**RE: CANTERBURY CITY COUNCIL LOCAL PLAN EXAMINATION**

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**COUNCIL RESPONSE TO LEGAL**

**REQUIREMENT ISSUES IN RESPECT OF**

**CONSULTATION & AVAILABILITY OF DOCUMENTS**

**INTRODUCTION:**

1. This note sets out the Council’s position in response to the views expressed by Richard Harwood QC (‘RHQC’) in his advice to Herne & Broomfield PC (HBPC) dated 17 June 2015 which considers an issue raised also by Mr Baker (and others) relating to the publication of submission documents and consultation requirements.
2. The complaint focuses upon the consultation carried out in June 2014 in respect of the publication draft of the plan and the documents made available compared with the final submission documents which accompanied the submission of the plan.
3. In essence it is suggested that there are additional documents within the submission documents over and above the documents made available in the June 2014 consultation which should either have been made available during the 2014 consultation or that there should have been further consultation to accommodate the additional documents and that the absence of a consultation before submission of the plan means that there has been a breach of the relevant legal requirements.

RELEVANT LEGAL PROVISIONS:

1. S.19 (3)of the Planning and Compulsory Purchase Act 2004 provides:

*“(3) In preparing the local development documents (other than their statement of community involvement) the authority must also comply with their statement of community involvement.”*

1. With regard to plan preparation and consultation Reg 18 of the Town and Country Planning (Local Planning) Regulations 2012 (“the 2012 Regulations”) provides:

*“(1) A local planning authority must—*

*(a)notify each of the bodies or persons specified in paragraph (2) of the subject of a local plan which the local planning authority propose to prepare, and*

*(b)invite each of them to make representations to the local planning authority about what a local plan with that subject ought to contain.*

*(2) The bodies or persons referred to in paragraph (1) are—*

*(a)such of the specific consultation bodies as the local planning authority consider may have an interest in the subject of the proposed local plan;*

*(b)such of the general consultation bodies as the local planning authority consider appropriate; and*

*(c)such residents or other persons carrying on business in the local planning authority’s area from which the local planning authority consider it appropriate to invite representations.*

*(3) In preparing the local plan, the local planning authority must take into account any representation made to them in response to invitations under paragraph (1).”*

1. With regard to an authority’s obligations before submission of a plan for examination Reg 19 of the 2012 Regulations provides:

*“ Before submitting a local plan to the Secretary of State under section 20 of the Act, the local planning authority must—*

*(a) make a copy of each of the proposed submission documents and a statement of the representations procedure available in accordance with regulation 35, and*

*(b) ensure that a statement of the representations procedure and a statement of the fact that the proposed submission documents are available for inspection and of the places and times at which they can be inspected, is sent to each of the general consultation bodies and each of the specific consultation bodies invited to make representations under regulation 18(1).*

1. Reg 17 of the Town and Country Planning (Local Planning) Regulations 2012 defines “*proposed submission documents*” as meaning *the following documents—*

*(a) the local plan which the local planning authority propose to submit to the Secretary of State,*

*(b) if the adoption of the local plan would result in changes to the adopted policies map, a submission policies map,*

*(c) the sustainability appraisal report of the local plan,*

*(d) a statement setting out—*

*(i) which bodies and persons were invited to make representations under regulation 18,*

*(ii) how those bodies and persons were invited to make such representations,*

*(iii) a summary of the main issues raised by those representations, and*

*(iv) how those main issues have been addressed in the DPD, and*

*(e) such supporting documents as in the opinion of the local planning authority are relevant to the preparation of the local plan;*

and

*“statement of the representations procedure” means a statement specifying—*

*(a)the title of the local plan which the local planning authority propose to submit to the Secretary of State;*

*(b)the subject matter of, and the area covered by, the local plan;*

*(c)the date by which representations about the local plan must be received by the local planning authority, which must be not less than 6 weeks from the day on which the statement is published;*

*(d)the address to which representations about the local plan must be made;*

*(e)that representations may be made in writing or by way of electronic communications; and*

*(f)that representations may be accompanied by a request to be notified at a specified address of any of the following—*

*(i)the submission of the local plan for independent examination under section 20 of the Act,*

*(ii)the publication of the recommendations of the person appointed to carry out an independent examination of the local plan under section 20 of the Act, and*

*(iii)the adoption of the local plan*

1. With regard to who may make representation about a plan proposed for submission Reg 20 of the Regulations 2012 provides as follows:

*“(1) Any person may make representations to a local planning authority about a local plan which the local planning authority propose to submit to the Secretary of State.*

*(2) Any such representations must be received by the local planning authority by the date specified in the statement of the representations procedure.”.*

1. With regard to availability of documents Reg 35 of the 2012 Regulations provides :

*“(1) A document is to be taken to be made available by a local planning authority when—*

*(a) made available for inspection, at their principal office and at such other places within their area as the local planning authority consider appropriate, during normal office hours, and*

*(b) published on the local planning authority’s website”*

1. In addition with regard to making copies of documents Reg 36 of the Regulations 2012 provides :

*“1) A person may request from the local planning authority a copy of a document made available in accordance with regulation 35.*

*(2) The local planning authority must provide a copy of the document to that person as soon as reasonably practicable after receipt of that person’s request.*

*(3) The local planning authority may make a reasonable charge for a copy of a document—*

*(a)provided in accordance with paragraph (2), or*

*(b)published as required by or under Part 2 of the Act.”*

ISSUES RAISED

1. The advice of RHQC at para 12 is that that there are a number of documents which he suggests *“could only have been seen as relevant”* andwhich *“ought to have been published with the consultation”*  and that *“if they were not taken into account in preparing the draft Local Plan then critical material was omitted and the plan process was therefore severely flawed.”*
2. He then, without specifically identifying all the documents he means, (although it has been assumed he is chiefly relying upon the analysis carried out by Mr Baker ) sets out different categories of documents in issue [ para 11]. These categories are:
3. Documents/material which were not in existence at the time of the June 2014 consultation;
4. Documents/material which were in existence at the time of the June 2014 consultation, that were not in the evidence documents but *“traceable elsewhere or ought to have been”;*
5. Documents/material which were in existence at the time of the June 2014 consultation which were not traceable but would have been found if published
6. At para 14 RHQC acknowledges that consultation errors are “*capable of being remedied….but the present circumstances point to the remedy being reconsultation”.*

PUBLICITY

1. The Council at the time of the extent of publicity in respect of the consultation in 2014 is set out in the Consultation Statement 18 November 2014 CDLP 3.5. In particular all those wanting to view and comment upon the draft local plan could access documents through the Council’s website and at the Council offices as well as at other locations and that further information could be obtained from the Council’s planning policy team either by telephoning the relevant number which was displayed or by email at the address also displayed.

DOCUMENT IDENTIFICATION AND ANALYSIS

1. In response to the points raised therefore the Council has investigated this matter and carried out a full analysis set out in the table below.
2. The Council has sought to provide a response to each of the documents listed setting if they were available at the time of the time of the 2014 consultation, if so how and, if not, the reasons why.
3. This analysis is set out in the table attached.
4. The table shows that of the 54 documents identified as being in issue by Mr Baker and relied upon by Herne & Broomfield Parish Council, the great majority were in fact available in accordance with Reg 35. This is because to be “available” in accordance with the regulations documents must be available through the Council’s website. The suggestion appears to be that the consultation on a pre submission plan must include all the docs on one single

CONCLUSION

1. In summary, the analysis shows that the vast majority of the documents that were in existence and which subsequently formed the submission documents were in fact available in accordance with the regulations at the time of the June 2014 CDLP Publication Draft consultation.
2. Where others documents or updates were not available the table shows that a considerable number documents did not exist at the time of or had not been published prior to the June 2014 consultation (including updates to existing evidence base documents).
3. Those documents that were in existence or had been published prior to the June 2014 consultation (some 11 documents) fall into the following categories:
4. documents where it was considered unnecessary to be published online for purposes of the 2014 consultation (highlighted in yellow);
5. documents that had been available online in respect of earlier historic consultations removed after that consultation and were subsequently considered unnecessary to be published online for purposes of the 2014 consultation and were in effect historic (highlighted in dark blue);
6. documents that could not be published online but which were available in hard copy during the consultation. Thereafter a means was devised to publish online (highlighted in light blue).
7. documents omitted in error but where the full report or information set out therein was reflected in available documents (highlighted in green)
8. It is acknowledged by RHQC that Council’s are entitled to deploy discretion and judgement in the number and extent of supporting documents to be published at such a stage of development plan progress. In addition it is clear that the overall purpose of the consultation process is to enable consultees to understand how the plan and its policies have been derived and maker representations in respect of the draft plan prior to examination. Such representations can be and are wide ranging including whether there is sufficient evidence to support the plan.
9. It is not accepted that the historic documents that were not made available online or at all render the consultation process unlawful and that such documents “*could only have been relevant”* as suggested by RHQC. As for those documents omitted in error online were available in hard copy and the information in those omitted documents was reflected in documents which were available online.
10. It is not accepted therefore that the Council has failed to comply with the relevant legal requirements. It is also not accepted that it would be reasonable to expect or require the Council to carry out a further consultation when the additional new documents were added to the submission documents.
11. In addition, to the extent that there is any suggestion that people have been disadvantaged because they would have liked to make representations on the additional documents, the Inspector made it clear that he is willing to consider representations that address those documents and matters raised therein in any event.