**CANTERBURY DISTRICT LOCAL PLAN EXAMINATION 2015**

**RESPONSE BY J.D.I. BAKER TO CANTERBURY CITY COUNCIL’S REPORT TO FULL COUNCIL ON THURSDAY 23rd JULY 2015 RECOMMENDING THE ADOPTION OF A LOCAL DEVELOPMENT SCHEME**

1. **INTRODUCTION**

On Wednesday, 22nd July 2015 at 17:42, the Programme Officer issued an email to participants in the Examination, stating:-

“At the first hearing session on Tuesday 14 July the inspector asked the council to produce the papers on the adoption of the LDS, please see the link below for the councils response.

<https://www.canterbury.gov.uk/media/1036594/Supp24216dDocPackPublicversion0001.pdf>

“the inspector has asked that comments on this be made via myself by next Tuesday 28 July at 5pm.”

I am much obliged to the Inspector for ensuring that the attention of participants was drawn to this new evidence from the Council, and for allowing a reasonable time for participants to comment upon it. This Response provides my comments in sections **C.** and **D.** below. Before doing so, it considers in section **B.** the Background to the current situation regarding the LDS.

The following terms are used in this Response:-

* “LDS” is used simply as a generic abbreviation for “Local Development Scheme”, and does not refer to any particular document.
* “PDLP” means the Publication Draft Local Plan, which the Inspector is examining.
* “CDLP 1.3” refers to the Examination Document of that number, being a purported LDS dated September 2014, which was submitted to the Planning Inspectorate by the Council alongside the PDLP on 20th November 2014.
* “the Report” refers to the report of the Council’s Assistant Director of Planning and Regeneration to the Full Council which is at the above weblink. It has also just become CDLP 16.29.1.
* “the September 2014 LDS” refers to the LDS document, so dated, which forms Appendix 1 to the Report. For the purposes of this Response, it is assumed that the September 2014 LDS is identical to CDLP 1.3. I have not been able to compare the two documents, as they are both in pdf format, but I understand that Rev. Paul Wilson has asked for specific confirmation that they are identical, and I am not aware that this confirmation has yet been provided. Should there be differences, I reserve the right to comment on those differences.
* “the Regulations” means the Town and Country Planning (Local Planning) (England) Regulations 2012.
1. **BACKGROUND**

When the Council published the Publication Draft Local Plan (“PDLP”) for public consultation under Regulation 19, a webpage of “Evidence base documents” was made available on the Council’s website to support the PDLP. A copy of this webpage is at Appendix 1 of my letter to the Planning Inspectorate dated 19th February 2015, which is an annex to my Statement on Legal Compliance and Examination and can be found at:- <https://www.canterbury.gov.uk/media/1029725/J-Baker-appendix-Duty-to-Co-Legal-780828-0085.pdf>.

No Local Development Scheme of any kind was listed on this webpage, despite the legal requirement on the Council, under the Regulations, to publish on its website for consultation at Regulation 19 stage “a copy of each of the proposed submission documents”, as explained on pages 1 and 2 of my 19th February letter.

Despite various requests by Councillors and members of the public to allow more time for public consultation on the PDLP, the Council allowed only the minimum 6-week period required by the Regulations. As explained in my 19th February letter, it was unfair and onerous of the Council to require the public to comment on the PDLP, together with its SA and HRA, as well as upon a draft of the District Transport Strategy and a draft of the Open Space Strategy (both of which were claimed to be supporting documents for the PDLP), all at the same time and in the same 6-week period. As a result of the extreme shortness of time allowed by the Council, it was not possible to look into the LDS situation at that time.

When the PDLP was submitted for Examination, one of the documents submitted with it was CDLP 1.3. This document had been created in private by the Council, and had never been published before it was uploaded, in the last week of November 2014, to the Council’s “Examination documents” webpage.

It has subsequently been stated by the Council that, at a meeting of the Council’s Local Plan Steering Group on 15th October 2014, approval was given by some Councillors to this document. It has not been possible to verify this claim at present, but in any event the Local Plan Steering Group is not a duly-constituted committee of the Council, and under the Local Government Act and related Regulations, it cannot lawfully be given any legal powers because of this. Its lack of proper procedures is confirmed by the fact that it meets in secret, and reports presented to it, and its decisions and minutes, are not published in any way.

As a result of the above facts, my 19th February letter stated, at the foot of page 10, that CDLP 1.3 has not been legally approved, and should not have been submitted to the Examination and represented as a lawful LDS.

This was disussed at the Hearing on Day 1 of the Examination (Tuesday, 14th July 2015), and as a result of the Council’s assertions that CDLP 1.3 had in fact been lawfully approved by the Council as its LDS, was one of a number of matters left outstanding for the Council to investigate and revert to the Examination.

The Council attempted, in the afternoon of Day 2 of the Examination (Wednesday, 15th July) to provide some further information on the LDS issue to the Inspector. This included, inter alia, a claim that a “delegated decision” had been made by the Local Plan Steering Group on 24th May 2013 to approve CDLP 1.3. Given the self-evident discrepancies in dates, this information was left outstanding once again for further clarification at a later date.

The Council subsequently produced a letter to the Inspector dated 16th July 2015, entitled “Canterbury District Local Plan – Local Development Scheme”, referring to a large number of meetings. This letter has just become document CDLP 16.29.2, although it makes no reference to the Report which is CDLP 16.29.1. Meanwhile, some or all of the meeting papers referred to in CDLP 16.29.2 have become CDLP 16.46.

This has resulted in some confusion for participants as to what the Council’s position on the LDS matter now is. CDLP 16.29.1 seems not to have a covering letter or email of explanation from the Council, and it is not referred to in CDLP 16.29.2.

On 25th July 2015, I requested, by email to the Programme Officer, clarification of whether CDLP 16.29.2 and CDLP 16.46 mean that the Council is not in fact relying upon the Report.

Pending clarification of the Council's position on this matter, and how this relates to the various documents that it has very recently produced, I have no alternative to submitting at this stage such comments as I have at present on the Report. In doing so, however, I wish to reserve the right to comment on the new material produced by the Council as CDLP 16.29.2 and CDLP 16.46, once the Council’s position on the LDS matter is clarified.

I further need to reserve the right to comment on the actual Resolution of the Full Council Meeting on Thursday, 23rd July, once this becomes available. At the time of writing, neither the audio recording nor the minutes are available online, so it is not certain whether, and if so in what form, the resolution proposed in the Report was passed.

1. **THE REPORT**

The resolution proposed in the Report was: “That Council adopts the draft Local Development Scheme with effect from 23rd July 2014.” It is assumed that this was a typographical error, and should have read “2015”, not “2014”, as the Council clearly cannot adopt a document to have effect before the Council’s resolution to do so. Para. 8 of the Report confirms that this apparent ‘backdating’ was not intended.

The Report continues: “The first iteration of the LDS was adopted by Council in 2004. Since then the subsequent versions have been reported to Executive and latterly the Local Plan

Steering Group.” This appears to be a summary of the position set out in the Council’s letter to the Inspector dated 16th July 2015 (CDLP 16.29.1), and para. 2.3 effectively confims this. However, the Report then continues:-

“As set out above*,* since 2009 subsequent revisions of the LDS have not been

formally adopted and brought in to effect by formal resolution of Council or a duly

authorised committee or sub-committee. The purpose of this report is to correct that

position and to create a clear audit trail showing the up to date adoption by Full

Council of the latest iteration of the LDS. It seeks to give full approval by the Council

as the Local Planning Authority to this document and to address issues relating to its

validity which were put during the course of the current Local Plan hearing.”

The Report thus effectively accepts and confirms my submission to the Examination, that no LDS has been validly adopted by the Council for some years, since 2009. If this were not so, there would be no need to “correct that position”, nor to seek “full approval to” the September 2014 LDS.

The fact that the Report was rushed, late, to the Full Council meeting during the second week of the Examination confirms, too, that the situation I had outlined to the Examination in the Examination’s first week is accepted by the Council as putting it in difficulty.

It is normal practice, and a legal requirement of the Local Government Act 1972 and related Regulations, that reports to Council meetings are published five clear working days before the meeting. In this case, the Agenda and reports for the Full Council meeting on Thursday, 23rd July were duly published on Wednesday, 15th July. At that time, there was no reference on the Agenda to the intention to consider a report on the LDS. This appears to have been added as an afterthought on Monday, 20th July, in a belated attempt to address the problem affecting CDLP 1.3.

Although it is true, as para. 2.2 of the Report puts it, that “There is no requirement that [an LDS] be subject to public consultation”, not to expose a proposed LDS to even the usual level of a Council report, by rushing it out at the last minute, shows a disregard for any level of community involvement, even that required by law in terms of the timely advance publication of reports to Council meetings. It also shows an approach at variance with that espoused in the Council’s Statement of Community Involvement (CDLP 3.1), para. 1.1 of which states: “Strengthening community and stakeholder involvement is an important part of this new planning system.”

Reference might also be made to numerous other positive statements about community involvement in the SCI.

And para. 4 of the Report states: “The LDS in all its iterations has been published on the Council’s website and copies made available to the public.” It has, I believe, been established by Rev. Paul Wilson that this is not so.

As the Report, at para. 2.1, puts it, “the LDS is a rolling three year programme for the production of the Local Plan”. Clearly, a work programme cannot be adopted after the work has been completed. Such would be totally contrary to Parliament’s intentions in requiring the adoption and maintenance of an LDS by plan-making councils, and requiring further that plans be prepared in accordance with it.

It defies logic and the law to imply that the process can legally be carried out the other way around – i.e. first prepare the plan, and then produce the previously-secret work programme (LDS) for preparing the now-completed plan, adopt the work programme, and claim that the plan was produced in compliance with the work programme. This is quite clear in the extracts from the law and the NPPF quoted in paras. 2.1 and 2.2 of the Report.

In short, for the Council to attempt to produce and bring into force an LDS now, with effect part-way through the Examination of the PDLP, is an exercise in window-dressing for the Inspector’s benefit. Whilst in theory, it would enable him to complete his Examination in the belief that an up-to-date LDS in the form set out in the Report existed, this is a wholly theoretical exercise and defeats the whole purpose of an LDS.

That purpose is to enable the public to know in advance, and to follow and participate in, the preparation of a local development framework, whatever documents that may consist of, as it takes place. The Report does not enable that to happen. Indeed, like the Council’s failures to comply with the Duty to Co-operate, a failure to prepare a Local Pan in accordance with an up-to-date LDS is effectively irremediable after Submission. Indeed, it is effectively irremediable after publication in a case (such as this) where the Publication Draft is simply submitted for Examination with no further consideration or steps after the close of public consultation.

To adapt a metaphor I used on Day 1 of the Examination, the situation proposed by the Report is somewhat akin to a restaurant which advertises to invite members of the public to sample its menu and write up their comments on a website, but neither publishes the menu in advance, nor displays it at the door, nor hands it to diners at table (although it exists in the kitchens), and only produces it after all courses have been cooked for, presented to and consumed by the diners. Only at that stage do they learn the shape of the overall meal in which they were invited to partake.

1. **CONCLUSION**

As demonstrated above, it defies logic, planning guidance and the law to seek to bring into force an LDS after the completion of the preparation of a Local Plan whose preparation was supposed to be in accordance with it. To do so makes a mockery of the system, and would enable any council that had failed to comply with its LDS to retrospectively ‘correct’ its breach of the legal requirements.

The relevant Inspector’s Issue and Question is as follows:-

*“Has the Local Plan complied with other legal requirements:*

1. Has the Local Plan been prepared in accordance with the Local Development Scheme? “

Any attempt to “adopt” the September 2014 LDS with effect from 23rd July 2015, can ultimately have no impact upon the answering of this Question. The preparation of the PDLP was completed at Submission, or – effectively in this case – at Publication under Regulation 19 in June 2014.

This Question can only be answered by reference to an LDS that was in force at the time of the preparation, not one that came into being after the preparation had been completed.

The LDS at the time of preparation was clearly not CDLP 1.3, and that document should be withdrawn and treated as of no relevance to the Question.

It is not yet clear what LDS was legally in force at the time of preparation of the PDLP. However, the Council’s desperate efforts, by means of the Report, to belatedly “adopt” the September 2014 LDS very strongly indicate that it is well aware that the PDLP has not been prepared in accordance with any other LDS that it may have been legally adopted at some point in the past.

Thus the only possible answer to the Inspector’s Question above is “**No**”.

**J.D.I. Baker**

**28th July 2015.**