ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD RESIDENTS' ACTOION GROUP

WINDSOR ANMD MAIDENHEAD BOROUGH LOCAL PLAN

REGULATION 19 CONSULTATION

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OPINION

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1. The Royal Borough of Windsor and Maidenhead (the Council) is in the process of preparing a new Borough Local Plan to guide development in the area up to 2033. A draft of the Local Plan has now been prepared and is undergoing a period of consultation before it is submitted to the Secretary of State for examination prior to its adoption.

2. I am asked to advise whether the process of consultation, which the Council is undertaking, complies with the requirements of the relevant regulations. In my opinion, for the reasons which follow, it does not. The process is unduly restrictive, misleading and fails to accord with regulation 20 in particular. The present consultation process should be abandoned and a fresh consultation process commenced which fulfils the requirements of the relevant statutory

provisions and regulations. Failure to do so will leave the Council vulnerable to an application for judicial review.

3. The Local Plan is being prepared in accordance with the provisions of the Planning and Compulsory Purchase Act 2004 and the Town and Country Planning (England) (Regulations) 2012. Section 20 of the Act requires every development plan document, which includes the Local Plan, to be submitted to the Secretary of State by the Council for independent examination. A plan must not however be submitted unless "they have complied with any relevant requirements contained in regulations". If a plan is submitted to the Secretary of State he will arrange for PINS to appoint an Inspector. The Inspector will examine the plan and other relevant documents to consider whether there has been compliance. Among the relevant documents that must be submitted is a Statement of Community Involvement, under section 18, which the Inspector will also examine to ensure it is legally compliant.

4. As mentioned above, a draft of the Local Plan has been prepared for submission to the Secretary of State and has been published for consultation pursuant to regulation 19. This regulation provides:

"19. Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must –
(a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35, and
(b) ensure that a statement of the representations procedure and a statement of the fact that the proposed submission documents are available for inspection and of the places and times at which they can be inspected, is sent to each of the general consultation bodies and each of the specific consultation bodies invited to make representations under regulation 18(1)."

5. Regulation 20, which is headed "Representations relating to a local plan" states that

"20(1) Any person may make representations to a local planning authority about a local plan which the local planning authority propose to submit to the Secretary of State.
(2) Any such representations must be received by the local planning authority by the date specified in the statement of the representations procedure.

6. Regulation 23 further provides that

"23 Before the person appointed to carry out the independent examination under section 20 of the Act makes any recommendation … the person must consider any representations made in accordance with regulation 20."

7. Regulation 35 requires documents to be available for inspection at the local planning authority's principal office and such other places within their area as they consider appropriate during normal office hours, and on the authority's website.

8. Announcing the Council's decision to proceed to the Regulation 19 stage, a press release was issued on 23rd June 2017. This contained serious flaws and misrepresented the scope of representations that could be made. The third, (un-numbered) paragraph states that "Regulation 19 tests the legal and technical soundness of the plan **as a whole**. Consultation with residents took place in 2016 on the proposed sites in Regulation 18. These comments have been fed into the Regulation 19 document" (my emphasis). It goes on to refer to "key areas for the public to make representations" which it derives from the tests for soundness in the NPPF. It concludes by indicating how "comments on the soundness or legality of the plan can be submitted".

9. A further press release dated 6th July repeats the approach and states that "this stage of the process allows comments to be submitted **"on the legal and technical soundness of the plan as**

a whole" and mentions "key areas" for the public to make representations, again taken from the soundness tests in the NPPF. A third press release dated 17th July adopts the same approach.

10. In accordance with regulation 35, mentioned above, the Council has arranged for copies of the submission version of the plan to be available in public libraries. The advice to library staff includes the following:

    "Regulation 19 allows interested parties to comment on the legal compliance of the plan as a whole (rather than on individual sites) and how it meets the Government's test of soundness"

    Staff are asked to urge those "who would like to respond to any points on legal compliance and/or the Government's test of soundness" to do so using the Council's online Portal for their response."

11. In my opinion the Council's approach in restricting the scope of matters upon which respondents can make representations is wholly erroneous and unlawful. As can be seen from the press releases and guidance to library staff potential respondents are informed they can only make representations with regard to the soundness of the Plan **as a whole,** "and only having regard to its **legal and technical soundness**". Those who may have made representations at the Regulation 18 stage are informed that their comments have been assessed and fed into the Regulation 19 document. They, and others who may wish to make representations at this stage, are clearly deterred from doing so as the only representations that the Council has indicated it will entertain are those that relate to the Plan as a whole and it legal and technical soundness.

12. This is contrary to regulation 19, which is concerned with the publication of the Submission version, and contains no such restriction. It is emphatically contrary to regulation 20 which enables "any person" to make representations about a plan which is to be submitted, and also

regulation 23 which requires the examiner "to consider any representations made in accordance with regulation 20". There is no provision in the 2004 Act or the 2012 Regulations which justifies such a restrictive approach. In neither the Act nor the Regulations is there a reference to the Plan "as a whole" in this context, nor indeed to representations restricted to legal and technical soundness.

13. It is also my respectful opinion that the approach set out in the Secretary of State's letter to the Prime Minister, in her capacity as Constituency MP, is entirely correct. As he says, there is no limitation at the regulation 19 stage as to what topics of the plan residents may comment upon.

14. In this instance the Council have unlawfully introduced a restrictive limitation which will have, and indeed is intended to have, the effect of limiting matters upon which residents can make representations. This wrongful approach vitiates the regulation 19 process which the Council should abandon and re-commence in a legally compliant manner.

15. If the Council refuse to do so they stand the risk of the Plan being rejected by the Examining Inspector. A decision to persist with the flawed consultation exercise could also be challenged by an application for judicial review.

16. Although in most instances it is appropriate to wait until the Plan is adopted before bringing a challenge in the High Court under section 113 of the 2004 Act, such a delay would not be necessary in this case.

17. As Lindblom J held in *The Manydown Company Limited v Basingstoke & Deane Borough Council* [2012] EWHC 977 (Admin) at paragraph 88:

> "The conclusion that these proceedings are not ousted by section 113(2) seems both legally right and pragmatic. In a case such as this an early and prompt claim for judicial review makes it possible to test the lawfulness of decisions taken in the run-up to a statutory process , saving much time and expense – including the expense of public money - that might otherwise be wasted. In principle, it cannot be wrong to tackle errors that are properly amenable to judicial review, when otherwise they would have to wait the adoption of the plan before the court can put them right.

18. In my opinion, in the light of the Council's unlawful approach to the consultation process, this is a case that would indeed be properly amenable to judicial review, and I consider that such an application would have a very good chance of success.

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