

DRAFT STATEMENT OF COMMUNITY INVOLVEMENT – KKG SUBMISSION

25 March 2015

Executive Summary

We welcome this opportunity to submit our comments on the Spelthorne Draft Statement of Community Involvement.

In drawing up this submission, we have taken advice from a specialist solicitor in the field of Public Law, and a leading QC in the field of Public, Planning and Environmental Law. We refer you to a petition of almost 500 signatures from all corners of Spelthorne endorsing the overall purpose of this submission, as follows:

We, the undersigned, call on Spelthorne Council to start "working with" local communities without any further delay.

Comments (8)

Signatures (493)

In summary:

- * **The Draft Statement of Community Involvement does not go far enough to satisfy the requirements of the relevant legislation and guidance for community involvement**
- * **Consultation must be undertaken at a time when proposals are still at a formative stage**
- * **Consultation must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response**
- * **Adequate time must be given for this purpose**
- * **The product of consultation (including the current consultation on the Draft Statement of Community Involvement) must be conscientiously taken into account when the ultimate decision is taken**

These summary points are discussed in detail in what follows.

1. An adequate response?

1.1 The Council's proposals for community engagement are set out in the tables in chapter 3 of the document. Table 3.2 deals with *Methods of Involvement in Local Plans*, Table 3.3 *Methods of Involvement in Supplementary Planning Documents* and Table 3.4 *Methods of Involvement in Local Plan Evidence Base Studies*. The relevant parts of all of these tables concern early community/stakeholder involvement. An overview of the Council's position is set out in table 3.2 and the principle contained there is reproduced in tables 3.3 and 3.4.

1.2 The Council's position is summarised as follows:

"Dependent upon the subject matter of the Local Plan Document or individual local plan issue, the Local Planning Authority may undertake early engagement as deemed appropriate including on evidence based documents."

1.3 The advice we have been given is that this is not an adequate response to the requirement to involve the community in the Local Plan Review.

1.4 Extracts from the relevant legislation and guidance for community involvement are as follows. (The parts highlighted in **bold** are our emphasis.)

1.5 National Planning Policy Framework (NPPF)

a) Paragraph 69:

*"... local planning authorities **should** aim to **involve** all sections of the community in the development of Local Plans and in planning decisions and should facilitate neighbourhood planning."*

b) Paragraph 155:

*"**Early and meaningful engagement and collaboration** with neighbourhoods, local organisations and businesses is **essential**"*

1.6 Planning Practice Guidance (PPG)

a) Housing and Economic Development Needs Assessments (paragraph 007):

*"Local communities, partner organisations, Local Enterprise Partnerships, businesses and business representative organisations, universities and higher education establishments, house builders (including those specialising in older people's housing), parish and town councils, designated neighbourhood forums preparing neighbourhood plans and housing associations **should** be involved **from the earliest stages of plan preparation, which includes the preparation of the evidence base in relation to development needs.**"*

b) Housing and Economic Land Availability Assessments (paragraph 008):

*"The following **should** be involved from the earliest stages of plan preparation, which includes the evidence base in relation to land availability: developers; those with land interests; land promoters; local property agents; local communities; partner organisations, Local Enterprise Partnerships; business and business representative organisations; parish and town councils; neighbourhood forums preparing neighbourhood plans."*

c) Local Plans (paragraph 014)

*"Local planning authorities **should** publish documents that form part of the evidence base as they are completed, rather than waiting until options are published or a Local Plan is published for representations. This will help local communities and other interests to consider the issues and **engage** with the authority at an early stage in developing the Local Plan. It will also help communities bringing forward neighbourhood plans, who may be able to use this evidence to inform the development of their own plans."*

1.7 Thus, stakeholders, including local community organisations, should be involved "from the earliest stages" of plan preparation including the preparation of the various evidence bases. Further, local planning authorities should publish documents that form part of the evidence base as they are completed.

1.8 From the above it is clear that the Council's response to the need for community involvement is insufficient.

1.9 Rather than committing to community engagement, the Council states that it "may undertake engagement depending on the circumstances."

1.10 In other words, the Council's formulation is that generally speaking it will not engage unless it deems it appropriate, and that the onus is really on the community to show why engagement should take place.

1.11 The guidance, however, is consistent with an approach where the Council should consult unless there are exceptional circumstances which mean that this is not possible. In this approach, the onus is on the Council to demonstrate why it will not engage.

2. The status of Practical Planning Guidance

2.1 At paragraph 1.10 of the Draft Statement of Community Involvement, the Council says:

"The Planning Practice Guidance (PPG) contains a series of technical notes which expand on the policies in the NPPF on how local authorities should approach certain issues and evidence base studies. The PPG notes are not policy in the same way as the NPPF but are a material consideration in preparing the Local Plan or taking planning decisions."

2.2 The advice we have been given is that the PPG notes are more than just a “*material consideration*”.

2.3 The courts have frequently considered the nature of guidance as it applies to statutory bodies. For example in relation to health service guidance the House of Lords held in *Munjaz v Mersey Care NHS Trust* [2005] UKHL 58:

2.4 *“It is guidance which any hospital should consider with great care, and from which it should depart only if it has cogent reasons for doing so. ... In reviewing any challenge to a departure from the Code, the court should scrutinise the reasons given by the hospital for departure ...”*

2.5 The general principles stated apply here. Guidance is not formulated by central government in order that local authorities can take it or leave it, it is a recommended course of action. If it is not to be followed reasons ought to be given.

2.6 The advice we have been given is that as regards the Council's approach (as against the approach indicated by the PPG), a court is likely to endorse the view that the onus is on the council to follow the guidance unless it has good reason for not doing so. In the context of this Draft Statement of Community Involvement policy document, therefore, the onus is on the Council to engage at the earliest possible stage (including the formulation of evidence based studies.)

3. General consultation principles

3.1 The classic statement of consultation principles are those set out in the judgment of Lord Woolf in the case of *R v North and East Devon Health Authority Ex Parte Coughlan* [2001] QB 213, where he stated that:

“To be proper, consultation must be undertaken at a time when proposals are still at a formative stage. It must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

In *Moseley v Haringey* [2014] UKSC 56, the Supreme Court has recently analysed the nature of obligations arising where consultation is required. In its judgment the Court makes clear the obligation - even where not specifically required by a statutory consultation scheme – for consultees to be provided with adequate information about alternative options.

3.2 Lord Wilson (with whom Lord Kerr agreed) explained that:

“23 A public authority's duty to consult those interested before taking a decision can arise in a variety of ways. Most commonly, as here, the duty is generated by statute. Not infrequently, however, it is generated by the duty cast by the common law upon a public authority to act fairly. The search for the demands of fairness in this context is often illumined by the doctrine of legitimate expectation; such was the source, for example, of its

duty to consult the residents of a care home for the elderly before deciding whether to close it in R v Devon County Council, Ex p Baker [1995] 1 All ER 73. But irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will inform the manner in which the consultation should be conducted.

24 Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be linked to the purposes of consultation. In R (Osborn) v Parole Board [2014] AC 1115, this court addressed the common law duty of procedural fairness in the determination of a person's legal rights. Nevertheless the first two of the purposes of procedural fairness in that somewhat different context, identified by Lord Reed JSC in paras 67 and 68 of his judgment, equally underlie the requirement that a consultation should be fair. First, the requirement "is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested": para 67. Second, it avoids "the sense of injustice which the person who is the subject of the decision will otherwise feel.": para 68. Such are two valuable practical consequences of fair consultation. But underlying it is also a third purpose, reflective of the democratic principle at the heart of our society. This third purpose is particularly relevant in a case like the present, in which the question was not: "Yes or no, should we close this particular care home, this particular school etc?" It was: "Required, as we are, to make a taxation-related scheme for application to all the inhabitants of our borough, should we make one in the terms which we here propose?"

3.3 Lord Reed explained that:

"38. The purpose of this particular statutory duty to consult must, in my opinion, be to ensure public participation in the local authority's decision-making process.

39 In order for the consultation to achieve that objective, it must fulfil certain minimum requirements. Meaningful public participation in this particular decision-making process, in a context with which the general public cannot be expected to be familiar, requires that the consultees should be provided not only with information about the draft scheme, but also with an outline of the realistic alternatives, and an indication of the main reasons for the authority's adoption of the draft scheme. That follows, in this context, from the general obligation to let consultees know "what the proposal is and exactly why it is under positive consideration, telling them enough (which may be a good deal) to enable them to make an intelligent response": R v North and East Devon Health Authority, Ex p Coughlan [2001] QS 213, para 112, per Lord Woolf MR.

3.4 As can be seen proper consultation places specific requirements on the local authority - not least the obligation to provide sufficient reasons for particular proposals and to take the product of consultation into account conscientiously. This is **more than simply sharing information** which could be characterised as engaging with the local community.

4. The nature of consultation on the Local Plan Review

4.1 As stated above, the advice we have been given is that the onus is on the council to follow the guidance.

a) Housing and Economic Development Needs Assessments (paragraph 007) says that involvement should be:

“from the earliest stages of plan preparation, which includes the preparation of the evidence base in relation to development needs.”

b) Housing and Economic Land Availability Assessments (paragraph 008) says that involvement should be:

“from the earliest stages of plan preparation, which includes the evidence base in relation to land availability”

4.2 In light of a) and b) above, paragraph 3.10 should be removed from the Statement of Community Involvement.

Residents should be free as part of consultation to suggest inputs to the methodology whose output will be the evidence base. The product of such consultation should be conscientiously taken into account by the Council.

4.3 Once such evidence base studies are completed (including the conscientious taking-into-account of the product of consultation), such studies should be published, rather than waiting for the Issues and Options stage of the process.

5. Other matters

5.1 In Chapter 2, the draft Statement of Community Involvement specifically links the new Local Plan to:

- * the Spelthorne Community Plan
- * the Spelthorne Corporate Plan
- * the Spelthorne Economic Strategy
- * the Draft Spelthorne Housing Strategy

The Spelthorne Leisure & Culture Strategy is not linked in the same way, however.

5.2 A paragraph 2.11 should be inserted as follows:

2.11 The Local Plan will need to take account of the Leisure and Culture Strategy.

5.3 Viability Reports

Case law regarding making public developers' Viability Reports (and Local Authorities' assessments of them) is changing.

See Royal Borough of Greenwich v IC and Shane Brownie

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1478/Royal%20Borough%20of%20Greenwich%20EA.2014.0122%20\(30.01.15\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1478/Royal%20Borough%20of%20Greenwich%20EA.2014.0122%20(30.01.15).pdf)

and

London Borough of Southwark v IC and Lend Lease (Elephant and Castle) Ltd and Adrian Glasspool

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20%2809.05.14%29.pdf>

and

Elmbridge Borough Council v IC and Gladedale Group Ltd

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i479/%5B2011%5DUKFTT_EA20100106_\(GRC\)_20110104.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i479/%5B2011%5DUKFTT_EA20100106_(GRC)_20110104.pdf)

and others.)

5.4 Paragraph 4.11 of the draft Statement of Community Involvement should be amended to read:

4.11 All planning applications including plans and supporting documentation, **and developers' Viability Reports and the Council's assessments of those Viability Reports**, will be available to view on the Council's web-site via the 'Planning Applications On-line' search facility and/or at the Council Offices. Residents of Spelthorne can also sign up to 'My Alerts' on the Council's web-site. The 'My Alerts' service sends an email to residents (who have registered) whenever something of interest happens near their property including the submission of planning applications. Residents can opt to have alerts sent to them for interests up to 500m from their property.