

# MBC LOCAL PLAN EXAMINATION

## SESSION 1A

### MATTERS ISSUES AND QUESTIONS RELATING TO LEGAL & PROCEDURAL SUBJECTS

1. This submission is prepared on behalf of the Co-ordinating Team which draws together the views of this Society, the Joint Parishes Group, the Kent Association of Local Councils Maidstone Area and the Maidstone Branch of the CPRE. It provides a response on behalf of these groups to the matters, issues and questions you want to raise on the first morning of the examination on 4 October.

2. It begins with the central issue of whether Maidstone Borough Council (MBC) has complied with the duty to co-operate with Tonbridge and Malling Borough Council (TBMC) and then turns to the individual questions you raised.

#### **The duty to co-operate**

3. The NPPF requires local authorities and public bodies to:

- ▶ Engage constructively, actively and on an ongoing basis in relation to the planning of sustainable development on strategic issues that cross administrative boundaries, including housing and employment. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.
- ▶ Consider producing joint planning policies on strategic matters.
- ▶ Demonstrate evidence of co-operation, co-ordination and continuous engagement in dealing with cross-boundary issues when their Local Plans are submitted for examination e.g. by way of joint committees, formal agreements between lpas, memoranda of understanding or jointly prepared strategies presented as evidence of an agreed position.
- ▶ Engage continuously from initial thinking through to implementation.

4. It is clear from Inspectors' reports on local plans that they examine the evidence presented in Compliance Statements, including minutes of meetings, to see whether these substantiate the claims made by the authority that co-operation has been constructive, active, diligent, ongoing and collaborative. (See, for example, paragraphs 8 to 30 of Inspector David Hogger's letter of 29 April 2014 to Runnymede Borough Council and paragraphs 11 to 30 of his letter of 2 December 2013 to Mid Sussex District Council.) Both are examples of Councils that were deemed not to have met these tests.

5. Compliance Statements vary in length and detail. Luton Borough Council's, for example, comprised nearly 435 pages, 235 of which contained minutes of many of the meetings held with other authorities. These minutes are highly informative and enable the reader to understand immediately what took place at the meetings and their outcomes. As Inspector, Jeremy Youle noted:

***“The Council has submitted a large amount of evidence that illustrates the extent and nature of engagement over the full range of relevant strategic matters.”***

6. By contrast MBC's Statement runs to 80 pages and contains no minutes of meetings so it is impossible from this document to trace the detail of the discussions referred to in the 28 page Appendix of meetings held with other authorities or to tell whether they substantiate the claims MBC makes.

7. Accordingly, on 6 June the Society submitted an FOI request to MBC for the agendas, minutes and any papers tabled or considered at 22 meetings listed with TMBC. In response the Council provided minutes of only 6 meetings, only 2 agendas and no papers. We have since asked for an explanation as to why the material is so scanty. Six weeks later we received the following explanation:

***“During 2012-13 the Council were at the early stages of the Plan preparation. The Duty to Co-operate was a relatively new issue..... having only been introduced through the Localism Act (2011) and the NPPF (2012). However, since the publication of the Inspector's letter to Mid-Sussex District Council in late 2013, in which [he] set out detailed comments about the failure to demonstrate compliance with the Duty, we have maintained a strict approach to record keeping associated with the Duty. This is reflected in the fact we are able to provide the agenda and minutes requested from mid 2014 onwards. The meetings where we have been able to provide an agenda and minutes were verbal updates and discussions and it is likely no papers would have been tabled at these meetings.”***

***“We are unable to provide you with any additional documentation.”***

8. We find this explanation worrying on a number of counts. A meeting held on 17 August 2012 ***“to discuss cross-boundary strategic issues impacting on Maidstone and Tonbridge”*** was minuted. If minutes were taken for that meeting why were none taken for the 14 meetings between then and March 2014?

9. Furthermore, the 2012 meeting contains the following somewhat cryptic statement:

***“Duty to co-operate surrogate Strategic Plan e.g. greenbelt – consider meeting growth in other boroughs – could examination inspector be asking this question. Cross – boundary and Kent wide.”***

10. This would appear to recognise the importance of a strategic approach to co-operation nearly **18 months before the Mid-Sussex decision**, so why was not more done about it?

11. Maidstone say the Mid-Sussex letter changed their approach to record keeping. But it appears they failed to take account of the significance of much of the rest of Inspector's Hogger's letter, e.g. paragraph 27:

***“No joint committees have been established specifically to address the Duty to Co-operate and no joint planning policies are currently proposed. At the time of submission no Memoranda of Understanding had been signed. This reflects a lack of positivity and commitment to joint working.”***

12. None of these initiatives feature in MBC's relations with TMBC - although paragraph 28 of the meeting between them held on **9 October 2015** stated:

***“Summing up all agreed that it would be essential to work together on strategic cross-boundary matters including future development in TMBC adjacent to the boundary line.”***

13. While at their meeting on **11 March 2016** they:

***“Discussed the potential for a statement of common ground to support the examination of the Maidstone Plan.”***

14. One cannot but reflect that this recognition was somewhat belated.

15. Finally, MBC have been unable to identify any papers circulated prior to, or tabled at, the 22 meetings held with TMBC. Were these then simply verbal updates and discussions? If so, it indicates a highly superficial approach to the Duty to Co-operate.

16. We also believe there have been shortcomings in MBC’s dealings with Ashford Borough Council (ABC). Ashford has been a major growth area for many years with many millions of pounds invested in infrastructure. The 2002 Halcrow capacity study concluded that ABC could provide an additional 1,018 homes p.a. This has since been reduced to 773 p.a. despite the fact that infrastructure has been planned for the higher figure. It would appear therefore that ABC could accommodate part of MBC’s planned growth, though this has not been actively pursued as required under the NPPF. This is underscored by the fact that 75% of MBC’s growth is for in-migrants. The majority of these would probably not have a commitment to Maidstone and so could equally live/work in Ashford.

### **Why does this matter?**

17. In the Society’s Regulation 19 response to the Maidstone Plan of 17 March we drew attention to the close links between Maidstone and the 7 parishes immediately to the west which lie within the administrative area of TMBC – see extract from the local OS map (Attachment 1). Both authorities recognise that these areas look primarily to Maidstone for other than day to day services. There is a regular flow of commuters across the boundary. The map from page 128 of the Historical Atlas of Kent (Attachment 2) shows these flows in 1991. The accompanying text (page 127) stated that there were over **6,000** journeys from Maidstone into Tonbridge and Malling. By January 2014, according to G L Hearn, combined daily flows between the two districts had risen to **13,900** – more than between Maidstone and any other location.

18. The detailed pattern of the commuting has changed over the years, with the decline in employment at Aylesford Paper Mills and the growth in jobs in the new commercial and industrial estates bordering the Medway and office development at Kings Hill. But these cross-border flows remain an extremely important aspect of the jobs market in the two authorities requiring the closest co-operation to ensure that planning is done in such a way to be of mutual benefit to all concerned. For example, the brownfield Aylesford Paper Mill site – already provided with services - has the potential to provide space for hundreds of new jobs in the area that would negate the need to build on green field sites, such as Woodcut Farm.

19. This situation fully justifies this whole area being considered as one economic area and jobs market for which one might expect to find the kind of inter-authority structures identified in paragraph 3 and 10 above. Yet, to the best of our knowledge, none have been established.

20. What we do know – because MBC state this in section 3.2 of their Compliance Statement – is that MBC, in common with its neighbouring authorities, has provided only:

***“A borough level requirement for employment land.” (Paragraph 3.2.3)***

21. The reason is that:

***“The timetables of neighbouring authorities meant that there was not a realistic opportunity ..... to jointly commission the economic evidence that the Council needed.”***

22. We find this argument unconvincing and believe that, given a concerted effort on all sides and the drive and determination to deliver a truly strategic approach to planning this could have been achieved.

23. We acknowledge that in July/August 2013 the Council's officers contacted counterparts in neighbouring authorities to explore options for meeting the Council's emerging employment land needs outside the Council's administrative boundary. With one exception (Swale Borough Council) the authorities did not foresee any prospect of accommodating Maidstone's needs for these uses.

24. With the publication of the Forecast Report which envisaged that need could be met within the borough, **"the earlier approach to adjoining authorities was not repeated"**.

25. That then was that: **no attempt to secure any kind of strategic approach towards the provision of employment land was made despite the circumstances outlined above which clearly establish the close links between MBC and the adjoining areas of TMBC as one economic and labour market.**

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## Questions

**Qn 1.2 As part of the 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?**

**Qn 1.3 Would under provision of housing in West Kent be likely to affect the geography of housing market areas? In particular, would those be 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)?**

*Our view is that any under provision in any district would have an impact on the geography of neighbouring housing market areas – these ripple effects being the greater depending on the numbers involved. The issue, it seems to us, is not whether unmet demand has consequences, but how those consequences are dealt with. For example, should additional demand be 'steered' towards areas of deprivation, where, along with infrastructure investment, it can serve as a means of regenerating those areas, or should the process be left to the market? And should demand be met irrespective of the impact it has on congestion, pollution, journey times and in locations where geography or other constraints mean that ameliorating measures cannot be provided, leading only to a deterioration in the standard of living of all concerned.*

*As things stand we do not believe that the planning structure created by the NPPF is strong enough to deal with these situations; especially in terms of matching the demand for housing with the supply of infrastructure, economic, social and cultural.*

*While the NPPF requires authorities to co-operate, there is a powerful economic and political incentive on them to consume their own smoke which in turn limits their interest in strategic thinking. In extreme cases this has reduced the duty to co-operate to nothing more than a duty to chat. This is another area where the NPPF falls short and where the former Strategic Plans, whatever their shortcomings at least made an effort to cover.*

**Qn 1.4 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 this be left to the first review of the Maidstone local Plan?**

*While it could be left our view is that a far more satisfactory outcome would be reached if the authorities concerned co-operated closely together.*

**Qn 1.6 has MBC sought information from the adjoining Boroughs as to their own employment land supply positions?**

*Maidstone may well have sought this information, but our concern is that it has not been used in the way the NPPF envisages. It seems to us that MBC and the adjoining authorities decided early on that they would 'consume their own smoke' and that this obviated the need for the kind of collaborative structures referred to above.*

**Qn 1.7 Does transport infrastructure qualify as a cross border strategic matter?**

*Most certainly yes.*

**Qn. 1.8 Does lack of agreement to date between MBC and KCC (and HE) on some transport issues qualify as a failure in the duty to co-operate given the history of engagement set out in the DtC Compliance Statement?**

*In our view the answer is yes.*

*Barbara Cooper's letter of 30 October 2015 to the Chief Executive of MBC (which has been described as one of the most critical letters ever sent by a senior officer of one authority to another) identified the shortcomings in the Maidstone Plan: In particular that it*

- ▶ **Fails** the test of soundness as prescribed in the national planning policy framework (paragraph 182);
- ▶ **Wholly disregards** the demonstrably constrained local highway network in the south east of Maidstone town where further development would result in **an unacceptably severe cumulative** impact;
- ▶ Creates **significant challenges** to mitigating the impact of new development on local education provision in a sustainable manner;
- ▶ Is based on a development strategy that is **not justified** by proportionate evidence and is **not consistent** with national planning policy; and
- ▶ **Does not meaningfully contribute** to the delivery of genuinely sustainable development that reflects the vision and aspiration of local communities across the Maidstone Borough.

*While it is widely accepted that the **duty to co-operate** does not mean a **requirement to agree**, in paragraph 21 of his decision letter on the vale of Aylesbury Local Plan Inspector Kevin Ward commented:*

***"..... the nature of representations from other authorities is an indication as to what extent engagement has been constructive in resolving strategic issues."***

***We submit that such scathing criticism of the Local Plan by KCC is a clear indication of Maidstone's failure to constructively engage with KCC in resolving strategic issues and therefore fails the duty to co-operate set out in the NPPF.***

*If further evidence were needed, it was provided at a meeting organised by Helen Grant MP and Helen Whately MP and attended by over 300 people on a freezing February evening earlier this year. The top table included Councillor Matthew Balfour, the KCC Cabinet Member for*

Environment and Transport. Picking up a copy of the Maidstone Integrated Transport Strategy which, according to the report had been prepared in consultation with Kent County Council, Cllr Balfour made it plain that the County Council did not support the Strategy and distanced himself from it at every turn.

The absence of an effective strategy dates back to the rejection of proposals by the Joint Transportation Board in October 2012. Rarely can a document have been so heavily criticised by both County and Borough Councillors across party lines. The then Chairman of the Board, Conservative County Councillor, Gary Cooke, described it as “**not a fit and proper document. Most of our points we [Kent] made a year ago have not been incorporated. The strategy suggests that trips into Maidstone will grow by 41% and journey times will increase on average by 20%. This will not be acceptable to the people of Maidstone.**”

Across the political divide, Liberal Democrat Borough Councillor, Clive English (then Deputy Mayor of Maidstone; now Vice Chair of the Planning Committee) commented that “**It is not integrated and it is not a strategy.....It does include proposals that will actually make the situation worse. We would spend a fortune to ruin peoples’ lives and create more problems down the road.**”

In our view MBC’s Compliance Statement places a gloss on the level of agreement reached which is undermined by the criticisms voiced by Barbara Cooper.

**Qn 1.15 What regard should be had to the emerging Local Transport Plan 4 which is expected to be adopted after the examination of the hearings but before the submission of the Inspector’s Report?**

*The draft plan has a section on MBC, its congested roads and air pollution and it usefully makes links between MBC and TMBC (page 35). But perhaps most important is that when the Maidstone Local Plan is so Maidstone centric, the KCC plan introduces a very welcome degree of strategic thinking that is essential if sensible decisions are to be made about the future of the county and the largest towns within it. As the document puts it on page 51, “By setting out our vision for transport in LTP4, KCC has a platform from which to engage [district] councils and help shape their Local Plans when identifying areas for potential development”.*

## **Conclusion**

It is our view that MBC has:

- ▶ Failed to carry out a thorough examination of cross-boundary issues, and has not demonstrated the co-operation, co-ordination and continuous collaborative, diligent engagement required under the NPPF.
- ▶ No joint committees have been established with TMBC and no joint planning policies agreed or proposed, demonstrating a lack of positivity and commitment to joint working.
- ▶ Produced a Plan that is not positively prepared and effective.
- ▶ Made it impossible to draw conclusions regarding the effectiveness of its meetings with TMBC because of a lack of substantiating paper work.



