



Stop the ~~eco~~ new town development

For immediate release

18 March 2009

BARD LAUNCHES ECO-TOWN JUDICIAL REVIEW APPEAL

The BARD Campaign today lodged an application with the Court of Appeal, seeking permission to appeal the ruling by Mr Justice Walker dated 27 January 2009 that the Government's consultation on its April 2008 shortlist document: "*Eco-towns Living a Greener Future*" was lawful.

In summary, BARD's application contends that:

1. the principle of eco-towns was not properly and lawfully consulted upon in the Housing Green Paper. There was **no genuine consultation on the eco-town policy** since the policy had already been determined;
2. the Government pledged there would be a consultation on the eco-towns **principle** and broke this promise;
3. the **key criteria for eco-towns** were not properly and lawfully consulted on;
4. the **errors in the early consultation stages cannot be rectified** by any improvement to future consultation that would be based on a pre-determined principle.
5. the **failure to consult on the 42 sites rejected** from the April 2008 shortlist was unlawful;
6. the Government has **not provided adequate information** to enable intelligent consultation on the proposed locations;
7. the eco-towns policies are subject to the requirements of the **Strategic Environmental Assessment Directive and the Environmental Assessment of Plans and Programmes Regulations 2004**;
8. the **Strategic Environmental Assessment should have begun** by the "Eco-towns - Living a Greener Future" stage;
9. BARD's application for disclosure should have been considered before the hearing of their substantial complaint since the **materials requested were clearly relevant** and could have helped BARD's case.

This application will impact the eco-town programme timeframe as the Government has given BARD an undertaking that consultation on 'Middle Quinton' would close no sooner than six weeks after the outcome of the proceedings. The current consultation end date is 30 April 2009 (six weeks tomorrow) yet a decision from the Court of Appeal as to whether to grant leave to appeal could take several weeks.



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David Bliss, Chairman of the BARD Campaign said:

"We were disappointed with Mr Justice Walker's ruling. It can surely be beyond doubt that the information provided by the Government on eco-towns has been confused, flawed and inadequate, thereby making it impossible for ordinary members of the public to engage in serious consultation.

"It is regrettable that we now rely on the Court of Appeal for us to be given an opportunity to consult on the principle and key criteria for new environmentally-friendly affordable settlements. Local opinions should be heard."

ENDS

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NOTES TO EDITORS

The BARD Campaign (www.BARDcampaign.org) was formed by a group of residents from across Warwickshire, Worcestershire and Gloucestershire last year. They are not experts in new town development. However knowing their area well, they instinctively felt that development of a town of at least 6000 houses, plus retail and leisure facilities, offices, an incinerator and railway on a 600-acre site in rural isolation, would fail both in its alleged eco agenda and would not provide solutions to the counties' affordable housing needs. Instead they were concerned it would irreparably damage this beautiful part of middle England.

They therefore clubbed together to instruct a series of leading experts in town planning, transport, environmental sustainability and planning law to provide the factual basis for their concerns. They contend the eco-town programme amounted to a lottery among developers which would determine proposed locations for an eco-town, rather than a considered and planned set of principles on which the general public would be consulted. Long Marston was put on the first government shortlist. However, BARD soon uncovered that there were other far more suitable locations to the north and east of the region which would be far better suited to an experimental new-town, lying within designated growth corridors or areas of new housing and regeneration need.

BARD's application for Judicial Review was lodged on 24 June 2008 in the name of **BARD Campaign** and its Chairman and co-applicant **David Bliss**, by **Ian Dove QC and Christopher Young, Counsel**, and **SJ Berwin solicitors**. Permission to bring the proceedings was granted on 11 September 2008 by Order of Mr Justice Collins. The Judicial Review began on 22 January 2009 and Mr Justice Walker's ruling was handed down orally on 27 January 2009, with his written findings handed down on 25 February 2009.

GROUNDS OF APPEAL (AS LODGED)

The grounds of appeal are notated by reference to the Sedley requirements (the principles governing consultation¹)

- 1 The learned judge erred in law in considering that the principle of eco-towns had been properly and lawfully consulted upon in the Housing Green Paper, in particular as questions were asked in relation to other parts of the Housing Green Paper but not in relation to eco-towns and insufficient information was given as to why the proposal was being made. Furthermore the learned judge erred in concluding that the consultation was genuine when the facts demonstrated that the Defendant was clearly wedded to the policy of eco-towns and had no intention of changing its proposal. In reality the policy had already been determined and the consultation never seriously engaged the possibility that the policy of eco-towns would be changed or not pursued. (*Sedley requirement (i),(ii)*).
- 2 The learned judge erred in law in failing to find that the Secretary of State's local advertisement in June 2008 inviting views from the public 'are eco-towns a good idea?' was a promise of consultation on the principle of eco-towns which was broken by the Secretary of State subsequently declining to consider the principle following the Housing Green Paper consultation in 2007. The "Eco-towns - Living a Greener Future" consultation document was expressly not a consultation on the principle of eco-towns: this had already been determined. (*Sedley requirement (iv)*).
- 3 The learned judge erred in law in considering that the key criteria had been properly and lawfully consulted upon in the Housing Green Paper, where those criteria were in the Eco-towns Prospectus which was not consulted upon (*Sedley requirement (i)*).
- 4 The learned judge erred in suggesting that these errors could be perfected in any event by the Defendant considering responses from the Claimants and others at a later stage of the process in relation to issues such as the principle of eco-towns as a form of development. The Claimants were lawfully entitled to be consulted at a formative stage of the consultation and the longer the consultation process went on the less weight the Defendant would inevitably give to consultation responses about matters of principle. The Defendant submitted that the proposals would not become real to the people directly affected by them until the sites had been short-listed. It was therefore vital that in the context of the "Eco-towns - Living a Greener Future" consultation document that consultation on the principle as well as the site and its competitors was undertaken.
- 5 The learned judge erred in law in considering that the identified failure to consult on the 42 rejected sites at or before the "Eco-towns - Living a Greener Future" consultation document stage was lawful: there is a duty to consult at a formative stage when rejected sites are capable of being brought back into contention. The "Eco-towns - Living a Greener Future" consultation document immediately followed on from the site sifting exercise which the Defendant had undertaken in reducing the sites to a short-list. The only sensible purpose for this stage of the consultation was to seek views on that exercise, yet bizarrely that was impossible as a result of the Defendant excluding at this stage any consideration of the excluded sites. This precluded any consideration by consultees of the comparative exercise

which the Defendant had undertaken in selecting the sites for the short-list. This error and omission has been reiterated in the Sustainability Appraisal and Strategic Environmental Assessment published after the impugned “Eco-towns - Living a Greener Future” consultation document since the vast majority of the excluded sites remain excluded from consideration. (*Sedley requirement (i)*)

- 6 The learned judge erred in law in failing to find that there was inadequate information to give intelligent consideration to and an intelligent response on the proposed locations. A legally competent consultation seeks the views of consultees on the basis of an accurate and complete evidence base. It is not, as the judge concluded, the purpose of a consultation exercise to correct basic errors in the evidence base underlying the decisions being consulted about. The role of the information provided with the consultation is to inform the consultees, and the judge’s analysis stands on its head the purpose of providing the information. This error was compounded by the failure of the Defendant to provide any sensible information about the rejected sites. In fact it published on its web-site towards the end of the “Eco-towns - Living a Greener Future” consultation period incoherent and inaccurate information about the rejected sites but then in these proceedings placed no reliance upon that material. This behaviour left the consultation process incomprehensible to consultees (*Sedley requirement (ii)*).
- 7 The learned judge erred in law in finding that the Housing Green Paper and the Eco-towns Prospectus was not a plan or programme within the Strategic Environmental Assessment Directive and the Environmental Assessment of Plans and Programmes Regulations 2004
- 8 The learned judge erred in law in finding that whilst the shortlisting of eco-town locations was a plan or programme, Strategic Environmental Assessment did not have to be begun by the “Eco-towns - Living a Greener Future” stage
- 9 The learned judge erred in postponing the consideration of the Claimants’ application for disclosure until after the hearing of their substantive complaint when that substantive complaint included the withholding of or absence of information in the consultation process. There are many examples, even within the material disclosed in the context of this application, of evidence being suppressed or withheld from the Claimants. This material was clearly relevant to and had the potential to reinforce the Claimants’ contentions that inadequate, inaccurate and incomplete information had been provided to accompany the consultation.

ⁱ There are four principles of consultation as set out in the Sedley Requirements:

1. Consultation should take place when the proposals are at a formative stage;
2. The proposer must give sufficient reasons to permit an intelligent response;
3. There must be adequate time for consultation and for consultees to respond;
4. The product of the consultation must be taken into account in the final proposals.