

TOWN AND COUNTRY PLANNING ACT 1990

IN THE MATTER OF

**WINGERWORTH NEIGHBOURHOOD
DEVELOPMENT PLAN**

NORTH EAST DERBYSHIRE

OPINION

No5
CHAMBERS

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Introduction

1. In this matter I am instructed by RPS on behalf of Rippon Homes (hereinafter “the Client”), in respect of the Wingerworth Neighbourhood Development Plan (hereinafter the “WNDP”). The Client has successfully developed land in the WNDP area for housing in recent years. As is very well known locally, the Client also owns additional land adjacent to the housing scheme which it has long promoted for housing.
2. The local planning authority for the area is North East Derbyshire District Council (hereinafter “the Council”).
3. The Parish Council has promoted a neighbourhood development plan. It makes no allocation for new housing. This despite the fact there is a pressing need for a new Local Plan and housing allocations contained therein. The WNDP also seeks to restrict all new housing development beyond the settlement boundary.
4. The key issue for the Client at this stage is the fact the Parish Council completely failed to consult it about the WNDP during the Regulation 14 stage. The Client only became aware of the WNDP during the final stages of the Regulation 16 stage.
5. The LPA perform a supervisory role over the WNDP and so the failure to consult will be a problem which is ultimately levelled at the LPA when a Judicial Review is issued in respect of the making of the WNDP. Such a Judicial Review should be issued against any decision of the LPA to allow the WNDP to proceed to referendum.

Opinion Sought

6. My opinion is sought about the fact the Parish Council and LPA failed to consult the Client at the Regulation 14 stage, such that Rippon were

unaware of the WNDP andnd that it was only through investigation that the Client became aware of the WNDP shortly before the end of consultation at the Regulation 16 stage.

THE LAW

PRE-SUBMISSION CONSULTATION

7. Regulation 14 of the Neighbourhood Planning (Regulations) 2017 provides:

14. Pre-submission consultation and publicity

Before submitting a plan proposal to the local planning authority, a qualifying body must—

(a) publicise, in a manner that is likely to bring it to the attention of people who live, work or carry on business in the neighbourhood area—

(i) details of the proposals for a neighbourhood development plan;

(ii) details of where and when the proposals for a neighbourhood development plan may be inspected;

(iii) details of how to make representations; and

(iv) the date by which those representations must be received, being not less than 6 weeks from the date on which the draft proposal is first publicised;

(b) consult any consultation body referred to in [paragraph 1 of Schedule 1](#) whose interests the qualifying body considers may be affected by the proposals for a neighbourhood development plan; and

(c) send a copy of the proposals for a neighbourhood development plan to the local planning authority.

8. **Regulation 15 provides that the Consultation Statement** must include:

(2) In this regulation “*consultation statement*” means a document which—

(a) contains details of the persons and bodies who were consulted about the proposed neighbourhood development plan;

(b) explains how they were consulted;

(c) summarises the main issues and concerns raised by the persons consulted; and

(d) describes how these issues and concerns have been considered and, where relevant, addressed in the proposed neighbourhood development plan

9. This is all that exists for the purposes of paragraph 4 of Schedule 4B, which is the “parent” provision:

(1) Regulations may make provision as to requirements that must be complied with before proposals for a neighbourhood development order may be submitted to a local planning authority or fall to be considered by a local planning authority.

(2) The regulations may in particular make provision—

(a) as to the giving of notice and publicity,

(b) as to the information and documents that are to be made available to the public,

(c) as to the making of reasonable charges for anything provided as a result of the regulations,

(d) as to consultation with and participation by the public,

(e) as to the making and consideration of representations (including the time by which they must be made),

(f) requiring prescribed steps to be taken before a proposal of a prescribed description falls to be considered by a local planning authority, and

(g) conferring powers or imposing duties on local planning authorities, the Secretary of State or other public authorities.

(3) The power to make regulations under this paragraph must be exercised to secure that—

(a) prescribed requirements as to consultation with and participation by the public must be complied with before a proposal for a neighbourhood development order may be submitted to a local planning authority, and

(b) a statement containing the following information in relation to that consultation and participation must accompany the proposal submitted to the authority—

- (i) details of those consulted,
- (ii) a summary of the main issues raised, and
- (iii) any other information of a prescribed description.

10. There are various provisions of the PPG which provide guidance on those provisions: please see paragraphs 047, 048 and 050.

What is the role of the wider community in neighbourhood planning?

A qualifying body should be inclusive and open in the preparation of its neighbourhood plan or Order and ensure that **the wider community:**

- is kept fully informed of what is being proposed
- is able to make their views known throughout the process
- has opportunities to be actively involved in shaping the emerging neighbourhood plan or Order
- is made aware of how their views have informed the draft neighbourhood plan or Order.

11. Paragraph: 047 Reference ID: 41-047-20140306 reads

Should other public bodies, landowners and the development industry be involved in preparing a draft neighbourhood plan or Order?

A qualifying body must consult any of the consultation bodies whose interest it considers may be affected by the draft neighbourhood plan or Order proposal. The consultation bodies are set out in Schedule 1 to the Neighbourhood Planning (General) Regulations 2012 (as amended). Other public bodies, landowners and the development industry should be involved in preparing a draft neighbourhood plan or Order. By doing this qualifying bodies will be better placed to produce plans that provide for sustainable development which benefits the local community whilst avoiding placing unrealistic pressures on the cost and deliverability of that development.

12. Paragraph: 048 Reference ID: 41-048-20140306 reads

What are the pre-submission publicity and consultation requirements for neighbourhood planning?

A qualifying body must publicise the draft neighbourhood plan or Order for at least 6 weeks and consult any of the consultation bodies whose interests it considers may be affected by the draft plan or order proposal (see regulation 14 and regulation 21 of the Neighbourhood Planning (General) Regulations 2012) (as amended). The consultation bodies are set out in Schedule 1 to the Regulations.

OPINION

13. From these provisions, it is clear that the Client would constitute “**people who...carry out business in the area**”. The WNDP was not brought to the Client’s attention and it plainly should have been.
14. In my opinion, there has been a direct breach of Regulation 14.
15. The fact the Client offered representations at the Regulation 16 stage does not save the WNDP from this defect. The Regulation 14 stage is a very important one in the proper formulation and evolution of the plan. Proper consultation with Rippon at that stage, as a well-established house builder operating in the Parish, should have taken place and would have been an important step.
16. There is in my opinion a clear breach of Regulation 14. A Judicial Review to the adoption of the WNDP should be brought in due course.
17. This opinion should be disclosed to the LPA so that it may consider the position before allowing the WNDP to proceed further.
18. I trust I have dealt with all the matters concerning my instructing consultant, but needless to say if there are any other matters arising please do not hesitate to contact me, upon the telephone if necessary.

29 December 2017

CHRISTOPHER YOUNG

No5 Chambers, Birmingham - Bristol - East Midlands - London



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