

“ Plain speaking legal advice ”

The South East Plan Examination In Public – March 2007

“ Plain speaking legal advice ”

Rhianne Vaughan, from the Commercial Property Department at Herrington & Carmichael LLP, attended the South East Plan Examination in Public (“the EIP”) on the 22nd March 2007 at Reading Town Hall. The EIP was to debate the Report to the Panel by Peter Burley on Natural England’s Draft Delivery Plan (“the DDP”) and the Thames Basin Heaths Special Protection Area (“the SPA”). These are her condensed notes from the meeting, for the full notes email plainspeaking@herrington-carmichael.com.

Background

Peter Burley was appointed as the Assessor to consider the SPA and the DDP and report his findings to the Panel for the Draft South East Plan (“the SEP”). The key issues discussed were the way in which the DDP interprets the Habitats Directive and Habitats Regulations; the ecological evidence; the evidence base for the approach put forward in the DDP in relating to the effectiveness of Suitable Alternative Green Spaces (“SANGs”), the DDP Zones and quantities of SANGs required by the DDP.

Assessor’s Conclusions

Peter Burley concluded that the DDP in its present form is unsound for a number of reasons, and recommended that action is required in the short, medium and long term. The Report has generally been favourably received and some interested parties have already published their views on their websites.

Short Term Actions (6 –12 months):

- To have in place an Interim Strategic Delivery Plan, to include a number of differences from the current DDP, such as: A smaller Zone B; A requirement to provide mitigation only if more than 10 houses, or less than 10 houses but within 1km of the SPA; Developments of over 50 houses between 5km and 7km from the SPA to be assessed individually; More general advice on the quality, size and location of SANGs.
- To make a definite list of land available to use as SANGs, to include the cost of bringing it up to the required standard; To calculate a standard contribution figure per dwelling;

Medium Term Actions (12 – 18 months):

- To set up a loose strategic partnership involving the affected Local Planning Authorities (“LPA’s”), South East England Regional Assembly (“SEERA”) and Natural England to co-ordinate policy for the protection of the SPA; Natural England to finalise its access management plans and produce a habitat management plan for the SPA; Further research to be undertaken to improve the evidence base for future strategy;

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

Longer Term Actions (24 - 36 months):

- A joint Development Plan Document (“DPD”) to be drawn up; Monitor and review the success of the SANGs; Introduction of a wardening scheme

The impact of the Report on current and near future planning applications

The Planning Inspectorate has issued guidance on the weight that the Report should carry. Briefly, it states that the Report is likely to be cited as a material consideration in planning applications and appeals. However, the Planning Inspectorate states that decision-makers are currently not in a position to rely upon the Assessor’s conclusions and recommendations. The Planning Inspectorate further states that the Panel’s Report will have some weight, as the Panel will have reached conclusions on the matter, but it will be limited.

The Debate on 22nd March 2007

It was stated by the Panel at the debate that not all of the Report is relevant to the Regional Spatial Strategy (“the RSS”). The following issues were discussed at the debate:

- Level of housing provisions
 - Most participants agreed that 40,000 houses were deliverable provided appropriate avoidance and mitigation measures were implemented.
- Phasing of development
 - Some participants urged caution on leaving the majority of development until after 2016. Some LPA’s recommended that a significant number of the 40,000 houses be deferred to that later part, in some cases as much as 70% of the 40,000 houses after 2016. A deferment of the development would give them time to assess the effectiveness of the SANGs.
- Distribution of development
 - Larger urban extensions were recommended by many participants, as these would be able to supply SANGs within that development, as many LPA’s have little, if any, land available for SANGs let alone in a location that would mitigate any adverse impact on the SPA. Some participants recommended that housing be redistributed away from the SPA
- Less than 10 houses needs no mitigation

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

“ Plain speaking legal advice ”

- Many of the participants disagreed with this possibility, approximately 25% of all housing in the 13 authorities is of less than 10 houses. It was contended that the combined effect would have an adverse impact on the SPA.
- What should be included in the SEP
 - A joint DPD was not seen as possible by the LPA's, however the house building industry suggested this is the only way for progress on this issue. Regardless of whether or not a joint document was implemented the timetable discussed was between 12 – 24 months at the least to implement DPD's. Woking BC pointed out the RSS cannot require that the LPA's have a joint DPD.
 - There was not a consensus of opinion on whether or not a timetable for action should be included in the SEP.
 - Nature England requires that a mechanism for monitoring and reviewing the impact on the SPA be included within the SEP.

Having regard to the fact that the Panel's Report will not be published until late July and the Secretary of State's proposed changes to the SEP will not be published until mid December 2007, there seems to be no immediate relief from the current moratorium, or at least no compulsory relief. It remains to be seen how the LPA's react to the Report and the debate. Whatever happens, surely anything would be better than the current moratorium on planning that is starving the Thames Valley of much needed new homes.

Table of Acronyms

DDP	Draft Delivery Plan	SANGs	Suitable Alternative Green Space
DPD	Development Plan Document	SEERA	South East England Regional Assembly
EiP	Examination in Public	SEP	South East Plan
LPA's	Local Planning Authorities	SPA	Special Protection Area
RSS	Regional Spatial Strategy		

Watchmoor Park
Camberley
Surrey
GU15 3YQ

tel: 01276 686222

4 Station Road
Aldershot
Hampshire
GU11 1HU

tel: 01252 322451

51 Guildford Road
Bagshot
Surrey
GU19 5NG

tel: 01276 451451

3&4 Market Place
Wokingham
Berks
RG40 1AL

tel: 01189 774045

www.herrington-carmichael.com

This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.