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Mr Ian Coates
Deputy Regional Director
Government Office for the South East
Bridge House
1 Walnut Tree Close
Guildford GU1 4GA

19 March 2009

Dear Mr Coates,

RE: PROPOSED CHANGES TO SOUTH EAST PLAN – POLICY MKAV1.

We act for South Bedfordshire Friends of the Earth and have been instructed by the group to write to you setting out a specific concern regarding the Secretary of State's proposed changes to the emerging South East Plan. We appreciate that the period for consultation on these changes has already ended, but would be grateful if the concerns set out below could nevertheless be addressed by the Secretary of State.

Proposed Policy MKAV1 makes specific reference to:

"...opportunities to go beyond provision of 26,890 dwellings should be taken, if possible, to provide for further development in Aylesbury Vale district associated with growth around Leighton – Linslade."

We are instructed that a number of consultees, including the affected County Councils have objected to this proposed change to the Plan on a number of various grounds.

We are advised that part of the area in question identified by the Secretary of State for further development is a designated County Wildlife Site by reason of its fenland habitat, whereas other priority habitats (as recognised under the National Biodiversity Action Plan), such as ancient hedgerows and species rich grassland are also present in the area identified.

In this context, proposed Policy NRM5 4 is directly relevant.

Proposed Policy NRM5 4 ii, which addresses Conservation and Improvement of Biodiversity, states:

“...seeking to ensure that damage to county wildlife sites and locally important wildlife and geological sites is avoided, including areas outside the boundaries of Natura 2000 sites where these support the species for which that site has been designated.”

As you will appreciate, on the face of it, it is very difficult to see how these 2 proposed policy changes can be reconciled, as MKAV1 would appear to conflict directly with the policy requirements of NRM5 4.

Biodiversity Action Plan (BAP) priority habitats are specifically addressed by the Natural Environment and Rural Communities Act 2006.

Section 40 (1) of the Act imposes a duty upon “every public authority...in exercising its functions” to “have regard... to the purpose of conserving biodiversity.”

S.40 (4) makes clear that, for the purposes of the Act, a Minister of the Crown is a “public authority”.

Section 41 (Biodiversity lists and action) imposes a duty upon the Secretary of State to “...publish a list of the living organisms and types of habitat which in the Secretary of State’s opinion are of principal importance for the purpose of conserving biodiversity.”

Prior to publication, the Act requires the Secretary of State to consult Natural England (s.41 (2)).

We are instructed that, at the present time, no such list has yet been produced for the South East region.

When set in the context of this statutory framework, proposed policy MKAV1 is clearly at odds with the requirements of the NERC Act 2006, and were the proposed policy to be adopted by the Secretary of State, there would appear to be a very real risk that the purpose of the Act would be frustrated.

We would be grateful if you could give these concerns your urgent consideration and we look forward to hearing from you as soon as possible.

Yours sincerely,

CHARLIE HOPKINS
EARTHRIGHTS SOLICITORS.