

Campaigning to protect the Lea Valley Park as a green lung for London

**Statement on the decision of the Secretary of State regarding call-in of Planning Application 2010/0934, Essex Wharf, Lea Bridge Road.**

For the consideration of the  
Lower Lee Valley Regeneration & Planning Committee,  
Lee Valley Regional Park Authority,

7<sup>th</sup> April 2011 meeting

Agenda Item 8

## **Introduction**

The Essex Wharf decision threatens the integrity of the Lee Valley Regional Park. Following Waltham Forest's disregard for the Park Authority's plan for the site, contrary to Section 14 (2) (a) of the 1966 Act, no part of the Park is now safe from development.

The Park Authority must now consider not only the risks of challenging the Minister's decision but also the risks presented to the Park by the dominant position of local planning authorities over the Park Authority.

We agree with Report LLV/86/11 paragraph 6 that the Secretary of State has not given clear or sufficient reasons for his decision.

The Nazeing case is not exactly comparable to the Essex Wharf case yet Report LLV/86/11 relies on Nazeing to the exclusion of any arguments based on the Essex Wharf case itself.

Report LLV/86/11 does not consider the legal arguments which, it says, would make successful application for judicial review unlikely. In face of the risks to the Park's integrity posed by the Essex Wharf decision, this is not adequate advice to offer the Park Authority's Members at this critical time.

The Park is clearly a regional creation. The 1966 Act says "there is in Greater London and the counties of Essex and Hertford an area adjoining the river Lee which is suitable for development as a regional park" and refers to constituent councils, contributory councils, county councils, the common council of the City of London and the management body responsible for the catchment of the River Lee.

## **The relevance of Nazeing**

The report refers to a statement by the Secretary of State in the Nazeing case that he has discretion to exercise powers where he considers this to be in the national interest (LLV/86/11 paragraph 7). Unlike the Nazeing statement the Essex Wharf decision nowhere refers to national issues. On this ground alone, and assuming that there are no other differences between the Nazeing and the Essex Wharf statements from the Minister, it is unsafe to rely entirely on the precedent of Nazeing in the Essex Wharf case, as the Report LLV/86/11 does in paras 7, 8 and 9.

LLV/86/11 paragraph 8 states that the Park Authority drew the attention of the Minister to the extent to which the Nazeing decision to permit a permanent site "would undermine the attractiveness of the wider Regional Park in line with Section 12 of the Lee Valley Regional Park Act 1966". This section of the Act is perhaps not the strongest grounds on which to request the Minister's call-in. The stronger argument is that the planning authority is ignoring its duty under Section 14 of the Act to incorporate the plans of the Authority into its own plans. We trust that this was the ground for the Park Authorities request for call-in over Essex Wharf.

The Minister himself in his 18th March letter on Essex Wharf, says, as if to warn against over-reliance on the relevance of other cases, "each case is .... considered on its own facts."

### **The Minister's letter dated 18<sup>th</sup> March 2011**

1 Paragraphs 2 - 3 of the letter are flawed. The Minister has defined a "general approach" (para. 2) and the "selective criteria" (para. 3) but has failed to give proper weight to the specific provisions of the Park Act.

2 Para 3 states "the Secretary of State will ... only take this step if planning issues of more than local importance are involved". However the Minister has not considered that the reference under Section 14(8) signifies, of itself, that the issue is a regional, not a local one.

3 Section 14 (8) also states that the Park Authority is to be afforded an opportunity of appearing before and being heard by a person appointed by the Minister for that purpose. This is not a matter for the Minister's discretion, he is obliged to do it. He has not done it.

4 Paragraph 4 lists the "relevant matters" to which the Park Plan has been added. Sub para.s i, ii, iii. iv and vi are all "localist" criteria, which the Secretary of State may consider, but he has failed to consider the regional criteria at all, other than inserting the reference to the Park Plan into the list.

5 The words "we have carefully considered" are contradicted by the absence of any stated reasoning; in truth the Minister has not given the matter "careful consideration".

### **Risks and Possible Costs of pursuing Judicial Review**

The strength of the case for judicial review cannot be judged on the basis of Report LLV/86/11; referring to the Secretary of State's Nazeing letter earlier this year - which we have not seen - the Report cites case law supporting the Secretary of State's view that he has "very broad powers of discretion" under Section 77 of the Town and Country Planning Act 1990. We would like Members to know what case law supports this view before accepting this statement at face value.

Future costs cannot be known with certainty in advance. However the report makes no estimate whatever of costs, such as would help Members assess the risks of proceeding or not proceeding to judicial review.

### **Conclusion**

We ask the Authority to defer a decision on the request for judicial review until  
A the legal decisions behind the assessment of likely success or failure, and  
B an indication of the order of costs which might be incurred, can be put before Members.

for The Lea Valley Federation