



Oliver Dove
Planning Policy and Regeneration
Manager
Erewash Borough Council

Our Ref:
Date:

PINS/3312282/01
14 December 2023

Dear Mr Dove,

Examination of the Erewash Core Strategy Review

Thank you for the information you supplied on Thursday 7 December 2023 which supplemented the response you provided on 9 November 2023 following my initial request for information about the consultation process on 19 October 2023.

Having reviewed the information that has been supplied, I am concerned that not all relevant interested parties were informed about the Regulation 19 consultation of the Core Strategy Review, in line with the Council's Statement of Community Involvement (SCI).

In your submissions on this matter, you explain that for the second round of Regulation 18 consultation (18.2) you moved from an 'opt out' to an 'opt in' approach requiring people to explicitly confirm that they would like to be kept informed about future rounds of consultation on the Core Strategy Review. You identify that this was to comply with GDPR requirements. You explain that consultation letters sent to those already on the consultation database made reference to the need to confirm continued interest in notification about the Strategy. You also identify that people completing the Council's response form were required to tick a box confirming continued interest. However, the approach adopted by the Council is not explained in the SCI and the Council has identified that 76% of respondents did not use the official response form. Those not already on the consultation database and not using the official response form may therefore not have known about the requirement to 'opt in' to information about future consultations. For this reason, I have concerns that a significant number of people were unaware of the publication version Plan and were denied the opportunity to submit representations in response to it.

In addition to this and irrespective of the Council's approach in response to GDPR requirements, Appendix 2 of the SCI lists consultation bodies, defining 'resident and other persons' as '*....persons carrying on business in Erewash from which the Council considers it appropriate to invite representations. This regulatory provision means the Council can invite anyone it considers would be interested in a document even if they form no part of its consultation database and isn't listed as a Specific or General Consultation Body*'

You have identified that the Council deems that anyone who confirmed their wish to be informed about future consultations to be those who have an interest in the Core Strategy Review. This is not explained in the SCI and would inevitably result in the potential

exclusion of all those who did not know about the need to 'opt in'. It can be reasonably assumed that anyone submitting comments at the Regulation 18.2 consultation can be deemed to have an interest in the Strategy and on this basis should have been informed about the Regulation 19 consultation.

In your submission you have identified *'it should be noted that both Regulation 18 consultations were comprehensive in nature and included details of proposed site allocations. No new site proposals were added at the Regulation 19 stage that weren't already included at 18.2'*. However, this does not overcome the issue above. It is only those who have made representations at Regulation 19 stage that can benefit from the 'right to be heard'. As such, those unaware of the Regulation 19 stage will have missed their opportunity in this regard.

In conclusion, you have identified that 761 people that made a representation at Regulation 18.2 were not informed about the Regulation 19 consultation. That is a significant number of people who may have been interested in the publication draft Plan but were unaware of the consultation on it. Several participants have already been in touch as part of the examination to raise this point following publication of the Hearings programme.

In the interests of procedural fairness, I have decided that all those that made a representation at Regulation 18.2 that were not already on the consultation database and did not use the official Council's response form and therefore may not have known about the need to 'opt in' should be given the opportunity to comment on the Regulation 19 document. The Council should make the necessary arrangements as soon as is practical, giving interested people 6 weeks to respond. I will then take any responses received from this group into account as part of the examination.

In terms of the implications for the examination, I have identified 2 possible ways forward in seeking to rectify this issue. They are:

1. That the Hearings take place as planned in January-February 2024 and additional sessions be added to the programme to enable those wishing to be heard to exercise that right, or
2. Postpone the Hearing sessions until after the consultation for the excluded group has concluded, enabling those who wish to be heard to take part in the discussions.

I appreciate that pursuing Option 2 would inevitably result in further delay to the hearings programme whilst the necessary consultation is undertaken. However, it would remove the need for additional, duplicated sitting time where issues are raised which are already before me as part of the examination. Before deciding how to proceed, I would therefore be grateful for the Council's view in the first instance on the options identified above. To avoid any unnecessary delays to the examination process, and mindful of the revised hearing programme starting in January, I would be grateful for the Council's views on this by 5pm on Wednesday 20 December 2023.

If you have any other questions regarding the details of the proposed course of action, please raise them with me via the Programme Officer.

Yours sincerely,

K Ford INSPECTOR