

PAPER ON CANTERBURY DISTRICT LOCAL DEVELOPMENT SCHEME [LDS] – 23 JULY 2015

PREAMBLE

This paper is relevant to Examination Question *'Has the Local Plan been prepared in accordance with the Local Development Scheme?'* This is an important question under Legal Compliance and, after the Duty to Cooperate, perhaps the next most important matter along with the Statement of Community Involvement. Legally the Local Planning Authority needs to have a formally adopted LDS which is kept up-to-date. It is a vital tool in keeping the public informed and in setting expectations re-the LP. The LDS is intricately linked to DTC, SCI and other crucial legal compliance issues and this borne out by its place in the PAS Checklist.

The views below are my own and represent my reading of the situation and I am happy to be corrected.

INTRODUCTION

As the NPPG points out: *'A LDS is required under Section 15 of the Planning and Compulsory Purchase Act 2004 (as amended by the Localism Act 2011). This must specify (among other matters) the documents which, when prepared, will comprise the Local Plan for the area. It must be made available publically and be kept up-to-date. It is important that local communities and interested parties can keep track of progress. LPAs should publish their LDS on their website.'*

The Localism Act 2011 includes following – see section 111 (9a) - *'The LPA must make the following available to the public –*

- (a) the up-to-date text of the scheme.*
- (b) a copy of any amendments made to the scheme, and*
- (c) up-to-date information showing the state of the authority's compliance (or non-compliance) with the timetable mentioned'.*

ISSUES OF CONCERN WITH THE CCC CD LDS

In terms of evidence the Planning Advisory Service Legal Compliance Checklist suggests that possible evidence of adherence would be *'i The adopted LDS at the time of commencement, publication and submission of the DPD and ii The relevant authority monitoring report if changes need to be explained'.*

In the Council's completed Legal Compliance Checklist (CDLP 1.5), stage One, question 1, it is stated that evidence provided is as follows:

- Canterbury District LDS at commencement (CCC, Mar 2009).
- CD LDS at Publication (CCC, May 2014)
- CD LDS at Submission CCC, Sept 2014)
- Annual Monitoring Reports – 04/05 through to 12/13 (CCC)
- An updated AMR for 2014 will be submitted to the Inspector for examination when completed.

Also, in the same document dealing with the issue of community engagement, stage one, question 2, it is stated that the evidence provided includes CD LDSs – from 2004 through to 2014.

However, **only** the LDS dated September 2014 and the AMR dated March 2013 are listed in the Evidence Base and as current Examination Documents. Furthermore, that AMR which was the version available prior to the public consultations on the LP, was still indicating that the Council would be pursuing a housing target figure of

10,200. Admittedly, it is mentioned that the housing target figure will be resolved as part of the new LP preparation process, but it is my understanding that at March 2013 the Council had already expressed a desire to pursue scenario E which would mean a substantially higher housing target figure.

Furthermore, I cannot find a list of amendments made since the original LDS.

Page 11 of the September 2014 LDS sets out, under risk reduction 11.1, a series of actions the Council will take

- i.e.:
- Ensure that each stage of the LP preparation meets the relevant legal requirements
 - Use the soundness self-assessment tool kit
 - Ensure records are kept of the process
 - Ensure evidence base is robust

(Note: It is assumed that the 2012 LDS and the May 2014 key publication version of the LDS would have expressed similar wise commitments, but despite asking several times for all the LDS versions in order to prepare this paper I have not been supplied with those ones to date.)

Being listed and promised in this way in 11.1, the above actions create expectations which the public could very reasonably presume would be rigorously pursued. However, serious questions have been raised regarding their fulfilment. These include:

1. Significant queries about the fulfilment of the duty to cooperate and consultation requirements (which have been mentioned so far at the Examination),
2. The production and submission of the PAS legal compliance and soundness checklists only after the public consultation stages (which prevented the public checking these compliance matters adequately in order to prepare well-informed consultation responses; whilst certain compliance matters awaited further unfolding of the Plan process, e.g. the satisfactory conducting of the consultation stages themselves, an interim version of this checklist would have been very appropriate),
3. The absence of and failure to produce adequate duty to cooperate notes and notes of discussions with developers demonstrating viability (again undermining public consultation responses and clearly out of line with the Advisory Inspector's clear advice to put such information into the public domain to demonstrate viability) and
4. The incomplete evidence base especially before finalisation of the publication draft LP (which has been an issue of particular public concern from the Core Strategy onwards and which has been highlighted again during the opening sessions of the Examination).

Moreover, in 12.2 of the September 2014 LDS it is stated that *'Member oversight of the LP process is undertaken through the LP Steering Group, which has senior Members involved to ensure an authoritative member view is fed into the process in a continuous way. The Steering Group reports directly to the Council's Executive (Cabinet).'* But in my view there is little evidence of this type of oversight guiding the LP production process or of that authoritative member view being fed into the process in a continuous way or of the LPSG reporting directly and regularly to the Executive.

For example, after the first stage consultation on the Preferred Option LP in the summer of 2013, the LPSG did not meet until December 2013 and, as recorded in the minutes of that meeting, the steering group was only given a cursory and rather skewed account of the results of that consultation. It was told under the Interim Summary of the main issues that *'Overall indicative indications showed that there is a strong level of support for the Plan.'* This did not square with the reality of overwhelming public disapproval which was surely already known by chief officers and senior local planning officers 5 months after the close of the second consultation. That disapproval was subsequently conveyed so vividly in the 16 predominantly red pie charts out of the overall 21 produced in the Catherine Hughes Associates' Preferred Option Representation Analysis report (CDLP 3.8.) covering main issues and strategic housing site allocations. Only 2 out of the 21 pie charts were predominantly green indicating substantial public support. It can be also pointed out that in the Interim Summary for the strategic site allocations, there is no hint of the outright public rejection of the South

Canterbury site. The same applies in relation to the Strode Farm site, Herne Bay, where again it appears that no indication whatsoever was given to members of the overwhelming public rejection of that site as well.

Having trawled through the minutes of Executive meetings, I can only find very sparse refs to the LPSG and I cannot see any ongoing formal reports from the LPSG to the Executive, though there are 2 references to the LPSG in the report laid before the Special Executive on 30/5/13:

1. para. 133) page 26: *'The Local Plan Steering Group has considered the distribution of housing development set out in the draft Plan. The distribution set out in this report is recommended as the most appropriate distribution that could be achieved within the context of the overall development requirements, taking into account all the planning, transport and environmental factors.'*
2. Page 35: *'The draft Plan has been considered in some detail by Local Plan Steering Group, and this strategy is recommended to the Executive.'*

Nevertheless, from the records of Executive agendas and minutes there was no apparent regular reporting to the Executive of any fuller meaningful discussions at the steering group or evidence of its active oversight or confirmation of its views being fed into and embodied in the process in a continuous way. That would have also reinforced public accountability and permitted public perusal and comment. Those statements above fall some way short of the role anticipated for the LPSG in the LDS.

In an Overview Committee minute (no.778) relating to a meeting on 13/5/13, there is the following telling statement: 'Members made comments including the following points: 42. The Local Plan Steering Group was officer led and although Members had a chance to have some input there had been little input from community groups.'

Also, having sat through a number of Council and Executive meetings over the last few years when the LP was being discussed, and especially at key junctures in its progress, I did not identify in any sense that the LPSG was performing in a manner fully compliant with that set out in 12.2 above. Rather what came across was that the LPSG was being side-lined to a significant degree and that the Council Leader and some chief officers were controlling the process and not admitting or addressing the overwhelming public disapproval of the development scenario, the housing target figure and the choice of most of the strategic sites.

CONCLUSION

For all the above reasons I conclude that the answer to the Examination question cited at the beginning of this paper must be "No". The pointing out of this significant legal shortcoming is in the positive hope that it might persuade the Council to consider going back to an earlier stage in the LP preparation process, to adhere to the LDS and to factor in the public representations in order to ensure that the Plan reflects the community's concerns, vision and aspirations.

As of date I have not received all the LDS versions from the Council, I wish to have the possibility of providing an Addendum to this paper once I am in receipt of the complete data requested.