



CALVERTON PARISH COUNCIL

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Ms Karen Baker *DipTP, MA, DipMP, MRTPI*

Planning Inspector

C/O Ms Carmel Edwards – Programme Officer

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By Email: carmel.edwards@gedling.gov.uk

19th April 2017

Dear Ms Baker

Gedling Local Planning Document – Examination

The Parish Council have received feedback on the Gedling Local Planning Document Examination Hearings at their meeting on Tuesday 11th April 2017. Members having attended various hearing sessions have requested that I write to you expressing some grave concerns together with some other issues.

Request for Suspension of the Examination into the Gedling Local Planning Document

Calverton Parish Council have actively participated in the examination hearings for the Gedling LPD, however they consider that the examination process has been fundamentally undermined by the actions of Gedling Borough Council.

The Borough Council has consistently produced and submitted late evidence on a wide range of topics, some of which has only been made available the day before the relevant hearing session. As such the Parish Council must place on record the fact that they consider the participation of parties including Calverton Parish Council and the Calverton Preservation and History Society has been substantially prejudiced.

We recognise your sterling efforts in trying to ensure that all parties have been heard and we appreciate the fact that you have continued sitting over lunch and into the early evening. However, we consider the fact that Gedling Borough Council have consistently failed to meet the evidence deadlines that you clearly set in advance means that other parties have been disadvantaged. We would respectfully suggest that any plan adopted following the current hearing sessions would be unsafe and open to challenge under s278 of the Town and Country Planning Act 1990 on the grounds of procedural unfairness.

Whilst the Parish Council understands that there are no statutory hearing rules or regulations for Local Plan examinations beyond s20 of the Planning and Compulsory Purchase Act 2004 and the advice in paragraph 182 of the NPPF, the principles of fairness and other public law elements apply. This includes in our view the obligation for all parties to meet deadlines prescribed for the submission of evidence to allow all parties reasonable opportunity to prepare for the hearing. These public law principles were conveniently

summarised by Lord Diplock in *Council of Civil Service Unions v Minister of the Civil Service [1985]* as the “three I’s”: illegality, irrationality and (procedural) impropriety.

You will be familiar with the principle that (procedural) impropriety includes: failing to follow procedural requirements; and failure to give a fair hearing. We must express concern that the submission of late evidence post-submission and during the examination by Gedling Borough Council has resulted in the examination hearings failing to meet the procedural requirements you set.

Procedural requirements can come from statute or regulations; case law; or, alternatively, they may come from constitutional documents such as an LPA’s standing orders. Whatever the source of the requirements, a failure to follow them can render the resulting decision(s) or action liable to challenge.

The ground of failure to give a fair hearing is founded in the rules of natural justice and is similar to, but distinct from, the above. It is a difficult concept to define in the abstract but an example would be adopting a procedure at a hearing session which was manifestly unfair to one interest as against another. We recognise that your hands are somewhat tied by the examination hearing programme that has been published and the fact that postponing the hearings at late notice would result in additional costs to parties and potentially abortive journeys for members of the public who had made a special arrangement to attend. However, tendering evidence the day before an examination hearing session can in our view only be considered to warrant wholly unreasonable behaviour which has prejudiced the rules of natural justice. The LPA has done this consistently throughout the examination hearings which demonstrates contempt for the procedural deadlines you set.

Given the fact that we consider that parties, including Calverton Parish Council, have been disadvantaged by the failure of Gedling Borough Council to comply with the procedures that you prescribed, it is imperative that further opportunity must be provided for parties to be heard further on all matters covered in late evidence.

We do not make this statement lightly as we recognise that holding further hearing sessions will impose financial burdens on all participants including the Parish Council itself. As you will be aware, if we were dealing with a s78 planning appeal, the actions of the LPA would almost inevitably be judged to be unreasonable behaviour. Unfortunately, there is no costs regime for Local Plan Examinations.

Given the seriousness of the concerns we have set out, we would formally request that you consider using the powers available to you to impose a suspension of the examination process in order to give the local planning authority time to undertake further work to complete the evidence base, including undertaking the requisite consultation where necessary. Once the Council has been able to confirm to you that it considers that the evidence base is complete then we consider that the examination should be recommenced with further hearing sessions held on:

- Sustainability Appraisal;
- Housing;
- Heritage;
- All Settlements; and
- Gypsy and Travellers

We have previously placed on record at the relevant hearing sessions our concerns regarding the late submission of evidence. Our position set out above should not therefore come as a surprise to you or to Gedling Borough Council.

We have also clearly stated at the relevant hearing session that we consider the fact that the Council has published two addendums to the Sustainability Appraisal means that the LPD has failed to meet the required legal provisions of consultation with the specified bodies on the Sustainability Appraisal.

As you are aware under Regulation 17 of The Town and Country Planning (Local Planning) (England) Regulations 2012 the 'proposed submission documents' includes the sustainability appraisal and such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan. Under Regulation 19(a) of The Town and Country Planning (Local Planning) (England) Regulations 2012 the 'proposed submission documents' must be made available for consultation prior to submission to the Secretary of State as required under Regulation 35.

The Council has in our view failed to meet these statutory requirements such that we consider the obligations of submission set out under Regulation 22 of The Town and Country Planning (Local Planning) (England) Regulations 2012 have not been met.

We recognise that during the examination process additional matters can come to light and clarification can reasonably be sought by the Inspector. We also recognise that it is normal practice for LPAs to publish a Schedule of Changes to the Publication Plan at the time of submission to the Secretary of State.

However, given the sheer scale of additional evidence produced post publication, the Parish Council must unfortunately question the legal basis of the examination being undertaken. The latest evidence produced in relation to housing at the request of yourself, has in our view exacerbated the failure of the plan to comply with the consultation and procedural requirements of The Town and Country Planning (Local Planning) (England) Regulations 2012.

We note that the following twenty nine evidence documents, which we consider should have formed part of the 'proposed submission documents', have been published post-submission:

- EX/12; EX22 (and EX/56, EX/57, EX/58 & EX/59); EX/23; EX35; EX43; EX51; EX/62; EX/65 (and EX/66, EX/67, EX/68, EX/69 & EX/70); EX/80; EX/89; EX/98; EX/101; EX/104; EX/105; LPD/REG/20; LPD/BACK/02; LPD/BACK/05; LPD/GRO/14; LPD/GRO/15; and LPD/OPE/02

We do not consider that the suite of twenty nine evidence documents published post-submission can be reasonably referred to as clarifications or supplementary information normally expected during an examination process. It includes substantial new material and clearly demonstrates that the plan as submitted was not fully evidenced and as such was unsound.

In order to address the deficiencies identified, we further consider that during the suspension of the examination process we have requested above (if agreed), Gedling Borough Council undertake the requisite consultation required under The Town and Country Planning (Local Planning) (England) Regulations 2012 on the further documents now forming part of the 'proposed submission documents'. Any additional representations received should then be considered by you during a reconvened examination process including further hearing sessions as we identified above.

In our latest statement on housing in relation to documents EX/98; EX/104; and EX/105 we draw attention to the fact that the evidence now being relied upon includes the 2017 SHLAA call for sites which only ended on the 31st March 2017 and has not yet been published in any manner.

We also note that your latest request for submissions does not actually invite comments on document EX/98 Site Selection document - Addendum 2, although we accept this is probably an oversight. We consider this document to be significant new evidence which was requested specifically in response to concerns expressed during the examination hearings. As such it must be tested as it is integral to the LPA seeking to contend that there is a demonstrable 5 year land supply.

This document also contains conclusions on sites that should be allocated which are fundamentally at odds to the position adopted by the LPA during the examination hearings. As such this undermines the entire examination process held to date and, in our view, can only support our contention that the only option available to you is to formally suspend the examination process.

We recognise that our comments will be unwelcome to Gedling Borough Council, however we consider it important to raise them now rather than leave them to a later challenge. Calverton Parish Council have consistently seen its role as being to ensure that the best interests of the residents of Calverton are promoted at all times in the planning process.

Whilst we understand the desire of all parties to ensure that Gedling has an up-to-date Local Plan in place, such a Plan must have public confidence and must have met all the relevant legal obligations. You will be aware that suspension of an examination process is a decision purely for you to make. A suspension of an examination is not an unusual step to be undertaken where such fundamental problems with a Local Plan exist.

I look forward to receiving your decision on this request in due course through your programme officer Ms Carmel Edwards.

Schedule of Changes Post Hearing Sessions

Calverton Parish Council are somewhat confused regarding the status and intention of this document. Whilst it predominantly proposes changes put forward or supported by Gedling Borough Council, it also appears to include proposed changes put forward by certain other parties, but not all other parties. In documents EX/87 and EX/97 there is a proposed change MM73 put forward by Ashfield District Council but objected to by Gedling Borough Council. It also includes MM92 put forward by Ibstock Group but again not supported by Gedling Borough Council. As you will be aware Calverton Parish Council have put forward a number of proposed changes including the deletion of Site H15 but these are not included.

We consider that documents EX/87 and EX/97 need to be clear and either, only include the proposed changes put forward by Gedling Borough Council or supported by them, or it should include all proposed changes suggested through the examination by all parties. The current approach appears to be inconsistent in its treatment of suggested changes made by those attending the examination hearing sessions. Whilst we have no concerns regarding the proposed changes made by Ashfield District Council and Ibstock Group we must place on record our concern that parties are not being fairly treated and that Calverton Parish Council appear to be unfairly treated.

Factual Update – Calverton Neighbourhood Plan

As you will be aware from previous correspondence, on behalf of Calverton Parish Council, Gedling Borough Council held a consultation on the Submission version of the Calverton Neighbourhood Plan between Friday 20th January 2017 and Friday 3rd March 2017.

The comments received through the consultation period along with the Submission Neighbourhood Plan and supporting documents have now been passed by Gedling Borough Council to an independent Examiner, Robert Yuille. The Neighbourhood Plan has therefore now commenced its independent examination.

There were 50 representations on the Neighbourhood Plan, which can be broken down as follows:

- General Comments – 11
- Support – 35
- Object – 4

We would consequently draw attention to the fact that there are very few objections to the Neighbourhood Plan and, as it has now commenced its examination phase, it should be afforded significant weight in accordance with the advice in Annex 1 of the NPPF. As you will be aware, the examination of the Neighbourhood Plan is limited to consideration as to whether the NDP meets the basic conditions, it is not an examination of soundness.

Given the issues we have raised regarding the Gedling Borough Council LPD and the timescale likely to be involved in completing the LPD examination; consultation on any proposed main modifications; and the likelihood of the need for further hearing sessions on the proposed main modifications, we consider that it is likely that the examination and decisions under Regulations 17 to 19 of The Neighbourhood Planning (General) Regulations 2012 on the Calverton NDP will be completed before the Gedling Borough Council LPD is finished. This is in our view a highly material further factor for you to consider in relation to our above request to suspend the LPD examination.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Bott', with a long, sweeping horizontal stroke extending to the right.

Gareth Bott
Clerk to Calverton Parish Council