
ROCHFORD CORE STRATEGY – WAY FORWARD

1 SUMMARY

- 1.1 This report considers the Council's options for the Rochford Core Strategy following the receipt of a letter from the Inspector on 11 August 2011.

2 INTRODUCTION

- 2.1 The Council (Minute 185(2) 2011) recently requested that the Core Strategy examination be suspended to allow the outcome of the Localism Bill to be considered, and to enable the Council to undertake other minor changes on the Core Strategy to ensure the plan period has regard to a likely new adoption date of late 2011.
- 2.2 In a letter received on 11 August, the Inspector has rejected the Council's request, but has suggested a way forward for the Core Strategy. This report explains the situation and proposes that Members consider reverting to the Core Strategy as submitted in January 2010, subject to amendments considered through the examination process, and for this Core Strategy to be submitted to the Inspector for final assessment.

3 BACKGROUND

- 3.1 The Core Strategy is a key part of the Local Development Framework – a collection of documents which set out how development will be managed in the District over the next 15 years, and beyond.
- 3.2 The production of the Core Strategy was an iterative process with the submission version being agreed at Council on 9 September 2009. This version set out the Council's strategy for delivering a minimum of 250 dwellings per annum, in accordance with the requirements of the East of England Plan 2008 (the relevant Regional Spatial Strategy for Rochford District).
- 3.3 The submission version of the Core Strategy and other evidence documents, were submitted to the Planning Inspectorate for examination in January 2010.
- 3.4 The role of the Planning Inspectorate is to conduct an examination into the soundness and legal compliance of the Core Strategy on behalf of the Secretary of State. Guidance from the Planning Inspectorate states that the time period between submission and their final report on soundness and legal compliance is six months. That being the case, it was anticipated the final Core Strategy could be adopted in autumn 2010.
- 3.5 However, a number of events, primarily at national level, have subsequently caused delays to the process. Most notably, statements and instructions issued by the Secretary of State for Communities and Local Government, followed later by Court judgements that these were unlawful.

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- 3.6 Following a dialogue with the Inspector in 2010, the Council agreed to make changes (called the schedule of amendments) to the submitted Core Strategy to reflect the decision of the Secretary of State to revoke Regional Spatial Strategies (see Minute 261/2010).
- 3.7 The schedule of amendments included an adjusted housing policy designed to deliver a maximum of 190 dwellings per annum over an extended plan period to 2031. The justification for this approach was subject to further public consultation and then submitted to the Inspector for consideration at the examination.
- 3.8 In summary, the figure of 190 dwellings per annum was considered an appropriate balance between addressing identified need, as evidenced through a Strategic Housing Market Assessment (SHMA) report, and consideration of the environmental constraints the District is subject to. It is the figure that was agreed at the regional level, as part of the draft review of the East of England Plan (RSS31). RSS31 was submitted to government for approval by the Regional Assembly in March 2010. RSS31 proposed revised housing figures for the period 2011 – 2031, having regard to the view of stakeholders (including Rochford District Council) and supported by Sustainability Appraisal and Habitats Regulations Assessment. However, it was never formally approved as part of the Regional Spatial Strategy by government, as, following the General Election, the government sought to revoke and abolish this tier of the plan making process.
- 3.9 As a result of the outcome of the legal challenges to the Secretary of State's attempts to revoke regional strategies, Rochford District Council's attempts to adopt a Core Strategy which sets what it considers to be an appropriate housing figure based on up-to-date evidence has been frustrated. As set out in the report to Council on 21 July 2011 (Minute 185(2) 2011), perhaps the most significant decision was that of the Court of Appeal on 27 May 2011 which ruled that the proposed abolition of Regional Spatial Strategies is not a material consideration at all in plan-making (e.g. the preparation of Core Strategies) and that it would be unlawful for a Local Planning Authority preparing, or a Planning Inspector examining, Development Plan Documents to have regard to the proposal to abolish Regional Spatial Strategies.
- 3.10 The Inspector wrote to the Council, clarifying her views on the implications of the appeal on the Core Strategy:
- “As you will be aware from the hearing sessions, an area of concern is the relevance of the RS [Regional Spatial Strategy] housing figures. In this regard I have to take into account the fact that the RS remains part of the development plan and that your strategy has to be in general conformity with the RS. Accordingly, as you will see in my report which you will shortly get for fact check purposes, I have not been able to support your proposed changes which were published for consultation last autumn.”

- 3.11 The above statement also confirmed that the Core Strategy was once again out of sync with the legal position in relation to the status of the East of England Plan. In order to ensure the plan can be found sound prior to the enactment of the Localism Bill, it would have been necessary to revert to a housing allocation which requires the delivery of a minimum of 250 dwellings per annum over the period to 2027 (to allow for a plan period of 15 years). This is not however the Council's preference for housing delivery, following the decision to promote a maximum provision of 190 dwellings per annum over a longer plan period running until 2031.
- 3.12 The Council submitted a request to the Inspector on 29 July 2011 for the examination to be suspended until December 2011, in order to allow the outcome of the Localism Bill to be considered, and to enable the Council to undertake other minor changes on the Core Strategy to ensure the plan period has regard to a likely new adoption date of 2012.
- 3.13 This request was rejected by the Inspector, but a way forward was suggested that would deliver 250 dwellings per annum over the period to 2025, not to 2027 the date required for a full fifteen year period. However, this would be predicated on an early review of the plan.
- 3.14 The Inspector also requested a reply to her letter by 26 August. As such a letter was sent to the Inspector, informing her that the Council would meet to discuss the Core Strategy on 31 August, and that we would inform her of the Council's decision as soon as possible thereafter.
- 3.15 The full reasons for her decision are outlined below. The above represents an overview of the most significant events in the life of the Core Strategy since its original submission in January 2010 – a timeline of all key events concerning the Core Strategy in this period is set out in Appendix 1.

4 REQUEST FOR SUSPENSION OF EXAMINATION – THE INSPECTOR'S DECISION

- 4.1 The Inspector's letter in response to the request for suspension is attached as Appendix 2.
- 4.2 In summary, the Inspector cited the Government's aim for plans to be put in place at the local level as soon as possible, and the reasons for rejection can be broken down into four points.

Point 1

- 4.3 The Localism Bill makes provision for abolition of Regional Spatial Strategies, but the abolition of each Regional Spatial Strategy can only occur once it has been subject to Strategic Environmental Assessment (SEA). It cannot be assumed at this stage that the revocation of the East of England Plan is bound to occur. If the Core Strategy were to be suspended until December 2011, the Inspector expressed concern that a further suspension may be

necessary pending the completion of the revocation process, including SEA. This would lead to further delay and uncertainty.

- 4.4 The government is undertaking Strategic Environmental Assessments of each RSS, as set out in a written ministerial statement of 5 April 2011¹:

“This process of environmental assessment will be carried out during the passage of the Bill through Parliament. Subject to Royal Assent, the revocation of each individual regional strategy will be commenced after the assessment process has been completed.”

- 4.5 However, the Inspector notes that the outcome of this assessment cannot be assumed at this stage, or when the assessment will be completed.

Point 2

- 4.6 The Localism Bill will introduce a ‘duty to co-operate in relation to planning of sustainable development’ (clause 90). This requirement will be particularly relevant in terms of housing policies, and how housing is to be distributed within housing market areas but across different administrative boundaries. The Inspector has expressed concern that it would not be possible for Rochford to demonstrate that requirements arising from the duty to cooperate had been met by December 2011. The Inspector is concerned this could lead to a further suspension of the examination while this situation is resolved.

Point 3

- 4.7 A consultation draft of the government’s National Planning Policy Framework (NPPF), which seeks to set out all national planning policy within a single document, was published four days after the Council agreed to submit a request for the examination to be suspended. This document is currently in draft form, and out to consultation, so the final content is not presently known. However, the tone of the document is very much pro-development and growth. The Inspector is concerned that this could lead to yet further changes being required to be made to the Core Strategy.

Point 4

- 4.8 The Inspector has considered the Council’s request for a suspension in the light of the Planning Inspectorate’s Procedural Guidance. Paragraph 9.21 of the Guidance notes that: “As a general principle suspension goes against the wider policy objective of speeding up the plan process and developing evidence to inform choices made during plan making”. The Guidance identifies situations in which suspension may be an appropriate response, but

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<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110405/wmstext/110405m0001.htm#11040558000004>

in the Inspector's view the circumstances outlined in the Council's letter appear to go well beyond what is envisaged in the guidance.

5 OPTIONS

Revert to the Submission Core Strategy

- 5.1 The Inspector has suggested that the Council revert to the original version of the Core Strategy submitted in January 2010 (end date 2025), with changes to the Plan which would acknowledge the housing shortfall in the plan period, briefly explaining the circumstances and making a firm commitment to an early review of the Plan.
- 5.2 Other minor changes would be required to correct anachronisms (for example, where the 2009 Core Strategy referred to policies being in place before 2011), update references to government and local policy documents where relevant, and to implement changes required by the Inspector following the hearing sessions in May 2010, including explanatory text on the Transportation Strategy Supplementary Planning Document, and consolidation of the vision into a single chapter.
- 5.3 The adjustments would result in a Core Strategy which did not cover the minimum 15 year plan period required. However, the Inspector has indicated this will be acceptable, provided the firm commitment is given to an early review.
- 5.4 Direct number comparisons between the original Core Strategy and the schedule of changes version are not straightforward. Put simply, the schedule of changes proposes to deliver 190 dwellings per annum (dpa) over a plan period running from 2011 until 2031; the expected maximum number of dwellings delivered would be 3,800. A policy of delivering 250 dpa would, between 2011 and 2025, deliver a total of 3,500 dwellings. However, it is accepted that a commitment would need to be given to an early review of the plan.
- 5.5 It is not possible to give a definitive indication of the outcome of a review of the original Core Strategy, if adopted, since any review would need to be informed by an update to the SHMA, as well as taking into account the enacted Localism Bill and the final version of the NPPF.
- 5.6 The Inspector has also confirmed that such changes to the original Core Strategy could be considered minor, and would not require formal consultation or further SA work. However, the changes would need to be advertised on the Council's website and comments invited to coincide with a short consultation on the draft NPPF (a separate consultation which will be organised by the Programme Officer on behalf of the Inspector, as opposed to a consultation by the Council).

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- 5.7 The Inspector anticipates being able to issue her report on the Core Strategy within one month from the close of the consultation, providing no issues of such significance as to warrant the reopening of hearings arise from consultation.
- 5.8 Provided the Inspector finds the Core Strategy sound and legally compliant, this would allow the Council to adopt the Core Strategy within a relatively short timeframe from receipt of the report – and one which to all intents and purposes is the same strategy agreed by Council in September 2009.
- 5.9 There is no doubt that the changes required to the plan are frustrating given earlier, clear indications by government that local planning authorities would be able to determine their own housing figures balancing an assessment of local need with other factors. In reality, this is not expected to be the case; the recently published draft NPPF places great emphasis on the preparation of a Strategic Market Housing Assessment (SHMA) to assess the full housing requirements, working with neighbouring authorities where housing market areas cross administrative boundaries.
- 5.10 The approach for the preparation of a strategic housing market assessment set out in the draft NPPF appears to be broadly similar to the current arrangements; there was an updated SHMA for Rochford published in May 2010. That being the case, the draft NPPF effectively advocates an approach that looks at housing market areas rather than simple administrative boundaries and it does not provide any support for a reduction in levels of development.
- 5.11 The Council would be committed to an early review of its Core Strategy. However, for the reasons set out above, it is not certain that the Council would be able to revert back to a housing figure of 190 dwellings per annum.

Withdraw the Core Strategy

- 5.12 The alternative approach available to the Council at this juncture is to withdraw the Core Strategy.
- 5.13 Rochford District Council would still be required to deliver 250 dwellings per annum, but would not have a plan in place setting out a clear vision and spatial strategy for development, and crucially the required five-year supply of deliverable land for housing. As such, the Council would be left in a position where it would be difficult to refuse planning applications for housing development within the Green Belt, regardless of the location, quantum, or form of development.
- 5.14 The government's recently published NPPF takes a very positive approach to development and suggests that the requirement to demonstrate an adequate supply of housing is unlikely to go away. In fact, the draft NPPF suggests that Councils will be required to demonstrate a five-year supply of land, plus an allowance of 20 percent to "ensure choice and competition in the market for

land”. There is a likelihood that projects facing difficulty under the existing rules will be more positively placed if the only test on acceptability is the NPPF.

6 WAY FORWARD

- 6.1 In light of recent Court Rulings against the government regarding Regional Spatial Strategies, and the Inspector’s rejection of the Council’s request for suspension, the Council is left with two choices when it comes to managing housing development.
- 6.2 First, the Council can decide to proceed with a Core Strategy which will aim to deliver 250 dwellings per year to 2025, but in locations identified as being the most appropriate by the Council, with the numbers of dwellings within said locations, the form of development, and the accompanying infrastructure determined by the Council.
- 6.3 Second, the Council could withdraw the Core Strategy, but there will remain a requirement for the delivery of 250 dwellings per year, but in locations not necessarily those identified as being the most appropriate by the Council, with limited control over the numbers, the form of development and infrastructure accompanying such development.
- 6.3 In addition, it is important to remember that the Core Strategy is not solely concerned with housing. The Core Strategy provides policies for employment development, for enhancements to the town centres, and for the protection and enhancement of our environment. A decision to withdraw Core Strategy would have important implications for housing, but it would also impact upon the delivery of much needed land for employment development and town centre enhancement.
- 6.4 For the above reasons, it is concluded that the only logical option now open to the Council is to revert to the submission version of the Core Strategy, subject to the changes agreed during the examination and to include statements acknowledging the shortfall in the plan period, explaining the circumstances and delivering a commitment to an early review of the plan.

7 RISK IMPLICATIONS

Revert to Submission Core Strategy

- 7.1 Notwithstanding the announcements made by government and the outcome of the various legal challenges, the ongoing advice from the Secretary of State is that Local Authorities should continue to prepare their Core Strategies to ensure there is certainty for local people and the development industry. Without an adopted Core Strategy, it is anticipated that the District will remain at risk from unsolicited approaches from developers for planning consent for housing in particular. Housebuilders may see a period where Councils do not

have an up-to-date plan and a five year supply of housing land as a real opportunity to bring forward schemes that would otherwise be rejected.

- 7.2 Given the uncertainties that have caused the current delays in the adoption of the Core Strategy, there is inevitably some risk associated with reverting to the submission version of the Core Strategy. However, the Inspector's letter seems to be clear that a sound plan can be achieved, based on the plan submitted in January 2010, and it is considered that the risks of not having a spatial framework in place to guide the future development of the district are very significant indeed given the high level of developer interest in the last couple of years.

Withdraw the Core Strategy

- 7.3 There is little doubt that withdrawing the Core Strategy is a very high risk strategy for the district. Whilst it is understood that many residents want to see little, if any, development take place in the district, the existing situation is clear – there would remain a requirement for the delivery of 250 dwellings per annum as per the East of England Plan. Crucially, with no spatial strategy in place, these dwellings might very well receive consent (via the Secretary of State?) at locations that are not favoured and without the supporting infrastructure envisaged in the Core Strategy.
- 7.4 Furthermore, the draft NPPF sets out that cross boundary housing assessments will continue to be required and that unless up-to-date plans are in place, planning applications must be determined in accordance with the NPPF, including its presumption in favour of sustainable development. That being the case, this could result in greater levels of development where it can be shown proposals are sustainable, though the NPPF does state that green belts should continue to be protected.
- 7.5 Finally, the Core Strategy is not simply about housing, but sets out policies that seek to support and deliver, new employment opportunities and town centre developments.

8 ENVIRONMENTAL IMPLICATIONS

- 8.1 There is little doubt that delays in putting in place a clear planning framework for the future development of the district will increase the likelihood of planning applications being sought for development on land that is not considered to be acceptable for development, and will have unacceptable environmental impacts. The key test will be the availability of a five-year supply of housing and this is dependent on the adoption of the Core Strategy.

9 RESOURCE IMPLICATIONS

- 9.1 Minor amendments to the Core Strategy to ensure it is as the Inspector has suggested can be undertaken using existing resources.

- 9.2 If this approach were to be taken, it would require commitment to an early review. An early review of the Core Strategy would require resources, the precise scale of which will be dependent on the outcome of the Localism Bill. However, it is relevant to note that withdrawal of the Core Strategy will also require significant additional resources to be committed to producing a wholly new plan.

10 LEGAL IMPLICATIONS

- 10.1 Although only in draft form, the current draft NPPF proposes that “In the absence of an up-to-date and consistent plan, planning applications should be determined in accord with this Framework, including its presumption in favour of sustainable development”. As such, the Council’s ability to manage development within its District will be severely hampered in the event that there is no Core Strategy in place and the NPPF is finalised and becomes national policy.

11 RECOMMENDATION

- 11.1 It is proposed that Council **RESOLVES**

- (1) Revert to the submission version of the Rochford Core Strategy dated September 2009 (submitted for examination in January 2010).
- (2) Correct any anachronisms, dates and references to account for the delay in the examination process.
- (3) Update the vision by collating the visions for the various elements of the Core Strategy into one chapter, as requested by the examination Inspector following hearings in May 2010.
- (4) Include explanatory text regarding the Transportation Strategy Supplementary Planning Document, as requested by the Core Strategy Inspector following hearings in May 2010.
- (5) Advertise the changes to the Core Strategy to coincide with a consultation being organised by the Inspector on the draft NPPF.
- (6) Submit the revised Core Strategy and consultation responses to the Inspector with a request that the final report be issued as soon as is practicable.

Shaun Scrutton

Head of Planning and Transportation

Background Papers:-

Letter from Inspector, 11 August 2011.

For further information please contact Sam Hollingworth (Planning Policy team Leader) on:-

Phone:- 01702318165

Email:- samuel.hollingworth@rochford.gov.uk

If you would like this report in large print, Braille or another language please contact 01702 318111.



Key	
■	Rochford District Council Decision / Action
■	Inspector Decision / Action
■	Government Decision / Action
■	Regional Office Decision / Action
■	Court Ruling

Thank you for your letter of 29 July requesting a suspension of the Rochford Core Strategy Examination until December.

The Government is encouraging local councils to get up-to-date, evidence based plans in place, in order to meet the housing and commercial needs of their area and to provide greater certainty for communities and developers. The Government's top priority in reforming the planning system is to promote sustainable economic growth and jobs, consequently the Government is encouraging councils to press ahead without delay in preparing up-to-date development plans to drive and support growth. As you acknowledge, the progress of the Core Strategy has been subject to significant delays, not all of which have been within the Council's control. Nonetheless, to allow a further suspension of the Examination could result in further significant delays, bearing in mind the factors I set out below, and I am therefore unable to agree to your request.

My first concern relates to the uncertainty over the timing of the abolition of regional strategies. The Localism Act, as currently drafted, makes provision for the abolition of Regional Spatial Strategies. The most recent judgement in the *Cala Homes* case states at paragraph 32: *Moreover, even if clause 89 is enacted in its present form, it could not lawfully be assumed that revocation of any individual regional strategy is bound to occur regardless of the outcome of the process of environmental assessment, because to make such an assumption would be contrary to the requirement of the SEA Directive and SEA Regulations: that a decision to revoke may not be made until the process has been completed.* If I were to suspend the Examination until December, regardless of whether the Localism Bill has achieved Royal Assent, a further suspension may be necessary pending the completion of the process, including SEA. This would lead to further delay and uncertainty.

Secondly, I have significant concerns relating to the approach adopted by the Council in proposing the reduced housing numbers of 190 dwelling per annum, as set out in Topic Paper 3, and whether this would be consistent with the approach promoted in the Localism Bill as currently drafted, in particular the introduction of a 'duty to cooperate'. I recognise that the figure is derived from the (abandoned) review of the East of England Plan, but that emerging plan was not subject to independent examination which limits the weight that can be placed on it. The full implications of the duty to cooperate have yet to be realised, but it may be of particular relevance to the circumstances of Rochford District. This is because the rationale set out in Topic Paper 3, relies to a significant extent on redirecting growth to other locations in Thames Gateway South Essex. Therefore the delivery of this strategy would be dependent on the cooperation of neighbouring authorities. Bearing in mind the negative response from Basildon District Council when the proposed changes were published for consultation last year, it is not clear that Rochford District Council would be in a position to demonstrate that any requirements arising from the duty to cooperate had been met by December 2011. This could lead to a further suspension of the Examination.

Thirdly, I am also mindful that a consultation draft of the NPPF has recently been published. Clearly, the final form of the document is not yet known, but if adopted as currently drafted it may require further changes to the Rochford CS to ensure conformity. For example there may be a need to add a 20% surplus to housing numbers in the first five year period. This is another factor that could lead to further delays in the Examination.

I have also considered your request for a suspension in the light of the Planning Inspectorate's Procedure Guidance. Paragraph 9.21 of the Guidance notes that: *As a general principle suspension goes against the wider policy objective of speeding up the plan process and developing evidence to inform choices made during plan making.* The Guidance identifies situations in which suspension may be an appropriate response, but the circumstances outlined in your letter appear to go well beyond what is envisaged in that document. I note your reference to other Core Strategy examinations which have been suspended, but these are not directly comparable. In the case of Luton and Central South Bedfordshire and Surrey Heath, the examinations have been suspended because the submission draft documents were not in general conformity with the relevant regional strategy. The Luton and Central South Beds DPD is now to be withdrawn. The South Wiltshire examination has been suspended, but I understand the ongoing work should enable the Inspector to find the DPD sound prior to the Localism Bill enactment.

Your main concern appears to be that extending the Plan period to provide the 15 years required by PPS3 and PPS12 would require significant amendments to the Core Strategy, leading to further delay. You state that: *One option was to amend the Core Strategy such that it unequivocally conforms to the East of England Plan (2008), i.e amend the current policy of providing 190 dwellings per annum to 250.* However, the submission Core Strategy seeks to provide 250 dwellings per annum in accordance with the regional strategy, so the changes required would be to roll this forward two years to 2027, to allow for an adoption date of 2012, rather than 2010 as envisaged at the time of submission. I agree that the kind of changes needed to roll the plan forward would require public consultation and SA, but your scenario 2 timetable, published in June, would have allowed for this to happen in August/September 2011. Evidently that timeframe has now been missed.

In all the circumstances, and to avoid any further delay, I am minded to suggest that the Council considers proposing changes to the Plan which would acknowledge the shortfall in the plan period, briefly explaining the circumstances, and making a firm commitment to an early review of the Plan. I am of the view that such changes could be considered minor, and would not require formal consultation or SA. However, the changes could be advertised on the Council's website and comments invited to coincide with a short consultation on the draft NPPF, which I am asking to Programme Officer to organise. Assuming that no issues of such significance as to warrant the reopening of hearings arise from these consultations, the Council could expect to receive my report for fact check within about one month from the close of the consultation.

This course of action would be a pragmatic way of ensuring that the Council has a Core Strategy in place to guide development whilst it undertakes a revision of the Plan in accordance with the new legislative and policy framework.

As I am unable to agree to a suspension of the Examination, the alternative course of action would be to withdraw the Core Strategy. I would be grateful for an indication of how you wish to proceed as soon as possible, and in any event by 26 August 2011.

Laura Graham

Inspector