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Canterbury Local Plan Examination
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BY EMAIL & FIRST CLASS POST

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Dear Mr Moore

Tackling air pollution is now a pressing priority for the Government after the High Court found the Government's air pollution plans unlawful in the Client Earth judgment handed down on November 2nd 2016. Air pollution kills of the order of 100 people in the Canterbury area. The Canterbury Local Plan (CLP) cannot lawfully permit this to continue or worsen--as it seems that it would be likely to under the proposed Plan.

The UK does not have a robust plan to achieve compliance with air quality objectives without delay (as is required by EU and UK law) Further legal challenges are likely . These include a challenge to the soundness of the CLP for its failure to properly address air pollution.

The CLP is clearly of direct relevance to this ruling because Canterbury falls within one of the areas in respect of which the Government's plans are legally flawed. It has had an Air Quality Management Area (AQMA) for some time and still has nitrogen dioxide (NO₂) exceedances.

In these circumstances, the CLP cannot be found sound under s.19 and s.20 of the Planning and Compulsory Purchase Act 2004 until it can be shown that the policies within the CLP will in fact ensure compliance with air quality objectives in Canterbury's AQMA "as soon as possible" as required by Article 4(3) of the Treaty on the European Union and UK law. Adoption of such a Plan would infringe the principle established by the Court of Justice in C-129/96 Inter Environnement Wallonie at [50].

Canterbury City Council's CLP evidence base concerning the environmental and health impacts of air pollution is woefully inadequate. It does not even have an adopted Air Quality Plan to address the current AQMA as legally required. Modelling will need to be undertaken on a realistic basis (not relying, for example, on flawed factory setting predictions of vehicle emissions) to show how air pollution objectives will in fact be met and "as soon as possible". In addition, the Sustainability Appraisal of the CLP will need to be revised to conform with the ruling.

Failure to carry out the above, before further moves to adopt the draft Plan ,would also be a breach of the UK's duties under the European Convention on Human Rights and render the Council susceptible both to legal challenges and damages claims under the HRA 1998 (see, for example, Guerra v Italy (1998) 26 EHRR 357)

Yours sincerely

Emily Shirley

cc. Dr Therese Coffey MP Defra Parliamentary Under Secretary of State
Mr Andrew Scott-Clark, Director of Public Health Kent County Council