

Duty to Co-operate Addendum

18/10/19

This note responds to the Inspector's concerns raised in her letter of 14th October 2019, specifically in relation to the Duty to Co-operate (DTC). The Council notes the concerns raised regarding DTC compliance. Respectfully, the Council considers that these concerns do not properly reflect the substance of the extensive DTC work undertaken, nor what the DTC actually requires. The strength with which the Council holds these views is leading it to submit this note now, rather than waiting. We understand that the Inspector has not yet reached a final conclusion on this matter and hope that this note provides the clarification and comfort that, contrary to the Inspector's initial views, a positive and pragmatic way forward can be found.

The following points are fundamental:

- Four years of active, ongoing and constructive engagement with neighbouring authorities and other DTC partners underlies the Local Plan, i.e. since 2015, when plan preparation began. This is documented in the DTC statement and appendices (SUP6a-d).
- Not a single neighbouring authority or other DTC partner has alleged non-compliance with the DTC.
- The DTC discussions were comprehensive. They covered wide-ranging cross boundary issues, including transportation, natural environment and employment.
- Further, at the heart of the discussions was the issue of housing need and the ability of authorities to meet their needs. It is difficult to see how there can have been a failure on this issue, when it was the central issue in several years of DTC work.
- The Inspector's letter appears to place particular weight on the fact that the Council did not formally ask neighbours to consider taking some of our unmet need until late in the process. Critically, this does not take account of the fact that the inability of the Council to meet its own need and whether others could assist had been the premise of discussions for some considerable time. Indeed neighbours were surprised, when we made the final request, at the fact that we felt it necessary at all.
- Of course, the DTC work did not lead to unmet need being met elsewhere. That does not represent a failing in the DTC work itself. Rather, it should lead one to look back at the extent to which SDC can meet those needs within the district itself. So far as the Inspector has concerns on that front, that is something which main modifications may be able to address. In the Council's view, that is the pragmatic and proper course to which consideration should now be given.

By way of further detail on these matters:

- The NPPF (2019) sets out (paragraphs 24-27) the importance of maintaining effective co-operation and LPAs are under a duty to cooperate with each other,

and with other prescribed bodies, on strategic matters that cross administrative boundaries.

- The NPPF states that authorities should collaborate to identify the relevant strategic matters which they need to address and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere. It also outlines that 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.
- The Council has had active, ongoing and constructive engagement with neighbouring authorities and other Duty to Co-operate partners, since 2015, when plan preparation began, in accordance with the requirements of the NPPF (paragraphs 24-27).
- This is documented in the Duty to Co-operate (DTC) statement and appendices (SUP6a-d).
- These discussions covered wide-ranging cross boundary issues, including transportation, natural environment and employment, but largely focused on the issue of housing need and the ability of authorities to meet their needs.
- The Council has been very open from the outset about the challenges to meeting its needs, due to Green Belt, AONB and other environmental constraints.
- All discussions with our Duty to Co-operate partners have genuinely, actively and constructively sought to address cross-boundary issues, but it is noted that it is not a Duty to Agree.
- Requests to assist with unmet need were sent to all eight of our neighbouring authorities and Maidstone BC on 11 April 2019. It is important to understand that this was not the first time the requests were made – this issue had been discussed at almost every DTC meeting since 2015. Indeed, the letters were sent in order to formally document the already known position of our neighbouring authorities, in preparation for examination.
- It is relevant to note, in response to this request, Tunbridge Wells Borough Council responded:

In respect of your question whether TWBC will be able to meet any of SDC's unmet housing need: Firstly, I am somewhat surprised by this request, given the Duty to Co-operate meetings which have taken place so far over recent years (both between TWBC and SDC and in the three way discussions with TMBC) have included discussions about any assistance with unmet need, but through these discussions it has been clear that TWBC is not in a position to assist either authority (if needed) in this regard;

- Indeed, this position was confirmed verbally by both Tunbridge Wells BC and Tonbridge and Malling BC (who form the West Kent HMA, together with SDC) at the Local Plan hearings on 24 September. They highlighted the ongoing,

constructive DTC engagement that has taken place since 2015 and their inability to assist SDC with any unmet housing need.

- Therefore the suggestion that the Council did not formally ask neighbours to consider taking some of our unmet need until late in the process fails to take proper account of the fact that this had been the premise of discussions for some time and indeed neighbours were surprised, when we made the final request, at the fact that we felt it necessary at all.
- There is no set format for DTC requests to assist with unmet need. We would suggest that the regular meetings with our partners where this issue was discussed, followed up with a request to document the position and signed Statements of Common Ground, is an appropriate means of demonstrating constructive engagement with neighbouring authorities on the issue of unmet housing need.
- Before submission and as part of our review process, the Council was assisted by the Planning Advisory Service (PAS), at the suggestion of MHCLG during a meeting with them on 6th March.
- A meeting with PAS was convened (24 April) and chaired by Keith Holland, to specifically discuss the issue of unmet housing need and our neighbours ability to assist us with this need. The meeting independently confirmed again that our neighbouring authorities are unable to assist with any unmet need. The minutes of the meeting set out that:

KH (Keith Holland) advised that, in his view, SDC has done all it can and is able to demonstrate that it has satisfied the duty to cooperate requirement (SUP6d).

A recurring theme throughout each update was the challenges of delivering housing in heavily constrained areas, particularly Green Belt, given the current policies in the NPPF, and also the inability of authorities to meet any needs outside of their own (SUP6d).

- The 'actions' in relation to housing, set out set out in the Statements of Common Ground with neighbouring authorities, detail that SDC:
 - will undertake a 5 year review in line with national guidance (as using a capped need figure).
 - will engage through the wider DTC forum with other neighbouring authorities in relation to strategic housing related matters, including unmet need.
- The Council has, through the hearings, agreed to provide a 'roadmap' to be included within the Local Plan, to set out how the issue of unmet need will be addressed. We have indicated that this document will be provided by w/c 28 October. Therefore, consideration of whether the issue of unmet need has been deferred to subsequent Plan updates should be informed by this forthcoming document.