Case No: CO/605/2012

Neutral Citation Number: [2012] EWHC 2542 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/09/2012

Before :

THE HONOURABLE MR JUSTICE SINGH

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Between :

COGENT LAND LLP	**Claimant**
- and -	
ROCHFORD DISTRICT COUNCIL	**Defendant**
- and -	
BELLWAY HOMES Ltd	**Interested Party**

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- -

Russell Harris QC and Sasha White (instructed by **Clyde & Co**) for the **Claimant**
Gregory Jones QC and Juan Lopez (instructed by the Solicitor, Rochford District Council) for the **Defendant**
Paul Brown QC (instructed by **Reynolds Porter Chamberlain**) for the **Interested Party**

Hearing dates: 30th May and 1st June 2012

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Judgment

Mr Justice Singh :

Introduction

1. This is an application under section 113 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act) to quash parts of the Housing Chapter of the adopted Rochford Core Strategy (RCS). The RCS was adopted by the defendant local planning authority on 13 December 2011. That adoption followed an Examination in Public (EiP) into a draft version of the RCS by an inspector appointed by the Secretary of State for Communities and Local Government.

2. The claimant owns the freehold interest in land to the south of Stambridge Road, which for present purposes can be described as being in the general location of East Rochford.

3. The claimant's challenge is to three housing policies in the adopted RCS: policy H1 (Distribution), policy H2 (General Locations) and policy H3 (Phasing General Locations Post 2021). Policies H2 and H3 identify a number of general locations proposed to be released from the Green Belt in satisfaction of the annual requirement to deliver housing for the plan period. Under those policies, the general location of West Rochford is to provide approximately 450 dwellings by 2015, with approximately 150 further dwellings from 2015 to 2021.

4. The interested party, Bellway Homes Limited (Bellway) supports the defendant in opposing the present application. Bellway controls a site of some 33.45 hectares at Hall Road on the western edge of Rochford. Bellway participated in the consultations on the RCS and made detailed submissions at the EiP in support of the release of land to the west of Rochford (and its own site in particular) for residential development. In April 2010 Bellway submitted an application for outline planning permission for residential development of 600 dwellings, associated access and a new primary school. That application is in accordance with Policy H2 of the adopted RCS. On 18 January 2012 the defendant's Development Committee accepted the recommendation of its planning officers and resolved to grant planning permission for that development, subject to the conclusion of a section 106 agreement and the imposition of appropriate conditions. I was informed that no formal decision notice has yet been issued on the Bellway application, because the section 106 agreement is still being finalised.

5. The claimant's Skeleton Argument makes numerous criticisms of the defendant's approach to the production of the RCS. However, at the hearing it became clear that its essential grounds relate to the following:

    (1) the defendant's selection of alternatives for potential general locations for housing (alleged failure to explain the initial selection process);

    (2) the defendant's reasons given for preferring or rejecting reasonable alternatives (alleged failure to give an adequate explanation of the comparative assessment);

    (3) the defendant's Addendum of July 2011 (alleged inadequacies in that document);

(4) whether, even if the Addendum was otherwise adequate, it was capable in law of curing the alleged earlier defects;

(5) the claimant also complains that in failing to re-open the public hearings the inspector failed to comply with the requirements of natural justice. Although the Secretary of State is not a defendant in these proceedings, it is argued that the defendant erred in law by adopting the inspector's report in spite of this alleged breach of natural justice.

Brief Chronology

6. In 2005 the defendant commenced preparation of its Core Strategy.

7. In September 2006 the defendant published a document called Core Strategy Issues and Options. It also published its Strategic Environmental Assessment (SEA) and Sustainability Appraisal (SA) in respect of that document.

8. In May 2007 the defendant published its Core Strategy Preferred Options. In June 2007 the defendant published its SA and SEA in respect of that document.

9. In February 2008 the claimant purchased its freehold interest in the land to which I have referred in East Rochford.

10. In October 2008 the defendant published its Revised Core Strategy Preferred Options. In November 2008 the defendant published its SA and SEA in respect of that document.

11. In September 2009 the defendant published its pre-submission Core Strategy and also its SA and SEA in respect of that document.

12. On 14 January 2010 the defendant submitted its Core Strategy for examination by the Secretary of State.

13. Between 11 and 21 May 2010 EiP hearings were held into the submission draft Core Strategy. There were also EiP hearings on 7 September 2010 and 1-2 February 2011.

14. On 25 March 2011 the High Court gave judgment in a case called Forest Heath, to which I will refer below. On 7 April 2011 the claimant requested that the examination be suspended following that judgment.

15. On 11 May 2011 the defendant requested that the inspector should not issue her report in order to allow the defendant to carry out a review of the SA and SEA in respect of the submission draft Core Strategy. On the same date the inspector agreed to delay publication of her report.

16. In July 2011 the defendant published an Addendum to its SA and SEA in respect of the submission draft Core Strategy.

17. On 27 July 2011 the claimant requested the inspector to suspend the examination until December that year. On 11 August 2011 the inspector refused to suspend the examination.

18. On 27 October 2011 the inspector submitted her report to the Secretary of State.

19. On 13 December 2011 the defendant resolved to adopt the RCS, incorporating changes recommended by the inspector, and on the same date did adopt the RCS. That is now the subject of the present challenge.

The development of the RCS in more detail

20. In its Draft Core Strategy (Regulation 25 version) of September 2006 the defendant set out options that it considered to be realistic to shape the development of its District in the period until 2021 and beyond. Options for development were presented in tables and listed in two categories of "possible" or "probable".

21. At para. 4.6.2 this document said:

> "The council will allocate land in locations that are considered sustainable and such locations will be tested through the Strategic Environmental Assessment/Sustainability Appraisal process. The council will not allocate sites which are considered sensitive due to landscape designations, biodiversity issues or where there may be a risk of flooding."

22. Para. 4.6.3 stated:

> "Within the District there are three tiers of settlements. The top tier is that comprising Hawkwell/Hockley, Rayleigh and Rochford/Ashingdon. These are all towns and villages with a good range of services and facilities as well as some access to public transport. They are capable of sustaining some expansion, in-filling and redevelopment."

23. After describing in brief the second and third tier areas, para. 4.6.6 stated:

> "Taking into account such sustainability issues, the council believes that the settlement pattern should be focussed on existing settlements, with the main settlements in the District taking the majority of development required. The majority is defined as 90% of the housing development required. The main settlements are considered to be Hawkwell/Hockley, Rayleigh and Rochford/Ashingdon."

24. In a table at page 149 of the document, the council set out the options which it considered should be considered as follows. In the column headed "possible" there were the following four bullet points:

- "Greater dispersal to minor settlements, enabling possible regeneration of local facilities.

- Split the housing allocation evenly between the parishes (excluding Foulness), so that each area gets a small amount of housing.

- Develop a new settlement, well related to transport links and providing its own basic infrastructure.

- Focus solely on an expansion of one settlement, creating a significant urban expansion."

25. Under the heading "probable" there were two bullet points as follows:

- "Allocate the total number of housing units to the top (90%) and second tier (10%) settlements, to gain a smaller number of large sites which will deliver the greatest amount of infrastructure improvements.

- A timescale will be specified detailing the expected phasing of development."

26. The next relevant document is the Draft Core Strategy Preferred Options (Regulation 26 version) of May 2007. Section 4.6, on general development locations, was in similar terms to the 2006 document. In particular, it again described the three tiers of settlement in the District, with the top tier comprising Hawkwell/Hockley, Rayleigh and Rochford/Ashingdon.

27. Para. 4.6.10 set out the defendant's preferred options for general development locations as follows:

- "The council will set out a policy detailing a settlement hierarchy split into three tiers based on services and sustainability.

- The council will set out a policy detailing a timescale for the expected phasing of development.

- The council will set out a policy allocating the total number of housing units to the top (90%) and second tier (10%) settlements, to gain a smaller number of large sites which will deliver the greatest amount of infrastructure improvements. The split (with approximate numbers) will be as follows: …"

There then followed a table with a description of the relevant location and the approximate number of units envisaged to be allocated there. The total number of units envisaged was 4,600. The number of units envisaged for Rochford/Ashingdon was 1,000.

28. Para. 4.6.11 set out alternative options for general development locations as follows:

- "Greater dispersal making more use of settlements in the East of the District.

- Greater dispersal to minor settlements, enabling possible regeneration of local facilities.

- Focus solely on an expansion of one settlement, creating a significant urban expansion."

29. Para. 4.6.15 stated:

"In reaching a decision about the broad distribution of future housing the starting point is that the top tier of settlements – Rayleigh (population 30,196), Rochford/Ashingdon (population 10,775), and Hockley/Hawkwell (population 20,140) are best placed to accommodate expansion."

30. Para. 4.6.16 stated:

"The top tier settlements are generally better located in relation to the highway network, though the provision of new housing must be used as an opportunity to seek infrastructure improvements, particularly in relation to the highway network."

31. Para. 4.6.20 stated:

"Rochford/Ashingdon has in theory reasonably good transport links to Southend and the A127, but in practice the area is heavily congested with congestion on Ashingdon Road being amongst the worst in the District. To the West, Hall Road links directly to the Cherry Orchard Way link road, but the railway bridge at the eastern end of Hall Road is a severe constraint on traffic movements."

32. Para 4.6.21 stated:

"There are environmental designations on the West side of Ashingdon north of the railway line and Rochford town centre is a conservation area and its setting must be protected. There are some opportunities for expansion, though road infrastructure will need to be carefully considered."

33. The next relevant document is the Core Strategy Preferred Options document of October 2008. Section 3 of this document, which dealt with strategies, activities and actions, listed the defendant's preferred options in green boxes and its alternative options in yellow boxes.

34. Page 13 of this document described the characteristics of the District in the following way:

"The District of Rochford is situated within a peninsula between the Rivers Thames and Crouch, and is bounded to the East by the North Sea. The District has land boundaries with Basildon and Castle Point District and Southend-on-Sea borough councils. It also has marine boundaries with Maldon and Chelmsford Districts. The District has linkages to the M25 via the A127 and the A13 and direct rail links to London. … The landscape of the District has been broadly identified as being made up of three types:
Crouch and Roach Farmland; Dengle and Foulness Coastal; and South Essex Coastal Towns. The latter of these three is least sensitive to development.

The character of the District is split, with a clear East-West divide. Areas at risk of flooding and of ecological importance are predominantly situated in the sparsely populated, relatively inaccessible East. The West of the District contains the majority of the District's population, has better access to services and fewer physical constraints."

35. Page 20 of this document set out a brief description of the tiers of settlement. Page 26 of the document, headed General Locations, stated:

"It is the not the purpose of the Core Strategy to set out the precise locations for new development - this is done through the Allocations Development Plan Document. Instead, the Core Strategy will set out the general approach for the allocations document.

The concept of sustainable development is at the heart of any decisions with regards to the location of housing. …

As described in the Characteristics chapter of this document, the District's settlements can be divided into four tiers, with the settlements in the higher tiers being generally more suitable to accommodate additional housing development for the reasons described above. The settlement hierarchy is as follows …"

There then followed a table setting out in numbered tiers 1 to 4 the following:

1. Rayleigh; Rochford/Ashingdon; Hockley/Hawkwell.

2. Hullbridge; Great Wakering.
3. Canewdon.
4. All other settlements.

36. At page 28 of the 2008 document there appeared draft policy H2 on "General locations and phasing – preferred option", which set out in a table the number of units envisaged to be allocated to various areas by 2015 and also the number of units envisaged to be allocated to each area between 2015 and 2021. In respect of West Rochford it was envisaged that there would be 300 units by 2015 and 100 units thereafter. In respect of East Ashingdon there would 120 units by 2015 and none thereafter. In respect of South East Ashingdon there would 120 units by 2015 and none thereafter.

37. At page 30 of the 2008 draft, in the discussion of alternative options under policy H2 there was a reference to East Rochford as an alternative to other Rochford locations and in answer to the question "Why is it not preferred?" there was stated the following:

> "It is considered that West Rochford is a more suitable location given its proximity to the train station, town centre and its relationship with areas of significant employment growth potential at London Southend airport and its environs. Traffic flows from new development to the East of Rochford would be predominantly through the centre of the town centre resulting in significant congestion."

38. The next relevant document is the SA/SEA non-technical summary in respect of the Rochford Core Strategy preferred options document of October 2008.

39. At about the same time, in November 2008, there was published the technical Report in relation to the SA and SEA. Para. 1.6 of this Report, under the heading Summary of Compliance with the SEA Directive and Regulations, stated:

> "The SEA Regulations set out certain requirements for Reporting the SEA process, and specify that if an integrated appraisal is undertaken (i.e. SEA is subsumed within the SA process, as for the SA of the Rochford LDF), then the sections of the SA Report that meet the requirements set out for Reporting the SEA process must be clearly signposted. The requirements for Reporting the SEA process are set out in Appendix 1 and within each relevant section of this Report."

40. Para. 5.3 of this document stated:

> "An emerging draft of the revised Preferred Options policies was then subject to SA in October 2008. A summary of the results of this appraisal is provided below, with the detailed working matrices provided in Appendix vii. On the whole, the findings of the SA suggest that the emerging Core Strategy policies will make significant contributions to the progression of SA objectives."

41. Paras. 5.7–5.11 dealt specifically with the draft policies H2 and H3. Para. 5.10 stated:

> "The actual locations for growth proposed in the policy are considered to be the most sustainable options available, within the context of the overall high levels of population growth being proposed in the East of England Plan. The policy recognises the distinctive landscape and bio-diversity areas in the District, (including coastal landscapes and flood-prone areas in the East of the District) and takes an approach to development that minimises impacts on these areas through steering development toward the more developed Western side of the District."

42. In Appendix 1 (statement on compliance with the SEA Directive and Regulations) para. 1.8 stated:

> "*An outline for the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties encountered in compiling the required information:*
>
> This work, undertaken by Essex County Council's Environmental Assessment Team is available in the Regulation 25 Issues and Options SA Report, and is summarised in section 4 of this Report. Details of how the assessment was undertaken are provided in section 3 of this SA Report (appraisal methodology), and difficulties encountered in compiling information summarised in Section 4 of this report."

43. The next relevant document is the Core Strategy pre-submission draft of September 2009. Para. 4.9 of this document again set out the four tiers of settlement in the District.

44. In relation to policy H2 (extensions to residential envelopes and phasing) a table at page 44 of this document stated that it was envisaged that 450 dwellings would be allocated to the area of West Rochford by 2015 and 150 dwellings between 2015 and 2021. In relation to East Ashingdon the figure was 100 dwellings by 2015 and none thereafter. Nothing was allocated in respect of East Rochford.

45. In relation to policy H3 (extension to residential envelopes post-2021) a table at page 45 of the document envisaged 500 dwellings in that period in relation to South East Ashingdon. Again nothing was allocated in respect of East Rochford.

46. The next relevant document is the Technical Report for the SA/SEA in respect of the pre-submission draft of 2009. This had an Appendix 1 also in similar terms to that which has already been quoted from the 2008 report: see in particular para. 1.8 of that Appendix.

47. The next relevant document, which is very important to the present proceedings, is the Sustainability Appraisal Addendum dated July 2011. The introduction to this document highlighted the reasons why it had been produced. Para. 1.3 stated:

> "In light of the recent High Court ruling in Save Historic Newmarket v Forest Heath District Council, Enfusion advised the Council that it would be prudent to undertake a review of the Core Strategy Sustainability Appraisal, ensuring compliance with the new case law on SEA arising from this ruling. Rochford District Council has subsequently requested the issuing of a decision on the soundness of the Core Strategy be delayed to enable the Council to undertake such a review. The Planning Inspectorate has accepted this request and the Council commissioned Enfusion in May 2011 to undertake the work. In response to the findings of the Forest Heath case, this Addendum SA report provides a summary of the alternatives considered throughout the production of the plan setting out the reasons for selecting/rejecting those alternatives. It also includes consideration of more detailed housing locations (than previously appraised). … This Addendum Report should be read in conjunction with previous Sustainability Appraisal Reports and iterations of the Core Strategy, in particular the SA Report of the LDF Core Strategy proposed submission draft DPD [Development Plan Document] (2009) for a full account of how the Sustainability Appraisal has influenced the process to date."

48. Para. 2.2 of the Addendum stated that:

> "The recent Forest Heath High Court ruling and recommendations by DCLG in its report on the effectiveness of SEA and SA have clarified and provided an additional interpretation of the EU SEA Directive. This section of the SA Report Addendum therefore seeks to provide a clear summary of the alternatives considered throughout the SA process and the reasons for selecting/rejecting those alternatives."

49. Table 2.1 of the Addendum set out over several pages a summary of the approach to the assessment and selection of alternatives.

50. Section 3 dealt with "Further appraisal of alternatives: General housing development locations." Para. 3.1 stated:

> "As illustrated above, the Council has considered the results of the SA of issues and options (alternatives) in its selection and rejection of alternatives for plan-making. The Sustainability Appraisal considered a range of issues considered to be of key importance to the development of the Core Strategy. This included consideration of housing numbers and general locations for development (strategic options 4 and 5). The SA found that option E, the allocation of housing to the top and second tier settlements to gain a smaller number of large sites would have the most positive effects of all the options."

51. Para. 3.2 stated:

> "In light of the Forest Heath Ruling, it was decided to further develop this appraisal, considering the more detailed locations for development within

individual top and second tier settlements. The recent publication (in February 2010) of the LDF Allocations DPD Discussion and Consultation Document has also enabled a further consideration of the realistic locations for development, as it incorporates the findings of the Call for Sites process and Strategic Housing Land Availability Assessment (SHLAA)."

52. Para. 3.3 stated:

> "Detailed appraisal of housing locations were undertaken for each of the top and second tier settlements and Canewdon, with full details provided in Appendix 1. …"

53. Table 3.1 then set out over several pages the Housing Development Options for Rochford District: Reasons for selection/rejection. In this table location 1 was West Rochford and location 3 was East Rochford. Under the heading "Reasoning for Progressing or Rejecting the options in plan making" it was stated in respect of location 1 that this:

> "was selected as it is a sustainable location, particularly in terms of accessibility, economy and employment, and balanced communities. In addition, the location relates well to London Southend airport and proposed employment growth there, is not subject to significant environmental constraints which would inhibit development, and is of a scale capable of accommodating other infrastructure, including a new primary school which would have wider community benefits. The location performs well to the proposed balanced strategy, and, due to its location in relation to Southend and the highway network, would avoid generating traffic on local networks for non local reasons. The location is unlikely to enable infrastructure improvements to King Edmund School, but is nevertheless selected for the aforementioned reasons."

54. It should be mentioned that the table also said that location 5 (South East Ashingdon) and location 6 (East Ashingdon) were selected as they are well located in relation to King Edmund Secondary School.

55. Turning to location 3, East Rochford, the table said that this was not selected:

> "as it was not considered as sustainable a location as West Rochford. There are greater environmental constraints to the East of Rochford, including Natura 2000 and Ramsar sites. Development to the East of Rochford has the potential to be affected by noise from London Southend airport, given its relationship to the existing runway. Whilst a small quantum of development may be accommodated within this general location avoiding land subject to physical constraints, such an approach is less likely to deliver community benefits, and would necessitate the identification of additional land, diluting the concentration of development and thus reducing the sustainability benefits of focussing development on larger sites. Location 3 is also unlikely to aid the delivery of improvements to King Edmund School. Furthermore, it would

generate traffic on local networks for non local reasons, i.e. traffic to Southend would be likely to be directed through the centre of Rochford, including through the Conservation Area."

Legal Framework

56. Section 19(5) of the 2004 Act requires a local planning authority to carry out an appraisal of the sustainability of the proposals in each development plan document and to prepare a report of the findings of that appraisal. This is known as an SA. It is common ground that the RCS is a development plan document by virtue of regulation 7(a) of the Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004 No. 2204).

57. The background to the present case can be found in Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. This is sometimes known as the Strategic Environmental Assessment (SEA) Directive.

58. The SEA Directive has been implemented in domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004 (SI 2004 No. 1633). Part 3 of those Regulations concerns environmental reports and consultation procedures.

59. Regulation 12 provides that:

> "(1) Where an environmental assessment is required by any provision of Part 2 of these regulations, the responsible authority shall prepare, or secure the preparation of, an environmental report in accordance with paragraphs (2) and (3) of this regulation.
>
> (2) The report shall identify, describe and evaluate the likely significant effects on the environment of –
>
> (a) implementing the plan or programme; and
>
> (b) reasonable alternatives taking into account the objectives and geographical scope of the plan or programme.
>
> (3) The report shall include such information referred to in schedule 2 to these regulations as may be reasonably required, taking account of – [a number of matters are then set out in sub-paragraphs (a) to (d)]…."

60. Paragraph 8 of Schedule 2 requires "an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken …" The other paragraphs in Schedule 2 deal with a number of other items of information which must be included in an Environmental Report (ER), for example the likely

significant effects on the environment, including such matters as biodiversity, fauna, flora and climatic factors: see paragraph 6 of Schedule 2.

61. Regulation 13(1) provides that:

> "(1) Every draft plan or programme for which an Environmental Report has been prepared in accordance with Regulation 12 and its accompanying Environmental Report ('the relevant documents') shall be made available for the purposes of consultation in accordance with the following provisions of this Regulation."

62. Regulation 13(2) sets out a number of steps in relation to the consultation process which must be followed. Paragraph (3) specifies that the period for consultation must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents.

63. It was common ground before me that:

(1) the Regulations are the relevant source of law in this country, since the Directive, unlike an EU Regulation, is not directly applicable;

(2) the Regulations should be interpreted so far as possible in a way which is compatible with the Directive; and

(3) if an interpretation of the Regulations is incompatible with the Directive and no other interpretation is possible, then, to the extent of any incompatibility, the claimant may rely on a provision of the Directive, since there will, to that extent, have been a failure correctly to transpose the Directive into domestic law: in those circumstances the Directive may have direct effect.

It is therefore appropriate now to turn to the material provisions of the Directive.

64. Article 1 of the Directive provides:

> "The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive an Environmental Assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment."

65. Article 2(b) defines "Environmental Assessment" to mean:

> "The preparation of an Environmental Report, the carrying out of consultations, the taking into account of the Environmental Report and the results of the consultations in decision-making and the provision of information on the decision in accordance with articles 4 to 9."

66. Article 4, which sets out general obligations, provides in paragraph (1):

> "The Environmental Assessment referred to in article 3 shall be carried out in the preparation of a plan or programme and before its adoption or submission to legislative procedure."

67. Article 3, which deals with the scope of the Directive, requires in paragraph (1) that an Environmental Assessment, in accordance with articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

68. Article 5(1) provides that:

> "Where an Environmental Assessment is required under article 3(1), an Environmental Report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex 1. Annex 1 sets out a number of matters, including at sub paragraph (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken….".

69. Article 6 provides that:

> "(1) The draft plan or programme and the Environmental Report prepared in accordance with article 5 shall be made available to the authorities referred to in paragraph 3 of this article and the public.
>
> (2) The authorities referred to in paragraph 3 and public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate timeframes to express their opinion on the draft plan or programme and the accompanying Environmental Report before the adoption of the plan or programme or its submission to the legislative procedure. …"

70. Guidance on implementation of the Directive has been issued by the European Commission. Para. 1.5 of that Guidance makes it clear that it represents only the views of the Commission and is not of a binding nature. As Ouseley J commented in Heard v Broadland DC [2012] EWHC 344 (Admin), at para. 69, the Guidance is not a source of law.

71. Para. 4.2 of the Guidance states:

> "As a matter of good practice, the Environmental Assessment of plans and programmes should influence the way the plans and programmes themselves are drawn up. While a plan or programme is relatively fluid, it may be easier to discard elements which are likely to have undesirable environmental effects than it would be when the plan or programme has been completed. At that stage, an Environmental Assessment may be informative but is likely to be less influential. Article 4(1) places a clear obligation on authorities to carry out the assessment during the preparation of the plan or programme."

72. Para. 5.11 of the Guidance states that:

> "The obligation to identify, describe and evaluate reasonable alternatives must be read in the context of the objective of the Directive which is to ensure that the effects of implementing plans and programmes are taken into account during their preparation and before their adoption."

73. Para. 5.12 of the Guidance states:

> "In requiring the likely significant environmental effects or reasonable alternatives to be identified, described and evaluated, the Directive makes no distinction between the assessment requirements for the drafted plan or programme and for the alternatives. The essential thing is that the likely significant effects of the plan or programme and the alternatives are identified, described and evaluated in a comparable way. The requirements in article 5(2) concerning the scope and level of detail for the information in the report apply to the assessment of alternatives as well. It is essential that the authority or Parliament responsible for the adoption of the plan or programme as well as the authorities and the public consulted, are presented with an accurate picture of what reasonable alternatives there are and why they are not considered to be the best option. The information referred to in Annex 1 should thus be provided for the alternatives chosen. …"

74. Para. 7.4 of the guidance, which relates to the definition of "Environmental Assessment" in Article 2(b) of the Directive states that:

> "This definition clearly states that consultation involved is an inseparable part of the assessment. Further, the results of the consultation have to be taken into account when the decision is being made. If either element is missing, there is, by definition, no Environmental Assessment in conformity with the Directive. This underlines the importance that is attached to consultation in the assessment."

The claimant's ground (1)

75. The claimant submits that the defendant breached the requirements of the Regulations in that it failed to set out the reasons for its initial selection of various general areas for possible location of housing. It is common ground that this obligation did not arise in the early stages of the drafting process, from 2006. However, the claimant submits that a key stage in the production of the Core Strategy was reached when the Revised Core Strategy Preferred Options draft was published in October 2008.

76. In support of this contention the claimant relied upon a recent decision by Ouseley J, Heard v Broadland District Council [2012] EWHC 344 (Admin). In particular the claimant relied upon what was known in that case as ground 1, which was considered at paras. 53-72 of the judgment. The claimant emphasised what Ouseley J said at para. 57 of his judgment, that the council in that case had not set out in any document "the outline reasons for the selection of alternatives at any particular stage."

77. Under ground (1) the claimant submits that the SA/SEA in 2008 failed to identify in outline (or at all) the reasons for the selection of the alternatives to be the subject of assessment in Policy H2. The claimant submits that the SEA must identify in outline the reasons for the selection of alternatives to be the subject of assessment at all and that this is a different order of analysis from the actual assessment and selection of preferred options. The claimant submits that this defect in the 2008 draft was not cured in September 2009, when the pre-submission version of the Core Strategy was published and was accompanied by an SA/SEA.

78. I do not accept this ground of challenge. There is an air of unreality about this ground since, in fact, this claimant's site was in a general location which was among those selected for further assessment. In any event, in my view, the defendant did adequately explain the basis on which the initial selection of general locations to be considered for housing allocations was made, in particular the environmental reasons in outline terms.

79. I have already quoted the relevant passages in the documents from 2008 and 2009 which set out in outline the environmental reasons why parts of the western area of the district were to be considered for further assessment.

80. In particular, the Technical Report in relation to the SA/SEA in 2008 addressed this at para. 5.10. It was noted there that the "actual locations for growth proposed in the policy are considered to be the most sustainable options available" and that the "policy recognises the distinctive landscape and bio-diversity areas in the District." It was also noted that the policy "takes an approach to development that minimises impacts on these areas by steering development toward the more developed western side of the District."

81. Appendix 1 to that Technical Report, at para. 1.8 (which I have already quoted) also cross-referred to the relevant sections of the earlier SA Report which had provided an outline of the reasons for selecting the alternatives chosen and a description of the difficulties encountered in compiling the required information.

82. Furthermore, as I have already indicated, similar passages can be found in the Technical Report for the SA/SEA in respect of the pre-submission draft in 2009.

83. I therefore reject the claimant's ground (1) that there was a breach of the Regulations in this regard.

The claimant's ground (2)

84. The claimant observes that the 2008 Revised Core Strategy Preferred Options draft preferred West Rochford as a general location for housing along with 10 other general locations across the District.

85. Under Policy H2 of that draft, East Rochford was identified as an "Alternative Option" to "other Rochford" locations. It was said that:

> "It is considered that west Rochford is a more suitable location given its proximity to the train station, town centre and its relationship with areas of significant employment growth potential at London Southend Airport and its environs. Traffic flows from the new development top the east of Rochford would be predominantly through the centre of the town centre resulting in significant congestion."

86. This was the first time in the Core Strategy process that any general development locations had been preferred and the first time that identified alternative locations had been rejected. Accordingly, submits the claimant, the affected public were entitled (applying the provisions of the Regulations and the Directive) to look to the SA/SEA *accompanying* the draft plan to understand why such a preference was being expressed in relation to reasonable alternatives and to examine the evidence upon which such a preference was based. However, the claimant submits, the SA/SEA which accompanied the Preferred Options document did not allow the public this early and effective engagement.

87. In this context the claimant again placed reliance on what was said by Ouseley J at para. 57 of his judgment in Heard. He found in that case that there was no discussion in an SA, in so far as required by the Directive, of why the preferred options came to be

chosen, and that there was no analysis on a "comparable" basis, in so far as required by the Directive, of the preferred option and selected reasonable alternatives.

88. On that last point, the claimant also emphasised what Ouseley J said at para. 71:

> "… it seems to me that, although there is a case for examination of a preferred option in greater detail, the aim of the Directive, which may affect which alternatives it is reasonable to select, is more obviously met by, and it is best interpreted as requiring, an *equal examination of the alternatives* which it is reasonable to select for examination alongside whatever, even at the outset, may be the preferred option. It is part of the purpose of this process to test whether what may start out as preferred should still end up as preferred after a fair and public analysis of what the authority regards as reasonable alternatives. …" [Emphasis added]

89. Taken in isolation, I would be inclined to accept those submissions by the claimant under ground (2). Although the defendant and Bellway argued to the contrary, in my view, the documents from which I have already quoted, in particular the Technical Report for the SA/SEA in 2008, did not set out adequately the reasons for preferring the alternatives that were selected. It was indeed "prudent", as Enfusion advised the defendant, to undertake a review of the sustainability of the Core Strategy.

90. However, the matter does not rest there, in my view. This is because the claimant's submission depends on its grounds (3) and (4) relating to the Addendum. If, as the defendant and Bellway submit, the Addendum cured any defects in the earlier stages of the process (ground (3)) and if as a matter of law it was capable of doing so (ground (4)), there would be no merit in ground (2) either. The main plank of the claimant's case is that the defendant was not entitled to seek to remedy any deficiencies in its procedures by way of the Addendum in July 2011. I therefore turn to those contentions under grounds (3) and (4).

<u>The claimant's ground (3)</u>

91. The claimant submits that the Addendum fails to meet the requirements of the Regulations (read with the Directive) in a number of ways.

92. First, the claimant contends that, even if East Rochford was identified as a reasonable alternative, at all material times when East Rochford has been considered it has been considered solely against West Rochford and not against or as an alternative to any other housing location. No explanation even in outline has been given as to why it has been so limited as an alternative. The claimant complains that there was no appropriate comparison done between East Rochford and other locations such as Ashingdon.

93. I do not accept that contention. For example, the passages to which I have already referred, in particular the text of Table 3.1 in the Addendum, noted that location 5 (South East Ashingdon) and location 6 (East Ashingdon) were well located in relation to King Edmund School; location 3 (East Rochford) was not. More generally, in my

view, the Addendum did adequately explain the environmental reasons why location 3 was not a preferred location.

94. Next, the claimant submits that the assessment of alternatives which was undertaken does not constitute a proper assessment on a comparable basis with the preferred locations. In particular, the claimant submits that the environmental effects of the preferred locations were considered in much more detail through the series of SEAs which had been produced since the Revised Preferred Options draft in 2008. The consideration of alternatives in the Addendum was on a wholly different and lower scale (consistent with what is alleged to be an ex post facto justification).

95. I do not accept that contention. Rather, I accept the defendant's and Bellway's submissions that:

(1) the Addendum was produced by independent consultants who will have been well aware of the fact that (as the inspector herself pointed out before the Addendum was commissioned) it must not be undertaken as an exercise to justify a predetermined strategy;

(2) the claimant's assertion that Enfusion were simply asked to "verify" the conclusions already reached by Council Members is emphatically denied by Cllr Hudson (see his witness statement, para. 24);

(3) In any event, having considered the Addendum and the submissions made (by the claimant and others) in connection with it, the independent inspector concluded that there was "no compelling reason to question [its] integrity".

(4) Further, the inspector had specifically (and at the claimant's request) included within the "Matters and Issues" for consideration at the examination the question: "Are the broad locations identified for the supply of housing most appropriate when considered against all reasonable alternatives?" In that context, she considered whether the reasons advanced in the Addendum were sound and concluded that there was:

> "no compelling evidence to dispute the conclusion of the SA that the chosen locations are the most sustainable."

96. On 27 October 2011 the defendant received the inspector's report concluding that, with a limited number of changes, the RCS was sound. The report notes (para. 3) that none of the changes materially altered the substance of the plan and its policies, or undermined the SA/SEA and participatory processes undertaken.

97. The inspector's report confirms her consideration of representations on the SA/SEA Addendum, as follows:

> "In June 2011, and following the judgement of the High Court in the case of Save Historic Newmarket Ltd v Forest Heath District Council, the Council published a draft Addendum to the Sustainability Appraisal which was subject

to consultation between 13 June and 11 July 2011 and I have taken account of representations made in preparing my report" (para. 10).

98. At para. 31 of her report, the inspector stated:

> "The SA is informed by a comprehensive scoping report and I find no reason to conclude that any significant effects have not been taken into account. The SA Addendum (July 2011) provides a more detailed appraisal of the alternative locations considered, and was subject to public consultation. I have taken into account criticisms that the Addendum was produced after the submission draft plan, but sustainability appraisal is an iterative process"

99. At para. 32 she further stated:

> "Overall, there is no compelling reason to question the integrity of the SA as a whole, and no convincing evidence to dispute the conclusion of the SA that the chosen locations are the most sustainable, and therefore the CS is sound in relation to this issue"

100. Further, the inspector concluded at para. 62, in respect of legal requirements, that the SA/SEA is adequate.

101. Following receipt of the inspector's report, the defendant prepared an SA/SEA Adoption Statement. The SA/SEA Adoption Statement also incorporates an SA/SEA Compliance Review and Quality Assurance, produced by Enfusion. The Compliance Review concludes:

> "Having undertaken this review, it is our professional opinion that the SA/SEA of the Rochford Core Strategy (incorporating the Addendum reports of September 2010 and July 2011) is compliant with the SEA Directive and requirements and PPS 12 requirements for Sustainability Appraisal" (para.1.4).

102. On the evidence before the Court, I therefore reject the claimant's contention that the Addendum was an "ex post facto justification" or a "bolt-on consideration of an already chosen preference" to justify a decision which had already been taken.

103. Furthermore, I reject the contention that the Addendum did not adequately carry out an assessment on a "comparable" basis. I have earlier set out relevant passages from the Addendum. It is clear from the Addendum, in my judgement, that:

    (1) the 2009 SA/SEA had incorporated comments and representations received during public consultation on earlier iterations of the draft RCS and the sustainability appraisal undertaken throughout the plan-making process, since Issues and Options stage (para. 1.1);

    (2) it "...provides a summary of the alternatives considered throughout the production of the plan setting out the reasons for selecting/rejecting those alternatives. It also includes consideration of more detailed housing locations..." (para. 1.3);

(3) the same method of appraisal using the SA framework of objectives and decision-aiding questions for sustainable development had been used in its production (para. 1.5);

(4) "A strategic approach was taken - appropriate to the Core Strategy level of plan-making and to minimise pre-empting the preparation of the Site Allocations DPD that will consider sites in more detail" (para. 1.7);

(5) it incorporates consideration of "...the approach to general locations within each settlement" (para. 1.7);

(6) it performs a comparative appraisal between locations and settlement areas:

- findings of "no significant effects identified" were recorded in the Addendum as to denote "...that the development of the location is unlikely to have a significant effect on the SA objective in question...";
- any "cumulative issues of significance" were considered in the Sustainability Appraisal Submission report (section 6).

104. In particular the explanation at Table 3.1 adequately explained, in my judgement, the reasons why, on environmental grounds, East Rochford was not considered a suitable general location for housing development and why other locations were preferred.

105. The claimant also submits that the assessment in the Addendum was defective because it failed to take any account of the defendant's own detailed findings in relation to the sustainable deliverability of the claimant's own site in East Rochford. The claimant submits that those findings were relevant to which areas are to be preferred because they relate to the ability of the claimant's large site alone to produce a scale of housing (320 units plus) similar to or greater than that suggested for other preferred broad locations (West Rochford - 450 units by 2015 and East Ashingdon – 100 units). The claimant argues that the acceptance in a formal document issued to the Inspectorate by the defendant (jointly with the claimant) that 326 dwellings at Coombes Farm in East Rochford would be acceptable in flood risk terms and in various other respects was clearly relevant to any comparable assessment but was left out of account.

106. However, I accept the submission by the defendant and Bellway that there is a conceptual difference between development throughout the general location of East Rochford and the development of one or more (non-specified) sites within this general location.

(1) The plan process and the claimant's appeal were concerned with two separate things. The plan process was concerned with identifying a broad geographical area within which it might be possible to locate 650 houses. The claimant's appeal was concerned with an application on a specific site for planning permission for 326 houses. It is not surprising that the consideration of the Coombes Farm application was carried out

at a greater level of detail than the identification of broad areas for development in the RCS. However, whether or not Coombe Farm was suitable revealed nothing about the suitability of the surrounding area. This is particularly relevant, given that the claimant's proposals would only address part of the overall need for Rochford.

(2) To the extent that it might have been relevant to consider the claimant's particular site, this submission confuses two different issues, namely:

- whether the impacts of developing the claimant's site (whether in terms of traffic, habitats, landscape or any other matter) were sufficiently harmful as to justify refusal of permission for the claimant's site *if that site were considered in isolation*;

- whether the impacts of developing the claimant's site (whether in terms of traffic, habitats, landscape or any other matter) would be more harmful/less advantageous than those which would arise if development were carried out to the west of Rochford instead.

The claimant's planning appeal was concerned with the former; the RCS process was concerned with the latter. It was for this reason that the 2008 draft of the RCS described west Rochford as being "more suitable" than the other Rochford locations. It did not suggest, nor did it need to, that there were no locations to the east of Rochford where residential development might be acceptable.

(3) In any event, one of the functions of the statutory process is to give members of the public the opportunity to draw what they perceive to be errors or omissions to the attention of the decision-maker. In the present case, if and so far as the claimant considered that the Addendum was wrong not to refer to the Statement of Common Ground and other material presented at the Coombes Farm planning appeal, it was open to it to draw the inspector's attention to this material in the EiP process. In fact, the claimant had already done this long before the Addendum was produced. This information was again drawn to the inspector's attention by a letter of 24 June 2011. Further detailed submissions were made on 8 July 2011. In the circumstances, there is no basis for the suggestion that the inspector was not properly informed of this matter.

107. Accordingly, I reject the claimant's ground (3) and conclude that, on the facts of the present case, the Addendum was adequate.

The claimant's ground (4)

108. The claimant submits that, even if as a matter of fact, the Addendum did comply with the requirements of the Regulations and the Directive, as a matter of law it was incapable of curing the defects in the earlier stages of the process.

109. Both the defendant and Bellway observe, as a preliminary point, that this is not the position which the claimant took when it first wrote to the defendant, drawing its attention to the decision in Forest Heath. Rather, the letter sent on its behalf on 7 April 2011 asked for only a suspension of the process. It stated:

> "We would urge you to suspend any decision to adopt the Core Strategy until such time was the Council has conducted a fully objective and transparent assessment of the effects of the broad housing locations and their consideration against all reasonable alternatives."

110. They also observe that the claimant's argument that the process on which the defendant embarked was inadequate was not advanced until 13 June 2011, *after* the draft Addendum had been published for consultation. No such argument was advanced when the defendant first announced its intention to review the SA in light of recent developments in the field of sustainability appraisals on 11 May 2011.

111. Under ground (4) the claimant relies, first, upon the language of Regulation 13, which requires "every draft plan… and its accompanying environmental report" (prepared in accordance with the Regulations**)** to be made available for the purposes of consultation by informing the public "as soon as reasonably practicable" of where the documents may be viewed. However, in my judgement, this does not have the effect contended for by the claimant, that the Addendum was incapable as a matter of law of curing any earlier defects in the process. It means simply that the draft plan, and any accompanying environmental report there happens to be, must be available for public consultation as soon as reasonably practicable. This is a timing provision. It does not prescribe the content of the report. Still less does it have the effect that if, for some reason, the accompanying report is not wholly adequate at that time, it cannot be supplemented or improved later before adoption of the plan, for example by way of the Addendum in the present case.

112. I prefer the submissions that were made by the defendant and Bellway. First, it should be noted that "Strategic Environmental Assessment" is not a single document, still less is it the same thing as the Environmental Report: it is a *process*, in the course of which the Directive and the Regulations require production of an "Environmental Report". Hence, Article 2(b) of the SEA Directive defines "environmental assessment" as:

> "the preparation of the environmental report, carrying out consultations, the taking into account of the environmental report and the results of the consultations in the decision making and the provision of information on the decision in accordance with Articles 4 to 9".

113. Furthermore, although Articles 4 and 8 of the Directive require an "environmental assessment" to be carried out and taken into account "during the preparation of the plan", neither Article stipulates when in the process this must occur, other than to say

that it must be "before [the plan's] adoption". Similarly, while Article 6(2) requires the public to be given an "early and effective opportunity … to express their opinion on the draft plan or programme and the accompanying environmental report", Article 6(2) does not prescribe what is meant by "early", other than to stipulate that it must be before adoption of the plan. The Regulations are to similar effect: Regulation 8 provides that a plan shall not be adopted before account has been taken of the environmental report for the plan and the consultation responses.

114. The claimant relied upon several authorities said to support its submissions under ground (4).

115. The first case is a decision of the High Court in Northern Ireland, Re Seaport Investments Limited [2008] Env LR 23, a decision of Weatherup J on equivalent regulations in Northern Ireland which implemented, or purported to implement, the SEA Directive. The applicants in that case contended that the regulations had failed to transpose the Directive correctly in a number of respects. The applicants also contended that there had been a breach of the Regulations and the Directive on the facts of the case.

116. Weatherup J accepted the applicants' argument in relation to what he called the second transposition issue: see paras. 19 – 23 of the judgment. He then turned to whether there had been a failure to comply with the requirements of the Regulations and Directive.

117. At para. 47 he said:

> "The scheme of the Directive and the Regulations clearly envisages the *parallel development* of the Environmental report and the draft plan with the former impacting on the development of the latter throughout the periods before, during and after the public consultation. In the period before public consultation the developing Environmental Report will influence the developing plan and there will be engagement with the consultation body on the contents of the report. Where the latter becomes largely settled, even though as a draft plan, before the development of the former, then the fulfilment of the scheme of the Directive and the Regulations *may* be placed in jeopardy. The later public consultation on the Environmental Report and draft plan *may* not be capable of exerting the appropriate influence on the contents of the draft plan." [Emphasis added]

118. The claimant emphasised in particular the phrase "parallel development." However, it is important to read the passage as a whole, in particular the words I have emphasised towards the end of it: they indicate that Weatherup J did not intend to lay down a general and absolute rule but was in truth stressing that whether or not the scheme of the Regulations and Directive is in fact breached will depend on the facts of each case.

119. At para. 49 Weatherup J said:

> "Once again the Environmental Report and the draft plan operate together and the consultees consider each in the light of the other. This must occur at a stage that is sufficiently 'early' to avoid in effect a settled outcome having

been reached and to enable the responses to be capable of influencing the final form. Further this must also be 'effective' in that it does in the event actually influence the final form. *While the scheme of the Directive and the Regulations does not demand simultaneous publication of the draft plan and the Environmental Report it clearly contemplates the opportunity for concurrent consultation on both documents*." [Emphasis added]

120. At para. 51 Weatherup J concluded on the facts of that case that:

> "When the development of the draft plan had reached an advanced stage before the Environmental Report had been commenced there was *no opportunity* for the latter to inform the development of the former. This was not in accordance with the scheme of Articles 4 and 6 of the Directive and the Regulations." [Emphasis added]

121. I accept the defendant's submission that, in Seaport, Weatherup J confirmed that as regards the requirement for a ER to "accompany" a draft plan, the Directive and Regulations do not require "simultaneous" publication of a draft plan and the ER.

122. The claimant also relied upon the decisions of Ouseley J in Heard (to which I have already made reference) and Collins J in Save Historic Newmarket Limited and other v Forest Heath District Council, the case which prompted the production of the Addendum. At para. 7 Collins J said:

> "The challenge is brought on two grounds. First it is said that there was a failure to comply with the relevant EU Directive and the Regulations made to implement it that the Strategic Environmental Assessment (SEA) did not contain all that it should have contained. This if established would render the policy made in breach unlawful whether or not the omission could in fact have made any difference. That, as is common ground, is made clear by the decision of the House of Lords in Berkeley…. Although Berkeley concerned an EIA, the same principle applies to a SEA. To uphold a planning permission granted contrary to the provisions of that Directive would be inconsistent with the Courts obligations under European Law to enforce Community Rights. The same would apply to policies in a plan."

123. However, it is important to note what the actual decision in that case was, and the basis for it. At para. 40, Collins J, in accepting the claimant's first ground of challenge in that case, said:

> "In my judgement, Mr Elvin is correct to submit that *the final report* accompanying the proposed Core Strategy *to be put to the inspector* was flawed. It was not possible for the consultees to know from it what were the reasons for rejecting any alternatives to the urban development where it was proposed or to know why the increase in the residential development made no difference. The previous reports did not properly give the necessary explanations and reasons and in any event were not sufficiently summarised nor were the relevant passages identified *in the final report*. There was thus a

failure to comply with the requirements of the Directive …" [Emphasis added]

124. I accept Bellway's submission that the claimant's primary argument seeks to extend the principles in Forest Heath and Heard beyond their proper limit. Those were both cases where the Court was satisfied that *no* adequate assessment of alternatives had been produced prior to *adoption* of the plans in those cases. Although they comment (understandably) on the desirability of producing an Environmental Report in tandem with the draft plan, as does Seaport, neither is authority for the proposition that alleged defects in an Environmental Report cannot be cured by a later document.

125. I also consider, in agreement with the submissions by both the defendant and Bellway, that the claimant's approach would lead to absurdity, because a defect in the development plan process could never be cured. The absurdity of the claimant's position is illustrated by considering what would now happen if the present application were to succeed, with the result that policies H1, H2 and H3 were to be quashed. In those circumstances, if the claimant is correct, it is difficult to see how the defendant could *ever* proceed with a Core Strategy which preferred West Rochford over East. Even if the defendant were to turn the clock back four years to the Preferred Options stage, and support a new Preferred Options Draft with an SA which was in similar form to the Addendum, the claimant would, if its main submission is correct, contend that this was simply a continuation of the alleged "ex post facto rationalisation" of a choice which the defendant had already made. Yet if that choice is on its merits the correct one or the best one, it must be possible for the planning authority to justify it, albeit by reference to a document which comes at a later stage of the process.

126. As both the defendant and Bellway submit, an analogy can be drawn with the process of Environmental Impact Assessment where it is settled that it is an:

> "unrealistic counsel of perfection to expect that an applicant's environmental statement will always contain 'the full information' about the environmental impact of a project. The Regulations are not based upon such an unrealistic expectation. They recognise that an environmental statement may be deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting 'environmental information' provides the local planning authority with as full a picture as possible. There will be cases where the document purporting to be an environmental statement is so deficient that it could not reasonably be described as an environmental statement as defined by the Regulations … but they are likely to be few and far between."

See Sullivan J. in R(Blewett) v. Derbyshire County Council [2004] Env LR 29 at para. 41, approved by the House of Lords in R (Edwards) v. Environment Agency [2008] Env LR 34 at paras. 38 and 61.

127. Accordingly, I reject the claimant's ground (4) and conclude that the Addendum was capable, as a matter of law, of curing any defects in the earlier stages of the process.

The claimant's ground (5)

128. Under its final ground of challenge, the claimant submits that the inspector unfairly failed to re-open the public hearings on the issue of the Addendum. It observes that it was entitled to appear at all relevant stages of the EiP because it had made representations seeking to change the development plan document by the addition of East Rochford as a development location for housing and had requested that its representations be dealt with by way of hearing.

129. The claimant submits that the inspector's adoption of the written representation process to consider the Addendum meant that the claimant was not able to avail itself of this right in relation to the SA/SEA . This, it is alleged, was unfair and contrary to the provisions of s.20(6) of the 2004 Act.

130. In my judgement, there was no breach of the rules of natural justice or of the 2004 Act in the inspector's approach.

131. As Bellway points out, the claimant had already, in April 2010 (in advance of the EiP hearings), identified to the inspector the material from the Coombes Farm appeal which it considered relevant. That material was therefore available for consideration at the EiP.

132. Although the scheduled hearing sessions had been completed by the time the defendant had sought to undertake the SA/SEA Addendum, the inspector made it plain that she was prepared to contemplate the possibility of further EiP hearings into the SA/SEA Addendum were such hearings considered necessary.

133. This was in accordance with the way in which the defendant also envisaged things might go. On 11 May 2011 the defendant wrote to the Inspector, suggesting that they carry out additional work to the SA/SEA and that issue of the Examination report be delayed, pending this review:

> "In order to enable this additional work to be appropriately fed into the decision-making process, we respectfully request that the issuing of the Inspector's report be postponed. We appreciate that additional work on the SA will necessitate a delay in the examination process to allow for the additional work to be drafted, consulted upon, and the results fed into the plan-making process as appropriate. Furthermore, *we are mindful that the Inspector may wish to hold further hearing sessions to consider the results of the additional SA work*." [Emphasis added]

134. On 25 May 2011 the defendant suggested two timetables in relation to proceeding with the RCS examination, in order to account for potential scenarios following production of the SA Addendum (i.e. where changes to the RCS would and would not be required as a result of the additional SA work). The suggested consultation period under scenario 2 (i.e. where changes to the RCS would be required) was extended to 6 weeks.

135. As I have already said, the inspector confirmed that she was prepared to consider additional hearing sessions if necessary.

136. On 10 June 2011 the defendant stated:

> "We are mindful that the public consultation period set out in the scenario 2 timetable represents an opportunity to consult not only on any changes that may be required as a result of the SA review, but also on adjustments to extend the Plan period to 15 years."

137. All material arising in connection with the additional SA/SEA work carried out was published on the defendant's website, which included all correspondence between the defendant and the inspector about the process being undertaken. The claimant's representatives were perfectly aware of the timetable being followed and that all documents were being published online, and indicated their satisfaction with this process.

138. The defendant also points out that the claimant did not request a re-opening of the hearings at the time.

139. It is clear on the evidence before the Court that the inspector's considered view was that such hearings were not, as events turned out, necessary. I do not regard that view as one that was wrong or unfair. Accordingly, as I have indicated, I conclude on this ground that there was no breach of natural justice or the procedural requirements of the 2004 Act.

Conclusion

140. For the above reasons this application is refused.