TANDRIDGE LOCAL PLAN
TANDRIDGE HOUSING FORUM

OPINION

1. I am asked to advise the Tandridge Housing Forum\(^1\) (“the Forum”) as to whether the Council in preparing the Tandridge Local Plan (“TLP”) Tandridge District Council (“the Council”) have complied with the duty to co-operate imposed by section 33A of the Planning and Compulsory Purchase Act 2004 (“PCPA 2004”).

Main Material Facts

2. In December 2014 the Council published a document entitled “Duty to Cooperate Framework Scoping Statement” (“the 2014 Scoping Statement")\(^2\). In that statement the Council identified what they considered to be the key strategic housing matters\(^3\), and the bodies with whom those strategic matters were to be ‘discussed’\(^4\). Key strategic matters relating to other issues, such as employment land\(^5\) were also identified.

3. In November 2015 the Council published ‘A Paper setting out position of the Surrey Local Strategic Statement’\(^6\). At paragraph 4 that document states:

4. The authorities have all signed up to the Memorandum of Understanding in order to “provide a vehicle for cooperation and joint working between local authorities within Surrey.” Furthermore, the Surrey Strategic Planning and Infrastructure Board have agreed that a Local Strategic Statement (LSS) should be prepared.

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\(^1\) The Tandridge Housing Forum consists of a group of parties with an interest in land or with an interest in the provision of housing in Tandridge. The companies concerned include Cala Homes, Catesby Estates, Croudace, Fairfax Properties, Land Group UK, Millwood Designer Homes, Rydon Homes, Taylor Wimpey Strategic Land, Thakeham Homes, Wates Developments Ltd

\(^2\) Examination document SDTC 15

\(^3\) SDTC 15 paragraph 7.19

\(^4\) SDTC 15 paragraph 7.21

\(^5\) SDTC 15 paragraph 7.40

\(^6\) SDTC 14
5. In December 2015 the Council published a document entitled “Duty to Cooperate Statement Update” (“the 2015 DTC Update”\(^7\)).
   a. Paragraph 2.1 states:

   "This document is an update to the 2014 scoping statement, which reflects how the Council has applied the duty up to the point of the Regulation 18 Local Plan."

b. The proposed timescales and methods for engagement (in relation to housing) are set out at pages 12-13.

c. Appendix A contains notes relating to duty to cooperate meetings with LB of Bromley, Crawley BC, LB of Croydon, Reigate and Banstead BC, Sevenoaks DC, LB of Sutton, and Wealden DC.

   a. Table 1 on page 13 includes the following:

   In addition the other activities with the duty to cooperate bodies have been ongoing:
   1. Workshop to inform the methodologies for the Landscape Capacity and Sensitivity Assessment and Site-based Ecology Assessments (March 2016)
   2. Memorandum of Understanding signed with Mid Sussex. Will be reviewed at the appropriate point in Tandridge’s plan making when the number of homes it can deliver are understood.
   3. Continued involvement in the preparation of the Local Strategic Statement (LSS) for Surrey
   4. Continued work on an update to the joint Local Strategic Statement with all relevant authorities within the Gatwick Diamond area
   5. General ‘duty’ meetings/teleconferences with Sevenoaks, Mid Sussex, Reigate and Banstead and Croydon to discuss their emerging evidence, housing numbers and allocations and plan making stages. Discussions on Tandridge’s unmet need were noted but until a preferred approach is determined the level of unmet need could vary and therefore will be an ongoing discussion and an updated position will be set out in the Regulation 19 duty to cooperate statement.

\(^7\) Examination document SDTC 13
\(^8\) Examination document SDTC 12
6. Further Regulation 18 consultation on Local Plan: Sites Consultation (November 2016 – December 2016) including pre-consultation with east surrey and neighbouring authorities, as well as Surrey and Sussex County Councils (September 2016)

b. Appendix A contains notes of meeting with service providers.

   a. At Section 5 the Council identified the ‘duty to cooperate bodies’ with whom potential garden village locations were to be discussed.
   b. In each table which sets out actions taken in relation to a particular garden village other activities with consultation bodies are identified.
   c. Notes of meetings with Sevenoaks DC and with Reigate and Banstead BC are appended.

8. In December 2017 the Interim Local Strategic Statement for Surrey was published. Annex 1 to the document consists of a memorandum of understanding between the participating authorities. The duty to co-operate issues arising in East Surrey (within which Tandridge falls) were considered at paragraph 3.41. Paragraph 3.42 reads as follows:

> Addressing these strategic issues is, in reality, a much wider challenge and cooperation with authorities that fall outside the East Surrey sub-area, but have a functional relationship with it, will be vital to ensure that every attempt is made to meet development needs in an appropriate and sustainable manner


    a. Actions taken in relation to housing are listed at page 11.

\(^9\) Examination document SDTC 11
\(^10\) Examination Document SDTC 9
Between the Duty to Cooperate Statement update of August 2017 and this update statement (June 2018), the Council has been continuing to prepare and collate evidence and prepare a Regulation 19 Local Plan. In addition to the statutory consultation requirements, the Council shared a draft of the Regulation 19 with Duty to Cooperate bodies and also explained the spatial strategy and sites allocated at several meetings.

In addition the other activities with the Duty to Cooperate bodies have been ongoing:
1. General ‘duty’ meetings/teleconferences with all to discuss their emerging evidence, and Local Plan updates
2. Shared draft of Local Plan on 8 June 2018
3. Meeting on 13/14 June 2018 set out in Appendix A
4. Work on Surrey Local Strategic Statement and consideration of joint Local Plans
5. Publication of Gatwick Diamond Local Strategic Statement
6. Publication of Surrey Infrastructure Plan 2017
7. Regulation 19 consultation on Local Plan (July – August 2018)

b. Appendix A contains notes of duty to cooperate meetings held on 13th/14th June 2018 with Sevenoaks DC, Wealden DC, Mid Sussex DC, Reigate and Banstead BC, LB of Bromley, Crawley BC, and the LB of Croydon.

11. The Forum made representations on the Regulation 19 Plan. In those representations the Forum indicated that it was their view that the duty to cooperate had not been complied with. In that representation the Forum:
   b. Argued that no concrete actions had arisen as a result of the meetings held with neighbouring authorities.

12. On 18th January 2019 the Council submitted the TLP to the Secretary of State for examination. Paragraphs 6.2 and 6.3 of the regulation 22 version of the TLP state:

6.2 The Council adopted a Duty to Cooperate Scoping Statement in December 2014. The scoping statement was always intended to be a live document and updated to reflect the actions taken to demonstrate how the council has complied with the Duty to Cooperate throughout the Local Plan

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11 Examination Document HNS 6, at paragraphs 392 and 393
preparation. In preparing Our Local Plan, Duty to Cooperate Update Statements have been prepared at each formal stage of consultation and published accordingly.

6.3 The Duty to Cooperate Scoping Statement and all updates should be read together to observe how we have engaged with relevant parties on strategic matters. In particular how we have engaged on unmet housing needs, infrastructure, flooding and landscape matters and in determining the location for the Garden Community.

13. The Council have entered into statements of common ground with (amongst other bodies) Crawley BC, Guildford BC, Mid Sussex DC, Mole Valley District Council, Sevenoaks DC, Surrey CC, Wealden DC and West Sussex CC.

Instructions

14. I am asked to consider whether the Council, when preparing the TLP, have complied with the duty to cooperate.

15. I will first consider the legal and policy framework and then provide my advice on the question asked.

Legal and Policy Framework

Legal Framework

16. Section 33A of the PCPA 2004 provides:

(1) Each person who is—
(a) a local planning authority,
(b) a county council in England that is not a local planning authority, or
(c) a body, or other person, that is prescribed or of a prescribed description,
must co-operate with every other person who is within paragraph (a), (b) or (c) or subsection (9) in maximising the effectiveness with which activities within subsection (3) are undertaken.

(2) In particular, the duty imposed on a person by subsection (1) requires the person—
(a) to engage constructively, actively and on an ongoing basis in any process by means of which activities within subsection (3) are undertaken, and
(b) to have regard to activities of a person within subsection (9) so far as they are relevant to activities within subsection (3)

(3) The activities within this subsection are—
(a) the preparation of development plan documents,
and
(e) activities that support activities within any of paragraphs (a) to (c),

so far as relating to a strategic matter.

(4) For the purposes of subsection (3), each of the following is a “strategic matter”—
(a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and
........................................................................
(6) The engagement required of a person by sub-section (2) (a) includes, in particular —
(a) considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches to the undertaking of activities within subsection (3), and
(b) if the person is a local planning authority, considering whether to agree under section 28 to prepare joint local development documents.
(7) A person subject to the duty under sub-section (1) must have regard to any guidance given by the Secretary of State about how the duty is to be complied with

17. The bodies prescribed for the purpose of section 33A(1)(c) PCPA 2004 are identified in regulation 4(1) of the 2012 Regulations.
18. The duty applies to preparation of development plan documents (section 33A(3)(a) PCPA 2004). In Samuel Smith v. Selby DC12 the Court of Appeal considered the distinction between plan preparation and the stages that follow. That distinction was considered by Sales LJ at paragraph 28:

28 The stages of the plan-making process constituting, respectively, the preparation of a local development document, as provided for in section 19, and independent examination, as provided for in section 20, are distinct and separate from each other. The language of section 19 is consistent in referring to the activity of “preparing” the plan. The language of section 20 is consistent in referring to the “examination” of a plan that has, by then, been prepared and submitted to the Secretary of State for this further exercise to be carried out as the next stage of the total process. Section 20(2) states that an authority can only submit a plan for examination when the authority has “complied” with any relevant requirements (that is to say, the authority has finished doing everything required of it

12 [2015] EWCA Civ 1107 at paragraph 28
regarding the preparation of the plan as set out in section 19 and, when it applies, in section 33A) and the authority thinks the document is ready for independent examination (i.e. the authority thinks its preparation is complete and at an end). A plan can only be submitted for public examination once it has been prepared, and not while its preparation is still going on. The concept of plan preparation by the local planning authority and independent examination by an inspector being in any sense concurrent and overlapping stages of the process is alien to the statutory scheme. They are sequential stages. Preparation comes to an end before examination begins. The former is an activity undertaken by the local planning authority, the latter an activity undertaken by the inspector, albeit with scope for him to call for further work to be done by the authority with a view to making the plan sound. As Ouseley J. observed in paragraph 29 of his judgment, once the plan passes from the stage of preparation to the stage of examination, it leaves the authority's hands – save for the authority's power of withdrawal under section 22 – until it is able within the constraints of section 23 to adopt it.

19. In *Zurich Assurance v. Winchester City Council*\(^\text{13}\) Sales J held that deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be undertaken requires evaluative judgments.

110 The obligation (see subsection (1)) is to co-operate in “maximising the effectiveness” with which plan documents can be prepared, including an obligation “to engage constructively [etc]” (subsection (2)). Deciding what ought to be done to maximise effectiveness and what measures of constructive engagement should be taken requires evaluative judgments to be made by the person subject to the duty regarding planning issues and use of limited resources available to them. The nature of the decisions to be taken indicates that a substantial margin of appreciation or discretion should be allowed by a court when reviewing those decisions.

111 The engagement required under subsection (2) includes, in particular, “considering” adoption of joint planning approaches (subsection (6)). Again, the nature of the issue and the statutory language indicate that this is a matter for the judgment of the relevant planning authority, with a substantial margin of appreciation or discretion for the authority.

20. The extent of the duty was considered in *St Albans DC v. SSCLG*\(^\text{14}\).

a. At paragraph 38 Sir Ross Cranston followed the approach taken by Paterson J in *R (Central Bedfordshire Council) v. SSCLG*\(^\text{15}\)

\(^{13}\) [2014] EWHC 758 (Admin) at paragraph 110-111

\(^{14}\) [2015] EWHC 2167 (Admin)

\(^{15}\) [2017] EWHC 1751 (Admin)
What is required of a planning inspector in examining whether a local planning authority has performed its section 33A duty was spelt out by Paterson J in *R (on the application of Central Bedfordshire Council) v Secretary of State for Communities and Local Government* [2015] EWHC 2167 (Admin):

"[50] To come to a planning judgement on a duty to co-operate involves not a mechanistic acceptance of all documents submitted by the plan-making authority but a rigorous examination of those documents and the evidence received so as to enable an Inspector to reach a planning judgment on whether there has been an active and ongoing process of co-operation. The key phrase in my judgment is "active and ongoing". By reason of finding there were gaps as the Inspector has set out, he was not satisfied that the process had been either active or ongoing."

b. The duty to cooperate is not a duty to agree (paragraph 47).

c. At paragraph 51 Sir Ross Cranston made plain that once there is disagreement that is not the end of the matter:

51 Further, I accept the Secretary of State's submission that once there is disagreement, I would add even fundamental disagreement, that is not an end of the duty to cooperate, especially in an area such as housing markets and housing need which involve as much art as science, and in which no two experts seem to agree. As Paterson J underlined in *R (on the application of Central Bedfordshire Council) v Secretary of State for Communities and Local Government* [2015] EWHC 2167 (Admin), the duty to cooperate is active and on-going, and that to my mind means active and on-going even when discussions seem to have hit the buffers. In all the circumstances, my conclusion is that the Inspector did not reach an illogical or irrational conclusion as regards the duty to cooperate over housing.

21. One of the purposes of independent examination is for the inspector to determine:

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.\(^\text{16}\)

**Policy**

22. As the plan was submitted before 24\(^\text{th}\) January 2019 the policies in the NPPF 2012 apply when it is examined\(^\text{17}\).

\(^{16}\) Section 20(5)(c) PCPA 2004

\(^{17}\) NPPF 2019 paragraph 214
23. Guidance on Planning Strategically Across Development Boundaries is given at paragraphs 178-181 of the NPPF 2012. That advice includes the following:

Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework. As part of this process, they should consider producing joint planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.

24. The PPG on the Duty to Cooperate states:

If another authority will not cooperate this should not prevent the authority bringing forward a Local Plan from submitting it for examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved and this will be thoroughly tested at the examination. Local planning authorities should discuss their particular circumstances with the Planning Inspectorate prior to submitting the Local Plan.

Prior to submitting a Local Plan in these circumstances local planning authorities should have explored all available options for delivering the planning strategy within their own planning area. They should also have approached other authorities with whom it would be sensible to seek to work to deliver the planning strategy.

Local planning authorities should discuss their particular circumstances with the Planning Inspectorate prior to submitting the Local Plan.  

What outcomes are expected from the duty to cooperate?
Cooperation between local planning authorities, county councils and other public bodies should produce effective policies on strategic cross boundary matters. Inspectors testing compliance with the duty at examination will assess the outcomes of cooperation and not just whether local planning authorities have approached others.

Time for performance of the duty
25. The duty to cooperate is to be fulfilled at the preparation stage. That stage has passed once the plan is submitted. Accordingly, once a plan has been submitted any
deficiency in performance of the duty during preparation cannot be overcome by
further engagement after the plan has been submitted. If an inspector finds that the
local planning authority have not complied with the duty to co-operate s/he will be
obliged to recommend non- adoption of the plan\(^{20}\).

Advice
26. Section 33A(2)(a) PCPA 2004 imposed a duty on the Council “(a) to engage constructively,
actively and on an ongoing basis in any process by means of which activities within subsection (3) are
undertaken”. It should be noted that engagement is to be constructive, active and
ongoing.
27. Section 33A(6) required certain specific matters to be considered.
28. As a result the following main issues fall for consideration:
a. Was engagement active?\(^{21}\)
b. Was engagement ongoing?\(^{22}\)
c. Was engagement constructive (and collaborative)?\(^{23}\)
d. Did the Council’s engagement include consideration of:\(^{24}\)
   i. whether to consult on and prepare, and enter into and publish,
      agreements on joint approaches
   ii. whether to agree to prepare a joint local development document/s.
e. Did the Council have regard to the guidance given by the Secretary of State\(^{25}\).
29. It must also be recalled that the task that falls to the inspector is to determine
whether it would be reasonable to conclude that the section 33A duty has been
complied with\(^{26}\).
30. Given the Forum’s purpose and function, in considering the questions I have set
out below, I have concentrated on housing. Housing was identified as a key
strategic matter in the 2014 Scoping Statement. There can be little doubt that

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\(^{20}\) Section 20(7A) PCPA 2004
\(^{21}\) St Albans para. 27
\(^{22}\) St Albans para. 28
\(^{23}\) St Albans para. 29
\(^{24}\) Section 33A(6) PCPA 2004
\(^{25}\) Section 33A(7) PCPA 2004
\(^{26}\) Section 20(7)(b) PCPA 2004
the future housing requirement for the district and the question of how such a requirement may be accommodated gives rise to strategic issues.

Was engagement active?

Was engagement ongoing?

Was engagement constructive (and collaborative)?

31. I will consider these three issues together in relation to each local authority concerned.

32. In order to be active there should be continuing and frequent engagement.27

33. In considering whether engagement has been constructive and collaborative it is necessary to ask whether every effort has been made to secure the necessary cooperation.28

34. It is important to note that advice in the PPG that inspectors at EiPs will assess the outcomes of cooperation and not just whether local planning authorities have approached others.

LB of Bromley

35. The 2014 Scoping Statement identifies Bromley as a party with whom strategic matters are to be discussed.29

36. The 2015 DTC Update includes notes of a meeting with Bromley which took place on 30th September 2015. The notes record that:

- TDC and LBB unable to help each other meet housing targets at this moment in time. However, to share data and continuing communication.30

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27 St Albans at paragraph 27
28 St Albans at paragraph 29
29 SDTC 15 page 19
30 2015 DTC Update page 29
37. The 2018 DTC Update includes notes of a meeting with Bromley on 13th June 2018. At that meeting each council informed the other of their position on local plan preparation\textsuperscript{31}.

38. It is apparent that engagement with Bromley was not continuing or frequent. It was neither active nor ongoing. There was some engagement in 2015, but there was then a gap until 2018. In addition there is no evidence to show that the Council sought to engage constructively; it appears that the Council merely accepted Bromley’s position that it was unable to assist in meeting unmet need.

\textbf{Crawley BC}

39. Crawley were contacted to see if they wished to participate in a joint SHMA\textsuperscript{32}. Crawley fall into the general category of authorities who either felt that the housing market links were weak or that the timing of the Tandridge SHMA did not fit.

40. A meeting was held with Crawley on 30th September 2015\textsuperscript{33}. It is noted that, in relation to housing need, neither authority is able to help each other. The outcome recorded in the notes is to continue to work together on the Gatwick Diamond LSS.

41. The 2018 DTC Update includes notes of a meeting with Crawley on 14th June 2018. At that meeting each council informed the other of their position on local plan preparation\textsuperscript{34}. The notes also record:

TDC has explored all options to meet their housing needs target however 3,000 of unmet need will remain. It was noted that there were strong links between both councils and a willingness to assist where possible but equally each had other links and commitments within our Housing Market Areas.

42. The Council has entered into a statement of common ground with Crawley, the purpose of which is described at paragraph 1.2 of the statement:

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\textsuperscript{31} 2018 DTC Update page 30
\textsuperscript{32} 2014 Scoping Statement paragraph 7.12
\textsuperscript{33} 2015 DTC Update page 31
\textsuperscript{34} 2018 DTC Update page 32
“The purpose of this SCG is to set out the basis on which TDC and CBC have actively and positively agreed to work together to meet the requirements of the Duty to Cooperate.”

43. The actions are set out at paragraph 2.1.8 of the statement of common ground:

**Actions**
- TDC and CBC will engage through a wider Duty to cooperate forum with other neighbouring authorities outside TDC HMA in relation to housing related matters, including unmet need, five year housing trajectory, best fit HMAs, affordability, large scale developments and opportunities for meeting unmet need.
- TDC to undertake a 5 year review of the Local Plan.

44. Those actions relate to the future and do not set out any specific outcomes in relation to meeting housing need.

45. It is apparent that engagement with Crawley was neither active or ongoing. There was some engagement in 2015, but there was then a gap until 2018. In addition there is no evidence to show that the Council sought to engage constructively; it appears that the Council merely accepted Crawley’s position that it was unable to assist in meeting unmet need.

**LB of Croydon**

46. A meeting was held with Croydon on 1st October 2015. There is no reference to any request that Croydon meet some of Tandridge’s unmet need. The outcome on housing need is that there should be continued discussion. The outcome on housing supply is that the parties are to provide updates.

47. The 2016 DTC Update does not refer to further meetings or discussions with Croydon on housing need. It does refer to pre-consultation notification given.

48. The 2017 DTC Update includes notes of a meeting held on 9th August 2017 at which representatives of Croydon were present, and at which a presentation was given on the garden village proposal. It was also noted that:

35 2015 DTC Update page 33
“Discussions were had about the housing trajectory and the likely unmet need TDC may have and what help others could provide to meet the need.” 36

49. The 2017 DTC Update also includes notes of a meeting with Croydon on 29th June 2017 at which the Council outlined their preferred strategy37.

50. The 2018 DTC Update includes notes of a meeting with Croydon on 14th June 2018. At that meeting each council informed the other of their position on local plan preparation. Croydon informed the Council that they would be unable to assist in meeting housing need38.

51. The gap between meetings with Croydon is shorter than the gap in meetings with Bromley and with Crawley. However there is no record of any meetings or discussion with Croydon in the 2016 DTC Update. Additionally there is no clear evidence of any attempt to engage constructively, as the meeting notes appear to merely record each side’s position.

**Guildford BC**

52. In the 2014 Scoping Statement, Guildford is identified as one of the authorities with whom strategic matters need to be discussed39.

53. The 2015 DTC Update includes a response from Guildford on gypsy and traveller sites40 but not on housing.

54. The statement of common ground with Guildford states:

GBC sits well outside this functional area and the SHMA 2018 does not even reference Guildford and therefore it would not be appropriate to request an authority, such as GBC, where there is limited relationship to assist in meeting Tandridge’s unmet need. Further, GBC is not a neighbouring authority as set out in para 11b of the NPPF. In reality, people from Tandridge are unlikely to occupy housing in Guildford and therefore it would not

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36 2017 DTC Update page 56
37 2017 DTC Update page 57
38 2018 DTC Update page 34
39 2014 Scoping Statement page 19
40 2015 DTC Update page 59
provide a proactive and realistic solution. Further, GBC have informed TDC that due to constraints within the Borough, they could not help meet TDC unmet need.\textsuperscript{41}

55. It is clear that engagement with Guildford has not been active and ongoing.

\textbf{Mid Sussex DC}

56. A meeting was held with Mid Sussex on 30\textsuperscript{th} September 2015\textsuperscript{42}. There is no record of any request by Tandridge that Mid Sussex should accommodate unmet need. The outcome recorded is that the parties should continue to work together on the Gatwick Diamond LSS.

57. The 2016 DTC Update does not refer to further meetings or discussions with Mid Sussex on housing need. It does refer to pre-consultation notification given.

58. The 2017 DTC Update includes minutes of a meeting with Mid Sussex on 8\textsuperscript{th} August 2017\textsuperscript{43}. The notes suggest that both parties informed the other of actions they were taking. The 2017 DTC Update also includes notes of a meeting held on 9\textsuperscript{th} August 2017 at which a representative of Mid Sussex was present, and at which a presentation was given on the garden village proposal. It was also noted that:

"Discussions were had about the housing trajectory and the likely unmet need TDC may have and what help others could provide to meet the need."\textsuperscript{44}

59. The 2018 DTC Update includes notes of a meeting with Mid Sussex on 13\textsuperscript{th} June 2018. At that meeting each council informed the other of their position on local plan preparation\textsuperscript{45}.

\textsuperscript{41} SDTC 2 paragraph 2.1.6
\textsuperscript{42} 2015 DTC Update page 35
\textsuperscript{43} 2017 DTC Update page 54
\textsuperscript{44} 2017 DTC Update page 56
\textsuperscript{45} 2018 DTC Update page 26
60. The statement of common ground with Mid Sussex includes a statement that MSDC is unable to meet unmet need from Tandridge\textsuperscript{46}. The actions agreed with Mid Sussex are:

- TDC and MSDC will agree a governance structure within the next two years so that joint strategic plans are prepared to consider where unmet need could be met, including working together through the LSS process on strategic priorities affecting the LEP.
- TDC to undertake a 5 year review of the Local Plan.
- MSDC will carry out a review of their District Plan in 2021.
- TDC to engage with MSDC on preparation of the South Godstone Garden Community Area Action Plan.

61. The meeting notes indicate that the Council took few, if any, steps to engage constructively with Mid Sussex on whether unmet need from Tandridge could be met in Mid Sussex, a district which does not have the same Green Belt constraints as Tandridge. This failure to engage may be said to be of particular importance given the statement made in the Interim Strategic Statement for Surrey\textsuperscript{47} that cooperation with authorities outside East Surrey but which have a functional relationship with it, will be vital. On that basis engagement was not constructive or collaborative.

\textbf{Mole Valley BC}

62. In the 2014 Scoping Statement, Mole Valley is identified as one of the authorities with whom strategic matters should be discussed\textsuperscript{48}.

63. The 2015 DTC Update includes a response from Mole Valley on gypsy and traveller sites\textsuperscript{49} but not on housing.

64. The 2017 DTC Update includes notes of a meeting held on 9\textsuperscript{th} August 2017 at which a representative of Mole Valley was present, and at which a presentation was given on the garden village proposal. It was also noted that:

\begin{footnotes}
\item 46 SDTC 3 paragraph 2.11
\item 47 SDTC 10 paragraph 3.42
\item 48 2014 Scoping Statement page 19
\item 49 2015 DTC Update page 63
\end{footnotes}
“Discussions were had about the housing trajectory and the likely unmet need TDC may have and what help others could provide to meet the need.”

65. The statement of common ground with Mole Valley BC states:

MVDC sits outside this functional area and the SHMA 2018 identifies that Wealden displaces Mole Valley in the top ten for average migration flows, compared to the 2015 paper. This lessens the relationship between Tandridge and Mole Valley and therefore it would not be appropriate to request an authority, such as MVDC, where there is limited relationship, to assist in meeting Tandridge's unmet need. In reality, people from Tandridge are unlikely to occupy housing in Mole Valley and therefore would not provide a proactive and realistic solution. Further, MVDC have informed TDC that due to constraints within the District, they could not help meet TDC unmet need.

66. It is clear that engagement with Mole Valley was neither active nor ongoing in that the only reference to discussions on housing need appears to be in the 2017 DTC Update. Further there is no evidence that the Council have engaged constructively with Mole Valley; the Council appear to have accepted that Mole Valley are unable to accommodate any unmet need from Tandridge without engaging on the issue.

**Reigate and Banstead BC**

67. A meeting was held with Reigate and Banstead on 1st October 2015. It is noted that neither authority is able to meet its own needs. The outcome is to continue to work together on the Gatwick Diamond LSS and Surrey LSS and share numbers in relation to housing land supply.

68. The 2016 DTC Update does not refer to further meetings or discussions with Reigate and Banstead on housing need. It does refer to pre-consultation notification given.

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50 2017 DTC Update page 56
51 SDTC 4 paragraph 2.1.6
52 2015 DTC Update page 38
69. The 2017 DTC Update includes minutes of meeting with Reigate and Banstead on 24th May 2017. The notes suggest that both parties informed the other of actions they were taking. There is no evidence that discussion of meeting housing need took place. The 2017 DTC Update also includes notes of meeting held on 9th August 2017 at which a representative of Reigate and Banstead was present, at which a presentation was given on the garden village proposal. It was also noted that:

“Discussions were had about the housing trajectory and the likely unmet need TDC may have and what help others could provide to meet the need.”

70. The 2018 DTC Update includes notes of a meeting with Reigate and Banstead on 14th June 2018. At that meeting each council informed the other of their position on local plan preparation. The notes of the meeting also record the following:

TDC have explored all options to meet their housing needs target however 3,000 of unmet need will remain. RS confirmed that despite currently exceeding their own 460pa housing need, RBBC would be unable to meet any of TDC’s unmet need.

71. In their formal response to the regulation 19 consultation on the TLP Reigate and Banstead stated that they had no available capacity to meet any of Tandridge’s unmet needs and then stated “However, we would like to assure you that we will co-operate closely with you in reviewing this position as and when appropriate and request your commitment to do likewise.” There is no indication as to how the position is to be reviewed, or as to what form the co-operation will take.

72. The meeting notes show that discussions have taken place over the years, but there is little or no evidence of constructive engagement. For example it does not appear that Tandridge sought to engage with Reigate and Banstead on whether,

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53 2017 DTC Update page 22
54 2017 DTC Update page 56
55 2018 DTC Update page 31
56 Letter from RBBC’s Director of Place Services dated 29th August 2018
despite the assertion that they had insufficient capacity, they could accommodate unmet need. As with its discussions with other local authorities it appears that Tandridge merely accepted Reigate and Banstead’s statements which that it could not accommodate unmet need from Tandridge. In that respect engagement was not constructive.

Sevenoaks DC

73. A meeting was held with Sevenoaks on 14th October 2015\textsuperscript{57}. The outcome of the meeting was that the councils were unable to help each other and would continue to work together, and share numbers on sites situated on or near the boundary.

74. The 2016 DTC Update does not refer to further meetings or discussions with Sevenoaks on housing need. It does refer to pre-consultation notification given.

75. The 2017 DTC Update includes minutes of meetings with Sevenoaks on 3\textsuperscript{rd} and 17\textsuperscript{th} May 2017\textsuperscript{58}. The notes suggest that both parties informed the other of actions they were taking. Potential areas for discussion/co-operation were identified at the 17\textsuperscript{th} May meeting. The 2017 DTC Update also includes notes of meeting held on 9\textsuperscript{th} August 2017 at which a representative of Sevenoaks was present, at which a presentation was given on the garden village proposal. It was also noted that:

“Discussions were had about the housing trajectory and the likely unmet need TDC may have and what help others could provide to meet the need.”\textsuperscript{59}

76. The 2018 DTC Update includes notes of a meeting with Sevenoaks on 13\textsuperscript{th} June 2018. At that meeting each council informed the other of their position on their local plan preparation\textsuperscript{60}.  

\textsuperscript{57} 2015 DTC Update page 41
\textsuperscript{58} 2017 DTC Update page 23
\textsuperscript{59} 2017 DTC Update page 56
\textsuperscript{60} 2018 DTC Update page 26
77. The statement of common ground with Sevenoaks records the following actions:

Consequently, both councils will continue to work together and identify the position as both TDC and SDC prepare to review their Local Plan every 5 years.

Actions
- TDC and SDC will engage through the wider Duty to cooperate forum with other neighbouring authorities outside TDC HMA in relation to housing related matters, including unmet need, five year housing trajectory, best fit HMAs, affordability, London’s growth, large scale developments and opportunities for meeting unmet need.
- TDC and SDC to undertake a 5 year review of the Local Plan.\(^{61}\)

78. The meeting notes show that discussions have taken place over the years, but there is little or no evidence of constructive engagement. For example it does not appear that Tandridge sought to engage with Sevenoaks on whether they could accommodate unmet need. As with its discussions with other local authorities it appears that Tandridge merely accepted Sevenoaks’s statements which that it could not accommodate unmet need from Tandridge. In that respect engagement was not constructive.

Surrey CC

79. A meeting was held with Surrey on 30\(^{th}\) September 2015\(^{62}\). It was noted that no action was necessary on housing need and housing land supply.

80. The 2016 DTC Update does not refer to further meetings or discussions with Surrey on housing need. It does refer to pre-consultation notification given.

81. Given Surrey CC’s functions it can legitimately be said that it was not appropriate for Tandridge to pursue discussions with Surrey on housing need in any further detail.

London Borough of Sutton

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\(^{61}\) SDTC 5 paragraph 2.1.11
\(^{62}\) 2015 DTC Update page 43
82. A meeting was held with Sutton on 1st October 2015. The councils discussed meeting joint needs but they were unable to help each other- no further action is referred to. Co-operation on housing mix was considered.

83. The 2016 DTC Update does not refer to further meetings or discussions with Sutton on housing need. It does refer to pre-consultation notification given.

84. The 2017 and 2018 DTC Updates do not refer to any further discussions with Sutton on housing issues.

85. It is clear that engagement with Sutton has not been active and ongoing.

**Wealden DC**

86. A meeting was held with Wealden on 1st October 2015. There is no record of any specific request by Tandridge that Wealden should accommodate unmet need, although the outcome is noted as being that neither council is able to help the other- no further action is noted on housing need. It is noted that Wealden should be consulted on the Lingfield and Dormansland Neighbourhood Plans.

87. The 2016 DTC Update does not refer to further meetings or discussions with Wealden on housing need. It does refer to pre-consultation notification given.

88. The 2018 DTC Update includes notes of a telephone call with Wealden on 13th June 2018. At that meeting each council informed the other of their position on local plan preparation.

89. The statement of common ground with Wealden records:

2. 1.8 Through duty to cooperate meetings, WDC have identified that they sit within a different HMA which are meeting their own needs and there is no available capacity to meet TDC's unmet need due to constraints. Discussions would need to first occur with neighbouring authorities in the HMA to assist with any unmet need.

**Actions**

- TDC and WDC will engage through a wider Duty to Cooperate forum with other neighbouring authorities outside TDC HMA in relation to housing related matters, including unmet need, five year housing trajectory, best fit HMAs, affordability, large

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63 2015 DTC Update page 45
64 2015 DTC Update page 48
65 2018 DTC Update page 27
scale developments and opportunities for meeting unmet need.

- TDC to undertake a 5 year review of the Local Plan.
- WDC to undertake a review of the Wealden Local Plan in accordance with Policy.  

90. The absence of notes of meeting/s with Wealden in 2016 and 2017 indicates that engagement was not active and ongoing. Further there is little evidence that Tandridge engaged constructively in the sense of testing whether Wealden was able to contribute to meeting unmet need. As with Mid Sussex, this failure to engage may be said to be of particular importance given the statement made in the Interim Strategic Statement for Surrey that cooperation with authorities outside East Surrey but which have a functional relationship with it, will be vital.

**Conclusion**

91. Once the Council had identified the local authorities and other bodies with whom they intended to engage, they were under a duty to do so constructively, actively and on an ongoing basis.

92. The Council were under a duty to cooperate with every other person (section 33A(1) PCPA 2004) and were required to engage, constructively, actively and on an ongoing basis. Therefore, if in respect of one or more of the persons with whom they were to cooperate, they did not engage constructively, actively and on an ongoing basis, they failed in their duty.

93. Despite identifying the relevant authorities in the 2014 Scoping Statement it is clear from the documents that they rely upon, that the Council did not engage actively and on an ongoing basis with each of those authorities.

94. Further when meetings were held, it appears that often, engagement was limited to each side setting out its own position. The duty to cooperate is not a duty to agree, however once a party has stated it cannot accommodate unmet need, that should not be the end of the matter. In the case of Tandridge, on being told by an authority that it could not accommodate Tandridge’s unmet need, there is

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66 SDTC 7 paragraph 2.1.8
67 SDTC 10 paragraph 3.42
little or no evidence that Tandridge pursued the point. In that respect Tandridge did not engage constructively.

95. For all those reasons, and based on the evidence to which I have referred, it is my view that, in preparing the TLP, the Council failed in its duty to engage constructively, actively and on an ongoing basis with every other person identified at section 33A(1) PCPA 2004 in maximising the effectiveness with which the preparation of development plan documents are undertaken.

**Did the Council consider**

i. whether to consult on and prepare, and enter into and publish, agreements on joint approaches

ii. whether to agree to prepare a joint local development document/s.

96. Section 33A(6) imposed a duty on the Council when engaging (as required by section 33A(2)(a)) that the engagement should include, in particular, “considering whether to consult on and prepare, and enter into and publish, agreements on joint approaches” and “considering whether to agree under section 28 to prepare joint local development documents.”. Those requirements are imposed by statute, and if the engagement (in respect of every other person who is within section 33A(1)) did not include considering whether to prepare, and enter into and publish, agreements on joint approaches and to prepare a joint local development documents, the duty to cooperate would not have been fulfilled.

97. The Council did consider whether to prepare a joint SHMA with other authorities.

98. The 2014 Scoping Statement refers to guidance recommending that consideration be given to preparing joint local development documents. The 2014 Scoping Statement does not refer to the statutory duty (imposed by section

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68 2014 Scoping Statement paragraphs 7.12 to 7.13
69 2014 Scoping Statement paragraph 1.6
33A(6)(b) PCPA 2004) that when engaging consideration should be given to preparing joint local development documents. The Scoping Statement does not indicate how the Council intended to fulfil that duty.

99. Paragraph 3.4 of the 2015 DTC Update refers to the range of means of co-operation and those means include preparing joint development documents. The notes of the various meetings with other councils do not indicate that there was any engagement on the issue of preparing joint development documents.

100. Paragraph 3.4 of the 2016 DTC Update refers to the range of means of co-operation and those means include preparing joint development documents. Reference is made to a joint Local Strategic Statement with all relevant authorities within the Gatwick Diamond area\textsuperscript{70}. The notes of the various meetings with other councils does not indicate that there was any engagement on the issue of preparing joint development documents relating to housing. The notes of meetings on local plan infrastructure needs do include a heading “Are there any opportunities for joint working/strategic projects that we could benefit from or feed into?” but there is no specific reference to joint development documents.

101. The 2017 DTC Update includes reference to the fact that if Redhill Aerodrome were to come forward as a preferred garden village site a joint Area Action Plan would be required\textsuperscript{71}. A similar reference is made in relation to a garden village on land west of Edenbridge\textsuperscript{72}.

102. The 2018 DTC Update states that there has been “Work on Surrey Local Strategic Statement and consideration of joint Local Plans”\textsuperscript{73}. The Interim Strategic Statement for Surrey 2016-2031 does not appear to envisage joint local plans\textsuperscript{74}.

103. On the basis of the documents referred to above there are few references to consideration of joint local plans. In my view it is clear, on the basis of the documents I have referred to that there has not been active engagement on an

\textsuperscript{70} 2016 DTC Update page 13
\textsuperscript{71} 2017 DTC Update pages 19, 42
\textsuperscript{72} 2017 DTC Update page 21
\textsuperscript{73} 2018 DTC Update page 12
\textsuperscript{74} Examination Document SDTC 10
ongoing basis in relation to every other person identified at section 33A(1), which includes considering whether to agree to prepare joint local development documents. Reference is made in the 2018 DTC Update to the consideration of joint local plans, but that reference does not provide evidence of ongoing discussion of that issue. Further the notes of meetings with individual councils do not refer to such consideration. On that basis, and absent some further evidence, in my view an inspector could not rationally come to a view that it was reasonable to conclude that the Council have complied with the duty to co-operate.

**Conclusion**

104. For the reasons set out above, it is my opinion that, in preparing the TLP, the Council failed to fulfil the duty to cooperate.

105. If I can be of any further assistance at this stage, please contact me in chambers.

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Neil Cameron QC  
2nd April 2019
TANDRIDGE LOCAL PLAN

TANDRIDGE HOUSING FORUM

OPINION

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