

APPENDIX 3

Rt Hon Eric Pickles MP
Secretary of State for Communities &
Local Government
Eland House
Bressenden Place
London SW1E 5DU

Netherbury
Meadow Close
Bridge, Kent
CT4 5AT

February 7 2011

Dear Secretary of State

Re: Application of Regulation 10 of the Environmental Assessment of Plans and Programmes Regulations 2004 No. 1633 (the Regulations). Request for a Direction from Secretary of State regarding remedying the failure of Canterbury District Council to undertake any form of environmental assessment of its Local Investment Plan (LIP) before adoption as required by Regulation 9(1) and 8(1)(b) of the Regulations.

Canterbury District Council adopted the LIP at a full council committee on January 13th 2011 (See Appendix 1 for a copy of the LIP). The LIP was unlawfully adopted without any form of environmental assessment as required by the Regulations (See Appendix 2 for a copy of the Officer's Report dated 6 January 2011).

Under Regulation 10 of the Regulations, the Secretary of State is asked to assess whether the LIP is subject to a strategic environmental assessment. Please supply reasons for your determination in this matter.

The LIP is not a budgetary or financial plan. It is primarily a local plan to indicate where housing, employment and transport development infrastructure should go in Canterbury, Shepway, Dover and Thanet districts. The LIP is not just simply about releasing funding streams from the Homes and Communities Agency. Large-scale and site-specific projects are indicated for each district. The LIP and its resulting funding arrangements will encourage and increase the likelihood of the LIP proposals materialising. The LIP will predetermine to varying degrees planning outcomes for East Kent. The Regulations bite in these circumstances. The size and type of the LIP proposals when considered for planning permission would fall under the Environmental Impact Assessment regime under either Annex 1 or Annex 11.

With regard to Canterbury, a large site location for thousands of homes on farmland in Canterbury South is introduced in the LIP for the first time without guidance from an adopted Core Strategy or other legitimate planning document. By regulation 2 of the Town and Country Planning (Local



Experienced Campaigners working to support communities in Kent

Development) (England) Regulations 2004, a "site allocation policy" means a policy which allocates a site for a particular use or development'. Under regulation 7, any document which includes a site allocation policy, must be a development plan document. Therefore, in the case of any doubt, by this fact alone, the LIP becomes subject to the Regulations.

The LIP is in effect a local plan but without having had the safeguards of public consultation, environmental assessment and accountability of decision makers afforded to plans under the Local Development Framework.

The LIP will be difficult to undo or change once contracts have been entered or money received from Government funding streams for specific proposals. As a result, the LIP is likely to predetermine the planning choices in the LDF process rendering any later consultation, environmental assessment or issues connected to accountability meaningless.

Finally, the East Kent Local Strategic Partnership (LSP), the creator of the LIP is supposed to represent the shared community interests arising from the partnership according to Government guidance entitled Creating Strong, Safe and Prosperous Communities July 2008. At paragraph 2.7.v. it says, 'The representatives need to be able to take account of *all* of the community, including the diverse range of minority community interests. It should also be clear how they will be able to influence the decisions and actions of the LSP'. This is not the case here. The LSP membership does not include residential or environmental groups (See Appendix 3 for membership of board). The LSP members appear to be self-appointed and self-regulated with a constitutionally unsuitable involvement of the Chief Executives. Chief Executives are supposed to give neutral advice to their councils on all matters including planning. Their involvement with the LSP and the LIP process raises a serious legal question; are these Chief Executives biased? (See Appendix 4 for the constitutionally unsuitable memberships of the Chief Executive of Canterbury City Council).

KECN look forward to hearing from you regarding the above request under the Regulations and for your comments regarding the constitution of LSPs and involvement of Chief Executives in them.

Yours Sincerely

Emily Shirley

Copies to:

Standards in Public Life Committee

Julian Brazier MP

European Commission



Experienced Campaigners working to support communities in Kent

16 March 2011

Ms Emily Shirley
Netherbury
Meadow Close
Bridge Kent
CT4 5AT

Our Ref.
Your Ref.

Dear Ms Shirley

EAST KENT LOCAL INVESTMENT PLAN

Thank you for your letter of 7 February to the Secretary of State about the East Kent Local Investment Plan. I am sorry that you have not received a quicker reply.

Taking your points in the order of your letter:

On strategic environmental assessment, your letter suggests that the Secretary of State has made a determination in relation to this plan, under the Environmental Assessment of Plans and Programmes Regulations 2004. This is not the case. Regulation 10, to which you refer, creates a power for the Secretary of State to determine that a plan or programmes is likely to have significant environmental effects, but it does not require him to make a determination in any particular case, and he has not done so in this case.

It is the responsibility of an authority preparing a plan or programme to take a view on whether it is subject to these Regulations. Local authorities act independently of central Government, and Ministers have no remit to intervene in the day to day affairs of local authorities, except where specific provision has been made in an Act of Parliament. Local authorities are accountable for their actions to their electorate and must act within their statutory powers. You may wish to seek advice from the council's Monitoring Officer, who is responsible for ensuring that the council acts lawfully and has a duty to report on matters he believes are, or are likely to be, illegal or amount to maladministration.

Concerning the status of the Local Investment Plan, it is not a development plan document as defined under Section 38 of the Planning and Compulsory Purchase Act 2004. However, under planning law, councils are required to consult local people on the preparation of their development plan documents and take their representations into account. They should do this early in the process when

Department for Communities and Local Government
Zone 1/J8
Eland House
Bressenden Place
London
SW1E 5DU
Tel 0303 444 1697

considering what a plan should contain, as well as consulting on the draft which the council propose to submit to the Secretary of State for independent examination. The aim of the examination in public is to establish whether a plan is justified and likely to be effective, and allows anyone seeking to change a development plan document to be heard by the inspector. Unless a document had complied with the relevant law and regulations it would not be able to form part of the statutory development plan, and become the primary consideration for determining planning applications.

Local strategic partnerships are non-statutory groups of local organisations, led by local authorities, coming together voluntarily to work in partnership. Decisions on their composition, accountability and structures, are entirely a matter for local areas themselves. Any complaints about their composition, including the issue of appointments of Chief Executives, can be directed to the council in the first instance. Information about complaints procedures is normally available on councils' websites.

Yours sincerely,



Roger Smithson

The Kent Environment and Community Network



Rt Hon Eric Pickles MP
Secretary of State for Communities &
Local Government
Eland House
Bressenden Place
London SW1E 5DU

Netherbury
Meadow Close
Bridge, Kent
CT4 5AT

March 21 2011

Dear Secretary of State

Re:Application of Regulation 10 of the Environmental Assessment of Plans and Programmes Regulations 2004 No. 1633.Request for a Direction from Secretary of State regarding remedying the failure of Canterbury District Council to undertake any form of environmental assessment of its Local Investment Plan (LIP) before adoption as required by Regulation 9(1) and 8(1)(b) of the Regulations.

Thank you for your response to our letter received on 17 March 2011.Unfortunately, there appears to be a misunderstanding about what we were requesting from you. In our first communication to you, we asked you to decide whether the LIP was subject to the Environmental Assessment of Plans and Programmes Regulations 2004 No. 1633 (the Regulations).We asked you to do so at that stage because the council had not and has still not made its final decision regarding the LIP.

The LIP is a 'working' document and will come back to full Committee shortly in order for the Committee to agree the investment schemes proposed. This agreement



Experienced Campaigners working to support communities in Kent

will in effect be the final adoption or decision. We are asking you to assess whether the LIP is subject to a strategic environmental assessment in this interim period before the final decision is made. You can legitimately make a direction under Regulation 10 in these circumstances. Please supply reasons for your determination in this matter.

There is no indication that the council intends to subject the LIP to the Regulations at this late stage. KECN will as a result be left with no remedy but judicial review, a risky and prohibitively expensive venture. This course of action would not provide us with a remedy in line with the principles of the Aarhus Convention as mirrored in the Regulations.

Regardless of whether the LIP would be considered a DPD, SPD or something else altogether under or adjacent to the LDF system, the LIP is a plan and it allocates new land for development. It is a sort of plan that the Regulations under the SEA Directive, are supposed to cover.

With regard to your comments concerning LSPs, we are well aware about what LSPs are supposed to be and how we are supposed to complain. The trouble is that LSP in East Kent is not what it is supposed to be. Furthermore, complaints about the constitutional structures of partnerships have proved fruitless. As you know, the powers to enter into partnerships hinge upon the well being powers under s.2 of the Local Government Act 2000. The involvement of Chief Executives with the LSP and the LIP process is apparently condoned by the well-being powers and the serious legal question whether Chief Executives might be biased as a result of their involvement in the LSP process cannot apparently be addressed. Furthermore, there is no remit for investigating complaints against officers in the soon to be abolished Standards Board.

KECN look forward to hearing from you regarding the above request.

Yours Sincerely

Emily Shirley

Copies to:
Standards in Public Life Committee
Julian Brazier MP
European Commission

26 May 2011

Ms Emily Shirley
Netherbury
Meadow Close
Bridge, Kent
CT4 5AT

Our Ref:
Your Ref:

Dear Ms Shirley

EAST KENT LOCAL INVESTMENT PLAN

Thank you for your letters of 21 March and 5 May to the Secretary of State. I am sorry you have had to chase for a reply, but your 21 March letter did not reach me.

As I said in my letter of 16 March, the Local Investment Plan is not a planning document and does not allocate land for development. It was produced on a voluntary basis by a non-statutory Local Strategic Partnership, and appears to present a combination of evidence and broad-brush proposals which would have to be elaborated in much greater detail in local authorities' development plan documents if they were to form part of their Local Development Frameworks. These development plan documents would be subject to environmental assessment under EU law, in the normal way. The latest (Spring 2011) version of the Local Investment Plan refers to these local plans, and Figure 2 on page 14 gives details of their current status and proposed work on them.

For these reasons the Local Investment Plan does not appear to be a plan or programme subject to the SEA Directive and Regulations.

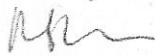
You also asked about how to make a complaint about the East Kent Local Strategic Partnership. I note that this Partnership was closed down on 31 March, but if you wish to take forward your complaint, after taking it up with the local authorities concerned, you could contact the Local Government Ombudsman. The Ombudsman is charged by Parliament with investigating complaints by individual citizens that they have suffered injustice arising from maladministration by local authorities. The Ombudsman is independent of both central and local government to ensure impartiality in his decisions. The service is provided free of charge and you can telephone them direct on 0300 061 0614, from 8.30am to 5.00pm, Monday to Friday. They can also be found online at www.lgo.org.uk

Department for Communities and Local Government
Zone 1/J6
Eland House
Bressenden Place
London
SW1E 5DU

Tel 0303 444 1697

If you have any concerns about the financing of the project, you can raise the matter with the District Auditor. To find out how to contact the District Auditor for your area, contact the Audit Commission on 0844 798 3131 or 0117 975 3131, or you can email them on public-enquiries@audit-commission.gov.uk.

Yours sincerely,



Roger Smithson