

Louise St John Howe
Programme Officer
PO Services
PO Box 10965
Sudbury
Suffolk
CO10 3BF

By email only: louise@poservices.co.uk

15 July 2022

Dear Louise,

RE: The Maidstone Local Plan Review

Introduction

1. I am writing to you on behalf of Lenham Parish Council ("the Parish Council") and in respect of the Inspector's initial letter to the Council of 24th May 2022 (ED2), Maidstone Borough Council's ("MBC") response (ED5), the Inspector's Matters, Issues and Questions for Stage 1 and the Draft Programme.
2. The Parish Council has, with some interest, been awaiting MBC's response to ED2. Having considered that response, it raises some considerable concerns as to whether or not the examination should even proceed to Stage 1 and if it does, whether the current draft of the programme provides a fair opportunity for those wishing to participate in the examination to do so.
3. The Inspector will be aware, from its Reg 19 Representations, that the Parish Council is particularly concerned about the inclusion of Heathlands in the submitted local plan.
4. The purpose of this letter is to ask the Inspector to consider these issues and respond to the Parish Council. As this letter raises issues that clearly impact others, the Parish Council considers that it would be right for it, together with any response from the Inspector, to be published on the examination website.

Should the Examination Proceed to Stage 1?

5. Section 20(2) of the Planning and Compulsory Purchase Act 2004 makes it very clear that a local authority:

“...must not submit such a document unless–

(a) they have complied with any relevant requirements contained in regulations under this Part, and

(b) they think the document is ready for independent examination.”

6. The Inspector's engagement with MBC has made it very clear to the Parish Council that MBC could not have realistically thought that the Local Plan Review Document (“LPRD”) was ready for independent examination. The sheer volume of further work that MBC has accepted/volunteered to do is astonishing and undermines any credibility that it was submitted in good faith as being ready for the Inspector.
7. Further, the current proposals by MBC to provide further material fundamentally undermines the purpose of local plan preparation prior to examination. Much of what appears to be anticipated from MBC is clearly material that should have formed part of a Reg 19 consultation. Instead, those who would have wished to be involved in the formation of the LPRD at that stage have been bypassed.
8. In addition to that, those who now intend to engage with this examination are having to prepare on a false basis, knowing that MBC will submit further material that may be relevant to representations that they may want to make to the Inspector and will now have little or no chance to do so, due to MBC's vague and unhelpful timetable for producing its new works.

Further Material Expected from MBC

9. Within ED2, the Inspector identified a series of significant deficiencies in respect of the material submitted by MBC. He invited what is, with respect, a significant amount of further information be provided to him by MBC. The response provided by MBC at ED4, provides some of the information requested, but more worryingly, makes it clear that further significant work has been identified as being necessary to respond, much of which will not be provided until much later in the examination process.
10. Much of that material relates to issues of particular concern to the Parish Council (Heathlands, the Leeds Langley Corridor, Lenham Railway station)

and upon which the Parish Council wishes to address the Inspector on at the relevant hearing sessions.

The Inspector's Response ("ED5")

11. At [4] pf ED5. The Inspector has helpfully set out a table summarising the further material that is due to be received and, the indicative timetable for that material to come in. At [5] the Inspector rightly identifies that the starting point for the examination is that the local plan review document and accompanying and provides the following warning to MBC:
12. *"... I am not dissuading the Council from progressing this additional evidence but I will be giving careful attention to: (i) if and when it can be submitted into the examination; and (ii) matters of fairness, in particular, giving those representors who have objected to the soundness of the Plan the opportunity to respond to any further Council evidence (in addition to the standard ability to comment on proposed main modifications and accompanying material)."*

The Parish Council's Position

13. With all due respect to the Inspector, it is quite clear from the nature and volume of the material currently being prepared for or on behalf of MBC, that the submitted plan was by no means ready for submission at the point at which MBC decided it was. The material that is now expected to come in is clearly of a nature that many of those (including the Parish Council) would have wanted to consider and address in their Reg 19 response. Further, it is clear that this is information that should have been obtained before submission and, indeed, that should have been considered, acted on and a further draft of the local plan review document prepared and considered by way of a Reg 19 consultation.
14. There is a very real risk of procedural unfairness here through the way in which MBC appears to be using the Inspector's initial requests for clarification as an opportunity to "patch" holes in the documents it has submitted and in doing so, bypassing a clearly required Reg 19 consultation.
15. As such, the Parish Council urge the Inspector to consider rejecting the currently submitted LPRD and invite MBC to re-submit it once all of this new material has been obtained, considered and commented on. It cannot, and is not, fair to those entitled to early input into the local plan review to allow MBC to develop their local plan review document throughout the process of this examination, when this should clearly have been undertaken pre-submission.

What if the Examination Proceeds to Stage 1

16. Given the vague and uncertain timetable and, indeed, the volume of new material that is expected it cannot be fair to expect those who wish to participate and prepare position statements to do so before they have had sight of all the relevant material. By way of example, the Parish Council has engaged the services of two consultants (one planning, one transport) and two members of Counsel to assist with the preparation and presentation of its representations. This is due to the impact that the proposal at Heathlands is considered to have upon the Parish and those who live and work in the locality.
17. Funding is understandably a concern for Parish Council and to see, in black and white, a timetable that involves preparation for, and attendance at, hearings some of which will take place before material promised by MBC has been provided cannot be the correct approach to this examination.
18. The Inspector is invited to look again at the timetable and to revise it to allow all those who want to prepare for and attend the hearings sufficient time to consider the material due from MBC and factor it into their position statements and oral representations.
19. It may be possible that the Inspector could set a “rolling timetable” for position statements, allowing for Matter 1 and Matter 2 statements to be filed at different times and not all at once, is currently envisaged.
20. In particular, the Parish Council highlights the Heathlands sessions, commencing on 13th September 2022. On MBC’s timetable, it seems that some material that is relevant to Heathlands is not due until September 2022. This includes additional highway modelling. How is the Parish Council’s transport consultant expected to provide advice and material to the Parish Council to allow it to produce an informed position statement (due 18th August 2022) and assist with presenting representations at the sessions when it seems that material that he should clearly take into consideration is not due until either shortly before, or as seems likely after, the relevant sessions?
21. Position statements are at risk of being prepared on a nugatory basis, at the expense of time and money to those seeking to make representations, and in respect of wasting time at the examination.

Conclusion

22. Notwithstanding the above “damage limitation” position, the Parish Council’s main point is that MBC appear to be using the examination process as a way of developing the plan, in response to significant issues raised by the Inspector,

and seeking to avoid a further public consultation. This should not be allowed by the Inspector and will clearly give rise to a risk of procedural unfairness.

23. Given the issues raised in this letter will clearly affect others wishing to take part in the examination, the Inspector is invited to direct that this letter, and his response, be uploaded onto the examination website.
24. Please note that I am instructed to act for the Parish Council on a direct access basis. As such, whilst any response should be directed to me as acting on behalf of the Parish Council, I would be grateful if that response could be copied to the Parish Council's clerk at clerk@lenhamparishcouncil.org.uk to avoid any delay in it being considered by the Parish Council.
25. I look forward to hearing further from the Inspector.

Yours sincerely



Simon Bell
Counsel