



Councillor John Mason

Representing the Hawkwell West Ward

Rochford District Residents
is a Registered Political Party



27 June 2011

Dear Sirs

Sustainability Appraisal of Core Strategy Submission Document - Consultation

The Council wrote to me on 13 June to advise, in my capacity of Party Leader of Rochford District Residents as a participant in earlier consultations, that the Council is now seeking views on the Sustainability Appraisal Addendum Review (SAAR) of the Core Strategy Submission Document.

I will refer to this as the Sustainability Review or just Review in this letter in order to promote the ease of reading and avoid unnecessary additional jargon.

I understand that comments submitted will be used to inform the final version of the Sustainability Appraisal Addendum, which will be submitted to the Planning Inspectorate.

I would like to remind the Council that my Party is a fully registered and relevant organisation in Rochford District and publication of my Party's views in a Summary is just as relevant and justified as the other organisation names and views that you do publish.

Although I am a Member of the Council and can speak in Full Council you will appreciate that only a very short period of time, 9 minutes, is allotted to speeches and even that has been foreshortened on occasion by the intervention of Officers. It is quite clear that I cannot make all the points that I need to make anyway on behalf of residents in that allotment, hence this detailed letter.

With reference to the Sustainability Review the Council has informed me that participants in the consultation have to "test the robustness of the evidence".

From the Council's web site I am further instructed "Please note that comments can only be made in respect of the SA Addendum."

I shall take great care to only refer to the matters which apply to this Review and the Forest Heath Case.

Expectations of the Sustainability Review

Let us first look at expectations for the Sustainability Review from the perspective of the Council, The Planning Inspector and my Party.

I quote as follows:

Keith Hudson (Portfolio Holder for Planning & Transportation) says on the Council's web site:

"There has been a more recent court ruling relating to "The Forest Heath Core Strategy" and their Sustainability Appraisal. We intend to ensure that we conform to the findings and ruling of this court judgement, and as such there will need to be a review of our own sustainability appraisal....."

Ms Laura Graham (H. M. Planning Inspector) wrote to the Council on 11 May 2011:

"If you decide to carry out further work on the SA, you must bear in mind that it is an integral part of the plan making process, which should be transparent and open to public participation. It must not be undertaken as an exercise to justify a predetermined strategy."

Here is what Rochford District Residents was expecting of the Review.

There have been many concerns expressed in the public consultations and the Public Examination to date regarding the failure of the Council to objectively assess the broad locations for housing growth in the context of environmental issues including Water, Green Belt, Landscape and Transport not just by individual Locations but by geographical aggregation.

These issues in particular are now directly relevant to the recent decision on the Forest Heath Core Strategy as it refers directly to the SEA Directive. The Council still needed, therefore, to undertake a detailed, objective assessment of the broad locations taking into account the environmental impacts and all reasonably available alternatives in a fair and objective manner.

However, even then in my opinion, the Rochford Core Strategy would need to be overhauled significantly to accommodate the changes that would result. It cannot just be a case of retrofitting a solution to justify earlier poor decision making and failure to provide evidence.

Comments

Enfusion, stated "Please note that we are providing this advice in our professional capacity as the Council's SA consultants; we would also advise that RDC consider taking further legal Counsel to obtain a legal interpretation in relation to this matter." (Reference Letter addressed to Mr. Hollingworth by Enfusion dated 16 May and signed by Barbara Carroll.)

I have contacted Nicholas Khan (Principal Solicitor, RDC) and he wrote to me as follows: "As far as I'm aware, no advice has been provided regarding the above."

Without a considered legal opinion it is uncertain whether this Sustainability Review conforms to the findings and rulings of this court judgement as required by Councillor Hudson.

In the absence of a legal opinion as recommended by Enfusion I have informed myself with reference to the following from Consultants WSP published on the Internet ([http://wsp.selesti.com/media/docs/newsroom/Forest Heath Core Strategy May 2011 Final.pdf](http://wsp.selesti.com/media/docs/newsroom/Forest%20Heath%20Core%20Strategy%20May%202011%20Final.pdf)) in order to be able to decide if the review from Enfusion conforms to the findings and ruling of the Forest Heath Judgement.

Publicly available legal and technical opinion

The primary ground of the challenge was that the Core Strategy had been adopted in breach of the requirements of Directive 2001/42/EC on the assessments of the effects of certain plans and programmes on the environment ("the SEA Directive"), in particular the duty for the 'environmental report' accompanying a draft plan or programme to explain what reasonable alternatives to the proposed policies have been considered and why they have been rejected.

The Judge referred to Article 5 of the SEA Directive and associated regulations:

Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated.

The review has not provided assessments of the impacts of development of the broad locations in the context of issues including Water, Green Belt, Landscape and Transport not just by individual Locations but by geographical aggregation.

I will provide towards the end of this letter examples of the significant environmental impacts and appraisal analysis that are not included in the Sustainability Review.

Interestingly Enfusion did promise in its scoping document "We propose to undertake comparative appraisal of the 13 residential alternatives....."

When I read the Sustainability Review I found that the 13 residential alternatives had not been compared against each other, ranked and then re-ranked against ALL of the reasonable alternatives that have come forward in the PE.

The Judge also referred to the Guidance on implementing the Directive:

If certain aspects of a plan or programme have been assessed at one stage of the planning process and the assessment of a plan or programme at a later stage of the process uses the findings of the earlier assessment, those findings must be up to date and accurate for them to be used in the new assessment. They will also have to be placed in the context of the assessment.

The evidence presented in the Review would appear to be dated, far from comprehensive and neither revisited or refreshed as Enfusion stated in their Letter. Enfusion also only consulted Officers for evidential input not Members.

Remember Ms Laura Graham wrote "It must not be undertaken as an exercise to justify a predetermined strategy."

Councillor Black (Member of the Council's LDF Sub Committee) wrote on a public blog (<http://onlinefocus.org/?p=6482>) - "The LDF Sub-Committee met in private and confidential session so I don't think I can say too much. We did literally look at other locations (using a minibus) but we didn't spend hours discussing the merits of each one."

Remember what Ms Graham also wrote:

Ms Laura Graham wrote to the Council on 11 May 2011;

"you must bear in mind that it is an integral part of the plan making process, which should be transparent and open to public participation."

Private meetings of the LDF Sub Committee are not transparent and the records of these meetings must now be released as evidence for judgement.

The advice of WSP continues as follows;

With the demise of Regional Spatial Strategies and uncertainties around the effectiveness of the duty to co-operate included in the Localism Bill the identification of reasonable alternatives is likely to become more difficult. This judgement demonstrates it is a key part of the assessment (and hence) plan making process. More generally, the case highlights the complexities of the Directive and the need for vigilance to ensure compliance.

The Review does not give evidence for the reasons for rejection of the possibility of a spatial strategy for most if not all housing development in the East of the District which was rejected without a detailed assessment at the outset of the consultations in the Core Strategy.

What are the Implications of the Judgement? (from WSP)

The judgement demonstrates that assessment is a key part of the plan making process and compliance with the SEA Directive is essential if challenges are to be avoided. The judgement centres around the consideration of reasonable alternatives (options) and the need for each stage of the assessment to provide a clear audit trail in terms of the alternatives considered, their effects and why they were rejected.

Has the Council included all reasonable alternatives as have come forward from Participants in the Public Examination?

Without an audit trail including private meetings of the Council for this it is hard to accept the evidence put forward that all reasonable alternatives have been included.

Is there any evidence that the primary requirements of the SEA Directive were understood and applied at the time that the Council established the Locations for housing growth? I am not aware of any evidence that this was the case. Is this a case of retrofit?

Assessments must provide a commentary on this – one client described this as ‘telling the story.’ It is not sufficient to provide the reasons for rejection in, for example, the Core Strategy itself. **The principles apply equally to assessments of other documents in the Local Development Framework and assessments in other sectors (like water, energy and transport) that are also caught by the Directive.**

The Review has not provided an overall comparative assessment of the impacts of development of the broad locations in the context of issues including Water, Green Belt, Landscape and Transport or the policy alternatives to the significant environmental issues that are likely to be caused by the policies that have been put forward.

Allocations DPD Consultation

It is interesting to see that Enfusion have brought forward the Allocations DPD Consultation as evidence of robustness in the Sustainability Review:

“3.2 In light of the Forest Heath ruling, it was decided to further develop this appraisal, considering the more detailed locations for development within individual top and second tier settlements. The recent publication (in February 2010) of the LDF Allocations DPD Discussion and Consultation Document has also enabled a further consideration of the realistic locations for development, as it incorporates the findings of the call for sites process and Strategic Housing Land Availability Assessment (SHLAA).”

The Council has decided not to publish a Summary of this Consultation at this stage.

It cannot, therefore, represent evidence. But is it robust evidence anyway?

The results of that Consultation has been published on a Liberal Democrat blog (<http://onlinefocus.org/?p=6533#comments>) and because it is referred to in evidence in the Enfusion Review the results summary is now germane to discussion in this Review.

Another resident has entered the data into Excel and the overall position was as follows:

“2318 responses in total with just 1.5% in favour and 93.7% against.”

With 93.7% of a significant number of responders having rejected the evidence put forward in the Allocations DPD this is hardly robust.

Will the Council now strike this reference to the Allocations DPD from the submission version of the SAAR which will go to Planning Inspector, Ms. Graham?

Areas not covered in the Sustainability Review.

I stated earlier that I would provide specific detail to back up my assertion that the Sustainability Appraisal Addendum Review was not robust enough and why.

Please recall the legal advice above regarding the interpretation of the Forest Heath Case

"The primary ground of the challenge was that the Core Strategy had been adopted in breach of the requirements of Directive 2001/42/EC on the assessments of the effects of certain plans and programmes on the environment ("the SEA Directive")"

From my background reading I understand that the Directive requires preparation of an environmental report in which the likely significant effects on the environment of implementing the plan or programme are identified, reasonable alternatives are identified, described and evaluated. It is necessary to provide sufficient commentary to justify the conclusions arrived at.

Good practice in SEA emphasises the value of integrating the assessment with the plan or programme making process.

Indeed Ms Laura Graham wrote to the Council on 11 May 2011;

"you must bear in mind that it is an integral part of the plan making process, which should be transparent and open to public participation."

In my view, again from my background reading, many benefits of SEA may be lost if it is carried out as a completely separate work stream or by a separate body. In the case of this Core Strategy I understand that the SEA work has been conducted by Essex County Council and Enfusion in separate workstreams.

Further work must be done by the Council itself on the following matters.

The Sustainability Review is not evidentially robust because none of these areas are covered.

There may be tensions between objectives that look hard to resolve as the following examples reveal but the Sustainability Review must clarify these so that subsequent decisions are well based, and mitigation or alternatives are identified and considered.

It does not do this so as presented here for Consultation.

1. There is no actual evidence that the Council has undertaken an overall comprehensive and detailed (in planning terms) comparative assessment of the impact of the CS Locations as a whole or in discreet groups of geographically associated Locations, in that they are identified for places of housing growth, in terms of the impact on green belt, the effect on water, landscape and highways.

To amplify and explain further it is entirely conceivable, for example, that green belt Locations for housing development as proposed in the central part of the District provide an important stepping stone in the green corridor that links the SSSI, Local Nature Reserves and the Local Wildlife sites where Hockley Woods is, in particular, a strategic resource of biodiversity which must not be damaged. This green corridor is extremely important to such initiatives as the Living Landscapes vision and general

bio-diversity and this aspect requires further research and analysis under the SEA Directive.

Development proposals for the first phase are concentrated in the centre of the district where the infrastructure, based on historical country lanes, cannot cope with existing traffic. There are a number of bottlenecks across this part of the District and being systemic in nature will not be improved by the relatively small improvements provided by the developments proposed.

There is no evidence that the consolidated impact of all the various developments on highways has been assessed nor in the discreet geographic group referred to above.

2. Para 4.23 of the published Core Strategy states that the Council will prioritise the redevelopment of brown field sites to minimise green belt release. There is no evidence that this has been fulfilled as an objective in the Sustainability Review.
 - The proposals result in 67% of new dwellings being sited on greenbelt land.
 - The two proposed new industrial sites will also be relocated to Green Belt land which in itself is the only way that any significant brown field will be allocated for housing development. This is not a true release of brown field because it is a policy which is a thinly veiled mechanism. Adjusting the real position for this means that, effectively, 89% of all development proposed in this CS is on green belt.
3. Any Locations which fall within the highest classifications of Agricultural Land, Grades 1 & 2 require special analysis in the SA.
 - A map showing agricultural land classification is available on page 61 of the Strategic Environmental Assessment Baseline Information Profile.
 - As such each have protection under PPS 7, paragraphs 28 and 29.
 - Para 28. The presence of best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification), should be taken into account alongside other sustainability considerations (eg biodiversity; the quality and character of the landscape; its amenity value or heritage interest; accessibility to infrastructure, workforce and markets; maintaining viable communities; and the protection of natural resources, including soil quality) when determining planning applications. Where significant development of agricultural land is unavoidable, local planning authorities should seek to use areas of poorer quality land (grades 3b, 4 and 5) in preference to that of a higher quality, except where this would be inconsistent with other sustainability considerations. Little weight in agricultural terms should be given to the loss of agricultural land in grades 3b, 4 and 5, except in areas (such as uplands) where particular agricultural practices may themselves contribute in some special way to the quality and character of the environment or the local economy. If any undeveloped agricultural land needs to be developed, any adverse effects on the environment should be minimised.
 - Para 29. Development plans should include policies that identify any major areas of agricultural land that are planned for development. But local planning authorities

may also wish to include policies in their LDDs to protect specific areas of best and most versatile agricultural land from speculative development. It is for local planning authorities to decide whether best and most versatile agricultural land can be developed, having carefully weighed the options in the light of competent advice.

- Where in evidence did the Council obtain "competent advice"? In the absence such advice any Locations so affected must be removed from the CS.
- 4. Proposed phasing will focus initial developments in the centre of the district (Hockley/Ashington/ Hawkwell/Rochford) but delay access road improvements in West of district until end of programme resulting in road chaos for years.
- 5. No consideration appears to have been given to mapping highways improvements to the housing phasing. As with other environmental issues, the capacity of the highways network should be assessed formally with consideration of the cumulative effects of other developments. The highways plan is unsound and not sustainable.
- 6. The Core Strategy only takes into account Flood risk identified by the Environment Agency which is fluvial based (tidal) and does not take into account Surface Water flooding risk. This is despite the fact that majority of flooding in the area has been caused by the latter and a combination of both.

Aviva Insurance were not content with the Environment Agency's evaluation they conducted their own that included Surface Water and number of claims for an area. This was because flooding was and still is a major concern to their revenue stream so they needed to identify properly all types of flooding risks.

An additional point that is not captured by either the Environment Agency or Aviva is there is no need to report flooding occurring regularly in a field, only local people know about this. It is wrong for the Core Strategy to only consider Fluvial flood risk.

Faithfully

