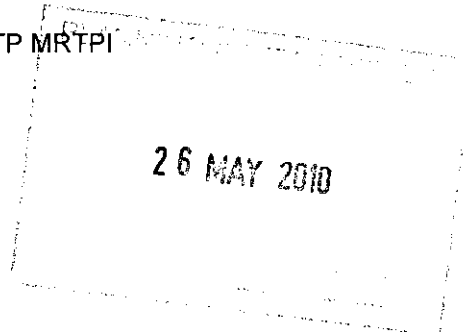


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Dear Madam

### **Ashford Borough Council: Tenterden & Rural Sites DPD**

This letter is sent to you via the Programme Officer, and concerns the approach which will be taken at the forthcoming Examination into the soundness of the Plan. A copy of this letter is being sent to the Council as Local Planning Authority.

The reason for writing to you at this stage on behalf of our client, Imperial College, arises from your comments made at the Pre-Hearing Meeting, and as recorded in the Minutes of the Meeting, which we have now received.

Under the heading "The Purpose of the Examination", the Minutes state: "the starting point is the assumption that the Council has submitted a sound plan – that is: it proposes the right actions for the area; it will achieve what it sets out to achieve; and is consistent with national policy". This statement is repeated under the heading "Questions from the floor", where it is stated: "The Council is now assumed to have submitted a sound plan and the representors to have made all their points by the submission stage. Any further representations are merely in response to the Inspector's Matters and Issues, and are made by representors and the Council at the same time".

We have considered these statements in consultation with Leading Counsel, who has advised us that we should write and point out that this approach does not reflect the correct legal position. The starting point is not that the Council *has* submitted a sound plan. This would involve giving effect to a presumption of soundness which was held to be unlawful by the Court of Appeal in *Blyth Valley BC v Persimmon Homes (NE) & Others* [2008] EWCA Civ 861, and also Collins J in *Capel PC v Surrey County Council* [2009] EWHC 350 Admin. As Keene LJ said in the *Blyth* case at paragraph 40, a presumption of soundness is not what section 20(5) of the 2004 Act is providing for when soundness is being investigated. He emphasised that the statutory requirement is couched in neutral terms, with no initial assumption that the plan is sound.

As you will recall, the wording of the 2004 version of PPS12 was changed to reflect this. The 2008 version now provides: "The starting point for the examination is the assumption that the local authority has submitted *what it considers to be a sound plan*" (my emphasis). This is, of course, as Keene LJ remarked, quite different from starting with the assumption that the plan *is* sound.

We have been advised that it is appropriate to point this out to you at this stage, and invite you to issue a clarification indicating the approach that you will adopt. Although of course the Council considers that it has submitted a sound plan, we hope that you will confirm that you are approaching the matter on an entirely neutral basis.

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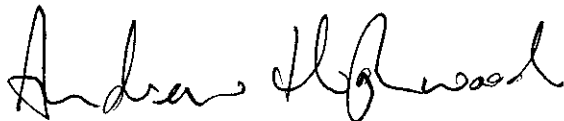


In this regard we also ask that you revert to the question Mr Hobson QC raised at the Pre-Hearing Meeting. His point was that, although objectors, such as our clients, have made representations on a number of occasions, the Council has never provided a statement indicating its reasons for rejecting those representations. Approaching the matter in a fair and neutral manner, means that we should be given the opportunity to consider fully, and respond to such points as the Council may make in its statement for the Examination. This will not of course be possible if we are required to submit the totality of our statement for the Examination by the same date as the Council.

We are intending to put in a statement by 3<sup>rd</sup> June. Would you please confirm that you will also receive any further statement that we are advised should be submitted in response to matters which the Council may raise in its statement, which of course we will not have seen before. Only if we are able to do this can we ensure that all the relevant material is before you to enable you to assess the soundness of the Plan, fairly and from a neutral starting point.

We hope that you will forgive us troubling you with this matter. However the issue is clearly important, and we have felt it right that if we have a concern with the approach being adopted, we should raise it openly and as soon as possible. It is in that helpful spirit that this letter is being sent.

Yours faithfully

A handwritten signature in black ink, appearing to read "Andrew Highwood". The signature is fluid and cursive, with the first name "Andrew" being more prominent than the last name "Highwood".

Andrew Highwood LLM FRICS FAAV  
Director