection to the Oxford City Council's accounts, reporting inter alia:

Local electors questions and objectors: A number of local electors have exercised their rights to ask the Council to provide them with information relating to the accounts and subsequently ask me questions. One elector has made objections against expenditure in the Council's accounts. I am currently reviewing this objection. I have not issued my certificate pending the conclusion of my work on the objection. There will be an extra charge to the Council for this work. The cost to the end of October 2010 is around £9,000 and the work is ongoing. Maria Grindley, District Auditor, ANNUAL AUDIT LETTER – AUDIT COMMISSION, [Item 3.pdf](#)

Questions and objections 18 A few local electors have exercised their rights to ask the Council to provide them with information relating to the accounts and subsequently ask me questions. One elector has made an objection against expenditure in the Council's accounts. I am currently responding to these. I may need to consider holding the audit open until I have concluded my work on the objection. There will be an additional charge to the Council for the time I spend doing this.

Maria Grindley, District Auditor, ANNUAL GOVERNANCE REPORT – AUDIT COMMISSION, [Item 4.pdf](#)

At this public meeting, the Council's Chief Executive Peter Sloman claimed that the twin Inspectors' "confidential draft report" stated the Council had correctly followed all procedures and regulations. At the time of writing I have not received a response to my objection. Therefore, it is open for the District Auditor, or ultimately the Courts, to reach a different conclusion to that Mr Sloman publicly claimed the twin Inspectors have reached - in what he described as their "confidential draft report".

2. New matter since the last Examination hearings: (1) Oxford City Council accepts its Core Strategy affordable homes policy is unsound, (2) Homes and Communities Agency budget cut by 50%, and (3) no funding for Access to Oxford

On 10 Nov 2010 the Oxford City Council City Executive Board had a report (please make this report a core document)

4.	BARTON – LAND DEVELOPMENT Item 4a.pdf
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This stated inter alia (paragraph 5):

Our consultants, having analysed the project in great detail, advise that due to the abnormal costs involved, the lack of grant for social housing, together with a normal S106 package and 50% affordable housing result in the site having a negative development value. They further advise that to make the scheme viable either a reduced level of affordable housing (40% which will be 100% social rented), a much reduced S106 package (potentially prejudicing the community facilities provided) is agreed, or a retail or other higher value use is permitted on the site. They conclude that of these the key variable is the level of affordable housing as it is understood that the majority of the S106 requirements are necessary for the regeneration benefits associated with the site, and the Council is not able, at this time, to commit to a significant retail or other high value use on the site.

My representation is that this is new evidence that the Core Strategy policy on having 50% affordable housing is undeliverable and therefore unsound; and that this evidence supports the multiple representations that the Council has failed to recognise that the changed economic circumstances make its Core Strategy undeliverable.

Also the Government has announced that the budget of the Homes and Community Agency has been cut by 50%. Since much of the development at strategic sites was contingent on HCA funding, my representation is that this is new evidence that much of the development planned in the Core Strategy is undeliverable and the Core Strategy as a whole is therefore unsound.

The Government has also made an announcement that funding for Access to Oxford has not been granted. My representation is that this is evidence that the entire Core Strategy is unsound, and that this supports the strong representations of unsoundness made by the two highways agencies, particularly the Highways Agency.

3. The stayed CPRE/Oxford University et al judicial review

The Oxford Core Strategy Examination was suspended when the Secretary of State failed to defend a multi-party judicial review to the South-East Plan. That legal action was stayed by the High Court following the Secretary of State's direction revoking Regional Strategies. On 10 November the High Court ruled this direction was unlawful (please make this Cala Homes judgment a core document). The response of the Secretary of State and his Chief Planner was issued the same day as judgment was given, and is the subject of a further legal action (see above).

The Cala Homes' judgment revives the cause of action in the CPRE et al judicial review. I currently understand that the CPRE have written to the Treasury Solicitor to revive and conclude that action.

I understand that this circumstance is covered by Section 113 of the Planning and Compulsory Purchase Act 2004 (given below). For the avoidance of doubt, my legal submission (a submission about the law not a submission made by a lawyer) is that the South-East Plan cannot be questioned in legal proceedings such as the Oxford Core Strategy statutory Examination unless and until a relevant *Court Order* is made. I currently understand that no such order has been made. It is therefore my legal submission, notwithstanding possible concessions of unlawfulness made by the Secretary of State, that core document

CD10/1	The South East Plan
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remains unchanged *unless and until* valid court orders are made. If such orders are made it is my legal submission that I have a right to be informed of these orders and to make statutory representations on them because there is a statutory duty that the Oxford Core Strategy is in general conformity with the Regional Strategy, of which the South East Plan forms part.

113 Validity of strategies, plans and documents E+W

(1) This section applies to—

(a) a revision of the regional spatial strategy;

(b) the Wales Spatial Plan;

(c) a development plan document;

(d) a local development plan;

(e) a revision of a document mentioned in paragraph (b), (c) or (d);

(f) the Mayor of London's spatial development strategy;

(g) an alteration or replacement of the spatial development strategy,

and anything falling within paragraphs (a) to (g) is referred to in this section as a relevant document.

(2) A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions of this section.

(3) A person aggrieved by a relevant document may make an application to the High Court on the ground that—

(a) the document is not within the appropriate power;

(b) a procedural requirement has not been complied with.

(4) But the application must be made not later than the end of the period of six weeks starting with the relevant date.

(5) The High Court may make an interim order suspending the operation of the relevant document—

(a) wholly or in part;

(b) generally or as it affects the property of the applicant.

(6) Subsection (7) applies if the High Court is satisfied—

- (a) that a relevant document is to any extent outside the appropriate power;
 - (b) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement.
- (7) The High Court may quash the relevant document—
- (a) wholly or in part;
 - (b) generally or as it affects the property of the applicant.
- (8) An interim order has effect until the proceedings are finally determined.
- (9) The appropriate power is—
- (a) Part 1 of this Act in the case of a revision of the regional spatial strategy;
 - (b) section 60 above in the case of the Wales Spatial Plan or any revision of it;
 - (c) Part 2 of this Act in the case of a development plan document or any revision of it;
 - (d) sections 62 to 78 above in the case of a local development plan or any revision of it;
 - (e) sections 334 to 343 of the Greater London Authority Act 1999 (c. 29) in the case of the spatial development strategy or any alteration or replacement of it.
- (10) A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document.
- (11) References to the relevant date must be construed as follows—
- (a) for the purposes of a revision of the regional spatial strategy, the date when the Secretary of State publishes the revised strategy under section 9(6) above;
 - (b) for the purposes of the Wales Spatial Plan (or a revision of it), the date when it is approved by the National Assembly for Wales;
 - (c) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be);
 - (d) for the purposes of a local development plan (or a revision of it), the date when it is adopted by a local planning authority in Wales or approved by the National Assembly for Wales (as the case may be);
 - (e) for the purposes of the spatial development strategy (or an alteration or replacement of it), the date when the Mayor of London publishes it.

Page 48 of the [Proposed Changes to the Submission Core Strategy](#) clearly and *explicitly* states the need for the Oxford Core Strategy to contain policy text on the South Oxford Strategic Development area to comply with the *statutory duty* to be in general conformity with the Regional Strategy - in a section explicitly headed *Relationship to the Spatial Strategy*:

Relationship to the Spatial Strategy

The proposed South Oxford SDA would significantly contribute to meeting the city's housing need, but because it is outside Oxford's boundary it would not contribute to meeting our housing targets. It would however, increase the supply of housing close to where people work, so helping to reduce the need to travel.

The SDA is a different type of strategic site because it lies wholly outside of the city's boundary. *However, it has been important to consider the implications in the context of the spatial strategy and to ensure that the Core Strategy conforms with the South East Plan.* Significant growth to the south of the city would support several of the elements of the spatial strategy; for example the regeneration of Blackbird Leys with a newly designated district centre and the promotion of Cowley Centre as an interchange for local public transport. [Emphasis added.]

The importance of this strategic site to the Oxford Core Strategy, even though it is outside the city boundary is expanded on in an earlier passage:

To deliver an adequate level of housing and employment, this means the following strategic areas: strategic locations for development have been identified. Strategic sites or areas of search should be identified where These are considered centrally important to the delivery of the strategy for the city over the period to 2026. Development of strategic sites close to areas in need of regeneration should seek to ensure that the new developments are well integrated physically and functionally with the existing urban fabric, and also attract investment that stimulates regeneration to benefit deprived communities. The strategic locations for development in Oxford are: West End, Northern Gateway and land at Barton. *The proposed South Oxford SDA would be outside the city boundary, but it is important to the spatial strategy because of its location immediately adjoining the city, its role in providing housing for the city and the need to integrate services and facilities.* The potential site of land at Summertown would support the spatial strategy but is not fundamental to the delivery of the strategy.

[Proposed Changes to the Submission Core Strategy](#), p. 37 [emphasis added]

Because the Regional Strategy is currently extant policy (and at the time of writing a Court Order stays the Government response to the Cala Homes judgment) and allocates this site, my representation is that deletion of the policy text on SOSDA within the [Proposed Changes to the Submission Core Strategy](#) would make the entire Oxford Core Strategy unsound, and that the twin Inspectors have no power to make this deletion because no withdrawal direction has been either sought or granted, and the Inspectors have no power to make a Core Strategy more sound.

My representation is that SOSDA policy can only be deleted by the Inspectors if the policy is unsound. My representation is that the SOSDA policy itself is evidence of an unresolved cross-boundary dispute between Oxford City Council and South-Oxford District Council and this unresolved dispute makes the entire Oxford Core Strategy unsound.

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Administrative Court**

CO/12056/2010



Between:

Cala Homes (South) Limited	Claimant
and	
Secretary of State for Communities & Local Government	Defendant
and	
Winchester City Council	Interested Party

ORDER

Upon reading the Claimant's application for judicial review dated 18 November 2010 and application for directions dated 18 November

IT IS ORDERED that:

1. The claim be expedited.
2. Time for serving an Acknowledgement of Service and the Defendant's grounds for contesting the claim shall be abridged. The Defendant shall serve its grounds for contesting the claim on the Claimant within 7 days of the date of this order. The Defendant shall, at the same time, file and serve any written evidence on which it intends to rely.
3. The effect of the Statement of the Defendant dated 10 November 2010 and the letter dated 10 November 2010 as sent by the Defendant's Chief Planner to all local planning authorities in England (which incorporates by reference a letter sent by the Chief Planner dated 27 May 2010) is stayed until further order.
4. The obligation on the Defendant to file and serve further detailed grounds for contesting the claim under CPR 54.14 shall be dispensed with.
5. The matter shall be listed for a rolled up permission and substantive hearing on 20 December 2010 or the first available date thereafter, with a time estimate of 1 day.
6. The Claimant shall file and serve a skeleton argument 5 working days prior to the hearing.
7. The Defendant shall file and serve a skeleton argument 3 working days prior to the hearing.
8. All parties shall have liberty to apply on 48 hours notice.

Mr Justice Lindblom

25 November 2010

By the Court

SOUTHFIELD GOLF CLUB

HILL TOP ROAD, OXFORD OX4 1PF
www.southfieldgolf.com

HOME OF
OXFORD CITY GOLF CLUB ▪ OXFORD LADIES GOLF CLUB ▪ OXFORD UNIVERSITY GOLF CLUB

Mr S J Pratt BA (Hons) MRTPI
C/O Mrs H Wilson
c/o Conference Centre Oxford
Cantay House
Park End Street
Oxford OX1 1JD

3rd December 2010

Dear Mr Pratt,

**Oxford Core Strategy
Response of Southfield Golf Club / Oxford City Golf Club / Oxford Ladies Golf Club / and
Mr R J Davies (together herein referred to as the “Club”)**

Thank you for the opportunity to respond to your letter dated 11th November 2010 regarding revocation of The South East Plan - Regional Spatial Strategy, by the Secretary of State. The Club note the issues raised therein and re-iterates its view that the Core Strategy should be concluded without further delay, given that the additional hearing sessions have now been concluded.

The position of the Club regarding the Core Strategy remains as set out in our previous consultation responses and EIP statements, including a Statement of Common Ground with the City Council, thus not repeated in this response.

The Club remains of the opinion that it is essential that the Core Strategy is completed, without further delay, given the time and resources expended by the Council and other stakeholders to date on the Core Strategy, so that the City Council can maintain an up to date planning framework to guide the future development of Oxford.

The Club wishes to see the previously agreed Statement of Common with the Council, relating to the land at Southfield Golf Course, incorporated into the final adopted Core Strategy so that greater certainty over the Club's future can be attained.

Yours Sincerely

Ray Davies
Hon Planning Liaison Member OCGC Ctee

On Behalf of

Southfield Golf Club
Oxford City Golf Club
Oxford Ladies Golf Club
Mr R J Davies

3 December 2010
L 101203 PB Response to Inspectors

Mrs Helen Wilson BA (Hons)
Programme Officer
c/o Conference Centre Oxford
Cantay House
Park End Street
Oxford
OX1 1JD

David Jackson
E: [REDACTED]
DL: [REDACTED]
F: +44 (0) 1865 269 001

Wytham Court
11 West Way
Oxford OX2 0QL
DX 96205 - Oxford West
T: +44 (0) 1865 269 000
savills.com

Dear Mrs Wilson

RE: Response to Inspectors letter of 11 November 2010

We are writing on Magdalen College and Thames Water Property (Magdalen/Thames) in response to the Inspector's letter of 11 November 2010, in which comments on the implications of the recent Cala Homes (Southern) Ltd decisions for the Oxford City Council Core Strategy were invited.

Magdalen/Thames have jointly promoted proposals for the South Oxford SDA and are the principal owners of land to the south of Grenoble Road, which is the preferred location for the SDA. In that capacity, Magdalen/Thames participated in the session of the Oxford Core Strategy examination that considered the provisions for the SDA. Throughout the Public Examination, despite changing circumstances Magdalen/Thames has consistently expressed view that the Core Strategy should make provision for the South Oxford SDA. In their joint statement to the examination on Matter 8.4 Magdalen/Thames supported the introduction of text to the Core Strategy that addresses the objectives for, and delivery of, the SDA.

There have been two important considerations that bear on the Magdalen/Thames proposition:

- i): the status of the legal challenges made against South East Plan (SEP) following its publication; and
- ii) the intentions of the new Coalition Government following the General Election in May 2010.

In May 2010 the Secretary of State confirmed the Government's intention to 'rapidly abolish' Regional Strategies and the formal revocation was announced on 6th July 2010. The High Court has now found that the revocation of RS was unlawful (Cala decision of 10 November 2010) and a block has also been placed on the content of the letter issued by the Government's Chief Planner (Steve Quartermain), dated 6th July 2010, that the Government's plans to abolish RSS should be treated as a material consideration (Cala decision dated 29 November 2010). The cumulative effect of the Cala Homes decisions is that the SEP is now reinstated as part of the development plan.

Of course, we are aware that the SEP has itself been the subject of a legal challenge in relation to the South Oxford SDA, including by South Oxfordshire District Council and other parties. On 29 September 2009 the then Secretary of State announced that he would not contest the legal challenge and the parties entered into negotiations to seek to agree appropriate revisions to the SEP. This process of negotiation has not been resolved and so the implications of the legal challenge on the SEP remain to be determined. In these circumstances we consider that it is appropriate for the Core Strategy to retain a contingency policy in order to address the continuing uncertainty.

PPS12, paragraph 4.46 addresses just such circumstances where uncertainty exists (under the heading 'Flexibility') and states:

'A strategy is unlikely to be effective if it cannot deal with changing circumstances. Core strategies should look over a long time frame – 15 years usually but more if necessary. In the arena of the built and natural environment many issues may change over this time. Plans should be able to show how they will handle contingencies: it may not always be possible to have maximum certainty about the deliverability of the strategy. In these cases the core strategy should show what alternative strategies have been prepared to handle this uncertainty and what would trigger their use. Authorities should not necessarily rely on a review of the plan as a means of handling uncertainty.'

In the present circumstances, it is right for the Core Strategy to recognise that the SEP is re-instated as part of the development plan. In addition, it remains the case that there are a number of possible outcomes to the legal challenge to the SEP as it relates to the South Oxford SDA. In previous submissions Magdalen/Thames proposed wording for a policy that provided for the contingency whereby the SDA is to be delivered as part of the development plan and this wording is repeated below for the Inspectors to consider:

'The South East Plan as published by the Secretary of State in May 2009 includes an allocation of 4,000 dwellings for the period up to 2026 as part of a mixed use South of Oxford Strategic Development Area (SDA). To facilitate this urban extension the South East Plan proposes a selective review of Green Belt boundaries on the southern edge of Oxford, within the local authority area of South Oxfordshire District. The selective review is proposed to take place by one or more co-ordinated development plan documents, with the aim of identifying land to be removed from the Green Belt to facilitate the SDA with minimal impact on village identity and the landscape setting of the city.'

The SDA and associated selective Green Belt review is the subject of 4 legal challenges, which the Secretary of State has decided not to contest and are therefore to be submitted to the High Court for judgement. In this context the likely outcome is for the Court to uphold the challenges and for all reference to the SDA and Green Belt review to be deleted from the South East Plan. In this scenario, the Council acknowledges there will be no policy requirement for the urban area of the City to grow beyond the present local authority boundaries.

Under the legal challenge procedure, the High Court has within its power to rule that relevant parts of the SEP should be remitted to the SofS for redetermination to correct errors in the process. In this scenario it is for the Secretary of State then to undertake the necessary procedures that will remedy the procedural failings and reinstate the provisions for the South Oxford SDA into the South East Plan. In this scenario the City Council will work with the adjoining authority of South Oxfordshire District Council to deliver the SDA in accordance with the process of implementation contained in the May 2009 published version of the South East Plan and in particular paragraph 22.31, or whichever wording might replace it. In doing so the City Council will seek to achieve the following Key outputs:

(Insert key outputs as listed on the Proposed Changes to the Submission document at page 48 and Policy CS8 to be the subject of a caveat at the beginning with the insertion of the following wording 'In the event that the South East Plan provides for it, the City Council will')

We trust that the Inspectors will find these comments of assistance. Should they have any questions or require further clarification in relation to the points made on Magdalen/Thames behalf then please do contact me.

Yours sincerely

David Jackson
Director

C.c. Magdalen College and Thames Water

From: [REDACTED]
To: progofficer@aol.com
Sent: 01/12/2010 18:35:24 GMT Standard Time
Subj: Oxford Core Strategy Examination

Our Ref.: RF/3293

RSS Policy Implications

Thank you for your email of 11 November consulting The Theatres Trust on the legal challenge to the revocation of Regional Spatial Strategies and the implications for the Core Strategy policies.

The Theatres Trust is The National Advisory Public Body for Theatres. The Theatres Trust Act 1976 states that *'The Theatres Trust exists to promote the better protection of theatres.* It currently delivers statutory planning advice on theatre buildings and theatre use through the Town & Country Planning (General Development Procedure) (England) Order 2010 (DMPO), Articles 16 & 17, Schedule 5, para.(w) that requires the Trust to be consulted by local authorities on planning applications which include *'development involving any land on which there is a theatre.'*

Until Regional Spatial Strategies are revoked in the Localism Bill sometime next year they remain relevant to the Core Strategy. The South East Plan therefore is of consequence, notwithstanding the Government's intention to abolish it. Conformity to the South East Plan is still a legal requirement. Documents can be amended following the new requirements of the Localism Bill.

Rose Freeman

Planning Policy Officer

The Theatres Trust

22 Charing Cross Road

London WC2H 0QL