

Friends of Tudeley

Statement regarding additional information provided by TWBC after the Stage 1 Hearings of the TWBC Local Plan Examination, regarding the Duty to Cooperate

Background

- 1 Following discussion at the Stage 1 Hearing regarding TWBC's Duty to Cooperate ("**DtC**"), TWBC has provided all parties with some minutes of meetings of the Strategic Sites Working Group ("**SSWG**").¹
- 2 At the Hearing, TWBC suggested that the Minutes contained commercially sensitive information and thus would have to be redacted. In fact they have been provided unredacted, and there is nothing remotely commercially sensitive in the contents. It is hard to avoid the suspicion that "commercial sensitivity" was simply being invoked as an excuse to keep these documents out of the public domain. It is notable that the very first minutes (18.7.19) simply state (item 2) "*these minutes, discussions and associated correspondence are not to be made public*", without making any reference to commercial sensitivity.²

Summary

- 3 Three things clearly emerge from the new documents:
 - a. TWBC has failed (i) to produce a complete record of the SSWG meetings, and (ii) to produce the contents, actions and outcomes of other supposed meetings with TMBC.
 - b. Those documents which have been produced show that no meaningful "Duty to Cooperate" dialogue took place between TWBC and TMBC in the SSWG.
 - c. There are numerous indications in the documents that TWBC was using the SSWG to drive through its pre-decided plan, rather than to conduct meaningful dialogue.
- 4 We develop these points in turn.

¹ Published on 8th March 2022 as **TWLP-008**.

² "Commercial sensitivity" was mentioned for the first time at the 1 December 2019 meeting (item 2).

Incomplete record

- 5 There are two problems here: first that there are no fewer than six sets of SSWG minutes missing, by reference to the meetings that were scheduled to take place; and second that no minutes at all have been produced of other meetings (referred to in the SSWG minutes) which supposedly took place between TWBC and TMBC for DtC purposes.
- 6 As to the first point, it was agreed at the first and second meetings in July and September 2019 that the SSWG would meet every month rather than the original plan for bi-monthly meetings.³ The minutes then record the date of the next meeting. This evidence therefore suggests that the following meetings were planned to take place, but no minutes have been disclosed for any of them:
- a. **2 October 2019;**⁴
 - b. **November 2019;**⁵
 - c. **8 January 2020;**⁶
 - d. **4 March 2020;**⁷
 - e. **April 2020;**⁸ and
 - f. **2 June 2021.**⁹
- 7 As to the second point, the SSWG minutes contain numerous references to other meetings between TWBC and TMBC (and sometimes others) which would assist in deciding whether the DtC has been fulfilled, but no minutes or other documents evidencing them have been provided. Thus:
- a. **Meeting 1 December 2019 item 6** records *“Representatives from TMBC, TWBC, MBC and KCC highways confirmed that a meeting was scheduled for 10th December 2019 at KCC to discuss highway and transport infrastructure*

³ Changed to quarterly meetings at the 7 July 2021 meeting (item 12).

⁴ Agreed date for next meeting as recorded on 4.9.19 (meeting minutes item 8).

⁵ Date unknown in the absence of the October 2019 minutes.

⁶ Agreed date for next meeting as recorded on 1.12.19 (meeting minutes item 10); referred to as having taken place at item 2 of 5.2.20 minutes.

⁷ Agreed date for next meeting as recorded on 5.2.20 (meeting minutes item 12). It is certain that this meeting happened, since Paddock Wood TC published a summary of it - see <https://paddockwood-tc.gov.uk/documents/strategic-sites-working-group-meetings/>. Note that the summary log produced by TWBC at page 94 of the PDF for TWLP-008 omits many of the summaries published by Paddock Wood, including omitting the March 2020 meeting.

⁸ Date unknown in the absence of the March 2020 minutes.

⁹ Agreed date for next meeting as recorded on 5.5.21 (meeting minutes item 12)

impact and provision.” No minutes have been provided. (Note also that Mr Baughen was “to update next SSWG meeting” about events at this meeting – but since the January 2020 minutes are missing, there is no record of any update either.)

- b. **Meeting 1 July 2020 item 6** records “*TMBC has also been having regular Duty to Co-operate meetings with West Kent (with TWBC and SDC)*”. Only one set of minutes have been provided with the Submission Plan, in an SDC DtC Appendix. This meeting also recorded (item 12) that “technical sub-groups” would be set up to “bring together key stakeholders” on matters such as “transport and highways”. An update was promised for the next meeting.
- c. **Meeting 5 August 2020 item 7** records meetings with various authorities (not including TMBC) to discuss DtC. No minutes have been provided. There was no update on the technical sub-groups.
- d. **Meeting 2 September 2020 item 5** records “regular” DtC meetings with other authorities, this time referring to TMBC. No minutes have been provided.
- e. **Meeting 7 October 2020 item 5** states that there would be “formal discussions on the infrastructure implications” with TMBC later in October. If these took place, no minutes have been provided.
- f. **Meeting 18 November 2020 item 6** refers to TWBC setting up “the next round of DtC meetings with neighbouring authorities”. If these took place, which item 6 of the 16 December 2020 meeting suggests they did, no minutes have been provided.
- g. **Meeting 16 December 2020 item 6** records “TWBC keen to take forward discussions with TMBC in particular, as the IDP is now in draft form. The impact on Tonbridge will be discussed”. No minutes have been provided.
- h. **Meeting 3 February 2021 item 6** records “TWBC has had a fresh round of discussions with a number of neighbouring authorities and is now looking to agree and sign Statements of Common Ground”. No minutes have been provided.
- i. **Meeting 7 April 2021 item 6** recorded “TWBC and TMBC are continuing to meet on a regular basis to discuss cross-boundary infrastructure issues”. The identical sentence appears at **Meeting 5 May 2021 item 5**. No minutes have been provided. Doubt is cast on whether these statements are correct by the fact that TWBC’s own meeting Schedule at Appendix 2 of TWLP-008 shows only one meeting with TWBC in the whole of 2021 (in February 2021).

- 8 It should be noted that value of minutes being provided regarding any meetings between TWBC and TMBC outside of the SSWG was mentioned by the Inspector during Day 1 (see recording for the afternoon of Day 1 at 2:29) and that the point was reiterated by Paul Brown QC at the end of Day 2 (see recording for the afternoon of Day 2 at 3:18). It is thus all the more striking that they have not been provided.

Lack of meaningful DtC discussions at the SSWG

- 9 The minutes show that the SSWG itself conducted no meaningful DtC discussions with TMBC at all. We have the following observations.
- a. As the extracts set out above show, the SSWG minutes suggest that to the extent that bilateral discussions with neighbouring authorities took place, they took place outside and separately from the SSWG.
 - b. This is further evidenced by the contents of the minutes, which contain no trace whatever of any meaningful DtC discussion between TWBC and TMBC at the SSWG in relation to Tudeley. There is no discussion of the impact on TMBC of this massive new settlement in terms of infrastructure, transport, schools, parking or medical facilities, for example. Given that a new settlement such as the proposed Tudeley Village is exactly the sort of strategic planning issue on which cooperation is key, this is a startling omission.
 - c. The SSWG minutes compare unfavourably to the minutes of the MBC/TWBC cooperation meetings.¹⁰ Those minutes clearly show that TWBC had a framework for recording cooperation. TWBC failed to follow that framework in the relationship and cooperation with TMBC during plan preparation. Given the severe impact on TMBC of TWBC's plans for Capel (in particular Tudeley Village), this is a glaring omission.
 - d. In fact, what the minutes show is:
 - i. that the only TMBC representative who attended the SSWG was Ian Bailey (apart from a Mr Wren who attended on 7 October 2020 and 7 July 2021);
 - ii. that no TMBC representative attended the SSWG meetings on 18 July 2020, 20 May 2020, and 16 December 2020 (and who knows about the SSWG meetings for which there are no minutes); and

¹⁰ Also published on 8th March 2022, as Appendix 1 to TWLP-006.

- iii. that the only substantive contribution which Mr Bailey is ever recorded as making to the meetings was to update the SSWG on progress of TMBC's own Local Plan examination. This is completely irrelevant to the DtC.
 - e. There is thus no evidence of effective, meaningful cooperation in the SSWG minutes or actions. It's just a talking shop.
 - f. It is not unfair to point out that Mr Bailey does not seem to have had a well-grounded view of what the DtC entails, since he was presumably responsible for TMBC meeting its own DtC. He reported to the SSWG on how well TMBC was doing in front of its own Inspector in relation to the DtC, right up until the point that the TMBC Local Plan was rejected for failing the Duty to Cooperate. This does not inspire any confidence that he would have been an effective agent for TMBC in ensuring that the DtC was being met in relation to TWBC's Local Plan.
 - g. Far from TWBC proactively involving TMBC, TMBC was not invited to the first SSWG meeting and on 2 September 2020 Mr Bailey had to ask whether TMBC would be invited to the David Lock Associates presentations about Tudeley Village (this request was not answered). TMBC's absence at the first meeting is to be contrasted with a comment from TWBC (Steve Baughen) on Day 1 of the Stage 1 Hearing (at 1:48:30 on the recording of the afternoon session). As part of an attempt to evidence active cooperation, SB stated that TMBC were founder members of the SSWG, thus suggesting that they were involved from its inception. The minutes of the first meeting, however, record the following (third bullet under item 6, headed "Discussion on Tudeley Garden Village"): *"Query that considering how close Capel is to Tonbridge, it would have been good to see a representative from Tonbridge and Malling Borough Council at the meeting today. SB confirmed that T+M have been aware of the proposal for a considerable period of time and will be invited to future meetings."*
- 10 TWBC have insisted that meaningful and effective cooperation took place with TMBC before, during and after the creation of the Local Plan. After much pressure they have, at the eleventh hour, provided SSWG minutes, in an attempt to evidence this argument. In fact, however, the minutes just show why TWBC was so reluctant to make them public. They contain no evidence of meaningful, effective cooperation, including real problem solving, at all. The only reasonable conclusion is that **TWBC has not fulfilled the Duty to Cooperate.**

Other points arising from the SSWG minutes and TWLP-008

- 11 Having reviewed the SSWG minutes and the new document submitted by TWBC – TWLP-008 on 8th March 2022, we draw to the Inspector’s attention the following points of concern (some of which undermine the suggestion that TWBC was using the SSWG as a genuine problem-solving forum).
- a. Developers were prevented (by TWBC) from engaging their own transport consultants and so had no choice but to accept one report from SWECO. This report has now been discredited by both Motion and Connect, as their assumptions on modal shift and road improvements were flawed. If developers had been able to use their own consultants, as they requested, and at their own cost, the public would have been better served. TWBC denied the developers’ request due to fears over "public perception". TWBC wanted to control the narrative and consequently sabotaged any prospect of accurate, peer reviewed assessment.
 - b. TWBC were determined to lead the masterplanning at Paddock Wood and East Capel but were very willing to delegate masterplanning at Tudeley (a bigger site with larger, more complex infrastructure needs) to a landowner that has not been involved in any large housing developments (Hadlow Estate). None of the major home builders wanted to be involved, due to the very obvious delivery risks. This decision by TWBC should have been made open to the public when it was made. Transparency on decision making should have been foremost in their minds after the dreadful waste of time and money caused by the failed Calverley Square development – a £108 million project that was scrapped in October 2019. One of the TWBC Councillors said at the time, "I do not want to be here in 50 years' time paying for the 'right' project in the wrong location.". Those words resonate.
 - c. Once TWBC had appointed DLA to masterplan Paddock Wood & East Capel they introduced them to the SSWG as primarily “Providing evidence to support the Local Plan”. That is their first stated objective in the SSWG meeting where their appointment is announced. Surely that is the wrong approach. They should be there to advise on masterplanning, not prop up a set of assumptions and decisions made by TWBC prior to the allocation of the strategic sites.
 - d. There is absolutely nothing commercially sensitive in the SSWG minutes, as shown by the absence of redactions. TWBC’s attitude regarding these minutes has done this borough a great disservice and resulted in a waste of time and money. If the minutes had been published, flaws in the plan, particularly with respect to transport, would have been revealed much sooner.

- e. The meeting on 18 July 2019 contains at item 6 bullet 6 the following: *“Query over whether a rail halt could be delivered as part of the proposals at Tudeley. SB confirmed that TWBC had raised this with Network Rail but currently had indicated that it could not – he felt that this requires political pressure to move forward”*. This has never changed – none of the minutes record even any further discussion with Network Rail about a rail halt at Tudeley Village, let alone agreement to it. Yet TWBC has never made this public; its traffic modelling assumed rail travel from Tudeley Village; and the Tudeley Village Masterplan to this day continues to show a rail station in the centre of the settlement.¹¹
- f. Actions noted at SSWG meetings are frequently ignored. SB does not provide an update on the KCC Highways meeting (which supposedly involved discussion of cross boundary issues) and Hadlow Estate don't come back with the number of residents who attended their Exhibition. Minutes are poorly written and sometimes missing. The length of meetings is not recorded.
- g. Formal discussions on the cross boundary infrastructure implications of TV and PW/EC were scheduled for October 2020. This is too late to have significant influence on plan making and the allocation of the strategic sites. It is also the same month that TMBC felt that their LP Examination DtC hearings had gone well. This clearly shows how little they (and TWBC) understood the DtC.
- h. Finally, point 9 on page 5 of TWLP-008 refers to partner organisations meeting with TWBC to facilitate work with regard to the DtC. The reference to paragraph 125 of TWLP-001 (their Stage 1 Hearing Statement on DtC) leads to Appendix C6 of the Submission Plan DtC Statement dated October 2021. The engagement record found here is shown below, and this gives rise to several detailed comments.

¹¹ <https://www.tudelevillage.co.uk/masterplan/>

Date of engagement	Officers/Members in attendance	Type of engagement	Purpose /Outcomes
			TWBC indicated could meet their own OAN Preparation of SoCG
December 2018	Officers and Members of TWBC/Tonbridge and Malling BC and Sevenoaks DC	DtC meeting	Employment: <ul style="list-style-type: none"> General update on Local Plan progress and approach to ED Retail Use of article 4 directions Rural employment opportunities Local Plan updates
10 June 2019	Tonbridge & Malling BC - Bart Wren and Nigel De Wit	DtC meeting	Local Plan updates. Agreed cross boundary issues: transport, flooding and town centre impact and that TWBC will lead on SoCG
19 September 2019	Eleanor Hoyle - Director of Health and Planning, Tonbridge and Malling Borough Council Louise Reid – Head of Planning – Tonbridge and Malling Louise Rowe – Kent County Council Highways – for Tonbridge and Malling and Sevenoaks area Nick Abrahams – KCC West Kent Education Officer Vicky Hubert – KCC Highways – for Tunbridge Wells Borough Council area Steve Baughen –TWBC Hilary Smith – TWBC Sharon Evans - TWBC	DtC meeting	Local Plan Updates Education needs and travel Patterns Health Flood risk

Date of engagement	Officers/Members in attendance	Type of engagement	Purpose /Outcomes
18 May 2020	SDC – James Gleave, Hannah Gooden TMBC – Ian Bailey and Bart Wren TWBC- Stephen Baughen, Sharon Evans and Hannah Young	West Kent DtC meeting	Updates on : Local Plans, Housing – including discussion about unmet need, Employment, AONB, Infrastructure, Strategic Sites, Gypsies and Travellers, approach to future DtC meetings and SoCGs
15 June 2020	SDC – James Gleave TMBC – Ian Bailey and Bart Wren TWBC – Steve Baughen and Sharon Evans	DtC meeting (see Appendix SDC14 Minutes of West Kent DtC Meeting on 15 June 2020)	Updates on local plan, lessons from other LPAs, housing need (including scope for TMBC and SDC to take housing and employment in Green Belt/AONB), economic needs, strategic sites, infrastructure and sub-regional planning
6 October 2020	TWBC – Stephen Baughen	DtC correspondence	TWBC formal request to TMBC to meet unmet TWBC housing/employment need
14 October 2020	TMBC - Ian Bailey TWBC – Stephen Baughen	DtC correspondence	TMBC response to formal request to meet unmet TWBC housing/employment need
21 October 2020	SDC – James Gleave TMBC – Bart Wren and Julian Ling TWBC – Sharon Evans and Steve Baughen	DtC Meeting (see Appendix SDC17 Minutes of West Kent DtC meeting on 21 October 2020)	Updates on local plans, cross boundary infrastructure, housing need, SoCGs
5 March 2021	TMBC- Ian Bailey TWBC – Stephen Baughen, Hannah Young, Hilary Smith	DtC Meeting	Local Plan updates; Tudeley site allocation; highway modelling; cycling and walking infrastructure; other infrastructure; SoCG

14 June 2021	TMBC - Cllr David Lettington , Eleanor Hoyle and Ian Bailey TWBC - Cllr Alan McDermott and Steve Baughen	DTC Portfolio Holder Meeting	Local Plan updates and housing need, other cross boundary issues, including infrastructure and SoCG
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Date of engagement	Officers/Members in attendance	Type of engagement	Purpose /Outcomes
2 September 2021	TMBC – Bartholomew Wren, TMBC Consultants DHA, TWBC – Hilary Smith, KCC – Miranda Palmer & Katie Cullen	Dtc Meeting	Update on TMBC Active Travel Strategy and links to TWBC LCWIP
29 October 2021	TWBC and TMBC	Dtc email correspondence	Updated SoCG signed-off by both parties

- i. This shows that at the point in time when TWBC decided to include Tudeley Village (TV) in their Draft Local Plan, which was somewhere between January and May 2019, they did not meet or correspond with TMBC regarding any issues that fall under the Duty to Cooperate. There was no active engagement on the many cross boundary issues that creating a town the size of Kings Hill within a stone’s throw of the boundary of Tonbridge would create. In fact, this shows that TWBC did not meet or correspond on Dtc issues with TMBC at all between December 2018 and June 2019, despite going public with the inclusion of TV in the Draft Local Plan in May 2019.
- j. Looking at the log above more closely, it suggests that bilateral meetings were held between TMBC and TWBC on:
- 10 June 2019
 - 19 September 2019
 - March 2021
 - June 2021
 - September 2021
- k. No minutes, actions or outcomes from these meetings have been provided. If TMBC has serious concerns regarding cross boundary issues, why is it meeting TWBC so infrequently, with no public minutes or record of the issues, actions and responsibilities to resolve those serious concerns?
- l. What is more, in the Dtc session on Day 1 of the Stage 1 Hearing (1:42 in to the afternoon session recording) the Inspector asked TMBC (Kevin de Wit) what the serious concerns are which TMBC believes can be resolved by ongoing engagement with TWBC.

- i. KdW stated that concerns included impacts of TV on local communities, amenities and traffic plus wider impacts on road junctions in Tonbridge and the A228 (a strategic north-south route). He then went on to say that he wanted to comment only on the legal compliance of the DtC and not the soundness of the plan at this stage.
- ii. When pushed for an example of cooperation, KdW pointed to the secondary school site moving from Postern to Five Oak Green. The school was moved because KCC Education rejected the site (which was hardly surprising given that it was split in two by a main railway line crossed only by a bridge sadly notorious for suicides and that it contained a large patch of ancient woodland, restricting development). It had nothing to do with cooperating with TMBC.
- iii. The only other example of cooperation offered by KdW was TWBC including Tonbridge junctions in their transport analysis. That is of no worth at all, given that (as shown by the Reg19 submissions made by FoT and Save Capel) two independent, highly regarded, transport consultants (Motion and Connect) have shown the transport analysis of these junctions by TWBC's consultants SWECO and Stantec to be based on unsustainable assumptions. TMBC Councillors are aware of this chasm in the analysis and have raised it in TMBC meetings. There have been three Extraordinary Meetings called between the TWBC Reg18 and Reg19 consultations (November 2019 to May 2021). Why has the TMBC planning team not looked at this evidence in detail and taken their concerns forward? Why has there been no comment on this evidence in SSWG meetings or in any direct responses to Reg19 Submissions? They have had the reports for over 6 months now. Both TMBC and TWBC are letting their residents down with their slow, weak approach to finding solutions to cross boundary issues. Some of the transport issues are showstoppers. Ignoring them won't make them go away.
- m. The Duty to Cooperate exists to help ensure that plans are deliverable. We believe that TMBC and TWBC's failure to address serious concerns and major issues together, actively and effectively, during strategic plan making has resulted in the harmful, undeliverable site at Tudeley Village going forward in to the Submission Plan. The development of Supplementary Planning Documents and ongoing liaison in the future does not fix their failure.

The additional information provided by TWBC in TWLP-008 shows that TWBC has not fulfilled the Duty to Cooperate with TMBC.