

Appendix D

Inspector's Letter to SDC dated 13 December 2019

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,

1. In my letter¹, dated 19 November 2019, I stated that I would respond to your letter² and attached Appendix 1: Schedule A³, dated 18 November 2019, along with the Planning Advisory Service (PAS) Meeting Note⁴, dated 7 May 2019, after the pre-Election period in line with the Planning Inspectorate's published position in this regard. Following your letter, you have sent me a copy of your Appendix 3: Duty to Cooperate Appendices⁵, which I have also now had the opportunity to consider. I set out my response to your points below, in the order that you made them, and under the headings you used, in your letter.

The Nature of the Duty

2. I acknowledge the letter that the Secretary of State wrote to the Planning Inspectorate on 18 June 2019 in which he stressed to Inspectors the importance of being pragmatic in getting plans in place that, in line with paragraph 35 of the National Planning Policy Framework (NPPF), represent a sound plan for the authority.
3. Paragraph 35 of the NPPF says that local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It then goes on to say that plans are 'sound' if they are positively prepared, justified, effective and consistent with national policy. Although I have concerns about the soundness of some aspects of the Sevenoaks District Local Plan, it is the Council's failure to comply with the legal Duty to Cooperate which has necessitated a halt to the Examination proceedings. Any failure in the Duty to Cooperate cannot be rectified once the Plan has been submitted for Examination because the Duty to Cooperate applies specifically to Plan preparation and Plan preparation ends when the Plan is submitted for Examination.
4. The Secretary of State's letter refers to a previous letter written in 2015 by the Rt Hon Greg Clark. This earlier letter also stresses the importance of

¹ ED43

² ED42

³ ED42A

⁴ ED42B

⁵ ED42C

Inspectors working in a pragmatic way with Councils towards achieving a sound Local Plan, by finding plans sound conditional upon a review in whole or in part within five years of adoption, giving Councils the option to undertake further work to address shortcomings identified at Examination and highlighting significant issues to Councils very early on and giving Councils the full opportunity to address issues.

5. In accordance with this advice, I have worked in a pragmatic way with the Council towards achieving a sound Plan as far as practicable. However, given that it is a failure in the legal Duty to Cooperate that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor would the Council have the option to undertake further work, as any failure in the Duty to Cooperate cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearings in relation to the Duty to Cooperate, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the Duty to Cooperate undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to proceed, if, for example, the Duty to Cooperate had been passed, I would have been pragmatic in considering any Main Modifications required to make the Local Plan sound. However, there is no scope within the Examination process to correct the failure of the legal duty following its submission.
6. I set out the requirements of Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended) in my previous letter⁶ and I agree that a careful judgement is required in the interpretation of the terminology used. However, it is important that any judgement is based on substantial evidence presented both in writing and in person at the Hearings. Although I have applied appropriate pragmatism in reaching my judgements, this cannot extend to concluding that the Duty to Cooperate has been met when the submitted evidence strongly demonstrates that it has not.
7. Paragraph 26 of the 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.
8. I acknowledge that the Council has prepared a joint evidence base which underpins many of the policies in the Local Plan and I note its disappointment that I have not referred to this positive aspect in my conclusions. However, in respect of legal compliance, my central concern relates to the lack of constructive engagement with neighbouring authorities in an attempt to resolve the issue of unmet housing need and the inadequacy of strategic

⁶ ED40

cross boundary planning to examine how the identified needs could be accommodated. The joint evidence base produced by the Council in cooperation with others is not, therefore, of direct relevance to this matter.

Constructive Engagement

9. The Note on the Duty to Cooperate and the Local Plan⁷, prepared by Intelligent Plans and Examinations⁸ (IPE), dated 7 May 2019, following the Planning Advisory Service (PAS) workshop, which took place on 24 April 2019, six days before the Plan was submitted for Examination, was not submitted as part of the Council's Duty to Cooperate Statement⁹. This note concludes that none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District Council and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working.
10. I acknowledge that discussions have taken place as part of the West Kent Leaders' Forum with regards to the preparation of a sub-regional strategy, but this represents activity in relation to a longer-term solution. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the Duty to Cooperate. However, the PAS workshop was undertaken at a very late stage in the Local Plan preparation process and if the engagement had occurred as soon as the Council was aware of the broad level of unmet need and, in any event, in advance of the Regulation 19 version of the Local Plan, it might have resulted in a more positive outcome.
11. Although authorities who attended the PAS workshop, including those in the West Kent Housing Market Area (HMA), are at different stages of the plan making process, earlier notice and more time for in-depth engagement, discussion and consideration may have enabled neighbouring authorities 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 and capacity to reach a final and informed 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.
12. I am fully aware of the nature and timing of the engagement and cross boundary planning that was undertaken and which is set out in Schedule A¹⁰

⁷ ED42B

⁸ IPE were working on behalf of PAS

⁹ SUP006, SUP006a, SUP006b, SUP006c and SUP006d

¹⁰ ED42A

attached to your letter, with the minutes of most of these meetings¹¹ provided in your Duty to Cooperate Statement, dated May 2019. The minutes of the meeting of the West Kent Duty to Cooperate Meeting on 2 August 2017 do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The Duty to Cooperate Forum Notes on 23 August 2017 do not make reference to the position at that time in Sevenoaks District Council. The minutes of the initial meeting of the West Kent Statement of Common Ground (SoCG) Group with IPE on 22 January 2018 do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated.

13. The notes of the Statement of Common Ground (SoCG) Pilot Programme: West Kent Group on 12 February 2018 indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of OAN, but state that Sevenoaks is testing options to assess the way forward. The summary of the meeting held on 14 March 2018 set out in the Facilitator's Note does not mention the unmet housing need in Sevenoaks District, nor does it make reference to any discussion relating to how those unmet needs could be accommodated. The minutes of the West Kent Duty to Cooperate Meeting on 11 September 2018 do not mention the unmet housing need in Sevenoaks District, nor do they make reference to any discussion relating to how those unmet needs could be accommodated. The first time that the minutes of the Duty to Cooperate meetings refer to addressing the unmet need in Sevenoaks is following the meeting on 13 March 2019, when it is noted that 'officers discussed 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'. Again, this was very close to submission on 30 April 2019.
14. The evidence from the notes of these meetings does not indicate that there has been constructive engagement with neighbouring authorities with regard to addressing Sevenoaks' unmet housing need. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed and what, if anything, the authorities proposed to do to address it.
15. I note that, in addition to a number of other parties to the Examination, neighbouring authorities have made positive comments about engagement overall and have not said that Sevenoaks District Council has failed the Duty to Cooperate. However, their Hearing Position Statements do raise matters of concern in respect of unmet housing need in the District and the engagement between the authorities in this respect.

¹¹ No minutes have been provided of the meetings held on 6 December 2018 and 14 March 2018, although a summary of the meeting on 14 March 2018 is provided in the West Kent SoCG Pilot Project Facilitator's Note, dated 3 April 2018 (updated by the amended version of this note dated 10 April 2018 and submitted by the Council as part of its Appendix 3: Duty to Cooperate Appendices [ED42C])

16. In paragraph 13.2 of its Hearing Position Statement, Tonbridge and Malling Borough Council confirms that during the consultation on the Regulation 18 and Regulation 19 versions of the Tonbridge and Malling Borough Local Plan, Sevenoaks District Council did not make a formal request for Tonbridge and Malling to address the unmet need in Sevenoaks. Furthermore, it goes on to say that despite Officers from Tonbridge and Malling Borough Council and Sevenoaks District Council engaging on a regular basis to discuss cross-boundary strategic matters, Tonbridge and Malling Borough Council Officers did not receive a formal request from Sevenoaks District Council to address unmet housing need.
17. The Regulation 19 Tonbridge and Malling Local Plan was subject to public consultation between 1 October and 19 November 2018. The Council says that it became aware of the extent of its unmet need following the consideration of the representations to the Regulation 18 version of the Sevenoaks District Local Plan, which ended on 10 September 2018. Given this, I would have expected that the Council would have responded to the Regulation 19 Consultation on the Tonbridge and Malling Local Plan requesting that this neighbouring authority addresses some of this unmet need. However, this did not occur.
18. In paragraph 1.04 of its Hearing Position Statement, Tunbridge Wells Borough Council confirms that it received communication from Sevenoaks District Council 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. Indeed, at paragraph 1.06, Tunbridge Wells Borough Council 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.
19. Although these neighbouring authorities say¹² that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies, when taken together with the substantial evidence before me, including the minutes of meetings and the Hearing Position Statements, my interpretation is that there has been inadequate engagement in respect of unmet housing need.

The Timing of Engagement

20. Appendix 1: Schedule A¹³ to your letter states that the Facilitator's Note from the meeting of the West Kent SoCG Pilot Project on 3 April 2018 was incorrect as it referred to Sevenoaks District Council planning to meet its OAN in full. You refer to all three Councils commenting in April 2018 that this

¹² Letters dated 21 and 27 November 2019 included in the Council's Duty to Cooperate Appendices [ED42C]

¹³ ED42A

statement was incorrect, but that a final version of this note was not sent through by PAS in 2018 and the facilitator was contacted on 27 September 2019, during the Hearing sessions, and a finalised note was duly issued. The Council submitted the Facilitator's Note twice in its Duty to Cooperate Statement, however, no mention was made in that document about the inaccuracy of those minutes. Nor was any amended version sought from the Facilitator until the matter was raised during the Hearing session. Not only have changes been made to paragraph 6.3 which now says that Sevenoaks remains unlikely to be able to meet its housing need in full, but there are additional paragraphs inserted, as well as changes/additions made to other paragraphs.

21. Significantly, paragraph 6.1 of the amended version of the Facilitator's Note now says that the three Councils have not been in a position to identify firm figures for unmet need or to have any meaningful discussion on this cross boundary issue, but that it remains unlikely that Sevenoaks will be able to meet its housing need in full. Paragraph 6.6 concludes that, each of the Councils has a clear figure for its housing need, but whilst Tonbridge and Malling is confident that it can meet its own need, Sevenoaks and Tunbridge Wells have not yet completed the work needed to determine whether or not they can meet their housing need, thus the Councils are not yet in a position to reach agreement on the matter of housing supply. As such, it is apparent that, at that time, the three Councils were not aware of the extent of any unmet need, nor did they consider how any unmet need should be addressed.
22. You refer to the extent of unmet housing need becoming apparent once a full assessment of the comments received on the Regulation 18 consultation was undertaken, which would have been after 10 September 2018. The Regulation 19 version of the Local Plan was considered by the Council's Planning Advisory Committee on 22 November 2018 and by Cabinet on 6 December 2018. You say in your letter that the Council could have gone back to its neighbours at this point, but decided not to, as it was felt that as discussions had already indicated that an unmet need of 600 dwellings could not be accommodated it was therefore extremely unlikely that a higher unmet need would be met elsewhere.
23. I note that you say that had the peer review process, which was set up to run alongside the Regulation 19 consultation, raised significant concerns, the Council would not have submitted the Plan. Nevertheless, significant concerns were raised in relation to the Duty to Cooperate by the Inspector at the Advisory Visit¹⁴ in February 2019, as set out in his note¹⁵.

¹⁴ The Planning Inspectorate carries out Advisory Visits to local planning authorities ahead of submission to provide advice on procedures and to help them achieve a sound Plan

¹⁵ The PINS Advisory Visit Meeting Note is included in 1b. of the Council's Duty to Cooperate Appendices

24. The visiting Inspector noted that your Council had not sent formal letters asking other authorities to accommodate unmet need and that you could not point to any ongoing strategic level cross boundary planning to look at how identified needs could be accommodated. He went on to advise that, if the OAN really could not be accommodated within the District, then there should be clear evidence of positive engagement among the group of neighbouring authorities in order to resolve the issue on a cross boundary basis and that, despite the Memorandum of Understanding and Statements of Common Ground, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.
25. I note the comments of Tonbridge and Malling Borough Council that unmet housing need was discussed at the Duty to Cooperate meeting on 11 September 2018, despite the minutes not recording this. However, even if this was the case, the full extent of unmet need would not have been apparent at that time, which was the day after the closing date for consultation on the Regulation 18 Plan. As such, it seems to me unlikely that the full extent of unmet need could have been discussed. Furthermore, there is no evidence of any discussion about how this unmet need should be addressed or that this amounted to constructive engagement.
26. With regards to your concerns about the time taken for me to reach a conclusion on this matter. I asked a number of questions in my Matters, Issues and Questions¹⁶ (MIQs) which were supplemented by further questions at the Hearing session. It is normal practice for Inspectors to consider the evidence before them thoroughly before coming to a conclusion. In the interests of the Franks Principles¹⁷ of openness, fairness and impartiality, it was necessary for me to hear the Council's responses to my questions and for these responses to be tested in an Examination Hearing. Following the initial Hearing sessions, I then needed to consider the evidence presented to me, prior to coming to a conclusion. As soon as I had reached a conclusion, I cancelled the future Hearings that I had planned, even though the Council urged me to continue with them.

The Importance of the Peer Review

27. I understand the Council's reasons for seeking the advice from PAS and its hope that this would have identified potential 'showstoppers' in advance of submission. However, it is apparent that the PAS workshop would not have benefitted from the full extent of evidence that is before me, particularly given that the Duty to Cooperate Statement was not submitted until May

¹⁶ ED8

¹⁷ The Franks Principles are referred to in the following documents:

<https://www.gov.uk/government/publications/code-of-conduct>

<https://www.gov.uk/government/publications/examining-local-plans-procedural-practice>

2019. Nor would it have had the benefit of the time available to an Inspector for the Examination of that detailed and complex evidence or the discussion at the Hearing session.

28. The Council submitted a note of the Duty to Cooperate Workshop in Appendix 4 of its Duty to Cooperate Statement¹⁸ in which it states that 'KH¹⁹ advised that, in his view, SDC has done all it can and is able to demonstrate that it has satisfied the Duty to Cooperate requirement.' However, the Note of the same meeting held on 24 April 2019 included in IPE's Note on the Duty to Cooperate and the Local Plan²⁰, submitted by the Council in response to my letters, does not state that the Duty to Cooperate has been met or that KH advised that this was the case.

29. Moreover, although it would be wise for any authority preparing a Plan to seek advice from outside bodies in the way that you did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant.

Next Steps

30. The Duty to Cooperate Appendices that you have submitted in response to my letters include several statements and letters from neighbouring authorities and Parish Councils, as well as from Representors with an interest in the Local Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.

31. With regards to your request for a meeting. It would not be appropriate for myself as the Examining Inspector, or for any representative from the Planning Inspectorate, to meet with any party, including the Council, outside of the Hearing sessions. This would be contrary to the Franks Principles. Furthermore, I am satisfied that, having considered the additional written evidence submitted by the Council, there would be no benefit to holding a further Hearing session on the Duty to Cooperate issue.

Concluding Comments

32. Having considered the further evidence presented to me by the Council in response to my letters, I remain of the view 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 prior to submission means that the submitted Plan has not been shaped by adequate consideration of how Sevenoaks' full housing need was to be met.

¹⁸ SUP006d

¹⁹ KH was Keith Holland of IPE, working on behalf of PAS

²⁰ ED42B

33. The Duty to Cooperate 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 Plan, 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.
34. The outcome of this Examination is, of course, very unfortunate and I recognise that the Council is deeply disappointed by my conclusion. However, I have carried out a very thorough examination of this issue, taking account of the evidence provided by the local planning authority, the representations and the discussion at the hearings. Therefore, I will not be accepting any further comments on this matter. Consequently, unless the Council confirms that it intends to withdraw the Plan from Examination, the only course of action open to me is to prepare a Report concluding that the Plan is not legally compliant in respect of the Duty to Co-operate and recommending that it is not adopted. I appreciate that the Council will want to consider these alternatives. However, if I have not heard anything by Friday 17 January 2020 I will proceed to issue my final Report.
35. Finally, in your recent letter, you have asked that I set out my interim conclusions on other aspects of the Plan and I have previously given you a commitment that I will do this. As such, I intend to do this following either the withdrawal of the Plan or the submission of my final Report.

Yours sincerely,

Karen L Baker

Inspector

13 December 2019