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Ms L Graham  
The Planning Inspectorate  
Room 403  
2 The Square  
Temple Quay  
Bristol BS1 6PN

22 July 2011

DC/08/256/01  
**BY POST & EMAIL**

Dear Ms Graham

**ROCHFORD CORE STRATEGY – EXAMINATION IN PUBLIC**

Thank you for your letter of 19 July.

We can confirm that we have set out our views on the soundness of the CS throughout the consultation process, including the recent response to the consultation on the June 2011 Sustainability Appraisal Addendum. In the interests of clarity and openness, we have also provided the Council with a copy of this letter and previous correspondence that we have sent to you regarding the CS to confirm the magnitude of the concerns.

Since we wrote to you on 13 June a number of directly related determinations have emerged, both local to Rochford and in relation to other Core Strategies across the Country.

In addition to the matters raised in the Forest Heath Core Strategy judgment, previous correspondence sent to you and the Council has identified a number of recent examples where housing delivery matters have brought the soundness of Core Strategies into question. These have included Surrey Heath, Stevenage and Bury as well as the ongoing exchanges between Castle Point and the Inspectorate. More recently, the number of cases of interest has grown, with the Inspector sitting in Examination of the Central Lancashire Core Strategy identifying the failure to comply with the housing targets of the Regional Strategy as a reason why the Core Strategy is likely to be found unsound. Furthermore, the Inspector sitting in the West Berkshire Core Strategy stated that the failure to identify reasons for the rejection of alternative housing locations, and the failures to explain the process of selection, means that the Core Strategy could not be recommended for adoption even if all other issues were satisfactory.

The example set by the Inspector sitting in the West Berkshire Core Strategy is of direct relevance in the context of the recent Sustainability Appraisal Addendum (SA Addendum) consultation undertaken by Rochford. Representations we have submitted to the Council in response to the consultation confirm that the SA Addendum is considered to be merely an exercise to justify a predetermined strategy. Furthermore, these representations confirmed that the entire purpose of the SEA Directive and Regulations is for alternatives to be assessed at a formative stage as part of an iterative plan making process, rather than a bolt-on exercise only undertaken after the conclusion of the hearing sessions of the Examination.

Cont.2...

You may already be aware that the Council has recently approved an Executive Decision by the Portfolio Holder for Planning and Transport to request the suspension of the Core Strategy Examination process until December 2011. The Executive Decision and the report of officers that preceded it, both of which are enclosed for reference, confirm inter alia, that:

- The Council is unable to demonstrate a five year supply of housing land [App 3 – 2.3 & App 4 – 5.5];
- It is seeking to proceed on the basis of the retention of 190 dwellings per annum ("maximum") figure [App 3 – 3.1 & App 4 – 3.20];
- The Council's agreed approach is based on a draft document that did not proceed beyond the initial stage of consultation [App 4 – 5.2];
- Reversion to the adopted Regional Strategy housing figures of 250 dwellings per annum as set out in the adopted Development Plan is considered to constitute a change to the Council's agreed approach [App 3 – 4.1 & 4.2];
- The suspension is sought in order to allow the outcome of the Localism Bill to be considered [App 3 – 3.3];
- A further revised timetable (to that only recently agreed between the Council and the Inspectorate) for the Core Strategy will be required [App 3 – 3.6];
- The Council is reliant on the actions of third parties to act competently and lawfully [App 4 – 5.4];
- The Council is reliant on the Localism Bill being enacted swiftly after receiving Royal Assent despite recognising that further regulations (pursuit to the outcome of SEA), and the related time constraints, may be required before the abolition of Regional Strategies takes place [App 4 – 5.4]; and
- The Council is therefore reliant on the actions of third parties for it to keep to any proposed timetable.

It is clear that the position has moved so far that the actions of the Council are an attempt to predict the outcome of primary legislation before it completes its passage through Parliament. The action of the Council in ratifying their Executive Decision is an attempt to retrofit the planning system to accord with its Core Strategy.

In coming to your decision in response to the suspension request we ask that you critically assess whether the actions of the Council have been taken in the interests of propriety and fairness and in accordance with due process. Furthermore, we ask you to consider the logic of the Council's proposed approach – if the Council wishes to await the outcome of emerging legislation before progressing with the preparation of the strategic planning framework for the District, would it not be advised to prepare a plan based on the new legislation, rather than proceed with an unlawful plan prepared under a different legislative structure?

We reiterate the advice we have reported to you and the Council regarding the advice received from Queen's Counsel in relation to the lawfulness of the Core Strategy because of the failings of the Council in respect of due process.

We await your response to the Council's suspension request, in terms of the matters raised above, but also in recognition of the implications that the further delays will have on the relevance of an increasingly out of date evidence base that the Council is seeking to rely on.

Finally, we confirm that we reserve the right to show correspondence relating to the matters raised by this letter to the Court at a subsequent date.

Yours sincerely,



David Churchill  
DIRECTOR

cc. Andrew Yeardeley – Stratland Management Limited, p.p. Colonnade Land LLP  
Shaun Scrutton – Rochford District Council  
Lissa Higby – Programme Officer

# ROCHFORD CORE STRATEGY EXAMINATION

Programme Officer: Lissa Higby  
Council Offices  
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Essex, SS4 1BW

Tel.: 01702 318062

Email: [programme.officer@rochford.gov.uk](mailto:programme.officer@rochford.gov.uk)

Ref:

Date: 27 July 2011

Mr. D. Churchill  
Iceni Projects  
20 Hanover Square  
London W1S 1JY.

Dear Mr. Churchill,

## **Rochford Core Strategy**

I have received the following response from the Inspector to your email of 22 July:

“I have received your letter/email dated 22 July. If I receive a formal request from the Council regarding suspension of the Examination, my response will be placed on the Council’s website.

Please note that, in accordance with the Guidance Notes published for the Pre-Hearing Meeting, any matters which participants wish to raise with the Inspector should be addressed to the Programme Officer, not copied to the Inspectorate’s staff in Bristol. It is not part of their role to deal with correspondence of this sort. The Programme Officer is currently attending her office about twice a week, which I regard as perfectly acceptable at this stage in the Examination.”

Yours sincerely,

Lissa Higby  
Programme Officer

KC/1027  
22 July 2011  
Lissa Higby  
Programme Officer  
Council Offices  
South Street  
Rochford  
Essex  
SS4 1BW

Dear Lissa

**Rochford Core Strategy Examination**

I refer to my letter of the 24<sup>th</sup> June in which I raised certain queries and concerns regarding the on-going Rochford Core Strategy Examination, and to the Inspector's written response of 6<sup>th</sup> July.

In its proposed timetable, the Council had indicated that it would report back to Full Council at the end of July on proposed amendments arising from the Review of the Sustainability Appraisal, and would then proceed to consultation on those changes.

As you may be aware, or no doubt will shortly become aware, a meeting of Full Council was held on the 21<sup>st</sup> July, but not to consider amendments to the Core Strategy arising from the Review of the Sustainability Appraisal. Instead, Full Council was presented with two options on the future progress of the Core Strategy, being (a) to request a suspension of the Examination until after the Localism Bill, or (b) to seek to undertake amendments to ensure the Core Strategy accords with the Regional Spatial Strategy.

The Council duly adopted Option A, and no doubt the Council has or will shortly notify you of this.

The report presented to Full Council explains that under Option A, the Council could use the period of suspension to make amendments to the Core Strategy, irrespective of whether those changes arise from the SA Review, and suggests that this is an approach sanctioned by the Inspector (see paragraph 4.4 of the Committee Report attached).

We did note in our previous correspondence our concern that since the original request to the Inspector not to issue her report was predicated solely on undertaking the SA Review, this shouldn't become an opportunity to 'rewrite bits of the plan' unless those changes arise as a result of the SA Review. However, the SA Review we know already neither proposed nor considered any amendments, and therefore our concern remains that there does not appear to be a clearly defined scope for further amendments at this stage.

I also noted in my letter that it seemed apparent that the Council had no intention of ensuring that its Core Strategy should achieve general conformity with the East of England Plan, despite the Inspector's comments to the Council that it should do so.

The decision of Full Council on the 21<sup>st</sup> is now a formal resolution that the District Council has no intention of responding to the Inspector's concerns on this point. It is also clear from paragraph 3.20 of the Committee Report that the Council does not in fact consider that the amended Core Strategy (i.e. with the housing provision reduced from 250 to 190 per annum) is in general conformity with the RS (despite the suggestion to the contrary made at the Examination hearing sessions).

I note incidentally at paragraph 5.10 of the attached Report that there is no longer any legal requirement to seek an opinion from the RPB on the issue of general conformity, since this part of s24 was removed by the 2009 Act, and therefore the concerns raised in respect of how this might be done procedurally do not arise. I also note that reference is made in the report to the recent suspension of the Luton and Central Beds Core Strategy Examination (a process in which we are involved), but for a number of reasons, this is not actually a comparable situation, not least because in that instance the suspension has arisen prior to the start of the Examination, not after the completion of the Inspector's report.

The Inspector will obviously be familiar with the PINS guidelines on suspension requests. In seeking to suspend the Examination until December, this Examination would be reconvening sometime in 2012 with a new Act, a whole new set of national planning policies, a rapidly aging evidence base, and potentially a whole new legal system against which development plans would be assessed. All of those changes could require a very different plan to be produced, but at the very least, it is likely that the process of Examination would need to begin very much from the beginning, in order to take account of changed guidance and circumstances.

Clearly the Inspector will come to her own view about the merits of a further suspension, but as a process we are concerned that with the passage of time and the changing framework referred to above, we are likely to end up in a position of substantial parts if not all of the Core Strategy being reopened for debate, and we are unclear as to what the 'ground rules' would be.

It remains of course the case that as originally submitted, the Core Strategy was in general conformity with the RS, and was certified by the Council as 'sound' at the point of submission. It remains the originally submitted Core Strategy (as opposed to the focussed changes of October/November 2010) that is the starting point for the determination of whether or not the Plan is sound. We wonder therefore whether or not reversion to the original Submission draft (which actually has implied flexibility in terms of the post 2021 period) might still offer a basis for a Sound plan.

Yours sincerely

Kevin Coleman

Associate Director

[kevin.coleman@jbplanning.com](mailto:kevin.coleman@jbplanning.com)

# ROCHFORD CORE STRATEGY EXAMINATION

Programme Officer: Lissa Higby  
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Ref:

Date: 27 July 2011

Mr. K. Coleman  
**JB PLANNING ASSOCIATES LIMITED**  
Chells Manor  
Chells Lane  
Stevenage  
Herts  
SG2 7AA

Dear Mr. Coleman,

## **Rochford Core Strategy**

I have received the following response from the Inspector to your email of 22 July:

“I have received your letter/email dated 24 July 2011. If I receive a formal request from the Council regarding suspension of the Examination, my response will be placed on the Council’s website.”

Yours sincerely,

Lissa Higby  
Programme Officer

Dear Ms Graham

I am aware that you are not accepting new evidence at this time, in accordance with paragraph 5.32 of the Inspectorate's Procedure Guidance.

Nevertheless I believe that I should be entitled to make a representation to you on the following.

I understand that following a decision by Council on 21 July that a formal request has been made to you by the Council that the examination into the Core Strategy be suspended until December 2011.

On 21 July I received the following in an email from Carter Jonas;

"Dear Councillor, I refer to the above and particularly to item 8(2) which deals with the Core Strategy. Having been involved with the Core Strategy process for a number of years, including taking part in many consultations and participating at 2 Examinations, it is frustrating that the Council propose further delay, cost and uncertainty, and in effect are proposing a suspension which conflicts with the Inspector's clear advice to the Council. In this respect, we consider that approval of the recommendation may be unlawful. Trevor Dodkins MRTPI, Head of Planning, Cambridge."

I raised the last sentence in Council.

The Council's Lawyer advised Members that the Recommendation could not in itself be unlawful being just a request of the Inspector which was lawful. It was the Inspector's decision to agree or not.

I would be pleased if you would consider my following representation which is made in good faith without the benefit of any legal advice but the application of the view of residents.

The latest Court Case referred to by you for Rochford says (letter dated 2 June 2011);

""You will be aware of the recent High Court judgement in the Cala Homes case. At paragraph 24 it says "It would be unlawful for a local authority preparing, or a Planning Inspector examining, development plan documents to have regard to the proposal to abolish regional strategies".""

The words which still ring in my ears are "It would be unlawful for a local authority preparing.....to have regard to the proposal to abolish regional strategies."

But the Council is continuing to do just that and just asking for a Suspension of the Public Examination does not, in my opinion, change this act of continuing to prepare its Core Strategy having regard to the proposal to abolish regional strategies, as it evidences from its published Timetables from being unlawful to lawful.

Personally, seeing that this position remains I do not think, respectfully, that you should agree to the Suspension because in doing so the decision would surely be facilitating something contrary to general direction of Court, in having seen the Council's intention to continue on an unlawful course despite what the Court ruled, "that it is lawful to continue to have regard to the proposal to abolish regional strategies in preparing a Core Strategy."

I thank you very much for considering my representation.

Sincerely

Councillor John Mason



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Ref:

Date: 27 July 2011

**Cllr. J. Mason**

Dear Cllr. Mason,

## **Rochford Core Strategy**

I have received the following response from the Inspector to your email of 24 July:

“I have received your letter/email dated 24 July 2011. If I receive a formal request from the Council regarding suspension of the Examination, my response will be placed on the Council’s website.”

Yours sincerely,

Lissa Higby  
Programme Officer