



Neighbourhood Forum concerns Monitoring Officer analysis

Collectively the Neighbourhood Forums have raised concerns inter alia in respect of the Council's response to the consultation on the three submitted Neighbourhood Plans, such that they believe that it exposes the Neighbourhood Plan making process open to challenge and further dispute. They are concerned that;

1. The consultation responses may not have been made in accordance with the Council's Standing Orders,
2. The Council has not received a report from Officers that explains the Neighbourhood Plans that have been submitted,
3. The Council's responses, as Local Planning Authority and as Landowner contain conflicting views,
4. The representations, in the view of the Neighbourhood Forums, do not fall within the scope of the Basic conditions that the Examination is governed by.

I have considered these concerns and met with a range of Officers to understand how the consultation responses were developed and submitted. Using the numbering above, I set out my response to the issues raised as follows;

1. The consultation responses may not have been made in accordance with the Council's Standing Orders

The Officer Scheme of Delegation within the Constitution sets out that the responsibility for making consultation responses is delegated to the Chief Executive, in consultation with the Relevant Member.

In practice, it is inconceivable for the Chief Executive to undertake this personally for all consultation responses, given the wide range of matters which the Council has to respond to.

The Officer Scheme of Delegation includes at paragraph 1.13 the ability for the Chief Executive to delegate to any other employee, so far as it is lawful, any matters for which he is responsible.

Therefore this was delegated to Kevin Mowat. Kevin, as Executive Head has the ability to further delegate, and he had support from TDA colleagues in respect of the Council in its capacity as landowner, and with support from Strategic Planning in respect of the Council in its capacity as Local Planning Authority (LPA). Kevin retained an oversight in respect of the consultation responses.

I can find no cause for concern in this respect.

The question is then whether there was sufficient consultation with the relevant member.

In respect of the Council in its capacity as LPA the relevant member will have been the Executive Lead for Planning. Until the 23 November 2017 this was Cllr King, whereupon it changed to Cllr Mills. I am advised that the substantive work in respect of the preparation of the consultation response was undertaken whilst Cllr King was the Executive Lead, and that he was briefed regularly as to the progress of the consultation response and the objections therein, which notably were based on elements of the Neighbourhood plans not being in conformity with the Torbay Local Plan.

It is important to note here that the Torbay Local Plan is a Policy Framework document, i.e. a Policy which has to be approved by Full Council. Therefore Officers were responding based upon the stated policy of the Full Council, which Cllr King was aware of.

Whilst Executive Lead responsibility did change within the period, I am satisfied that Officers had consulted with Cllr King, who had been their longstanding Executive Lead for this area, and were responding on the basis of the Local Plan which had been approved by Full Council.

In respect of the Council in its capacity as landowner the relevant member will have been the Elected Mayor, as Executive Lead for Assets. I am advised that Officers briefed the Elected Mayor and wider members on the response as Landowner. This included that the response was based upon the Council's Asset Management Strategy.

It is important to note here that the Asset Management Strategy is a Policy Framework document, i.e. a Policy which has to be approved by Full Council. Therefore Officers were responding based upon the stated policy of the Full Council, which the Elected Mayor and wider members were aware of.

Conclusion

On the basis of that set out above, I find that there has been no breach of the Council's Standing Orders.

2. The Council has not received a report from Officers that explains the Neighbourhood Plans that have been submitted

It is well established that a meeting of the Council is for decision making. There is no decision at this point which Council have been required to take in respect of the Neighbourhood Plans, and therefore it rightly has not been before Council.

Officers have, however, briefed Members on elements of the Plans, and will be considering what further briefings should take place.

Conclusion

I can find no cause for concern as to process from the fact that the Council has not received a report from Officers as to the submitted Neighbourhood Plans.

3. The Council's responses, as Local Planning Authority and as Landowner contain conflicting views

The Council has responded to the consultation in a number of respects, but significantly in this context in its capacity as;

- (i) landowner, and
- (ii) Local Planning Authority.

Concern is raised by the Forums in this respect, however I do not share their concern, indeed I believe that this correctly and accurately reflects the different capacities which the Council has. By way of example, I would envisage that there may be a number of sites within the Plans which are put forward by the Forums as Local Green Space, where the LPA may agree that these are capable of such designation, however, the landowner may robustly disagree. Should the Council in its capacity as landowner be restricted in its ability to oppose such designation, when other landowners are not restricted? The answer to this has to be no, the Council as landowner should not be put in a worse position than other landowners. Equally, it cannot be right that the LPA are required to change their position given the Council's position as landowner.

These are separate and distinct roles, which can mean that different consultation responses are made. It is for the Examiner to consider all of the consultation responses made, and the relative strength of the same, in order to reach their view.

Conclusion

I can find no cause for concern as to process from the fact that the Council as landowner and the Council as LPA have submitted conflicting views.

4. The representations, in the view of the Neighbourhood Forums, do not fall within the scope of the Basic conditions that the Examination is governed by.

Only a Neighbourhood Plan that meets a set of basic conditions can be put to a referendum and ultimately be made. The basic conditions are set out in legislation and are;

- a. having regard to national policies and advice contained in guidance issued by the Secretary of State it is appropriate to make the order (or neighbourhood plan).
- b. having special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest that it possesses, it is appropriate to make the order (this only applies to orders).
- c. having special regard to the desirability of preserving or enhancing the character or appearance of any conservation area, it is appropriate to make the order (this is only applied to orders).
- d. the making of the order (or neighbourhood plan) contributes to the achievement of sustainable development.
- e. the making of the order (or neighbourhood plan) is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area).
- f. the making of the order (or neighbourhood plan) does not breach, and is otherwise compatible with, EU obligations.
- g. prescribed conditions are met in relation to the Order (or plan) and prescribed matters have been complied with in connection with the proposal for the order (or neighbourhood plan).

Whilst the Neighbourhood Forums have expressed their view that the Council's consultation responses do not fall within the scope of the basic conditions, the Officers I have spoken to disagree. It is not appropriate that I review to form a view as to this, as this is the role of the Examiner, who will shortly commence their work.

Conclusion

I do not consider that this difference of opinion between the Forum and Council Officers as to compliance with the basic conditions results in any concern as to the Council's process. This is a matter for the Examiner to consider when reviewing the consultation responses.

Overall Conclusion

On the basis of my reasoning as set out above, I do not believe that there is any matter which requires further action or decision by the Council.

Anne-Marie Bond
Monitoring Officer
9 February 2018