

Recent TMBC Local Plan Communications- A Five Parish Perspective

In **ED67** the Inspectors cancelled the planned Hearing Sessions over concerns with legal compliance by TMBC in the Duty to Co-operate (DtC).

In **ED68** this was expanded upon by citing the DtC failure to being around the issue of unmet housing need of Sevenoaks District Council (SDC). This is a relatively narrow objection as the 5 Parish (5P) barrister also cited other areas where we considered TMBC to have failed DtC. The Inspectors did not pull any punches but invited TMBC to respond as follows.

"19. We will not reach a final decision until you have had chance to consider and respond to this letter. However, in light of our serious concerns regarding the DtC, as set out above, we consider it a very strong likelihood that there will be no other option other than to invite you to withdraw the plan from examination, or, failing that, for us to issue a final report recommending that the plan is not adopted because of a failure to meet the DtC in accordance with our duties under Sections 20 (5) (c) and (7) of the Act." Ref: ED68

They also stated that they were not responsive to third party representations.

In **ED69** TMBC have given their barristers' response which, not unexpectedly, is a rebuttal of why they consider that the Inspectors are wrong in law. In paragraph 83 they state that they will also write to the Secretary of State (SoS) inviting him to overturn the Inspectors judgement and that letter will be forwarded to the Inspectors.

"Given this position, the Council respectfully asks you to review your provisional conclusions on compliance with the DtC and reconvene the examination..." Ref: ED69

All of this follows a similar pattern to the fate of the SDC Local Plan. They also wrote to the SoS who did not intervene in that case. They invited the Inspectors to formalise their completed report which they then judicially reviewed (JR'd) and lost. They have now asked the High Court to allow SDC to appeal that court decision.

Dr Ashley Bowes, the 5P barrister, stated that he felt that the Inspectors had made the right call in law in halting the Inquiry. He said that prior to ED69 being recently published.

The unfortunate thing from the 5P perspective is that the Inquiry was halted at the very first hurdle and on a legal compliance issue. As a result the 5P case against Policy LP29 (Borough Green Garden City) was not aired. Therefore TMBC may well believe that LP29 is still a viable proposition, one that they can continue with, should their current difficulties be overcome.

In the unlikely event that TMBC achieve what SDC has failed to, then what is the situation? The Inspectors reopen the Inquiry where it was stopped before. The 5P are there with barrister and experts and submit all the modelling reports and critical information that TMBC are unaware of. In other words the 5P Case is not disadvantaged and all that has happened is a significant delay.

The prospect of the SoS intervening when he didn't for TMBC seems unlikely. Particularly as it's a legal compliance issue which would leave him open to JR.

The most likely outcome is that the Inspectors will remain resolute and issue a final report. The ball would then be in TMBC's court as to whether to follow SDC down the JR route. Delays of any kind impact on the TMBC evidence base and make it increasingly likely TMBC will have to start again.

What are the Problems with LP29 (BGGC)

Currently it is now recognised that the road, a critical part of LP29, is unachievable for numerous reasons and there is no agreement between the quarries and TMBC on its implementation, as stated in the Statement of Common Ground.

1. Quarries repeatedly put in new applications that extend quarrying/backfilling at the expense of time delays building the road. e.g. Nepicar Sandpit quarrying 2m deeper causing a 5 year overall delay.
2. The road would sterilise undug reserves to the east of the site, contrary to the Mineral Plan.
3. None of the infrastructure associated with the policy has been costed.
4. A lot of the critical modelling around LP29 we can evidence is seriously flawed. The implication on infrastructure costs of this flawed modelling will have a critical effect on the deliverability of LP29.
5. Fundamentally the change of green belt borders requires an exceptional circumstance (ECs) case which cannot be provided by housing. TMBC's used the timely provision of the road for their case to remove green belt.

The LP29 policy is flawed in many other ways that will be revealed should the Inquiry continue but fundamentally TMBC did very poor Sustainability Analysis and appear to have been led by Barton Wilmore.

In conclusion we must leave TMBC and PINs to resolve their differences and should the Inquiry continue, which we think unlikely, we have little to fear from a forensic consideration of LP29.