

INDEPENDENT EXAMINATION OF THE CONGLETON NEIGHBOURHOOD PLAN

EXAMINER: Jonathan King BA(Hons) DipTP MRTPI.

David McGifford
Congleton Town Clerk

cc: Tom Evans
Cheshire East Council

Examination Ref: 03/JK/VNP

Via email

26 March 2019

Dear Mr McGifford

EXPLORATORY MEETING 11 APRIL 2019: CONGLETON NEIGHBOURHOOD PLAN EXAMINATION

Thank you for your letter of 19th March. I look forward to meeting you and your colleagues at the Exploratory Meeting, which as you know has been arranged for 10.30 on 11th April.

In my letter of 6th March I took the view that, should it be determined that the circumstances were appropriate for the Qualifying Body (QB) to add, delete or substitute new text to the submitted Plan, it would be necessary to undertake additional formal public consultation with respect to any significant or substantial changes. I did not go into any detail, but the reasoning behind this was in the interests of fairness and openness, and to avoid any disadvantage to any member of the public, organisation or other interested party. In short, I took the view that any revisions to the Plan would have to be subject to the same degree of public scrutiny as the original submission. As a point of principle, I think that must be right.

The suggestion of holding an Exploratory Meeting was to discuss, practically, whether the examination could progress and, in particular, whether this should be by means of suspending it in order to permit the necessary consultation to take place; or whether, in view of the breadth and depth of the changes and other considerations, it would be better for the Plan to be withdrawn and resubmitted in a revised form. I indicated that I was provisionally inclined towards a view that the Plan should be withdrawn.

I have since taken the opportunity to further assess the more detailed legal and practical implications of handling your proposed revisions. My starting point is to be clear about the status of your proposed revisions. Having considered the matter carefully, I must conclude that they have no formal status: it simply represents the modified views of the QB subsequent to the submission of the Plan for examination. Unlike the process with respect to the examination of Local Plans, there are no procedures set down to cover such a situation. In my view, the limited circumstances where changes or modifications to a submitted Plan might be put forward by the QB would be where the examiner explicitly asks for them based on identified legal shortcomings (including those relating to the Basic Conditions). This might be, for example, where as part of formulating modifications, the examiner has determined it would be helpful to have some suggested wording from the QB or have them comment on his/her wording. Even then, this approach would be constrained by the general principle that there is only so far a modification may go before it starts to introduce a new approach which has not been subject to consultation. In that case the default is that the policy should be deleted as it is not capable of repair through the examination process. Paragraph 10(3) of Schedule

4B to Town and Country Planning Act 1990 (as amended) ('the 1990 Act') clearly sets out the very limited range of circumstances in which a modification may be recommended. It does not include where a new plan policy, or policy test has been introduced. A further concern, which may be relevant to your proposed revisions, is that cumulatively the revisions/modifications might be so extensive that the Plan is no longer cohesive or coherent as a whole and should not be recommended for proceeding to a referendum.

It is clear from the narrow framing of the legislation that the Plan I am obliged to examine is the one formally submitted by the QB at the outset. It is apparent that many if not most of your proposed revisions are not amenable to being incorporated into the submitted Plan at this stage. I am unaware of any legal, policy or practice guidance which would guide such a process. In the very rare instances examiners have asked for discrete modifications to be advertised during the examination, this has been driven by an external factor beyond the control of the QB, such as the impact of a new legal precedent occurring (in relation to Habitats Regulation Assessment) during the examination. In this instance there are no such external factors, the changes can by no means be considered discrete and they were not submitted at my request based on any identified shortcomings.

Whilst I am content to hear any contrary views on my interpretation of the scope of modifications and suspension (for the purposes of consultation), the principal and most appropriate route to rectify the Plan is to withdraw it under paragraph 2(1) of Schedule 4B to the 1990 Act. I am of course content to consider any other options you might identify, albeit I cannot readily envisage any alternative to withdrawal other than to continue to examine the Plan in the form it was originally submitted, which will not result in a positive outcome.

In the circumstances, I do not intend to address the questions (a) – (d) posed in your letter, which to a large extent presuppose that your suggested changes are capable of being dealt with as part of this examination. They have largely been overtaken by further detailed consideration of the situation in readiness for the Exploratory Meeting. Nonetheless, I will be happy to discuss any aspect of the Plan and the examination at the meeting, though I will not, of course, be able to formally advise you.

I have provided an agenda for the meeting, which is annexed to this letter.

I am copying this letter to Cheshire East Council. In the interests of transparency, may I prevail upon you to ensure a copy of this letter and agenda is placed on both the Town Council and the Cheshire East Council websites?

Thank you in advance for your assistance.

Your sincerely

Jonathan King

Examiner

CONGLETON NEIGHBOURHOOD PLAN EXAMINATION

EXPLORATORY MEETING

10.30, 11TH APRIL 2019

1. Opening
2. Introductions
3. Background
 - The Plan
 - The Examiner's questions
 - The Qualifying Body's responses and proposed revisions to the Plan
 - The Examiner's subsequent letters
4. Options for the way forward
 - Withdrawal of the Plan
 - Any other options
5. Procedural implications
6. Feedback on the content of the Plan
7. Any other matters
8. Future action

JGK March 2019