

South Wiltshire Review Core Strategy

Correspondence between the Inspector and Wiltshire Council via the Programme Officer Regarding Progression and the Situation Nationally

Email to Wiltshire Council from Ian Kemp dated 21st June 2011

Dear All,

I have today received the following email from the Inspector . . .

"The Examination into the soundness of the South Wiltshire Core Strategy is due to resume in the week commencing 8 August 2011. At that time the intention is to examine the housing and employment figures contained in the Focussed Review Changes to that document proposed by the Council. These figures are well below those contained in the emerging RS. In the case of the housing figures it is proposed that they be reduced from the emerging RS figure of 12,400 to 9,900: in the case of the employment figures it is proposed that they be reduced from the emerging RS figure of 13,900 jobs to 10,400 jobs.

The Court of Appeal judgement in R Cala Homes (South) Limited and the Secretary of State and Local Government and Another 2011 EWCA Civ 639 has now been published. Paragraph 24 of that decision makes explicit reference to the status of the RS when examining DPDs. It states:

"It would be unlawful for a local planning authority preparing, or a Planning Inspector examining, development plan documents to have regard to the proposal to abolish regional strategies. For so long as the regional strategies continue to exist, any development plan documents must be in general conformity with the relevant regional strategy"

The upshot of this is that - for the time being - the approach to examining the Core Strategy should be the same as it was before the Secretary of State's announcement of the intention to abolish regional strategies. The Council will recall that when the question of the weight to be attached to the emerging RS was discussed earlier in the Examination - before the announcement of the intention to abolish - it was common ground that the emerging RS should be given very considerable weight.

The Council should consider whether this ruling would so curtail my consideration of its case as to undermine at the outset the Council's justification for its proposed changes. The Council may wish to seek the withdrawal of the plan or the suspension of the Examination until there is certainty about the legislative framework. If the Examination were to be suspended for a further period I would not anticipate its resumption before the Localism Bill is enacted."

. . . The Inspector has always maintained the original CS is still on the table and if necessary he could revert to the original position however I'm unsure if that would find favour with you.

Needless to say as notices and information was to be sent imminently on the Review CS I'm sure it would be everyone's interest to have a speedy response on the above. I appreciate however such things are not to be taken lightly and you'll no doubt wish to fully assess your position.

If you have any queries please let me know and I'll do my best to obtain a quick response.

Response from Wiltshire Council to above email dated 29th June 2011

Dear Ian

We were rather disappointed by your email communication of 21 June 2011 but have now had the opportunity, as officers, to consider this further. Our initial thoughts are set out below.

At the exploratory meeting with the Inspector held on 28 January 2011, he made it clear that in order for the examination to continue, any changes to the draft core strategy would need to be focussed, rather than extensive. We understood that if he considered the changes to be extensive, the Council would have been asked to withdraw the South Wiltshire Core Strategy. Can you please confirm that this is not what is now being suggested? We have carefully developed our approach to the changes in line with this requirement to ensure they are focused.

In construing the general conformity requirement, there should in our view be room for manoeuvre within the core strategy in the measures taken to reflect the regional policy so as to meet the various and changing circumstances that may arise.

We of course accept that the formulation or emergence of national policy cannot justify the displacement of the requirement for general conformity. That requirement is imposed by statute. Nevertheless the reach or content of that requirement is another matter altogether. The implementation of planning policies in development plans necessarily tends to be subject to long lead-times. Over such periods of time, the needs and exigencies of good planning policy are liable to change. The interpretation of the general conformity requirement therefore should accommodate these factors. That points in our view to a looser, rather than a tighter approach to the interpretation of the concept of "general conformity". It is clearly possible to envisage a policy that contains variations from regional guidance where they are properly supported by local evidence. We would expect that the examination of the draft core strategy will look at precisely these kinds of issues.

For South Wiltshire, from the work undertaken, it is clear that a reduction in figures can be justified. Although, the Inspector has stated that in his view the housing and employment figures contained in the Focussed Review Changes are "well below" those in the emerging RSS, that does not in and of itself imply that the changes are not in general conformity with regional policy. Considerable work has been undertaken to justify the revised figures in the context of a sustainable strategy for growth within south Wiltshire, which is in general conformity with the RSS (see attached note on the housing figures). For this reason we fundamentally disagree with the conclusion that "the approach

to examining the Core Strategy should be the same as it was before the Secretary of State's announcement of the intention to abolish regional strategies".

We do consider that the passage from the Cala judgment is quoted slightly out of context. Strictly, that part of the judgment that comments on the position in relation to the preparation of policy documents under the Local Development Framework, was "obiter" i.e. not directly relevant to the case before the court, and could not therefore serve as a precedent. (The decision made in that judgment was based on the claim that the Government's intention to abolish regional strategies was incapable in law of being a material consideration within the meaning of section 70(2) of the 1990 Act - i.e. it was solely on the question of whether this was a material consideration to take in to account in **deciding a planning application**) In fact, although section 19(2) of the 2004 Act provides a list of matters to which the local planning authority must have regard in preparing development plan documents, that list is not made exhaustive or exclusive. That is why the judge, in referring to that list, specifically commented "**whether or not** it [i.e. the local planning authority] is precluded from having regard to other matters that are not listed..."

In our view the need for conformity should be balanced against the need for the core strategy to take account of and explain the circumstances in which the regional policy will be given effect. It would therefore be right for the Council to introduce measures into a strategy to reflect the fact, where it arises, that some aspect of the regional policy is itself to be subject to review.

It is unfortunate that the sentence that has been picked out of the judgment was not qualified by the judge to bring it into line with his earlier statement. In any event however the whole passage is "obiter" as explained above. Clearly therefore the ruling in Cala does not (and cannot in law) operate so as to curtail your consideration of the Council's case for the proposed changes.

Furthermore, post submission changes should (paragraph 5.23 PINS Procedure Guidance) be subject to adequate community engagement. As you are aware the focussed changes have been the subject of consultation; the Council will need properly to consider the responses and take them fully into account before it presents its case to the inquiry when it reopens on 8 August 2011.

Finally, we note the findings of the Inspector examining the Bristol Core Strategy, which acknowledge that the case for the emerging RSS for the South West forming part of the adopted development plan for Wiltshire to be unlikely: "Paragraph 12 - Prior to the Government's announcement of its intention to abolish the regional tier of the development plan (27 May 2010), proposed changes by the Secretary of State to an emerging RSS would have carried very considerable weight in this Examination. This was because such proposals had very real prospects of becoming part of the development plan in the near future and it was right to anticipate those proposals in lower order plans. However, there is no realistic prospect of the previously emerging RSS ever becoming part of the development plan. Even if the Government's intention expressed in the Localism Bill does not become law as currently envisaged, this would not immediately change matters. Progression of the emerging RSS to become part of the development plan would need further technical/administrative work and formal endorsement by the Secretary of State. This would be completely at odds with all the Government's announcements regarding the regional tier. In the context of this Examination and its focus on the long term planning of the city, the emerging RSS has little policy weight. Nonetheless, regard should still be given to the evidence and reasons why the Secretary of State considered that 36,500 dwellings should be provided in Bristol City."

We look forward to your early confirmation that the examination will recommence as scheduled.

Emailed response from Ian Kemp dated 1st July 2011

Dear All,

It appears from the last sentence of your email of 29 June 2011 that the Council wants to press ahead with the Examination into the soundness of the Core Strategy. That being so I confirm that the Hearings will resume in the week commencing 8 August 2011. I also confirm that the changes proposed by the Council will continue to be treated as focussed rather than extensive. As to the other points raised in your email, these will be dealt with at the Hearing sessions where the main issues to be discussed will include the weight to be given to the emerging RS and whether the Core Strategy is generally consistent with that RS.