

towards efficient and meaningful consultation

Penny Norton, from the Consultation Institute, considers the potential for greater community involvement in planning and looks at the characteristics of involvement good practice

I am frequently asked whether consultation is a legal requirement in planning. The fact that it is impossible to answer in fewer than 100 words exemplifies just how complex community involvement in planning has become. And so I, and other associates of the Consultation Institute, very much welcomed the Interim Report of the Raynsford Review¹ and the very constructive steps that it recommends in bringing about greater clarity and consistency.

Members of the Consultation Institute's Planning Working Group – all communications and/or planning professionals working in planning and development – have considered the Interim Report's recommendations and their potential implementation. There is no expectation that report's nine propositions will result in immediate changes to planning law, but much of what is recommended, along with the commentary on them presented here, can be regarded as good practice and is worthy of serious consideration.

A historic need

Despite growing concern about public disaffection with the planning system, there has been no comprehensive review of the relationship between planning and people since the 1969 Skeffington Report.² Although it received a positive reception, few of its recommendations were put into practice – apparently because they were considered intangible. And yet the Skeffington Report had an enduring influence on community involvement in planning – to the extent that Skeffington is said to have influenced the introduction of localism over 40 years later.

In 2011, embarking on the localism agenda which was to set the scene for community involvement in planning today, the coalition government said:

'Pre-application consultation provides an opportunity to achieve early consensus on controversial

*issues before proposals are finalised. This should encourage greater community engagement in the process, and result in better quality applications submitted to local authorities, which are more in line with community aspirations, and much less controversial. Such an approach is considered to be inclusive and transparent, with development outcomes more in line with what the community desires.'*³

This statement was based on research carried out by the then Department for Communities and Local Government, which found that as a result of pre-application consultations there was a 10-15% fall in the number of appeals, hearings and enquiries.

Additionally, a YouGov poll⁴ for the National Housing and Planning Advice Unit had demonstrated that while 21% of respondents opposed new housing supply in their area, this number fell to 8% if the homes were well designed and in keeping with the local area.

Localism (which was itself instigated by the need to substantially increase the UK's housing stock) was based on the belief that local involvement would deliver greater consensus. In an environment in which local comment on development proposals was generally negative, this was a bold approach and one which should have begun by communicating the benefits of consultation in bringing about appropriate development. Unfortunately the government (unlike the Raynsford Review Interim Report) failed to do so.

The eventual Localism Act was significantly less bold on the requirement for consultation than was originally intended: while the Bill set out to enshrine a requirement to consult in law, the Act omitted the requirement to consult on planning applications, with the exception of planning applications for wind turbines.

Box 1

The 'Gunning principles'

- Consultation must be held at a formative stage, so that respondents have maximum opportunity to influence decision-making.
- Consultation must provide sufficient opportunities for 'intelligent consideration', so that respondents can come to informed opinions.
- Consultation must provide adequate time for consideration and response, to ensure that respondents have sufficient time to come to and express a view, and that there is sufficient time to properly consider that view.
- Consultation must 'conscientiously consider' feedback received.

And so while there are considerable obligations for local authorities to consult on the formation of a Local Plan, for Neighbourhood Plans to be determined by referendum and for Nationally Significant Infrastructure Project applications to follow a very prescriptive consultation strategy, there is little requirement on the average developer to consult, other than some vague wording in the National Planning Policy Framework (NPPF)⁵ (regrettably unchanged in the 2018 revision), which states (in para. 39) that:

'Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.'

In a further watering-down, the NPPF continues (in para. 40)

'Local authorities... cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they offer. They should also, where they think this would be beneficial, encourage applicants... to engage with the local community... before submitting their applications.'

So the legal requirement for consultation in planning remains vague and widely misunderstood, and the work of the Raynsford Review in demystifying this is much to be welcomed.

Enriching planning through community involvement

While the legal requirement for developers to consult remains opaque, the notion that community involvement *can* benefit planning decisions is unequivocal.

Planning is ultimately about people: whether through a local authority-run strategic plan or a private sector-led development proposal, change to the built environment impacts on communities. While it is generally believed that those proposing changes should involve local residents as a courtesy,

additionally planners and developers have much to benefit from involving local people.

Consultation provides the opportunity to glean information and ideas from a local community. This might include knowledge of local history, which has the potential to enrich a scheme; otherwise unknown social issues which might have delayed the process; and the needs and aspirations of the community which may be met through the new development. With local input, proposals can be enriched and finely tuned to a specific neighbourhood, creating a unique scheme well suited to its location.

The local community, too, can benefit: community involvement can promote social cohesion, strengthen individual groups within it, and create a shared legacy.

Following local dialogue at an early stage and having had proposals either challenged or welcomed, a developer has a greater chance of building local support for a proposed scheme. And a well run consultation can build a trusting and mutually co-operative relationship between the developer and the community, which can minimise the potential for conflict and thereby remove risk in the process.

Clarification in a covenant

So it is without hesitation that the Consultation Institute supports the Raynsford Review's call for greater clarification on the role of community engagement in planning. Specifically, it welcomes the proposed covenant for community participation, which has the potential to formalise requirements for consultation in appropriate circumstances, rectify the uncertainty about when a developer is required to consult, and clarify the expectations that local communities should have of the planning system.

Such a covenant would require clear definitions of consultation/participation/involvement/engagement and the circumstances in which each should be used. All too frequently the terms are used interchangeably, at considerable risk to the developer or planning consultant. 'Engagement' and 'participation' refer to an ongoing, generally long-term dialogue and can vary significantly. 'Consultation', however, as a result of considerable case law), mostly outside the

development sector) has become very litigious. Specifically, the courts view consultation in the context of the 'Gunning principles' (see Box 1),⁶ and where these are not upheld, decisions can be overturned by the courts. Similarly, the 'three pillars' (Articles 4-9) of the Aarhus Convention stipulate three public rights regarding access to information, public participation, and access to justice in governmental decision-making. Like the Gunning principles, they have become an important benchmark in consultation, specifically in relation to dialogue between the public and public authorities.

The Consultation Institute hopes to work with the TCPA on a draft covenant for community participation and would use both the Gunning principles and those of the Aarhus Convention as its basis.

Raising standards and encouraging innovation

There is an opportunity to raise standards in consultation. Specifically, a renewed focus on consultation can put in place measures to ensure that dialogue is efficient and meaningful without being excessive and that a wide range of groups in the local community are involved, and it can put in place some

Box 2

Efficient and meaningful consultation

Consultation strategy

- Gain a thorough understanding of the target consultees, especially any 'hard-to-reach' groups.
- Determine how consultation responses will be used at the very start of the process. If community feedback is to advise, rather than determine the resulting decision, this should be clearly stated. It is also helpful to state how anonymous responses, petitions and comments from outside any defined geographical area should be used.
- Where possible, meet with community support/neighbourhood involvement officers to discuss how to ensure effective access for hard-to-reach groups.
- Carry out initial research, including stakeholder and issues analysis.
- Draft a consultation mandate, stating the target audience, the aims and objectives of the consultation, the subject for discussion, how the results will be used, the organisation initiating the change post-consultation, and the consultation process's timing. Ensure that the consultation mandate is communicated effectively, including on all consultation material.

Timing

- Hold the consultation at a formative stage, so that respondents have maximum opportunity to influence decision-making.
- Provide adequate time for consideration and response (both in the consultation and the analysis of it).
- Avoid a clash of consultations – for example, consulting on a development planning application during a Local Plan consultation.
- Allow no fewer than six weeks for a standard consultation – more if a significant holiday period falls during this period.

Selecting tactics

- Ensure a range of tactics to appeal to the range people within the community.
- Consider all tactics in terms of access – both physical and psychological.
- Consider using innovative tactics to make the consultation more engaging.
- Use a variety of tactics to inspire involvement.
- Consider tactics most likely to result in constructive responses.
- Understand the specific groups that make up the neighbourhood and ensure that consultation tactics are targeted suitably, investing in translations if necessary.

Determining questions

- Provide adequate information to enable consultees to make a fully informed response.
- Combine both quantitative and qualitative research techniques as appropriate.
- Ensure that questions and accompanying information are free from technical jargon.

Analysis, evaluation and feedback

- Evaluate the consultation responses as set out at the start of the consultation.
- Provide feedback to those who took part.

guidance on how consultation results are used. The latter does not simply concern issues with evaluation, analysis and reporting (although there are certainly opportunities for improvement at this stage), but also the need, at the start of any local dialogue, to agree and clarify how feedback is to be used.

Confusion on this issue is unsurprising. In the case of a Neighbourhood Plan, a local referendum determines the final decision, yet community responses to a development application are generally only regarded as 'advisory' and secondary to that of the professional team. Consequently, local communities remain confused about the intended use of their contributions, and this is a primary reason for dissatisfaction with the current system.

Promoting community involvement as a central tenet of planning – one that is structured by guidelines and inspired by best practice – has the potential to tackle many of the issues that continually perplex planners and developers.

While the Consultation Institute is a strong advocate of good consultation, it does not prescribe consultation in all circumstances. Each development proposal is different: some benefit from community input from the very outset, while in other cases viability issues prevent community involvement in all but a handful of decisions. But where consultation on a planning application is appropriate, it should be efficient and meaningful, without being excessive, and a selection of means by which this might be achieved is summarised in Box 2.

The Interim Report's proposal for 'a new professional culture and skills set directed at engaging communities' is long overdue. Planning consultants and developers are generally highly trained, their undergraduate and postgraduate degrees covering a wide spectrum of skills. With only a few exceptions, however, consultation has so far featured on very few syllabuses. In fact, when I published my book *Public Consultation and Community Involvement in Planning: A Twenty-First Century Guide*⁷ last year, it was the only book specifically on consultation in planning to have been published since the Skeffington Report almost 50 years earlier.

Through other generally more litigious sectors, the Consultation Institute has contributed to a professionalisation of consultation through quality assurance, consultation industry standards of practice, professional accreditations, and CPD, and the Institute sees considerable benefit in these benefits applying to the development sector.

Similarly, the Consultation Institute is fully supportive of the Interim Review's proposition for a new 'creative and visionary' planner. There are some excellent examples of creativity and innovation in consultation – both within the planning sector and elsewhere – which could be communicated more widely across the planning sector and inspire more positive community engagement.

We look forward to the publication of the Raynsford Review Final Report. As a next stage, there is significant benefit in guides on consultation in planning for both the development industry and for local residents; the creation of a 'good' consultation kite mark for the industry; training for planning consultants on consultation; and a formalised means of delivering best practice across industry, specifically on subjects such as online consultation, evaluation and analysis, the use of co-production, and participatory planning.

There is no doubt, as a Raynsford Review 'Provocation Paper' acknowledges, that it is 'a challenge to define how much power communities should have as compared to the development industry or national government'.⁸ Striking a balance between achieving growth and giving existing communities a voice is a perpetual problem, but one which can be lessened and in many cases overcome through an appropriate and considered approach to community consultation.

● **Penny Norton** is the Director of property communications consultancy PNP and runs ConsultOnline, an online consultation service (www.consultonlinewebsites.com). Her book *Public Consultation and Community Involvement in Planning: A Twenty-First Century Guide* was published by Routledge in July 2017. The views expressed are personal.

Notes

- 1 *Planning 2020: Interim Report of the Raynsford Review of Planning in England*. Raynsford Review. TCPA, May 2018. www.tcpa.org.uk/raynsford-review
- 2 *People and Planning: Report of the Committee on Public Participation in Planning*. Skeffington Report. HMSO, 1969
- 3 *Localism Bill: Compulsory Pre-application Consultations between Prospective Developers and Local Communities. Impact Assessment*. Department for Communities and Local Government, Jan. 2011. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/6044/1829781.pdf
- 4 *Public Attitudes to Housing*. Report of a YouGov Survey. National Housing and Planning Advice Unit, Jun. 2010. http://webarchive.nationalarchives.gov.uk/20120919133007tf_/http://www.communities.gov.uk/archived/general-content/nhpau/research/publicattitudes2010/
- 5 *National Planning Policy Framework*. Ministry for Housing, Communities and Local Government, Aug. 2018. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/740441/National_Planning_Policy_Framework_web_accessible_version.pdf
- 6 *R (ex parte Gunning) v Brent LB* [1985] 84 LGR 168
- 7 P Norton and M Hughes: *Public Consultation and Community Involvement in Planning: A Twenty-First Century Guide*. Routledge, 2017. www.routledge.com/Public-Consultation-andCommunity-Involvement-in-Planning-A-twentyfirst/Norton-Hughes/p/book/9781138680159
- 8 *People and Planning*. Provocation Paper 2. Raynsford Review of Planning in England. TCPA, Jun. 2017. www.tcpa.org.uk/Handlers/Download.ashx?IDMF=8a028329-fb39-431e-a994-2b0a25eeb62b