

Norfolk, Suffolk, Devon chief executives

12 February 2009

Dear colleague,

Following the Secretary of State's revised deadline of 15 July 2009 for the provision of advice, I am writing to advise you of the Committee's intended course of action.

The Secretary of State extended the deadline for advice in order to allow the Boundary Committee to adapt its review process to take into account 'directions' contained in the judgment recently handed down by Mr Justice Cranston at the close of a judicial review action by East Devon District Council. At a meeting on 10 February 2009, the Committee considered the extended deadline and agreed to continue its process of considering what, if any, advice to provide to the Secretary of State and to adapt that process to accord with the 'directions' from Mr Justice Cranston.

The Committee's legal advisers have given the Committee the following advice in relation to Mr Justice Cranston's judgment and its implications for the Committee's process. In his judgment, Mr Justice Cranston declined to quash the Committee's review process as the claimant had asked. However, he suggested that the Committee had misdirected itself by believing it could consult on no more than one draft alternative proposal. He also suggested that the Committee's approach to assessing proposals against the

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affordability criterion was flawed. The Committee's legal advisers have advised the Committee that in order to rectify these flaws in its review process the Committee should consider whether there are proposals, other than the draft proposal already published, that it could potentially put to the Secretary of State as alternative proposals that meet 'in aggregate' the criteria set out in the Secretary of State's request for advice. The Committee should then go out to consultation on the proposals it identifies through this process.

The Committee has accepted this advice from its legal advisers and adapted its review process accordingly. However, Mr Justice Cranston's judgment is the subject of appeal proceedings commenced by East Devon District Council. The Committee's legal advisers have advised that it may be unlawful to proceed with the adapted process if the Court of Appeal overturns those aspects of the judgment that suggest the need for the adapted process. This being the case, the Committee is proceeding with the adapted review process in the knowledge that it may be required, by law, to alter that process and return to its original process. Given the timeframe imposed on the Committee by the 15 July deadline, the commencement of the adapted review process cannot be delayed until a Court of Appeal judgment is given.

The Committee is very concerned by the possibility that further consultation may begin but then be abandoned, thereby rendering redundant any work that interested parties may have invested in producing representations. However the legal imperatives to which the Committee is working leave the Committee with no options for overcoming this possibility.

The Committee has not yet agreed what patterns it considers should form the basis of further draft proposals. However, in order to meet the deadline of 15 July 2009 the Committee intends to publish any further draft proposals on 19 March and receive representations on them until 14 May 2009. The Committee is aware of the issues surrounding consultation in the pre-election period leading up to the local government and European elections in June and considers that the elections should not impact on the ability of local government and residents in the counties to respond on any further draft proposals.

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The Committee views the ongoing delay with regret but believes that the process should continue. The Committee will be mindful of the need to minimise any impact or excessive burden on residents and local government in the coming months.

Yours sincerely

*Archie Gall* |

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