

**SPECIAL DELIVERY & EMAIL**

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Our ref: 18293/A3/IP/AC

21 February 2011

Dear Ms Higby

**ROCHFORD CORE STRATEGY EXAMINATION**  
**CALA HOMES (SOUTH) LTD AND SECRETARY OF STATE FOR COMMUNITIES AND**  
**LOCAL GOVERNMENT [2011] EWHC 97 (Admin)**  
**REPRESENTOR REFERENCE: 14265**

I write further to your letter dated 8th February 2011 in which you confirmed the Inspector's invitation for any final submissions in respect of the effect or otherwise of the recent *Cala Homes* judgement upon the examination of the Rochford Core Strategy. We act on behalf of Bellway Homes Ltd who control some 33.45 ha of land at Hall Road, Rochford. Our submissions are as follows:

**Background**

Rochford District Council ('the Council') submitted the draft Core Strategy ('the CS') on 14th January 2010. The Council prepared the CS to be in general conformity with the relevant spatial strategy, namely the East of England Plan ('the EEP') dated May 2008. In short, the CS sought to provide 4600 new homes in the period to 2021 reflecting Policy H1 of the EEP. In addition the CS noted the requirement to plan for delivery 15 years from the date of adoption and, in doing so, assumed that the average annual requirement of 250 units should continue beyond 2021 to 2025.

On 27<sup>th</sup> May 2010, the Secretary of State announced his intention to abolish RSS through legislation and by letter dated 6<sup>th</sup> July 2010, this led to the immediate revocation of the RSS (and hence the EEP). In addition, the DCLG Chief Planner sought to provide guidance on the implications of the decision by way of a series of questions and answers attached to his letter dated 6<sup>th</sup> July 2010. In response, the Council proposed amendments to the CS dated 19<sup>th</sup> October 2010, the effect of which was to adopt the revised housing requirements set out in the emerging review of the EEP. Topic Paper 3 discussed this issue in detail. In summary, it concluded that the figures within the draft EEP 2011-2031 ('Option 1' figures) were the most appropriate. This equated to 3,800 dwellings, or 190 dwellings per annum delivered between 2011 and 2031.

The practical effect of the proposed change in terms of the CS was to extend the plan period, maintain the broad quantum of development but at a reduced annual rate. The spatial strategy remained the same.

Submissions were invited on these proposed changes and we submitted representations on behalf of Bellway Homes by letter dated 29<sup>th</sup> November 2010.





In *R (Cala Homes (South) Limited) v Secretary of State for Communities and Local Government & Winchester City Council* [2010] EWHC 2866 (Admin) Cala Homes successfully challenged the decision of the Secretary of State to revoke RSS (see judgement of Sales J dated 10 November 2010). The effect was to reinstate the RSS and hence the EEP as part of the development plan. The Secretary of State confirmed by his statement dated 10th November 2010 that RSS had been reinstated but restated his intention to abolish RSS through the Localism Bill. The Secretary of State also expressed his view that 'little had changed' as a result of the Judgement and that Councils should have regard to this intention. The Localism Bill was laid before Parliament on 13<sup>th</sup> December 2010.

The Council's response has been to maintain the revised housing requirement as set out in the Proposed Changes. The effect is that if the CS were to be amended in accordance with the Council's proposed changes, it would no longer be in general conformity with the EEP as required by section 24(1) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act").

Again, the Inspector invited submissions on this matter and we responded by letter dated 18th January 2011.

Meanwhile, Cala Homes pursued a new challenge, this time to the Secretary of State's statement of 10th November 2010, arguing inter alia, that the intention to abolish RSSs was not a material consideration in the determination of planning applications.

Lindblom J handed down his judgement on this second challenge on 7 February 2011 (see *R (Cala Homes (South) Limited) v Secretary of State for Communities and Local Government & Winchester City Council* [2011] EWHC 97 (Admin)).

It is important to note that the second Cala Homes challenge concerned a planning application for large scale residential development, currently the subject of an appeal. The challenge was not directed against the plan-making powers of the local planning authority nor how they had been discharged. Rather, it was whether any weight should be given, in a development control context, to the November 2010 statements of the Secretary of State and the Chief Planner

However, in respect of the plan-making position, Lindblom J commented as follows:

#### **"Plan-making**

28. **So far as plan-making is concerned, I believe Mr Mould** (Counsel for the Secretary of State)<sup>1</sup> **was correct in submitting that the letter and statement of 10 November 2010 do not compromise the duty of a local planning authority under section 19 of the 2004 Act, as amended, to have regard to "the regional strategy for the region in which the area of the authority is situated ..." when preparing a development plan document or any other local development document (section 19(2)(b)). This duty does not exclude the discretion to have regard to other considerations. Other considerations could, for example, include the national government's commitment to reforming the planning system by the removal of regional planning policy altogether. Similarly, in my judgment, 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<sup>2</sup>. 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**

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<sup>1</sup> Our insertion

<sup>2</sup> Emphasis underlined



**disregard its duty under section 38(6) when determining an application for planning permission. The statement and letter of 10 November 2010 has not warranted, let alone incited, any such breach. Neither has the Secretary of State's letter of 27 May 2010".**

The implications, if any, of Lindblom J's judgement for the examination of the CS can be considered as follows:

- (i) The status of the Council's proposed changes dated 19<sup>th</sup> October 2010 and the document that is before the Inspector for examination;
- (ii) Whether the intended abolition of RSS over-rides the duty for the CS to be in general conformity with the EEP; and
- (iii) If not, how the Secretary of State's intention should be addressed in the CS, if at all.

### **Status of Proposed Changes**

In our letter dated 18<sup>th</sup> January 2011, we set out our view that the document that is currently the subject of examination by the Inspector is the CS submitted on 14th January 2010 for examination. The Council's proposed changes are either simply changes proposed by the Council in response to issues raised by the Inspector or, as is the case here, in response to a material change of circumstances prevailing at that time. The Inspector will no doubt have regard to those changes and the Council's response to the effects of the respective *Cala* judgements of Sales J and Lindblom J in her examination of the CS. It is open to the Inspector to recommend that the proposed changes be discounted or adopted, in whole or in part as she considers appropriate so long as these accord with the applicable regulations, statute and case law.

### **Intended Revocation**

It is our view that to adopt the Council's proposed changes would render the CS as not in conformity with the EEP. Lindblom J comments upon this duty in paragraph 28 of his judgement, as set out above; confirm our view.

Accordingly, the duty imposed upon the Council by virtue of section 24 (1) of the 2004 Act remains, and the CS must be in general conformity with the EEP. Having taken counsel's advice, we believe that there are no other considerations or changes in law that would warrant the Inspector coming to a different view.

This position is consistent with that set out in our letter dated 18<sup>th</sup> January 2011.

### **Appropriate Response to Intended Revocation**

In our letter dated 18<sup>th</sup> January 2011 we set out our view that the intention to revoke the EEP was a likely change in circumstance during the lifetime of the CS, which the CS should seek to accommodate, in accordance with paragraph 4.44 of PPS12. It was therefore a matter of whether the CS contained sufficient flexibility to accommodate the effects of this intended change. Given the Council's position, namely, that the effect of revocation would be a reduction in the annual rate but maintenance of the spatial strategy and broad quantum (albeit over an extended period), it was our view that the future revocation of RSS could be accommodated through revisions to the implementation and monitoring policies and the housing trajectory of the CS.

Again, there is nothing in Lindblom J's Judgement that would alter this approach.

I trust the above is helpful and will enable the Inspector to close the Examination, which I understand will be in writing.

Yours sincerely

  
**IAIN PAINTING**  
Partner