



The Planning
Inspectorate

Report to Sedgemoor District Council

by Brian J Sims BSc CEng MICE MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 27th September 2011

PLANNING AND COMPULSORY PURCHASE ACT 2004

SECTION 20

REPORT ON THE EXAMINATION OF THE SEDGEMOOR CORE STRATEGY DEVELOPMENT PLAN DOCUMENT

Document submitted for examination on 3 March 2011

Examination hearings held between 24 and 26 May 2011

File Ref: PINS/V3310/429/4

Issue 6 - whether the CS makes appropriate provision for Retail and Leisure Development

63. Representations are made that Policy P2 for Bridgwater Town centre should provide expressly for a major leisure facility, together with additional car parking space, to redress a perceived lack of family entertainment and consequent loss of comparison retail trade and vitality. Added to this is a current local fear that the centre could become dominated by food retail.
64. Policies S1, D13 and P2 together provide for an identified need for 16,000sqm of new comparison floorspace in a comprehensive development in the Northgate area of central Bridgwater and Policy P2 lists leisure uses among those supported. Within the scope and context of the CS, such development will be market-led. At the same time, any proposal will be subject to development management provisions, such as Policies D10 and D13 requiring transport and retail impact assessments, to help ensure that development will further the overall objective of Policy P2 to re-establish the centre as a key destination. In this respect the CS is sound as submitted and no change is necessary.

Issue 7 - whether the CS makes appropriate provision with respect to the proposed Hinkley Point C (HPC) nuclear power station as a Nationally Significant Infrastructure Project (NSIP) and other Major Infrastructure Projects (MIPs)

65. As a result of discussion at the hearings, SDC entered into correspondence with the promoters of the proposed Hinkley Point C nuclear power station (HPC) in neighbouring West Somerset with respect to the terms of Chapter 4 of the CS regarding Major Infrastructure Projects [C1-18]. This led to a proposed revision of Chapter 4. The revised Chapter is set down in Appendix A.2 as SC48, excluding para 9.

The Planning Act 2008 and National Policy Statements

66. The Act of 2008 created the Infrastructure Planning Commission (IPC), soon to be merged with the Planning Inspectorate as its Major Infrastructure Unit (MIU), to decide applications for Development Consent Orders (DCOs) for NSIPs and associated works, or to make recommendations to the SoS upon them.
67. The Act also provides for National Policy Statements (NPSs) to be issued, including the recently designated, overarching NPS EN-1 for Energy and NPS EN-6 for Nuclear Power Generation [NP1, NP7]. These are defined as the primary basis for DCO applications to be decided directly by the IPC/MIU/SoS for a number of projected nuclear power stations.
68. The 2008 Act has thus created a process within the national planning regime for NSIP proposals to be decided at national level. This process is separate from the application and appeal procedures of the Town and Country Planning Act 1990 (TCPA90) operated by local planning authorities. In the case of NSIPs and any associated works included in a DCO application, the IPC/MIU/SoS is required only to invite the local planning authority to submit a Local Impact Report (LIR) on the proposed NSIP. Planning applications for

works associated with the NSIP but not included within the DCO application remain for determination by the local planning authority under the 1990 Act.

Chapter 4 as submitted

69. The CS in Chapter 4 refers to a range of potential MIPs in Sedgemoor, or having planning implications for the District. Among these, the sole NSIP is the proposed Hinkley Point C (HPC) nuclear power station in neighbouring West Somerset.
70. Chapter 4, as submitted, makes reference to the distinction between the national process relating to HPC as an NSIP and the local planning procedures applying to other MIPs, including any non-DCO works for HPC. However, Policies MIP1-3 and their supporting text seek to apply the same criteria of assessment to both HPC and other MIPs. This is with the intention of establishing a common basis, not only for the direct control of MIP development, but also for making representations on HPC and any effects it might have on the District, including mitigation of, or compensation for, adverse impacts.
71. Chapter 4 as a whole is challenged in legal submissions for the promoters of HPC [PS44], essentially on grounds that, in its detailed terms, it sets tests of compliance for the HPC, thereby duplicating or anticipating the proper function of the IPC/MIU/SoS in this connection. In response, SDC [PS45, SDC/PS/1-2] points to the legitimate roles of the CS, both in informing a LIR on the basis of policy adopted following public consultation, and also as a material consideration that the IPC/MIU/SoS may take into account.
72. Section 104 of the 2008 Act includes provisions that the IPC/MIU/SoS, in deciding a DCO application, must have regard to a relevant NPS, as well as to the LIR and any other matters which the IPC/MIU/SoS thinks are both important and relevant to the decision. Thus, notwithstanding any function of the CS to inform an LIR, Section 104 does not go so far as to name a CS as a consideration material to a decision to issue a DCO. In practice the CS might be regarded as material to any decision on HPC. However, for the CS itself to imply that, or to set tests of compliance for HPC as an NSIP, could be seen as going beyond the Act and anticipating the judgement of the IPC/MIU/SoS.
73. Chapter 4, in setting criteria for the consideration of HPC as an NSIP as well other MIPs, assumes a status above that accorded by the 2008 Act and the relevant NPSs. In this respect therefore, the CS does not accord with national policy. Policies MIP1-3 are not fully justified or effective in connection with HPC. The CS with Chapter 4 as submitted is therefore not sound.

Chapter 4 as proposed to be changed

74. Chapter 4 is of limited significance to the overall spatial strategy, especially with the removal of specific housing provision for HPC by SC29 to para 5.59. The CS could be made sound simply by the deletion of Chapter 4, possibly to be replaced by a separate DPD or SPD if required. However, SDC is justified in seeking to establish a set of principles, of adopted policy status, to inform any LIR, as well as any decision on a MIP. Rather than defer the matter to a later DPD, or to create separate chapters for NSIPs and MIPs, SDC chose to attempt to negotiate a new version of Chapter 4 which would clarify the

distinction between the two planning processes for NSIPs and MIPs and avoid setting tests of compliance for NSIPs [C1-18]. Much progress was made but full agreement was not achieved.

75. Central to this negotiation was the wording of the overarching para 9 of the new Chapter 4 where the crucial distinction between the separate roles of SDC as local planning authority for MIPs and statutory consultee for NSIPs is set out. SDC would have preferred to refer to the CS as setting no "primary" policies for NSIPs, reflecting the definition of the NPSs themselves as the "primary" basis for deciding DCO applications. However, the term "primary" is not apparently used in the 2008 Act, even though it occurs repeatedly in the NPSs. This does not seem to go so far as to imply that there is a policy hierarchy whereby a development plan might be designated a non-primary or secondary basis for decision. Outside the immediate context of the NPS therefore, the use of the term "primary" in para 9 would be superfluous and potentially confusing.
76. However, SDC also maintains that para 9 should expressly state: "This chapter of the Core Strategy will inform the LIR to be submitted by the Council to the IPC/MIU/SoS in connection with the determination of any application for development consent, and subject to their consideration, may potentially be thought of as important and relevant to a determination by the IPC/MIU/SoS, but only if considered to be so by them." SDC considers that a statement such as that underlined would be entirely factual and would not in any way suggest to, or attempt to tell, the IPC/MIU/SoS what it should or should not take into account. Despite the sentence being heavily qualified, the latter assertion is strictly a contradiction.
77. Taking into account the status of the CS with respect to NSIPs, the most that can be recommended is a repetition of the terms of the Act to inform the reader. Accordingly, the version of para 9 recommended in **IC1** omits the underlined passage. Otherwise it is recommended that Chapter 4 be changed as set out in **SC48**, as this achieves the appropriate distinction between NSIPs and MIPs whilst also going further than the submitted version in acknowledging potential benefits of the HPC project to Sedgemoor as well as its potential impacts.

Conclusion on Issue 7

78. With the exception of para 9, the revised Chapter 4 set out in SC48 complies with national policy and justifiably provides an effective basis for the control of MIPs and would also properly inform any LIR for NSIPs. Therefore, with SC48 and IC1 for para 9 in place, the CS would make appropriate provision with respect to the proposed Hinkley Point C nuclear power station as a Nationally Significant Infrastructure Project and for other Major Infrastructure Projects and, accordingly, would be sound in this respect.