

PENRITH MASTERPLAN INADEQUATE CONSULTATION

ADVICE

Introduction

1. I am asked to advise “Keep Penrith Special” on the legality of the consultation exercise undertaken by Eden District Council (“**the Council**”) into the “*Penrith Strategic Masterplan: A Vision to 2050*” (“**the Masterplan**”).
2. For the reasons below, my view is that:
 - (i) The Masterplan falls woefully short of the legal requirements of a valid consultation process; and
 - (ii) The surrounding documentation and – in particular – the online questionnaire imply that other options have now been ruled out of account without consultation, and that the principle of development in this broad location has already been decided.

Background

3. The Masterplan was published online in September 2018¹ - not on the Council’s website, but on the website of something called “Beacon Villages”, a point I return to below.
4. The Masterplan detailed the Council’s preferred option (“**Option 4**”) which includes “5,560 new homes across the three Beacon Villages” to the north-east of Penrith.
5. Other options were considered and discarded without consultation.

¹ [http://beaconvillages.co.uk/wp-content/uploads/2018/09/Penrith Masterplan Brochure.pdf](http://beaconvillages.co.uk/wp-content/uploads/2018/09/Penrith_Masterplan_Brochure.pdf)

6. Section 16 of the Masterplan states that:

“The proposals in this Masterplan will only happen with public support so it’s vital we hear what you have to say.

[...]

Please send us your views by completing the questionnaire at www.beaconvillages.co.uk before Friday, 2 November 2018.”

7. The questionnaire comprises 14 questions. Consultees are asked:

- (i) Whether they live in Penrith or how often they visit;
- (ii) For three things they would improve “to make Penrith a better place to live, work and visit”;
- (iii) How important a number of issues are scaled from 1-10, including the “requirement for additional housing”, the “requirement for additional affordable housing” and the “requirement for housing to meet a wider range of needs”;
- (iv) Whether Penrith faces any other challenges;
- (v) To tick boxes for the steps which should be taken to “overcome” these challenges – options include encouraging housing led by community groups, building affordable homes and building more homes, supporting more self-build homes and encouraging the “development of environmentally friendly homes”;
- (vi) To tick boxes for “important considerations when locating a new settlement in Eden”
- (vii) Whether they “agree”, “partially agree”, “disagree” or are “unsure” about the “location of the proposed new settlements within Option 4.
- (viii) If concerned, to identify whether “any of the areas previously assessed should be reconsidered and assessed in more detail”;

- (ix) To tick a list of matters which are thought to be “important for creating a vibrant new community” (including “health services” and “good education facilities”);
- (x) To suggest any “any specific improvements to Penrith Town Centre”;
- (xi) To suggest uses for Beacon Hill;
- (xii) To add “any other comments”;
- (xiii) Age; and
- (xiv) Postcode.

Requirements of a lawful consultation

8. I note three particular requirements of a lawful consultation:

- (i) It must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response.²
- (ii) Fairness may – particularly (as in this case) when statute does not limit the subject of the requisite consultation to the preferred option – require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options.³

² *R v North and East Devon Health Authority, ex p Coughlan* [2001] QB 213 at §108, Lord Woolf MR, endorsed by the Supreme Court in *R. (Moseley) v Haringey LBC* [2014] 1 W.L.R. 3947 at §25.

³ *R (Montpeliers & Trevors Association) v City of Westminster* [2005] EWHC 16 (Admin) at §29, *R. (Moseley) v Haringey LBC* [2014] 1 W.L.R. 3947 at §27.

- (iii) It must be made clear to consultees that they are free to “press the case” for those alternatives.⁴
9. The way in which the questions are asked in a consultation exercise may be very important. One of the principal purposes, if not the principal purpose, of any consultation exercise is to enable consultees to identify and draw to the attention of the decision maker relevant factors which the decision maker may, either by accident or design, have overlooked when deciding upon a preferred option for consultation.⁵
10. In addition to those common law principles, the Council is required by statute⁶ to consult in a way that complies with its Statement of Community Involvement (“**SCI**”)⁷, which promises among other points that:

“We will explain to people why we are consulting and how their views will be taken into account.

[...]

We will seek to explain issues clearly to all the audiences we wish to reach and make responding easy, both on and off-line. In organising the consultation, we will provide a summary of the main issues, a clear set of questions, and ability to make comments.

In relation to on-line consultations, we will provide a broad range of background information to ensure stakeholders have good opportunity to form opinions on the basis of balanced information.”

⁴ *Moseley* at §28.

⁵ *R (JL & AT Baird) v Environment Agency* [2011] EWHC 939 (Admin) at §41.

⁶ Section 19(3) of the Planning and Compulsory Purchase Act 2004.

⁷ <https://www.eden.gov.uk/media/3095/sd039-statement-of-community-involvement-december-2013.pdf>

Analysis

11. In my view, the Masterplan falls woefully short of the requirements of a lawful consultation.

In particular:

- (i) Option 4 was selected without public consultation, and the discarded options were not and are not even now the subject of consultation.
- (ii) The Masterplan simply does not make clear:
 - (a) What the purpose is of the consultation;
 - (b) What matters are of particular importance to the process;
 - (c) How the plan is intended be taken forward, and
 - (d) To what degree responses will be able to shape that plan, particularly if those responses are not supportive of Option 4.
- (iii) The online questionnaire does not, in my view, present the issues in the “balanced” way required by the Council’s SCI. In particular:
 - (a) The vast majority of options for members of the public to pick between are obviously supportive of very significant housing growth in broadly the locations outlined in Option 4.
 - (b) Members of the public are not asked any questions on the detailed comparative merits or demerits of the other options.
 - (c) Each of the questions assumes that very substantial development to the north-east of Penrith will take place, and consultees are not asked for their views on the merits

of that strategy, or on the principle of development (as opposed to its broad location).

(d) In consequence, the fundamental spatial strategy which underlies the Masterplan is assumed to be acceptable, and consultees are asked no questions at all about its merits.

(iv) Even the phrasing at section 16 which I set out above (“*the proposals in this Masterplan will only happen with public support*”) implies that what is sought is public support in order to facilitate the delivery of Option 4.

12. What complicates matters further is that the consultation appears to be run not through the Council’s website, but by another unspecified organisation – “Beacon Villages”.⁸ The nature of the association between Beacon Villages and the Council is not clear from the Masterplan itself. But the relevant point is this: the fact that the consultation is being run through a body which is itself named after the preferred option in the Masterplan⁹ reinforces the flaw I identify above, i.e. the impression is given to a fair-minded reader is that other options have now been effectively ruled out of account, and that the principle of development in this area has already been decided.

13. For those reasons, in my view the Masterplan document falls short of the legal requirements of a valid consultation process.

14. Finally, I am instructed that some at the Council have referred to this consultation exercise as “informal”. That is surprising; it is not referred to in that way in the consultation

⁸ <http://beaconvillages.co.uk/>

⁹ Under the heading “About Beacon Villages”, the website states: “*Beacon Villages is an exciting plan to bring 5,560 new homes and over 7,000 new jobs to the Penrith area over the next three decades. It is the cornerstone of the Penrith Strategic Masterplan [...]*”

document itself. On the contrary, it is plain that the Council has treated this consultation “formally” – at least until now. In any event, the claimed “informality” is not relevant. Once a public body decides to embark on a consultation exercise, it is bound by the strict legal requirements I refer to above. Those requirements derive from the fundamental tenets of procedural fairness. They cannot be softened or circumvented only after a consultation exercise has been launched by describing that exercise as “informal”.

Conclusion

15. Those instructing me should not hesitate to contact me in Chambers with any questions arising out of these instructions.



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