

Birmingham City Council CPD

# Statements of Community Involvement

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## Structure

- Statutory framework
- Guidance
- Legal principles
- Review of caselaw
- Concluding remarks

# Planning and Compulsory Purchase Act 2004 (1)

- S. 18(1): “The local planning authority must prepare a statement of community involvement”
- S. 18 (2): SCI is “a statement of the authority’s policy as to the involvement in the exercise of the authority’s functions under sections 13, 15, 19, 26 and 28 of this Act and Part 3 of the principal Act of persons who appear to the authority to have an interest in matters relating to development in their area”
  - S. 13: survey of area (review of matters expected to affect development of area of planning of its development)
  - S. 15: preparation of local development scheme
  - S. 26: review of LDDs (including DPDs)
  - S 28: preparation of joint LDDs
  - Part III of the TCPA 1990: primarily grant of planning permission, but also other control over development including planning obligations

# Planning and Compulsory Purchase Act 2004 (2)

- NB Ss. 18(2B)–(2D) inserted by the Neighbourhood Planning Act 2017 ss 6 (see too s 13)
- With effect from 31 July 2018 (see Neighbourhood Planning Act 2017 (Commencement No. 3) Regulations 2018)
- S. 18(2B): SCI must set out the local planning authority's policies for giving advice or assistance under
  - (a) paragraph 3 of Schedule 4B to TCPA 1990 (advice or assistance on proposals for making of neighbourhood development orders) and
  - (b) paragraph 3 of Schedule A2 to PCPA 2004 (advice or assistance on proposals for modification of neighbourhood development plans)
- S. 18 (2C): reference in (2B)(a) to Schedule 4B includes that Schedule as applied by section 38A(3) of this Act (process for making neighbourhood development plans eg examinations, referenda)

# Planning and Compulsory Purchase Act 2004 (3)

- S. 18(3): SCI is an LDD, subject to section 17(8)(adoption by resolution of LPA/approval by SS following intervention)
- S. 18(3A): SCI must not be specified as a DPD document in the LDS
- S. 19(3): in preparing LDDs (including DPDs but not the SCI) the authority must also comply with their SCI
- S. 23(1): adoption of LDDs (LPA may adopt an LDD either as originally prepared or as modified to take account of (a) any representations made in relation to the document; (b) any other matter they think is relevant)
- S. 20(5): purpose of an independent examination of DPD is to determine (a) whether it satisfies the requirements of s.19

# TCP (Local Planning) (England) (Amendment) Regulations 2017/1244

- From April 6, 2018
- 10A Review of local development documents
  - (1) A local planning authority must review a local development document within the following time periods
    - (b) in respect of a statement of community involvement, the review must be completed every five years, starting from the date of adoption of the statement of community involvement, in accordance with section 23 of the Act

## Guidance

- NPPF 2 [16]: “Plans should:…
  - (c) be shaped by early, proportionate and effective engagement between plan-makers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees”
- PPG ID 12-017-20140306:
  - “Section 18 of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to produce a Statement of Community Involvement, which should explain how they will engage local communities and other interested parties in producing their Local Plan and determining planning applications. The Statement of Community Involvement should be published on the local planning authority’s website”

## Legal principles: legitimate expectation

- Reliance on SCIs mainly framed by legal principle of legitimate expectation
- Courts will require a public body to honour a procedural promise that is “clear, unambiguous and devoid of relevant qualification”: R v. Inland Revenue Commissioners, ex p. MFK Underwriting Agencies Ltd [1990] 1 WLR 1545 at 1570
- Aspect of concern to ensure that decision-makers act fairly in procedural sense; but principle could as readily seen as a requirement of reasonableness: Abdi v. SSHD [2005] EWCA Civ 1363



## Wider principles (1)

- Other principles which may apply regardless of SCI content
- Authorities must follow published policies unless there are good reasons not to: R (Lumba) v. SSHD [2011] UKSC 12 at [26]
- Duty to consult may come from by statute but common law duty of procedural fairness may require it and inform how to conduct it: R (Moseley) v. Haringey LBC [2014] UKHL 56 at [23]
- Whether re-consultation on amended planning application is required will depend on what fairness requires in circumstances including nature and extent of changes: Keep Wythenshawe Special v. NHS Central Manchester [2016] EWHC 17 (Admin) at [74]-[75]

## Wider principles (2)

- Where consultation takes place it should meet the “Sedley principles” approved in R v. North and East Devon Authority ex p. Coughlan [2001] QB 213, in particular:
  - Consultation must take place when the proposal is still at a formative stage
  - Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response
  - Adequate time must be given for consideration and response
  - The product of consultation must be conscientiously taken into account

# R (Majed) v. Camden LBC [2009] EWCA Civ 1029

- SCI: occupiers of application premises and adjoining occupiers likely to be affected will receive a letter of notification
- CoA rejected submission that there was no legitimate expectation of SCI being followed given statutory code for notification (see now DMPO 2015: “legitimate expectation comes into play when there is no statutory requirement”)
- Prejudice relevant to wider question of whether Court should exercise its discretion to grant relief
- Building works had been completed so prejudice to developer and lack of any real planning harm to claimant led Court to refuse relief

# R (Gerber) v. Wiltshire Council [2016] EWCA Civ 84

- SCI:
  - main text: “The Council will endeavour to notify occupiers of premises which adjoin the application site by letter”
  - Appendix 1: “if the Council receives a planning application that it feels may affect neighbouring properties then it will notify persons affected by writing to them directly”
- Interpreted to mean that relevant policy was in main text and “it cannot be said that it is possible to read that in conjunction with Appendix 1 in order to spell out a clear and unambiguous promise that any affected neighbour would be consulted”
- Claimant did not adjoin the site so no legitimate expectation arose

## R (Kelly) v. Hounslow LBC [2010] EWHC 1256 (Admin) (1)

- SCI: Council “will allow objectors to be heard at planning meetings...any person who has commented on an application will be invited by letter to attend the committee meeting”
- Delays in posting out, sent second class
- Arrived with objecting claimant on day of committee meeting

## R (Kelly) v. Hounslow LBC [2010] EWHC 1256 (Admin) (2)

- Held:
  - Defendant had to post “at a time and in a manner which means that it will arrive in time to enable the objector to organize himself and avail of the opportunity to speak”
  - Arrival of letter on day of meeting was consistent with general promised performance of post office
  - Prejudice due to absence of opportunity to present case orally, not necessarily that there may have been a new point to make

## R (Joicey) v. Northumberland CC [2014] EWHC 3657 (Admin)(1)

- SCI: “once a valid planning application has been received we will...publish details of the application with supporting documentation on the council website”
- Alleged failure to make noise assessment available on website, in breach of SCI (and in breach of requirement to provide background papers for report to committee meeting, contrary to s. 100D of LGA 1972)
- Assessment uploaded onto website day before committee meeting (but backdated)

# R (Joicey) v. Northumberland CC [2014] EWHC 3657 (Admin)(2)

- Held:
  - Right to know provisions relevant to SCI require timely publication to enable public to absorb information and make intelligent representations.
  - “Timely”: will turn on factors including its “character (easily digested/technical), the audience (sophisticated/ordinary members of the public) and its bearing on the decision (tangential/central)”
  - Publication not timely; and although claimant had opportunity to see report for a day before meeting and make “main points” by way of critique
  - Could not be said that result would inevitably have been the same (Simplex Holdings [1988] 3 PLR 25)



## Kendall v. Rochford DC [2014] EWHC 3866 (Admin) (1)

- Challenge to conclusion of Inspector examining Allocations Plan that LPA had complied with SCI
- SCI objectives: “to engage effectively with all sections of the community”; and “use appropriate engagement techniques targeted at the area of concern”
- General allegation of “huge numbers” of objectors unaware of proposed allocations in part of LPA area

## Kendall v. Rochford DC [2014] EWHC 3866 (Admin) (2)

- Held:
  - Question for I is “simply whether the authority has complied with the SCI as it is, not as it might have been”
  - Any allegation that judgment in reply to this question is irrational faces “daunting and difficult task”
  - SCI framed “in deliberately broad terms” and “does not prescribe a uniform approach to plan-making process”
  - No basis to question judgment of I that SCI complied with

# Holborn Studios v. Hackney LBC [2017] EWHC 2823 (Admin)

- SCI: “Changes [to planning applications] may be made to resolve objections. In these cases there is no legal requirement to re-consult stakeholders, although the Council may re-advertise and re-consult for a 14-day period”
- Claim challenging grant of permission following amendments to application
- No reliance placed on SCI to justify decision not to re-consult, but Court noted that officers would have misdirected themselves if they had relied on it, given wider legal principle that fairness may require re-consultation
- Held on facts that amendments did require re-consultation as matter of procedural fairness

# R (Rainbird) v. Tower Hamlets LBC [2018] EWHC 657 (Admin)

- SCI: “application details can be viewed at a specific address.. and are also available via our website”
- Held that:
  - although that statement created a legitimate expectation that “application details” could be viewed on website, what that term encompassed was open to argument
  - where SCI so indicates, “desirable” for it “to make clear if there are some that will not be available...so that those interested may not be misled into a belief that they may have inspected all such documents... when in fact they have not”
  - on the facts that claimant had not demonstrated a sunlight and daylight report was not listed on the Council's website in the relevant consultation period

# R (CK Properties) v. Epping Forest DC [2018] EWHC 1649 (Admin)

- Challenge to decision of Council to approve submission draft of a Local Plan
- SCI required supporting studies to be made available on Council website “when they are finalised”
- Site Selection Report published during consultation but without Appendix B (assessment of individual residential sites) - “being finalised”
- No failure to comply with SCI at time of decision
- Reasons for not selecting claimant’s site adequately explained in main text of SSR

## R (Matthews) v. York CC [2018] EWHC 2102 (Admin)(1)

- SCI:
  - “if you have commented on an application the Council will advise you about the time and place of the meeting”
  - “The Council will consult all respondents again...if amendments [to a planning application] are significant or would directly affect a neighbour”
- Challenge:
  - failure to notify claimant of committee meeting
  - failure to consult on amendments (dropped kerbs and tactile paving facing claimant’s living room window)

# R (Matthews) v. York CC [2018] EWHC 2102 (Admin)(2)

- In relation to first complaint (committee meeting):
  - claimant accepted to have legitimate expectation of being notified about date of committee meeting
  - dispute was whether he was “advised” about it
  - Council produced screenshot from computer system showing emails sent to objectors
  - copies of emails not kept due to impact on data storage capacity
  - claimant argued that did not receive email; and screenshots insufficient evidence to show email actually sent

# R (Matthews) v. York CC [2018] EWHC 2102 (Admin)(3)

- Held:
  - email sent: there was evidence that emails to others had been sent and received
  - in the absence of any challenge to use of email for notification, Council obligation was discharged by sending of email, even if not received
  - no prejudice anyway, because claimant had made written representations to committee meeting determining resubmitted (amended) planning application which encompassed points he would have made on earlier application; and they had made no difference to determination



# R (Matthews) v. York CC [2018] EWHC 2102 (Admin)(4)

- In relation to second issue (amendments)
  - claimant argued that decision not to re-consult should have been reported to committee and was irrational
  - held that the decision on whether an amendment fell within the scope of the SCI was a matter of planning judgment for the officer considering whether any amendments were significant or would directly affect a neighbour

## Conclusions (1)

- Checking statutory requirements in GDMO is not necessarily sufficient
- If drafting a new SCI, think about extent to which wish to make clear, unequivocal procedural promises
- Check for such promises in any existing SCI and comply

## Conclusions (2)

- Prudent to comply anyway where room for debate on whether promises meet those tests
- Give sufficient time and opportunity for public to act in response to promise
- Remember that there may be wider legal principles in play outside SCI