

South Wiltshire Review: Core Strategy

Further representations from Catesby Property Group (Reps 29-32)

Matter 1: Conformity and weight to be afforded to SWRSS.

What weight should be attached to the emerging SWRSS in preparing the Core Strategy?

Is the Core Strategy in the form now proposed by the Council, generally consistent with the emerging RSS?

Introduction.

Catesby Property Group are the key investors and developers behind the Longhedge strategic site at Old Sarum north of Salisbury. Since we had not confirmed and concluded our interest in the site at the time of the previous Examination in January 2010, we were not formally represented at that Examination, although we did attend as observers. However, the landowners were ably represented at the previous EIP by their agents, SmithsGore. We have now indicated a wish to appear at the Examination in Public in August 2011. Hence our submissions should be read in conjunction with those of Steven Briggs from SmithsGore.

Background.

The South Wiltshire Core Strategy was submitted in September 2009 and was formally tested at a Public Examination during February 2010. Had the Inspector been able to issue his report on the Public Examination prior to the change of Government in May 2010, then this situation might not have arisen. In the event, the SCWS has been delayed by some 18 months.

The new Secretary of State for Communities, Eric Pickles, signalled his intention to abolish Regional Spatial Strategies in a hasty Ministerial statement issued on 27th May 2010 and then subsequently (as it turned out unlawfully) revoked all Regional Strategies on 6th July 2010. The 'Revocation Statement' was accompanied by advice from DCLG which has a key bearing on this LDF.

CALA homes then challenged the Secretary of State's decision (and ability) to revoke Regional Strategies under current planning powers. Lord Justice Sales upheld their appeal on 10th November 2010 and ruled that the decision to revoke RSS's had been unlawful.

In the meantime, Wiltshire Council had already followed the advice and encouragement of the Secretary of State in deciding to review their Local Development Framework and rejecting the South West Regional Spatial Strategy (Proposed Modifications) – upon which they had previously relied.

However critically, it is clear from the paragraph 5.2 of Topic Paper No 20 that Wiltshire Council's Cabinet decision to review the Plan was made on 19th October 2010, **before** the CALA decision was made, and hence the Council could not have known when they made that decision of the implications of the High Court's ruling. Having committed themselves politically to a review, it would no doubt have become difficult for South Wiltshire's Councillors to step back from the brink.

Effectively therefore one might conclude the Council were 'seduced' by the prospect of reducing their levels of growth, following the initial 'Pickles' announcement and subsequent unlawful decision to revoke Regional Spatial Strategies on 6th July 2010, and they have effectively been 'pickled' by the eventual outcome, which has left the Regional Strategies 'in play' as a central part of the Development Plan and hence (at least for the time being) a key material consideration in determining future Local Development Frameworks.

Legal Position.

It is now clear that as a result of the outcome of the Legal Challenge by Cala Homes, the Government's decision to 'revoke' Regional Strategies was unlawful. It is therefore equally clear that in the absence of any further up to date planning guidance, the South West Regional Spatial Strategy (Proposed Modifications) carry the same status as before the unlawful decision to revoke occurred.

Cala Homes subsequently applied to the High Court (in response to an initial dismissive press release issued by DCLG following the November 2010 High Court decision), to clarify whether the Localism Bill should indeed now be a 'material consideration'. Their challenge was unsuccessful, but the Court concluded that whilst any relevant matter could be regarded as a 'material consideration', it was the weight to which the decision-maker attached to that matter which was important – a point which was confirmed by the Court of Appeal (quoted in the email from Ian Kemp dated 21st June 2011).

However, the Court of Appeal (which issued its decision on 5th May 2011) went further as Ian Kemp has underlined, in saying that:-

"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, and development plan documents must be in general conformity with the relevant regional strategy".

The upshot, as Ian Kemp has said, should be 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. Furthermore, since previously, when the question of weight was debated in the earlier examination, it was common ground that the emerging RSS should be given considerable weight, this should therefore remain the position. Similar warning letters have been sent out to other local authorities in similar situations in other Districts.

We appreciate that the Council, understandably, may take a different view. Having resolved to pursue 'focussed' changes to the Plan (which had been accepted as such by the Inspector within correspondence dated 5th April 2011), they no doubt consider that it is legitimate to promote and indeed debate their alternative changes in parallel with the submitted Core Strategy. However, the subsequent Court of Appeal judgement casts a very different light on the matter since the Inspector wrote his 5th April 2011 letter, and hence it is now clear that both the Council and the Inspector have less freedom to change the Plan than was hitherto envisaged.

Successive appeals decisions since the outcome of the Cala High Court decision have confirmed the Government's and the Inspectorate's position on the status of Regional Spatial Strategies in the current climate. For example a recent appeal decision at Leeds (APP/N4720/A?08/2117920) indicates that *'The Secretary of State's has made it clear that it is the Government's intention to revoke RSS's and the provisions of the Localism Bill which is now before Parliament reflects this intention. While he has taken this matter into account in determining this case, the SOS gives it limited weight at this stage of the Parliamentary process'*.(para 11). In another recent case in Padstow (APP/D0840/A/10/2141605), the Inspector states, *'I can give very little weight to the intended abolition of the RSS'*.(para 13). So until the Localism Bill makes further progress through the Parliamentary process, it can have only limited weight in determining decisions and formulating plans, whilst until Regional Strategies are replaced they must continue to carry considerable weight.

Whilst, as the Council notes, the findings of the Inspector into the Bristol Core Strategy were that there was no realistic prospect of the previously emerging South West RSS ever becoming part of the Development Plan, (which may be true), this statement was made in March 2011, prior to the High Court of Appeal decision (referred to above). Furthermore, clearly, without something more robust to replace the emerging RSS, the housing and employment ambitions for the area within the SWRSS Proposed Modifications must be regarded as the latest and most up to date information which has been adequately tested through the planning process and the LDF should be in conformity with it.

The case for review.

The Council appear to acknowledge that (as a result of the respective High Court and Court of Appeal decisions, their Submitted Core Strategy (however it is revised) needs to remain within general conformity with the Regional Strategy.

Furthermore, it also needs to be judged to be sound, within the guidance within PPS12 and hence the motives for submitting alternative Plans and their content needs to be carefully considered.

The Council's position appears to be threefold:-

1. that time has moved on since the SWRSS was considered and that new factors should come into play. This appears to emerge from a feeling that development proposals set out within the earlier submitted plan were perhaps too ambitious and now need to be reviewed against the background of more recessionary trends. *Whilst it is possible that different and maybe lower projections of growth in South Wiltshire could be justified, in our view this approach is flawed for two reasons, firstly because strategic planning is intended to take a long term view and hence should not be swayed by short term counter trends, and secondly, because the previous Examination was held in January 2010, well after the worst of the 2008 recession and hence in full knowledge of any potential downward indicators. Officers were clearly largely supportive of the trends and the proposals at the time and there has been little convincing new evidence to change their professional opinion since,*
2. that the Plan needs to be re-assessed because of perceived environmental constraints which officers now consider could limit the delivery of new development, without causing environmental harm. *This is a curious approach to adopt, since previously officers had recommended the strategy (as submitted) and claimed to be satisfied that the delivery previously proposed (and specifically the strategic sites) could be accommodated without imposing environmental harm. Indeed, they produced a Sustainability Appraisal which supported their stance. A Housing Land Availability Assessment was published which showed that more sites were potentially available than were strictly required, and hence there was a surplus of land which could be developed, without causing undue harm to environmental assets. Essentially, the Council has now turned the whole case upside down by adopting a 'capacity led' approach to development rather than a 'needs led' or 'economy led' approach to assessing the appropriate scale of development,*
3. that as a result of 'local consultation', the Council should now re-assess the scale of development. *This would appear to be a desire to reflect the concept of 'Localism', which has emerged since the change of Government. However, once again this motive is flawed for two key reasons, firstly, because the Government has since made it clear through Ministerial Statements, the Planning for Growth Statement and the new Draft National Planning Policy Framework that 'Localism' should not be seen as an excuse for reducing development requirements, on the contrary, it should be viewed as an opportunity to promote additional development and secondly, that the last Core Strategy EP was the most recent opportunity for formal input (following the earlier public consultation stages), it is surely inappropriate to seek further public consultation during the latter stages of the Core Strategy process without reference to the Inspector.*

The case therefore for reviewing and re-assessing the Core Strategy at this stage in the process is both technically and procedurally flawed and can only have arisen through direct and 'opportunistic' political intervention arising from the initial Ministerial statement made by the Communities Secretary on 27th May 2010 and the subsequent unlawful revocation of Regional Strategies.

Consistency with the SWRSS (Proposed Changes).

According to paragraph 4.50 of PPS12 the Core Strategy must, inter alia, 'have regard to national policy' and must '*conform generally to the Regional Spatial Strategy*'. In addition, paragraph 4.52 of PPS12, specifies that in order for the Core Strategy to be 'sound' it must be JUSTIFIED, EFFECTIVE and CONSISTENT WITH NATIONAL POLICY. The paragraph continues by emphasising that in order to be justified the plan must be '*founded on a robust and credible evidence base*' and must be '*the most appropriate strategy when considered against the reasonable alternatives*'. These are tough tests and not ones that can simply be ignored.

Dealing with the national policy aspect first; planning policy has undergone a clear shift in the last 12 months with a strong emphasis emerging towards promoting economic growth in order to assist recovery. During the early stages of the new coalition Government, the theme of 'Localism' was widely interpreted as meaning that local authorities should simply respond to the perceived wishes of their electorate and thereby resist 'unwanted' development. However, more recent expressions of national policy (including the Draft National Planning Policy Statement which has emerged today), have emphasised that 'Localism' has a very different meaning and that NIMBY objectives should be allowed to hold sway, or that a 'lowest common denominator approach' is acceptable. Far from it, the 'Plan for Growth' statement issued jointly by the Chancellor and Business Secretary emphasises that new homes and jobs are essential both for meeting peoples' needs and to help stimulate economic growth. The default position towards development should be 'Yes'.

Dealing second with conformity; the Regional Strategy for the South Wiltshire area has already been recognised as meaning the SWRSS (Proposed Modifications). This document, although now some 3 years old, is still the latest and most up to date position which has been tested through a proper Examination in Public and subject to full public consultation. It reflects the most recent trends (at that time) and above all, treats growth the pressures 'in the round'. It is intended to be consistent and coherent and, notwithstanding more recent political criticisms, the result of bottom up consultation as well as top down decisions. The policies are intended to be inter-locking so that housing and employment patterns are viewed across wider market area boundaries and migration pressures in one area are absorbed in another – and vice versa.

The housing target for the Salisbury Housing Market Area was for 620 dwellings per year (12,400 dwellings 2006-2026), which was identical to the proposal in the Panel Report. This in turn was an increase from the original Draft RSS housing figure promoted by the Regional Planning Body, due to acknowledged rises in the rate of housing formation and job requirements. The projected HMA growth in employment within Appendix A (iv) of the Panel Report was based on 13,900 jobs between 2006-2026 – a figure which emerged from the Cambridge Econometrics Study.

The Council's revised proposals now expressed within Core Strategy Topic Paper 20, and the associated submissions, appears to reverse the growth strategy with the clear aim of holding the housing target below 10,000 dwellings. The new proposal of 9,900 appears to be unsupported by any firm evidence and seems to derive from a series of subjective judgements based on revised assumptions of what is 'considered appropriate' (para 5.8 Topic Paper 20) rather than what is actually needed, or can be properly justified.

Therefore whilst it is possible that a case could theoretically be made for reducing the housing (or indeed the employment) target on the basis of thoroughly researched statistics, provided those were consistent and compatible with adjacent authorities, it would appear that none of this work has actually been done. The normal checks and balances of potential migration flows between authorities have not been explored and the implications of reducing the figures (in terms of depressed ambitions – never mind the impact on specific sites such as Longhedge) - have not been investigated.

Conclusions.

In conclusion, the revised SWCS Core Strategy, as presented by Wiltshire Council, cannot feasibly be regarded as consistent with the RSS, nor can it be demonstrated as being properly 'sound' in that it is not built on a robust and credible evidence base and is not necessarily the most appropriate strategy. This will be covered in more detail in Matter 2.

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