

Introduction

- (i) This response is submitted on behalf of our clients, Countryside Properties (respondent ID 8650), and sets out our comments on the additional Matters identified by the Inspector for the February 2011 resumption of the Examination.
- (ii) In respect of some of the Matters raised by the Inspector, our original submissions on the proposed Core Strategy changes already set out our comments in some detail, and we have appended that previous submission and cross-refer to it where appropriate to avoid repetition.
- (iii) We would like to be present at the resumed Examination to explain our submissions below at the Hearing sessions.

Matter 1(a): Given that the East of England Plan remains in place as part of the development plan, in what ways and to what extent would the proposed changes result in the Core Strategy failing to meet the requirement to be in general conformity with the East of England Plan, and are there any local circumstances that would justify any lack of conformity?

1. As set out in paragraphs 1.1 – 1.14 of our previous submissions (see Appendix 1), whilst the RSS exists, being in “general conformity” with it is not an optional extra – it is a basic legal requirement as per Section 24(1) of the P&CP Act.
2. The principle issue as regards ‘general conformity’ that arises from the proposed changes is in our view the issue of the quantum of new housing proposed.
3. Although the Council has previously sought to argue that the overall level of housing provision is the same as the RSS, just spread over a longer period, the result of the proposed changes is actually to decrease housing provision to well over 25% below the RSS requirement, in real terms a shortfall of over 1300 dwellings.
4. We set out the calculations that result in that conclusion in paragraphs 1.8. to 1.11 at Appendix 1, but basically over the period 2006-2026 the RSS requires 5,040 units, and the Core Strategy makes provision for only 3,713 units (partly through completions up to 2011, and partly through planned provision thereafter).
5. In terms of the issue of the “extent” to which this shortfall renders the Core Strategy not in ‘general conformity’, the following context is relevant:
 - (a) Setting the District level housing provision is one of the most significant functions that RSS performs, as both PPS11 and PPS3 confirm (see para 1.6 of Appendix 1 for references). If individual districts fail to provide the requisite levels of housing required by the RSS, then not only will there be a local and regional shortfall by that amount, but clearly the precedent would be set for other districts not complying either;

- (b) There is no equivocation in the manner in which the East of England Plan sets out the housing requirement. Policy H1 sets a minimum dwelling provision for all districts up to 2021, and a further requirement equivalent to the minimum annual requirement thereafter. It is difficult to see how a level of provision below a minimum figure could reasonably be said to be conforming;
- (c) The scale of under-provision (below the 'minimum' level) in this case could not be said to be de-minimus. Providing circa 3,500 homes instead of a minimum of over 5,000 is a very substantial level of discrepancy.
6. In terms of the second part of Matter 1(a), and the question of '*are there any local circumstances that would justify any lack of conformity*', we would respond firstly by saying that we are concerned that an option to justify non-conformity on grounds of local issues does not actually exist procedurally.
7. The P&CP Act 2004 at Section 24(1) states that a local development document "must be in general conformity with ... the RSS". It does not contain any proviso that says "*must be in general conformity unless material considerations indicate otherwise*" or "*unless local circumstances justify a lack of conformity*".
8. It was the case of course that as originally drafted, Section 24(1) went on to say at subsection (2) and (6) that the Local Planning Authority should request the opinion of the Regional Planning Body as to general conformity, and if the RPB felt that the Plan was not in general conformity, it would say so, and its comments would then be treated as an objection at the Examination, such that the issue of 'general conformity' might be a matter for debate at Examination. All of these provisions were deleted from Section 24 under the Local Democracy, Economic Development and Construction Act 2009 (except for remaining provisions for London).
9. Therefore the Act itself appears to make no provision at all for a DPD to proceed unless it is in general conformity, and no provision for the issue of general conformity to be weighed against other factors; hence our opening comment that 'general conformity' is a basic requirement, not an optional extra.
10. If our understanding of the legal position is incorrect, however, then it would be relevant to consider whether or not the 'local issues' advanced by the Council in Topic Paper 3 justify a Core Strategy not in 'general conformity' with the RSS. We would argue that none of the factors advanced do so, for the reasons set out in full in our Appendix 1 (paragraphs 2.1 to 2.46) and which can be summarised as follows:
- The Council's reliance on the 2010 Draft RSS as the 'option 1' figure is we understand incorrect (paras 2.3-2.7 of Appendix 1);
 - The Council's reliance on the 2010 Draft RSS in respect of evidence to support a lower housing figure: (a) ignores the RSS 'backlog' of unmet need at 2011, and (b) ignores the fact that the Draft RSS was proposing a level of housing provision that fell well below the actual level of housing

need established by the RSS evidence base, both in terms of the region as a whole and Rochford District in particular (para 2.8-2.14 of Appendix 1);

- The 2008/2010 Rochford SHMA documents both support a level of housing provision at least as great as the RSS, whilst noting that in relation to affordable housing provision, Rochford district now has the dubious distinction of being “the least affordable place for local residents” (paras 2.16-2.20 of Appendix 1);
 - The SHMA evidence on the effects of migration demonstrate that Rochford does and will continue to experience high levels of in-migration (paras 2.26-2.30 of Appendix 1);
 - The scale of housing provision is well below locally arising need as identified by the SHMA (paras 2.31-2.33 of Appendix 1);
 - The additional factors suggested by the Council in respect of an aging population, reducing household size and economic/commuting issues do not upon examination impact upon the over-riding conclusions from the SHMA regarding levels of need (paras 2.34- 2.28 of Appendix 1);
 - That the Council's argument that an under-provision of housing is more sustainable in terms of impacts on environmental and physical constraints, ignores the wider sustainability consequences of failing to meet housing need (adverse economic/social consequences locally, plus off-set of impact on to adjoining districts creates no net benefit anyway) (paras 2.30-2.35 of Appendix 1);
 - That the Council's argument that neighbouring Districts are better placed to provide housing than Rochford ignores the fact that there is no procedural means by which this could be achieved through the Rochford Core Strategy (and ironically that this sort of 'top down' rationalisation across boundaries was exactly what the RSS was for), and that neighbouring Districts are already providing far more housing to meet the overall sub-regional requirement than Rochford anyway. Also, contrary to the Council's suggestion, neighbouring Districts do not have better access to funding for new infrastructure, nor is there an infrastructure deficit in this Core Strategy (paras 2.36-2.40 of Appendix 1).
11. Therefore even if the question of 'local circumstances' is relevant to the issue of 'general conformity', the evidence shows that no such circumstances exist in the case of Rochford, and certainly not factors that are distinct and peculiar to Rochford, and which are not faced by other areas, including neighbouring Districts.

12. Fortunately, this Core Strategy can meet the 'general conformity' test by restoring the Pre-Submission housing figures (alongside other matters in our previous representations), because the RSS based figures have been subject to both SA and consultation.

Matter 1(b): 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 consideration of the proposed changes.

13. The simple answer to both questions is "none".
14. In his letter of 27th May 2010, and subsequently on 6th July, the Secretary of State invited Local Planning Authorities and the Inspectorate to have regard to the Government's intention in the future to abolish Regional Spatial Strategies as a "material consideration", and this is repeated in the more recent letter from Mr Quartermain of 10th November 2010.
15. However, this is an Examination in respect of a Development Plan Document, where the only considerations are legal compliance with Section 24(1) and Soundness. The concept of a "material consideration" simply has no applicability in the DPD process.
16. This is not a matter of semantics. The legal requirements for a DPD are clearly set in Section 24(1), and the application of the concept of Soundness is also clearly set out in PPS12 (compliance with National Policy, Justified, Effective etc). A DPD is either sound when assessed against the PPS12 tests or it is not, and either meets the requirements of Section 24(1) or it does not. There is no provision in legislation for a decision maker to come to a different decision based on 'material considerations' (and especially so for the matter of 'general conformity', as discussed in paragraphs 6 to 9 above).
17. 'Material consideration' is a concept that only has meaning in the context of the determination of a planning application or appeal against the provisions of an existing Development Plan.
18. The Court's decision on the second Cala Homes challenge is therefore equally of little relevance here, unless of course the Courts help to clarify that no weight should be attached to the Secretary of State's intentions. The second Cala Homes challenge certainly has applicability in respect of outstanding planning applications/appeals, but not DPDs.
19. Even if our understanding on procedure above is not correct, there are two other very practical considerations which lend further weight to the answer of "none", being:
- (a) For a decision to be based upon a piece of legislation that has not come in to effect, the decision maker would need to be very certain as to the consequences/effects of that legislation. We know the Secretary of State wishes to remove Regional Spatial Strategies, but as yet, it is not clear as

to what system will exist in its place, what transitional measures may exist, and what alternative guidance may be brought forward to guide the production of Development Plans in the absence of RSS. In essence, at the moment, there is only a partial picture as to the likely consequences that removal of RSS will have, and that is a very unsafe context to make decisions on the basis of expected future legislation;

- (b) We do know that the rudimentary guidance issued by the Secretary of State intended to apply in the absence of RSS (the 'Q&As' published alongside the Secretary of State's letter on RSS revocation) still makes clear that DPD housing provision figures will need to be based on robust evidence, and should follow the guidance in PPS3 para 33. As set out in the second part of our response to Matter 1(a) above, the evidence still points very much to the RSS figure (or indeed higher).

Matter 2(a): Would the revised CS meet the requirements of PPS3, having particular regard to paragraphs 33 and paragraphs 52-61?

20. No. This is because:

- (a) With regard to paragraph 33, there is good evidence of current and future levels of housing need contained in the SHMA, but the Core Strategy has ignored that evidence without sound reasoning (as summarised at paragraph 10 above and set out in detail in paragraphs 2.16 to 2.40 of Appendix 1);
- (b) Again with regard to paragraph 33, advice from the NHPAU informed the EoE Plan 2031 options evaluation, and pointed to considerably higher levels of provision that even the EoE Plan 2008 provided, let alone the EoE Plan 2031 (i.e. the EoE Plan 2031 itself under-provides for housing when assessed against its own evidence base).
- (c) The SHLAA and indeed the Submission Draft Core Strategy (prior to the latest changes) demonstrates that there is no shortage of available land within Rochford District to meet the current RSS requirement, it is simply that the Council does not wish to bring that land forward.
- (d) With regard to Paragraphs 52-61, the phasing provisions of the Core Strategy do not allow for a flexible and responsive supply of land, and are not conducive to continuous supply. We set out our concerns regarding the phasing provisions at paragraphs 4.1 – 4.14 of Appendix 1.

Matter 2(b): Is there sufficient justification for using the Option 1 Figures from the EoE Plan 2031?

21. No. This is because:

- (a) The EoE Plan 2031 should not be the 'Option 1' Figure, according to the Government Office (see Appendix 1 paragraphs 2.3 – 2.7, also Appendix

2, which contains the relevant correspondence referred to, which we think we may have inadvertently failed to attach to our previous submission);

- (b) The housing provision figures in the EoE Plan 2031 are not themselves based on robust evidence, with the options that were tested through the RSS process (and which *were* based upon evidence) all being higher at both the regional level and district level (see paragraphs 2.8 to 2.14 of Appendix 1).

Matter 2(c): Would the revised CS comply with the requirement in PPG2 that Green Belt boundaries should be revised only in exceptional circumstances?

- 22. The 'exceptional circumstances' in this case would be the need to remove land from the Green Belt in order to meet housing need (and whilst the RSS remains, to comply with that 'higher tier' strategic document).
- 23. If the provisions of this Core Strategy were actually meeting the evidentially justifiable needs for housing, we would say that 'exceptional circumstances' would exist. The problem is that this Core Strategy dilutes the 'exceptional circumstances' balance by removing land from the Green Belt to meet only a part of the locally arising need for housing.

Matter 2(d): To the extent that the revised CS allows for the potential release of Green Belt land to meet housing needs, is there sufficient clarity on when and how such land would be released, for example what would trigger the need to review the Green Belt boundary?

- 24. No comment.

Matter 2(e): Would the revised CS provide sufficient flexibility and a continuous supply of housing land?

- 25. We do not consider that the Proposed Changes to the Core Strategy have changed the position as regards the lack of flexibility in the Core Strategy, and the problems that exist in respect of the inflexible and inappropriate phasing provisions for the Greenfield sites, which will adversely affect the provision of a continuous supply of land for housing.
- 26. In fact, the updated phasing provisions contained in Policy H2 of the Core Strategy changes exacerbate the situation as regards the inexplicability and unsuitability of the Greenfield phasing provisions.
- 27. We deal with this matter in paragraphs 4.1-4.14 of Appendix 1 to these submissions.

Matter 3(a): Sustainability – Would the proposed changes have a positive or negative impact on sustainability, and would the revised CS strike the right balance between meeting development needs and environmental considerations?

28. As set out in our arguments at Paragraphs 2.30 – 2.35 at Appendix 1, the answer to this question depends to a large extent upon whether the shortfall in housing proposed in Rochford District could, as the Council argues, be made up in neighbouring districts, or whether or not there is an overall shortfall in housing provision in the Sub-Region.
29. Dealing with the first scenario (and ignoring for the moment the fact that in reality, given constraints in neighbouring Districts, it is not a proposition that has any credibility in practice), the answer to the question is that any local environmental benefits that may arise in Rochford District would in all likelihood be off-set by the adverse environmental benefits that would then occur in the neighbouring district (all are subject to Green Belt and other relevant environmental, physical and infrastructure constraints). So whilst in overall terms this scenario might see housing levels in the broad geographical area being sustained, it is difficult to see how there would be any positive impact in terms of overall sustainability.
30. As we note in our submissions in Appendix 1, in this scenario, any SA for Rochford District would be inextricably linked to the SAs for the relevant neighbouring districts. This would of course present a problem procedurally for an Inspector, because no wider SA has been undertaken, and without knowing how and where the shortfall in units might be made up, no way of being able to fully assess the consequences.
31. In the alternative and more likely scenario that there would be an overall shortfall against locally arising needs, then the adverse sustainability consequences of under-provision could be significant, including:
- Adverse social consequences arising from further relative inflation in house prices and scarcity of housing to meet local community requirements. The evidence base already explains that Rochford is the least affordable district in the South Essex area. The effects of internal migration cannot be 'wished away', because unless there are border controls or restrictions on occupancy in Rochford, it is a fact of life that homes in the district will continue to be occupied by in-migrants on occasions, which will further reduce availability to existing local households;
 - Adverse consequences on economic performance, owing to a shortfall in available labour;
 - Adverse environmental consequences from increased travel, in particular reverse commuting, from persons working in the district but unable to live there.



32. In considering the above issues, it should also be borne in mind that there is little, if any, substantive evidence to support the assertion that reducing the overall level of housing in Rochford District will have sustainability benefits, other than a general contention that building new homes has an environmental cost, and building less homes uses less land. As far as we are aware, the proposed reduction in the number of new homes does not result in any specific, tangible or identifiable 'sustainability benefit'.

Matter 4: Any other matters arising from the Proposed Changes

33. A key additional issue that arises as a consequence of the Proposed Changes (as opposed to a change contained within the Proposed Changes) is the implication for the Plan period. The delay in progressing the Core Strategy means that it will not now be adopted until 2011, and therefore providing for a minimum of 15 years (as per PPS12) will require a Plan that extends to at least 2026 (and indeed potentially 2027, as per our comments at paragraphs 3.1 to 3.3 of Appendix 1).