

Matter 1 – Legal Compliance

Issue 1 - Duty to Cooperate

Q1. The Duty to Cooperate Statement – Part 1 (Revised November 2021)¹ states that the Council has identified sufficient sites to meet its local housing need in full. Whilst this involves the removal of land from the Green Belt and some major development in the High Weald AONB, paragraph 4.14 states that neighbouring authorities were approached to help in meeting housing needs but were unable to assist.

What did this process entail and how did the Council explore the possibility of meeting housing needs in areas outside the Green Belt and High Weald AONB? Can the Council point to evidence of effective and on-going joint working with neighbouring authorities beyond Green Belt and AONB boundaries?

No comment

Q2. Likewise, how did the Council approach strategic decisions about meeting employment needs? Were options explored with duty to cooperate partners which sought to meet needs without releasing Green Belt land or requiring major development in an AONB? If so, where is this set out?

No comment

Q3. Paragraph 27 of the National Planning Policy Framework ('the Framework') states that in order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these. Has a signed statement of common ground been prepared with Sevenoaks District Council, as required by the Framework?

3.1 A Duty to Cooperate (DtC) Statement between Sevenoaks District Council (SDC) and Tunbridge Wells Borough Council (TWBC) was entered into in May 2019 as part of the evidence base to the SDC LP examination – see Appendix A1 of the DtC Statement (3.132ciii).

3.2 Appendix B7 of 3.132ciii – the 'DtC Engagement Record between TWBC and SDC' highlights ongoing joint working on strategic matters such as housing over the period December 2014 to October 2021, with the last entry advising that '*a working draft SoCG has been produced between both parties which will be reviewed and updated prior to the TWBC Local Plan Examination*'.

3.3 Appendix A2 of the DtC Statement (3.132ciii) contains a copy of the working draft SoCG dated Oct 2021, para 1.21 makes it clear that the new SoCG will effectively update the position in relation to that formerly agreed. It also includes a set of actions on the last page which includes agreeing said statement in Oct 2021.

3.4 We note that to date no signed document has appeared on the TWBC web site. The implications of this are addressed in our response to question 4.

¹ Core Document 3.132a

Q4. In the absence of a statement of common ground with Sevenoaks District Council, what evidence can the Council point to in order to demonstrate effective and on-going joint working on strategic cross-boundary matters?

4.1 Examination document 3.132ciii – appendix B of the DtC statement, which sets out the dialogue there has been between TWBC and SDC during the preparation of the TWBLP, is at appendix B7 helpful in setting out the chronology of discussions there have been between the two parties on all strategic cross boundary issues, as is the working draft SoCG that is contained in Appendix A2 of the DtC Statement (3.132ciii), and the Duty to Cooperate Statement – Part 1, p 17 – 39, and 83 – 86. Together these paint a picture of detailed, effective, and ongoing discussions.

Q5. 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?

5.1 The DtC Statement – Part 1 at para 4.16 indicates that only SDC *'has either not produced a Local Plan which looks to fully meet their own housing needs, has indicated that they do not expect to be able to meet their local housing needs or has not indicated that it will be starting its plan making process on the basis of a strategy which, as a minimum, seeks to meet the area's objectively assessed needs'*.

5.2 In the context of the above we note that whilst SDC made a formal request to TWBC and other neighbouring LPAs about whether they could meet any of SDC's unmet need in April 2019, Para 4.18 of the DTC statement indicates that *'It did not have any arrangement in place to meet this unmet need at the time that the Local Plan was submitted. The (SDC) strategy which resulted in the unmet need has not been subject to Examination, although the Inspector identified significant concerns in relation to the soundness of the 2019 plan.'*

5.3 Paras SDC 1.03, SDC 5.01-5.06, SDC 6.01-6.07, SDC 7.01-7.05, SDC8.01-8.20, SDC 9.01-9.07 and SDC 10.01-10.03², together with Para's 4.19 and 4.20 of the DtC statement, and appendix B of the DtC Statement (3.132ciii) set out in detail the chronology of events surrounding SDC's request to TWBC to help meet their unmet needs, and what has occurred subsequently.

5.4 Of note is SDC 21 of appendix B of the DtC Statement, which indicates in section 3 that by the 08.07.21, SDC's position on unmet need was no longer clear, a point reiterated in SDC 22 where in response to a direct question about whether SDC thought that it could potentially meet its housing need, the response was *'We go where the evidence takes us'*. This situation and its implications is amplified further in SDC24. The subsequent draft SoCG of Oct 2021 (Appendix A2 of the DtC Statement), at para 2.10 suggests that *'It is common ground that the unmet need figure of 1800 units identified April 2019 can no longer be relied upon'*. It is also clear from para 2.25 that only after SDC have updated their evidence base, undertaken a call for sites and relevant site assessment work will they be able to establish if

² P 21 - 37 of the DtC Document – 3.132a

they can meet their housing needs on land outside the green belt, will they discuss the resulting position with TWBC. As such the extent to which SDC still have an unmet need, and whether TWBC may need to help meet that through the DtC is now unknown. That said SDC 24 does make it clear, as does the DTC Statement, that the pre submission TWLP includes a buffer of approximately 1050 dwellings which on face value would help assist in meeting any of SDC unmet need if a need is identified.

5.5 In the context of the above, it is also noteworthy, as set out in SDC24 that TWBC have through their SA included assessments of growth options which include meeting TWBC's uncapped need (741 dpa as compared to 678); accommodating SDC's unmet need and meeting TWBC's uncapped need (853 dpa). A point we return to in our response to question 6 below.

Q6. Planning Practice Guidance advises that local planning authorities are not obliged to accept needs from other areas where it can be demonstrated that it would have an adverse impact when assessed against policies in the Framework.³ How has the Council considered the likely possible impacts of accommodating unmet housing needs from elsewhere as part of the Plan's preparation? What does this show and how have the results been shared and/or discussed with duty to cooperate partners?

6.1 Section 6 of the SA reviews 12 growth scenarios (see table 12), seven of which look at various ways of meeting the existing capped need of 678dpa (option 3-9), two look at a lower level of development with either no Green Belt or no AONB releases (options 1 and 2) and two look at a higher level of growth (meeting TWBC's uncapped need (741 dpa) (option 10), and meeting TWBC's uncapped need and SDC's unmet need (853 dpa) (option 11). Whilst we comment separately on the merits of the exercise undertaken in our response to issue 3, for the purposes of issue 1, we note that Table 12 suggests that option 10, with potential sustainable growth outside the AONB already maximised, is assumed to result in a high proportion of additional growth within the AONB settlements, and that option 11 is likely to result in further housing in the AONB as well as the loss of more Green Belt, including the losses around RTW/Southborough.

6.2 Whilst para 6.2.16 explains how the growth strategy evolved as a result of the SA process and the effects of the different distribution strategies on social, economic and environmental factors (as set out in paras 6.2.8 – 6.2.15) resulting in option 3, the Draft LP Strategy, we note that as far as the options 10 and 11 were concerned, para 6.2.7 indicates that; *'it is not appropriate to conclude that positive effects cancel out negative effects as the importance of each objective needs considering in its own right. Instead, the sustainability appraisal process recognises the interdependence of the three strands of sustainable development and the weight given nationally to the most highly affected environmental objectives and recommended that Growth Strategies 10, 11 and 12 were not pursued further.'*

6.3 It is clear from the DTC Statement, see for example SDC6.05 – 6.07 (p28/9), table 1 and paras 4.19 – 4.21; as well as para 2.16 of the draft SoCG, and section 4 of SDC11 (appendix B of the DtC statement), that the results of the SA process were shared with SDC.

³ Paragraph: 022 Reference ID: 61-022-20190315

6.4 Given the above, it would appear to us that there has been constructive, active and on an ongoing engagement with SDC, and that TWBC have tried to address SDC unmet needs and sought to demonstrated through the SA why they are unable to do so.

Q7. Has the Council been approached by other strategic policy-making authorities to accommodate any unmet needs in the Tunbridge Wells Borough Local Plan? What were the outcomes of these discussions?

No comment

Q8. Does the Plan seek to meet any unmet housing needs from elsewhere? If not, what are the reasons for this and is it justified?

No comment

Q9. The submitted Local Plan proposes two strategic developments (at Tudeley Village and Paddock Wood, including land at east Capel) which are situated reasonably close to the boundary with Tonbridge & Malling Borough. The Statement of Common Ground with Tonbridge & Malling Borough Council⁴ includes details of a 'Strategic Sites Working Group' which meets monthly and includes examples of some policy outcomes as a result of this joint working.

The Statement of Common Ground also clarifies that Tonbridge & Malling Borough Council has raised 'serious concerns' relating to the transport evidence base, transport impacts, flooding and infrastructure provision. In response, paragraph 5.12 concludes that both authorities will continue working to address these concerns, including where necessary with key infrastructure providers and statutory consultees.

How have these strategic cross-boundary matters been considered throughout the plan-making process and has the Council engaged constructively, actively and on an on-going basis in addressing them?

In answering this question, has the Council's approach been consistent with advice contained in the Planning Practice Guidance? It states that Inspectors will expect to see that strategic policy making authorities have addressed key strategic matters through effective joint working, and not deferred them to subsequent plan updates or are not relying on the Inspector to direct them. If agreements cannot be reached, Planning Practice Guidance advises that plans may still be submitted for examination, but, states that comprehensive and robust evidence of the efforts made to cooperate, and any outcomes achieved, will be required.

Whilst para 5.10 of the Oct 2021 SoCG with TMBC highlights the serious concerns TMBC raised in their Reg 19 reps of June 2021 (see appendix A4 and C4 of CD 3.132c(ii)), not only does para 5.2 make it clear that '*Both authorities will continue the discussions and collaborative working on the strategic cross boundary implications of the proposed growth at Tudeley and Paddock Wood, noting the TMBC concerns, and working to address these including where necessary key infrastructure providers and statutory consultees*', but para 5.7 and 5.8 make it clear how the Strategic Sites Working Group has helped to address these concerns, and frame the evolving plans for Tudeley Village and Paddock Wood, including land at east Capel, and the actions set out under para 5.21 demonstrate how the position has been and will continue to be addressed; but the DTC statements with KCC Highways and Southern Water (Appendix H8 and I8 respectively) demonstrate how TWBC

⁴ Contained within Core Document 3.132c(iv)

have sought to liaise with KCC Highways and Southern Water on the highway and drainage infrastructure associated with the proposed strategic allocation; with para 2.4 of the SoCG with KCC Highways giving examples of effective and ongoing joint working, especially in relations to the strategic allocations, and para 2.7 making it clear that *'Both TWBC and KCC agree that the other authority has met the requirements under the DTC on strategic matters that cross administrative boundaries and through effective and ongoing joint working'*. The DTC statement with SW highlighting at para 4.9 that it is agreed by the parties that the Local Plan demonstrates a good understanding of, and due regard to water and drainage and waste water infrastructure in its preparation; whilst paras 4.14, 4.16, 4.18, 4.21 and 4.22 demonstrate where reps made by SW have been addressed in the local plan preparation and submission.

Given the above, and having regard to the fact Para 7.2 of the DTC Statement with TMBC sets out the governance arrangements for the cooperation process and para 2 of TMBC's letter of the 3.6.21 on the reg 19 plan makes it clear that TMBC *'recognises the ongoing and pragmatic engagement in respect of the Duty to Cooperate to address the relevant cross-boundary issues and the continuing contributions to the infrastructure planning and master planning of the two strategic allocations at Tudeley and Paddock Wood'*; and the fact that the penultimate paragraph of policy STR/SS 1 indicates that the delivery of the infrastructure for the strategic expansion of Paddock Wood should be through ongoing discussions with relevant stakeholders, including Tonbridge & Malling and Maidstone Borough Councils' we believe TWBC have had due regard to the strategic cross-boundary matters associated with the strategic developments at Tudeley Village and Paddock Wood, and engaged constructively, actively and on an on-going basis with all the relevant parties in addressing them.

Whilst some matters will, given their nature, require continued ongoing discussions, TWBC have not sought to defer them to subsequent plan updates. Those of us promoting the strategic sites and attending the Strategic Sites Working Group meetings have been well aware of the discussions taking place and the actions arising for all parties. Indeed the SSWG has provided a forum that seeks to facilitate collaborative working in the delivery of the two strategic sites.

Q10. The Statement of Common Ground with Kent County Council (Highways) refers to the preparation of a Transport Assessment Addendum (dated September 2021) and a second Addendum dated October 2021. It then concludes that the Council and Kent County Council agree to continue working together over the coming weeks and months and will seek to update their positions through a further statement of common ground 'prior to the examination'.

What is the latest position regarding 1) the completion, publication and consultation on this evidence and 2) the statement of common ground?

No comment

Q11. How does the preparation of additional highways evidence and further dialogue with the County Council demonstrate compliance with the duty to cooperate, which relates to the preparation of the Plan and thus cannot be rectified post-submission?

The fact that additional highways evidence is still being prepared/ is being submitted after the submission of the Local Plan does not necessarily mean a failure of the DTC. It's clear

from the DTC statement with KCC that they agree that the duty has been complied with (see para 2.7). The fact the effective joint working remains on going is not contrary to the duty, it merely demonstrates that TWBC and KCC are being realistic in their approach and testing/ fine tuning things as they plan progresses, thus addressing queries raised and ensuring a sound plan, that is positively prepared, justified, effective, and consistent with national policy is before the inspector. It would in fact be disingenuous of them to not look to sense check their position. As long as that does not result in new evidence or a change in policy direction to that set out in the submission plan, that others do not have the ability to comment upon through the examination process, it does not prejudice anyone or conflict with the aims and objectives of the duty.

Q12. Has the Council engaged with all relevant local planning authorities, county councils and other prescribed bodies in the preparation of the Plan?

No comment

Q13. Has the Duty to Cooperate under sections 22(5)(c) and 33A of the 2004 Act and Regulation 4 of the 2012 Regulations been complied with, having regard to advice contained in the National Planning Policy Framework (the 'Framework') and the National Planning Practice Guidance (the 'PPG')?

No comment