

IN THE MATTER OF

CRANBROOK EXPANSION DPD

**NOTE FROM
QUEEN'S COUNSEL**

No5
CHAMBERS

BIRMINGHAM • LONDON • BRISTOL

1. In this matter I am instructed by Nick Freer of David Lock Associates, on behalf of Hallam Land Management and Taylor Wimpey, who form part of the East Devon New Community partners (hereinafter “EDNCp”).
2. The EDNCp are progressing their representations on the Cranbrook Expansion DPD and are appearing at the EIP.
3. Together with Miss Nina Pindham of Counsel, I am acting on behalf of the East Devon New Community partners in relation to viability matters.
4. I was due to appear at the session that should have taken place last Thursday 13th February. The Inspector has sent a note setting out carefully the reasons for the postponement (PSD14). As the Inspector alludes in the note, East Devon New Community partners are extremely disappointed by the circumstances which led the Inspector to reach this conclusion.
5. Prior to the decision, Ms Pindham and Mr Freer set out why EDNCp believed there were very cogent reasons to press ahead with the examination, not least so that progress might collectively be made more quickly.
6. Whilst EDNCp are sympathetic to the position the Inspector found herself in, as is evident in EDNCP’s Matter 15 statement (and in particular in the correspondence reproduced in Appendix B of that statement), EDNCp strongly urged East Devon District Council NOT to submit the Cranbrook DPD for examination with the parties so far apart and in the absence of meaningful engagement on the viability work. The EDNCp fear – now realised – was further inevitable delay in the progression of the DPD.
7. This is of no small importance. As the Inspector indicated in her statement all four expansion areas are central to the Council’s ambition for housing delivery in the District in meeting its Objectively Assessed Need. There are applications – not

least for Blue Hayes which are capable of being granted consent and of fulfilling the trajectory objective of Cranbrook Expansion areas which requires the delivery of occupations this time next year. Yet the applications are not being progressed.

8. The Inspector's postponement follows the request from the Council for a delay while it revisits one of the assumptions in the viability study – having recognised now that the land use budget of 227 hectares in the expansion areas is insufficient.
9. EDNCp sympathy with the Council in this regard is very limited. Exactly this point was set out in terms and in detail in EDNCp's Regulation 19 submission in April 2019. Only during the examination has this been accepted. The sense of frustration is amplified by the suggestion by the East Devon Local Plan Inspector that a DPD for Cranbrook was unnecessary and likely to lead to delay – prescient indeed.
10. However in moving forward, EDNCp welcome the Inspector's intention to give a steer on the key issues the Inspector has in relation to viability – so that they may be all considered at the same, rather than in two sequential stages. This would seem to be very important part of the process now. EDNCp will keep an eye on the Examination website and in touch with Mr Kemp, the EiP Programme Officer.
11. The Inspector highlighted mediation as one option to be explored. EDNCp will seek to co-operate with the Council in exploring how that might work. Critical to any mediation process will be to make such progress as is possible with alacrity, and to engage a suitable mediator who is a RICS member but in addition whose primary skills and considerable experience are a specialism in development land valuation matters (rather than simply in mediation or a more broadly based surveying background). Equally consultation and agreement will be necessary between those parties willing to engage in that process including regarding the appointment of mediator and scope of the brief for the mediator. It should not be

an EDDC led process which appears to be the direction at least at present. Whether agreement regarding the appointment of an appropriate mediator can be reached will be pivotal to the success of any mediation that might be embarked upon. EDNCp expect and are willing to contribute to any appropriate and agreed process.

12. With or without any mediation process I anticipate, with some regret, that there may well be issues still for the Inspector to determine and judgement will be key in determining which obligations would be capable of meeting the necessary legal tests and be consistent with national policy and reasonable in all other regards.
13. The Inspector is aware that EDNCp have expressed grave concerns with regard to the items and costs (for instance the underestimation of the CHP costs as discussed under Matter 16 (Issue 23)) set out in the Cranbrook IDP. This is a separate point to the methodology and inputs and outputs of the Viability Assessment. The scale of the IDP expectation has yet to be discussed at the examination and will need to be addressed alongside viability methodologies and outputs, when the examination resumes. It is the view of the EDNCp that the viable level of infrastructure burden will need to be very similar to that found deliverable in relation to the first 3500 dwellings at Cranbrook (£10,900 as set out in Appendix 2 to Appendix A of EDNCp's Matter 15 Statement) rather than the circa £28,000 per unit set out in the IDP in relation to the expansion areas..
14. One way that the Inspector intended to mitigate the effects of the postponement is to require a timetable for the additional viability work which the Council says it needs to undertake, and allow the provisional programming of a future viability session of the examination. We will engage with the Council on the matter of timetable and with respect, I would suggest those instructing me encourage the Inspector to set an early date for the reopened viability session as diaries are always difficult and all parties need the discipline that the date will provide.

EDNCp will liaise with Mr Kemp, the Council, and other parties to seek to agree a early agreement of a date.

15. As set out in the Inspector's statement the pace of the examination must be maintained.

19 February 2020

CHRISTOPHER YOUNG QC

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