

# MAIDSTONE BOROUGH LOCAL PLAN EXAMINATION

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## SESSION 1A – LEGAL & PROCEDURAL MATTERS

**Deadline for Statements: Thursday 15th September.**

*Please refer to the Inspector's Procedural Guidance Notes for information on the provision of hearing statements.*

### Inspector's Agenda with Matters, Issues, and Questions

#### 1. Introduction

- 1.1. The Inspector is required to assess if the Local Plan meets legal and procedural requirements. Particular considerations are set out below.

*Issue (i) – Whether the Local Plan accords with the adopted Local Development Scheme?*

- 1.2. Section 15 of the Planning and Compulsory Purchase Act 2004 (the P&CPA) requires a local planning authority to prepare a local development scheme (LDS). Section 19 of the P&CPA requires that development plan documents such as this Local Plan are prepared in accordance with that LDS.
- 1.3. The current LDS 2014-2017 [Document SUB 012] came into effect on 9 December 2015. It provides that the Local Plan shall, in summary, set the spatial vision and strategy for development to 2031, identify borough wide site specific development allocations, include policies to regenerate the town centre, designate protection areas and include development management policies. The submitted Local Plan covers all those topic areas. The LDS target for submission for examination in May 2016 has also been met.

*Issue (ii) – Whether the Local Planning Authority and other relevant persons has complied with the Duty to Cooperate?*

- 1.4. S33A of the P&CPA sets out a statutory 'Duty to Cooperate' (DtC) which here applies to MBC and other local planning authorities, to Kent County Council,

and to other persons prescribed by Regulation 4 of the Town and Country Planning (Local Planning) England Regulations 2012 (the Regulations). Amongst other bodies these include the Environment Agency, Natural England, the Mayor of London and highway authorities.

- 1.5. The list of prescribed bodies does not include parish councils or Historic England and they are thus not affected by the statutory DtC. Consultation issues are addressed separately below.
- 1.6. The duty requires those persons to cooperate with other persons to '*maximise the effectiveness*' with which named activities are undertaken. Those activities include the preparation of development plan documents (such as this local plan) and activities that support that activity '*so far as relating to a strategic matter*'. A strategic matter is defined by S33A(4) in summary as: (a) '*sustainable development or use of land that has or would have a significant impact on at least two planning areas*' (a planning area in this case is the area of a borough or district council); and (b) '*sustainable development or use of land in a two tier area*' (as this is) '*if the development or use (i) is a county matter, or (ii) has or would have a significant impact on a county matter*'. County matters broadly relate to minerals and waste and associated developments as defined by Paragraph 1 of schedule 1 to the Town and Country Planning Act 1990 (as amended).
- 1.7. S33A(7) requires persons subject to the DtC to have regard to any guidance issued by the Secretary of State about how the duty is to be complied with.
- 1.8. Paragraph ID 9-004-29140306 of the Government's Planning Practice Guidance (PPG) confirms amongst other things that the duty to cooperate is not a duty to agree albeit that local planning authorities should make every effort to secure the necessary cooperation on strategic cross border matters before they submit local plans for examination.
- 1.9. A number of Representors have claimed that MBC as the local planning authority has not complied with the DtC. These claims are made mainly in relation to the following broad subject areas:
  - Cross border housing needs and supply
  - Cross border provision for economic development and employment

- Provision of strategic infrastructure, especially transport
- Cross border strategic gaps in development
- Minerals Planning Issues

1.10. MBC has issued a Duty to Cooperate Compliance Statement [SUB 005] as recommended in paragraph ID 9-011-20140306 of the PPGhttp. This was published after the closing date for representations on the submission plan and thus was not available when Representors were preparing their representations. It sets out the record of cooperation including in relation to 4 strategic issues that cover the above subject matters.

#### DtC in relation to Housing Needs and Supply

1.11. The DtC Compliance Statement records that local plan preparation in MBC and its adjoining authorities is proceeding on different time scales. However MBC has commissioned a Joint Strategic Housing Market Assessment (SHMA) with Ashford and Tonbridge & Malling Borough Councils. This considered the overlap of Housing Market areas. The Ashford HMA overlaps into Maidstone and the Maidstone HMA overlaps into Tonbridge & Malling. It concluded that there is little overlap into other authority areas such as Medway, Swale and Tunbridge Wells.

1.12. The DtC Compliance Statement records that the Joint SHMA has provided separate reports for each of the 3 authorities. Following SHLAA and SHEDLAA studies into land availability and discussions and adjustments to the Swale and MBC local plans, no authorities are now seeking that housing needs be met in another authority's area. MBC, Swale, Ashford, Medway and Tonbridge and Malling are all intending to meet their own defined housing needs within their areas.

1.13. Paragraph 3.1.9 notes DtC engagement with the West Kent authorities of Sevenoaks and Tunbridge Wells who are both at an earlier stage in their local plan preparation and who have commissioned their own joint SHMA. Based on travel-to-work data it is concluded that these authorities are currently in separate housing market areas. Nevertheless Tunbridge Wells closely adjoins Maidstone Borough to the south and some villages are closer to Maidstone town than to the town of Tunbridge Wells itself. Moreover both Tunbridge Wells and Sevenoaks districts are heavily constrained by

extensive Green Belt and/or national landscape designations, including around their main towns. Most of their adjoining local planning authorities face similar constraints.

- 1.14. Ashford Borough has recently published a submission version of its Local Plan which seeks to meet only its own housing needs and which would significantly reduce housing provision compared to the former south east Plan targets when Ashford was intended to be a regional growth centre.

**Qn1.2 As part of DtC engagement have Sevenoaks or Tunbridge Wells Councils in west Kent indicated to MBC how they might address a housing needs assessment if they are not capable of being accommodated within their own areas due to Green Belt and other constraints?**

**Qn1.3 Would under-provision of housing in west Kent be likely to affect the geography of housing market areas? In particular, would those unable to be accommodated locally (including London Commuters) seek to live in other areas (including Maidstone) with knock on consequences for their own residents (such as the possible displacement of unmet demand towards Ashford)?**

**Qn1.4 As the west Kent Local Plans remain at an early stage without defined housing targets, should this issue lead to a request to accommodate additional housing can it be left to the first review of the Maidstone Borough Local Plan?**

- 1.15. The DtC Compliance Statement records that MBC has been involved in discussions led by the Greater London Authority including whether migration from London to the wider South East may exceed the ONS projections which have already been taken into account in the SHMA. No formal request to make additional provision has been received from the London authorities.
- 1.16. The soundness of the housing needs assessment will be discussed further at Sessions 2a and 2b.

Economic Development and Employment

- 1.17. Some Representors suggest that there has been a lack of evidence of cooperation in identifying economic development needs and supply in relation to the provision of land for employment. This relates particularly to suggestions that the EMP1(5) Woodcut Farm allocation may not be needed owing to poor take-up of employment land allocations both within and outside the Borough. The need to consider alternatives has been emphasised by MBC's the recent refusal of planning permission for employment development on that site. The soundness of the Plan's employment provision will be discussed at another session.
- 1.18. The DtC Compliance statement refers to the differing timetables as hampering attempts to jointly commission economic evidence. An attempt was made to jointly commission a qualitative assessment with Ashford but was not pursued as different consultants had been employed previously. In 2014 when a shortfall in office and warehousing supply was indicated MBC approached all adjoining planning authorities to seek capacity to address unmet needs but the response was negative with the possible exception of Swale.
- 1.19. When dismissing the Waterside Park appeal for an employment development [Document ORD 011] the Inspector commented in paragraph 62 that: *'It is also the case that, ....., there is available industrial floor space in neighbouring boroughs and this will need to be taken into account under the 'duty to co-operate' set by the Framework, when determining the precise requirement that Maidstone will need to provide.'*

**Qn1.6 Has MBC sought information from the adjoining Boroughs as to their own employment land supply positions?**

Strategic Infrastructure

- 1.20. A number of Representors suggest that the failure prior to submission to reach agreement with Kent County Council (KCC) on transport impacts and transport infrastructure provision (and with Highways England – HE - in respect of traffic impacts) is a failure of the Duty to Cooperate. There have also been disagreements with KCC on education and other community infrastructure which MBC has sought to resolve by proposed modifications to the Plan.

- 1.21. The soundness or otherwise of transport provision will be a matter for other sessions.

**Qn1.7 Does transport infrastructure qualify as a cross border strategic matter?**

**Qn1.8 Does lack of agreement to date between MBC and KCC (and HE) on some transport issues qualify as a failure in the duty to cooperate given the history of engagement set out in the DtC Compliance Statement?**

Cross Border Strategic Gaps and Landscape Designations

- 1.22. Some landscape and gap designations in the adopted Local Plan 2000 cross district boundaries.

**Qn1.9 Has there been cross border co-operation in the review of such designations?**

*Issue (ii) Whether the consultation process has accorded with the Statement of Community Involvement and other statutory provisions.*

- 1.23. S18 of the PCPA requires the preparation of a Statement of Community Involvement (SCI). S19(3) of the PCPA requires compliance with the authority's SCI [Document ORD 002]. Regulations 18-20 include specific consultation and publication requirements. Regulation 22 requires the preparation of a Statement of Consultation [SUB 009].
- 1.24. **CPRE Kent** suggests that an alleged lack of consultation with parish councils '*prior to the allocation of housing sites*' and '*stalled*' communication with Neighbourhood Plan Groups conflicted with the SCI objective to '*Engage with key stakeholders (including parish councils in the preparation of the document.*'

**Qn1.10 Would the Council please respond to the CPRE representations concerning consultation with parish councils..**

- 1.25. **Historic England** has suggested in its representations and in a letter dated 9 June 2016 that it was not properly consulted during the formal consultation period. This is disputed by MBC in a letter dated 17 June 2016. However late representations by Historic England have been taken into account including a further letter dated 30 June 2016 and will be considered at other sessions.

Issue (iii) Whether the Key Diagram and the Policies Map accord with statutory requirements

- 1.26. Regulation 9 provides amongst other things that the adopted policies map must: be reproduced from, or be based upon, an Ordnance Survey map; include an explanation of any symbol or notation which it uses; and illustrate geographically the application of the policies used in the adopted development plan.
- 1.27. Policy in the National Planning Policy Framework (NPPF) at paragraph 157 is not a statutory provision but provides that Local Plans should (amongst other things) indicate broad locations for strategic development on a key diagram and land-use designations on a proposals map.
- 1.28. The Local Plan includes a key diagram at page 23.

**Qn1.11 Are the Ordnance Survey based inset maps in the Local Plan part of the Policies Map or the Key Diagram or neither?**

**Qn1.12 Should Policy H2 (Broad Locations) be included on a key diagram or is it a policy with a geographic application which should be illustrated on the Policies Map?**

**Qn1.13 Do all the other local plan policies with a geographic application state that that they are so illustrated on the Policies Map?**

Issue (iv) What regard should be had to the current and emerging Local Transport Plans

- 1.29. Regulation 10(1) (a) provides as one matter to which regard is to be had in the preparation of local plans: '*policies developed by a local transport*

authority in accordance with section 108 of the Transport Act 2000' [Local Transport Plans].

**Qn1.14 Has the preparation of the Local Plan had regard to the current Local Transport Plan 3?**

**Qn1.15 What regard should be had to the emerging Local Transport Plan 4 which is expected to be adopted after the examination hearings but before the submission of the Inspector's Report?**

*Issue (v) Whether the Local Plan has been subject to appropriate Sustainability Appraisal*

1.30. The submitted Local Plan is accompanied by a Sustainability Appraisal [Document SUB 002 and appendices]. An addendum was issued in July 2016 concerning a number of housing sites.

*Issue (vi) Whether the Local Plan has been the subject of an appropriate Habitats Regulations Assessment*

1.31. A Habitats Regulations Assessment 2016 has been prepared [ENV 016] and led to the minor amendment of Policy DM3(ii). A further amendment has been proposed to the relevant wording following comments from Natural England.