Examination – Note for Inspector

Sevenoaks Examination – Duty to Cooperate

October 2019
1. This note responds to the THF document entitled “Note on Sevenoaks Local Plan Document ED37” raising further issues relating to the DTC. The Council has, in its M1 statement and throughout the examination, provided examples of DTC cooperative working including a number of successful outcomes.

2. A helpful list of over 40 bodies treated as DTC bodies, none of whom have DTC objections to the adoption of the eLP, appears at [SDTC-15/34-35].

3. THF’s reliance on the position at Sevenoaks to support its contention that Tandridge has failed the DTC is misconceived in principle, logic and fact for the main reasons set out below.

4. The essential basis for THF’s submission is a mirror principle: If there is a DTC between A and B and B fails, then A should also fail unless there are “cogent and compelling” reasons for a different conclusion.

5. The first problem with that submission is that the Sevenoaks inspector has not reached a final conclusion on the matter. Their ED43 makes clear that the inspector will not be responding further to recent correspondence before the general election.¹ It will

¹ https://www.sevenoaks.gov.uk/downloads/file/2832/ed43_-_holding_response_from_the_planning_inspector_to_letter_ed42
also be noted that in neither ED37 or the more detailed ED40 is Tandridge even mentioned.

6. The most obvious flaw with such a mirror principle is that DTC bodies do not co-operate with only one body, but with many (over 40 in the case of Tandridge), and the DTC is decided by looking at the matter as a whole and applying planning judgment to it.²

7. That flaw is also shown in previous inspectors’ reports. Again, one obvious example is the failure by Central Bedfordshire Council to pass the DTC in their 2014 examination (i.e. the previous examination to the one currently underway).
   a. The most important element of CBC’s failure was a failure to co-operate adequately in meeting Luton’s very substantial unmet housing need.
   b. That failure did not prevent Luton passing the DTC in 2017 in the same round of plans, but in the context of its own examination, for the reasons set out in the inspector’s report.³
   c. That simply demonstrates the need to focus on what actions the examined authority has taken, and not those of its neighbours (which may or may not be sufficient to meet the DTC as far as each of those neighbours is concerned).

8. The third problem is that there is no issue of potential inconsistency between two examining inspectors here.

² As the inspector’s decision on this issue is one of planning judgment, it could only be later upset if it displayed some conventional error of public law such as being irrational.

a. The need to identify carefully whether situations truly are the same or sufficiently similar is addressed in caselaw including **CPRE v. Waverley BC [2019] EWCA Civ 1826** at paras [45], [54] – the question will often turn on context and the “available evidence” [54]

b. The evidence before the Sevenoaks inspector is patently quite different from the evidence before the examination. So is the context.

i. DTC bodies were raising DTC issues relating to housing before the Sevenoaks examination. None do so here.

ii. Sevenoaks have decided to plan on the basis of a formally agreed HMA definition that does not include Tandridge. This is the West Kent HMA made up of 3 authorities – Sevenoaks, TWBC and TMBC. The obligation in national policy is to seek to meet housing need across the relevant HMA. Further, based on SHMA analysis, the strongest relationships Sevenoaks has outside of the HMA, are with a number of different authorities, not Tandridge.\(^4\) This is what led to the commissioning of different SHMAs, but it should be noted that Tandridge considered whether to engage in joint working with Sevenoaks in this respect.\(^5\)

iii. The inspector’s criticisms of Sevenoaks included a key criticism that “the Council did not formally ask neighbouring authorities if they were in a position to address its unmet housing need until just before\(^6\)

\(^4\) SDTC-5/4/2.1.4-2.1.5

\(^5\) SDTC-15/17/7.12-7.13

\(^6\) The inspector found that happened on 11 April 2019, after the period of consultation on the Reg 19 version of the plan had concluded; the plan was submitted on 30 April 2019 – see ED40 pp.3-4
the Local Plan was submitted for examination. I am not satisfied therefore . . .”\textsuperscript{7}. The inspector concluded Sevenoaks were simply deferring the issue. Both the other HMA authorities submitted evidence supporting the inspector’s view and complaining that Sevenoaks had not met the DTC.\textsuperscript{8} They appeared at the relevant hearing session.\textsuperscript{9}

iv. By stark contrast on this key point Council’s evidence in the DTC section of the examination library demonstrates a substantial history of documents many published well before submission of the eLP running from 2014 investigating whether other authorities (including Sevenoaks) could assist with unmet need; and considering the evidence informing their respective plan processes as they evolved.\textsuperscript{10}

\begin{itemize}
  \item \textsuperscript{7} ED37 p.1
  \item \textsuperscript{8} ED40 p.4
  \item \textsuperscript{9} file:///Users/Work/Downloads/Agenda_Day_1_V.2.pdf
  \item \textsuperscript{10} SDTC-13 (2015), see p.13/Point 7 in table, and the meeting minutes with Sevenoaks on p.41 which confirm, for example, that TDC is unlikely to be able to meet its own need, and the respective SHMA’s showed very minor links between the two, with each having stronger connections elsewhere; but record an agreement to share information regarding housing numbers on the sites on/near the boundary and continue to work together. In 2016 see SDTC-12 p.13/Points 5 and 6, and Appendix C sending out the Reg 18 consultation to Sevenoaks amongst others.

To similar effect in 2017 the then four potential GV locations, including LWoE, were discussed: SDTC-11, p.56 meeting on 9.8.17. The Reg 18 Sevenoaks I&O consultation was scheduled for c. Aug-Sept 2017 with a second Reg 18 scheduled for Spring 2018: SDTC-11 p.24 (App B). It was recognised that LWoE was not in line with Sevenoaks’ I&O development strategy and consultation draft and as such would be unlikely to be in the final SDC plan; however, it was not ruled out at that stage: SDTC-11/13/4.11-4.13. The realistic need for cross authority consensus on such matters was recognised: 10/4.1-4.3. The potential for LWoE inclusion was discussed, but further identified work on both sides was required (Point 4 in table). SDTC-11 set out DTC tables for each of the 4 GV options. The Table for LWoE is Table 6 on p.20, which clearly indicates continuing joint working on this possibility. Point 8 of the table notes “If the preferred location, seek agreement to progress work on an Area Action Plan” (emphasis supplied).
v. Accordingly, the two positions are, patently, not the same or
sufficiently similar to engage the principle of consistent decision
making.

9. Fourth, the potential opportunity relating to Land West of Edenbridge (“LWoE”) was
not left out of account in this plan process.

a. It is clear that it was investigated through the evidence base\textsuperscript{11} and through
DTC discussions. Those investigations concluded that the site was potentially
suitable and available in broad location terms.\textsuperscript{12}

b. However, Sevenoaks made clear they would not take that site forward through
their plan.\textsuperscript{13}

c. Consistent with that statement they did not seek to do so.\textsuperscript{14}

d. It is therefore fanciful, and wholly devoid of any supporting evidence, to think
that pursuing such an option, with an authority outside the HMA, in the face
of Sevenoaks’ clear decision about it (supported by their own work pursuant
to Reg 18 and ultimately Reg 19), remained realistic.\textsuperscript{15}

e. The DTC is not a duty to agree, and Sevenoaks did not agree with the
potential proposition put to them. The idea of joint planning for that prospect
is therefore equally unrealistic in the circumstances which arose.

\begin{footnotes}
analysis.
\item[12] SPS-1/18/3.18
\item[13] See, e.g. SAD-3/74/Section 14; MD-5/227
\item[14] SAD-3/74/Section 14.
\item[15] As to the importance of realism and the HMA considerations, see the Luton inspector’s report at 9/29-30.
\end{footnotes}
10. The further THF submissions do not demonstrate any failure to comply with the DTC. There is evidence of compliance with the duty, both specifically with regard to LWoE, Sevenoaks as an authority, and more generally. It is straightforward to distinguish this situation from the one apparently prevailing at Sevenoaks.