RE: EMERGING TELFRD AND WREKIN LOCAL PLAN ("TWLP")

A D V I C E

---

1. I am asked to advise, as a matter of urgency, whether the TWLP submission process is flawed as a result of the late publication of a significantly different SHMA.

Background

2. The issue can be simply stated. In February 2016 the proposed submission version of the TWLP was published for consultation together with the proposed submission documents pursuant to Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The consultation period closed on 15th March 2016.

3. One of the submission documents was the "Housing Vision" SHMA. However, on 11th March 2016 (ie two working days before closure of the consultation period) a new SHMA was published and the Housing Vision document was removed from the Council's website.

4. Messrs Acres Land and Planning Limited wrote to Mr Partington (CEO of the Council) on 15th March 2016 complaining about this change in the evidence base. (I do not propose to rehearse the differences between the two SHMA documents - it is sufficient to note that they are very significant.) The aforesaid letter was responded

to by Ms Kynaston, Assistant Director of Business, Development and Employment, on 28th March 2016. The response is brief and reads as follows:

> "Thank you for your letter of 15th March to Richard Partington. Richard has asked me to reply to the concerns you raise.
>
> The Council commissioned an updated SHMA to make sure it had the latest data to hand before the inspector examines our Local Plan. It would have been ideal to get this published at the start of the Regulation 19 exhibition. It was not possible on this occasion. Nonetheless, the Council takes the view that it is good housekeeping to present evidence as soon as it is ready to publish. We are finalising our evidence base on other matters and this will all be available to view online. We will notify all parties of the extent of the evidence base when we submit the Local Plan to PINS later this year ensuring everyone has ample opportunity to review as representations for the EIP are prepared. This has simply been noted by other respondees to the Reg 19 consultation.
>
> You will, of course, know that the Council must forward your representation and the letter you've sent to Richard Partington to the inspector. I also invite you to take account of our updated data if or when you determine whether to make a submission to the inspector at the forthcoming examination in public.
>
> If you have any further questions or concerns in the meantime please come back to me."

5. The above response is disappointing on multiple levels. Obviously the Council knew it had commissioned a new SHMA when it began the Regulation1 9 ibid process and it must have known that its receipt was imminent (the preparation of a SHMA is a significant undertaking). Why the Council nonetheless proceeded to launch a Regulation 19 process based in part upon a SHMA that it either knew or suspected would imminently be made redundant is not explained. I do suggest that the background to the commissioning of the new SHMA and the receipt of it by the Council is thoroughly investigated and resort is had to the FOIA regime if necessary. More importantly, however, the casual characterisation of the publication of the new SHMA as "good housekeeping" does not begin to engage with the procedural significance of what has gone on.

6. Regulation 19 ibid is a mandatory provision. "Submission Documents" for the purposes of Regulation 19 are defined in Regulation 18 ibid as:

"'proposed submission documents' means the following documents-

(a) the local plan which the local planning authority propose to submit to the Secretary of State,

(b) if the adoption of the local plan would result in changes to the adopted policies map, a submission policies map,

(c) the sustainability appraisal report of the local plan,

(d) a statement setting out –

(i) which bodies and persons were invited to make representations under regulation 18,

(ii) how those bodies and persons were invited to make such representations,

(iii) a summary of the main issues raised by those representations, and

(iv) how those main issues have been addressed in the local plan, and

(e) such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan."

A SHMA is a key submission document and pursuant to Regulation 19 ibid it must be consulted upon following the Regulation 35 ibid procedure. The consultation process then forms a key part of setting the context for the EIP and the issues to be investigated by the Examining Inspector.

7. In the instant case the SHMA that was consulted upon for all but two working days of the statutory consultation period was redundant before the consultation process was concluded. This, however, was the document that informed decisions as to whether or not to make representations and the content of some of the representations made. The substitute document has not been consulted upon for six weeks, but rather for two days. Many people who had sought to engage with the consultation process will not have been aware of the document and hence their views upon it are not known. If these errors had occurred in respect of a document of limited significance then the situation would not be so serious, but a SHMA is one of the key evidential foundations for an emerging Local Plan. The LPA have not sought to deny that a

procedural error has occurred, but rather sought to downplay its significance. Breach of a mandatory requirement is no light matter.

8. The time for challenging a Local Plan is governed by Section 113 of the Planning and Compulsory Purchase Act 2004, ie six weeks from adoption. There is no statutory mechanism for challenge to the process prior to that date. There may be circumstances in which a Judicial Review will be heard pre-adoption (see, for example, the emerging Durham Local Plan), but I doubt they arise here and even if they do the time it would take to secure a hearing would make an interim challenge impractical. The error is therefore clear and the proper remedy for challenge lies pursuant to Section 113 ibid. I cannot think that a Court, however, would thank my clients for bringing a Section 113 challenge without first giving the Council and/or PINS an opportunity to adequately mitigate the consequences of the error. That would involve acknowledging the error and undertaking a proper consultation upon the new SHMA in advance of the EIP commencing.

KINGS CHAMBERS
36 Young Street
MANCHESTER
M3 3FT
DX 718188 (MCH 3)

Leeds and Birmingham

D E MANLEY QC

17th October 2016

RE:

EMERGING TELFRD AND WREKIN LOCAL PLAN ("TWLP")

A D V I C E
