

**STATEMENT ON THE INEFFECTIVENESS OF THE
SHROPSHIRE COUNCIL ‘STATEMENT OF COMMUNITY
INVOLVEMENT FOR SHROPSHIRE’
Adopted Version – February 2011**

INTRODUCTION

1. Preparation of the Core Strategy is laid out in Planning Policy Statement 12 (PPS12) which states:

“ Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public.”

2. PPS12 sets out five guiding principles for community engagement which should be followed when a council produces a Statement of Community Involvement (SCI). One of these is that it should be: **“ transparent and accessible – using methods appropriate to the communities concerned.”**

3. Because of the methods used by Shropshire Council to advertise and consult on the Core Strategy (and subsequent SAMDev), there has been a **‘breach of legitimate expectation’** in that the local authority has distinctly promised to consult those affected or potentially affected by policy change, but failed to do so.

There is a relatively recent case law on the reach of this procedural expectation:

EWCA Civ 1029 (2009) R (Majed) v London Borough of Camden

The court of appeal held that a local planning authority’s Statement of Community Involvement gave rise to a legitimate expectation that the consultation process set out in that SCI would be carried out.

4. The place of legitimate expectations in public law was broadly summarised in the judgement of Laws LJ in:

EWCA Civ 755 (2008) R (Bhatt Murphy) v Independent Assessor

As follows:

“The power of public authorities to change policy is constrained by the legal duty to be fair (and other constraints which the law imposes). A change of policy which would otherwise be legally unexceptionable may be held unfair by reason of prior action, or inaction, by the authority”.

5. This statement will demonstrate how Shropshire Council have adopted what can only be described as an ineffective Statement of Community Involvement which has been hurriedly introduced without proper consultation

and because of its importance, within the examination process of development plans, makes those potentially unsound as well.

OBJECTIVE ANALYSIS OF SHROPSHIRE COUNCIL'S STATEMENT OF COMMUNITY INVOLVEMENT

Legal compliance

6. The Shropshire Core Strategy was adopted February 2010 after an independent examination during which the Examining Inspector should have checked that the plan complied with current legislation and was sound.

7. The latest edition of PPS12 states: "*The starting point for the examination is the assumption that the local authority has submitted **what it considers to be a sound plan.***"

8. The 2004 version of PPS12 couched it in more neutral terms: "*A policy was presumed to be sound unless evidence was produced demonstrating the contrary.*"

9. The onus is now upon the Inspector to apply a more rigorous approach to the examination process, but as the local authority has to submit a 'Declaration of Compliance with the requirements of the Planning Act 2008', there is a temptation for the Examining Inspector to accept, that supporting documentation to the DPD, for example the SCI, is compliant and sound in itself.

10. The SCI is no longer a legal requirement (but will be helpful to the Inspector) for the examination, however the Council needs to show:

- . *Who was invited to make representations*
- . *How they were invited*

In order to demonstrate this, it is necessary to refer to the SCI, and this is part of the legal compliance (Sect 20, *Legal Compliance, The Planning Inspectorate August 2009 (2nd Edition)*), were one of the key questions is:

"Is the DPD in compliance with the Statement of Community Involvement and has the LPA carried out consultation consistent with the SCI?"

11. PPS12 states at paragraph 5.52, that to be sound a core strategy should be:

- . Justified
- . Effective
- . Consistent with national policy

Paragraph 5.2 goes further and says that this also applies to other DPD's.

12. PPS12 provides that to be 'justified' a DPD needs to be founded on a robust and credible evidence base involving:

- . evidence of participation of the local community and others having a stake in the area.

One of the key questions that should be considered by the Inspector is:

“Has the consultation process allowed for effective engagement of all interested parties?”

13. The above requirements illustrate the importance of the Statement of Community Involvement within the development plan framework, if the SCI is not sound, then it follows that neither can any of the DPD's, because there has not been effective engagement of all parties.

Consultation on the SCI

14. A consultation on the draft version of the Shropshire SCI was carried out between 16th August and 8th November 2010, and included all Parish and Town Councils (circa 150) as well as other statutory consultees and local interest groups.

15. Responses were received from just 14 Parish Councils and 15 'others', a total of only 29 consultees responding. It was on this basis that the foundation of the Shropshire Local Development Plan, the Statement of Community Involvement was adopted. However, in the adopted version of the SCI (Feb 2011) at Para 6.5 it states:

“It is anticipated that revisions to the SCI could be made in response to the following issues..... responding to low turnouts at consultation events, or low response rates to consultations.”

It is difficult to understand how a Statement of Community Involvement, with such a low response of 29 consultees, which in itself is enough to trigger a revision, can be the basis for all other consultations!

Methods of Informing Communities – Table 4.2 of SCI

16. The SCI identifies seven methods of informing Communities:

- . Through Parish & Town Councils
- . Via Elected Members
- . Accessing the Shropshire Council Website
- . Social Media & Interactive Consultation (Twitter, Facebook, etc)
- . Direct Mail
- . Local Media and Council Publications
- . Regular LDF E-mail Updates

It is worth exploring each of these in turn to demonstrate how ineffective they have been:

17. PARISH AND TOWN COUNCILS

The SCI states (table 4.2) : “ *it is envisaged that Parish and Town Councils will play a central role in informing local communities about current consultations....*”

Shrewsbury Town Council (STC) were asked, what role they played as described above. They said:

“Generally we do not consult on other organisations’ consultations and we rely on our elected members’ understanding of their wards and the issues that affect their electors and residents.”

They would not consult with or inform individuals, and attendance at Shrewsbury Town Council meetings are in the single figures if anyone turns up, and recently erected ward noticeboards seldom have accurate up to date information on them of council meetings, let alone consultation information.

STC were recently challenged on their poor ‘Communications Strategy’, and it took the threat of a Parish Poll to get it revised. This revision was done in isolation by an STC working group of councillors, without any participation from the public. The revised communications strategy satisfies minimum requirements for a parish council, but is not effective.

18. ELECTED MEMBERS

The SCI states (table 4.2): “ *Councillors have a key role in both agreeing the scope and form of Planning Policy documents and consultations exercises providing a vital link between the Council and communities acting as local ‘ambassadors’.* “

Local Councillor, Mansell Williams, was asked what engagement he might have had with the consultations on the AHC and CIL (2 Shropshire Council Policies at the heart of the LDF), and if he had been involved in any consultation/link with the Belle Vue community in regard to them. He said:

“I have not organised formal meetings with residents or brought the subjects up in our Community Newsletters... “

19. SHROPSHIRE COUNCIL WEBSITE

The Council is heavily reliant on this method, as they say, “ ... *it is proven to be cost effective and efficient way to distribute information on planning policy..*”

This method was criticised in the SCI consultation by respondents:

- . Generally regarded as disenfranchising
- . Not very useful to the elderly population
- . Many find internet access difficult/impossible
- . Should not use costs to disenfranchise people

20. West Felton Parish Council went as far as to say, “ ... ***the SCI does not promote consultation, instead it pays lip service whilst seeking to impose its own agenda.***”

Shropshire Council responded to criticism by acknowledging that electronic communication does rely upon having access to a computer, but it is considered more effective and efficient.

However, you cannot communicate effectively this way, if you do not make the public aware that electronic communication is your preferred method, and directly invite them all to register their contact details.

21. The only way to have effective electronic communication is for the Council to spend money at the outset informing the public it is available, how they can access it, and give them the opportunity to register their contact details for inclusion on various consultation databases. This could be done via the Council Tax notification letters.

Very few people wake up each day and decide to have a look at the Council website, but most will read an email sent to them.

22. SOCIAL MEDIA AND INTERACTIVE CONSULTATION

Similar problems to internet communication in that you need to let people know that they can register for it, although it could be useful for council officers and members, and perhaps those persons or organisations on the LDF database. Results in further widening of the ‘digital divide’.

23. DIRECT MAIL

The SCI refers to consistently using direct mail to inform the individuals and organisations on the LDF consultee database about consultations. It may come as a surprise to Shropshire Council, but the public community generally do not know about the LDF database or the existence of the SCI.

Of course if you were aware of the existence of the SCI, which few are, and read paragraph 4.10, it would tell you how you can be added to the LDF consultee database using the contact details at the front of the document. Unfortunately there are no contact details at the front of the document!

24. LOCAL MEDIA AND PUBLICATIONS

The SCI at table 4.2 states: *“Press releases by the Council’s communication team have normally formed the basis for informing local newspapers and radio about consultation documents...”*

The Council refers to this as the ‘free press’ approach and claim: *“it has proven both an effective and efficient way to express information easily to a large number of people. However, it is recognised that some forms of local media do not always pick up press releases.... An alternative... is to use paid advertisements, which while ensuring articles are covered, does come at a price to the council and taxpayer. This method has traditionally been resisted because of concerns over cost and effectiveness. Given the ongoing need to provide effective and efficient services to the public it is proposed to continue to use the ‘free press’ approach.”*

The use of the ‘free press’, in this context, is explored in detail at paragraphs 32(iii) to 37 below.

EXAMPLE OF SHROPSHIRE COUNCIL’S RESPONSE TO CRITICISM OF THE CONSULTATION ON THE COMMUNITY INFRASTRUCTURE LEVY (CIL):

25. After finding out about the imminent introduction of the CIL, I was told that the full Council would be making a final decision on the 24th November 2011 about adopting the charging schedule. I wrote to the Council expressing my concerns about the lack of transparent consultation and asked that the committee be made aware of my concerns.

26. It was clear that something was wrong if the council could get to this stage of adoption with a policy that would have severe financial repercussions to many people, and those people know nothing about it.

27. In my letter, dated 10th November 2011, I pointed out that the Council had ignored government guidance given in, ***‘The Governments Code of Practice on Consultations’*** which states:

- . Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- . Officials running consultations should seek guidance in how to run effective consultation exercise.
- . When planning a consultation, it is important to take steps to raise awareness of the exercise among those who are likely to be interested.
- . It is essential that interested parties are identified early in the process.

- . Over reliance on standard lists of consultees to disseminate consultation papers can mean that key groups are excluded.
- . It is vital to be proactive in disseminating consultation documents. Events can be held to help promote consultation exercises.

28. That letter also referred the Council to guidance from The Royal Town Planning Institute, as laid out in their, '**Guidelines on Effective Community Involvement & Consultation**', which recommends:

- . Working from an authority wide database of groups and organisations
Avoid the temptation to compile yet another list of target organisations
- . Identify and leverage existing authority relationships whenever possible.
- . The onus is on consultants to ensure that visibility is achieved and that communications with stakeholders are such to create a high level of awareness.

These are all legitimate, accurate, truthful, well referenced statements.

29. Conversely, notes were prepared, by officers, for Councillor Price (Portfolio Holder for Planning) to use at the full council meeting on 24th November 2011. I could not attend that meeting, but was sent a copy of the briefing notes. These notes were very misleading because:

It was stated that the charging schedule has been ratified by a Planning Inspector and would not have been if it did not meet the requirements of the CIL regulations 2010.

This is misleading because the Inspector did not question or investigate the depth of the consultation, because the focus of the examination was just the levy rates, but relied upon the declaration made by the Council, dated 12th May 2011, that they 'had complied with the requirements of the Planning Act 2008'.

The Local Development Frameworks Examining Development Plan Documents: Procedure Guidance – Overview, Para 8 states:

“The Inspector assesses the whole document for legal compliance and soundness – this means dealing with the main issues which go to the heart of the DPD, and not getting involved unnecessarily with the details of the plan.”

The Inspector would have accepted the Councils declaration of compliance and not looked in detail at whether the Statement of Community Involvement was 'sound'. The above guidance also says, "***the absence of representations on a matter is not a guarantee of soundness.***"

30. Councillor Price's notes then state that "the Codes of Practice I referred to are not legislative requirements for CIL consultation." However they are guiding principles and ensure best practice is achieved. To ignore them is arrogance, and leads to poor policy making, as in this case.

31. The legislation that does cover the requirements for CIL consultation, '*The Community Infrastructure Regulations 2010, Sect 15 sub para (5)*', states:

***"The charging authority must also invite representations on the preliminary draft from –
(a) persons who are resident or carrying on business in its area"***

Shropshire Council failed to do this.

32. The notes say that it is not possible to consult everyone and have worked closely with the following:

- . The development Industry
- . Briefed Local Members and Parish & Town Councils
- . Considerable coverage in the local press through the Shropshire Star

(i) I am sure that the development industry has been well consulted, they have been given the opportunity to obtain planning permission on their 'land bank' before the levy has been introduced. Any further land purchase for development will have the levy paid by the land owner, not the developer. The people who are really affected are those who have already purchased land at market value without allowing for the levy liability because they were not consulted, like myself. This was not even considered within the consultation.

(ii) Whilst local members and councils have been briefed, they have failed to pass this information on in my locality. This has already been explored in Para 17 and 18 above.

(iii) Coverage in the local press

Councillor Price's notes refer to 7 press releases placed on the Council website available for the local press to extract at their pleasure during 2011. I requested copies of these, but was only sent 5, these were headlined:

- . 17th March 2011- Levy set to raise millions for investment in local infrastructure.
- . 11th July 2011- Future development money to be invested in local communities.
- . 16th September 2011- President of the RTPI visits Shropshire Council Planners.

. 21st September 2011- Shropshire Infrastructure Levy gets go-ahead from independent examiner.

. 13th October 2011- Community Infrastructure Levy gets go-ahead from independent examiner.

33. The notes claimed that the Shropshire Star also carried related articles on, 7th June, 12th July, 14th July and 30th August. I asked Shropshire Council for copies of these, but they refused to send them. I did however manage to get copies of two from the Shropshire Star, 7th June and 14th July 2011. Their editorial support said that they could not find articles in the other 2 papers!

. 7th June – Page 4, “Authority accused of unfair levy lure”, this was approximately 200 words about a complaint from Newark & Sherwood Council about Shropshire’s levy rates.

. 14th July – Page 23, “Residents to decide on developers’ levy” This stated that the CIL had been given the go-ahead. This was 4 months before it was approved at cabinet 24th November 2011.

34. The notes also said articles were in the Shrewsbury Chronicle on, 28th April and 19th May 2011. The Council refused to send copies, but I managed to obtain both:

. 28th April – “Retailers set to escape charges”. This was around 300 words about retailers being exempt from CIL. To a casual reader, or person wishing to obtain planning on their land, it would not have registered. That article also gave the effective date as October when that is a registration date. The effective date was 1st January 2012.

. 19th May – “Council says new school possible”. Again, about 300 words, but the focus of this article is school places. Buried in the text is the term ‘Community Infrastructure Levy’ in relation to it being used to part fund a new school.

35. This is the ‘free press’ approach, as described in para 30 above, and is totally reliant on the local press accessing the Shropshire Council website and extracting items of interest from the Council’s press releases. The Council cannot force the media to run a story, and when a story is picked up, the Council have no editorial control whatsoever. In any event, If you do not read the local papers, then you would not be aware of any of it.

36. A local authority cannot rely on the press for consultation, there is a case precedent:

EWCA Civ 239 R (Breckland DC) v Boundary Committee (2009)

It was held:

“... an authority cannot rely on the press and others to make such information more intelligible – We do not agree with the Judge (Lower Court, my emphasis) that mediation by opinion makers is a proper supplement which was capable of turning inadequate consultation Into adequate consultation”

37. It has already been mentioned in para 24 above, that the Council have resisted their own paid advertising in the press because of cost and effectiveness. The public are denied targeted, paid advertising, due to **“concerns over cost and effectiveness”**, yet free press with no control over content, is considered effective!

38. I asked the Corporate Head of Strategic Planning – Shropshire Council, how does Shropshire Council communicate on Planning Policy consultations with those who neither access the council website or read local newspapers? His reply was:

“Through communication directly to (a) Shropshire Councillors, (b) Shropshire Parish and Town Councils, (c) Press releases which can be picked up by local radio and (d) the Local Consultation Database which is referred to in the Statement of Community Involvement report.”

39. Paragraphs 17 and 18 above have already illustrated, in their own words, that my Shropshire Councillor or Town Council do not, and have not communicated directly. To be on the Local Consultation Database you have to be aware of its existence or/and the existence of the Statement of Community Involvement. I was not aware of either until very recently. I do occasionally listen to Radio Shropshire, but I would be very lucky to be listening on a day when they have decided to feature on a story taken from the Council website about a particular planning policy.

SUMMARY

40. The Shropshire Statement of Community Involvement is a statutory document and is an important statement of how the Council, as planning authority, informs, consults and engages with the community on Planning Policy. Whether, or not, the public is aware of this document, it is important that the local authority conducts its business in accordance with the document.

41. However, if that document is to be used as the ‘charter’ for all subsequent consultation methods, it is vitally important that that document accurately reflects the most effective methods of reaching out to the public, and not by methods which are driven purely by cost.

42. It is my belief that Shropshire Council paid ‘lip service’ to this statutory requirement. This is evidenced by their acceptance of just 29 consultees responding to the consultation, and ignoring the strong message from many, that, the use of web based communications is disenfranchising.

43. Any organisation serious or dependent upon '2 way' communication would not adopt such a document, and would not willingly use the 'free press' approach to communicate when they have already established that advertising in the press is not effective (SCI Table 4.2 Local Media and Council Publications).

44. Because of the ineffectiveness of this document, there has been a '***breach of legitimate expectation***', and this is further compounded by Shropshire Council's refusal to accept the evidence before them.

CONCLUSION

45. Once again I will refer to the comments made in the judgement of Laws LJ in: *EWCA Civ 755 (2008) R (Bhatt Murphy) v Independent Assessor* where the place of legitimate expectation in public law was broadly summarised:

"The power of public authorities to change policy is constrained by the legal duty to be fair (and other constraints which the law imposes). A change of policy which would otherwise be legally unexceptionable may be held unfair by reason of prior action, or inaction, by the authority".

46. The failure of Shropshire Council to adopt an effective Statement of Community Involvement brings in to question the 'soundness' of all subsequent policies and plans.

47. Any submissions by Shropshire Council claiming that consultation has been widespread and effective need to be challenged because scrutiny will show that the responses to specific consultations are low. Turnout at consultation events are derisory, and attendance at council meetings by the public are at an all-time low, and this is despite the Localism Act coming in to law in November 2011.