

Joint Core Strategy for Broadland, Norwich and South Norfolk,  
Broadland Part of Norwich Policy Area Examination

Matter 02: Item 7

**Supplementary Legal Note on behalf of Landstock Estates  
Landowners Group and United Business and Leisure Limited**

1. Following the Inspector's direction at the Pre-Hearing Meeting on 16<sup>th</sup> April 2013 (para. 19 of the Meeting Notes<sup>1</sup>) and his agenda for Matter 2, item 7, this separate Legal Note is now submitted by Mr John Pugh-Smith of Counsel.
  
2. The short answer to the Inspector's question is that it would be within his powers to consider a modified policy, based on the following analysis:
  - (a) Regns. 5(1)(a) and 5(2)(a) of the T&CP (Local Planning) (England) Regulations 2012 permit a local planning authority ("LPA") individually or in co-operation with one or more other LPAs to produce a LDD to achieve one of the stated purposes in the relevant sub-paras.
  - (b) The relevant statutory provisions are set out overleaf.
  - (c) As this is a Joint Core Strategy to which the duty to co-operate (under s.33A of the Planning and Compulsory Purchase Act 2004) applies it is wholly appropriate, and, necessary, for a "reserve sites" policy of the type proposed.
  
3. However, the modification of the (remitted) JCS will require a Sustainability Appraisal; though for the reasons previously set out it is submitted that the *Cogent Land* case<sup>2</sup> does permit this work to be undertaken through an Addendum exercise.

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<sup>1</sup> *The Inspector asked if the parties could bear in mind and later address him on (if it became necessary) his concerns about housing solutions which went outside the Plan area (as expressed in his letter to Barton Wilmore of 25 March on the Examination web site); and also paragraphs 103 (4) & (5) and 106 (1) & (2) in the Cogent court case where the Judge commented that the Core Strategy should be of a broad strategic nature which did not pre-empt later plans – did that apply in this case, given the 2012 Local Planning Regulations?*

<sup>2</sup> *Cogent Land LLP v Rochford DC and Bellway Homes Ltd [2012] EWHC 2542 (Admin)*

## **Town & Country Planning (Local Planning) (England) Regulations 2012**

### **Local development documents**

5.—(1) For the purposes of section 17(7)(za)(1) of the Act the documents which are to be prepared as local development documents are—

(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular type of development or use;

(iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;

(b) where a document mentioned in sub-paragraph (a) contains policies applying to sites or areas by reference to an Ordnance Survey map, any map which accompanies that document and which shows how the adopted policies map would be amended by the document, if it were adopted.

(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are—

(a) any document which—

(i) relates only to part of the area of the local planning authority;

(ii) identifies that area as an area of significant change or special conservation; and

(iii) contains the local planning authority's policies in relation to the area; and

(b) any other document which includes a site allocation policy.

## Planning and Compulsory Purchase Act 2004

### 17 Local development documents

(1) – (2) *[Repealed]*

(3) The local development documents must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area.

(4) *[Not Applicable]*

(5) If to any extent a policy set out in a local development document conflicts with any other statement or information in the document the conflict must be resolved in favour of the policy.

(6) The authority must keep under review their local development documents having regard to the results of any review carried out under section 13 or 14.

(7) Regulations under this section may prescribe—

(za) which descriptions of documents are, or if prepared are, to be prepared as local development documents;

(a) which descriptions of local development documents are development plan documents;

(b) the form and content of the local development documents;

(c) the time at which any step in the preparation of any such document must be taken.

(8) A document is a local development document only in so far as it or any part of it—

(a) is adopted by resolution of the local planning authority as a local development document;

(b) is approved by the Secretary of State under section 21 or 27.

### 28 Joint local development documents

(1) Two or more local planning authorities may agree to prepare one or more joint local development documents.

(2) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document.

(3) For the purposes of subsection (2) anything which must be done by or in relation to a local planning authority in connection with a local development document must be done by or in relation to each of the authorities mentioned in subsection (1) in connection with a joint local development document.

(4) Any requirement of this Part in relation to the RSS is a requirement in relation to the RSS for the region in which each authority mentioned in subsection (1) is situated.

(5) If the authorities mentioned in subsection (1) include one or more London boroughs the requirements of this Part in relation to the spatial development strategy also apply.

(6) Subsections (7) to (9) apply if a local planning authority withdraw from an agreement mentioned in subsection (1).

(7) Any step taken in relation to the document must be treated as a step taken by—

(a) an authority which were a party to the agreement for the purposes of any corresponding document prepared by them;

(b) two or more other authorities who were parties to the agreement for the purposes of any corresponding joint local development document.

(8) Any independent examination of a local development document to which the agreement relates must be suspended.

(9) If before the end of the period prescribed for the purposes of this subsection an authority which were a party to the agreement request the Secretary of State to do so he may direct that—

(a) the examination is resumed in relation to the corresponding document;

(b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

(10) A joint local development document is a local development document prepared jointly by two or more local planning authorities.

### **33A Duty to co-operate in relation to planning of sustainable development**

(1) Each person who is—

(a) a local planning authority,

(b) a county council in England that is not a local planning authority, or

(c) a body, or other person, that is prescribed or of a prescribed description,

must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—

(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).

(3) The activities within this subsection are—

(a) the preparation of development plan documents,

(b)the preparation of other local development documents,

(c)the preparation of marine plans under the Marine and Coastal Access Act 2009 for the English inshore region, the English offshore region or any part of either of those regions,

(d)activities that can reasonably be considered to prepare the way for activities within any of paragraphs (a) to (c) that are, or could be, contemplated, and

(e)activities that support activities within any of paragraphs (a) to (c),

so far as relating to a strategic matter.

(4)For the purposes of subsection (3), each of the following is a “strategic matter”—

(a)sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and

(b)sustainable development or use of land in a two-tier area if the development or use—

(i)is a county matter, or

(ii)has or would have a significant impact on a county matter.

(5)In subsection (4)—

“county matter” has the meaning given by paragraph 1 of Schedule 1 to the principal Act (ignoring sub-paragraph 1(1)(i)),

“planning area” means—

the area of—

(i) a district council (including a metropolitan district council),

.....

(6) The engagement required of a person by subsection (2)(a) includes, in particular—

(a)considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3), and

(b)if the person is a local planning authority, considering whether to agree under section 28 to prepare joint local development documents.

(7)A person subject to the duty under subsection (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with.

(8)A person, or description of persons, may be prescribed for the purposes of subsection (1)(c) only if the person, or persons of that description, exercise functions for the purposes of an enactment.

(9)A person is within this subsection if the person is a body, or other person, that is prescribed or of a prescribed description.

### **37 Interpretation**

(1)Local development scheme must be construed in accordance with section 15.

(2)Local development document must be construed in accordance with section 17.

(3)A development plan document is a document which—

(a)is a local development document, and

(b)forms part of the development plan.

(4)Local planning authorities are—

(a)district councils;

(b)London borough councils;

(c)metropolitan district councils;

(d)county councils in relation to any area in England for which there is no district council;

(e)the Broads Authority