

## Examination: Sevenoaks District Local Plan

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**Our ref** 61191/01/MS/RC  
**Date** 5 September 2019  
**On behalf of** Sevenoaks Developer Forum

### Issue 2: Is the Local Plan's preparation compliant with the Duty to Cooperate [DtC] imposed by Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) [PCPA]?

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#### Q10. What has been the nature and timing of the co-operation and on which issues?

- 1.1 The Council's Duty to Cooperate (DtC) Statement sets out the nature and timing of the co-operation undertaken. The Council submitted the Sevenoaks District Council Local Plan for Examination on 30 April 2019. However, the Council's DtC Statement is dated May 2019, meaning that it was completed after the Local Plan was submitted for Examination.
- 1.2 The Planning Practice Guidance identifies that  
*"Authorities should have made a statement of common ground available on their website by the time they publish their draft plan, in order to provide communities and other stakeholders with a transparent picture of how they have collaborated."* (Paragraph: 020 Reference ID: 61-020-20190315)
- 1.3 The delay means that during the Regulation 19 consultation phase (which took place from 18 December 2018 to 3 February 2019) the DtC Statement had not been published, nor had the Statements of Common Ground, and as such our clients were unable to comment fully on the work undertaken as part of the DtC within their Regulation 19 consultation responses. This is not in accordance with the requirements set out in the Planning Practice Guidance as quoted above.
- 1.4 The predominant issue as part of the DtC discussions has been the potential for neighbouring authorities to meet some of Sevenoaks District Council's (SDC) unmet housing need (see Q13).
- 1.5 It should also of note that the draft Local Plan (agreed by Cabinet on 12<sup>th</sup> July 2019) included Green Belt site allocations with the potential to deliver 6,800 units: with the draft plan meeting almost all of its needs (13,382 homes identified compared to a need of 13,960<sup>1</sup>). Some of these Green Belt sites were only removed following public consultation – as agreed at the November 2018 Planning Advisory Committee<sup>2</sup>. While DtC discussions considered whether neighbouring Councils could meet some unmet need<sup>3</sup>, the shortfall at that stage was relatively minor. It is only after November 2018 that the full shortfall became apparent with the removal of proposed Green Belt sites from the Local Plan: resulting in the current major shortfall between local housing need and the proposed housing requirement, with no neighbouring authorities able to take any unmet needs. The issue of the nature and timing of the co-operation with neighbouring Council's must be viewed in this context. Neighbouring authorities simply would not have had a

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<sup>1</sup> Paragraph 1.1 & table 'Housing Supply Option', Draft Local Plan July 2018

<sup>2</sup> Held 22<sup>nd</sup> November 2018

<sup>3</sup> Paragraph 1.8, Draft Local Plan July 2018

concept of the scale of unmet need they were being asked to plan for put to them until relatively recently in the plan-making process when SDC was at the Regulation 19 stage. In the context that the scale of need to be met is relevant to the planning balance carried out to consider how far constraints should restrict development<sup>4</sup> the DtC process cannot be said to have been satisfied by activity that did not support the effective engagement of local authorities with the revised circumstances arising from Sevenoaks.

### **Q11. Who did the Council co-operate with?**

- 1.6 Statements of Common Ground (SUP007c-h) with the following Local Authorities have been prepared:
- 1 Tandridge District Council
  - 2 Wealden District Council
  - 3 Dartford Borough Council
  - 4 Gravesham Borough Council
  - 5 London Borough of Bexley
  - 6 Tunbridge Wells Borough Council
  - 7 London Borough of Bromley (published 16 July 2019, post-submission, as ED7)
  - 8 Tonbridge and Malling Borough Council (published 15 July 2019, post-submission, as ED6)
- 1.7 No indication has been provided as to why the Statements with the London Borough of Bromley and Tonbridge and Malling Councils had not been signed/published earlier and before submission. It is noted that they did not attend the Duty to Cooperate Workshop facilitated by the Planning Advisory Service held in April 2019.
- 1.8 The chronic housing shortfall in London will inevitably have knock- on effects for surrounding LPAs including Sevenoaks (ID-5646 paragraphs 5.10 to 5.12). The suggested consultation response by the London Borough of Bromley to the SDC Regulation 19 consultation, as discussed at Bromley’s Development Control Committee in April 2019, acknowledges that Bromley previously raised concerns about some aspects of the SDC Local Plan which could have negative impacts on Bromley. The suggested response then goes on to state that the London Borough of Bromley is anticipating working with Sevenoaks District Council to agree a Statement of Common Ground to be submitted with the Sevenoaks Local Plan. However, this response does not appear to have been submitted to the consultation from a review of the SDC website (although the SoCG was subsequently signed in July 2019 (ED7)).
- 1.9 The Tonbridge and Malling response to the SDC Regulation 19 consultation raises concerns with the proposed strategy for meeting housing need and the deliverability of the proposed options. It is not clear if these concerns were the reason that the Statement of Common Ground was delayed.

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<sup>4</sup> Phides Estates (Overseas) Ltd v SSCLG and Shepway DC [2015] EWHC 827 (Admin) where Lindblom J established that “...the weight given to a proposal’s benefit in increasing the supply of housing will vary from case to case. It will depend, for example, on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. So the decision-maker must establish not only whether there is a shortfall but also how big it is, and how significant”

- 1.10 In addition to those identified above, Statements of Common Ground have also been prepared with the Ashdown Forest Special Area of Conservation and the Ashdown Forest Special Protection Area.
- 1.11 Whilst a memorandum of understanding with Maidstone has purportedly been reached to explore the housing need which might not be able to be met within the Housing Market Area (SDCO01 para 1.9), this memorandum has not been included within SDC's DtC Statement. The contents and outcome of that memorandum is important in respect of whether the DtC has sought to maximise effectiveness and constructively seek solutions, particularly as Maidstone is a neighbouring (being nearby albeit non-contiguous) authority and is the first part of West Kent not significantly constrained by Green Belt.

### **Q12. Are there any failures in the DtC?**

- 1.12 Yes. As set out in the response to Q10 the Council failed to adequately demonstrate it had met the requirements of the DtC in advance of the submission of the Local Plan for examination. The PPG identifies that as the DtC relates to the preparation of the plan it cannot be rectified post-submission (Paragraph: 031 Reference ID: 61-031-20190315).
- 1.13 The delay in the publication of their Statement also means that consultees were unable to review the work undertaken by SDC during the Regulation 19 consultation period. This is a failure.
- 1.14 In the May 2019 (post-submission) DtC Statement, the Council confirm that Statements of Common Ground with the London Borough of Bromley and Tonbridge and Malling Borough Council have not been completed and signed. The NPPF (2019) requires these statements to be prepared in order to satisfy the DtC. This is expanded within the Planning Practice Guidance states (Paragraph: 022 Reference ID: 61-022-20190315):
- “Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the inspector to direct them. Where a strategic policy-making authority claims it has reasonably done all that it can to deal with matters but has been unable to secure the cooperation necessary, for example if another authority will not cooperate, or agreements cannot be reached, this should not prevent the authority from submitting a plan for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved; this will be thoroughly tested at the plan examination.” (Our emphasis)*
- 1.15 The Council is at odds with the above emphasised PPG text because it is indicating – in paragraph 6.4 of the Development Strategy Topic Paper (SUP008a) - that it intends to deal with unmet housing needs in the future rather than now:
- “The Council is continuing to work with neighbouring authorities to develop a joint-strategy to address housing need on a sub-regional basis, to ensure that people continue to have a place to live. Please see the Duty to Co-operate Statement for further details.”*
- 1.16 This strategy is clarified in more detail at paragraph 4.31 of the DtC Statement 2019 (SUP006):
- “In addition, officers have discussed the production of a joint ‘sub-regional’ strategy to address objectively assessed needs in the West Kent area. Whilst the difficulties of preparing such a document are recognised, the Council will fully investigate the potential of such a strategy, in advance of preparing the next version of the Local Plan.”*

- 1.17 Whilst the frequency of engagement between the various parties means that it might be said that DtC discussions have been active and ongoing, on the basis of the above, it cannot be concluded that engagement has been constructive. If the relevant local authorities are stating that they will defer the proper addressing of housing needs to a joint-strategy prepared on a sub-regional basis, this implies that there is scope to meet a greater amount (if not all) housing need. Based on the evidence to date, the constraints to development in Sevenoaks and its neighbours will not change through the production of a joint-strategy in the future, but the Councils' assessment of these constraints and the overall strategy to meet housing need obviously can, otherwise needs would currently be planned to be met. There is no reason why the proper process of addressing these unmet needs could not have been undertaken through this Local Plan process and furthermore, the PPG actively promotes it through a series of steps.
- “When preparing strategic policies, it may be concluded that insufficient sites / broad locations have been identified to meet objectively assessed needs, including the identified local housing need.*
- In the first instance, strategic policy-making authorities will need to revisit their assessment, for example to carry out a further call for sites or changing assumptions about the development potential of particular sites to ensure these make the most efficient use of land. This may include applying a range of densities that reflect the accessibility and potential of different areas, especially for sites in town and city centres, and other locations that are well served by public transport.*
- If insufficient land remains, then it will be necessary to investigate how this shortfall can best be planned for. If there is clear evidence that strategic policies cannot meet the needs of the area, factoring in the constraints, it will be important to establish how needs might be met in adjoining areas through the process of preparing statements of common ground, and in accordance with the duty to cooperate. If following this, needs cannot be met then the plan-making authority will have to demonstrate the reasons why as part of the plan examination.”* (Our emphasis) (Paragraph: 025 Reference ID: 3-025-20190722)
- 1.18 The Sevenoaks Local Plan does not identify sufficient sites to meet local housing need, but there is no evidence that the Council has revisited their assessment to ‘flex’ their assumptions to identify additional supply as per the PPG (see our responses on Issues 3 and 5 which set out the inherent limitations of the preferred spatial strategy to actively consider sustainable sites).
- 1.19 Whilst the Council has sought to establish how unmet housing needs might be met in adjoining areas, the outcome of the DtC discussions, reflected in the SoCG, is simply that individual authorities housing needs are unable to be accommodated within their own administrative boundaries, let alone assisting in meeting unmet needs of neighbouring authorities. But it appears to be acknowledged (via the intention to participate in a Joint Strategy) that this could change in future.
- 1.20 This shows a failure of the DtC engagement process to be constructive in this plan. A conclusion that Sevenoaks had satisfied the duty to cooperate would clearly be a perverse incentive for authorities to come to this conclusion (that they assert that they cannot meet their own needs, let alone anyone else’s, but promise to defer matters to a future plan) without showing they have actively and constructively maximised the effectiveness of their own plan with regards to the above extract of the PPG. As above, the Council has not adhered to the PPG to ‘flex’ their assumptions to identify additional supply. However, all authorities party to the future joint-strategy to address housing need will have to do so to ensure more supply is identified than is currently. Therefore, whilst the DtC has failed to be undertaken on a constructive basis, the plan

also falls foul of the PPG which expects authorities to address key strategic matters through effective joint working, and not defer them to subsequent plan updates (or in this case a future joint-strategy).

**Q13. Could the identified unmet housing need be accommodated in neighbouring authorities under the DtC?**

- 1.21 Many of the other neighbouring authorities are not meeting their own local housing need and they conclude that therefore they are unable to meet the unmet needs of SDC as set out in the conclusion of the DtC Statement (para 5.1) which states

*“The production of the Proposed Submission version of the Local Plan has been informed by discussions with neighbouring authorities about whether they are in a position to accommodate a proportion of unmet need. These discussions have consistently indicated that neighbouring authorities are not in a position to do this this and are indeed struggling to meet their own needs.”*

- 1.22 There is a chronic and persistent issue with slow housing delivery in the area which will result in an increasing residual need and worsening already critical affordability problems. In other words, the issue is not an abstract accounting problem, it is a real-world one that gives rise to adverse consequences for people, especially younger people and those on lower incomes. For the Plan to be found sound there needs to be much clearer and co-ordinated effort of all the local authorities in the region (including outer London) to work together to meet the residual unmet need.

- 1.23 As it stands, it is highly unlikely that the identified unmet housing need can be practically accommodated outside of SDC through the current and next cycle of Local Plans given that many of the neighbouring authorities are struggling to meet their own needs. As such, more should be done to increase supply within SDC, as set out in our response to Issue 6.

**Q14. Were any standing arrangements/protocols/memorandums of understanding in place?**

- 1.24 This is a matter for SDC to answer.

- 1.25 We note that a Memorandum of Understanding was prepared with Maidstone to explore housing need which might not be able to be met within the Housing Market Area however this has also not resulted in any level of housing need being met and this memorandum has not been included within SDC’s DtC Statement.

- 1.26 As set out above none of the other neighbouring authorities have been able to accommodate any of SDC’s unmet housing need.

**Q15. How has the co-operation influenced the preparation of the Local Plan?**

- 1.27 The co-operation has influenced the preparation of the Local Plan as it has been made clear through the DtC process by the neighbouring authorities that they are unable to accommodate any of SDC’s unmet housing need.

- 1.28 However, it is considered that this approach has not gone sufficiently far in seeking to meet the identified housing needs within SDC (and potentially the unmet need of the neighbouring



Representation Numbers: ID-5911; ID-1918; ID-2772; ID-5480; ID-4822;  
ID-5646; ID-4727 and LPS2108

authorities) and thus maximise the effectiveness of the respective local plans as set out in our response to Issues 4 and 6.