



Rachel Maclean MP,
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Dear Rachel Maclean MP,

S.27 Planning and Compulsory Purchase Act 2004 Local Plan Intervention

Thank you for your letter of 20 September 2023, which re-iterates that central government is imposing a direction on us, as a Borough Council, 'not to take any action to withdraw the local plan from examination'.

We do want to respond to both of your Ministerial letters of 14th and 20th September 2023.

As you are aware, we made a decision at our Extraordinary Council Meeting (ECM) on 14 September 2023 to extend the pause in the examination until the proposed changes to the National Planning Policy Framework have been published.

We wrote to the Planning Inspector on 15 September to that effect. He responded on 22 September by saying "*I agree that an extension to the pause in the examination timetable would be reasonable and consistent with the approach taken in other examinations*" (copies attached). We now await your Department's actions on the NPPF before any further progress on the examination can be considered.

In addition, we resolved to seek legal advice about your sudden decision to intervene. The decision to intervene has been made without any reference to us. Your letter on 14 September arrived unannounced and was received less than four hours before the meeting.

Having received our KC's advice (William Upton KC), we are still actively considering the option of a Judicial Review. We wish to keep our options open at this time, as this letter is the first opportunity that the Council has had to set out its views. Once these have been fully considered by yourself, and we have your reply, then a final decision will be taken on this matter.

The continuing delay around the NPPF and the uncertainty that this has caused us and other Councils forms part of our exceptional circumstances case and is covered further below.

Exceptional circumstances

In your letter of the 20th, you have specifically asked the Council to '*set out any exceptional circumstances that should be taken into account when the Secretary of State considers the next steps to take in relation to the direction and the emerging plan*'.

This should have been done before any action was considered by your Department. There has been a failure to ensure that you had the relevant information to enable you and the Secretary of State to address the relevant criteria correctly.

You referred in your letter of 14 September to “the Local Plan intervention criteria in the 2017 White Paper “Fixing our broken housing market””. We assume you were referring to paragraphs A7 to A11 of the section on the “Proposals from Chapter One” in that old White Paper, and the criteria set out in the consultation paper, “DCLG (2016) Technical consultation on implementation of planning changes”, referred to in the footnote.

It is stated that decisions on intervention will be informed by the wider planning context in each area and that “authorities would have an opportunity to put forward any exceptional circumstances before action was taken”. As was stated in the consultation, this is an opportunity to explain why intervention at the proposed time would be unreasonable. It is also acknowledged that what may constitute an ‘exceptional circumstance’ cannot, by its very nature, be defined fully in advance [Paragraph 6.20 of the 2016 Consultation].

Failure to follow due process

It is clear that in line with the Government’s own intervention criteria, the Department should have given the Council the opportunity to put forward any exceptional circumstances *before action was taken*.

We have to say it is incredibly disappointing and frustrating that this critical step was not taken. Your department has effectively failed to follow due process, and has then sought to rectify the situation ‘after the horse has bolted’. This is far from ideal, especially when it appears that this is the first time a formal intervention letter has been issued for several years.

The Secretary of State has also not treated the Council in the same way as other Councils. Even though these intervention powers are used infrequently, we can see that in two other cases authorities were given the opportunity to set out their exceptional circumstances prior to receiving an intervention letter (Thanet and Wirral Councils received their letters on 28 January 2019). In both cases, they were written to on 16 November 2017 when the Government expressed concerns. A response was sent by Wirral Council in January 2018 outlining their exceptional circumstances, which the Secretary of State replied to in March 2018. The actual intervention letter was only sent on 28 January 2019, some *14 months* after initial concern was expressed, not an un-announced *four hours* before a Council meeting.

As a Council we should have been given the chance to explain why, on the basis of exceptional circumstances, intervention at this time is unreasonable. It is doubly galling when you consider that your own technical consultation said that, “*We want to engage with authorities early on, and therefore we do not expect any authority to be surprised if we are considering intervention*”. We cannot understand why this early engagement was completely overlooked. Furthermore, your Department was clearly aware of the Council’s meeting, and would have had the time – in this era of emails and internet access - to ask submissions even at that stage. The papers for the Council meeting were publicly available, in the normal way, five working days before the meeting.

Response to Intervention Letter – the four criteria

We do consider that further discussion is necessary about the Government’s analysis of our situation and the conclusions that appear to have been drawn regarding the identified criteria, in particular in comparison with other Councils. You set out the Government’s analysis in the 14 September letter.

The least progress in plan-making has been made
Central government view
<i>“More than 90% of English Councils have adopted a local plan since Spelthorne (February 2009). If the Council withdraws the plan, it would be left with one of the oldest adopted local plans in the country”</i>
Council response
<p>Even a cursory review of the 61 Local Plans which are formally stalled, delayed or withdrawn throws up a number of Local Plans whose adoption dates are earlier than ours (Ashfield 2002, Amber Valley 2006, Hinkley and Bosworth 2009, Uttlesford 2005, Welwyn Hatfield 2003). Many of these have made much slower progress and are at a much earlier stage of review than us.</p> <p>If the Government is to apply a consistent approach, then - at the very least - all of those Councils who have adopted plans older than ours and who have not yet got to Examination should also be sent an intervention letter to prevent withdrawal when they reach that stage.</p> <p>The adopted plan covers the period up to 2026 and is therefore still current, and the Government’s own stated deadline for Local Plans to be in place is 30 June 2025.</p> <p>The Council have moved through all the necessary stages for the preparation of the replacement plan at the right pace for our borough and our circumstances (to ensure more than adequate time for consultation, debate and political oversight). It is better to do this right and take the time to do so.</p>
Policies in plans have not been kept up to date
Central government view
<i>“The adopted local plan is now over 14 years old, and it is reasonable to assume, given the age of the plan, that many of the policies it contains will not be up to date”.</i>
Council response
<p>It was always intended that the adopted local plan would cover the period up to 2026, as it states. It was adopted under the 2004 Act. It is not reasonable to assume on the basis of its age that policies are not up-to-date. The government’s own NPPF makes the point that existing policies should not be considered out of date simply because they were adopted or made prior to the NPPF (though it does acknowledge weighting needs to be applied on the basis of consistency with the NPPF). We, alongside many other authorities apply this approach. Developers, businesses and the community understand and accept this.</p>
There was higher housing pressure
Central government view
<i>“I note in recent years that the Council has not performed well against the Housing Delivery Test and affordability in Spelthorne is worse than in three quarters of the country. I can therefore conclude that there is higher housing pressure”.</i>
Council response
<p>The Council has had a Housing Delivery Test Action Plan in place since 2019, which reflects historical under-delivery of housing. There is no issue with planning performance as the team well exceeds government targets.</p> <p>Interventions have included reducing the time limit for implementing planning permissions, building positive relationships with developers, pre-application advice, working with RSL’s, training, simplifying conditions discharge and independent viability advice (affordable housing).</p> <p>In the most recently published figures (January 2022) the overall level of delivery has increased from 50% in 2021 up to 69% (a 39% increase). This upward</p>

trajectory is encouraging and demonstrates that the Council is being responsible in recognising the need for housing.

However, it is important that this is the right type of housing (not just buy to let), and affordability is undoubtedly a key issue for the borough. Genuinely affordable housing is one of the key ambitions of this Council (and this is not 80% affordable rented which is beyond the reach of many of our residents). We therefore entirely agree with the government that we want decisions to deliver homes to be driven locally.

The correct comparison should be with other authorities in the same region, not the country as a whole. The policy is that decisions on intervention will be informed by the wider planning context in each area. We are in the same position as virtually every other borough in our area in the south-east when it comes to lack of affordability. That being the case, there is no higher housing pressure.

Otherwise, the Minister is rewriting the intervention criteria, and saying that all other Councils who are in the same position with an un-adopted plan should be receiving an intervention letter on this basis.

Intervention would have the greatest impact in accelerating Local Plan production

Central government view

Considering the average time taken to prepare a local plan is seven years and we are approaching the phased introduction of a new planning system, withdrawing the plan at this stage could only lead to significant further delay whilst a new plan is prepared. Intervening would therefore accelerate plan production given the current plan is submitted and at examination.

Council response

It is not reasonable to apply the average time for preparing a local plan from scratch to the situation in our Borough. We have a substantial evidence base already in place, and have resolved many of the outstanding issues. Where we have not, further work continues, as noted by the inspector.

In any event, the view expressed by central government is not treating the Council fairly in comparison with other local planning authorities. There are over 60 Local Plans which are currently stalled, delayed or have been withdrawn. A number of these are at a slightly earlier stage than we are. They have been submitted for Examination but are subject to an advisory letter from the Planning Inspectorate. This means there is potentially still a considerable amount of work to be done.

As matters stand, the body with the greatest impact in accelerating our Local Plan production is not us, but central government. We and other Councils find ourselves in a situation where the Local Plan Inspector has agreed a pause until there is more certainty around government guidance. Mole Valley have been advised by their Inspector that the timescale for their extended pause will be kept under review whilst publication of a revised NPPF is awaited, but that she will work to ensure that the examination progresses, and it does not become unduly protracted.

Our Inspector has not referenced the publication of the NPPF directly but has linked his response to those of others who have. It seems to the Council that the issue therefore 'sits with government'. There is a desperate need to provide certainty for everyone through publishing the NPPF. That way, Councils and communities know exactly where they stand, and more importantly what they need to do.

The exceptional circumstances arguments

We consider that the specific context of our locality, combined with the continuing changes in national policy and our own unusual circumstances arising from the recent local elections, do raise exceptional circumstances. These significantly affect the reasonableness of the conclusions that appear to have been drawn by you and your advisors from the data and criteria used to inform the decision on intervention. These have also had a significant impact on our authority's ability to produce a local plan, for reasons that are largely beyond our control.

The context of the locality

Spelthorne Borough Council is exceptionally tightly constrained when it comes to planning – green belt, reservoirs, flooding, SSSI's – a point that our own Inspector made during the initial examination hearings. It also has a host of challenges – lack of affordable housing, protection of green space, employment needs, impact of Heathrow, proximity of London, poor air quality, need for higher quality design. All of these have been very well documented throughout the development of our Local Plan and are set out in documents and reports to Cabinet, Corporate Policy and Resources Committee and Council.

Notwithstanding all these challenges, we have nevertheless made good progress in moving forward with our Local Plan compared to other Councils who have a far less complex planning terrain. We also believe we have successfully negotiated the Duty to Co-operate with our neighbouring Councils (this will be for the Inspector to decide at any future Examination hearings), including those not seeking to meet their own housing need in full.

Changes in national policy

We have had to accommodate several changes in national policy, and we know that there is a revised National Planning Policy Framework (NPPF) coming, but not when.

The Council have been preparing our Local Plan through an unprecedented period of instability in the planning system, with major reforms frequently being proposed. The Council have been waiting on the updated NPPF since it was promised in May 2023 and there is still no definitive timeline for its publication. At this stage there is no absolute certainty that the final document will not bring with it some new detail that we are not yet aware of.

Until we have sight of the revised NPPF we are left in the very challenging (some would say impossible) position of trying to move forward a Local Plan without having any clear idea of what central government is requiring of us.

We are going to have to review our Local Plan once the revised NPPF is published, so we are not ducking the issue – far from it. But we must also ensure that we address the concerns of our communities at the same time.

The continuing uncertainty and *lack* of change in national policy is deemed to be exceptional.

Local circumstances

Spelthorne Council has all out elections every four years, which took place in May 2023. This has resulted in a Council with No Overall Control. Four of the five political parties are working together to drive the Council forwards with a new set of priorities and fresh Corporate Plan. The Local Plan arena is very contentious. It was right that we took the earliest opportunity to request a pause to the Local Plan examination hearings for 3 months to bring new councilors up to speed (22 of the 39 are new to their roles).

We also took the opportunity within that three-month period to bring in a 'critical friend' to ensure that our approach was as robust as possible. She was also able

to work with the planning team to identify areas where the current plan could be strengthened and improved. Her advice, and the need to consider new priorities had to be taken into account by the Council and it was reasonable to include withdrawal as part of the options for decision before the ECM.

This was a very necessary step for the Council to take politically. These steps are to be expected, and they happen at national as well as county and local level. The change in the future political direction of the Council and the possible implications this might have for the Local Plan were exceptional to this recent period. Whilst we have asked for two pauses, the Inspector has agreed to these as being appropriate and reasonable.

We trust the above clearly shows the Council has both a reasoned and justified response to the four criteria set out in your intervention letter and has been able to demonstrate exceptional circumstances in any event.

Moving the Plan forwards

It is also relevant to your current reconsideration of the 14 September decision to intervene to take account of the actions we have continued to take on the local plan preparation. We can re-assure you and our communities that we are emphatically not sitting on our laurels. Your officials have been able to confirm this at the meeting that has already taken place with our officer team.

This work is being done as part of the local plan process. Whilst the examination is paused, the Inspector did request in his 22 September letter that *“the Council continues to address the issues that I identified in the first week of the hearings, in particular flood risk and its potential implications in relation to the site allocation and delivery strategy of the plan”*. This Council is taking, and has always taken, the issue of flood risk seriously. Meetings are still taking place with the Environment Agency. As a Council we are also considering what other amendments and modifications may be required to the draft plan. Whilst we are continuing to work on the plan, what is paramount is that we ensure we do this with the right amount of engagement, and we get a plan that is absolutely right for our borough and its future.

Was intervention the right decision?

Government guidance is clear - even if all four intervention criteria are met (least progress in plan making, policies in plans have not been kept up to date, there was higher housing pressure, intervention would have the greatest impact in accelerating Local Plan production) which you state they have been, this still *does not* mean that intervention is reasonable.

Your own guidance states that intervention can be unreasonable if the Council can show its exceptional circumstances. The ability for this Council to set out its case before any intervention was not given. You have not complied with your own policy to consult the Council first, and the duty to inform yourself of the information relevant to the decision. Ministers clearly made the decision to intervene with no consideration of anything that might be said by the Council. The decision-making process to date has been flawed and we urge you to reconsider your intervention action. Now is the time for the matter to be given proper consideration.

Under the scheme of the legislation, a local planning authority has the power to withdraw a local plan at any time before a local development document is adopted under section 23 (s.22, of the 2004 Act). We accept that withdrawing a draft plan can cause additional delay and the expense of preparing a new plan, but we would respectfully point out that this should rest with us under the 2004 Act and not central government. If as a Council we wish to incur additional expense to produce a plan which is right for our communities and reflective of new government guidance, then surely this is for us to decide, in line with much central government advice which is promoting decision making and engagement at a local level.

Next steps

Clearly, we do not agree that your intervention letter on 14 September was needed. In any event, it has served its purpose. Whilst it would have been better to have allowed the Council to consider all 3 options at our Extraordinary Council Meeting, the decision has now been made. The Council has resolved to continue with the plan examination, and it has been able to secure a further pause from the Local Plan Inspector in accordance with that process. No further purpose would be served by continuing to intervene. The only reasonable course of action would be to withdraw the directions.

Given that the local plan examination is on hold, until the revised NPPF is published, we would expect that you would be prepared, at the very least, to allow the Council to consider all its options in accordance with its own duties under the legislation once it has had a chance to consider the implications of the revised national policy on the soundness of the draft plan. This would include the power to withdraw the local plan, if that was the reasonable course of action.

We look forward to receiving your response to this letter at your earliest convenience.

We note that an offer of a meeting with councillors has been made. We can confirm that the Leader of the Council, alongside other political group leaders, would welcome the opportunity of having a face-to-face meeting with yourself as Minister, and with the Secretary of State. If needs be, we can then discuss in more detail the exceptional circumstances that we firmly believe exist in the case of our borough.

Yours sincerely



Councillor Joanne Sexton
Leader of Spelthorne Council



Daniel Charles Mouawad
Chief Executive

Cc: Jameson Bridgwater – Planning Inspector
Cc: Kwasi Kwarteng MP