

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2009

Before :

Double-click to add the Judges name

Between :

(1) THE BARD CAMPAIGN
(2) DAVID BLISS

ClaimantS

- and -

SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT

Defendant

SUMMARY OF THE COURT'S CONCLUSIONS
WITH BRIEF REASONS

and Mr David Bliss. I shall refer to them together as "Bard". They oppose the government's proposal to include in the shortlist a depot at Long Marston in Warwickshire and Worcestershire. This depot is proposed to be a site for an Eco-town of at least 6,000 homes to be known as "Middle Quinton". The site
X formerly belonged to the Ministry of Defence ("MOD"). The defendant ~~(The~~
X Secretary of State) is responsible for the Department of Communities and Local Government ("DCLG"). The claim was lodged on 24 June 2008. Permission to apply for judicial review was granted on the papers by an order of Collins J dated 11 September 2008. By an order of Sullivan J dated 19 November 2008 Weston Front, an unincorporated association, was joined as an interested party. I shall refer to it as "Weston" or "WF". It objects to a

proposed "Weston Otmoor" Eco-town of 15,000 houses near the village of Weston-on-the-Green in Oxfordshire. The proposed Weston Otmoor Eco-Town is sometimes referred to as "WO". The complaints are not about planning permission. Eco-towns have not reached that stage. They have reached a stage where a process of shortlisting has begun. Since the issue of these proceedings that process has been taken further. There have been alterations to the proposed shortlist. A draft sustainability assessment has been published, as has a draft Planning Policy Statement. A further round of consultation has begun. These proceedings do not involve challenges to those further developments. The present challenge concerns a consultation document issued in April 2008. It was entitled "Eco-Towns - living a greener future." I shall refer to it as "ELGF".

4. In advance of the present hearing Bard issued an application notice asking the court to make an order requiring disclosure by the Secretary of State. The

present purposes I proceed at once to ground 1 and on this and on subsequent grounds I will explain my conclusions and the central features of the reasoning which has led me to those conclusions.

Ground 1: No consultation on principle

7. Here the complaints are that: (1) the Secretary of State failed to consult on the principle of constructing Eco-Towns; and (2) if there was such consultation it did not give sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response.
 8. I consider that these complaints have not been shown to be justified in law. The answer to both complaints is found in the HGP.
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9. Some readers of the HGP sent responses which treated the HGP as a consultation on Eco-Towns. Bard and Weston warned that this did not show that HGP met the legal test for consultation. I accept this, and for present purposes I put those responses on one side.
 10. I am satisfied, however, that a reasonable reader would have had no doubt that the HGP was a consultation document. It covered a number of different aspects of housing. On two of those aspects it identifies⁴ specific questions for readers to answer. On all the other aspects there was a general invitation for readers to send in their views. So far as the principle of constructing Eco-Towns was concerned, the law does not require the formulation of specific questions. It does require sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response.

14. Bard referred to various subsequent events as showing that a decision had been made prior to the HGP. I doubt whether, as a matter of principle, subsequent events assist to any great degree. In any event, on a fair analysis I do not think there is any basis to infer that the SoS failed to consider the consultation responses to HGP. Nor, on analysis, do other documents after the issue of HGP show that when it was issued the SoS had a closed mind as to the principle.
15. Oral submissions for the SoS recognised that local people may well not bother to read or respond to a green paper. The call to arms for them will not come until a site near them is proposed. Bard say that this shows the HGP was not directed to local people. I do not accept this, it was directed to all. As Bard accepted, this was a staged process. It made sense for consultation to take place on the principle before starting on the shortlisting process. If at stages after the HGP consultation anyone made representations asserting good reason to depart from the principle, the SoS was bound to have regard to this. I accept that later in the process there will be an increasing head of steam. The present proceedings, however, concern a relatively early stage in the process.

Ground 2: Number and locational criteria

16. The Claimants allege that there has been no public consultation on the key criteria and essential requirements for selecting Eco-towns, and their number and size.
17. For the purposes of today I can deal with this shortly. These matters are all closely linked with the principle of the Eco-towns policy, and they were properly dealt with in the HGP. They were open to change, and indeed the

about lack of information were matters that might well inform the SoS's decision about what information to provide at the next stage, but they did not give rise to good grounds in law to complain about ELGF. Again, whether what has so far happened, and may in future happen, on the next stage complies with the law on consultation is not for me to decide.

Ground 5: Inadequate time

- 21. This complaint is that insufficient time was given to consider documents provided under laws concerning access to information. The complaint fails because, for the reasons given on grounds 3 and 4, such documents were not needed for the limited purposes of the ELGF consultation.

Ground 6: SEA

- 22. The Claimants seek a declaration that the SEA Directive is applicable to "the eco-towns policies". The Secretary of State's position is recorded in the Detailed Grounds at paras. 95 and 96. The Secretary of State has indicated she will undertake an SA in full compliance with the SEA Directive. Accordingly, for the most part, the issue of whether the draft PPS is subject to the SEA Directive is academic.

- 23. The only live issue is whether the SEA directive required a SA no later than *the time when* ELGF. One pre-requisite in the SEA Directive and the Regulations concerns *was issued.* the existence of a legal or administrative requirement. Assuming that there is *obligations as to a SA* such a requirement, *it will only arise when there* is a plan or programme. In my *view that will not arise any earlier than the shortlisting stage. As ELGF was* *arise what is under consideration*

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(iii) Ground 3 - alternatives

- X 28. Weston alleges that alternative sites to Weston Otmoor should have been considered before it was proposed to be short-listed in ELGF. For present purposes it suffices to say that this complaint fails for the reasons given under ground 3.

Conclusion.

29. For the essential reasons given above all claims fail. Thus no question of discretion arises. I will hear submissions as to remaining steps in the present proceedings.
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