



The Planning
Inspectorate

Director of Development Plans, Policy and Quality

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Your Ref: APP/Q3115/A/09/2107586
APP/Q3115/A/09/2113256

Our Ref: RS/KJ

Date: 25 November 2010

Dear Mr Thompson

APPROACH TO LAND SUPPLY AND APPORTIONMENT IN SE PLAN

**APPEAL "A" BY MR J S BLOOR LTD AND HALLAM LAND MANAGEMENT LTD – SITE
LAND EAST OF BENSON LANE, CROWMARSH GIFFORD, WALLINGFORD, OX10 8ED**

**APPEAL "B" BY WATES DEVELOPMENTS LTD – SITE AT LAND WEST OF READING
ROAD, WALLINGFORD**

Thank you for your letter of 8 September 2010. Firstly, I would like to apologise for the delay in responding to you. That being said, you will be conscious that the issues that you raised required careful consideration and that our views on them then required to be reviewed following judgement in the case of Cala Homes (South) Ltd (2010 EWHC 2866) which was handed down on 10 November 2010.

The effect of the Cala decision has been to declare that the Secretary of State's decision to revoke Regional Strategies (RS) was unlawful and that the South East Plan (SE Plan) must therefore be considered to be current throughout the period from the decisions in Appeals A and B to the present day. It follows that this response to your letter addresses the SE Plan as part of the development plan in force for South Oxfordshire.

In investigating the issues raised, careful consideration has been given to your points of concern and the two decision letters concerned. From my reading, both Inspectors have provided well reasoned conclusions on why they deem a 5-year Housing Land Supply (HLS) to be present or absent. It is, however, acknowledged that the main difference in the conclusions relates to the acceptability of ring-fencing/disaggregating HLS targets within a district.

This issue relates to your Council's ring-fencing of its HLS target to different parts of the district in accordance with the SE Plan. The SE Plan identified an overall target for your Council. Your Council then adopted a ring-fencing approach to implementing this HLS target by deducing the HLS targets for the 'Rest of Central Oxfordshire' and the 'Remainder of the District' from the HLS figures in the SE Plan.



It is apparent that the respective Inspectors interpreted the provisions of the SE Plan differently in relation to the implementation of the housing targets. Whilst Appeal A concluded that the ring-fencing of HLS targets within a district was in accordance with the SE Plan, the Inspector in Appeal B could not find anything in the SE Plan that facilitated such an approach, with the Inspector stating: *'I do not find evidence that this is the correct approach in The South-East Plan'* with regard to your Council's ring-fencing of its HLS target.

Upon reviewing both decision letters and the relevant sections of the SE Plan, it would appear that there was evidence in the SE Plan that could be said to underpin your Council's ring-fencing of HLS targets. Paragraph 22.15 of the supporting text to Policy CO3 suggests that an LPA may influence the distribution of the housing targets set out in the SE Plan:

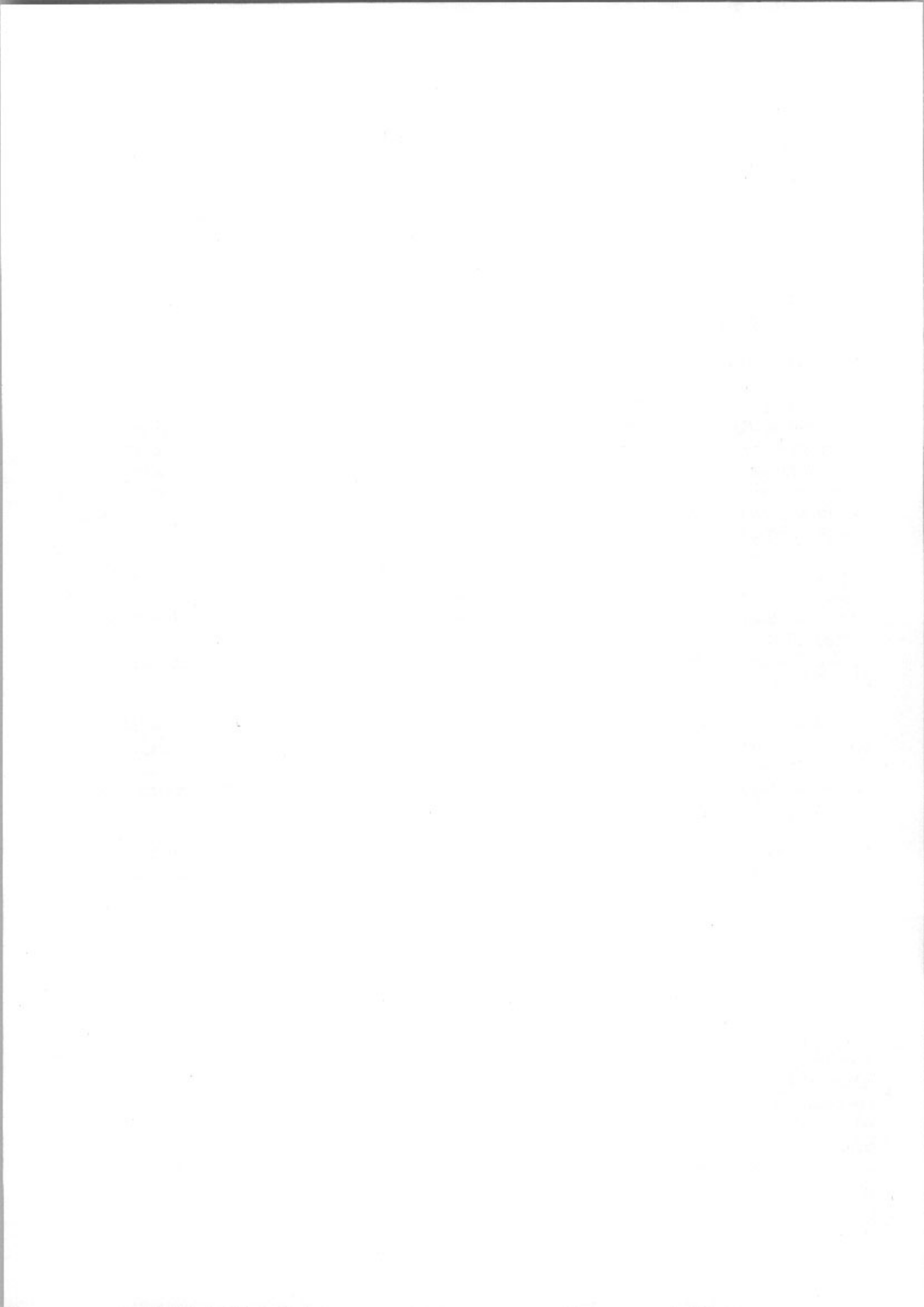
"It will be a matter for the relevant LDDs to respond the figures in Policy CO3. While a degree of flexibility is associated with these figures, local authorities must in the first instance seek to deliver their sub-regional allocations within their part of Central Oxfordshire. Each relevant core strategy development plan document (DPD) within the sub-region must, therefore, set out a clear distribution, setting out where, when, how and in what numbers the housing will be developed and, in turn, how this will help deliver this sub-regional strategy as well as any local vision and strategy."

It would appear from the above that the SE Plan provided LPAs with some flexibility in applying and implementing HLS targets through LDDs. Based on paragraph 10.4 of the Appeal A decision letter (which states that the ring-fencing of HLS targets has been continued through to the LPA's Core Strategy to be published for consultation in January 2010) it would seem that your Council were applying the provisions of paragraph 22.15 of the SE Plan in its emerging Core Strategy.

In this regard it is considered that Appeal A was correct in accepting the Council's reliance on a disaggregated approach based on the SE Plan. Policy CO3 of the SE Plan set out the housing allocation for South Oxfordshire that included 6,000 dwellings for Didcot. The Inspector, in paragraph 10.2 of his the appeal A decision letter, refers to Policy CO3 and quotes parts of paragraph 22.15 of the SE Plan in justifying his conclusion.

In summary, it would appear that there is evidence in the SE Plan to justify the Council's approach and therefore, Appeal A could be described as providing the preferred approach to 5-year HLS of the two appeals.

However, it must be borne in mind that each appeal case must be dealt with on its individual merits and in the light of the differing evidence presented. It is possible that the difference of opinion on the availability of a 5-year HLS in the district arose due to different evidence being presented at both appeals as acknowledged by the Inspector in Appeal B when referring to Appeal A: *"I do not have before me the evidence that was relied upon by the Inspector in that case. I note though, that his conclusions turned greatly on the credibility of witnesses, which is not the case here."* Furthermore, in the Appeal B decision letter, the Inspector makes it clear that he assessed the deliverability of named sites and he deemed that the Council was overly optimistic in its assessing the deliverability of the sites. Although the Inspector of Appeal A refers to the delivery of the same sites, he set aside concerns over the delivery of the sites, on the basis that the adopted RS no longer specifies that the majority of development in Didcot be delivered in the first 10 years as originally proposed in the draft RSS (paragraph 10.14).



Unfortunately, these issues turn on questions of professional judgement in the light of the evidence before the individual Inspectors. It is not now possible to reassess the evidence presented to them. The only way in which an Inspector's decision might be reconsidered is if it is successfully challenged in the High Court within 6 weeks of the date of the decision letter. I would also mention that an appeal decision does not set a precedent for the purpose of determining future planning applications. It would be for the developer in each case to demonstrate to the acceptability of a proposal in planning terms and each case must be considered on its own merits.

In final conclusion, the discrepancy between the decision letters arose through different interpretations of the SE Plan. Following the judgement in the case of Cala Homes, the relevant SE Plan policies remain part of the development plan and it will be possible for your Council to retain an approach guided by the policy analysis in Appeal A and to maintain its approach to disaggregating HLS targets to different sub-areas within the district. However, it is also arguable that the Secretary of State's intention to repeal legislative provisions for RS in due course, together with such new evidence base on HLS as you may have prepared in the intervening months, may provide a basis for a new approach to HLS not provided for in the SE Plan or the reasoning in Appeal A.

Thank you for bring this matter to our attention. We are keen to learn from such situations and the findings resulting from our investigation have been bought to the attention of the Inspectors and their professional managers.

Yours sincerely



Rynd Smith
Director of Policy, Quality and Development Plans
Head of Profession

