

CAMPAIGN TO PROTECT RURAL ENGLAND

DRAFT PLANNING POLICY STATEMENT: ECO-TOWNS

OPINION

1. As announced in the Housing Green Paper, the Department of Communities and Local Government have published as a consultation document a draft Planning Policy Statement on eco-towns (the draft PPS).
2. As requested I have reviewed the draft PPS together with the Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA) which were published contemporaneously with it. I have also seen the Joint Opinion prepared for the LGA on 2nd July 2007; a letter concerning the draft PPS sent by Cherwell DC to the Treasury Solicitor on 16th January 2009; and also the judgment of Mr Justice Walker in the case brought by the Bard Campaign, which was handed down on 25th February 2009.
3. Upon reading the draft PPS it is apparent that the government have taken on board a number of the trenchant criticisms made in the LGA Joint Opinion and also by others. The draft PPS expressly provides that eco-towns “should be considered in the same way as any other major development proposal”, and that in accordance with the plan-led system, “the development plan remains the starting point for the determination of

these applications” (paragraphs 2.5 & 2.6). However by identifying specific locations which have been selected through the Eco-towns Programme and listing these in an Annex to the draft PPS, the government are creating an anomaly that has the potential for subverting the plan led system which it professes to be maintaining.

4. In so far as the draft PPS states that sites identified as potential eco-towns should be considered as part of the RSS or LDF process, this is in itself unexceptional. However the comment in paragraph 2.4 that “there is no requirement to allocate an eco-town if a better way of meeting future needs exists” sits uneasily with the statutory requirement that “in preparing a local development document the local planning authority must have regard to (a) national policies and advice contained in guidance issued by the Secretary of State”, see section 19(2) Planning and Compulsory Purchase Act 2004. Notwithstanding the comment in paragraph 2.4, the inclusion of specific locations in the Secretary of State’s guidance, which the Secretary of State requires are to be given ‘material weight’ (paragraph 2.9), may unduly constrain local planning authorities in the exercise they have to conduct in the preparation of local development documents.
5. However eco-friendly a new settlement may be, it is clearly likely to have a significant impact upon a local planning authority’s area, and in this regard it should be noted that the upper end of the size range for an eco-town has now been increased from 10,000 to 20,000 homes (paragraph 4.1, draft PPS). The draft PPS quite correctly recognises that they would comprise major development proposals. In accordance with a plan-led approach, decisions about proposed development, and certainly in relation

to proposals on the scale envisaged, should be considered through the preparation of the Development Plan Documents. This enables consultation and public participation with proper consideration of alternative ways of meeting the needs of the area. It is a fundamental part of the process for the local planning authority to weigh the options and formulate its development plan policies accordingly. The amount of weight to attribute to the particular material considerations, including alternative proposals, is pre-eminently a matter for the decision-making local planning authority, see *Tesco Stores v Secretary of State* [1995] 2 All ER 636 HL, per Lord Keith at 642 and Lord Hoffman at 657. By the identification of these selected sites outside that process, and requiring that they be given “material weight” the government would be usurping the function of the local planning authorities and distorting the plan making process.

6. The problem also arises in the handling of applications for planning permission for the development of eco-towns in cases where the sites have not been identified in development plans. In such cases the draft PPS states that the application for an eco-town “should be considered on its merits, taking into account material considerations” (paragraph 2.8). It also states that the identification of a site within the list of locations annexed to the PPS will itself be a material consideration (paragraph 2.7), and moreover a consideration which should be given “material weight” (paragraph 2.9).
7. Through the stipulation that material weight should be given to the fact that a site has been identified through the Eco-towns Programme the government is requiring that it be accorded a favourable presumption

above any other sites or alternative ways of meeting the needs of the area. This is contrary to the principle, discussed above, that it is for the local planning authority to decide what weight should be attributed to the various material considerations. Furthermore in a case where a Development Plan Document is being prepared or under review, it would be premature to treat an application favourably just because it has emerged through the Eco-towns Programme. As paragraph 17 of the companion document to PPS 1 “The Planning System: General Principles” states, refusal on prematurity grounds may be appropriate in cases where a proposed development is so substantial “that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD”. Site specific allocations, especially for major development proposals should be examined in the LDF process.

8. In my opinion the proposal to include as an Annex to the PPS a list of sites which have been identified as suitable locations to be given material weight is fundamentally flawed. It would be an anomaly as I am unaware of any other situation in the PPS or PPG system in which national planning guidance has sought to identify site specific locations for particular forms of new development. It would subvert the plan led system by effectively removing such allocations from the LDF process and would usurp the function of the local planning authorities concerned.
9. The draft PPS and also the short-listed eco-town locations have been the subject of a Sustainability Appraisal and a Habitats Regulation Assessment. Although it is purported to have evaluated the “eco-town

locations and reasonable alternatives” the approach which has been adopted is defective. As summarised on page 66 of the non-technical summary, the only alternatives considered were those which were “deemed to fulfil the broad eco-town criteria”. There was no attempt to consider and compare alternative means of meeting the housing needs of the areas, for example by brown field development or urban extensions.

10. In paragraph 31 of the Introduction to the draft PPS it is stated that planning applications for eco-towns will also need to include a detailed Environmental Impact Assessment. The fact that a further and more detailed assessment will be provided with a planning application does not excuse a failure to carry out an assessment in accordance with the requirements of the SEA Directive when promulgating proposals which include the identification of specific locations for development. In his judgment at paragraph 144 in the *Bard* case, Walker J records the Secretary of State as indicating that “she will undertake a SA in full compliance with the SEA Directive”. Unfortunately she has so far failed to do so.

11. Article 5(1) of the Directive stipulates that:

“... an environmental report shall be prepared in which the likely effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified and evaluated...”

12. “Reasonable alternatives” to an eco-town are not confined simply to sites which meet “the broad eco-town criteria”, but also embrace other ways of

meeting the housing needs of the area. As mentioned above they might include development on brown field sites or urban extensions.

13. The failure to carry out a proper assessment of alternatives is contrary to the terms of the SEA Directive, and if the final version of the PPS includes the list of identified sites without any further assessment it would be unlawful.
14. In conclusion therefore I consider that, apart from the identification of the short-listed sites, there is very little if anything in the draft PPS which is not already reflected in existing guidance, such as PPS 1 (and its supplement: Planning and Climate Change”) and PPS 3, or could be with some slight amendments. However the promulgation of a list of identified sites in national policy guidance would represent an anomalous departure that would undermine the plan-led system. It would constitute a potentially unlawful interference with the statutory functions of local planning authorities in drawing up development plans and determining planning applications. The inclusion of the list of sites without a proper consideration of alternatives as part of the SA would also be unlawful.

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