

## **Examination of the Sevenoaks District Local Plan**

**Inspector:** Karen L Baker DipTP MA DipMP MRTPI

**Programme Officer:** Louise St John Howe

**FAO:** Mr James Gleave, Strategic Planning Manager

Dear Mr Gleave,

In my letter, dated 14 October 2019, I stated that I would write to you setting out in more detail the reasons why the Duty to Co-operate has not been met in respect of the Sevenoaks District Local Plan, as submitted on 30 April 2019.

My central concern, in respect of the legal compliance of the Plan, relates to the lack of constructive engagement with neighbouring authorities to resolve the issue of unmet housing need and the inadequacy of strategic cross boundary planning to examine how the identified needs could be accommodated. Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) requires that a local planning authority co-operates with other local planning authorities, the County Council and prescribed bodies or other persons in relation to planning of sustainable development. This duty requires the Council to engage constructively and on an ongoing basis in the preparation of the Local Plan, so far as it relates to a strategic matter.

Government policy set out in paragraph 26 of the National Planning Policy Framework (NPPF) says that effective and ongoing joint working between strategic policy-making authorities and relevant bodies is integral to the production of a positively prepared and justified strategy. It goes on to say that, in particular, joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

In order to demonstrate effective and ongoing joint working, paragraph 27 of the NPPF says that strategic policy-making authorities should prepare and maintain one or more Statements of Common Ground (SoCGs), documenting the cross-boundary matters being addressed and progress in co-operating to address these. These should be produced using the approach set out in national planning guidance and be made publicly available throughout the plan-making process to provide transparency.

Housing is a strategic matter upon which the Council should engage constructively and on an ongoing basis with its neighbours. The Council published a Duty to Co-operate Statement [SUP006 and SUP006a-d] in May 2019, following the submission of the Local Plan for Examination, which sets out the activities undertaken by the Council, including meetings with neighbouring authorities, at both Officer and Member level, and the production of a joint

evidence base with neighbouring authorities in the West Kent Housing Market Area<sup>1</sup> (HMA).

In Appendix 1 to the Duty to Co-operate Statement, the Facilitator's Note of a meeting of the West Kent Statement of Common Ground Pilot Project, on 3 April 2018, at which Officers from the Council, along with Tunbridge Wells and Tonbridge and Malling Borough Councils, were present, says, at paragraph 6.1, that Sevenoaks District Council is planning to meet its Objectively Assessed Need (OAN) as determined by the joint SHMA, which was updated in 2017. It goes on to say, at paragraph 8.5, that 'whilst both Sevenoaks and Tunbridge Wells are aiming to meet their standard methodology OANs, both are heavily constrained by Green Belt and infrastructure issues and are unlikely to be capable of accommodating unmet need from Tonbridge and Malling.'

The Draft Local Plan identified a need for 13,960 homes and identified sites capable of delivering between 6,582 and 13,382 dwellings, which fell short of the Council's housing needs. This Plan was subject to Regulation 18 consultation between 16 July and 10 September 2018. However, there was no West Kent Duty to Co-operate Meeting between 2 August 2017 and 11 September 2018 with Tunbridge Wells and Tonbridge and Malling Borough Councils and no evidence that the Council highlighted its own likely housing shortfall with its neighbours at that time.

At the meeting on 11 September 2018, the Council reported that in excess of 7,000 comments had been received to the Regulation 18 consultation, but that a Regulation 19 Plan would be considered by the Council's Planning Advisory Committee on 22 November 2018 and Cabinet on 6 December 2018, aiming for submission in Spring 2019. No reference was made at this meeting to the likely level of unmet housing need in the Regulation 19 Plan, which confirms that the unmet need within Sevenoaks was 3,392 dwellings, nor does it appear that a request was made to these neighbouring authorities for them to accommodate any of this unmet need. The next Duty to Co-operate Meeting between these authorities took place on 13 March 2019 following the Regulation 19 consultation on the Sevenoaks Local Plan, which closed on 3 February 2019. It is only at that meeting that reference was made in Item 3 'West Kent SoCG' to the unmet need in Sevenoaks and a discussion of 'the potential requirement for a follow up letter to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'.

The Council's position with respect to housing clearly changed during the course of the Plan's preparation, between the West Kent Statement of Common Ground Pilot Project meeting, on 3 April 2018, and the Regulation 18 and Regulation 19 versions of the Plan. Under the Duty to Co-operate, it is reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate its own needs, which would have been at some point between April 2018 and the Regulation 19 version of the Plan. This

---

<sup>1</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

would have allowed the authorities to engage constructively in an attempt to resolve this issue prior to the publication of the Plan at the Regulation 19 stage.

This did not happen; Regulation 19 consultation took place on the Plan between Tuesday 18 December 2018 and Sunday 3 February 2019, but the Council did not formally consult neighbouring authorities about the changed situation in respect of unmet housing need before that consultation took place. This was clear at the time that the Planning Inspectorate<sup>2</sup> carried out an Advisory Visit to the Council on 6 February 2019. The Inspector who undertook the Advisory Visit noted that the Council had not sent formal letters asking other authorities to accommodate the unmet need. He also advised the Council that, despite the SoCG, there did not appear to be clear evidence of positive engagement and that the Council could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated.

In fact, the Council did not formally inform neighbouring authorities of the position regarding its unmet housing need until it wrote to them on 11 April 2019, after the PINS' Advisory Visit and following the Regulation 19 consultation.

On 24 April 2019, six days before the Plan was submitted for Examination, the Council held a Duty to Co-operate workshop. This was facilitated by the Planning Advisory Service (PAS), with representatives from neighbouring authorities. At this workshop, the Council set out what it considers to be the shortfall of around 1,900 dwellings<sup>3</sup> in its Local Plan to be submitted for Examination. The Council states that the advice it received at this workshop, from the PAS Facilitator, was that it had done all it could and was therefore able to demonstrate that it had satisfied the Duty to Co-operate. However, having considered all the evidence before me in this Examination, I do not agree with this position. It is also the case that the workshop took place far too late in the preparation of the Plan to have any real influence over the way the issue of unmet housing need was handled.

Indeed, if the engagement had occurred between the Regulation 18 and Regulation 19 versions of the Plan, once the Council was aware of the level of unmet need, it might have resulted in a more positive outcome. Given earlier notice and more time for in-depth engagement, discussion and consideration, neighbouring authorities may have been able to accommodate some of Sevenoaks' unmet need. Alternatively, if the neighbouring authorities had not been able or willing to meet these needs, the Council would have had the time to formally reconsider its own constraints to reach a final view on whether or not it could appropriately fully meet its own housing needs in the knowledge that they would not be met outside the District. However, the Council did not do this, instead moving quickly to the publication of a Regulation 19 Plan which had a substantial level of unmet housing need and no strategy for accommodating that need.

---

<sup>2</sup> The Planning Inspectorate carries out a programme of advisory visits to local planning authorities to help them prepare for the Examination.

<sup>3</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council.

Although the Duty to Co-operate statement indicates that Officer and Member level meetings were held with neighbouring authorities, and a joint evidence base with neighbouring authorities in the West Kent HMA was produced, the minutes of the meetings clearly show that the Council did not seek assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, prior to the publication of the Regulation 19 Plan. Housing was identified as a key strategic cross boundary issue, but the issue of unmet need in Sevenoaks was not discussed during the meetings with neighbouring authorities, not even those in the West Kent HMA. As previously noted, the Council did not raise this as an issue with its neighbours until after the public consultation period on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils within the HMA.

In paragraph 13.2 of its Hearing Position Statement, Tonbridge and Malling Borough Council (TMBC) confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council (SDC) did not make a formal request for TMBC to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from TMBC and SDC engaging on a regular basis to discuss cross-boundary strategic matters, TMBC Officers did not receive a formal request from SDC to address unmet housing need.

In paragraph 1.04 of its Hearing Position Statement, Tunbridge Wells Borough Council (TWBC) confirms that it received communication from SDC on 11 April 2019 formally asking if it would be in a position to meet any of its unmet housing need. This was after the Regulation 19 consultation and indeed just before the plan was submitted for Examination, leaving no time for a proper consideration of the issues. At paragraph 1.06, TWBC states that if this request had been made at any point prior to the submission of its comments on the Regulation 19 version of the Plan, then its response would have addressed this issue more fully.

Following the submission of the Local Plan for Examination on 30 April 2019, the Council submitted SoCGs with TWBC [SUP007h] and TMBC [ED6], signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider Duty to Co-operate Forum with other neighbouring authorities outside the West Kent HMA in relation to housing related matters, including unmet need, five year housing land supply, best fit HMAs, affordability, London's growth, large scale developments and opportunities for meeting any unmet need' and to 'undertake a 5 year review of the Local Plan'; and, 'to engage through the wider Duty to Co-operate Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively. These SoCGs are obviously too late in respect of the preparation of the Local Plan: they set out the issues to be addressed following the submission of the Plan rather than the progress made to address them prior to submission. They infer that these matters will be dealt with in any review of the Plan. However, the duty required by the Act applies specifically to plan preparation, and plan preparation ends when the plan is

submitted for Examination. Furthermore, given the late publication of the Duty to Co-operate Statement and SoCGs, there was criticism at the Hearings that participants were unable to view these documents prior to submission or, indeed, as part of the Regulation 19 consultation.

At the Duty to Co-operate Workshop, on 24 April 2019, the group discussed the potential for a sub-regional strategy to address any unmet needs across the area, with this approach having been discussed through Kent Leaders' meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, do not resolve the issue of unmet housing need, nor do they provide the strategic cross boundary planning to examine how the identified needs could be accommodated now. The Council's approach appears to be to defer these matters until a future review of the Plan, when there should be a strategy for dealing with this unmet need now.

It is noted that neighbouring authorities have not indicated a readiness to take unmet need from Sevenoaks, in part due to the extent of Green Belt, but proper engagement at the right time would have enabled all three authorities and others in the wider area to properly grapple with the issues arising from unmet housing need. There is, of course, no guarantee that such an approach would have resulted in arrangements being made for Sevenoaks' housing needs to be met in full. However, in my view, earlier and fuller proactive engagement on this crucial issue, in accordance with national policy, would have been significantly more likely to result in an effective strategy for meeting the needs in full, or at least in part.

In conclusion, I consider that the Council has not adequately undertaken constructive engagement with neighbouring authorities to resolve the issue of unmet housing need in the District and has failed to plan strategically by not sufficiently examining how these needs could be accommodated. The absence of such engagement means that neither the submitted plan nor neighbouring authorities' plan-making processes have been shaped by adequate consideration of how Sevenoaks' full housing need was to be met.

The Duty to Co-operate places a legal duty on local planning authorities to engage constructively, actively and on an ongoing basis to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters. If a local planning authority cannot demonstrate that it has complied with the duty at the independent Examination of their Local Plans, then Section 20(7A) of the Act requires that the Examiner must recommend non-adoption of the Local Plan, if they consider that the local planning authority has not complied with the Duty to Co-operate.

As I said in my initial post-Hearings letter, I appreciate that the Council will be disappointed by my findings, given the significant amount of work and resources that have been put into the preparation of this Plan. However, I have come to this view based on all that I have read and seen, including the documentation submitted by the Council alongside, and in support of, the Plan and having regard to the Council's responses to my Matters, Issues and Questions, as well as the discussions at the Hearings.

Any failure in the Duty to Co-operate cannot be rectified once the Plan has been submitted for Examination and, as such, there would only be two possible ways forward for the Examination. These are that I would prepare a Report concluding that the Plan is not legally compliant in respect of the Duty to Co-operate or the Council would withdraw the Plan from Examination. I appreciate that you will want to consider your position in respect of my conclusions.

In my initial post-Hearings letter I referred to a number of soundness concerns that I have with the Plan. However, they are not of relevance to my Duty to Co-operate conclusions and would only be of relevance to assist the local planning authority with its subsequent plan making activities. As such, I will only set them down in writing if the Council wishes to receive them.

I will, therefore, look forward to hearing from you in due course.

Yours sincerely,

*Karen L Baker*

Inspector

28 October 2019