**Canterbury District Local Plan: Duty to Co-operate (Legal Requirements)**

**Council note to Inspector Mike Moore BA (Hons) MRTPI CMILT MCIHT in relation to the further submissions on the Duty to Co-operate, following response to additional evidence.**

1. This document provides the Council’s response to the further submissions and representations made by participants in the local plan examination.
2. This followed the submission by the Council of additional information as further evidence of examples of the Council’s compliance with the Duty to Co-operate (DTC) which the council undertook to do.
3. The further responses have been made by:

* Dover District Council
* Pentland Properties Ltd
* The Alliance of Canterbury Residents Associations (ACRA)
* Mr J.D.I Baker

1. The responses all still suggest that there is not sufficient evidence to show that the Council has fulfilled its statutory DTC. The Council strongly rejects this suggestion.
2. The statutory duty as set out in the Act is as follows:

“(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and

(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3).”

1. The Council maintains it has shown a high and consistent level of engagement going back even before the draft NPPF was published; what is more the Inspector has had clear evidence from those local authority partners that they are in agreement with regard to the Duty to Co-operate and CCC’s approach within that, in particular with regard to the relevant housing market areas and where housing needs are to be met, namely within each other’s areas.

Dover DC

1. It is acknowledged that Dover District Council (DDC) has recently sought to raise certain issues about CCC’s approach having originally confirmed that they considered that CCC had complied with the Duty. The concerns now expressed relate to retail impact and impact upon protected habitats and species.
2. DDC’s position in response to the 2010 Core Strategy was that no significant issues arose for their district with regard to the cross boundary matters including shopping and habitats regulations assessment (CSO1343).
3. In respect of the 2013 Preferred Option draft, DDC’s response was that they wished to be assured that that the level of growth proposed would not undermine their core strategy (PO731). DDC accepted that CCC housing and employment proposals will have no impact and Policy TCL6(g) (CDLP 1.1, Page 99) requires that when assessing applications for retail, the impacts on the vitality and viability of other town centres in the identified catchment area be assessed. Para 4.47 refers to maintaining Canterbury’s current role and Para 4.49 refers to Wincheap retail proposals needing to be complementary to the town centre. In addition DDC made no direct mention at this time about concerns with respect to retail provision at Wincheap even through CDLP 1.2 para 4.45 and Policy TCL7 made reference to 50,000m2 of retail space being provided at Wincheap.
4. In its response to the 2014 Publication Draft consultation, DDC stated that The Plan was legally compliant. DDC requested the inclusion of explanatory text to make it clear that Policies TCL6 and TCL7 should be read together and provide detail on the floorspace/size threshold (over 920 to have impact assessment) and wished to be assured that there were no cross boundary impacts on nearby towns such as Dover and Deal (PV159).
5. DDC also supported Policy SP7 and requested text be inserted to explain that the strategy is consistent with the East Kent approach and considered effects on nature reserves in Dover (PV160). It should be noted that amendments have been proposed to para 1.82 and 10.26 partially in response to Dover’s concerns (see CCC Matter 6 Appendix 1). NE have also confirmed that our approach is indeed compatible with the East Kent.
6. Following DDC’s comments on the Publication Draft in August 2014, CCC have met directly with DDC on three separate occasions primarily to discuss the retail issues raised (1.8.14, 8.1.15 and 3.6.15) and to inform DDC of the forthcoming GL Hearn work. In addition there have been the regular East Kent Local Authority meetings outlined in the consultation statements response which are before the examination, these provided opportunities to discuss all plan and policy related matters
7. It has been made clear to DDC that CCC’s retail proposals will simply maintain Canterbury’s position in the retail hierarchy and its current retail market share; and in any event will not have any impact upon any neighbouring authority’s market share. In addition, the recent retail capacity work undertaken by GL Hearn has reduced the forecast comparison floorspace requirements across the plan period to 2031 by 40% (by some 20,000m2).
8. In addition there was a meeting of the East Kent Green Infrastructure Group on 14 April 2015 where CCC/Val Hyland (the consultant) provided an update on the Council’s progress with the production of the Thanet Coast SAMM. DDC were in attendance at the meeting.
9. It is unfortunate and indeed a surprise to CCC, that despite this, DDC decided to raise the Duty to Co-operate formally as an issue for the first time in its statement to the examination on legal compliance received on 17 June 2015.
10. It is also noted that DDC have now raised concerns about water supply and waste water disposal. However, this was again not a matter that had previously been identified by DDC as a matter that led to a failure to comply with the DTC, but had merely expressed a wish to ensure that there were no cross boundary issues. The examination has heard evidence from SEW and SW confirming no such issues should arise.
11. Dover District Council is being and has been fully engaged with, and it is CCC’s view that DDC’s concerns should be better categorised as concerns or disagreement and do not truly amount to evidence of a failure on CCC’s part to engage constructively. It is not, therefore, clear why DDC now raise a Duty to Co-operate issue. Nevertheless, it is notable that DDC still remain in agreement with regard to housing and employment matters.

Other respondents

1. The nature of the other responses (in particular Pentland) seem to be to seek to emphasise that in order to comply with the DTC the Council is required to provide some form of forensic audit trail in order to meet the DTC. This is, however, not the correct interpretation of statute or the guidance given in the NPPF and PPG. The statutory duty is clear. The question the Inspector needs to be satisfied of is whether the Council has maximised the “effectiveness” within which activities within S.33a (3) are undertaken. Those activities under ss (3) in so far as they are relevant to this plan are the preparation of DPD’s; and those activities that can be reasonably considered to prepare the way for these activities or could be, contemplated, and activities that support activities within so far as relating to a strategic matter.
2. In its submission CCC has clearly done so and there is sufficient evidence to show this.
3. In addition, the Inspector at this examination is in fact not in a position where the authorities have failed to agree, but have engaged. He is in fact presented with an even stronger position where each of the neighbouring authorities (and indeed all of the relevant bodies) have stated that they are in agreement. This is, in itself clear and unassailable and such an agreed position could only have come about as a result of effective engagement between the relevant authorities and bodies. As such, combined with the other evidence, in itself shows how effective engagement has occurred over the years.
4. With regard to Mr Baker’s point about whether the Office of Rail Regulation (ORR) should have been engaged with under the DTC. As mentioned before the Inspector, the Council considers that the use of land at Canterbury West Station is not a strategic matter and therefore the ORR did not need to be consulted. However, it ought to be noted that during the preparation and consultation on the Canterbury West Regeneration Zone Development Brief (July 2011) the relevant rail authority was consulted. Pentland suggest that the existence of HS1 means that the ORR should have been consulted however HS1 is not part of the local plan. Furthermore, the ORR have confirmed to CCC that they would not have expected to be consulted by CCC on the Local Plan (CCC anticipate that this will be put in writing for the Inspector next week).
5. The Council notes the points raised by ACRA as to engaging with local residents and parish councils. Consultation and engagement with them is achieved separately through the plan preparation process and is not part of the DTC.
6. The Council submits it has complied with the statutory Duty to Co-operate and has provided sufficient information for the Inspector to accept that is so.