Leigh Day

Direct Dial [redacted]
Email [redacted]

Your Ref
Our Ref RSS/NQE/00091324/1
Date 17 February 2015

Chief Executive
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

[redacted]
Senior Planning Officer
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

VIA EMAIL & POST

HIGHLY URGENT

Dear Sirs

RE 14/01778/F Proposed development at Campsfield House Detention Centre, Langford Lane, Kidlington

We act on behalf of members of Stop Campsfield Expansion, a local grouping of concerned groups and individuals which includes Asylum Welcome and the Campaign to Close Campsfield

Summary

We have read the Officer's Committee Report ("OCR") for the above application due to be heard before the Committee on the 19 February 2015 and have taken Counsel's advice on the OCR For the reasons set out below, the approach in the OCR is plainly wrong in law

Further, it is clear to us that on the information before the Council, this application should be refused It is for the Developer to satisfy the Council that very special circumstances to justify this inappropriate development in the greenbelt are established The information before the Council completely fails to do this

Put shortly, the Developer simply and clearly fails to discharge its burden of proof

Legal errors

We do not comment here in relation to the accuracy of the summaries of the objections to the scheme made by our clients and others We are concerned with the clear errors of law the OCR adopts in the section headed "*Planning Balance*" which is clearly a critical part of the reasoning, paragraphs 5 33-5 49

At paragraph 5 37 the OCR repeats the erroneous approach the Council set out in its letters of 28 January 2015 and 11 December 2014 to Andrew Smith MP and Nicola Blackwood MP The first letter from the Council's Chief Executive stated that she was "*advised that officers do not believe that the Council, as a local planning authority can seek to determine whether there is a need for additional immigration detention capacity in the UK*" The OCR notes that whilst the Home Office/MoJ had been asked to provide further clarification of the need and whether the case had been "*overstated by the Government*", the Home Office/MoJ has not done so The OCR commented that the Home Office/MoJ's apparent reticence in providing an explanation is "unfortunate" but that Officer's approach in dealing with the issue of need was unchanged from that set out by the Council's Chief Executive

> "*It is not the role of the Council to question the validity of Government figures including those relating to "need" within the immigration removal system The applicants, unlike the Council, have access to the most relevant and up-to-date information available and experts in the field to interpret and analyse the information Any attempt to interrogate the numbers would therefore be unjustified and could be seen to infer that the Council was considering the possibility that Government policy on immigration, and the statistics that support it, were wrong*
>
> *The position adopted by planning officers in accepting the "need" at face value was confirmed to be the correct approach following discussions with the Council's Legal Team The Council has, however, invited the applicants to submit details of the methodology used to inform their calculations Any response received will become a matter of public record unless otherwise directed by the applicants*"

The OCR continues at paragraph 5 38 that

> *Against this backdrop, the VSC case presented by the HO requires Members to accept that there are no other viable options open to the HO to meet the need, and that assuming this hurdle is cleared, that the harm caused to the Green Belt would be outweighed by the more appropriate treatment experienced by detainees within an IRC rather than in the prison system*

It is unreasonable and wrong in law to consider that Members are obliged (or "*required*") to accept an asserted "need" because of "Government policy on immigration" as justification for this development "at face value" The OCR fails to examine critically or at all the assertions as to what is said to be government policy and what is said to be the need asserted in relation to this "policy" Members are not "required" to accept the Home Office/MoJ's case Simply because the Home Office/MoJ asserts something is "policy" (and especially where it refuses to supply the evidence) does not elevate its case above a usual process of scrutiny The Council is entitled to question the evidence upon which the need/very special circumstances case is asserted where relevant to its planning decision-making, indeed it is obliged to be satisfied that the "need" case which is used to justify the "very special circumstances" of this development on a greenbelt site has been made out by the Developer

You are referred to the clear terms in which Lord Justice Carnwath (as he then was) rejected an argument that Government aviation policy was outwith the terms of consideration of a planning decision-maker in the "Heathrow airport" case (*R (on the application of Hillingdon LBC) v Secretary of State for Transport in* [2010] J P L 976 that "*More generally, I do not accept that Bushell can be read as laying down any general rule that government "policy" is automatically outside the scope of debate at a local planning inquiry Lord Diplock referred to the "protean" character of the word "policy", and to the wide range of types of decision to which it may be applied* "

Further, this was not the approach adopted by Cherwell District Council when they considered the planning application for the proposed centre for asylum-seekers at Bicester (not in the Greenbelt) in 2002-3, where an Inspector was appointed by the Secretary of State to consider the application and report to the Secretary of State Highly experienced Leading Counsel was instructed by the Home Office and Cherwell District Council in that case (which was also the subject of subsequent challenge to the High Court and on appeal to the Court of Appeal) There was no automatic exclusion of particular issues because of government policy but rather consideration of the evidence that lay behind that policy (and this was a case which pre-dated the *Heathrow airport* case by many years) There was oral evidence given by and cross-examination of relevant Government witnesses, including the Deputy Director General

at the Immigration and Nationality Directorate at the Home Office, and the Accommodation Centres Project Manager, and Cherwell District Council amongst others called Professor Goodwin-Gill, a Senior Research Fellow at All Souls College (and Professor of International Refugee Law, formerly Professor of Asylum Law)

It is trite law that an application for development should be assessed on its own planning merits, in accordance with relevant local policies, national guidance in the NPPF, and any other material planning considerations This is what the Council is required to do in this case

We are also concerned at other related errors in the Council's letters to Andrew Smith MP, reflected in the OCR, including the suggestion that your officers are not able to "*interrogate*" the evidence put forward by the Home Office/MoJ because the Home Office/MoJ are the "*experts in the field*" who have access to the "*most relevant and up-to-date information available*" Your officers are able to take such external advice as they consider necessary, and to take into account the representations made by others, including our clients and others who include specialised NGOs and academics operating in this field

The Home Office/MoJ has not put forward this evidence base, despite it having been requested by the Council

If the Home Office/MoJ puts forward insufficient evidence to justify the need which it asserts, that is a straightforward basis for refusal It is not a basis for simply deferring to the Home Office's "experts"

We are also concerned at the lawfulness of the approach to the assessment of alternative sites As this is a greenbelt case and given the clear planning objections to the use of the site, the availability of other alternative sites is a central issue, see *R (Langley Park School for Girls Governing Body) v Bromely London Borough Council* [2010] 1 P&CR 10 and we refer you also to the Planning Encyclopaedia at P70 32

There is no planning reason to limit consideration of alternative sites to those "*in Home Office ownership*" The search for an alternative site must be reasonable, which includes that it must be done using reasonable criteria There is no reasonable basis as to why a developer should automatically limit its search for alternative sites to sites which are already within its ownership If this were the case, developers would routinely use this criteria to avoid carrying out a reasonable search and defeat the purpose of requiring a reasonable search This is particularly the case where this search criteria have been used to narrow the selection of sites such that the site now being proposed is a greenbelt site where very special considerations are required

The justification for this criteria given by the Home Office/MoJ is that a "significant investment and a long term commitment" is required The OCR report refers to this criteria as being "*an entirely reasonable requirement as it would not only be difficult to justify public expenditure on building works without a long-term occupancy guarantee, it would also make more political/financial sense to target resources at the HO/MoJ's own portfolio of buildings*"

The need for a "long-term occupancy guarantee" is not a reasonable reason to justify this criteria It does not justify why a search applying normal, reasonable criteria allowing for the purchase of a suitable site at reasonable market value could not be undertaken An occupancy guarantee can be obtained in a number of ways, including for example usual commercial negotiations as to the terms of a lease or its extension, purchase of a freehold interest, and further security of tenure is obtained as of right in a commercial landlord and tenant relationship under and subject to the terms of the Landlord and Tenant Act 1954 unless expressly excluded by the parties The Home Office/MoJ could clearly purchase a freehold or leasehold interest in an alternative site if it so wished This is an unreasonable and unjustified approach to setting criteria for a search to justify a greenbelt development This is particularly the case when it is selected as the first criteria, meaning that there can be no critical appraisal of an otherwise highly suitable site against the development of a greenbelt site

In any event, this criteria does not itself explain why four other specific sites have been rejected, given that for example a lease extension could be negotiated from a landlord, or indeed obtained under the Landlord and Tenant Act 1954

Further, as to the reasonableness of the first criteria being set on the basis of it being said to make "*political/financial sense to target resources at the HO/MoJ's own portfolio of buildings*" This is not reasonable There is no basis on which "*political sense*" is a justification In relation to "*financial sense*", simply because development may be more expensive because the site is not already in the developer's ownership it not a reasonable reason to automatically exclude it from the search criteria, and particularly not where such a search is then used as part of the justification of "very special circumstances" to justify development on a greenbelt site It is for the Home Office/MoJ to put forward evidence to support its asserted financial, budgetary and value for money case (which overlaps in the asserted criteria) There is no independent or other viability assessment to support the Home Office/MoJ's assertions, which are in the context of a many billion pound budget It is wrong in law to consider that "*such a debate is academic*" because the Council "*is not in a position to run an audit of Government finances*" (OCR para 5 46) The different costs of different possible schemes on alternative sites are highly relevant to considering whether or not "very special circumstances" exist to justify development on this site

The search criteria are not reasonable and the evidence presented to assess them is plainly insufficient

These issues around asserted budgetary constraints also apply to the site at Bicester It is insufficient to simply assert that a nearby site at Bicester, which has previously benefited from planning permission, and which of its own would very nearly achieve the entire number of bed spaces which the Home Office/MoJ asserts is required (800) because "*the Home Office budget would not enable such a large centre to be built*" There is no evidence supplied to support this assertion in relation to the Home Office budget, instead it is asserted that the Home Office has instead chosen to sell the site and seek expansion of existing IRC sites instead This is highly relevant to a proper lawful appraisal of the "need" case to instead justify development on a greenbelt site

It is for a developer to justify its case that very special circumstances exist and the Home Office/MoJ has failed to do so

There are two other points which we wish to raise shortly First, the "need" for this site is also linked to issues around the efficiency and operational use of the Home Office/MoJ's existing facilities It is relevant to the justification of a location of a site in the greenbelt if such a development can be avoided by better, more efficient or different use of existing facilities (expressly including Yarls Wood) We do not repeat the representations made by our clients and others save to emphasise that this is a lawful planning consideration, the OCR has not assessed this factor adequately or at all (other than in a limited way in relation to Yarls Wood) Nor is there any convincing explanation in relation to Yarls Wood (as the OCR recognises at paragraph 5 43) and thus the conclusion at paragraph 5 49 is not sound

Second, the Home Office/MoJ's assertions in this case that various matters are not "planning matters" is wrong in law For example, the Home Office/MoJ states that the "*standard of accommodation – including standards for living space, care and separation unit and mosque*" is "*not a planning matter*" is also wrong in law These are precisely the type of matters on which planning officers are able to exercise a planning judgment, in accordance with usual policies, national guidance, and any other material considerations As is apparent from the decision in the Bicester case, *inter alia* a variety of planning issues (including the rights and needs of asylum seekers in relation to the provision of services at the Centre) were considered in the Bicester application In this regard, we consider

(i) Simply because the buildings are "functional" does not mean they should therefore have "no architectural merit" Planning Officers should appraise the scheme on its merits in accordance with usual planning policies

(ii) We do not accept that it is "*impossible for Officers to comment in any detail on the internal layout*" (OCR paragraph 5 19) nor that it is "*not the responsibility of the Council to provide critical analysis*" as to whether or not proposed conditions would compromise the human rights of detainees Leaving aside that it is trite law that Members should consider the impact of a planning decision on an individual's human rights, usual planning policies (such as standards for living space, outdoor space, etc) are plainly a relevant planning matter and Officers should provide Members with relevant guidance Whilst security concerns may impact to a degree the analysis, it does not make it impossible to comment Floor-plans are often in any event indicative and the Council will regularly impose controls by way of condition on the use of internal floorspace in larger commercial schemes There is no planning reason why Members could not impose suitable conditions to secure compliance with usual planning policies such as standards for living space and access to outdoor space

(iii) General planning principles for example which underlie "security by design" are planning matters The OCR refers to the "*reasonably strong correlation*" which Asylum Welcome has explained between larger centres and the number of serious incidents This is also a relevant consideration when considering the need case, given that it would be possible for the Home Office/MoJ to bring forward smaller applications on a variety of sites

We are deeply concerned at the lack of critical appraisal in the OCR

Yours faithfully,

[redacted]

Leigh Day

Cc [redacted]

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