



PINS NOTE 26/2015

To: All Inspectors (England)

Relevancy: Local Plan examinations, Planning appeals and Secretary of State Casework

Date of Issue: 20 July 2015

Currency: review on 20 January 2016

Ashdown Forest Economic Development Lp and (1) Wealden District Council (2) South Downs National Park Authority

Action

1. Inspectors should note that following a challenge by Ashdown Forest Economic Development Lp, the Court of Appeal¹ has found that policy WCS12 within the Wealden District² Core Strategy was adopted in breach of the duty under regulation 12 of the SEA Regulations. As a consequence, part of policy WCS12 has been quashed.
2. Policy WCS12 relates to the protection of Ashdown Forest SPA and SAC. The quashing order is limited to the part of the policy relating to the 7km zone around Ashdown Forest and the supporting text. The 400m exclusion zone was not challenged.
3. It should be noted that this judgment provides clarification in relation to the differences between the treatment of alternatives in assessments required by the Habitats Regulations and the SEA Regulations.
4. The Court of Appeal found that it was not the function of the Habitats Regulations Assessment to consider alternatives, as the assessment was concerned with whether the 7km zone would be effective to prevent adverse effects upon Ashdown Forest.

¹ Ashdown Forest Economic Development Lp and (1) Wealden District Council (2) South Downs National Park Authority [2015] EWCA Civ 681

² which incorporates part of the South Downs National Park.

5. However, under the SEA Directive³, the LPA does have a duty to consider reasonable alternatives. In this case, there was no evidence that the Council applied its mind to whether there were reasonable alternatives to the 7km zone, as illustrated by the following extract from the judgement of Richards LJ:

“50..... it seems to me that Mr Elvin is correct in his submission that it was the duty of the Council to consider the question of reasonable alternatives. If the Council had considered the question, it might have concluded, in the absence of any suggestions to the contrary, that there were no reasonable alternatives, and have given reasons in support of that conclusion. The fact that nobody suggested alternatives cannot, however, validate the Council’s failure to consider the question at all.

51. My conclusion, arrived at with a degree of reluctance, is that policy WCS12, in so far as it relates to the 7 km zone, was adopted in breach of the duty under regulation 12 of the SEA Regulations relating to the assessment of reasonable alternatives.”

6. Wealden DC has amended the policy in light of this judgment. The Council has not indicated whether it intends to appeal.
7. Case officers will contact Inspectors with current Wealden DC cases, to draw attention to this judgment and determine whether further action needs to be undertaken.
8. Where the appeal site is located within the 7km zone around Ashdown Forest but the area is administered by either Mid Sussex District Council, Tunbridge Wells Borough Council, Sevenoaks District Council, Lewes District Council, Eastbourne Borough Council or Rother District Council, the appointed Inspector should determine on a case-by-case basis whether further action, such as referring back to the parties for comment, needs to be undertaken.

Background

9. Ashdown Forest Economic Development Llp brought a claim to the High Court seeking to quash the Wealden Core Strategy in whole or in part. The claim was dismissed on all grounds⁴. Permission to appeal was granted, limited to a single ground.
10. The appellant challenged policy WCS12 in relation to the development of new housing within 7km of Ashdown Forest,

³ Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, as implemented by the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations).

⁴ [Ashdown Forest Economic Development Llp v \(1\) SoS CLG \(2\) Wealden District Council \(3\) South Downs National Park Authority \[2014\] EWHC 406 \(Admin\)](#)

contending that it was adopted in breach of the Council's duty under the SEA Directive to assess reasonable alternatives to a 7km zone.

11. Please contact XXXX if you have any queries on this Note generally and XXXX if it relates to a specific appeal casework matter or XXXX for Local Plan matters.

XXXX

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