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**From:** Charles, Ruth on behalf of Eastaugh, Sandra  
**Sent:** 11 May 2010 10:19  
**To:** 'POServices'  
**Cc:** Charles, Ruth; Baxter, Amy  
**Subject:** Barton Willmore - counsels advice  
**Attachments:** LetterSandraEastaugh 2010 01 27.doc; Lee Newlyn re JCS.doc; Minutes Policy Group Final - 28 Jan 2010.doc

Dear Simon,

Following Barton Willmore's response to the EHM agenda and notes I thought it would be helpful to share activity to date with the Inspectors.

Barton Willmore sent a letter and attached opinions to Phil Kirby on 25 January 2010 - this was subsequently added to representations 11367 - 11383.

On 28th January 2010 this was considered by the GNDP Policy Group and, following extensive discussion, and advice from the Partnership's legal representative, Members resolved that the Proposed Submission document remained legally compliant and sound and should be submitted for examination, subject to the completion of one or two reports.

Phil Kirby's letter to Barton Willmore and the Partnership's letter of advice from legal representatives are attached, together with the Policy Group minutes of 28 January 2010.

Regards,

Sandra

Sandra Eastaugh  
Greater Norwich Development Partnership Manager

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27 January 2010

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NR1 1DJ

Dear Sandra

**Re: The Greater Norwich Development Partnership**

I have been asked to comment on Barton Wilmore's letter to Phil Kirby of the 25<sup>th</sup> January 2010 enclosing the Advice of Counsel (Mr Pugh-Smith) and on Counsel's Further Advice dated 25<sup>th</sup> January 2010, in light of the report by the GNDP Directors to the GNDP Policy Group which is being considered on the 28<sup>th</sup> January.

Counsel's Advice (dated 14<sup>th</sup> December 2009) presents some noteworthy legal decisions from the last 24 months relating to development plans. It also references some themes, most noticeably that Inspectors at examinations should independently inquire into the soundness of the exercises undertaken to consider and review the appropriateness of sites allocated in Core Strategies (as underpinned by the revised version of Planning Policy Statement 12 (PPS12) which now states that "the starting point for the examination is the assumption that the Local Authority has submitted what it considers to be a sound plan."

The concern raised by Mr Pugh-Smith, on behalf of his client, is that in his view, the evidence base involved in the preparation of the favoured strategy for residential

development in the Greater Norwich Joint Core Strategy is not sufficiently thorough to withstand scrutiny at the forthcoming examination which is likely to be held in October 2010 and that possibly an Inspector would require further work to be undertaken and more formal consultation before he could find that plan sound. Even if the Joint Core Strategy policies were to be upheld by the reporting Inspector, the Advice warns that following the independent examination there would be the continuing potential for a legal challenge.

In particular, Counsel advises there has been no indication that evidence from some recently published reports (such as the Infrastructure Report 2009) has been sufficiently considered when formulating housing distribution.

The Further Counsel's Advice dated 25<sup>th</sup> January 2010 reviews a number of background papers. From these, Counsel advises, in paragraph 14 "*it is clear that there was no new evidence produced to inform the December meeting that Option 2A should be favoured. Rather, what is apparent is that a political preference was promoted by South Norfolk Council (via Cllr Fuller, the SNC Leader) that would then be supported by evidence arising from that preference. In other words, "the political preference of locational distribution prevailed irrespective of cost and issues on sustainability."*

Counsel's advice rightly identifies that it is going to be incumbent on the Inspector at the forthcoming examination to consider any material matters which could indicate unsoundness and following the Barton Wilmore letter it is clear that a challenge will lead to vigorous scrutiny. In light of this Members could agree to recommend that the JCS requires further work.

However, as the report "Recommendation for Submission" also identifies, the risks of challenges to the soundness must be balanced by the risks associated with any delay to the adoption of the Joint Core Strategy given the imperative in Planning Policy Statement 3 (PPS3) to deliver housing. This is underpinned by PPS12's advice that it is critical that Core Strategies are produced in a timely and efficient manner. Ultimately, should Members confirm following the Policy Group meeting on the 28<sup>th</sup> January that the JCS remains sound, then the question of whether the concerns raised in Mr Pugh-Smith's Advice and Further Advice undermine the soundness of the JCS will be a matter of judgement for the Inspector at the forthcoming examination.

Yours sincerely

Fiona Croxen  
Senior Solicitor (Environment)

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**Date:** 1<sup>st</sup> February 2010

Mr Lee Newlyn  
Senior Planning Partner  
Barton Willmore  
35 Kings Hill  
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Kent  
ME19 4BW

Dear Mr Newlyn

**Re: Legal Opinion on the Soundness of the Greater Norwich Core Strategy for JCS Committee on 28<sup>th</sup> January 2010**

Further to my letter of 26<sup>th</sup> January 2010 I can confirm that your letter and attached Opinions were brought to the attention of the GNDP Policy Group at its meeting on 28<sup>th</sup> January 2010.

The Policy Group considered the contents and I apprised them of the comments received from the Partnership's legal representative, which is contained in the letter, a copy of which I enclose.

The Policy Group accepted the recommendation presented to them, which subject to various caveats is to recommend to the constituent local authorities that they will resolve to submit the Joint Core Strategy to examination by the Secretary of State.

Yours sincerely,

**Phil Kirby**  
Strategic Director & Chief Planner

Minutes of a meeting of the **Greater Norwich Development Partnership Policy Group**, held at Queen's Hill Primary School on **Thursday, 28 January 2010 at 2.00 p.m.** when there were present:

Councillor John Fuller – Chairman  
(South Norfolk Council)

Representing:-

Councillor Roger Foulger	Broadland District Council
Councillor Andrew Proctor	Broadland District Council
Councillor Simon Woodbridge	Broadland District Council
Councillor Brenda Arthur	Norwich City Council
Councillor Steve Morphew	Norwich City Council
Councillor Brian Morrey	Norwich City Council
Councillor Derek Blake	South Norfolk Council
Councillor Martin Wynne	South Norfolk Council
Councillor Brian Iles	Norfolk County Council
Councillor Adrian Gunson	Norfolk County Council
Councillor Alan Mallett	The Broads Authority
Sandra Eastaugh	GNDP Partnership Manager
Roger Burroughs	Broadland District Council
Phil Kirby	Broadland District Council
Jerry Massey	Norwich City Council
Paul Rao	Norwich City Council
Mike Burrell	Norwich City Council
Graham Nelson	Norwich City Council
Andrew Gregory	South Norfolk Council
Tim Horspole	South Norfolk Council
Andrea Long	Broads Authority
Phil Morris	Norfolk County Council
Richard Doleman	Norfolk County Council
Mary Marston	Go-East
Michael Hargreaves	Go-East
Chris Starkie	Shaping Norfolk's Future
Mark Fuller	Linstock Communications
Mark Allison	EEDA

## **1 DECLARATIONS OF INTEREST**

The following members declared an interest in the items listed below:

Minute	Councillor	Declaration
6	J Fuller	Interest in land holding in development area
6	M Wynne	Interest as Town and District Councillor for Wymondham

## **2 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Stuart Clancy (Broadland District Council), Councillor Alan Waters (Norwich City Council), Councillor Colin Gould (South Norfolk Council), Councillor Daniel Cox (Norfolk County Council), Councillor Ann Steward (Norfolk County Council), Mike Jackson (Norfolk County Council), Chris Starkie (Shaping Norfolk's Future), Michael Hargreaves (Go-East)

## **3 WELCOME**

The Chairman (John Fuller) welcomed members and officers to the meeting at Queen's Hill Primary School. The School had opened in September 2008 with just 33 children but numbers were increasing rapidly as housing development progressed with 115 currently on the role. In the absence of a Community Hall the Chairman noted that the School also operated as a community resource opening up to a variety of local groups and services including youth groups such as the Brownies, and Health Visitor sessions.

Mark Allison (EEDA) was welcomed to his first meeting of the Greater Norwich Development Partnership Policy Group.

## **4 MINUTES**

**RESOLVED** to agree the accuracy of the minutes of the meeting held on 17 December 2009.

## **5 MATTER ARISING: UPDATE ON RACKHEATH ECO-COMMUNITY**

Cllr Simon Woodbridge (Broadland District Council) advised members that an announcement on the results of the bidding for Government funding for the eco-community at Rackheath would be made in early February 2010.

## **MATTER ARISING: EAST OF ENGLAND PLAN REVIEW: PROPOSED JOBS TARGET**

Arising from Item 5 from the 17 December 2009 meeting of the GNDP (Greater Norwich Development Partnership) Policy Group, Phil Morris

(Norfolk County Council) introduced a report giving a jobs target of a minimum of 40,000 over 20 years (ie the period 2011-2031) within the policy area. The target was derived with use of the East of England Forecasting Model.

Members noted the increase in expected numbers of jobs was economically driven, and any additional growth should be based on improved economic performance rather than an increase in housing targets.

**RESOLVED** to recommend that any revised East of England policy for the area should include a jobs target requiring a minimum net increase of 40,000 jobs, based on the East of England forecasting model. This will be monitored and reviewed to ensure it remains challenging. It is anticipated that the forecast can be exceeded through efforts to minimise unemployment, increase participation, maximise the economic potential and regional role of the sub-region, and continue to provide job opportunities for the surrounding hinterland.

## **6 JOINT CORE STRATEGY REPORT: RECOMMENDATION FOR SUBMISSION**

Phil Kirby (Broadland District Council) outlined further developments in progressing the Joint Core Strategy (JCS) Document towards submission. Members were reminded that at the September 2009 meeting they considered the evidence and risks and resolved that the JCS proposed Submission Document was legally compliant and sound.

Members were asked to consider the additional emerging evidence as outlined in the report, including the Water Cycle Study, the JCS Transport Strategy, the Appropriate Assessment and the representations made under Regulation 27 on the document during the publication period.

Members attention was drawn to the commitment to produce position statements on the Water Cycle Study from the Environment Agency, Natural England, Anglian Water and the Broads Authority. The completed Water Cycle Study, with the position statements would be available to the constituent authorities when considering submission of the JCS.

The final Appropriate Assessment report and the views of Natural England, together with a full appraisal by officers would be available to the constituent authorities when considering submission of the JCS.

Members discussed, in considerable detail the implications of the additional evidence and pre-submission responses, and the risks and alternative options around submitting the JCS Document to the Planning Inspectorate for an Examination, together with risks associated with delaying submission.

Phil Kirby drew members attention to the letter from Barton Wilmore with attached legal opinion. The content of the letter was discussed at length.

**RESOLVED** with 11 members voting in favour and 1 abstention, to:

1. consider that the Proposed Submission Document remains legally compliant and sound, subject to consideration of the final reports of the Water Cycle Study and Appropriate Assessment;
2. delegate authority to the GNDP Directors, in consultation with portfolio holders to make typographical corrections as required, approve other technical documents as required, and produce a joint assessment of the final reports of the Water Cycle Study and Appropriate Assessment for consideration by constituent authorities;
3. recommend that Broadland District Council, Norfolk County Council, Norwich City Council and South Norfolk Council:
  - (a) approve the schedule of proposed minor changes to the Joint Core Strategy; and
  - (b) submit the 'JCS for Broadland, Norwich and South Norfolk: proposed submission document', and the schedule of proposed minor changes, to the Secretary of State under Regulation 30 of the Town and Country Planning (Local Development) Regulations 2004 (as amended) subject to:
    - (i) consideration of the final report of the Water Cycle Study and
    - (ii) consideration of the final report of the Appropriate Assessment and views on it from Natural England.

**7 INTENTION TO PREPARE A MEMORANDUM OF UNDERSTANDING IN RELATION TO WATER ISSUES AND POTENTIAL IMPLICATIONS UNDER THE HABITATS DIRECTIVE FOR DEVELOPMENT PROPOSALS IN THE AREA OF THE GREATER NORWICH DEVELOPMENT PARTNERSHIP**

Phil Kirby (Broadland District Council) informed members of work in progress to develop a coordinated response across the GNDP area towards development proposals which raise issues with regard to water supply and disposal. This was being undertaken with Natural England and the Environment Agency to draft a Memorandum of Understanding which will have to be signed off by all five planning authorities.

**RESOLVED** to note and endorse work in progress by officers to prepare a Memorandum of Understanding for consideration of development proposals raising issues related to water supply and disposal within the GNDP area.

**8 DATES OF FUTURE MEETINGS**

**RESOLVED** to note that the next meeting would be held on 25 March 2008 at the Genome Analysis Centre at Norwich Research Park.



**ADDITIONAL AGENDA ITEM – VENUE FOR EXAMINATION IN PUBLIC**

The Chairman informed members that a location for the Examination in Public had to be found, and invited suggestions of a suitable venue to be put forward. The Examination was expected to take between six and eight weeks.

The meeting closed at 3.15 pm.

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CHAIRMAN