



The Planning Inspectorate

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# Report to Sevenoaks District Council

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State**

**Date 2 March 2020**

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Planning and Compulsory Purchase Act 2004

(as amended)

Section 20

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

The Plan was submitted for Examination on 30 April 2019.

The Examination Hearings were held between 24 and 26 September 2019 and between 1 and 3 October 2019.

File Ref: PINS/G2245/429/7

## **Abbreviations used in this Report**

DtC	Duty to Co-operate
HMA	Housing Market Area
HPS	Hearing Position Statement
IPe	Intelligent Plans and Examinations
the Plan	Sevenoaks District Local Plan
MHCLG	Ministry of Housing, Communities and Local Government
MM	Main Modification
NPPF	National Planning Policy Framework
OAN	Objectively Assessed Need
PAS	Planning Advisory Service
PPG	Planning Practice Guidance
SoCG	Statement of Common Ground
SHMA	Strategic Housing Market Assessment

## **Non-Technical Summary**

This Report concludes that the Sevenoaks District Local Plan (the Plan) is not legally compliant in respect of the Duty to Co-operate (DtC) and, as such, I recommend that the Plan is not adopted.

## Introduction

1. This Report contains my assessment of the Sevenoaks District Local Plan (the Plan) in terms of Section 20(5) of the Planning & Compulsory Purchase Act 2004 (as amended). The National Planning Policy Framework (NPPF) 2019 makes it clear in paragraph 35 that local plans are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. It goes on to say that in order to be sound, a local plan should be positively prepared, justified, effective and consistent with national policy.
2. The starting point for the Examination is the assumption that the local planning authority has submitted what it considers to be a legally compliant and sound plan. The Sevenoaks District Local Plan Proposed Submission Version<sup>1</sup>, dated December 2018 and submitted on 30 April 2019, is the basis for my Examination. It is the same document as was published for consultation between 18 December 2018 and 3 February 2019.
3. This Report considers whether the Local Plan's preparation has complied with the Duty to Co-operate (DtC). Given my conclusions in respect of the DtC, I do not go on to consider whether the Plan is sound and whether it is compliant with the other legal requirements. 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. This is the situation in this case, and it is not, therefore, necessary for me to consider the other matters further in this Report.
4. Hearing sessions were held between 24 and 26 September 2019 and between 1 and 3 October 2019. These focussed on legal compliance matters, including the DtC, and matters of soundness in relation to the Local Plan Strategy, Green Belt, Housing Need, Housing Requirement, Housing Distribution and Housing Supply, along with the Sustainability Appraisal.
5. Further Hearing sessions were planned as part of this Examination between 5 and 7 November 2019 and between 12 and 14 November 2019 to consider other soundness matters including: individual housing allocations; Gypsy and Traveller provision and allocations; employment need, requirement, distribution and supply; individual employment allocations; transport and infrastructure; the historic environment; open space, recreation and community facilities; the natural environment and biodiversity; climate change, flooding and water management; and, health, well-being and air quality. However, following my consideration of the evidence presented by the Council and other participants in response to my Matters, Issues and Questions<sup>2</sup> at the Hearing sessions during the first two weeks, and taking into account the written representations and discussion at those Hearing sessions, I had significant concerns in respect of legal compliance, namely the DtC, and soundness.

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<sup>1</sup> SDC001

<sup>2</sup> ED8

6. Following the first two weeks of Hearing sessions, I notified the Council in my letter<sup>3</sup>, dated 14 October 2019, that I had significant concerns about a number of aspects of the Plan, both in terms of legal compliance and soundness. This letter also stated that, given these concerns, I had asked the Programme Officer to cancel the further Hearing sessions planned for November and that I was preparing a letter setting out my thoughts in more detail which would be with the Council shortly afterwards. It also confirmed that I would not reach any final conclusions on the way forward for the Examination until I had had the opportunity to consider the Council's response to that letter.
7. Although I had concerns regarding soundness, these were issues which I would have needed to explore further, it is the failure to comply with the legal DtC which necessitated a halt to the Examination proceedings. Any failure in the DtC cannot be rectified once the Plan has been submitted for Examination because the DtC applies specifically to Plan preparation, and Plan preparation ends when the Plan is submitted for Examination.
8. My letter<sup>4</sup> to the Council, dated 28 October 2019, set out my concerns with regards to the DtC in some detail. The Council submitted responses<sup>5</sup> to this and to my earlier letter, along with a number of appendices. I replied<sup>6</sup> on 19 November 2019 to say that I would be responding after the pre-Election period, in line with the Planning Inspectorate's published position in this regard.
9. Having fully considered the Council's responses and appendices, my final letter<sup>7</sup> to the Council, dated 13 December 2019, set out my conclusions on this matter and stated that, unless the Council confirmed that it intended to withdraw the Plan from Examination, the only course of action open to me would be to prepare a Report concluding that the Plan is not legally compliant in respect of the DtC and recommending that it should not be adopted. In its letter<sup>8</sup>, dated 3 January 2020, the Council confirmed that it would not be withdrawing the Plan from Examination and asked that I issue my Report as soon as possible.

### **Main Modifications**

10. I have found a failure in respect of the DtC and, as such, I have no option but to recommend that the Plan should not be adopted. Accordingly, I have not concluded on any other matters in connection with the Plan and, as a result, I would not be able to recommend any Main Modifications [MMs].

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<sup>3</sup> ED37

<sup>4</sup> ED40

<sup>5</sup> ED38, ED38A, ED41, ED42, ED42A, ED42B and ED42C

<sup>6</sup> ED43

<sup>7</sup> ED44

<sup>8</sup> ED45

## **Assessment of Duty to Co-operate**

### ***Has the Council demonstrated that it has engaged constructively, actively and on an on-going basis in the preparation of the Local Plan?***

11. Section 20(5)(c) of the 2004 Act requires that I consider whether the Council complied with any duty imposed on it by Section 33A in respect of the Plan's preparation.
12. Section 33A 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 the preparation of the Plan. This duty requires the Council to engage constructively, actively and on an on-going basis in the preparation of the Plan, so far as it relates to a strategic matter. A strategic matter includes the sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas.
13. Government policy, set out in 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. Co-operation is, therefore, about maximising the effectiveness of plan preparation.
14. The Plan, as submitted, identifies a need for 13,960 dwellings between 2015 and 2035, but sets out a requirement for 10,568 dwellings, which would amount to an unmet need of 3,392 dwellings. The Council advanced a position<sup>9</sup> during the Examination which sought to reduce the unmet need. However, it would still have left an unmet need of 1,316 dwellings, even if I had agreed with the Council's position.
15. It is common ground between the Council and most parties to the Examination that housing is a strategic matter upon which the Council should engage constructively, actively and on an on-going basis with its neighbours. I concur with this view. The Council published a DtC Statement<sup>10</sup> in May 2019, following the submission of the 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>11</sup> [HMA].

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<sup>9</sup> Housing Supply Update Paper – C2 Update [ED23]

<sup>10</sup> SUP006 and SUP006a-d

<sup>11</sup> The West Kent Housing Market Area includes Sevenoaks District Council, Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council.

16. Whether the DtC has been complied with is a matter of judgement for the examining Inspector following consideration of the evidence presented by the Council and other participants, both in writing and at the Hearing sessions.
17. I acknowledge that the Council has prepared a joint evidence base with other local planning authorities which underpins many of the policies in the Plan, including a Strategic Housing Market Assessment<sup>12</sup> (SHMA) with Tunbridge Wells Borough Council. The SHMA examines the overall housing need in the West Kent Housing Market Area<sup>13</sup> (HMA), need from different sizes of homes (both market and affordable) and needs for particular types of homes, particularly from the growing older population. The assessment of housing need does not include any specific provision for meeting unmet needs of adjoining areas, which the SHMA says will need to be considered through the DtC. In respect of compliance with the DtC, my concern relates to the lack of ongoing, active and constructive engagement with neighbouring authorities in an attempt 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. The joint evidence base produced by the Council in co-operation with others is not, therefore, of direct relevance to this matter as it does not address unmet housing needs.
18. The Council sets out the nature and timing of the engagement and cross boundary planning that was undertaken in its DtC Statement<sup>14</sup> and Appendices<sup>15</sup> and in Appendix 1: Schedule A<sup>16</sup> attached to its letter<sup>17</sup>, dated 18 November 2019, with the minutes of most of these meetings<sup>18</sup> provided in the DtC Statement. This indicates that a number of meetings took place between the Council and its neighbouring authorities, along with other prescribed bodies, during the preparation of the Plan. These include meetings of the West Kent DtC group<sup>19</sup> and the West Kent Statement of Common Ground (SoCG) Pilot Programme group<sup>20</sup>.
19. The minutes<sup>21</sup> of the West Kent DtC meeting, on 2 August 2017, which was held the day before consultation began on the Sevenoaks Local Plan Issues

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<sup>12</sup> Sevenoaks and Tunbridge Wells Strategic Housing Market Assessment, prepared by GL Hearn Limited, September 2015 [HOU001]

<sup>13</sup> The West Kent HMA includes Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council

<sup>14</sup> SUP006

<sup>15</sup> SUP006a, SUP006b, SUP006c and SUP006d

<sup>16</sup> ED42A

<sup>17</sup> ED42

<sup>18</sup> No minutes have been provided of the meetings held on 6 December 2017, 22 January 2018 and 14 March 2018, although summaries of the meetings on 22 January 2018 and 14 March 2018 are provided in the West Kent Statement of Common Ground (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 Co-operate Appendices [ED42C]).

<sup>19</sup> This group is made up of the three West Kent Housing Market Area (HMA) authorities, namely Sevenoaks District Council, Tunbridge Wells Borough Council and Tonbridge and Malling Borough Council.

<sup>20</sup> This group, facilitated by the Planning Advisory Service (PAS), also included the West Kent HMA authorities.

<sup>21</sup> Pages 172-174 of SUP006a

and Options (Regulation 18), 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 DtC Forum notes, on 23 August 2017, do not make any reference to the position at that time in Sevenoaks District Council. The summary<sup>22</sup> of the initial meeting of the West Kent SoCG group with planning consultants, Intelligent Plans and Examinations (IPe), held on 22 January 2018, set out in the Facilitator's Note, dated 3 April 2018, 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.

20. The notes<sup>23</sup> of the SoCG Pilot Programme: West Kent Group, on 12 February 2018, indicate that the difficulties faced by Sevenoaks were briefly discussed in respect of Objectively Assessed Need [OAN], but state that Sevenoaks 'is testing options to assess the way forward'. The summary<sup>24</sup> of the meeting, held on 14 March 2018, set out in the Facilitator's Note, dated 3 April 2018, 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 Facilitator's Note<sup>25</sup> does, however, refer to a 'table of draft key strategic cross boundary issues' which had emerged through discussions, including the 'need to address the matter of unmet need in the HMA', which was acknowledged to be the most significant issue. It goes on to say<sup>26</sup> that 'Sevenoaks and Tunbridge Wells are both planning to meet their OAN as determined by the joint SHMA which was updated in 2017'.
21. The Council has since stated, in Appendix 1: Schedule A<sup>27</sup> to its letter<sup>28</sup>, dated 18 November 2019, 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. The Council refers to all three HMA authorities commenting in April 2018 that this statement was incorrect, but that a final version of this note was not sent through by the Planning Advisory Service [PAS] in 2018. The Council contacted the Facilitator on 27 September 2019, during the Hearing sessions, and a finalised note<sup>29</sup>, dated 10 April 2018, was duly issued. The Council submitted the original Facilitator's Note twice in its DtC 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 of that document, which now says that 'it remains unlikely that Sevenoaks District Council will be able to meet its housing need in full', but there are

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<sup>22</sup> Page 185 of SUP006a

<sup>23</sup> Pages 182-183 of SUP006a

<sup>24</sup> Page 185 of SUP006a

<sup>25</sup> Paragraphs 5.1 and 5.2

<sup>26</sup> Paragraph 6.1

<sup>27</sup> ED42A

<sup>28</sup> ED42

<sup>29</sup> West Kent SoCG Pilot Project Facilitator's Note, dated 10 April 2018, set out in 2a of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

additional paragraphs inserted, as well as changes/additions made to other paragraphs.

22. 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'. 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, in April 2018, the three Councils were not aware of the extent of any unmet need. Consequently, while the evidence, up to this point, indicates that the Council was engaging in discussion, it does not demonstrate that constructive engagement was taking place on the strategic matter of unmet housing needs.
23. The minutes<sup>30</sup> of the West Kent Dtc meeting on 11 September 2018, the day after the consultation period had ended on the Regulation 18 Plan, 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 Dtc meetings refer to addressing the unmet need in Sevenoaks is at the Dtc meeting between Sevenoaks District Council and Tonbridge and Malling Borough Council on 13 March 2019, when it is noted<sup>31</sup> that 'officers discussed the potential requirement for a follow up letter<sup>32</sup> to request that neighbouring authorities assist with Sevenoaks' unmet need, where it is practical to do so'. This was at a very late stage in the Plan preparation process, following the Regulation 19 consultation on the Plan and only around 7 weeks prior to the submission of the Local Plan for Examination on 30 April 2019.
24. Although the Dtc 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 provide no substantial evidence that the Council sought assistance from its neighbours in meeting its unmet housing need or in devising an agreed approach for accommodating this unmet need, before the publication of the Regulation 19 Plan. Indeed, it is unclear from the notes of these meetings when unmet need was first discussed. Housing was appropriately identified as a key strategic cross boundary issue, but the evidence from the notes of these meetings does not indicate that there has been ongoing, active and constructive engagement with neighbouring authorities with regard to Sevenoaks' unmet housing need.
25. At the Hearing sessions, concerns were expressed by participants about the lack of co-operation between the Council and neighbouring authorities to address the issue of unmet housing need. However, I note that, neighbouring authorities have made positive comments about engagement overall and have

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<sup>30</sup> Pages 191-192 of SUP006a

<sup>31</sup> Page 194 of SUP006a

<sup>32</sup> Letters were sent to neighbouring authorities requesting that they assist with Sevenoaks' unmet housing need in April 2019.



not said that the Council has failed the DtC. Other parties have advanced similar comments. Nevertheless, the Hearing Position Statements (HPSs) submitted by both Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council do raise matters of concern about unmet housing need in the District and the engagement between the authorities in this respect, particularly that the Council did not formally raise this as an issue with its neighbours until after the public consultation on the Regulation 19 Plan was completed. This is confirmed in the Hearing Position Statements provided by the other two Councils<sup>33</sup> within the HMA.

26. In paragraph 13.2 of its HPS, 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 any formal requests to address unmet housing need' from Sevenoaks District Council.
27. 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. However, the Council did not request that Tonbridge and Malling Borough Council considered the possibility of accommodating unmet housing need from Sevenoaks during the Regulation 19 consultation on the Tonbridge and Malling Local Plan. This highlights the lack of engagement with this neighbouring authority on this issue at a crucial stage in the Plan preparation process.
28. In paragraph 1.04 of its HPS, 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 just before the Plan was submitted for Examination, leaving no time for a proper consideration of the issues by either Council and for Sevenoaks to consider whether or not its Plan remained appropriate in the knowledge that its unmet housing needs would not be provided for in neighbouring authority areas. 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.
29. I appreciate that these neighbouring authorities say<sup>34</sup> that there has been regular, constructive and cooperative liaison between the three West Kent authorities, including the preparation of joint evidence base studies. However, the evidence before me, including the minutes of meetings and the HPSs, does

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<sup>33</sup> Tonbridge and Malling Borough Council and Tunbridge Wells Borough Council

<sup>34</sup> Letters dated 21 and 27 November 2019 set out in 3a and 3b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C]

not demonstrate that there has not been active, constructive or on-going engagement in respect of unmet housing need.

*Statements of Common Ground*

30. 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.
31. The Council has submitted a number of SoCGs<sup>35</sup> as supporting documents, some of which were provided following the submission of the Plan for Examination, on 30 April 2019. These include several SoCGs with neighbouring authorities, including Tunbridge Wells Borough Council<sup>36</sup> and Tonbridge and Malling Borough Council<sup>37</sup>, which were signed on 21 and 30 May 2019 respectively. The agreed actions within these documents in respect of housing are to 'engage through the wider DtC 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 DtC Forum with other neighbouring authorities outside the West Kent HMA in relation to strategic housing matters' respectively.
32. These SoCGs were prepared too late to influence the preparation of the Plan. Indeed, in an email<sup>38</sup> to MHCLG, dated 15 March 2019, the Council says that it 'is in the process of preparing SoCGs to address, amongst other things, the issue of unmet need.' However, these SoCGs were completed following the submission of the Plan for Examination. As a result, the SoCGs 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 imply 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.
33. For these reasons, the SoCGs do not demonstrate that effective and joint working has been undertaken, particularly in respect of unmet housing need, nor do they document the progress made in co-operating to address this.
34. 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 engagement in relation to a solution in the future, not the submitted Plan. At the DtC 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'

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<sup>35</sup> SUP007a – SUP007i

<sup>36</sup> SUP007h

<sup>37</sup> ED6

<sup>38</sup> Email from James Gleave, dated 15 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

meetings. However, this approach is at a very early stage and this, along with the agreed actions in the SoCGs, relate to proposed joint working in the future, which is not something that is relevant to the consideration of the DtC in relation to the preparation of this Plan.

*The timing of engagement*

35. The Council refers 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. The Council says, in its letter<sup>39</sup> dated 18 November 2019, that it 'could have gone back to 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'. Nevertheless, the minutes of meetings with neighbouring authorities prior to this, which I refer to in paragraphs 19 to 22 above, either do not mention the unmet housing need or the extent of any unmet housing need in Sevenoaks District. There is no evidence, therefore, to support the Council's statement that discussions had already indicated that an unmet need of 600 dwellings could not be accommodated in the neighbouring authorities.
36. I note the comments of Tonbridge and Malling Borough Council, made in a letter, dated 1 February 2019, in response to the Regulation 19 consultation on the Plan that 'all three West Kent Authorities confirmed that they were seeking to meet as much of their needs as possible and acknowledged the practical difficulties of taking any unmet need from each other' at the DtC meeting on 11 September 2018, despite the minutes not recording this. Tonbridge and Malling Borough Council's response to the Regulation 19 consultation goes on to say that 'at that time the draft Sevenoaks Local Plan included options that could have met the vast majority of its need for housing. The best case scenario resulting in approximately 600 dwellings of unmet need across the Plan period.' However, there is no evidence from the minutes of the DtC meetings that even this level of unmet need had been discussed in a meaningful way.
37. The full extent of unmet need only became apparent to the Council following the consideration of the responses to the Regulation 18 consultation, after the DtC meeting on 11 September 2018, and during the preparation of the Regulation 19 Plan. Under the DtC, 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. This 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. However, there is no evidence to show that this occurred. 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

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<sup>39</sup> ED42

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. This could have included a reconsideration of the balance to be struck between planning policies that might constrain development and the merits of providing sufficient housing to meet identified needs. Ultimately, this process may, or may not, have led to the same outcome. However, it is not possible for me to know whether this would have been the case because effective and constructive engagement on this issue did not take place.

38. From the evidence before me, therefore, it is apparent that the Council did not engage with its neighbouring authorities on this matter at the appropriate time.
39. It is noted that neighbouring authorities have not indicated any willingness 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 Sevenoaks' unmet need.

#### *Peer Review*

40. The peer review process undertaken by the Council consisted of advice<sup>40</sup> from Intelligent Plans and Examinations (Ipe) in November 2018; a PINS' Advisory Visit<sup>41</sup> in February 2019; MHCLG advice<sup>42</sup>; and, a review of the Plan and PAS Workshop<sup>43</sup> on 24 April 2019.
41. The advice from Ipe following its meeting with the Council on 1 November 2018, considered several matters, including housing need and delivery, however, it made no mention of the extent of unmet housing need in the District, or how this could be addressed. The purpose of the PAS Workshop, which was held six days before the Plan was submitted for Examination and led by Ipe, was 'to provide advice on the implications of the DtC for the soundness assessment of the Plan' and 'to meet with neighbouring authorities,

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<sup>40</sup> Revised Note in respect of the preparation of the Sevenoaks Local Plan, prepared by Laura Graham of Ipe, dated 4 December 2018, set out in 1a of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>41</sup> PINS Advisory Visit Note, prepared by Inspector Jonathan Bore, dated 6 February 2019, set out in 1b of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>42</sup> MHCLG correspondence, meeting 6 March 2019, set out in 1c of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

<sup>43</sup> Note on the Duty to Co-operate and the Local Plan, prepared by Ipe, dated 7 May 2019, set out in 1d of Appendix 3: Duty to Co-operate Appendices, dated 4 December 2019 [ED42C].

so they could outline their respective positions regarding meeting development needs in West Kent.'

42. At this Workshop, the Council set out what it considered to be the unmet need of around 1,900 dwellings<sup>44</sup> in its Plan to be submitted for Examination. The Note on the DtC and the Local Plan<sup>45</sup>, prepared by IPe, dated 7 May 2019, following the PAS Workshop, was not submitted as part of the Council's DtC Statement<sup>46</sup>. This note concludes that 'none of the authorities present is in a position to help meet any unmet housing need generated by Sevenoaks District and it stresses the importance of continuing to meet development needs in West Kent through cooperative strategic working'.
43. The Council suggests that the PAS Note provides evidence that a solution to address unmet need now does not exist through the DtC. However, the PAS Note does not set out a detailed assessment of how the DtC has been complied with. Furthermore, 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. Alternatively, it may have been that the Council's conclusions were correct and that the unmet need could not be addressed by neighbouring authorities. However, on the evidence before me, I am unable to conclude that the issue of addressing unmet need had been given adequate consideration. Whether or not there is a cross boundary solution to unmet need is not a requirement of the DtC. The Duty is to engage constructively, actively and on an on-going basis and, on the evidence before me, I am unable to conclude that this has taken place.
44. The Council says 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, several points were raised in relation to the DtC at the Advisory Visit<sup>47</sup> carried out by the Planning Inspectorate in February 2019, as set out in the note<sup>48</sup> of this meeting.
45. The visiting Inspector noted that the Council had not sent formal letters asking other authorities to accommodate unmet need and that it 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 SoCGs, this did not appear to exist in a positive form. These issues were not adequately resolved before submission.

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<sup>44</sup> This revised figure took account of proposed changes to the Plan period being put forward by the Council for consideration during the Examination.

<sup>45</sup> ED42B

<sup>46</sup> SUP006, SUP006a, SUP006b, SUP006c and SUP006d

<sup>47</sup> 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.

<sup>48</sup> The PINS Advisory Visit Meeting Note is set out in 1b of Appendix 3: DtC Appendices, dated 4 December 2019 [ED42C].

46. 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 DtC Statement was not submitted until May 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 sessions.
47. The Council submitted its note of the DtC Workshop in Appendix 4 of its DtC Statement<sup>49</sup> in May 2019, in which it states that 'KH<sup>50</sup> advised that, in his view, Sevenoaks District Council has done all it can and is able to demonstrate that it has satisfied the DtC requirement.' However, the Note of the same meeting prepared by IPe<sup>51</sup>, submitted in November 2019, does not state that the DtC has been met or that KH advised that this was the case.
48. Moreover, although it is reasonable for any authority preparing a local plan to seek advice from outside bodies in the way that the Council did, doing so cannot ever provide a guarantee that the Plan will, at its formal Examination, be found to be legally compliant. In any event, given the timing of the peer review, I consider that it was held far too late in the preparation process for it to be effective.

*If a Plan is found to have failed the Duty to Co-operate, is it possible to proceed with the Examination?*

49. 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 NPPF, represent a sound plan for the authority.
50. 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 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.
51. 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 DtC that I have identified, this could not be resolved by finding the Plan sound conditional upon a review, nor does the Council have the option to undertake further work, as any failure in the DtC cannot be rectified following submission. Once I had considered all of the evidence presented to me in writing and at the Hearing sessions in relation to the DtC, I immediately notified the Council and cancelled future Hearings. I also gave the Council the opportunity to provide any additional evidence relating to the DtC undertaken prior to the submission of the Plan for Examination. Furthermore, had it been possible for the Examination to

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<sup>49</sup> SUP006d

<sup>50</sup> KH was Keith Holland of IPe, working on behalf of PAS.

<sup>51</sup> ED42B

proceed, if, for example, the DtC had been complied with, I would have been pragmatic in considering any Main Modifications required to make the Plan sound. However, there is no scope within the Examination process to correct a failure to comply with the DtC following submission of the Plan.

52. The DtC Appendices that the Council has 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 Plan. I have considered their comments carefully, however, none provides any substantial evidence which would lead me to a different view.
53. For the reasons set out above the DtC set out in Section 33A has not been complied with.

## **Overall Conclusion and Recommendation**

54. The DtC in Section 33A of the 2004 Act has not been complied with for the reasons set out above and I, therefore, recommend that the Local Plan is not adopted.

*Karen L Baker*

Inspector