

WILTSHIRE COUNCIL

**SOUTH WILTSHIRE CORE STRATEGY REVIEW
DEVELOPMENT PLAN DOCUMENT**

HEARING STATEMENT

IN RESPECT OF ISSUE 1

CONFORMITY AND WEIGHT TO BE AFFORDED TO RSS

**PREPARED BY PRO VISION PLANNING AND DESIGN ON
BEHALF OF BEMERTON FARMS**

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SOUTH WILTSHIRE CORE STRATEGY EiP

ISSUE 1: CONFORMITY AND WEIGHT TO BE AFFORDED TO RSS

POSITION STATEMENT ON BEHALF OF BEMERTON FARMS

- 1.0 What weight should be attached to the emerging Regional Strategy for the South West in preparing the Core Strategy?
- 1.1 The decision of the High Court on 10 November 2010 in *Cala Homes (South) Ltd v Secretary of State (SoS) for Communities and Local Government and Winchester City Council* [2010] EWHC 2886 (Admin) resulted in the reinstatement of (RSS's), following their abolition in May 2010.
- 1.2 The SoS made clear following this judgment that it is the Government's intention to revoke RSS's. This gave rise to a subsequent decision of the Court on 7 February 2011 in *Cala Homes (South) Ltd v SoS for Communities and Local Government* [2010] EWHC 97 (admin) which held that the Government's intention to legislate to revoke RSS's was capable of being a material consideration.
- 1.3 A further decision of the Appeal Court on 27 May 2011 considered whether those responsible for making decisions under the Planning acts are entitled to have regard to the Government's proposal to abolish regional strategies as a material consideration for the purposes of Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004. Whilst the appeal was dismissed the Judge found 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, any development plan documents must be in general conformity with the relevant regional strategy"* (paragraph 24).
- 1.4 In the Council's response to the Inspector's email dated 29 June 2011 they state that this passage (i.e. paragraph 24) is quoted out of context as it was not directly relevant to the case before the court. It is acknowledged that the exact case before the court was whether the intention to revoke RSS's was capable of being a material consideration for the purposes of Section 70(2) of the 1990 Act and Section 38(6) of the 2004 Act which require planning applications and appeals to be determined in accordance with the Development Plan unless material considerations indicate otherwise. These provisions allow the decision maker an element of flexibility in the determination process.
- 1.5 This is in contrast to Section 19(2) and 24(1)(a) of the 2004 Act.

- 1.6 Section 19(2) of the 2004 Act lists matters which Local Planning Authorities ('LPA's') must have regard to in preparing local development documents (LDD's). This includes "the RSS for the region in which the area of the authority is situated, if the area is outside Greater London" (item (b)).
- 1.7 Section 24(1)(a) subsequently requires LDD's to be in general conformity with the RSS.
- 1.8 There is no provision for considering "material considerations" as provided by Section 70(2) of the 1990 Act and Section 38(6) of the 2004 Act. Therefore irrespective of the latest Court of Appeal decision on this matter LDD's must continue to be in general conformity with the RSS.
- 1.9 Notwithstanding this Bemerton Farms disagree with the Council's interpretation of the latest Court of Appeal decision. Whilst the case before the Court related to the determination of planning applications the Court clearly differentiated between the principle governing the determination of planning applications and the principle governing the preparation of Development Plan Documents (DPD's). On the basis that such a distinction had to be made in order to come to a judgement on that particular case, we believe that the conclusions made at paragraph 24 regarding the preparation of DPD's are not "obiter", as claimed by the Council.
- 1.10 The SoS has considered the weight to be attached to RSS's as part of a number of recent planning appeal decisions¹. In each case he acknowledges the recent Court of Appeal decision which held that the Government's intention to legislate to revoke RSS's was capable of being a material consideration. Whilst taking this matter into account in the appeal decisions he gave it limited weight at this stage of the parliamentary process. This provides further support for significant weight to be attached to the emerging RSS for the South West.
- 1.11 The Council's response to the Inspector's email dated 29 June 2011 states²:
- "we fundamentally disagree with the conclusion that "the approach to examining the core Strategy should be the same as it was before the SoS's announcement of the intention to abolish regional strategies".*
- 1.12 The Council seek to justify this statement by saying that that the revised housing and employment figures are in general conformity with regional policy. The requirement for the Core Strategy to be 'in general conformity' with regional policy has however been a requirement both before and after the SoS's announcement. It is not therefore clear why the Council "fundamentally disagree" with the Inspector's conclusion. No logical

¹ Refer to Appendix 1 for details of Appeal decisions

² At the 5th paragraph

reasoning or justification has been provided by the Council. Bemerton Farms strongly agree with the Inspector on this point.

1.13 The Council refer to the Bristol Core Strategy Inspectors Report which concluded that little weight should be given to the emerging SW RSS. However, that conclusion predated the May 2011 judgement of the Court of Appeal. (It is also important to note that the Inspector stated that regard should still be given to the evidence and reasons why the SoS considered that 36,500 dwellings should be provided in Bristol City).

1.14 It is noteworthy that the same Inspector in relation to the West Berkshire CS acknowledged that at the present time, it would be unlawful to take into account the consequences of any abolition of RSS's³. That conclusion reflects the current position.

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

2.1 The Inspector stated⁴ that *“these figures are well below those contained in the emerging RSS. In the case of the housing figures it is proposed that they be reduced from the emerging RSS 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”*.

2.2 A 20% reduction in housing provision and 25% reduction in employment land provision are now proposed. This is a substantial reduction, and “well below” the RSS figures, as stated by the Inspector. Such a substantial reduction cannot by definition be “in general conformity” with the RSS.

2.3 The issue has often been debated in Local Plan Inquiries in respect of general conformity with the Structure Plan. In our experience a 5% variation has always been accepted, and often 10%. However, we are not aware of cases where 20 – 25% variation has been accepted as being in general conformity. We see no evidence or reason to now depart from that.

3.0 Conclusions

3.1 We therefore conclude that the Revised Core Strategy is currently required to generally conform to the emerging RSS, but would fail to do so.

³ Paragraph 3.2 of the West Berkshire Core Strategy Examination Inspector's Note (2) – July 2011 Soundness Issues Arising from the Resumed Hearing Sessions, extract attached at Appendix 2

⁴ Refer to second line of email from Ian Kemp (on behalf of the Inspector) to Wiltshire Council dated 21 June 2011

- 3.2 It would fail to do so because:
- a) FOC/01 would reduce the number of new homes to “well below” a reduction of 5-10% from the RSS.
 - b) FOC/02 would reduce the amount of employment land to “well below” a reduction of 5-10% from the RSS figure.
 - c) FOC/03 would reduce the number of new homes and the provision of employment land for Salisbury and Wilton to “well below” a reduction of 5-10% from the RSS figures.
- 3.3 In these respects the revised Core Strategy would therefore be unsound. In order to make it sound, it is necessary to either:
- a) Reinstate the RSS figures, or
 - b) Incorporate a reduction of 5% (or may be up to 10% if justified) on the basis of complete and reliable up-to-date local evidence.
- 3.4 However, as we shall emphasise in response to Issue 2, the evidence put forward by the Council in support of FPC/01, FOC/02 and FOC/03 is neither complete nor reliable. Therefore, the only way to make the Core Strategy sound is to reinstate the RSS figures.
- 3.5 Paragraph 1.8 of the Wiltshire Council Housing Requirement Technical Paper (January 2011) acknowledges that;
- “the previous emerging Wiltshire housing targets were developed through the RSS process with initial evidence provided by Wiltshire County Council through the submission of Section 4(4) advice.*
- 3.6 Government advice (through their Chief Planner) is that that evidence still holds good. The advice indicates that that should be the starting point, but then reviewed in the light of up to date information. The question as to whether that has been the process followed by the Council, and, if so, whether the up to date information is sufficiently justified and reliable to underpin a sound DPD, are matters to be addressed under Issue 2.

RECENT APPEAL DECISIONS WHERE THE SOS HAS CONSIDERED THE WEIGHT TO BE ATTACHED TO RSS'S

- APP/X3025/A/10/2141924 – Land to the south of Clipstone Road East, Forest Town, Mansfield
- APP/D0515/A/10/2138585 – Land south of Boardinghouse Farm, Knights End Road, March
- APP/D0515/A/10/2123739 and APP/D0515/A/10/2131194 – Land North of Burnthouse Farm, Burnthouse Sidings, Turves and Staffurth's, Bridge Farm, March
- APP/R0660/A/10/2140255 – Land East of Marriott Road, Anvil Close / Forge Fields and South of Hind Heath Road, Sandbach
- APP/R0660/A/10/2143265 – Land South of Hind Heath Road between Wheelock and Ettiley Heath, Sandbach
- APP/X3025/A/10/2140962 – Land at Picket Piece (land to the north and south of Ox Drove and south of Walworth Road) Andover
- APP/W0340/A/10/2133957 – Land off Pincents Lane, Tilehurst, Reading

and should be deleted in a further change. FPMCs 54 and 55 relating to Appendix C would then be superfluous and can be removed from the Schedule.

2.8 I would not normally consider further consultation on the above changes essential, but given that further consultation will be required on other matters it would be prudent to include these changes in any such consultation. New text within existing EPFCs will have to be highlighted for clarity. The 2 new paragraphs suggested above could be treated as a new addition and given a new change number.

3. Housing - scale and distribution

3.1 The CS proposes to provide the overall housing requirement for the district as set out in the South East Plan (SEP). On this matter the CS is clearly in general conformity with the RS and this regulatory requirement is met. There is, however, evidence of higher need and demand for housing in the area and Government policy promotes economic growth, which includes additional housing, and meeting demand. Outside the AONB, there is the potential to deliver more than the 10,500 proposed in the CS, taking into account the findings of the SHLAA and the testing of 11,000 dwellings in the SA/EA which concluded that there would be no unacceptable environmental impact from such a scale of development.

3.2 General conformity with the Regional Strategy (RS) is a separate requirement from whether the scale of housing provision is sound. General conformity could still be met with some variance from the requirement in the SEP. The Council's main justification for the soundness of housing provision is its reliance on fully meeting the SEP requirement. I consider that this reliance must carry substantial weight. The RS grappled with the conflicting needs and pressures for housing and constraints to its delivery. The RS is intended to reduce uncertainty for Councils in producing lower-order plans. At the present time, it would be unlawful to take into account the consequences of any abolition of Regional Strategies.

3.3 If I were concluding on this matter now, the 10,500 would be sound provided that it is made clear that 10,500 is not a cap or ceiling to the level of acceptable housing development. To reflect the evidence of need and demand, Government policy for growth and the potential to acceptably deliver more, references to the provision of 10,500 should be prefaced with *at least* or *a minimum of*. As currently proposed to be changed, such words need to be added to the first sentence of EPFC5 which changes policy ADPP1, to policy CS1 (both before the 10,500 and before 525 dwellings per annum) and anywhere else this figure is referred to in the context of what the CS is proposing. I suggest these changes are consulted on.

3.4 If there is to be a further suspension of the Examination to allow for further work on the SA/EA report, I may be concluding the Examination in a changed legislative and policy context, but I cannot fully anticipate how that would affect the balance of considerations. The Council may, if it wishes, consult now on any change that it anticipates may be appropriate later.

3.5 EPFC17 adds to policy CS1 broad locational guidance for the location of new housing (moving text from CS2, which is to be deleted). There is an unnecessary repetition of priority being given to previously developed land and no acknowledgment that greenfield sites will be required on the edge of settlements. A misleading impression is given which is not sound for effective delivery. Particularly on the edge of settlements, the choice of location should be that