

Your Ref: Cala
Our Ref: EW/010036&CS/047662/Higby 24-02

Ms Lissa Higby
Programme Officer
Council Offices
South Street
Rochford
Essex
SS4 1BW

24 February 2011

Dear Lissa

Cala Homes Judgment

I set out below our written submission to the Inspector's question:

What weight should be given to the Secretary of State's intention to abolish Regional Spatial Strategies, and what are the implications for the Inspector's considerations of the proposed changes?

I set out our clients' response to this question in our statement dated 18th January and my colleague, Robert Pomery, gave evidence orally on this matter at the Examination. This submission updates our position now that the second judgement in relation to the High Court case brought about by Cala Homes has been issued.

The first judgement concluded that the revocation of the Regional Spatial Strategies (RSSs) was unlawful. The second judgement has found that the Government's intention to abolish RSSs is a material consideration to be taken into consideration in planning decisions.

Whilst we accept that the second judgement has relevance to planning decision making, it is important to recognise that the second judgement does not overshadow the first judgement. Regional Spatial Strategies are still in force until such time as they are abolished. We give detailed consideration in our response as to whether weight should be given to the Government's intention to abolish RSSs in the case of Rochford's Core Strategy (CS).

Section 24(1) (a) of the Planning and Compulsory Purchase Act 2004 requires local development documents to be in general conformity with the RSS. This requirement for "general conformity" is a legal requirement. Useful commentary is provided within the judgment on this matter at paragraph 69:

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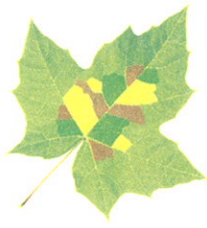
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"... the duty of an authority under section 24(1) of the 2004 Act to prepare their local plan documents "in general conformity" with the relevant Regional Strategy is not prejudiced by the Government's intention to dispense with such strategies. While Regional Strategies subsist a local planning authority will have to make sure to discharge its duty to achieve general conformity with them. Failure to do this would expose the offending plan to the risk of challenge in the courts. An authority preparing a plan is no more at liberty to override its duty under section 24 (1) of the 2004 Act than it is to disregard its duty under section 38(6) when determining an application for planning permission."

Turning to Rochford's Core Strategy (CS), it is our view that the Submission version of the CS was sound (subject to minor amendments as set out in our evidence). However, the proposed amendments, which were drafted by the Council at a time when they understood that the RSS had been revoked, are unsound and have no legal basis. In order to make the plan sound, the proposed changes should be rejected by the Inspector.

Rochford District Council concludes in their Topic Paper 3 that "the revocation of the East of England Plan provides a welcome opportunity to reconsider the total housing numbers to be accommodated within the Rochford District". At that time, the Council identified in TP3 that there were a number of reasons which justified their proposal to change housing targets. We challenged those reasons. The judgments which have followed mean that Rochford are now faced with a very different set of considerations. There is once again a legal requirement for the CS to be in conformity with the RSS as it remains part of the development plan. As the duty to be in conformity has clearly not been taken away, the Inspector cannot find the proposed changes to be sound.

Returning to the Inspector's question, no weight can be given to the Government's intention to abolish the RSS in the context of the Inspector's assessment of the soundness of the CS, as it is clear from the latest judgment that the courts take the view that the Government's intentions for regional strategies, should not prejudice the authority's duty, to be in general conformity with the relevant regional strategy.

In summary, it is clear that the Proposed Changes to the CS are not in 'general conformity' with the RSS. Furthermore, there are no circumstances to justify a CS which does not accord with the RSS. Therefore, it is respectfully requested that the Inspector rejects the Proposed Changes and considers the Submission version of the CS.

Yours sincerely

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cc Squiers and Crolls, Paul Fosh, Robert Pomery and Andrew Martin