**CANTERBURY DISTRICT LOCAL PLAN EXAMINATION 2015**

**WRITTEN SUBMISSIONS BY J.D.I. BAKER**

**REGARDING THE DUTY TO CO-OPERATE**

1. **INTRODUCTION**

Following the Hearing Session on Day 1 of the Examination (Tuesday, 14th July 2015) into the Duty to Co-operate, a number of matters were left outstanding for the Council to investigate and revert to the Examination.

I understand that on Friday afternoon (17th July 2015), the Council submitted two folders of new material in relation to the Duty to Co-operate with the Inspector. It was discourteous, unfair and contrary to normal practice for the Council to provide no copies for the other parties present at the Examination.

Despite assurances given by the Council to the parties then present at the Examination that the new material was available on the website, at the time of writing (Sunday, 19th July 2015) the Examination Documents webpage states “Last updated 15 July 2015”, and does not yet contain this new material.

Nor does the document regarding the decision by Kent County Council (KCC) on the Transport Strategy, which the Council brought to the Examination on the morning of Day 3, yet appear on that webpage. I have therefore not been able to see this document nor any of the other new information submitted to the Inspector.

I understand, however, that the Inspector has indicated that he will make a decision and announcement on the Duty to Co-operate matters as soon as Tuesday, 21st July 2015.

Therefore, given this timescale, I have no alternative to submitting by email at this stage such further comments as I have at present on the subject of the Duty to Co-operate, based on what the Council’s representatives have said during the Hearing Sessions to date.

In doing so, however, I wish to reserve the right to comment further when the new material submitted by the Council is available to review.

1. **KENT COUNTY COUNCIL (KCC)**

In bringing the decision by KCC on the Transport Strategy to the Examination on Thursday morning (16th July), the Council’s Counsel stated to the Inspector that the Decision made by KCC on 6th July 2015 was "KCC's endorsement of the Transport Strategy”. However, this is not the case.

In fact, as set out in my ‘Additional Papers Referred to at Hearing on: 14 July 2015’ (which I circulated to both the Inspector and the other parties present on the morning of 15th July 2015), KCC’s Decision was to endorse merely three principles of the Transport Strategy, not the whole Strategy.

The fact that this is the ultimate decision of KCC on the matter confirms that the earlier “approval” of KCC to the Transport Strategy (which Mr Brown referred to in his evidence on Day 1) was merely the approval of the KCC Cabinet Member to the public consultation commencing on the draft Transport Strategy (the Council’s Chief Executive had previously advised Councillors that this had been obtained before public consultation commenced).

Moreover, in its decision KCC specifically registered its dissent from “reduction in City Centre parking”. Such reduction is a “Main Action” within the Transport Strategy (see CDLP 8.6, page xiv, second bullet under heading (2)). It is also reflected widely in the Draft Local Plan, in which numerous existing car park sites are allocated for development without caveats relating to the re-provision of parking elsewhere, notably Policy EMP1 (land at Canterbury West Station, 0.4 ha.), and Policy HD1 and Appendix 2 (Sites CA481, Adjacent to Canterbury West Station; CA482, Canterbury East Station (North side) Car Park; CA278, Northgate Car Park; CA507, Castle Street car park; CA477, Holmans Meadow Car Park; CA043B, Rosemary Lane Car Park; CA347, Ivy Lane North; CA281, Hawks Lane; CA047, St Radigund's Place; CA286, St John's Lane Car Park).

Therefore, the Council has failed, even 7.5 months after Submission of the Draft Local Plan for examination, to achieve KCC’s agreement to a key element of the Transport Strategy that supports and is reflected in the Plan. Albeit the Duty to Co-operate does not amount to a duty to agree, the Council has in fact made subsequent concessions to KCC in two ways:-

1. The Council agreed, at its Executive Committee meeting on 22nd October 2014, to change the Transport Strategy (inter alia) to reflect KCC’s concerns over the loss of City Centre parking (which concerns were also expressed by rmembers of the public in their responses to the Draft Transport Strategy). See CDLP 8.6, Addendum 1, page v, references 36-40, which refer to changes agreed to be made but which have not yet been prepared, let alone incorporated in a revised Transport Strategy. Therefore, effectively KCC is dissenting from “an important part of the parking strategy” (as CDLP 8.6, Addendum 1, references 36 & 39 put it) and the Parking Strategy also supports the Draft Local Plan (see CDLP 8.5).
2. During the public consultation period on the draft Transport Strategy and the Draft Local Plan (which closed on 18th July 2014), the Council wrote a letter to KCC on 11th July 2014, a copy of which is at Appendix 7 to my Statement on Matter 4. This letter has never been published by the Council, and emerged into the public domain only at County Hall as part of KCC’s preparations to consider whether or not it would support the draft Transport Strategy. However, this letter and the discussions to which it refers show that the Council was well aware, long before Submission, that KCC dissented from its proposals in the Draft Local Plan. But the Council made no changes to the relevant Policies in the Plan (see above for details) prior to submitting the Plan and, as KCC is dissenting from those principles, the Duty to Co-operate cannot have been discharged.
3. **THE OFFICE FOR RAIL REGULATION**

At the Hearing Session on 14th July 2015, the City Council’s Assistant Director, Ian Brown, suggested in response to a question from the Inspector that the use of parcels of land at and around Canterbury West Station would not be a “strategic matter” within the meaning of section 33A(3) of the Planning & Compulsory Purchase Act 2004.

A “strategic matter” is defined in section 33A(4) as “development or use of land that has or would have a significant impact on at least two planning areas”, and it is assumed that Mr. Brown was suggesting that this test is not met. However, it is very relevant that a “strategic matter” is stated to specifically include “**development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas**”.

This latter wording cannot mean “development or use of land in connection with strategic infrastructure, where *the development or use of land would significantly impact two planning areas*”, because then it would add nothing to the main definition which precedes it. This latter wording can only logically be referring to “development or use of land in connection with *strategic infrastructure that has or would have a significant impact on two planning areas*”.

Thus, it is the cross-boundary impact of the infrastrucure that is relevant, not the cross-boundary impact of the Local Plan’s proposals.

In order to demonstrate (if there were any doubt) the current and future strategic importance of the High Speed train service and route to and through East Kent, I gave to the Examination on Day 1 references to it in relevant Sustainable Community Strategies. I further draw attention, in connection with the future significant impact that this railway line and service will have on other “planning areas” (i.e. Districts, including Thanet District and Ashford Borough), to CDLP 8.6, para. 5.106, and to the Press article at Appendix 5 to my Statement on Matter 4, referring to the “Journey Time Improvements” project which I referred to on Day 1.

The issues before the Inspector regarding the development and use of land in the vicinity of Canterbury West Station include:-

1. the future use of the site referred to in Policy EMP1 as “Canterbury West Station”, comprising the whole of the City Council’s Station Road West Car Park and part of the existing Station Main Car Park;
2. the future use of the site referred to in Appendix 2 to the Local Plan as Site CA481 as “Adjacent to Canterbury West Station”, which includes the whole of the existing Station Overflow Car Park along with other Network Rail-owned land on which the Canterbury-Wye Area Control Centre (a signalling centre) exists;
3. the need to safeguard land in Roper Road, owned by Network Rail, for use in connection with the High Speed train route from London to Ramsgate, namelymas a second access to Canterbury West Station. The draft Transport Strategy itself targets the achievement of this project (see CDLP 8.6, para. 5.111 and Actions D6 & D7 on pages 90 & 91), yet the Local Plan makes no provision for it.

All of these concern the use of land “for or in connection with” (to quote from the section) strategic infrastructure, i.e. HS1. But (unless the Council has now produced compelling evidence of its attempts to contact the ORR, of which the ORR is itself mysteriously unaware), the Council has simply failed to begin to comply with the Duty to Co-operate with the ORR as set out in law and in the Planning Practice Guidance.

1. **NATURAL ENGLAND**

The Council has failed to produce evidence of co-operation, prior to submission of the Draft Local Plan, with neighbouring local authorities with whom strategic access management and monitoring (SAMM) of European protected sites needs to be organised, such as Thanet District Council with whom the draft Memorandum of Understanding only appeared in June, 7 months after submission of the Local Plan.

In addition, the Council had not completed co-operation with Natural England regarding the same matters as at the date of submission of the Plan for Examination.

1. **THE COUNCIL’S OWN VIEW**

I attach an extract from the Minutes of the Council’s Local Plan Steering Group meeting on 17th December 2013. Page 9 of these shows that Council officers advised Councillors that “Duty to Cooperate” matters with other authorities included:-

1. Housing numbers [this has been addressed by the Examination already]
2. Economic strategy [this would include such things as the Retail Strategy for Canterbury, and its effects on neighbouring centres including Dover and Deal; how the Canterbury District relates to economic drivers like the High Speed 1 railway line through Canterbury West; and how the City Centre is to be supported in its economic role by the provision and arrangement of parking (including Park & Ride)]
3. Habitat Regulations Assessment / Green Infrastructure [this relates to both Natural England and the neighbouring local authorities with whom strategic access management and monitoring (SAMM) of European protected sites needs to be organised, such as Thanet District Council]
4. Highways matters [this relates to co-operation with KCC on strategic matters, including the Sturry Link Road and parking policies which affect traffic flows and also whether shoppers use other centres rather than Canterbury]

In each of these cases, it would seem that the Council was probably aware of the outstanding need to complete co-operation (or in the case of the ORR, ignorant of the need for co-operation), yet the Local Plan was submitted for Examination before the co-operation required by law had been concluded.

**J.D.I. Baker**

**19th July 2015**

ATTACHMENT: Extract from the Minutes of the Council’s Local Plan Steering Group meeting on 17th December 2013.