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Council Offices  
South Street  
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Essex  
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24 February 2011

DC/08/256/01  
BY POST & EMAIL

Dear Ms Higby,

**ROCHFORD SUBMISSION CORE STRATEGY – EXAMINATION IN PUBLIC  
RESPONSE TO CORRESPONDENCE RE CALA HOMES JUDGEMENT**

We write further to the request for further written submissions on the weight that should be given to the Secretary of State's intention to abolish the Regional Strategies (RSs) following the recent Cala Homes Judgement (referred to hereafter as 'the recent judgement').

Specifically, the Inspector wishes to understand the weight that should be given to the stated intention to abolish RSs in the context of the emerging Rochford Core Strategy (CS) and the implications of this on the Inspector's consideration of the proposed changes. The response of CLLLP seeks to address the two discreet elements of the question separately below.

However, before considering these issues in further detail, CLLLP considers the recent Cala Homes Judgement changes very little in the context of the original Cala Homes Judgement (referred to hereafter as 'the original judgement'), which confirmed in paragraph 54 that:

*"there has been no effective change in any planning guidance brought about by the Secretary of State's decision"*

The original judgement went on to confirm the need for SEA of the proposed revocation of the RSs, a process that is required under European law. It is significant that paragraph 92 of the recent judgement confirms that the matter of whether any of the provisions of the Localism Bill ought to have been screened for Strategic Environmental Assessment was not before the court, and is a matter that "goes only to the weight to be attached to the Bill as a material consideration."

The recent judgement considered three principal issues [at paragraph 6], which necessitated a detailed assessment of the matter of materiality and weight. For the purpose of the response to the Inspectors' question, this is the main area of focus. However, the conclusions of Mr Justice Lindblom in relation to the other issues considered are also relevant in the consideration of the implications for the Proposed Changes to the CS.

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It is against this backdrop, and the confirmation of the Secretary of State that the proposed revocation of RSs is to *“promote more extensive house-building overall”* [para 60 of the original judgement], that weight, and the associated implications, must be considered.

### Weight

When considering the weight to be afforded to the stated intention to abolish RSs, it is necessary to consider the two principal issues for the decision maker, being the status of the Development Plan and the surety that can be given to the outcome of the intention to revoke RSs.

The primacy of the Development Plan is not in question. The recent judgement confirms that neither the statement of the Secretary of State nor the letter from the Chief Planner says anything that seeks *“to alter the priority to be given to the development plan, of which the Regional Strategy forms part”* [para 58] and which *“for the time being is properly to be regarded as ‘central’”* to the development plan [para 54].

Paragraph 58 of the recent judgement goes on to confirm that:

*“It is explicitly acknowledged there that the effect of Sales J.’s decision is to re-establish Regional Strategies as part of the development plan. By virtue of section 38(3) of the 2004 Act, this is the status they will continue to enjoy unless and until they are removed by the forthcoming ‘localism’ legislation... ..No attempt has been made to deny the ‘centrality’ Parliament has given to Regional Strategies in the planning system, or their role as a ‘primary instrument of planning policy’.”*

As such, there can be no dispute that Regional Strategies remain central to the Development Plan as a primary instrument of planning policy.

Turning therefore to consider the surety in the outcome of the intention to revoke RSs, paragraph 23 of the recent judgement confirms that:

*“At this stage it is not clear when the [Localism] Bill will become law or precisely what form it will take when it does. In its current form, however, it proposes the abolition of Regional Strategies ‘upon commencement’.”*

Paragraph 75 of the recent judgement confirms:

*“...the Government accepts that Parliament will in due course decide whether and in what form that intention or policy is translated into the law in the provisions of the Localism Act.”*

The clear interpretation of the above is that both the form and content of the Localism Bill are far from determined, as it is subject to potentially considerable changes in its passage through the Parliamentary process. Similarly, the date upon which the Bill passes into law cannot be accurately predicted, with best estimates being at least a year from now [para 21].

CLLLP contends, therefore, that the primacy of the Development Plan and the lack of surety in the timing and eventual outcome of the intention to revoke Regional Strategies, means that little weight can be attributed to the Secretary of State’s intention to abolish RSs.

It is also significant that the matter of weight has been considered recently in the appeal against the decision to refuse planning permission for the residential development of a site in Winchester known as land at the Pumping Station, Spring Gardens in Alresford [APP/L1765/A/10/2133702].

When considering whether the intended reliance by the Council on the 'Option 1' targets of the RS the Inspector noted the guidance for local planning authorities following the revocation of RSs notes that any target may be tested and authorities will need to be ready to defend them [para 25]. The Inspector went on to confirm that whilst the Council had "*begun an admirable exercise in public consultation about local housing requirements*" the results cannot be foreseen and in contrast, the targets in the RS form part of the Development Plan.

The Inspector went on to note in paragraph 28 that:

*"There is no dispute that the Secretary of State for Communities and Local Government has made clear his intention to abolish Regional Strategies. Recent litigation has also resulted in a judgement stating that the government's intention to legislate to achieve a policy outcome is capable of being a material consideration (albeit that further challenges may yet alter this position). However, the government's intention is reflected in the provisions of the Localism Bill now before Parliament and whilst I have taken it into account in my determination, at this stage of the parliamentary process I find that, contrary to the Council's view, it can attract little weight." [our emphasis]*

In summary, therefore, CLLLP agrees with the findings of the Inspector regarding the weight that can be afforded to the intention to revoke Regional Strategies in the land at the Pumping Station, Spring Gardens in Alresford appeal.

#### Implications for the Proposed Changes

Having concluded that little weight should be afforded to the intention to revoke Regional Strategies, CLLLP contends that the representations submitted to the proposed Focussed Changes consultation remain relevant in the context of the recent judgement. The representations confirmed that:

- The CS should plan for the period of 15 years from the monitoring year of 2012/13, which would extend the plan period to up to 2027/28, with the associated housing targets that the extra period would bring with it;
- The proposed housing delivery figure of 190 units per annum is the 'simplest arrangement' for the Council around which it has sought to construct the evidence to support the reduction in housing numbers rather than undertake a full and rigorous assessment of the housing requirements arising from locally derived needs;
- The assessment of housing land supply fails to take account of historic under-provision, is overly optimistic in terms of future supply and the baseline for the assessment of future supply was not subjected to sufficient scrutiny through consultation;
- The assessment of housing need is neither robust nor logical. The evidence base presented by the Council to justify a reduction in the housing provision figure is confused and could have a deleterious effect on the essential characteristic of the Green Belt in Rochford;
- The Sustainability Appraisal of the proposed changes to the Core Strategy is flawed because it fails to effectively balance the eventual loss of land to development that would occur over the extended plan period with the significant and real negative social and economic implications of reducing housing provision figures.

The recent judgement serves to confirm the basis upon which the representations were made are sound. In particular, the recent judgement confirms that:

- "*As the Chief Planner's letter of 10 November 2010 makes plain, after the abolition of Regional Strategies is achieved, if it is, by the new legislation, decisions on housing supply will be made at the local level on the basis of local assessments of need.*" [para 61], which CLLLP contends are absent in the case of the changes proposed to the CS;

- The work that informed the preparation of the adopted Regional Strategies remains relevant [para 68], noting that the East of England Plan was subject to extensive consultation, Strategic Environmental Assessment and formal adoption;
- The “assessments of housing need underpinning the provisions of the Regional Strategy will not vanish” if and when they are revoked [para 69];

In addition to the above and set in the context of the plan-making process, paragraph 69 of the recent judgement confirms that it is:

*“...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.”*

The proposed Focussed Changes to the Core Strategy are not considered to be in general conformity with the adopted Development Plan and as such, the Core Strategy remains unsound. As noted previously in representations to the Examination, in seeking to reduce house-building targets the Core Strategy also fails to accord with the fundamental aims of the Secretary of State for Communities and Local Government, or indeed the policies of PPS3, as revised, which seek to provide for a step change in housing delivery.

#### Conclusions

CLLLPP contends that little weight should be given to the Secretary of State’s intention to abolish the Regional Strategies (RSs). It follows that the Inspector’s consideration of the proposed changes to the CS must be made in light of this and taking full account of the submissions of CLLLPP to the CS Examination process, which seek to address the shortcomings of the CS as submitted and the proposed changes to the submission CS.

Finally, it is significant that paragraph 54 of the recent judgement confirms that “*the weight to be given to it [the intention to abolish the RSs] will always depend on the decision-maker’s own judgement, which is ultimately subject to review by the court on public law grounds.*”

Yours sincerely,

David Churchill  
DIRECTOR

cc. Andrew Yeardeley – Stratland Management Limited, p.p. Colonnade Land LLP