

EXAMINATION IN PUBLIC – CORNWALL SITE ALLOCATIONS DPD (CSADPD)**POSITION STATEMENT****PREPARED BY STEPHEN REYNOLDS AND JANE LAMBERT ON BEHALF OF HANNAH DASH (REPRESENTATION 295)****LEGAL COMPLIANCE:****Council of Europe Framework Convention for the Protection of National Minorities****Introduction**

Hannah Dash (representation 295, page 5) raised the issue of the impact of the site allocations adjacent to Heamoor (**policies PZ-H4, PZ-H5, PZ-H6, PZ-H7 and PZ-H8 of the CSADPD**) with respect to the protected minority status of Cornish people as enshrined in the Council of Europe Framework Convention for the Protection of National Minorities (FCNM).

She has requested Stephen Reynolds of SHED (Save Heamoor from Excess Development) to speak on her behalf at the Examination in Public, and also to prepare (with Jane Lambert) this Position Statement.

This Position Statement relates to the legal compliance of policies PZ-H4, PZ-H5, PZ-H6, PZ-H7 and PZ-H8 of the CSADPD and specifically their impact on the community of Heamoor.

Argument:**1. Heamoor as a community with a strong Cornish identity**

In her representation, Mrs Dash referred to the strongly Cornish profile of Heamoor village. She cited data from the Spring School Census, provided by Cornwall Council, indicating that a high proportion of pupils at Heamoor Community Primary School (76.5% in 2017) self-identify as Cornish.

This contrasts with a lower figure for Mounts Bay Academy (an 11-16 age-group school also in Heamoor, but serving a much broader catchment area) of 54.7%.

Given that the pupils at the primary school are predominantly drawn from the village while those at Mounts Bay are from a wider area, the figures suggest that Heamoor is a much more strongly Cornish community than the average for the area.

2. Protection of the Cornish national minority

The Cornish people were granted national minority status under the FCNM in 2014. Article 16 of the FCNM states that:

“The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention”.

It was on the basis of article 16 that representations were made to the Council of Europe regarding the impact of Cornwall Council’s housing policy on the national minority rights of Cornish people.

This resulted in the following observation in Section 144 of the ‘Fourth Opinion on the United Kingdom of the Advisory Committee on the Framework Convention for the Protection of National Minorities’:

“The Advisory Committee was informed by Cornish interlocutors that they were of the opinion that the new housing policies geared toward increasing the stock available for out-of-county buyers of second homes would make prices rise, thereby potentially pushing Cornish and Cornwall residents out of the market, thus affecting the cultural balance between Cornish and newcomers. The Advisory Committee reminds the UK Government that Article 16 aims to protect national and ethnic minorities against measures that change the proportion of the population in areas inhabited by persons belonging to national minorities, including but not limited to expropriations, evictions and expulsions.”

The Advisory Committee here clarifies the aim of Article 16 as being to protect national and ethnic minorities against measures that change the proportions of the population. The fact that the Advisory Committee issued this reminder to the UK Government suggests it agreed that by putting undue pressure on Cornwall Council to increase its housing stock beyond local needs, the UK Government might be in contravention of the FCNM, notwithstanding the apparent requirement in Article 16 of intentionality, i.e. that the measures be “aimed at” restricting such rights. The Advisory Committee is apparently open to the idea that the FCNM may be contravened through recklessness in a case where an authority must know that its actions, though not intentional, would almost certainly have the effect of changing the proportions of the population in areas inhabited by persons belonging to national minorities.

The Advisory Committee also stated in its Fourth Thematic Commentary that:

*“The Advisory Committee has consistently acknowledged that states parties have a margin of appreciation in this context, but has also noted that this margin must be exercised in accordance with the general rules of international law contained in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. In particular it must be exercised in line with **the obligation to interpret a treaty in good faith and in the light of its object and purpose**”.*¹ [our emphasis]

Cornwall Council might have taken steps to respect the “object and purpose” of the FCNM, and protected the Cornish Minority by resisting development pressures in sensitive locations like Heamoor. However its failure even to carry out an Equality Impact Assessment on the Cornish Minority (see below, page 3) suggests a lack of commitment in this area.

¹ The Framework Convention: a key tool to managing diversity through minority rights – Thematic Commentary No.4: The Scope of Application of the Framework Convention for the protection of national minorities (adopted 25/05/16)

3. Impact of policies PZ-H4, PZ-H5, PZ-H6, PZ-H7 and PZ-H8 on the community of Heamoor

Paragraph 144 cited above speaks directly to the impact of the above policies on Heamoor as a community. The combined effect would be to add a further 719 dwellings to the existing community, increasing the population by nearly 1600² (more than 50%). Based on the affordability quota set by Cornwall Council for the area, at least 70% of those new dwellings would be open market homes (more if developers were to claim a viability exemption). That equates to a minimum of 503 new open market homes in a single, close-knit and predominantly Cornish village.

Given the low level of average wages in the Penzance/Newlyn area (£383 per week on the Council's own figures cited on page 15 of the CSADPD), the vast majority of these open market homes would be unaffordable for local people. The impact of these policies would therefore be to materially alter the cultural balance between Cornish and newcomers – precisely the effect that paragraph 144 warns against.

For example, starter homes in a recent new build development at Madron near Heamoor have been selling at £208,000. A working couple each on the average wage for this area of £393 would need to find an extra £70,000 to buy such a property (refer to SHED representation, reference 213, page 37).

The sheer scale of the proposed development combined with these affordability issues would inevitably have a serious impact on the existing majority Cornish population of Heamoor and substantially alter the cultural balance of the community, in contravention of Article 16 of the FCNM.

4. Equality Impact Assessment by Cornwall Council

As part of the **evidence base for the CSADPD**, Cornwall Council prepared a Comprehensive Impact Assessment (CIA) dated 6 March 2016.

This included an Equality Impact Assessment, required to consider the following questions:

*"4. Equality and Diversity: Who will be affected by this proposal? Is the proposal likely to result in positive or negative impacts/risks? If so what are they? What plans do you have in place, or are developing, that will mitigate the likely identified negative impacts/risks? This section should include reference to the 9 protected characteristics as referenced in the Equality Act 2010. **Consideration should also be given to the Cornish status.**" [our emphasis]*

Under this heading 4. is the following question:

*"Who will be affected by this proposal? (Consider the protected characteristics: age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race (incl. **Cornish Minority**), religion & belief, sex and sexual orientation)" [our emphasis]*

However, **the Council's response contains no reference to "Cornish Minority"**. It merely says:

*"The document will also provide support for the delivery of affordable housing, which will be of benefit to **families with a connection to Cornwall.**" [our emphasis]*

² Based on Cornwall Council's formula of 2.2 residents per dwelling

The Equality Impact Assessment therefore fails to address the questions “*Who will be affected by this proposal? Is the proposal likely to result in positive or negative impacts/risks? If so what are they? What plans do you have in place, or are developing, that will mitigate the likely identified negative impacts/risks?*” as they relate to the Cornish Minority. Instead, it merely makes a solitary reference to “*families with a connection to Cornwall*”. This is a much broader definition than “the Cornish Minority” and would include, for example, families from the rest of the UK or further afield who spend holidays in the Duchy and would like to acquire a second or permanent home here.

So, **the Council has failed to consider the Cornish Minority in its Comprehensive Impact Assessment as it is required to do, and neither has it considered the positive or negative impacts/risks in relation to Cornish Minority status, or mentioned what plans it has in place or is developing to mitigate such impacts/risks.**

5. Officer Response and subsequent correspondence

No officer response was provided to Mrs Dash’s representation on this point.

In subsequent correspondence on this issue, the Programme Officer commented (in an e-mail to Stephen Reynolds dated 16th January 2018):

*“As for any outstanding questions of compliance with the protection of national minorities or language; these matters were thoroughly considered and reported by the Inspector for the Local Plan Strategic Policies which has been found legally compliant and sound and is now adopted as part of the statutory development plan. **The Site Allocations Plan now under examination is merely required to be consistent with LPSP.** This necessarily limits the scope of the Inspectors to consider the matter of Cornish Minorities or language further or to hear further discussion on the matter. However, the Inspectors will include [on] the detailed agenda for Day 1 on legal compliance and General Matter 1, an item to cover the question whether the Site Allocations Plan is consistent with the LPSP with respect to these minority issues.” [our emphasis]*

We would make three points:

i) The issue raised in the present Position Statement concerns specific CSADPD policies, which obviously did not exist at the time that the legal compliance and soundness of the Local Plan Strategic Policies were being considered. Of course the CSADPD is required to be entirely consistent with the LPSP. But self-evidently, the Programme Officer’s statement that “*The Site Allocations Plan now under examination is merely required to be consistent with LPSP*” is incorrect, since the legal compliance of the CSADPD (including policies PZ-H4, PZ-H5, PZ-H6, PZ-H7 and PZ-H8) is also to be determined at the present time. Cornish Minority rights under the FCNM are one such matter.

ii) The opinion of the Council of Europe Advisory Committee regarding CC housing policy (cited on page 2) was published on 27th February 2017 and hence **postdates the Inspector’s report on the LPSP**, which was published on 23rd September 2016. The legal compliance of the LPSP with the FCNM has not been considered subsequent to the issuance of the Advisory Committee’s opinion. Given that the Council of Europe is the supreme authority with regard to the FCNM, and that the FCNM is legally binding on signatory states, it would be legitimate to question at this stage whether the LPSP itself continues to be legally compliant in light of that opinion.

iii) However, even if the LPSP were found still to be legally compliant with respect to the FCNM, we would argue that **policies PZ-H4, PZ-H5, PZ-H6, PZ-H7 and PZ-H8 of the CSADPD are not even consistent with the LPSP.**

The only explicit reference to the FCNM in the LPSP occurs in paragraph 1.16:

“The announcement, in 2014, of the formal recognition of the Cornish as a national minority reinforces the distinctive cultural identity and character of Cornwall. The designation also brings with it responsibilities under the Framework Convention for the Protection of National Minorities.”

In the absence of further information, one might reasonably ask: **what are the Council’s responsibilities under the FCNM?**

Clearly Cornwall Council cannot dictate who lives or buys houses in the county. However, it does have powers through its housing policies to control where development goes and in what specific numbers. By preventing long-established and sustainable Cornish communities from being overwhelmed by an influx of newcomers, the Council would be fulfilling its responsibility under the FCNM to protect its national minority. Yet it has to date apparently decided not to use its power to limit development in sensitive locations like Heamoor.

Cornwall Council, in its policies for Heamoor, has therefore failed to discharge its responsibilities under the FCNM as required under paragraph 1.16 of the LPSP.

We end by citing Cornwall Council’s pitch to have the Cornish minority recognised under the FCNM: **“Why should the Cornish be recognised as a national minority within the UK?”**:

“Our young people are crucial to the future success of Cornwall. Recognition under the Framework Convention for the Protection of National Minorities will empower our young people to better identify with their own cultural identity... It will encourage conditions in which young Cornish people can feel respected and valued in social, working and formal settings.... National minority status, by recognising not just their distinctiveness, but also the legitimacy of this distinctiveness, would generate greater self confidence amongst the Cornish, and in particular young people... It would enable them to identify with their cultural identity and develop their own lives in the way they would prefer.”

The sheer scale of the development proposed for Heamoor village, and the inaccessibility of most of the proposed dwellings to local people, would have precisely the opposite effect.

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 consider their effect on the Cornish Minority in its Comprehensive Impact Assessment and failure to discharge its responsibilities under the Council of Europe Framework Convention for the Protection of National Minorities, and under paragraph 1.16 of the Local Plan Strategic Policies.