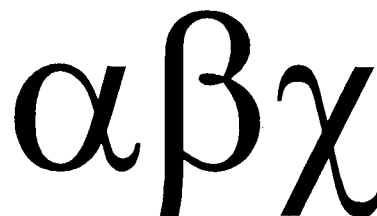


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16 January 2009

Dear Sir

ECO TOWNS PLANNING POLICY STATEMENT AND PROPOSED ECO-TOWN: WESTON OTMOOR

The Council will be responding in detail to the current consultation on the draft PPS and the SA. However, it is important that you understand at this stage the Council's position as to the legality of the process which the Government is engaged in. In short, the Council considers, on the basis of legal advice received, that the process is fundamentally flawed, a distortion of the statutory scheme and in breach of requirements imposed by European law. Any decision to identify Weston Otmoor in the PPS will be challenged.

My Council's view is that the Scoping report for the Eco-Towns PPS Sustainability Appraisal, the Draft Sustainability Appraisal and the draft PPS confirm our initial response to Government following the publication of the Eco Town locations shortlist: namely, that the approach to site identification and sustainability appraisal of the policy overall and selected sites is fundamentally misconceived.

The reasons for the Council's view are as follows:

Alternatives

Paragraph 3.5 of the Scoping Report states :

"The appraisal will look at reasonable alternatives where they have some formal backing from the Government Office, Regional Development Agency, Regional Assembly or Local Authority. These will be alternative proposals for eco-towns or other freestanding settlements in order to ensure comparability. The appraisal will not examine alternatives in the form of urban extensions or densification."

That approach to the assessment of alternatives is unlawful. It presumes that the concept of delivering housing through "freestanding settlements" is already established and accepted as sustainable and as the best option in terms of environmental impact. But there has been no prior assessment to justify that

assumption. To reach such a starting point, it would be necessary first to assess the following matters:

- (1) Is there a need to deliver housing in the particular area?
- (2) What are the reasonable and realistic ways of delivering the housing (other freestanding settlements, urban extensions, brownfield development etc)?
- (3) How do those alternative means of meeting the need compare to Ecotowns ("ETs") in terms of sustainability and environmental impacts?

We have been advised that the Government has failed to ask itself the correct question. The question it has asked itself assumes that ETs are the appropriate way to meet the needs without demonstrating this to be the case. The Government's continued approach to consideration of alternatives pre-judges the essential preliminary stage in the process – namely consideration as to whether ETs are the appropriate way to deliver housing.

Normally issues of this type are all considered in proper depth, on both a regional and local basis, through the preparation of the statutory Development Plan. That stage is being unlawfully bypassed in this case.

Further, the intention that the only alternatives which will be considered are those with "formal backing" is unlawful. There is no reason why a realistic alternative may not be one which has not yet been identified in a plan policy. Given that there is no policy basis as yet for ETs, the proper comparators must include other alternatives which could be brought forward (in policy and practical terms). To exclude alternatives just because they have not been promoted by developers for Ecotowns or identified for new settlements by the relevant public authorities is wrong in principle.

Deliverability and timescales are an important consideration for Government and local planning authorities, though this issue is only one of a number of relevant considerations. Deliverability is of particular relevance in respect of Weston Otmoor, where the need for massive infrastructure investment to make the site sustainable as an ET location means that the timetable for delivering housing at the site after the ET policy scheme is in place will be substantial.

The failure to properly assess the reasonable alternatives to ETs in the Sustainability Appraisal will mean it cannot satisfy the requirements of an environmental report for the purposes of the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004/1633). Accordingly, it would be unlawful for the Secretary of State to adopt the proposed ET PPS if the Sustainability Appraisal failed to fully consider all alternatives.

Cumulative impacts

Paragraph 3.5 of the Scoping Report also states:

"The cumulative assessment will examine the impacts of developing 10-15 ecotowns."

Such an assessment of cumulative effects fails to satisfy the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004. It is well established in the context of environmental impact assessment that the effects to be assessed are those which accumulate from the implementation of other projects in the relevant area. To merely assess the cumulative impacts of the development of ETs is not, in truth, to assess cumulative impacts at all: it is merely assessing the programme.

As such, a failure to include in the Sustainability Appraisal an assessment of the cumulative effects of the ET programme with other relevant programmes (such as developments which are anticipated in regional or local plans) would render the adoption of the PPS unlawful for the reasons set out above.

Distortion of the Statutory Scheme

The approach to identifying ETs is inconsistent with and contrary to the plan led system. We need not elaborate on the basis of this point as it has been well explained in various legal Opinions which have been made available by other parties. Our counsel concurs that the current process is unlawful for this reason also.

Conclusion

The approach anticipated is plainly inadequate and the Secretary of State could not lawfully adopt the ET PPS in reliance upon a Sustainability Appraisal with those inadequacies.

For these reasons, the Council requests that the Secretary of State reconsiders the scope and content of the Sustainability Appraisal and the form of the proposed PPS as a matter of urgency.

An approach which the Council would wish you to consider as an acceptable way forward would be a PPS that lists only locations supported by local planning authorities as being compatible with emerging and adopted Development Plans. This would avoid the unlawfulness of subverting the statutory Development Plan system, and be in accordance with local democratic principles.

As you know, the Council is currently considering whether it can support an eco town form of urban extension at North West Bicester. At this stage, the Council has asked Government to assess the concept as an alternative to Weston Otmoor. The Council has not yet proposed or endorsed such an extension at North West Bicester.

In the light of the above, the Council puts you on notice that should the PPS be published with Weston Otmoor included as an Ecotown location the Council will challenge it on (at least) the basis set out above.

I would be grateful if you could acknowledge receipt of this letter.

Yours faithfully,

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