

# Examination of the Tunbridge Wells Borough Local Plan

Statement on behalf of Taylor Wimpey UK Ltd

Matter 1 – Legal Compliance

February 2022

**Turley**

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**Client**  
Taylor Wimpey UK Ltd

**Our reference**  
TAYS3041

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# 1. Introduction

- 1.1 This statement is submitted on behalf of Taylor Wimpey UK Ltd for purposes of the Examination of the Tunbridge Wells Borough Local Plan.
- 1.2 The statement responds to the Inspectors' Issues and Questions for Matter 1 – Legal Compliance.
- 1.3 The concerns outlined by our client at the Regulation 19 stage (letter to TMBC dated 25<sup>th</sup> May 2021), on issues pertaining to the plans legal compliance and soundness, have not been overcome thus far. If anything, the documents published by the Council for submission purposes only serve to highlight the deficiencies evident in the production of the plan now submitted.
- 1.4 Accordingly, we have examined the Inspector's questions for Matter 1 and provide responses to those we wish to contribute to debate on. We have also respectfully requested the opportunity to participate in the forthcoming hearing sessions to assist the Inspector further on such matters.

## 2. Response to Issues and Questions for Matter 1 – Legal Compliance

### *Issue 1 - Duty to Co-operate*

*Question 5. The Duty to Cooperate Statement – Part 1 (Revised November 2021) confirms that Sevenoaks District Council informed Tunbridge Wells Borough Council that it was unable to meet its own housing needs in April 2019. What steps has the Council taken since April 2019 in response to this request? Has the Council engaged constructively, actively and on an on-going basis insofar as the preparation of the Tunbridge Wells Borough Local Plan is concerned?*

- 2.1 The statutory Duty to Cooperate under Section 33A of the 2004 Act requires TWBC to demonstrate they have engaged with adjoining authorities, such as Sevenoaks District Council (SDC), constructively, actively and on an on-going basis, throughout the preparation of the Tunbridge Wells Borough Local Plan. Whilst Tunbridge Wells Borough Council (TWBC) assert there was no ‘formal’ request made from SDC for assistance (this was made in April 2019<sup>1</sup>), there is well documented<sup>2</sup> evidence to suggest TWBC were aware SDC had identified unmet needs of various magnitudes as far back as 2017.
- 2.2 Indeed, this is evident from Appendix B7 (SDC8) of TWBC’s Duty to Cooperate Statement (Nov, 2021), that TWBC had been aware of such needs ‘over recent years’ and had consistently asserted it was not in a position to assist. This is evident in the paper trail set out in Appendix B of the TWBC’s Duty to Cooperate Statement (Nov, 2021). TWBC’s responses to SDC Local Plan Consultations dating back to 2017 consistently request SDC does not presume any ability to assist them with unmet needs. What is equally evident, is the absence of any positive engagement on a strategy to resolve this issue.
- 2.3 As the visiting Inspector commented in their Advisory Visit to SDC in February 2019<sup>3</sup>, ‘...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.’
- 2.4 The failure to constructively and actively discuss a strategy to resolve this issue on a cross boundary basis, and on an ongoing basis is evident; and is highlighted in the Inspectors Reports into the submitted Local Plans for both of the adjoining authorities (SDC and TMBC). SDC, TMBC and TWBC were involved in the Planning Advisory Services ‘West Kent Statement of Common Ground Pilot Project’ in 2017. TWBC Local Plan is the third of the three authorities to reach examination stage, with the other two withdrawn following recommendations from PINS that neither had met the statutory Duty to Cooperate under Section 33A of the 2004 Act. As TWBC was an integral part of this group and signed up to a common approach, it is difficult to deduce from the evidence presented that they have performed any better in this regard, particularly

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<sup>1</sup> Footnote 32 of Inspectors Report to Sevenoaks District Council, 2<sup>nd</sup> March 2020 (PINS/G2245/429/7)

<sup>2</sup> Paragraph 19 of the Inspectors Report to Tonbridge and Malling Borough Council, 7<sup>th</sup> June 2021 (PINS/H2265/429/8)

<sup>3</sup> Paragraph 45 of the Inspectors Report to Sevenoaks District Council, 2<sup>nd</sup> March 2020 (PINS/G2245/429/7)

over the period since 2017 cited by the two Local Plan Inspectors in question. Instead, there seems to have been a predetermined outcome to only meet TWBC objectively assessed needs, but not to assist SDC with theirs, no matter what the range of unmet need. There appears no attempt to assess different levels of unmet need, nor compose a strategy to address any range of unmet needs between the three West Kent authorities.

- 2.5 At Paragraph 4.19 of the Duty to Co-operate Statement (TWBC, 2021), TWBC instead outline steps they have taken to explain why they are unable to assist SDC in any way with unmet needs. This can be summarised into two broad points. Firstly, that TWBC have tested options through the SA process to accommodate SDC's unmet needs and found this to be unsustainable. Secondly, that SDC may be able to meet more of this unmet need themselves.
- 2.6 Turning to the first point, TWBC seek only to assess the unmet need from SDC of 1900 homes, as cited by SDC in April 2019; rather than a range, to deduce what, if any, contribution they could make to assist both SDC and, as we set out below in response to 'Question 8', other adjoining LPAs.
- 2.7 TWBC refer to the conclusions drawn from their Sustainability Appraisal process to support their assertion they are unable to assist SDC. TWBC assess additional uncapped & unmet need under growth options 10 and 11 of the SA, as evidenced in Table 12 of the SA (Oct 2021). Under option 10, the additional uncapped need alone is distributed *'as per Growth Strategy 3 (Draft Local Plan), with further development across settlements, including in the AONB.'* However, when assessing the additional unmet needs (Option 11), TWBC assess a distribution as per Growth Strategy Option 9 (Dispersed Countryside). This understandably leads to a more negative consequence, as this leads to growth in less sustainable locations that run contrary to many of the sustainability objectives of the plan. At paragraph 6.2.7 of the SA, TWBC use this conclusion to dismiss this option. The same evidence is then used to justify why TWBC are unable to assist meeting acknowledged unmet needs for housing in the area. Our client contends distributing unmet needs solely in line with Option 9 is not a reasonable alternative. It appears only to support a pre-determined outcome to select Option 13 (Pre-Submission Local Plan) as the 'appropriate strategy'.
- 2.8 We contend the Council ought to have explored distribution options for unmet needs more objectively, including an assessment of the contribution more sustainable settlements could make to this. For example at Cranbrook, which is ranked second only after Southborough in the Councils 'Settlement Role and Function Study' (TWBC, Feb 2021). The outcome of the SA process therefore cannot be relied upon to conclude Option 13 is an appropriate strategy, as it has not taken 'into account the reasonable alternatives', contrary to paragraph 35 of NPPF and the corresponding SEA Regulations requiring such alternatives to be 'reasonable'. Similarly, therefore, nor can the conclusion deduced from it that TWBC cannot assist SDC be relied upon. In its current form therefore the Local Plan is not in our view legally compliant in SA or Duty to Cooperate terms, as it has failed to test reasonable alternatives, and is not the product of constructive and ongoing engagement with SDC and TWBC over a joint strategy to address the unmet needs of the West Kent authorities; which one would have

reasonably expected to be an outcome of a SoCG conceived under this PAS pilot scheme.

2.9 Turning to the second point. It is evident in correspondence between the West Kent authorities on this matter since 2017, as documented in Appendix B of the Duty to Cooperate Statement (Nov 2021, TWBC), that both TMBC and TWBC perhaps disagreed with SDC over the quantum of unmet need SDC ought to be seeking assistance for. Nevertheless, SDC formalised and quantified their request for assistance in April 2019. One would therefore have expected constructive, active and ongoing engagement between the authorities over a strategy to address such needs. Instead, Statements of Common Ground were signed between SDC and TMBC; and between TWBC and SDC in May 2019, one month after this formal request, confirming neither TMBC nor TWBC could assist SDC with their needs. The resolved action between the three authorities was to continue to work together to redress this through subsequent Local Plan reviews every five years<sup>4</sup>.

2.10 The Inspectors examining both the SDC and TMBC Local Plans concluded this was not sufficient, and that the authorities in question had not done enough to discharge their statutory Duty to Cooperate under Section 33A of the 2004 Act. As the Inspectors examining the TMBC Local Plan state at paragraph 33 of their report:

*‘However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.’*

2.11 The SDC and TMBC Local Plans have now been withdrawn, leaving TWBC as the last of the three West Kent Authorities to have their Local Plan examined. The commonality of the grounds for withdrawal arguably apply to TWBC, as there is insufficient evidence to suggest TWBC took a more proactive stance to agree a strategy to address the unmet needs between these three LPAs. An up to date SoCG between SDC and TWBC remains to be agreed, well after submission of the TWBC Local Plan in November 2021. Whilst both TMBC and SDC have now begun the early stages of progressing revised Local Plans, the assessment of compliance with the DtC focuses on the evidence of cooperation between parties in the period up to the submission of the TWBC Local Plan in November 2021. As we assert above, TWBC have not engaged constructively, actively and on an on-going basis with their neighbours to develop a strategy to address the documented unmet needs of SDC during the preparation of the TWBC Local Plan. Accordingly, TWBC have not in our view discharged their statutory Duty to Cooperate under Section 33A of the 2004 Act.

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<sup>4</sup> Paragraph 2.1.9 of SoCG between TWBC and SDC (May 2019) ; and Section 4 of SoCG between TMBC and SDC (May 2019)

*Question 8. Does the Plan seek to meet any unmet housing needs from elsewhere? If not, what are the reasons for this and is it justified?*

- 2.12 Paragraph 60 of NPPF confirms that, *'In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.'*
- 2.13 'Figure 1: Local housing market area (from SHMA)' of the *'Housing Needs Assessment Topic Paper'* (Paragraph 2.36, TWBC, February 2021) is based on the travel to work area data for Tunbridge Wells within the SHMA (GL Hearn, 2015). This illustrates a strong functional and travel to work relationship with London. As a consequence, GL Hearn advised Sevenoaks and Tunbridge Wells Councils as far back as 2015 *'to engage with the Greater London Authority and London Boroughs in respect of any unmet needs arising from London.'* (Paragraph 2.72, Sevenoaks & Tunbridge Wells SHMA, GL Hearn, 2015). Yet, at Section 4 of the Duty to Co-operate Statement (TWBC, Nov 2021) no mention is made of efforts to understand what such unmet needs may be, or the implications this may have for adjoining LPAs and TWBC over the plan period. This context we argue is key to understanding the extent of pressure the adjoining authorities are likely to face to meet such needs over the plan period. It provides the relevant context for devising reasonable alternative growth scenarios to test through the Local Plan preparation stages.
- 2.14 The Secretary of State for Housing, Communities and Local Government is on record saying there is a significant level of unmet housing need across London that needs to be addressed. In his letter to the Mayor of London dated 29 January 2021, the SoS stated, *'I would again ask you to work closely with those authorities that surround London to develop a strategy to help alleviate the housing pressure that is faced both inside and immediately outside the capital.'* (our emphasis)
- 2.15 The revised standard method for calculating housing need, published by the government in December 2020, confirmed the housing requirements for the London Boroughs. Prior to the publication of Tunbridge Wells Local Plan Regulation 19 Consultation therefore, it seems likely there was an awareness of a growing likelihood of significant unmet needs across this area; something that has been well documented in the SoS Directions on the London Plan over recent years. In the context of the NPPF Paragraph 35 requirement to ensure plans are positively prepared, we therefore find it surprising the Council has not sought with its neighbours to better understand the implications for emerging Local Plans, particularly in the first five years post adoption. Under the transitional arrangements of national PPG, the London Plan housing requirement is an interim figure pending a review of this plan within the next five years, and will rise significantly thereafter as a consequence. This will occur within the first five years of the TWBC Local Plan period, which emphasises the importance of preparing a positive plan to face into such issues proactively.
- 2.16 SDC, arguably even more than TWBC, faces significant influence and housing need pressures from the London Boroughs. In the context of the scale of unmet needs evident in London, it is highly likely that SDC will be called upon themselves to explore even higher housing requirements to assist. The pressures on this area are not therefore likely to reduce, but are increasing, requiring adjoining authorities to work

together to positively prepare emerging plans that face into such matters within the next five years.

- 2.17 The London Borough of Bexley (LBB), abutting the northern edge of Sevenoaks is just one example. Their draft Regulation 18 Local Plan in February 2019 noted they were planning for a target of 446 homes pa for 10 years. This has risen to 685pa in the confirmed London Plan, and will rise to 2404pa within the next five years once the transitional period ends. This is four times what is currently planned, and almost double the annual SHLAA capacity figure (1245pa) confirmed by Bexley in the London SHLAA (GLA, 2017) for the same 10 year period. Notably, many other London boroughs are also seeing significant rises. In light of this evidence, it is clear that Bexley and other London Boroughs will almost certainly need assistance to address such needs with their neighbours in overlapping housing market areas. Indeed, it is notable that representatives of this London Borough were present in stated Duty-to- Cooperate meetings between TWBC and SDC<sup>5</sup> in April 2019, yet no strategy or outcome is stated in relation to such matters.
- 2.18 It is also important to examine the context emerging with the adjoining authorities. Sevenoaks District Council and Tonbridge and Malling both withdrew their Local Plans in 2021, following receipt of Inspectors Reports that concluded they had not discharged their statutory duty to cooperate with adjoining authorities over unmet housing needs, amongst other matters. Wealden District Council had also withdrawn its Local Plan in 2020, for largely the same reasons.
- 2.19 As a consequence, three of the adjoining authorities are delayed in their plan preparation and housing delivery strategies; and the SoS has confirmed there are significant unmet and mounting housing needs requiring collaborative action in London within the next five years. All of which highlights how important it is for the emerging TWBC Local Plan to be as positively prepared as possible.
- 2.20 As we outline, the SA process and the nature of the authority's engagement with adjoining authorities is insufficient in our view to satisfy these statutory requirements. The strategic context highlighted above serves to illustrate just how important it is for TWBC to positively prepare their plan to assist adjoining authorities, particularly over the next five years, pending the removal of the transitional arrangements for the London Plan. As we set out, the justification for not assisting SDC with their unmet needs is not based on an assessment of 'reasonable alternatives' through the SA process. In light of this and the above context, we do not consider TWBC have provided sufficient evidence to formally discharge their statutory Duty to Cooperate under Section 33A of the 2004 Act.

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<sup>5</sup> Entry for 24<sup>th</sup> April 2019 DtC Workshop (SDC Offices) [ Appendix B7 – DtC Engagement record between TWBC and SDC; Duty to Cooperate Statement (Nov 2021, TWBC)]



### **Issue 3 - Sustainability Appraisal**

*Question 3. Does the Sustainability Appraisal adequately and robustly test a strategy that would contribute towards meeting previously identified unmet housing needs from Sevenoaks?*

- 2.21 No. For avoidance of repetition, see paragraphs 2.4-2.8 above.

*Question 9. Does the Sustainability Appraisal adequately and robustly consider reasonable alternative strategies for the size and scale of development proposed at Tudeley Village and Paddock Wood, including land at East Capel? For example, does it consider smaller and/or larger forms of development as a way of meeting housing needs?*

- 2.22 No. For avoidance of repetition, see paragraphs 2.4-2.8 above.

- 2.23 As we outlined in our comments to Policy STR1 at Regulation 19 stage, in addition to the unmet needs of adjoining LPAs, there are equally compelling grounds to test higher housing requirements as reasonable alternatives to SA Option 13. Firstly to help address affordable housing needs that are evidently not being met by the proposed Local Plan housing requirement; and secondly to build in further contingency into the boroughs housing land supply to ensure a continuous supply of housing is delivered, particularly in the first five years of the plan period.

- 2.24 We contend the delivery expectations for the two proposed strategic site allocations, which between them account for between 67-69% of new allocations proposed in the Local Plan, are wholly unrealistic and contrary to the published evidence we reference in our Regulation 19 representations. Additional allocations capable of being delivered within the first five years of the plan period are therefore strongly recommended, ensuring the plan is both positively prepared and effective.

- 2.25 We respectfully suggest that TWBC be directed to revisit the SA process to objectively assess reasonable alternatives to meet such needs, including smaller 'deliverable' allocations around more sustainable settlements such as Cranbrook.

*Question 11. Are the scores and conclusions reached in the Sustainability Appraisal reasonable, sufficiently accurate and robust to inform the submission version of the Local Plan?*

- 2.26 We note at Table 53 (Page 150) of the SA (Oct 2021) that site ref: 25 is listed as a 'reasonable alternative site' at Cranbrook. If one compares the assessment of Site 25 at SA Appendix J (Page 317) with the assessments of the proposed allocation sites at Table 54 (SA Page 152-155), it is evident that Site 25 outperforms 4 of the 7 allocations proposed. The commentary provided at Table 54 states that,

*'where sites were not allocated but had a better range of scores than the allocated sites, there were frequently reasons outside of the SA remit to consider for example highway problems, access issues or deliverability concerns within the plan period e.g. site 409. (our emphasis). Further commentary can be found in Appendix J.'*

- 2.27 For transparency and consistency, and to accord with the SEA regulations, it is important to understand the extent to which the SA process has informed the plans preparation, with clear reasons provided for rejecting reasonable alternatives.
- 2.28 However, if one examines and compares the individual site assessments in Appendix J of the SA, the grounds for exclusion of Site 25 in favour of others is even less evident. No mention is made in the summary of Site 25 to any '*highway problems, access issues or deliverability concerns*' that would lead one to conclude that Site 25 is not suitable, or performed worse than those proposed for allocation and listed above. Indeed, as is evident at Figure 14 (Page 152) of the SA, and from site visits, Site 25 is well contained, is partially within the built up area and is well located to reduce the need to travel.
- 2.29 Rather than informing 'an appropriate strategy' for Cranbrook, the site selection process appears instead to have been designed with a pre-determined outcome in mind. This is evident if one examines and compares the published SHELAA for 2019 and 2021, where factual errors, poorly evidenced statements and inconsistent assessments are noted. These are matters we have sought to highlight to TWBC throughout the drafting stages of the Local Plan; as outlined in our clients representations at Regulation 19 stage (Pages 5-8 of our letter to TWBC, dated 25 May 2021), and in meetings with TWBC in February 2021. Our firm conclusion was / is that Site 25 had been incorrectly categorised as unsuitable, particularly when assessed objectively and consistently with others that the LPA had classified as suitable.
- 2.30 In the interests of brevity, we refer to the detailed concerns of the scoring and assessment process outlined in our representations at regulation 19 stage (Pages 5-8 of our letter to TWBC, dated 25 May 2021).

-End-