



Sevenoaks District Council Note on the Duty to Cooperate and the Local Plan

**Intelligent Plans and Examinations (IPE) Ltd
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1.0 Introduction

- 1.1 Intelligent Plans & Examinations (IPE) has been commissioned by the Planning Advisory Service (PAS) to provide advice on the implications of the Duty to Cooperate (DtC) for the soundness assessment of the Sevenoaks Local Plan (SLP) and also to meet with the neighbouring authorities, so they could outline their respective positions regarding meeting development needs in West Kent.

2.0 Meeting held on 17 April 2019

- 2.1 The first meeting was held with the following attendees:
- James Gleave - Spatial Planning Manager Sevenoaks District Council (SDC);
 - Hannah Gooden - Planning Policy Team Leader;
 - Other members of the Local Planning Team; and
 - Keith Holland (KH) – IPE.
- 2.2 The discussion focussed on the implications of the DtC for the soundness assessment of the SLP. At the time of the meeting, the Council's intention was to submit the SLP for examination at the end of the month (it was subsequently submitted on 30 April 2019). The discussion included a review of advice provided by Laura Graham of IPE and Jonathan Bore from the Planning Inspectorate (PINS). SDC feels that there is a degree of inconsistency between the PINS advice and that provided by IPE. SDC believe that the advice from PINS is based on a misunderstanding of the approach being adopted by SDC. In the view of SDC, PINS failed to fully appreciate that the council accepts unmet housing need as an exceptional circumstance justifying consideration of Green Belt (GB) land release. What PINS calls a "Council imposed impediment" (the provision of infrastructure for the existing community) is not the defining exceptional circumstance consideration – it is simply the logical requirement that any development in the GB needs to be accompanied by adequate infrastructure. In other words, SDC believes that PINS has placed too much emphasis on the infrastructure point and not enough on the unmet need consideration.
- 2.3 The SLP notes that the Council is unable to meet its housing need in full (paragraph 1.6), that it has explored all potential sources of housing land supply within the District (paragraph 1.8) and that it has consulted with neighbouring authorities to explore whether any of them can assist with meeting some of the unmet need from Sevenoaks (paragraph 1.9). The conclusion reached is that to date none of the other authorities are able to assist Sevenoaks. In the light of this position the Council have turned to a consideration of the potential of GB land to help meet its housing need (paragraph 1.10). In brief, the Council's approach will be to explain to the inspector that they cannot meet their own needs, even if some GB land is released for housing and that they are unable to rely on any help from neighbouring authorities under the terms of the DtC.
- 2.4 Referencing the Samuel Smith Old Brewery v Selby District Council Court of Appeal judgement¹ KH stressed the importance of having undertaken the DtC work before

¹ View at: <http://www.bailii.org/ew/cases/EWCA/Civ/2015/1107.html>

submission. SDC has been involved in consultations with neighbouring authorities and is clear that the neighbouring authorities will not be able to assist in meeting some of the unmet housing need identified for Sevenoaks. It was agreed that the cooperation done thus far needed to be supplemented by confirmation of the respective positions of the authorities before submission. KH pointed to the questions asked by the PINS inspector at the St Albans examination² and the subsequent judgement by Sir Ross Cranston³, in particular his point that the duty requires active and on-going cooperation “even when discussions seem to have hit the buffers”. KH stressed the importance of providing the inspector with a clear narrative detailing the cooperation discussions that have taken place to date, with an emphasis on the outcomes of the discussions. It was also strongly advised that SDC should take the lead in trying to get strategic sub-regional work done supported at member level with, if possible, formal arrangements for joint working. Explaining this ongoing commitment to the local plan inspector would strengthen the Council’s contention that they have met, and wish to continue to meet, the DtC.

- 2.5 The Council’s housing land supply position and the allocation of housing sites was not discussed in detail. It is clear that the Council appreciate that the land supply position will need to be robustly defended at the local plan examination and that the issue of housing delivery is likely to be critically important. On the question of the broad location for growth identified at Pedham Place, SDC queried whether it would be advisable to revise the GB boundary in this area to exclude this site from the GB. At present the intention is to give keep this site in the GB and to give further consideration to this matter when the plan is reviewed. KH considers that there are two reasons why it would be advisable to reconsider this approach. First the site is an important element in the Council’s current land supply position. Second the national guidance favours setting long term GB boundaries where councils propose to revise GB boundaries in local plans. For these reasons, it would be logical to deal with the GB issue at this stage.
- 2.6 Regarding affordable housing, the Council is proposing a policy that is contrary to the National Planning Policy Framework (NPPF) and that hence the policy will need thorough justification. The Council believes that it has a strong argument to justify the approach.
- 2.7 It was agreed that KH would attend the meeting scheduled for 24 April 2019 at which the neighbouring authorities would be outlining their respective positions regarding meeting development needs in West Kent.

² View at:

https://www.stalbans.gov.uk/Images/SP_SLP_EXAM002St%20AlbansCityandDCSLPNotetoCouncilaboutconcerns_tcm15-55246.pdf

³ View at: https://www.stalbans.gov.uk/Images/St%20Albans-v-Sec%20of%20State%20Approved%2012.07.17_tcm15-61009.pdf

3.0 Meeting held on 24 April 2019

3.1 The attendance at the meeting was as follows:

- Cllr Robert Piper – SDC;
- Richard Morris - Chief Planner SDC;
- James Gleave and members of his SDC team;
- Mark Aplin and Teresa Ryszkowska - Dartford Borough Council;
- Jeff Baker - Gravesham Borough Council;
- Stephen Baughen – Tunbridge Wells Borough Council;
- Marina Brigginsshaw – Wealden District Council;
- Marie Killip – Tandridge District Council;
- Jeannie Patterson – London Borough of Bexley;
- Sarah Platts – Kent County Council; and
- Keith Holland - IPe.

No representatives attended from Tonbridge & Malling and Bromley.

3.2 Prior to the meeting, KH had the opportunity to review the Statements of Common Ground (SCG) between SDC and authorities – Wealden and Tandridge – as well as the Ashdown Forest SCG signed by six authorities (including SDC) with Natural England. KH also had sight of a comprehensive summary of the engagement that SDC has had to date with Bexley, Bromley, Dartford, Gravesham, Tandridge, Tonbridge & Malling, Tunbridge Wells and Wealden.

3.3 The message regarding the importance of the DtC and the way it is dealt with at local plan examinations was repeated. All parties present appreciate how important the duty is and how it has the potential to derail examinations. Each of the councils present outlined the position they are in at present regarding their development plans. From the discussion, it is clear that none of the authorities present are in a position to help meet any unmet housing need generated by SDC. In fact, most of the authorities believe that they are unlikely to be able to meet their own needs. The discussion thus confirmed and reinforced the contention made in the Submission version of the SLP that the Council is unable to meet its own needs and cannot rely on the DtC to resolve the problem. The importance of preparing a clear and convincing narrative for the forthcoming SDC local plan examination was again stressed.

3.4 The importance of continuing to seek to meet development needs in West Kent through cooperative strategic working was discussed. In this regard, the need for a strategic approach to the provision of infrastructure was emphasised. KH explained the importance of getting member involvement and buy-in to any strategic work and that the more formal the process, the more likely it was to convince a local plan examiner that the councils are doing all they can to use the DtC effectively. Cllr Piper expressed severe reservations about the likelihood of effective strategic planning because of what he described as an inconsistency between the political message provided by the government regarding the GB and the guidance in the NPPF. KH pointed out that under the DtC there is nothing to stop local authorities undertaking joint strategic planning of the sort that previously happened in the South East through SERPLAN (London and South East Regional Planning Conference). KH also explained that the policy in the NPPF makes it clear that where there are

exceptional circumstances local authorities can revise GB boundaries, but that this must be done through their local plans and not through the development management process.

Keith Holland

Keith Holland Director IPe

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