

6th December 2016.

“Gorewell”
Selling Road
Old Wives Lees
Canterbury, CT4 8BD
Kent.

Email: [REDACTED]

Angela Furlong
Programme Officer
Local Plan Inquiry
c/- Canterbury City Council
Military Road
Canterbury

For the attention of Michael Moore

Dear Mr Moore,

The following is a response to your request for observations on the implications of the High Court judgment in the case of the ClientEarth v Defra in respect to air pollution (Neutral Citation Number: [2016] EWHC 2740 (Admin); Case No: CO/1508/2016. ClientEarth v. Secretary of State for the Environment, Food and Rural Affairs). This response is made on behalf of the Canterbury Society.

The Society is of the belief that the above judgement will oblige the government, and consequently all local councils, to expedite and improve upon existing measures aimed at reducing air pollution levels so as to meet present EU standards. Thus by next July it will be essential for the government (and subsequently local authorities) to have in place an updated air quality action plan. In view of the fact that nowhere in the country having existing Air Quality Action Plans has been successful in satisfying the required emissions reductions, then it is highly unlikely that present action plans will prove successful. In view of scale of developments that are forthcoming in the Canterbury District Local Plan we believe that air quality actions presently detailed therein will be insufficient to achieve the required rate of decrease in vehicle-based emissions.

The following briefly outlines individual points we wish to make (in no specific order) as to why future targets required to be set by Defra in response to the Client Earth judgment are likely to be missed in the Canterbury District, especially within and around the city itself:

- Despite the claims of most developers, whose air quality estimates and mitigation measures have been devised by non-neutral consultants, we believe that an obvious result of creating some 10,000 new homes within 3 km of the city centre will be considerable additional local road traffic with its associated air pollution. The building of extra road capacity in the area provides not only more “car space” but it can also facilitate perceived if not actual convenient access to the city centre. However, in central Canterbury history has prevailed in delivering road provision that is totally inadequate for 21st century travel desires. Vehicle congestion is inevitable and this accentuates air quality problems. And we are not alone in thinking that future air quality problems in the city have been underestimated – in fact the Council itself has acknowledged this. Thus the retiring Environmental Protection Manager for the city council, in a message to Mr Ben Young (Council Development manager) dated 03 June 2016, noted a number of reasons why air pollution levels are likely to be underestimated, mainly as a result of the Mountfield Park development.
- *“Euro air quality standards have introduced progressively tighter emission limits for various pollutants, but they have not led to a corresponding reduction in concentrations of NOx”*

(Transport-related air pollution: NICE guideline DRAFT (p.17 - December 2016). Thus, although many claims have been made that emissions will decrease with new automobile technology, this fact is readily counteracted by the fact that car manufacturers have been dishonest about emission rates (these emission data are important as inputs to pollution modelling), Defra has used over-optimistic estimates of future emissions from diesel cars (see para. 74 of the ClientEarth judgement), and that the increase in total vehicle numbers will more than counteract any technological improvements in engine design. If developers have been modelling likely vehicle emissions around Canterbury, their modelled results can no longer be valid and their work will need to be recalibrated.

- Because of future additional vehicles, congestion will increase in response to “stop/start” vehicle movements, i. e. slower driving speeds add considerably to vehicle emission rates. Indeed the limited traffic modelling to date has recognised that these slower speeds are likely to prevail on many of the main routes around the city, especially in Wincheap, New Dover Road and along the A28 ring road. As long ago as 2010, the traffic consultants Bureau Veritas advised the Council that NO₂ emissions would need to be reduced by 57% on the most polluted section of the inner ring road before air pollution was at a legal level (Bureau Veritas , 2010. LAQM Detailed and Further Assessment; p.24). This rate has nowhere near been achieved.

- Despite all the plans for road improvements in the city, we see no realistic measures that address the present congestion problems. Thus, although we welcome attempts to encourage people to utilise public transport, bicycles and walking, in reality it is nationally proving a major challenge to prise people from their vehicles. In the UK the average person spends around 230 hours per year in a car and only 70 hours walking, 10 hours cycling, 40 hours on a bus and 30 hours on a train (Department for Transport, 2011) and these figures show little temporal change. We strongly believe that major developers in Canterbury are being overly optimistic in their forecasting of the extent to which people will change their travel modes.

- Any attempt to forecast likely pollution levels must rely on accurate traffic forecasting. We are aware that KCC are in the midst of modelling transport flows along the A28 and inner ring road through Canterbury. It is this stretch of highway that forms the backbone of the AQMA in the city. Until this traffic modelling is complete then air pollution forecasts will be extremely premature and without any objective levels of confidence.

- The pollution data itself on which air quality in the city must be judged is very incomplete. NO₂ data levels are only based on a relatively small number of diffusion tube readings. Although they give some indication of polluted areas, the distribution of these tubes bears little relationship to the main areas of proposed future development. For instance, we are unaware of diffusion tubes in Thanington or along the New and Old Dover Roads or in the St Martin’s Hill area. The number of monitoring sites in the city has recently been reduced and we believe that the Council is unable to afford replacement tubes (including their management).

- Despite the fact that since 2011 local authorities have been required to submit to Defra Air Quality Review and Assessment Reports, and that one of the headings therein is "PM2.5: Local Authority Approach to Reducing Emissions and Concentrations", no particulate data are recorded in the Canterbury District except the background PM₁₀ readings taken at the Chaucer School. Thus the data upon which this PM_{2.5} section of the report is compiled is basically non-existent and the section must therefore be at best an informed guess and at worst a complete fabrication. We therefore have no confidence that air quality assessments in the District are providing statistically significant results. Without adequate air quality data the Council cannot ascertain whether it is meeting the requirements of Local Plan Policy T1(a).

- Levels of measured NO₂ in the AQMA area of Canterbury have remained almost static for the past decade though with the maximum permitted level of 40 mg/m³ being frequently exceeded in certain pollution “hot spots”. More recently the level of concern has been set at 35 mg/m³ (Defra letter dated 14 Nov 2016), and since this level is more frequently exceeded, this must be an additional cause for concern and thus a reason for the consequences of the Client Earth judgement to be recognised in the CDLP. We note here that ozone pollution levels have also been exceeded in the city on 17 occasions to date this year.

- Over the last few months there has been a proliferation of reports and other studies that have delivered an increasing awareness of the potential health hazards associated with polluted air, and it appears that health problems may now be most severe in cases where particulates are contributing to pollutants, e.g. within the past week four major cities (Paris, Athens, Mexico City and Madrid) are to ban diesel vehicles and the National Institute for Health and Care Excellence (NICE) have released a Guideline Scope on “Air Pollution: outdoor air quality and health” (NICE – December 2016). But whatever the pollution source it is clear that significant research has established beyond doubt that at least 23,000 premature deaths in the UK may be attributed to poor air quality with perhaps 1,500 of these deaths occurring in Kent. Were this number to be dying as a result of road accidents there would be a strong cause for outrage. So it should be in respect to air pollution. Little wonder that Judge Garnham reached the decision he published!

- The ClientEarth judgment exudes an air of urgency. Throughout the judgment reference is made to the fact that the government has put costs before the urgent need to alleviate pollution, that Defra has been slow to enact various measures and the judgment has required the government to bring forward by two months the time by which air quality action plans must be finalised. *“The problem of reducing nitrogen dioxide levels was urgent and the plan to do so should have been aimed at achieving compliance in the shortest possible time, regardless of administrative inconvenience or the costs of making the necessary investigations”* (para 69 of the ClientEarth judgment). We submit that the air quality section in the Local Plan (paras 12.44 to 12.53) gives no such sense of urgency; its whole discussion is on a scale of years rather than months.

- There is no evidence in the Local Plan to show that the City Council are complying with air pollution reduction requirements, or that they have undertaken any air quality modelling, and indeed the Council has apparently not yet adopted an up-to-date Air Quality Management/Action plan (there is no evidence of this in the Inquiry documentation). The existing 2009 Air Quality Action Plan covers only the Broad Street/Military Road section of the original AQMA. Without these requirements and/or actions being undertaken we contend that the Council is failing to act lawfully, and the Canterbury District Local Plan must therefore be found unsound.

Conclusion.

It is clear from reading the ClientEarth judgment that Defra, and consequently most UK local authorities, have failed to act with a sufficient sense of urgency in respect to dealing with levels of air quality that are illegal under European Union law. From our chronicled list above it must be clear that, in relation to Judge Garnham’s judgment, Canterbury City Council’s Local Plan presently shows insufficient effort with respect to dealing with this matter. The city council should have been greatly “upping its game” with respect to all aspects of air pollution remediation, and a failure to do this to date has resulted in a Local Plan that cannot be considered as sound. Mr Justice Garnham’s concluding statement:

“...the Secretary of State must aim to achieve compliance by the soonest date possible, that she must choose a route to that objective which reduces exposure as quickly as possible, and that she must take steps which mean meeting the value limits is not just possible, but likely. (para. 95 of the ClientEarth judgment)

could well form our advice to Canterbury City Council.

Yours sincerely

Signed Dr Geoff Meaden
Committee member – Canterbury Society