

CPRE Oxfordshire 28 Nov 2010 - Oxford CS

To: Inspector Stephen J Pratt

Dear Mr Pratt

Oxford CS EIP: Cala Homes judgment re RSS

I refer to the Programme Officer's letter of 11th November 2010 regarding the Cala Homes judgment on the SE Plan revocation inviting further views on the status of the SE Plan Regional Strategy and the policy implications for the Oxford Core Strategy.

I am writing on behalf of the CPRE Oxfordshire Branch.

We note that the effect of this judgment is to quash the decision to revoke the Regional Strategies, and as a consequence the South-East Plan RSS as it stood on 5 July 2010 forms an ongoing part of the development plan. However, the Government's intention to abolish regional strategies (announced 27 May 2010) will be given statutory effect in due course as part of the Localism Bill, and this intention is to be a "material consideration" in planning decisions. We also note that Cala Homes are set to challenge the Government in court again on the issue of Government "intention" being an important "material consideration", and this may also be successful.

As you will be aware from CPRE's concluding views at the EIP, we would on balance prefer a suitably modified, sound CS to proceed rather than have a complete policy vacuum in Oxford – which might well encourage damaging speculative developments as the economy improves.

However, we do appreciate that PINS must ensure that the Inspector's report on the EIP is legally correct regarding the development plan. No doubt PINS is taking its own legal advice on this very unfortunate situation.

Presumably the key issue is that due weight should be given to the provisions of SE Plan Regional Strategy as well as to the Government's expressed intention to revoke it, until the RSS is actually revoked by new legislation - which we understand could take about twelve months.

As you are aware, the situation in Oxford is further complicated by the legal challenge to the SE Plan by CPRE and others to delete the 4,000 house SDA south of Oxford. Unfortunately this legal process was not concluded and although the Secretary of State had conceded all the key points and offered a Draft Consent Order to that effect earlier in the year, this process was overtaken by the Election and the revocation of the RSS in July 2010. However, from either perspective there was very little or no prospect of the SDA proceeding, and all the ensuing arguments at the EIP, eg concerning the Northern Gateway etc, were based round the SDA being deleted. We would argue that this is very much a "material consideration" in the same way the intention to revoke the RSS is.

For your information CPRE Oxon has now written to the Treasury Solicitor to re-activate the Draft Consent Order and try to bring that process to a conclusion, if the RSS is now re-instated.

In terms of the development plan and “material considerations”, in our view there seem to be three main scenarios regarding the compatibility and soundness of the Oxford CS:

- 1) Scenario of the SE Plan RSS revoked - this was assumed by all at the EIP as it concluded in September and the robustness of the amended CS was thoroughly tested at the EIP. All parties were asked to suggest which issues had to be included in the CS after the RSS revocation.
- 2) Scenario of the SE Plan RSS still in force - but with due weight given to the Government's clear intention to abolish regional strategies as a “material consideration” and to the SoS expressed intention to delete the South of Oxford SDA as a “material consideration”.
- 3) Scenario of the SE Plan RSS still in force - but little weight given to the above and the SE Plan still gives legal force to the SDA.

Pragmatically the view of CPRE is that the amended CS should certainly be compatible with Scenario One as this was tested at the EIP. The CS is also arguably robust enough to be compatible with Scenario Two - RSS polices in force but exclude all references to the SDA. The CS proposed and was tested on 8,000 houses in City to 2026 in line with the RSS figure.

However, if notwithstanding the SoS expressed intention to delete the South of Oxford SDA, the re-instated SE Plan RSS gives legal force to the SDA – Scenario 3 - , then we do not see how the amended CS can be compatible with this, as all parties have tried to agree a workable CS which excludes the SDA and the growth proposals strongly related to it (eg Northern Gateway). Under this scenario it appears we would regrettably all have to “go back to the drawing board”, as it were.

Unfortunately, in the light of all the foregoing, this is straying into legal uncertainties again which may well leave the Inspector’s CS report open to legal challenge. We assume there are two broad options – wait until the legal position on the RSS is absolutely clear, or hold further EIP sessions to hear arguments on these issues.

As we have emphasised, there are real risks in delaying a decision on the CS. On this we may differ from some local pressure groups who seem to be content with further delays. It is very unfortunate that the Oxford CS EIP has been beset by so many uncertainties – it must be unprecedented.

If there are ways of bringing this important process to a speedy conclusion and putting a sensible, sound and robust core strategy in place, then they would certainly have our support. CPRE would be willing to take part in further hearings if necessary to do this. We trust these views are of some assistance.

Yours sincerely

Alan Jones
Chairman, CPRE Oxon.

In a message dated 17/11/2010 20:28:51 GMT Standard Time,

Dear Helen,

Thank you for requesting my view on the importance or otherwise of the South East Plan following the Cala Homes decision.

Given the recent explicit re-confirmation from central government that it intends to abolish the Regional Spatial Strategy for the South East, the South East Plan, in the Localism Bill which will be presented to Parliament very soon, this is such an important material Planning consideration that the Oxford City Core Strategy must for all practical purposes ignore the recent decision in favour of Cala Homes, and this Core Strategy must be prepared for the future situation where there will be no South East Plan in force. To attempt to respond in the short term to the temporary re-instatement of the South East Plan on the basis of the Cala Homes decision would result in an unjustified use of everyone's resources. Our aim should be to assist Oxford City Council in constructing a Core Strategy for its LDF which is as durable and sustainable as possible.

Best wishes,
Martin Harris
for Horspath Parish Council

RSS/00165

In a message dated 12/11/2010 11:45:21 GMT Standard Time, [REDACTED] writes:

In response to your letter of 11 November about the impact of the legal decision of 10 November to quash the revocation of the Regional Strategies I make my representations as follows:

Consider the following scenarios:

A. At today's date the SERSS as it stood on 5 July once again has legal standing. The Core Strategy, if issued within the next few weeks, will be on this legal basis: call it CS 'A'. The probability is that this legal basis is then removed by the passage through parliament of the Localism Bill. Result: a Core Strategy that has no continuing firm legal basis and gives no certainty for development planning or decisions.

B. No Core Strategy is issued until after the passage of the Localism Bill in a form that revokes the SERSS. The Core Strategy can then be issued in the form that was expected earlier in 2010 up until the decision on legal challenge taken on 10 November 2010.: call it CS 'B'. Result a Core Strategy that has a firm statutory legal basis and gives certainty for development planning and decisions.

C. No Core Strategy is issued until after the passage of the Localism Bill in a form that does not revoke the SERSS. Although non-revocation may be unlikely it cannot be ruled out as a possible outcome of the parliamentary process. A Core Strategy could then be issued: call it CS 'C'. This Core Strategy would have no evidence basis to justify it being in any form other than that in which it was prepared when it was assumed that the SERSS did have a firm legal basis: consequently, the CS would have to be in the same form as CS 'A': CSs 'A' and 'C' would be identical except in their date of issue.

Comment:

Scenario A has nothing to recommend it: it leads to further confusion and muddle.

Scenario B has the required impact of providing certainty, albeit on a basis that at present seems politically unlikely to eventuate.

Scenario C also has the virtue of certainty, albeit on a different and politically more probable basis.

As the purpose of the Core Strategy is to provide a firm legal basis for development planning and decisions there is only one sensible course: that is to delay the issue of the Core Strategy until the Localism Bill has been adopted: only at that time will it be known certainly that the SERSS has or has not been legally revoked. Only at that time can a Core Strategy that has a reasonable life expectancy be issued.

John Goddard

Lord Mayor of Oxford

City councillor for Wolvercote

County councillor for Summertown and Wolvercote

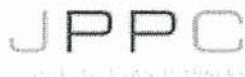
Nik Lyzba

From: Nik Lyzba [REDACTED]
Sent: 18 November 2010 09:28
To: 'Progofficer@aol.com'
Subject: RE: Oxford Core Strategy
Attachments: Oxford Core Strategy Letter to Progofficer.htm

Helen, Please find the e-mail as an attachment. Does this work?

Nik Lyzba

DipTP DipCP MRTPI
 Partner



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From: Progofficer@aol.com [mailto:Progofficer@aol.com]
Sent: 18 November 2010 09:08
To: [REDACTED]
Subject: Re: Oxford Core Strategy

Nik

Thank you for your email. The Inspector has asked that all representations received are put on the Examination website - this is rather difficult with an email. I have tried to copy the email into a Word document, but the PDF text does not reproduce. Is it possible to re-send me your comments as an attachment.

Regards

Helen Wilson
 Programme Officer

Tel. 01865 797904
 Mobile. 07879 443035

In a message dated 17/11/2010 18:00:16 GMT Standard Time, [REDACTED] writes:

Dear Helen,

Thank you for you letter of 11 November 2010.

As I understand the position, the South East Plan RSS remains in force and it is necessary for the Local Development Documents to conform with it. The Localism Bill will give effect to the Government's intentions but will not give statutory effect to the abolition until passed into an Act of Parliament. In the meantime, before the Act has effect, the position remains as set out in the Planning and Compulsory Purchase Act 2004 as amended by the Local Democracy Economic Development and Construction Act 2009. I am setting out below an extract from each which was set out by the Judge in the Cala Homes case.

18/11/2010

There is clearly a difference between the need for conformity with the RSS for Local Development Documents and "material considerations" in other planning decisions.

However, it really is about time that the Core Strategy (CS) was resolved one way or another so that progress can be made. Currently, the considerable re-writing of the drafts and the delays which have occurred seem to be the antithesis of a "planning" system. It is through no fault of the City Council that the muddle with the RSS has occurred: provided that the latest iteration can be said to be in general conformity with the RSS (for as long as it survives) then the Inspectors should proceed to make their recommendations.

Planning and Compulsory Purchase Act 2004

Section 19(2) provided in relevant part as follows:

"19. Preparation of local development documents...

(2) In preparing a local development document the local planning authority must have regard to –

(a) national policies and advice contained in guidance issued by the Secretary of State;

(b) the RSS for the region in which the area of the authority is situated, if the area is outside Greater London; ...

(d) the RSS for any region which adjoins the area of the authority; ..."

Under section 21, the Secretary of State is given powers of intervention if he considers any local development document to be unsatisfactory. Section 24 provided in relevant part as follows:

"24. Conformity with regional strategy

(1) The local development documents must be in general conformity with -

(a) the RSS (if the area of the local planning authority is in a region other than London); ...

(2) A local planning authority whose area is in a region other than London –

(a) must request the opinion in writing of the RPB as to the general conformity of a development plan document with the RSS;

(b) may request the opinion in writing of the RPB as to the general conformity of any other local development document with the RSS. ...

(6) If in the opinion of the RPB a document is not in general conformity with the RSS the RPB must be taken to have made representations seeking a change to the document. ..."

Local Democracy Economic Development and Construction Act 2009

Part 5 of the LDEDCA 2009, entitled "Regional Strategy", came into effect on 1 April 2010. It repeals and replaces sections 1 to 12 in Part 1 of the PCPA 2004 ("Regional Functions"). Section 70 of the 2009 Act provides, so far as relevant, as follows:

"70. Regional strategy

(1) There is to be a regional strategy for each region other than London.

(2) The regional strategy for a region is to set out –

(a) policies in relation to sustainable economic growth in the region, and

(b) policies in relation to the development and use of land in the region. ...

(6) On the day on which this section comes into force the regional strategy for a region is to consist of –

(a) the regional spatial strategy for the region subsisting immediately before that day, and

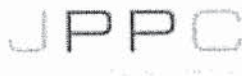
(b) the regional economic strategy for the region subsisting immediately before that day. ..."

Please excuse the formatting of this e-mail which is due to copying from pdf documents.

Kind regards.

Nik Lyzba

DipTP DipCP MRTPI
Partner



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.....
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From: Progofficer@aol.com [mailto:Progofficer@aol.com]

Sent: 11 November 2010 15:33

To: [REDACTED]

Subject: Oxford Core Strategy

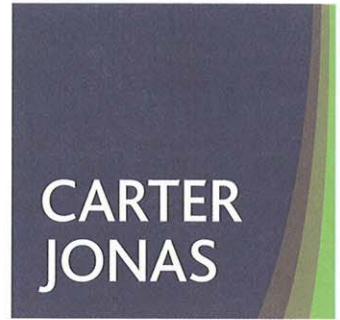
Please see the attached letter.

Regards

Helen Wilson
Programme Officer

Tel. 01865 797904
Mobile. 07879 443035

18/11/2010



The Property People

Mrs Helen Wilson
Programme Officer
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Oxford OX2 7LL
T: 01865 511444
F: 01865 310653

18th November 2010

Dear Helen

Oxford Core Strategy – Impact of Cala Homes decision

I write on behalf of the Northern Gateway Consortium in reply to your letter of the 11th November, 2010 inviting parties' views on the latest situation in terms of the status of the Regional Strategy and the implications for the Oxford Core Strategy.

We understand that the effect of the Cala Homes decision is two-fold:

- The Secretary of State's decision on the 6th July, 2010 to revoke Regional Strategies has been quashed and, as a consequence, the South East Plan as it stood on the 5th July, 2010 has been reinstated as part of the Development Plan.
- However, the Government's intention to abolish Regional Strategies as announced on the 27th May, 2010 remains and is a material consideration in any decision making.

On the 10th November, 2010 the Secretary of State issued a written statement in which he said, *'Whilst respecting the court's decision this ruling changes very little. Later this month, the Coalition Government will be introducing the Localism Bill to Parliament, which will sweep away the last Government's controversial regional strategies.'*

The DCLG's Chief Planner also wrote to all Local Planning Authorities on the same day confirming that the Government's intention to abolish Regional Strategies and attached the proposed clause of the Localism Bill that will enact that commitment.

The Inspectors have the Consortium's representations on Oxford's Core Strategy when the South East Plan was extant (as submitted to the Hearings in July and September, 2009). However, given that the Government is committed to abolishing Regional Strategies within the next few months, the Cala Homes decision represents only a temporary reprieve. The Appeal decision, therefore, only affects the mechanism and timing by which Regional Strategies will eventually be abolished, not the Government's intention to abolish them.

The Oxford Core Strategy is founded on a robust and credible evidence base whether or not the South East Plan forms part of the development plan. In particular, the Core Strategy as debated at the 2009 and 2010 Hearings should continue to be based on the most appropriate strategy for Oxford. In addition and more importantly, the spatial planning framework in this strategic document remains essentially the same with or without the RSS in terms of delivering housing and jobs and their balance over the Plan period.

The Oxford Core Strategy sets out the vision and objectives for the City over a long time frame (up to 2026). It is sufficiently flexible to cover the changing circumstances that may arise over this time. What is clear is that the RSS will be removed from the development plan in the near future and that the Oxford Core Strategy can deal with the implications of this process without triggering the need for a review. The Oxford Core Strategy as part of its legal requirements is only required to conform 'generally' to the RSS and this issue was comprehensively debated at the 2009 Hearings. It seems to us that the Oxford Core Strategy is a 'sound' plan as the Hearings have demonstrated that it is justified, effective and consistent with national policy (including the stated revocation or abolition of the RSS).

We believe that the Oxford Core Strategy should now proceed in an efficient and timely manner towards adoption. This is essential for the Council to deliver housing and jobs in order to meet the Government's stated aspirations to stimulate economic growth in the context of the implications of the recently announced comprehensive spending review

Yours sincerely

A large grey rectangular box redacting the signature of Mike Robinson.

Mike Robinson MRTPI

Associate

for and on behalf of Carter Jonas LLP

E: 

DD: 01865 404401

From: [REDACTED]
To: [REDACTED]
CC: [REDACTED]
Sent: 29/11/2010 16:24:59 GMT Standard Time
Subj: Oxford Core Strategy: High Court stays Chief Planner's guidance

Dear Ms Wilson

Please forward the comments below to the twin Inspectors.

Dear twin Inspectors

Welcome to Bleak House!

According to the website of Peter Village QC's Chambers 4-5 (an authoritative source since inaccuracy would presumably be a breach of the Bar rules and possibly contempt of court):

4-5 News: Court 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 \(PDF 368 kb\)](#)

Put simply, the effect of the Chief Planner's ludicrous guidance (including its effect) on the materiality of the putative future abolition of Regional Strategies is now sub-judice and formally within the jurisdiction of the High Court.

I trust you will now take my advice and immediately suspend the latest round of representations (deadline 3 December) on the longest running Core Strategy in the country (Oxford), while legally qualified people (lawyers including a judge) unravel the latest legal complications.

This will save me and others a great deal of trouble and save the Oxford tax-payers from footing the bill for a representation on a plan-lead system which will shortly be clarified by the High Court.

I trust you will shortly telephone me to tell me you have taken my advice and suspended the latest otiose round of representations.

Yours truly

Sean Feeney

**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