The Chelsea Society

Registered Charity 276264

Founded in 1927 to preserve and improve the amenities of Chelsea for the public benefit.

RESPONSE TO CONSULTATION

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Draft RBKC "Statement of Community Involvement in Planning"

GENERAL POINTS

This document has been produced because the Council are required to do so by s. 18(1) of the Planning and Compulsory Purchase Act 2004. This should be stated.

It seeks to explain how the Council will involve local people in planning decisions, but people cannot participate effectively in the planning system unless they have a basic understanding of what town planning is. The draft document assumes that they have that understanding and goes straight into detail, but we consider that the first chapter, or a separate document on the website linked to it, should be a simple explanation of what town planning is, and should contain at least the following information:

Some people think that the Council has power to decide what buildings shall be built, where and when, and has power to require it to be done. In fact, the basic principle in British planning law is that people who own land and buildings are free to use them as they please, and may be restricted from doing so only if that restriction is necessary to give effect to a public interest of sufficient importance to justify that restriction of the owner's freedom. The powers given to local councils by national government are therefore very limited.

Local councils have to decide how they would like to see the land in their area developed, or not developed, and they have to state their policies in a substantial document called a Local Plan (which is not just a map), but they cannot actually require any development to be done unless they own the land themselves. They have to wait until owners come forward with a development proposal (called a Planning Application) and then decide whether it complies with the policies in the Local Plan.

The elected Councillors then have to consider the application and grant or refuse it. They usually delegate this responsibility to a Committee comprising five or six Councillors, and in the case of less controversial cases they delegate it to their paid officials. If the Council refuse a planning application, the applicant can appeal to an Inspector appointed by national government, but if they grant the application there is no right of appeal for local people. Representative organisations can however apply to participate in planning appeals as a "Rule 6 Party," which The Chelsea Society did at the Sutton Estate appeal. (It is essential that the Council is not seen by developers to be deterred from refusing applications in appropriate cases by the costs of an appeal).

As RBKC is in Greater London people need to know in what circumstances a planning decision can be taken out of the hands of the Council by the Mayor of London, or by national government.

They also need to know that the Mayor sets targets for the minimum number of dwelling units in the Borough for which permission must be granted in each year, and they need to know by what criteria these targets are set. This has an important effect on planning decisions, for if the targets are not achieved, future refusals of planning permission for dwelling units will effectively be overruled. Chelsea is one of the most densely populated parts of the entire United Kingdom, and there is simply not enough space for the number of dwellings that the Mayor expects to be built. Local people need to know what efforts are being made by their Council, their GLA member, and their MP to get these targets reduced.

Local people also need to know how many of these dwellings will be affordable, and what is the difference between “affordable” and “social” housing.

An additional problem is that many of the dwelling units built in Chelsea will be bought by people who do not live in Chelsea and will keep them empty for most of the year.

Even when writing their Local Plan, the Council are not free to adopt any policy they please. They have to have regard to statutory provisions and case law, and to national and regional guidance, and they have to consult local people. Finally they have to submit their draft Plan to a Public Inquiry conducted by an Inspector appointed by national government. The Council should explain the three layers of planning policy documents – National Planning Policy Framework, London Plan, and Local Plan, and explain “Local Development Schemes” and “Planning Performance Agreements.”

If local people are expected to participate effectively in the planning process they also need to know what constitutes a material planning consideration and what does not, and they need to know what powers the Council does NOT have. They need to know, for example that the Council cannot refuse an application just because one or more applications have already been granted in the same street, and they cannot require permitted work to be done at any particular time. The Council may require the work to be commenced within a particular time limit, but that can be easily circumvented by digging out a bucketful of earth and claiming that the work has commenced. Thereafter there is no time limit and the work may progress intermittently for many years, often disfiguring the street by hoardings and scaffolding. These, and other, deficiencies in planning law need to be addressed with national government, and local people need to know what (if anything) the Council is doing about it.

Local people also need to know what Construction Management Plans and Construction-Traffic Management Plans are, and to what extent a development may be restricted or refused if in the particular location it is impracticable to carry out the work without subjecting local people to an unacceptable diminution in the quality of their lives.

They also need to know what Planning Performance Agreements are, and in what circumstances the Council can be expected to write a Special Planning Document. What are “planning conditions” and what is a “discharge of condition?”

We think that “Planning and Place” is a silly name for the Council’s planning dept. Some changes are necessary at RBKC but this is not one of them.

THE DRAFT STATEMENT

This document was preceded by a 2013 document entitled “Involving People in Planning” but it is not explained in what respects the present document is different. Also, the responses to the March-April 2019 consultation have not been included.

One general point about the present draft is that it is all about procedures and communications, and does not address any of the substantive issues which we and others have raised about the planning system.

Acronyms and jargon should be removed, as they mean nothing to ordinary people. Also, in the version of the final document intended to be viewed on a computer, all references to other documents (e.g. statutes, regulations, planning guidance, and the Council's own documents such as the Code of Construction Practice and the CIL charging schedule) should be clickable links, not footnotes. The link should take the reader to the relevant part of the document, not the document as a whole (e.g. to s. 106 of the Act, and to the evidence based formula for s.106 agreements set out within the Council's own Planning Obligations SPD).

COMMUNICATIONS

This is fine in theory, but we think the Council should spend less time talking about communicating and more time actually doing it.

We question whether the Council is as pro-active as they claim to be in seeking the views of Residents Associations or organisations like the Chelsea Society. We have for example had to ask for pre-app reports to be put on the website. Also, on 10th October we sent to RBKC our views on the proposed redevelopment of South Kensington Station, and have had no response.

One of our members is the convener of a Residents Network. He says, "I hardly ever receive any direct correspondence from the Council; and there have been several recent instances where we have only found out about an initiative because someone else has drawn it to our attention." Even The Chelsea Society is not always informed about an initiative affecting Chelsea.

The Planning Bulletin should be re-introduced and should be sent by e-mail to all subscribers to MyRBKC.

We agree that the Council should use e-mails, and social media, as electronic communication is much cheaper, quicker, and easier than paper-based communications. Particularly useful are the E-NOTIFY alerts to which people can subscribe via "MyRBKC." These give notice of planning applications and decisions, but should also include notice if a significant amendment has been made to an application.

However, not everyone is yet able to use electronic communication, and the opportunity must always be given for people to use the traditional methods of communication and to send photographs, plans, etc. Online forms may be convenient for Council officers but some people have difficulty using them, and they are often too restrictive. The Council should always send hard copies of documents when requested, on payment of an appropriate fee.

We are not in favour of snap polls and opinion surveys, but if the public are to be consulted in this way, it is important that the questions are properly formulated, that there is adequate information on which people can form a view, and that there is sufficient time for people to respond. The consultation must include all people likely to be affected, and not just the immediate neighbours.

We have had occasion to complain to the Council about a survey which did not ask about an important aspect of a proposal, and where general support was taken to include support for that particular aspect. If there was any support for that aspect it is strange that The Chelsea Society and the local Residents' Associations did not know about it. It is therefore important if these surveys are to have any credibility that the relevant local representative organisations are consulted on the design of the survey and the interpretation of its results. The Council and developers must be careful not to claim public support where it does not exist.

The Council says it will pilot new technologies, such as VuCity and Q Codes to help residents see what developments will look like. This could be very useful, and we would like to see a demonstration.

The Council wants developers to actively seek residents' and businesses' views (2.1 (7)). This is fine in theory, but a poorly attended public exhibition arranged by a developer is not very useful, and is no substitute for thorough consultation with the local representative organisations in the pre-application stage. There is always a danger that the developer will claim that attendees showed more support for the scheme than they actually did. There should be a Code of Practice for public consultation by developers.

Meetings held by the Council give the impression that the Council is listening, but all too often the Councillors and officers are doing most of the talking.

MITIGATING CONSTRUCTION (8.6)

Our members often tell us that living in Chelsea is like living on a building site. Building work is noisy. The noise is often very loud and can go on for months and even years, during which time it is almost impossible for local people to use their homes. It also creates dust which invades neighbouring homes, and it causes obstruction of the carriageways and footways, sometimes for long periods. We explain to members that the Council has only limited powers to refuse planning applications, but it does have power to mitigate the effect of building work. It is very important that the Council uses these powers promptly and effectively, and we are glad that the Council is making serious efforts to make enforcement more effective. The Society was pleased to participate in the Chelsea pilot scheme.

Often the worst offenders are small builders, whose workers may never have heard of the Council's codes of practice, and whose drivers have never heard of the Construction Traffic Management Plan.

There can also be a problem with some of the larger sites, and we have recently received the following comment from one of our members: "the protracted process of getting reasoned responses from the Council is getting worse not better (despite CREST) even when dealing with major strategic sites like Lots Road Power Station. For each major site there really should be a single dedicated Council officer charged with close ongoing scrutiny and able to pull together all the relevant planning conditions, construction traffic obligations and environmental monitoring requirements into a coherent system of effective control. We should continue to draw attention to blatant failings to abide by CTMP obligations caused by trucks serving the Power Station and Tideway sites."

COMMUNITY INFRASTRUCTURE LEVY and s.106 AGREEMENTS

The Amenity Societies and Residents Associations should be consulted in relation to each major development, on the purposes for which money is raised, and how it will be spent.

The Council must allocate at least 15% of all levy receipts to priorities that are agreed with the local community, but how is the local community defined for this purpose, and who is consulted?

ARTICLE 4 DIRECTIONS (5.52)

Local people need to know what Permitted Development Rights are, and that the Council can disapply those rights – especially in Conservation Areas. However, they also need to know that the Council cannot make an Article 4 direction lightly. Any direction must meet a legal test - and there are consequences if the Council gets it wrong.

Permitted Development rights can have undesirable consequences for attractive street settings in our Conservation Areas. For example, with the exception of listed buildings, an owner can without planning permission remove an attractive (even original or historic) window facing the street and replace it with a new ugly window provided only that the new window is made of similar materials – there is no requirement for similar style or design.

The Chelsea Society has asked RBKC to make an Article 4 Direction to remove these rights in all our Conservation Areas, making such developments subject to planning permission and enabling the Council to refuse applications which fail "to preserve or enhance the character or appearance of the Conservation Area."

After more than a year we have had no response.

Two examples:

1. A window in Brompton-Hans Ward. It is a standard condition of planning approvals in Conservation

Areas that any replacements of sliding sash windows fronting the street should be "like for like sliding sash windows" but the owner of one house put in an ugly non-sliding sash window. One of the former Ward Councillors said "I have just been to see the window; it is clearly inappropriate and will need to be replaced ASAP" and the Enforcement Officer agreed. However, the owner successfully claimed that the new window was within Permitted Development rights and that the Council had no control over its style. The ugly window remains. It is not just style over which the Council loses control, it's also colour.

2. Change of use. A house between two domestic residences was being used as an office. The owner made a planning application for change of use from B1 (offices) to A1 (hairdressing salon), and residents objected. However, the change of use was Permitted Development so the Council had no control.

PLANNING ADVICE – *The Council "will champion early engagement"* (6 & 2.1 (4))

The Chelsea Society made the following points at a meeting of the Council's Scrutiny Committee convened on 8th April 2019 to examine whether changes need to be made to the basis on which pre-application advice is given by Council officers to applicants for planning permission.

- "Input from local people or their representatives is necessary at the pre–app stage. The reason for this is that it is difficult for the planning officer to give properly informed advice without hearing from people with detailed local knowledge. If advice is given without that input, the applicant could be misled, and incorrect advice may be difficult to correct at a later stage of the application process. This is particularly important in Chelsea, as hardly any of the planning officers, architects, or commercial developers, live there.

- Transparency at the pre-app stage is essential, and the pre-app advice must be placed immediately on the RBKC website in an easily accessible place alongside the application documents. This should be done even if no planning application is made, because local people are entitled to know what developments are contemplated in their locality and what advice is being given by the Council in their name. Developers who have not yet bought the land may not wish the advice to be available to their competitors or the seller, but when weighing that interest against the right of local people to be properly informed, The Chelsea Society prefers transparency.

- Developers can get pre-app advice, on a non-profit basis, from the Council's officers. By contrast, advice is not available to local Amenity Societies and Residents' Associations on how they could resist the application, unless they can afford consultants' fees, which are not offered by private consultants on a non-profit basis. This imbalance needs to be rectified either by the Council providing this advice to registered local organisations, or by funding an RBKC branch of Planning Aid for London. See http://www.planningaidforlondon.org.uk/?idno=3

  At 6.4 the Council says "*We will be developing a new planning advice service in early 2020 and as part of this, we will be preparing a procedure note which will set out the details of the new service."* We look forward to being consulted about this.

- Officers who have given pre-application advice should not make subsequent or related decisions under delegated powers, nor advise the Planning Applications Committee. The reason for this is that officers giving pre-application advice, will have formed a relationship, perhaps over months or even years, with applicants and their advisers. It is better that delegated decisions are made, and advice to committee is given, by an officer who has not been so involved. This would not mean doubling the workload, but simply dividing the time spent on the application between two different officers.

More use should be made of Design Briefs to assist applicants and local people.

MAKING DECISIONS

The Planning Applications Committee must listen to the advice of the planning officers before they make their decision, but when officers write reports for the Committee and speak in Committee, they also make a recommendation as to what decision the Committee should make. Councillors are often reluctant to act against that recommendation, and if they do, it can be used against them on appeal. This needs to change so that officers do not make recommendations, but simply sum up the facts and arguments on both sides.

The fact that an application has been referred to Committee does not imply that the officers are for or against it. It will be automatically referred if there more than three objections or if a Councillor has requested that it be referred.

It should be explained in what circumstances local people are allowed to address the Committee and how and when they should apply to do this. Time allocated for verbal comment by objectors is understandably controlled, however the procedure that permits the applicant to make closing remarks after discussion can be abused. Where an applicant seeks to introduce new material in favour of his application it is vital that officers make clear that this should not be considered by the Committee unless the objectors are given the opportunity to respond.

Further, when post-consent adjustments to a scheme are requested in the case of a disputed consent, such adjustments should be referred back to objectors for consultation and not simply be consented by officers under delegated powers.

We are concerned that objections from The Chelsea Society are being put on the Council's website with the name of the objector removed. This is the policy for individuals, not for Amenity Societies.

MICHAEL STEPHEN

Planning Committee Chairman
The Chelsea Society
10th November 2019