

Planning Committee

Revocation of the Regional Spatial Strategy

2 December 2010

Report of Head of Planning Policy and Economic Development

PURPOSE OF REPORT

To inform members of the High Court ruling on 10 November which overturned the Secretary of State's revocation of Regional Strategies earlier this year and to consider the consequences of this.

This report is public

Recommendation

That members of the Planning Committee note the report and the implications of the re-establishment of Regional Spatial Strategies with regard to determining planning applications.

Introduction

Members will recall that in on 6th July, the Secretary of State, Eric Pickles MP, formally revoked existing Regional Strategies (including the South East Plan) under powers available to him under s79(6) of the Local Democracy Economic Development and Construction Act 2009. At the same time, the Secretary of State provided some guidance for Local Authorities which sought to provide clarification on the impact of the revocation and how Local Planning Authorities should continue to bring forward their Local Development Frameworks and determine planning applications.

The decision by the Secretary of State to revoke Regional Spatial Strategies has since been challenged through the courts by house builder Cala Homes. On 10th November, it was announced that this legal challenge had been successful in the High Court. The consequence of this is that the decision by the Secretary of State in July has been overruled, and therefore Regional Spatial Strategies (including the South East Plan) are re-established as part of the development plan. Regional and sub-regional policies, including those on housing, employment, transport, the environment and minerals and waste, are reinstated.

The purpose of this report is to consider the consequences of this latest decision, particularly in relation to housing land supply.

Two reports on the revocation of Regional Strategies were brought before this Committee at its meeting on 15th July. The matter was of immediate concern to this Council in view of the fact that, at the time, the Council did not have a five year supply of land for housing (as required by Planning Policy Statement 3) and was in the process of considering planning applications for residential development in that context. Under the South East Plan, the district's calculation of the 5 year supply was based on an overall housing requirement of 13,400 homes from 2006 to 2026.

The question the Planning Committee was asking at that time was whether, in the absence of the figures in the South East Plan, (1) what was the proper basis for considering the total number of homes that the district should be planning for, and therefore (2) what constituted a five year housing land supply?

The conclusions to the advice that I gave you on that occasion were as follows:-

"In summary, members are advised to exercise caution in considering the refusal of planning applications on the basis of a revised lower housing target until such time as work has been done to present an appropriate target backed by the proper evidence. The Secretary of State's announcement makes clear that some authorities may decide to retain their existing housing targets and that others may decide to undertake a review. He advises that authorities that decide to review their housing targets "*...should quickly signal their intention to undertake an early review so that communities and land owners know where they stand*". The possibility of a review is being considered together with other issues arising from revocation of the RSS.

However, at the present time applications should be considered on the basis of material planning matters relevant to individual applications, mindful of the need to maintain a delivery of housing in the district but equally mindful of the fact that there is no set housing target within the district against which to calculate whether we have a five years supply."

This advice has informed the recommendations made by officers to planning applications since that time and, in the absence of a justified, alternative figure, officers have continued to apply the 13,400 as a working housing figure until such time that there is an evidence based figure arrived at through the Core Strategy process. The Council (on 19 July) has instructed officers to progress the Core Strategy on the basis of meeting the local proposed draft South East Plan requirement of 11,800 and this is being tested along with other options.

Background Information

Cala Homes challenged the Secretary of State's revocation made under powers set out in section 79 (6) of the Local Democracy, Economic Development and construction Act 2009, on two grounds; firstly, that the Secretary of State acted outside his statutory powers in circumventing the need for Parliamentary scrutiny of such a fundamental change to the planning regime, and secondly that under European law the environmental effects of removing the strategies have to be considered.

The case was heard in October and the Judge's ruling announced on 10th November.

The Government sent a letter to all local planning authorities in response to this decision on the same day, and this is referred to below.

Key Issues for Consideration

A number of questions follow from this decision. These are:-

- What response has the Government given to this ruling?
- What impact does this ruling have upon decisions which this Council now makes on planning applications?
- What is likely to happen next?

These are now considered in turn.

- 1) What response has the Government given to this ruling?

The Government has made it very clear that the High Court ruling does not, in any way, deflect it from its announced intention to ultimately abolish Regional Spatial Strategies. Commenting on the announcement, Communities minister Bob Neill MP said:

"This judgement changes very little. Later this month we will be introducing the Localism Bill to Parliament, which will sweep away the controversial regional strategies. The Government remains firmly resolved to scrap this layer of confusing red tape. Instead, we will work with local communities to build more homes. This was a commitment made in the Coalition Agreement and in the general election manifestoes of both coalition parties. We intend to deliver on it."

- 2) What impact does this ruling have upon decisions which this Council now makes on planning applications?

The main impact of this decision is that, because the South East Plan still forms part of development plan, the Council should still have regard to all its policies, where material, in determining planning applications.

As well as housing policies, this includes policies on employment, transport, the environment and minerals and waste. After 6th July, the Council stopped citing any policies in the South East Plan in its Planning Committee reports and in decisions on planning applications. As of 10th November, it must, for the time being, start to do so again. This will be reflected in other reports on this agenda as appropriate.

A key matter, however, is over how we consider issues around housing numbers. With the re-establishment of the South East Plan, the housing target for Cherwell District (13,400 homes between 2006 and 2026) becomes – again – part of the development plan and therefore the formal basis on which we calculate our five year housing land supply until such time that Regional Strategies are abolished or replaced as a result of changes to the planning system expected to be delivered through the forthcoming Localism Bill.

In practice, this should make no difference to our decision making process. I set out in the introduction to this report the summary advice which officers gave to this Committee in July. This strongly advised the Committee to continue to using the figures in the South East Plan for the time being. This advice has provided the policy basis for subsequent decisions on planning applications. Because we have taken this position, there is therefore no requirement to change that advice to you now, except of course to make clear that the housing figures in the South East Plan now have statutory weight (again) as part of the development plan and therefore, contrary to what is stated in the second (above quoted) paragraph of my July advice, there is a set housing target within the district against which to calculate whether we have a five years supply.

Members may be aware that appeals have been lodged against some of the planning applications that it refused over the summer period. These are for:-

- 65 homes on land south of Milton Road, Adderbury (10/00270/OUT) and
- 63 dwellings on land next to The Green, Chesterton (10/00547/OUT).

Had the Council, in determining these applications, sought to apply a different overall housing land requirement from that in the South East Plan, these appeals would need to be considered vulnerable in the light of the re-establishment of the South East Plan. Because the council did not do this, our position now in these appeals is more robust.

The Planning Inspectorate has published advice for its inspectors on the impact of the Cala Homes judgement. This reinforces the key message that, until further announcement, and/or legislation to formally repeal or revoke RS is implemented, the Cala decision means that the Regional Strategy is part of the development plan on an ongoing basis. This will be used, as appropriate, by the council in handling appeals.

In making it clear that the South East Plan is re-established, the Committee should still, however, be aware of the view of the Government expressed in a letter sent to all local authorities immediately following the announcement. This stated (amongst other matters):-

The effect of this decision is to re-establish Regional Strategies as part of the development plan. However the Secretary of State wrote to Local Planning Authorities and to the Planning Inspectorate on 27 May 2010 informing them of the Government's intention to abolish Regional Strategies in the Localism Bill and that he expected them to have regard to this as a material consideration in planning decisions.

*.....The Bill is expected to begin its passage through Parliament before Christmas, and will return decision-making powers in housing and planning to local authorities. **Local Planning Authorities and the Planning Inspectorate should still have regard to the letter of the 27 May 2010 in any decisions they are currently taking.** (my emphasis).*

In making appropriate recommendations to this Committee, officers will have regard to this advice.

A final point to make on this matter is in relation to the five year housing supply itself. In the summer, as stated above, the Council did not have a five year housing land supply. This had originally been reported in the Annual Monitoring Report in November 2009.

The Annual Monitoring Report is updated annually and the latest update was presented to Executive on 1st November. This reported that the district had returned to a 5 year housing land supply and that there is not now a housing supply reason to consider favourably applications for 10 or more dwellings on sites not included within the district's supply of deliverable sites.

3) What is likely to happen next?

As stated above, the Government's intention is that the Localism Bill will abolish the statutory basis upon which Regional Spatial Strategies are prepared. At the time of writing this report, the Localism Bill had not been published, however we understand that it will be laid before Parliament before the end of November.

This Council is continuing to prepare its Core Strategy and as we do so, we will be considering a locally housing target which responds to the Motion agreed by Council in July 2010. It is likely that we will have undertaken this work, and prepared a revised development strategy for the district, before the localism bill is given Royal Assent.

In the event that the Council has agreed a development strategy before the bill is enacted, consideration will need to be given to the weight that can be attached to this strategy at that time. We will advise members again, having regard to the fact that it is likely that the South East Plan will still in place as part of the development plan.

In summary:-

1. Notwithstanding the re-establishment of Regional Strategies by the High Court ruling, it is highly probable that Regional Strategies are likely eventually to be formally abolished when the Localism bill is passed.
2. For the meantime, the Council should still have regard to policies in the South East Plan in determining planning applications and in calculating the basis upon which any five year supply of housing land is calculated. In particular, the advice I gave Planning Committee in July that it should be cautious about considering the refusal of any planning application on the basis of a housing target which is lower than that set out in the South East Plan still holds true.
3. We are also advised by Government to have regard to the Secretary of State's intention to return decision making powers to local planning authorities through the localism bill.
4. In the event that the Council has agreed a proposed alternative level of housing growth before the South East Plan is finally revoked or abolished, officers will advise you as to the weight to attach to this alternative strategy at that time.

Implications

Financial:

Whilst this announcement creates a period of increased uncertainty for the planning service, it is not anticipated that this will have any financial impact on the Council.

Comments checked by Joanne Kaye, Service Accountant 01295 221545

Legal:

The Localism bill, when enacted, may introduce significant changes for the Council's plan making function. Until this time, the Council will need to give full statutory weight to the policies of the South East Plan and carefully consider the weight that should be given to other planning advice coming from Government.

Comments checked by Nigel Bell, Solicitor 01295 221687

Risk Management: Careful consideration of the legal implications above should ensure no risk to the reputation of the Council.

Comments checked by Rosemary Watts, Risk and Insurance Manager 01295 221560

Wards Affected

All

Document Information

Background Papers

- Letter from Secretary of State to Chief Planning Officers - 27 May 2010
- Letter from Secretary of State to Chief Planning Officers - 6 July 2010
- Report to the Planning Committee on 15th July 2010: Letter from the Secretary of State for Communities and Local Government (27 May 2010) on the Abolition of Regional Strategies: Implications of the for 5 Year Housing Supply and Current Planning Applications
- Report to the Planning Committee on 15th July 2010: Supplementary report following the announcement on 6th July of the revocation of Regional Spatial Strategies: Implications of the for 5 Year Housing Supply and Current Planning Applications
- Advice produced by The Planning Inspectorate for use by its Inspectors – Regional Strategies – Impact of Cala Homes Litigation

Report Author	Philip Clarke – Head of Planning Policy and Economic Development
Contact Information	01295 221840 philip.clarke@cherwell-dc.gov.uk