Although I have yet to complete my initial preparatory work, I have identified an important concern that needs to be clarified at an early stage in the examination process.

I note that changes have been made to the Core Strategy's policies and text following the consultation that took place on the Proposed Submission Document (July 2011). These changes, which are set out in two editing schedules, and which I describe below as the 'pre-submission changes', have been incorporated into the January 2012 Submission Document.

While it is not explicitly stated in the submission bundle, my assumption is that you are intending that the January 2012 Submission Document should form the basis of the Core Strategy examination. (Please let me know if this is not the case.) The Programme Officer has advised that the pre-submission changes have not been the subject of a further consultation exercise. While they appear to have been considered in the most recent versions of the two Habitat Regulations Assessment documents (January 2012), the submitted Sustainability Appraisal (dated July 2011) does not take them into account.

It is clear from the editing schedules that the Council considers these changes to amount to non-material amendments. However, taken together, they amount to a significant number of changes to Core Strategy policies (some 68 changes), with a greater number of changes (over 123) to the supporting text and diagrams. While some of the changes are clearly minor in nature, others introduce new policy requirements that were not present in the July 2011 version of the Plan. Most notably, policy CSD4 has been expanded to set out requirements for development in the AONB and new references have been added in respect of biodiversity conservation. A substantial amount of new supporting text has been added. Policy SS1 has also been changed in respect of the approach to development and the AONB. Indeed, the overall effect of these has caused Natural England to alter its view on the plan’s soundness.

Without commenting on their specific merits, other pre-submission changes potentially represent material amendments to the July 2011 version – including:

- policy SS2: the addition of ‘approximately’ to the overall housing target;
- policy SS3: the addition of ‘or locations shown to be sustainable and strategically necessary’ as areas in which the principle of development is likely to be acceptable;
- policy SS3: the deletion of some text relating to flood risk in sub-para (c);
- policy SS4: the extension of the policy’s application to all trip-generating development (as opposed to commercial development) – and a number of amended criteria;
- policies SS6, SS7 and SS8: the addition of a new criterion regarding a recreational access strategy (to mitigate effects on European nature conservation sites) to each strategic allocation;
- policy SS6: additions to the list of acceptable uses in the Folkestone Seafront strategic allocation – and the addition of a requirement for financial contributions to meet additional primary school places;
- Policy SS7: the addition of heritage requirements to criterion (g); and
- Map 6.1: extensions to the boundary of the Folkestone Seafront strategic allocation (and consequent change to fig 5.5).
For reasons of brevity, this list is not intended to be comprehensive. It does not, for example, include potentially material changes to the CSD policies (other than the changes to CSD4 already mentioned) or other supporting text and diagrams.

Taking into account both the significant number of the changes concerned, and the substantive nature of some of the specific changes, it seems to me that, taken together (as is required by the relevant provisions of the Planning and Compulsory Purchase Act 2004, as amended), they cannot reasonably be described as being ‘non-material’. I accept that many of these changes have been introduced in response to specific representations. However, in most cases it is not clear to what extent such changes have indeed addressed the concerns raised, as most representors have not had an opportunity to make additional comments. Furthermore, other parties who may have wished to comment on the relevant changes have not had been able to do so. This raises concerns as to the plan’s legal compliance – as well as issues of natural justice.

For the above reasons, I am unable to carry out the Core Strategy Examination on the basis of the January 2012 Submission Document. It seems to me that there are two possible courses of action to resolve this matter:

(i) To carry out the examination on the basis of the July 2011 Proposed Submission Document, with the intended modifications being presented for consideration as possible recommendations in my report. However, in doing so, it must be noted that Section 20(7B) of the 2004 Act (as amended) confines me to recommending only those main modifications that rectify issues of unsoundness or legal non-compliance. As such, I would not be able to recommend a substantive change for other reasons.

Or

(ii) For the Council to withdraw the Plan and resubmit it following appropriate consultation/review of the SA.

As you will be aware, and assuming that option (i) is followed, in order for me to make modifications to the Plan you would need to formally notify me as to whether you wish to request modifications under section 20(7C) of the Planning and Compulsory Purchase Act 2004 (as amended). In the light of the above, in the event that the examination continues and the Plan needs amending to address legal compliance/soundness, it would be helpful to provide an indication of how you would wish me to proceed in respect of that matter.

In the absence of a request under section 20(7C), and assuming that the examination continues, my report would be confined to identifying any soundness or legal compliance failures and, if there are such failures, recommending non-adoptions of the Plan. An indication of the Council’s position on main modifications at this stage would be advantageous to the efficiency of the examination process and the expectation of participants. Deferring a decision to request modifications until a late stage of the examination may risk both time delay and incur additional examination costs.

If you have any queries regarding the above then I can be contacted via the Programme Officer. I would request an early response to the points raised.

Michael J Hetherington
Inspector for the Shepway Core Strategy Examination
9 February 2011