5 Grasmere Park

 Chestfield

 Whitstable

 Kent

 CT5 3PP

 24 April 2016

To: Mr Michael Moore

Planning Inspector

Canterbury District Local Plan

Dear Mr Moore

**CANTERBURY DISTRICT LOCAL PLAN: LEGAL ISSUES**

This letter sets out our further concerns about the legal deficiencies of the manner in which Canterbury City Council has addressed the additional sites aspect of the Canterbury District Local Plan. We have written previously on this issue but the outcome of a recent Freedom of Information request, which will be discussed in what follows, has served to accentuate our concerns yet further.

We understand that the process and provision for preparing a Local Plan is set out in the Planning and Compulsory Purchase Act 2004, as amended, and the Town and Country Planning (Local Planning)(England) Regulations 2012. The National Planning Policy Framework is also relevant.

The Town and Country Planning (Local Planning)(England) Regulations 2012 set out the processes that must be followed by a local planning authority in light of the primary Planning and Compulsory Purchase Act 2004 legislation.

Sections 18(1) and 18(2) of the Regulations require the local planning authority to carry out consultations of relevant bodies and residents in the local planning authority's area in development of the Local Plan.

Section 22 of the Regulations set out the documents and information that must be prepared for the Secretary of State in light of such consultations. These include:

* Under Section 22(c)(iii), a summary of the main issues raised by the representations made pursuant to regulation 18;
* Under Section 22(c)(iv), how any representations made pursuant to regulation 18 have been taken into account.

Section 22(3)(a)(iii) goes on to require the local planning authority to make these documents available and Section 22 (3)(a)(iv) to make them available for public inspection and give details of the places and times at which they can be inspected.

We have seen no evidence of the existence of these legally required documents.

The key point to note is that these requirements are not optional for the local planning authority, they are legal requirements which the authority must observe in the spirit which the law intends. In light of the outcome of our Freedom of Information request discussed below, it is clear Canterbury City Council have not met these requirements in respect of the additional sites process.

Coming on to the National Planning Policy Framework (NPPF) requirements, we believe Canterbury City Council have also failed to satisfy Sections 100 to 103 of the NPPF which deal with the need to avoid increasing flood risk as a result of formulation of the Local Plan.

These sections require that:

* Inappropriate development in areas at risk of flooding should be avoided;
* When considering flooding issues, the local planning authority must consider not only the site itself but also that of flood risk elsewhere (ie of surrounding housing and roads);
* Where flood risk is an issue, the development of a Local Plan should apply a sequential, risk-based approach to the location of development to avoid flood risk to people and property taking account of the potential future impacts of climate change. Both sequential and exception testing of this issue are required;
* New development should be steered to areas with the lowest probability of flood risk.

Section 101 states that, “Development should not be allocated or permitted if there are reasonably available sites …….. in areas with a lower probability of flooding”. Here we note also, for example, Canterbury City Council’s continuing intransigence in accepting your own direction that the former colliery site at Hersden should be regarded as a “brownfield site”, particularly when Kent County Council has informed them that the site has been used more recently for other essentially industrial purposes. Sustainability Appraisal indicates that this site has no flood risk associated with it. We believe the Appraisal also indicates that other lower flood risk sites are available.

We believe that Canterbury City Council has proposed inclusion of an additional site identified as being associated as high flood risk in the Local Plan without taking proper account of these NPPF requirements.

To establish precisely what actions and additional analyses Canterbury City Council did actually take between 23 January 2016 – the day after the additional sites consultation closed – and 22 March 2016 – when Ms Britton wrote to you to say that their position with respect to the proposed additional sites was unchanged, we submitted a freedom of information request to Canterbury City Council on 30 March 2016. A copy of that request and the reply received is appended to this letter.

Key points to note are:

* It appears that there was no proper analysis of the many hundreds of consultation responses submitting valid objections to the Council’s additional site proposals;
* It is noted that the only reference is to Ms Britton’s letter of 22 March 2016 to you that is notable only by its absence of any detail whatsoever as to why the Council effectively chose to ignore the consultation responses;
* The question you yourself posed was whether any choice of additional sites would “be soundly based and deliverable”. We do not see how this could be possibly be soundly judged on the basis of the information the Council has provided and, also importantly, what it has chosen to overlook or ignore;
* It seems that the decision delivered to you in Ms Britton’s letter of 22 March 2016 was taken behind closed doors by an unknown group of individuals who chose not to record the information upon which their decision was made or the analytical basis for it.

This is totally unacceptable. Openness and transparency are the key guiding principles of central and local government in the UK. They are firmly embedded in the provisions of the Town and Country Planning (Local Planning)(England) Regulations 2012 and the National Planning Policy Framework which Canterbury City Council have wilfully or otherwise chosen to ignore. At best this could indicate ignorance and shoddy practice or at worst something more untoward. We challenge any suggestion that Ms Britton’s letter of 22 March 2016 can be said to meet these clear legal requirements

We believe that these are not matters that the Council can choose to overlook or ignore to suit their own convenience. They are matters of law. Hence, if these deficiencies are not set right in the next stages of the Local Plan development, we believe it will leave the whole additional sites process and ultimately the Secretary of State open to the possibility of legal challenge.

We have already registered that we want to be involved and submit evidence in these next stages.

Yours sincerely

Robert L Jackson (Dr)

Secretary

Grasmere Village Residents’ Association (GVRA)