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My Ref:

Your ref

Date: 15 May 2018

Inspector Louise Nurser BA(Hons) Dip UP MRTPI

Sent by email, via the Programme Officer

Dear Inspector Nurser

RE: East Cambridgeshire Local Plan – Inspector Question relating to HRA

Thank you for your letter of 10 May 2018 (reference ED009), setting out questions in relation to a recent judgement of the Court of Justice for the European Union of 12 April 2018 (reference ED009A).

By way of commencing this response, the Council was previously unaware of the judgement, and therefore, until it was brought to our attention, it was not something that had previously been considered.

Having considered the judgement, and following correspondence with Natural England (who, in turn, I understand, has taken legal advice on the matter), it is the Council's view that further HRA related work is needed.

The HRA work undertaken to date (CD13) comprises a 'screening' assessment which was prepared in accordance with the domestic judgment of Sullivan J in the case of "Dilly Lane" (*R on the application of Hart DC*) v *Secretary of State for Communities and Local Government* [2008] EWHC 1204 (Admin)). In this case, Sullivan J ruled that mitigation measures that were "incorporated into the project" or which "formed part of the project" could, as long as they were effective, properly be taken into account at the screening likely significant effect test stage of HRA.

However, this EU judgement of last month has, the Council concedes, somewhat 'moved the goalposts' from the standard practice which has applied these past 10 years since the Sullivan J judgement. In short, as the Council understands it, mitigations measures incorporated into the project can no longer be taken into account at the screening stage.

The implication of this, it would appear, is of significance to plan making across the country, not just East Cambridgeshire. Nevertheless, for the East Cambridgeshire Local Plan currently being examined, it is proposed that the following action is undertaken:

1. A revised, much reduced, HRA screening report is prepared, to replace CD13. This will, we already know, conclude some 'likely significant effects' of the Local Plan, because the screening will no longer be able to take into account any mitigation effects as set out in the Local Plan.

2. Subsequently prepare a full Appropriate Assessment (AA). Our preliminary view is that much of the present screening report (CD13) will form the basis of this new AA, because, in simple terms, the commentary on mitigation can be transferred from CD13 to the new AA. However, it is too early at this stage to determine for certain whether any further, more substantive, work will also be necessary. And, likewise, it is too early at this stage to determine whether any suggested Local Plan modifications will also be necessary. However, our 'best guess' at this stage is that any additional work will be limited, and not time overly consuming.

The Council is obviously aware of the upcoming Hearing, in particular Matter 1, questions 8-11 (which focus on HRA matters), which is due for discussion on 19 June. The deadline for Statements for this Matter is Wednesday 23 May.

There is no prospect of either (1) or (2) being completed by 23 May. However, it appears possible (indeed, probable) to have undertaken (1) and (2) by 19 June, or at the very least reached agreement with NE on both the likely outcome of (1) and (2), and the need, or otherwise, for any substantive modifications.

The Council therefore suggests that the Hearings proceed as scheduled, including Q8-11, though, at the point of the Hearing on 19 June, it may be the conclusion of the Inspector that a further session on HRA matters is scheduled for Stage 2.

Overall, the Council is confident that, by the end of the session on 19 June, whilst the Inspector might not be able to categorically conclude, at that point, that legal requirements relating to HRA are fully met, the Council believes the Inspector should be in a position to be reasonably satisfied that such legal requirements are capable of being fully met prior to the conclusion of Stage 2 hearings (if not before).

The Council has engaged with Natural England on the above suggestions, and we are not aware of any concerns with the suggestions set out in this letter at this stage (indeed, provisionally, it is supportive). However, Natural England can confirm its position in due course.

I trust this letter helps clarify matters, and a proposed way forward, but I would be happy to provide further clarification as appropriate.

Yours sincerely

Richard Kay
Strategic Planning Manager