



(Save Heamoor from Excess Development)

Represented by Stephen Reynolds

EXAMINATION IN PUBLIC – CORNWALL SITE ALLOCATIONS DPD (CSADPD)

POSITION STATEMENT

Prepared by Stephen Reynolds & Jane Lambert

LEGAL COMPLIANCE –

**Failure to notify under the Town and Country Planning (England) Regulations 2012
(DAY 1 - Matter d)**

Our representation:

We reiterate the comments made in our **Representation (ref: 213, pp 6 and 7)**, which as regards Legal Compliance can be summarised as:

“The Council failed in its statutory duty to notify Heamoor residents of the proposals contained in the Allocations DPD. Under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012, the local planning authority must notify such residents as it considers ‘appropriate’ to invite representations from.”

Officer Response:

*“The consultaiton [sic] period was for 8 weeks, 2 weeks more than the standard 6 week period. The consultation was publicised in many different ways, which is set out within the DPD’s SCI, but included:
Letters / E-mails to landowners; statutory consultees; people that have previously responded to consultations
Press notices & adverts in the local papers
Press releases to TV / Radio / Papers
Through social media; including Facebook advertising which was seen by over 22,000 people
Through local members and Town/Parish Councils
Documents in local one-stop-shops throughout Cornwall
All of the above was undertaken at the start of the consultation; plus most of this was also repeated near to the end of the consultation to remind people of the deadline”*

Comments on the Officer Response:

1. **The officer is in error.** We clearly state (ref: 213, p.5) that the complaint in SHED’s representation relates to the Regulation 18 consultation from 3 October to 14 November 2016 (6 weeks). The officer’s response apparently relates to the later 8-week Regulation 19 consultation from 12 June to 7 August 2017.

2. If we look at the correct document: “2.4 Cornwall Site Allocations Development Plan Document: Preferred Options Consultation October 2016, under regulation 18” (p.18 of “Cornwall Site Allocations Development Plan Document – Statement of Representations, Regulation 22(1)(c) Submission (Reg. 18 & Reg. 19 Consultation)”), we see that **the Council fails to give a statement showing “Who was invited to make representations” as it is required to do under Regulation 22(1)(c)(i)**. Instead the Council starts with the second statement required under Regulation 22(1)(c)(ii): “How representations were invited”, in which we are told that “All statutory bodies and other important local bodies were notified of the consultation period, including how and where documents could be view [sic], and how to make representations”. We are also told that a press release was published on the Council’s website, that the document was available to download online from the Council’s website and available to view at One Stop shops and public libraries, and that there was Facebook advertising. Leaflets were distributed to doctors’ surgeries, parish and town councils and leisure centres. A school bag drop of leaflets was undertaken “during the consultation period” to “primary schools situated closest to the allocations”, including Heamoor Community Primary School. The leaflet was available at “Thinking Differently” events for Council staff, and distributed electronically to “other schools” (unnamed).
3. In their individual representations on the Allocations DPD and in their dealings with SHED, Heamoor residents complain that they were not notified of the Council’s development proposals. The Officer’s response says: “The consultation was publicised in many different ways”. But **publicising is not notifying**. To “notify” means “to inform (someone) of something, typically in a formal or official manner” (Oxford English Dictionary, ed. 2010, “OED”). This tallies with Regulation 18(1)(a) of the Town and Country Planning (Local Planning) (England) Regulations 2012, which requires LPAs to:

“(a) notify each of the bodies or persons specified in paragraph (2) of the subject of a local plan which the local planning authority propose to prepare, and (b) invite each of them to make representations to the local planning authority about what a local plan with that subject ought to contain”

[This applies to all local development documents including the CSADPD; our emphasis].

The “bodies or persons specified in paragraph (2)” include, in paragraph (2)(c):

“such residents or other persons carrying on business in the local planning authority’s area from which the local planning authority consider it appropriate to invite representations”

By using the word “each”, Regulation 18 indicates that notification must be to specific residents or persons carrying on business identified by the Council as being “appropriate” to be notified. So it requires notification of such residents and persons individually. This means that publicity in newspapers, on websites, TV, radio or social media, in One Stop shops, press releases and leaflets cannot qualify as “notification” because it is indiscriminate. Such “notification” is in fact (as the officer concedes) merely publicity or advertisement.

The indiscriminate nature of the publicity is emphasised by the content of the leaflet distributed by the Council (available on the Council website as the “[Bitesize Allocations DPD leaflet](#)”). This two-page leaflet makes no mention of Heamoor as a potential location for development, merely listing “Penzance/Newlyn” as one of ten main towns covered by the Allocations DPD. There is nothing in the leaflet that would alert a Heamoor resident to the fact that the document contained proposals that if approved would radically and irreversibly alter their community.

Further, Regulation 18 requires each of those notified bodies or persons to be invited to make representations. The statutory consultation period is 6 weeks. This means that purported “notifications” “during the consultation period” rather than at the outset of the period or in advance of it are clearly not notifications at all, but merely publicity. Hence, the bag drop of leaflets at Heamoor Community Primary School on the last afternoon of the last day of the consultation period cannot be regarded as “notification” of the CSADPD.

By contrast, to “publicise” means “to make (something) widely known” (OED). But Regulation 18 is not concerned with how widely the authority’s planning proposals are known: it is concerned simply that they should be notified to persons and bodies the authority regards it as “appropriate” to notify.

4. In the absence of the statutory statement on “*Who was invited to make representations*”, we may infer from the Council’s Regulation 18 statement of “*i) How representations were invited*” that the only persons or bodies actually notified by the Council were “*All statutory bodies and other important local bodies*”. As regards residents, Regulation 18 requires “appropriate” residents to be notified. However, the Council’s Regulation 18 statement does not mention any “appropriate” residents who were notified. We were ourselves notified, but not as residents, but rather as persons who had asked to be notified after taking part in an earlier consultation. So **there is no record that any residents judged to be “appropriate” to be notified were in fact notified in their capacity as residents.**
5. It might be considered that the Council has a **heightened duty** to the populace in respect of this Allocations DPD, in that this will probably be **the last chance** for residents or other interested parties to make representations on issues of soundness or sustainability. This is clear from Policy 1 of the Local Plan Strategic Policies, which states “... *Planning applications that accord with the policies in this Local Plan and supporting Development Plan (including, where relevant, with policies in Neighbourhood Plans) will be regarded as sustainable development and be approved, unless material considerations indicate otherwise.*”

If the Allocations DPD is passed and planning applications are submitted, it will probably be too late for residents to object to sites on a whole range of grounds. SHED has found that many Heamoor residents are unaware of this emerging situation, having been accustomed in the past to focusing on the planning permission stage in considering whether or not to object to proposed development. Indeed, had this been a planning application rather than an ADPD, the notification requirements would have been much more stringent, calling for neighbour notification and site notices (and yet the scope of a planning application is infinitely narrower than that of an ADPD).

So in addition to the Council’s failure to fulfil its statutory duty to notify “appropriate” residents, it is unfair of the Council to deny residents the right to make representations at this stage by not notifying “appropriate” residents and businesses.

Conclusion – MAJOR MODIFICATION requested:

DELETE CSADPD policies PZ-H4, PZ-H5, PZ-H6, PZ-H7 and PZ-H8 on grounds of failure by Cornwall Council to notify “appropriate” residents under the Town and Country Planning (England) Regulations 2012.