

BUCKLAND NEWTON NEIGHBOURHOOD PLAN

SUMMARY AND OVERALL ASSESSMENT

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1. I am instructed to advise the Buckland Newton Parish Council (“the PC”) in respect of their neighbourhood plan that was submitted to West Dorset District Council (“the DC”) in November 2015 (“the NP”). Concerns were raised by the original Examiner regarding, along with two other concerns, the supplemental consultation carried out by the PC.
2. This document summarises my Opinion on the specific matters raised in my Instructions. It should be read and understood alongside that full Opinion
3. I am surprised by the forcefulness of the Examiner’s suggestion of withdrawing the NP. However, I recognise that this was based on other reasons than just the supplementary consultation issue. In my view, this technical approach does not appear to be justified.
4. I do not consider that the carrying out of supplementary consultation is necessarily unlawful. The wording of regulation 14 does not expressly preclude this. However, I recognise that it could be argued that it is implicit in the wording and so there is an element of risk on this aspect.
5. However, even if that is the case in my view it still has to be considered whether any party has been prejudiced by the supplementary consultation. From the information before me, such prejudice is not obvious. Nor is there any obvious harm to the NP making process as a whole.

6. As I understand the position, the submitted NP incorporated the changes that were the subject of the supplementary consultation. The NP was then publicised by the lpa in accordance with regulation 16. That gave the opportunity for people to comment on it.
7. On that basis, I find it difficult to identify any difficulty that arises from the process adopted by the PC. Indeed, they were attempting to give opportunity for further public involvement rather than curtailing or prejudicing it. Only one person responded and that response was not directly related to the changes proposed and consulted upon. It does seem a disproportionate response in my view to suggest that this supplementary consultation therefore vitiates the consultation process and the submission NP cannot therefore be lawfully examined. On the facts as I understand them, I find such a conclusion to be difficult to justify.
8. However, I recognise, and it is in my experience, that it can be prudent for any body promoting a plan to avoid any unnecessary risks and uncertainty, where it is practicable to do so. Additional time, cost and effort spent now may in the longer term outweigh that which otherwise have been needed. That, I would assume, was the basis of Mr Cardnell's advice in his email to Mr Baker of 22 September 2016.
9. As Mr Cardnell indicates, there is the opportunity for the PC to get the NP up-to-date. The optimal approach might in my opinion be to go back to the pre-submission stage on that slightly amended plan and ensure compliance with regulation 14 and 15. That also would avoid any argument about what stage you can lawfully go back to when a NP proposal is withdrawn. It might be contended that if a submitted plan is withdrawn then you should go back to the regulation 14 stage at least, to allow the matter to be looked at afresh and be consulted on under regulation 14 on that basis.

10. Mr Cardnell's advice was on the basis of the Examiner's concerns in respect of public consultation. In my view in order for the PC to evaluate properly the risk of not taking the lpa's advice it would be helpful for the lpa to explain why they have departed from their decision in their letter of 25 January 2016. There ought to be a clear justification for this change in position. In particular, it would be helpful to know whether Mr Cardnell considers that there has been any harm or prejudice arising from the supplementary consultation.
11. I entirely understand that Mr Cardnell was taking a cautious/pragmatic approach, which he no doubt considered was in the PC's best interests. I also recognise the advantages of re-running the regulation 14 consultation, as indicated above. However, it has to be born in mind this could lead to significant delay as indicated above. Government policy encourages the making of neighbourhood plans and no doubt wishes this to be done without unnecessary delays.
12. In my view, therefore, simply referring to the Examiner's concerns does not provide the answer in the circumstances of this case. There is no bar on supplementary consultation and many Examinations have commended qualifying bodies for carrying out consultation beyond the minimum required by the 2012 Regulations.
13. Further, it is generally recognised that the legislation allows a more flexible approach to NPs than to the preparation of local plans. This reflects the fact that NPs are community based and promoted and this is itself reflected in the legislation and the interpretation by the Courts of it so far.
14. If the PC, in light of my advice, still prefer not to adopt the approach suggested by Mr Cardnell, then the best option would be to have the NP as submitted placed before the new Examiner. It would be simpler just to

rely upon the version of the NP already submitted. However, if the “minor amendments” are considered necessary, it would have to be re-submitted.

15. I consider that if this is to be done it should be assumed that it would be on the basis that the concerns of the previous Examiner will be made public and placed before the new Examiner. The issue should be dealt with directly and openly as it would be beneficial in the longer term to have the matter addressed as early as possible so the risks of proceeding can be addressed. However, it will need to be confirmed with the lpa that if the new Examiner is to be provided with the previous Examiner’s comments, the PC is permitted to provide a rebuttal to these which is provided at the same time. In my view, fairness would require that the PC has the opportunity to respond to the previous Examiner’s concerns.

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