



**TONBRIDGE & MALLING
BOROUGH COUNCIL**

Nicolas Heslop

**Borough Councillor for Cage
Green, Tonbridge**

Leader of The Council

2 February 2021

The Rt Hon Robert Jenrick MP
Secretary of State for Housing,
Communities and Local Government
Ministry of Housing, Communities and
Local Government
2 Marsham Street
London
SW1P 4DF

Dear Robert,

Re Tonbridge and Malling Local Plan

You will be aware that Tonbridge and Malling Borough Council (The Council) submitted a Local Plan on the 23rd January 2019 and that the Examination opened on the 6th October 2020. After the first three days of hearings our Local Plan Inspectors wrote to the Council to pause proceedings while they gave further consideration to some matters of legal compliance. Their detailed letter was received on 15th December setting out their concerns, which relate to the Duty to Cooperate, specifically in relation to the matter of unmet need arising in neighbouring Sevenoaks District.

The Council sent a full response to the Inspectors addressing all of their concerns and inviting them to amend their provisional decision that the Duty to Cooperate has not been met on Friday 29th January. If confirmed, such a conclusion would mean failure of the Plan. We hope that the Inspectors would ultimately accept the points made in our letter of response, but their letter indicates in terms that they consider it a "very strong likelihood" that they will fail the Plan. Copies of the letter from the Inspectors and the Council's response are attached.

The Council is firmly of the opinion that the Inspectors have made errors in their approach to the Duty to Cooperate, which is explained in the Council's response. The Council has summarised the main points in the initial section of the letter under the subheading "Overarching Points". Whilst the Inspectors have formed clear provisional views the Council is in no doubt that the Secretary of State could properly and lawfully take a different view on what is primarily a matter of planning judgment for the decision maker. A failure of the submitted Plan would lead, even in a best-case scenario, to a substantial delay in the adoption of any Local Plan in Tonbridge

& Malling. If this were to happen, it would run directly contrary to the Government's stated aims of ensuring 300,000 homes a year are delivered through pragmatic Local Plans. We submitted a plan that fully met our housing needs and which would contribute positively to that stated Government aim. Failing the Plan will do nothing to address the *potential* unmet need of Sevenoaks, but it will mean that actual housing need in the Borough of Tonbridge and Malling will not be met. In the absence of intervention, the only other potential recourse open to Council would be a legal challenge by judicial review. A successful judicial review would cause substantial delay in making the Plan. Failure would mean having to substantially recommence plan making from the beginning.

In the unfortunate circumstances that are summarised in the opening section of the response, and set out in more detail later in the letter, the Council in this letter is formally requesting that you exercise your powers in accordance with Section 21(4) of the 2004 Act and regulation 30 of the 2012 Regulations in order to review the Inspectors' judgment and provisional decision in relation to the Duty to Cooperate. The two Local Members of Parliament who represent constituencies covering the Borough of Tonbridge and Malling support the Council's position and will be sending their letters of support in due course for your consideration.

The Council believes that this is clear case for your intervention. It seems that the sole basis for the Inspectors' finding is that the Council did not do more to address Sevenoaks District Council's unmet housing need. However, as set out in more detail in the Council's response, at the time of submission of the Council's plan Sevenoaks District Council's unmet need was not established. Sevenoaks District Council did not allege any failure by the Council to meet the Duty to Cooperate. It appears to the Council that the Inspectors have misinterpreted the significance of the Duty to Cooperate, particularly in the light of the timescales set out in the Council's response, at the expense of a pragmatic approach to the implementation of the Local Plan.

Intervention by your Office would enable the acceleration of our Local Plan in an area of acknowledged high housing pressure. It would also provide a clear signal in relation to the Duty to Cooperate to those local authorities seeking to meet their housing needs in the West Kent Housing Market Area, without undermining the duties of the Inspectors. The Council is keen for the paused Local Plan examination to proceed expeditiously and at the earliest practical opportunity so that Tonbridge and Malling residents and businesses can enjoy the full benefits of an up to date development plan that seeks to meet its future needs and re-establishes a five year housing land supply for the plan period up to 2031.

I would welcome a meeting to discuss these matters further in order to assist your consideration of this request.

I look forward to hearing from you in due course.

Yours sincerely



Nicolas Heslop
Borough Councillor, Cage Green Ward
Leader & Cabinet Member for Economic Regeneration
Tonbridge & Malling Borough Council