**CANTERBURY DISTRICT LOCAL PLAN EXAMINATION 2015**

**RESPONSE BY J.D.I. BAKER TO CANTERBURY CITY COUNCIL’S LETTER DATED 17 JULY 2015 AND ATTACHMENTS, REGARDING THE DUTY TO CO-OPERATE (“THE DUTY”)**

1. **INTRODUCTION**

On Friday 17th July 2015, the Council submitted 392 pages of new material on the Duty to the Inspector. No copies were provided for other parties at the Examination, although the Council stated that the new material was available on the website. In fact, the material was not uploaded until Monday morning, 20th July 2015, and given the document reference CDLP 16.34.

Pending uploading of the Council’s new material, I submitted by email on 19th July 2015 some Written Submissions on the Duty, which have now become CDLP 16.39. I also reserved the right to comment further on the new material submitted by the Council.

I am much obliged to the Inspector for allowing other parties a proper opportunity to comment on CDLP 16.34, given its unexpected length and lateness (the material should have been submitted on 17th June 2015), and the fact that it has been submitted during the Examination Hearings when all parties are busy.

This Response is set out as follows:-

* Sections B, C and D consider respectively whether sections B, C and D of my Written Submissions on the Duty (CDLP 16.39) need to be reviewed or revised in the light of CDLP 16.34.
* Section E draws overall conclusions from the evidence provided to the Inspector on the Duty.

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

CDLP 16.34 refers to a number of meetings which the Council held with KCC regarding the traffic modelling that was undertaken in order supposedly to support the Local Plan. However, the related issue of car parking strategy was seemingly downplayed in these meetings with KCC. As pointed out in my Written Submissions on the Duty, car parking strategy is relevant to the economic strategy for the District and to its current and planned position in the sub-regional retail hierarchy, which is a “strategic matter” as confirmed by Dover District Council’s representations to the Examination.

I referred in my Written Submissions on the Duty to the letter sent by the Council to KCC on 11th July 2014, a copy of which is at Appendix 7 to my Statement on Matter 4. The opening paragraph of that letter referred to “various discussions between [the Council and KCC] regarding the Canterbury local plan and transport strategy”, in which “clarification and assurance” were sought by KCC. The letter’s concluding paragraph expressed a willingness to meet to explain the letter and any other matters that KCC wished to discuss.

While about one meeting of the nature referred to in the letter (in April 2014) seems to be hinted at within CDLP 16.34, there is no evidence that the Council took up KCC’s invitation to meet following the letter. I therefore presume that no subsequent meeting took place, and that the Council must have known, at Submission, that KCC remained unhappy with parking aspects of the the draft Transport Strategy documents. At best, the Council may have been told that its letter provided (outside the Transport Strategy) the reassurance that KCC sought – although there is no evidence of such a communication from KCC to the Council.

Even if this were the case, however, it was completely inappropriate for the Council to rely, at Submission, upon having secured – if indeed it had by then informally secured – KCC’s acceptance of its proposals relating to parking in the Transport Strategy, and the related allocations of numerous car park sites in the Draft Local Plan. As pointed out in my Written Submissions on the Duty, the Council made no changes to the relevant Policies in the Plan to reflect the assurances it gave to KCC, and therefore KCC’s dissent from the principles behind a number of substantial allocations in the Local Plan remained extant.

KCC’s decision to endorse three principles of the Transport Strategy (see my ‘Additional Papers Referred to at Hearing on: 14 July 2015’) was made on 6th July 2015, but as I informed the Examination on the morning of Day 1 (Tuesday 14th July), only came into force on 13th July because of the operation of potential “call-in” procedures at County Hall (in the event, there was no-call-in).

I conclude that **co-operation with KCC, in terms of addresing the Duty, was only completed on 13th July 2015**. This was over 7 months too late to influence the wording of the Plan as Submitted, and 14 months too late to influence the wording of the Plan as published for public consultation.

In order to complete compliance with the Duty, the Council should have proposed suitable amendments to the Plan (as it has done very recently regarding Habitats matters, see section **D.** below), agreed with KCC that they would satisfy KCC’s concerns, and incorporated them into the Plan which was published for public consultation. None of this has yet been done, even at this stage of part-way through the Examination. The Duty therefore cannot have been discharged in this respect.

1. **THE OFFICE FOR RAIL REGULATION (ORR)**

CDLP 16.34 contains no evidence of any contact or attempted contact with the ORR. Although a few meetings seem to have been attended by Network Rail in the period 2009-2012, it seems that the Council simply failed to realise that the ORR is the body responsible for the Duty, because it is the body with overall responsibility for both the rail network and rail services. Network Rail, like the Train Operating Companies (Southeastern in this area), is itself regulated by the ORR, which is responsible for passenger franchising as well as securing present and future Government policy for the railways.

CDLP 16.34 does however confirm the position set out in my Written Submissions on the Duty, in that the High Speed train service and route to and through East Kent is of strategic significance, in terms of having a current and future significant impact on more than one “planning area”.

I draw the Inspector’s attention in particular to the East Kent-wide documents in CDLP 16.34, especially those at pdf pages 32/33, 102/103, 118-120 and 144-147.

In any case, there is nothing in CDLP 16.34 that in any way alters my Written Submissions’ conclusion that **the Council failed to begin – let alone to complete - compliance with the Duty with the ORR** as set out in law and in the Planning Practice Guidance.

1. **NATURAL ENGLAND (NE)**

CDLP 16.34 contains evidence of only 5 meetings between the Council and NE over a period of some 3 years - on 8th October 2012, 18th July 2013, 21st November 2013, 27th January 2014 and 10th September 2014 - and no details of correspondence or telephone calls which might have advanced any co-operation with NE.

The information provided in CDLP 16.34 about every one of these meetings indicates that co-operation was ongoing, rather than completed, in that further work, drafting or research was to be done, or similar.

Since section 33A requires co-operation to be "in maximising the effectiveness with which the [preparation of development plan documents is] undertaken", and the "preparation" stage of the Local Plan was effectively completed when the Publication Version was approved for public consultation by the Council on 24th April 2014, any purported co-operation which took place after that date was effectively too late to influence the Plan as drafted.

Nevertheless, the last meeting with NE before Submission, took place on 10th September 2014. This generated an Outcome as follows:- “CCC to provide additional information regarding the matters raised in Natural England’s representations to address the key HRA matters”. Once again, therefore, the Council had not provided sufficient information to address NE’s concerns.

The reference to NE’s “representations” was clearly to NE’s letter in response to the consultation on the Publication Draft Local Plan dated 18th July 2014. That letter was a formal objection by NE to the Plan. And such objection remained NE’s position on the date of Submission, 20th November 2014. NE’s 18th July letter stated, inter alia, as follows:-

“… we are not satisfied with the HRA as there is insufficient information to allow a conclusion of no likely significant effect on internationally designated sites (N2K sites) to be drawn.

“We also consider that the plan is not currently sound, on the grounds that it is not consistent with national policy, as it is not fully compliant with the National Planning Policy framework. Our concerns about the plan focus on the lack of policy detail on protection of N2K sites and mitigation.”

NE’s letter continued by stating that NE “would be happy to agree wording changes with the Local Planning Authority”.

Given that NE had thus made it plain that it required changes to the Plan as drafted, it should have been clear to the Council that co-operation had not been completed so as “to maximise the effectiveness of Local … Plan preparation”, as PPG ID: 9-001-20140306 requires. Self-evidently, a Plan which will require redrafting in order to meet statutory and European requirements and satisfy the relevant statutory regulator cannot be a Plan the effective preparation of which has been maximised.

No further meetings with NE took place prior to Submission.

Page 9 of CDLP 16.4 records that it was only on 17th December 2014, almost 4 weeks after Submission, that NE indicated in a meeting with the Council (which meeting is, strangely, not listed in CDLP 16.34) that its strategic and soundness concerns, and its Habitat Regulations objections relating to the international wildlife sites, had been resolved by the additional studies done and the proposals and information contained in Topic Paper 3 dated November 2014 (subject to amendments to draft Policy SP7 so that it relates specifically to the coastal SPAs).

This confirms, if confirmation were necessary, that the Council had not completed co-operation with Natural England regarding these matters by the date of Submission.

NE’s formal withdrawal of its objection came on 19th December 2014 (see Annex 6 to CDLP 16.4, which is now part of CDLP 16.5). But NE’s “objection withdrawal” letter of that date indicated that co-operation in order to maximise the effectiveness of Plan preparation had still not been completed, as that letter was subject to “reworded text for policy SP7 to ensure that it is more specific with regard to the mitigation measures required for the coastal SPAs”, and NE said it “look[ed] forward to agreeing this”.

Yet this “reworded text” took until 17th June 2015 to appear in public, as part of Appendix 1 to the Council’s Statement for the Examination on Matter 6. Very many items of reworded text are set out in that Appendix, being a “Statement of Common Ground as agreed between Canterbury City Council and Natural England” dated 11th June 2015, which was signed by the Council on 12th June. No doubt one of the reasons why this took so long to reach agreement was the large number and complexity of the changes required to address the numerous issues which NE had with the Draft Plan.

I conclude that **co-operation with NE, in terms of addresing the Duty, was only completed on 12th June 2015**. This was over 7 months too late to influence the wording of the Plan as Submitted, and 14 months too late to influence the wording of the Plan as published for public consultation.

This is exactly the kind of situation that the Duty was intended to avoid. A Plan should not be prepared and published for public and stakeholder consultation when a statutory regulator on a strategic matter objects to it. There should not be belated, post-publication attempts at ex-post-facto ‘co-operation’ with a statutory regulator in an endeavour to resolve its objections on strategic matters (as opposed to addressing any proposed changes to the Plan following the consultation – there were none in this case). Such strategic matters should have been dealt with up-front. There should not be late changes to the wording of a Draft Local Plan, which are brought forward at Examination stage, after the public have had their final opportunity to comment on the Draft Plan and to state whether they wish to be heard at the Examination on the basis of their duly-made representations. A Council that has not complied with the Duty at Submission should withdraw the Plan in order to deal with the oustanding issues with the regulator.

If such issues have not been dealt with up-front, the Plan-making body only has itself to blame for the consequences of its non-compliance with good practice, the PPG and the law.

I also referred in my Written Submissions on the Duty to the issue of co-operation 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. Once again, CDLP 16.34 demonstrates a number of meetings, but that the work required to complete co-operation was not completed. Even as at 1st October 2014 (see pdf pages 303/304 of CDLP 16.34), the East Kent paper on Green Infrastructure shows that the work was far from complete, and also confirms that these matters with which NE were concerned are indeed ‘strategic’ matters. I also refer in this context to NE’s letter of 18th July 2014 which stated:- “Mitigation may be delivered best at a strategic level.”

1. **OVERALL CONCLUSION**

The Council’s document CDLP 16.34 therefore adds nothing to my earlier conclusions that the Local Plan was submitted for Examination before the co-operation required by law had been concluded, and in the case of the ORR, begun.

Moreover, the Inspector has shown great patience and generosity, in giving the Council every possible opportunity to produce late evidence that it discharged the Duty.

This means that, having fully considered the comments of all parties, the Inspector would now be fully justified in making a finding that the Council has failed to discharge the Duty as detailed above.

**J.D.I. Baker**

**24th July 2015**