

Appendix F

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My Ref:
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Date: 18th November 2019

Dear Ms Baker,

Sevenoaks District Council Local Plan

Further to your letter dated 28th October 2019, I am now able to provide a detailed response to the concerns you have raised regarding the Council's approach to meeting the duty to co-operate, in respect of the Sevenoaks District Local Plan. The following points should be read alongside the content of my initial responses dated 21st October 2019 (ED38) and 31st October 2019 (ED41) and the Addendum to the DTC Statement (ED38a).

The nature of the duty

The Council is broadly content with the legislative basis and policy framework for the duty that is described in your letter. We note the requirement to engage constructively and on an on-going basis and agree that paragraph 26 of the NPPF is central to the assessment of whether the requirements of the duty have been met. We are also aware of the requirement to prepare statements of common ground that was introduced in the July 2018 version of the NPPF and will address this elsewhere in this letter.

You will be aware that the then Secretary of State, James Brokenshire, wrote to the Chief Executive of the Planning Inspectorate in June of this year. Amongst other matters, he stressed to Inspectors the importance of being pragmatic in getting plans in place, in line with paragraph 35 of the NPPF.

The need for a pragmatic approach is essential for judgements surrounding the duty to co-operate, because a failure to meet the duty results in a failure to get a plan in place. Calls for pragmatism have also been echoed by successive Secretaries of State and are embedded within the Planning Inspectorate's own procedural guidelines. Careful judgement is required in the interpretation of terminology such as

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‘constructive engagement’ that considers outcomes, the reality of local circumstances and planning processes in equal measure.

The Council notes the specific content of paragraph 26 of the NPPF, which states 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.’

The Council has consistently referred to the jointly prepared evidence base documents that underpin many of the policies in the plan, as evidence of positive engagement. The preparation of a joint evidence base has been relevant in determining whether the duty has been met in other Local Plan examinations and it is disappointing that this positive aspect does not appear to have been considered in your conclusions.

Constructive engagement

The central criticism of the Council’s approach is the suggested lack of constructive engagement to assess whether unmet housing need could be accommodated in neighbouring authorities. Your letter raises a number of specific queries regarding the timing and nature of the discussions that took place, however a pragmatic conclusion on this matter must also consider whether a tangible and workable solution can be reached to accommodate unmet need elsewhere.

One possible approach discussed at the hearing sessions was the production of a joint sub-regional plan with neighbouring authorities. Feedback from the PAS workshop did indeed note that there is no legislative barrier that prevents authorities from working together to produce a document of this nature. The key issue however is whether this represents a realistic response to address unmet need now, or a possible solution for the future.

All authorities who attended the PAS workshop, including those from the West Kent housing market area, are at different stages of the plan making process and it is unrealistic to expect participants to abandon their respective plans, in favour of a sub-regional strategy. Such a document would take time to prepare and is not an instant solution to unmet need in Sevenoaks.

The discussions that have taken place as part of the West Kent Leaders forums were also raised at the hearing sessions. We understand the relevance of the Kent-wide approach, however they also represent a longer-term solution and no evidence has been put forward to suggest that a tangible and constructive mechanism exists to address unmet need through the duty. Indeed, the note from the PAS session attached to this letter is evidence that such a solution does not exist.

The Council’s response to the specific concerns you have raised regarding the nature and timing of engagement and cross boundary planning are contained in **Schedule A** attached to this letter. However, we are particularly concerned that you present a misleading account of our engagement with neighbours. The references to engagement with Tonbridge and Malling and Tunbridge Wells Borough Councils on page 4 ignores the positive comments made these by these authorities at the

examination hearing sessions. The views of neighbours must have a significant influence over the conclusion as to whether the duty has been met.

The timing of engagement

Your letter refers to the timing of when discussions regarding unmet need took place and when neighbouring authorities were formally advised of the Council's position. You note that under the duty to co-operate, it would have been reasonable to expect the Council to have contacted its neighbours as soon as it became clear that it would not be able to accommodate unmet need, which could have been at some point between April 2018 and the Regulation 19 consultation. The commentary in Schedule A notes the Council did not claim that full need could be met in April 2018.

The Council struggles to understand how you have reached a conclusion on the duty without knowing, even in broad terms, when the extent of unmet need became apparent. You will be aware that the July 2018 draft Local Plan was issued as a 'Regulation 18' consultation, which requires the Council to invite representors to make comments *'about what a local plan with that subject ought to contain'*. It follows that the Council could not have known the extent of unmet need until after the consultation on this document closed in September 2018.

In fact, the extent of unmet need became apparent after a full assessment of the comments received on this document. The Council could have gone back to neighbours at this point, however discussions had already indicated that a 'best case scenario' unmet need of 600 units could not be accommodated through the duty. It was therefore extremely unlikely that a higher unmet need figure would be met elsewhere.

The decision to publish the Regulation 19 version of the plan was undertaken with this knowledge, on the basis that activities associated with the duty could be undertaken up to the point of submission. The peer review process was instigated to run alongside the Regulation 19 consultation as a sense check for all aspects of the plan, including the approach to the duty. Had this process raised significant concerns, the Council would not have submitted the Plan. Instead, we would have engaged with the parties involved in the peer review to agree a suitable way forward.

Neighbouring authorities were provided with as much information as possible about the extent of unmet need during the production of the plan. It was also made clear that the sites contained in the Regulation 18 draft were identified as options on which the Council took a neutral position, rather than site specific allocations to meet a specific proportion of need. Responses to the detailed points in your letter are contained in Schedule A.

My letter of 31st October 2019 highlights concerns regarding the length of time it has taken to reach a conclusion on this matter. I would add that the Council took away a number of actions from the hearing sessions, including the production of a 'road map' to address unmet need and information on the delivery of specific sites. It seems highly irregular that the Council should be given these actions and then advised to withdraw the Plan due to fundamental failure in relation to the duty. This is misleading and unhelpful to all those participating in the examination process.

The Importance of the Peer Review

We are disappointed that you are dismissive of the conclusions reached by the PAS work and have chosen not to set out your concerns on this matter in more detail. From a procedural perspective, the peer review process was undertaken to avoid the circumstances that we now find ourselves in. The sequence of events that led to PAS being involved are as follows:

- Following the publication of the Regulation 19 Plan, the Council contacted the Planning Inspectorate in December 2018 to request a pre-submission Advisory Visit.
- The Advisory Visit was chaired by Jonathan Bore and took place on 6th February 2019. Key points of discussion at this session were the Council's approach to meeting housing need and also changing the base date of the plan from 2015 to 2019. The Council was informed at this session that the opportunity for on-going discussions associated with the duty to co-operate expired when the plan was submitted for examination.
- The Council was contacted by MHCLG following the Advisory Visit and a meeting arranged on 6th March 2019 to discuss the points raised by Jonathan Bore. The key outcome of this meeting was that MHCLG facilitated and funded the PAS workshop, which took place in 24th April 2019.

The comprehensive nature of the peer review, which sought to identify potential 'showstoppers' in advance of submission, was undertaken as a positive and pragmatic means of getting a plan in place in the most timely manner. The Council followed the advice provided by the Government and believes it would have been irresponsible to do otherwise. The conclusions of your report appear to undermine this advice and discourage Local Authorities from engaging with PAS, which provides an important service to all those involved in the planning process.

Next steps

The Council is currently preparing a pack of information, which includes minutes from the discussions referred to in Schedule A and details of how issues relating to the duty have been considered in other local authority areas. We are also discussing your conclusions with other parties involved in the examination process and will provide further commentary as this emerges.

We are keen to resolve these matters as quickly as possible so that a plan for Sevenoaks can be progressed and would welcome the opportunity to meet with you and/or representatives from the Planning Inspectorate, if this would help to facilitate and expedite matters.

The information contained in this letter reinforces our view that the requirements of the duty have been met. The Council believes that it has adopted a constructive approach to engagement and no evidence has been presented to indicate that unmet need could be accommodated in adjoining local authority areas. We are of the view that withdrawing the plan from examination at this stage fails all stakeholders in the process and does not represent a positive or pragmatic approach to plan making.

As noted in previous correspondence, it would be helpful to receive feedback on the other aspects of soundness to which you have referred. The Council will, of course, give serious consideration to your views on the approach it has taken to exceptional circumstances and the proportion of housing need that can be accommodated in the district.

Yours sincerely

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Strategic Planning Manager