

CORE STRATEGY FOR CHILTERN DISTRICT - EXAMINATION

INSPECTOR'S PRE-HEARING NOTE: SUSTAINABILITY APPRAISAL

Background

The Council may already be aware of the recent judgment of Collins J. in the High Court in: *Save Historic Newmarket Ltd & Others v. Forest Heath District Council* [2011] EWHC 606. The judgement can be found here:

<http://www.bailii.org/ew/cases/EWHC/Admin/2011/606.html>

Would the Council please make this judgment a Core Document.

This was a challenge under s113 of the Planning and Compulsory Purchase Act 2004 to policies in the Forest Heath Core Strategy (adopted in May 2010) allocating a 1,200 dwelling urban extension in north-east Newmarket.

The main ground of challenge was that the Core Strategy had been adopted in breach of the requirements of the EU Directive (2001/42/EC) on Strategic Environmental Assessment and the associated Environmental Assessment of Plans and Programmes Regulations 2004 (SI No.1633), in particular the duty for the 'environmental report' (i.e. the Sustainability Appraisal report) accompanying a draft plan or programme to explain what reasonable alternatives to the proposed policies have been considered and why they have been rejected.

Collins J. states in paragraph 40 that it was not possible from the SA report accompanying the draft plan for '*...the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in residential development made no difference*'. As a consequence, the policies in relation to the urban extension have been quashed.

This is one of the first judgments I am aware of that has applied these statutory requirements to the production of Development Plan Documents and has clarified how they are to be met.

Chiltern Core Strategy Sustainability Appraisal (CDN085)

On the Agenda for consideration of Statutory and Regulatory Matters, I ask in relation to the Sustainability Appraisal:

Was the selection of 2,400 as the required housing provision in the publication version of the Core Strategy considered against reasonable alternatives?

I can see no reference in CDN085 to explain why this number was chosen for the submitted plan, bearing in mind that previously the emerging plan had been based on providing 2,900 dwellings.

On the Agenda for Main Matter 2, I ask:

Is the Council's evolved choice of urban concentration (as it is now stated to be) as the locational strategy justified by evidence and has it been the subject of Sustainability Appraisal which has informed the development of the strategy?

The Council accepts (CDC2, 9 Feb 2011, paragraph 7) that the locational strategy proposed in the Core Strategy is more closely aligned to Scenario/option 1 than

Scenario 3 (as set out in the Options Paper, June 2008). Proposed changes in CDN117 would delete all references in the explanatory text to Scenario 3 on which the location strategy was supposedly based. However, the SA published with the draft plan (CDN085) refers specifically to the choice of option 3.

It is clearly difficult to understand, on its face, how the published SA meets the Regulatory requirements. This can be discussed further at the hearings.

However, I would be grateful if the Council could give this matter very careful thought in the light of the Forest Heath judgement. The Council should also consider whether, if there is any failure to meet the Regulatory requirements, this could be rectified as part of the progression of any necessary changes following the hearings.

Simon Emerson
INSPECTOR
5 April 2011