Dear Ms Sinclair,

South Kesteven Site Allocations and Policies Development Plan Document

Thank you for your letter dated 6 March 2013 regarding the above mentioned matter.

Although you do not make particular reference to this point in your letter, I assume that your Counsel's advice is that it would be prudent to re-examine your SA/SEA processes and outcomes in the light of recent case law. I agree that this would, indeed, be a prudent safeguard.

I have examined the recent High Court judgement (CogentLand LLP v Rochford District Council and Bellway Homes Ltd) which indicates that a review of the SA/SEA process could be undertaken without the necessity of withdrawal of the plan document. In these circumstances, I agree that the review of your Site Allocations and Policies DPD SA/SEA could be undertaken through the suspension of the Examination and the production of a revised SA/SEA.

However, I would draw your particular attention to the cautionary statement made in the last paragraph of Richard Harwood’s comment on the Cogent Land judgement in the Journal of Planning and Environment Law:-

‘The factual circumstances are also important. If the authority has made critical decisions before carrying out lawful SEA and is not prepared to revisit them, then a later environmental report cannot cure the error. In the present case the Court accepted that the addendum report had been a genuine exercise rather than a mere justification for the decisions that had already been taken.’

It is vital, therefore, that any review of the SA/SEA processes undertaken by the Council needs to be sufficiently robust and transparent to ensure that there is no perception that it has been simply ‘a paper exercise’ to justify conclusions previously reached.

During the recent hearing sessions, a number of areas were identified where the Council proposed making further Main Modifications. A review of the SA/SEA exercise may affect the Main Modifications which you propose. It may also identify other areas where Main
Modifications are required. As you say in your letter, these (together with the revised SA/SEA) would need to be subject to a formal re-consultation exercise. However, I am concerned to ensure that representors and consultees are fully aware of the process which is being followed. In my opinion it would be best to arrange what would, in effect, be an Exploratory meeting where this can be explained. I could meet a date in the first 2 weeks in April.

I look forward to your response.

Yours sincerely

Roland Punshon

INSPECTOR