

Examination of the Dartford Borough Local Plan

Statement on behalf of Taylor Wimpey UK Ltd

Matter 1 – Procedural and legal requirements including the Duty to Co-operate

May 2022

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Contents

1.	Introduction	3
2.	Response to Issues and Questions for Matter 1 – Procedural and legal requirements including the Duty to Co-operate	4

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Client

Taylor Wimpey UK Ltd

Our reference

TAYS3108

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Introduction

- 1.1 This statement is submitted on behalf of Taylor Wimpey UK Ltd for purposes of the Examination of the Dartford Borough Local Plan.
- 1.2 The statement responds to the Inspectors' Issues and Questions for Matter 1 – Procedural and legal requirements including the Duty to Co-operate.
- 1.3 The concerns outlined by our client at the Regulation 19 stage, on issues pertaining to the plan's legal compliance and soundness, have not in our view been overcome thus far. If anything, the documents published by the Council for examination purposes serve to highlight the deficiencies evident in the production of the plan now submitted.
- 1.4 Accordingly, we have examined the Inspector's questions for Matter 1 and provide responses to those we wish to contribute to debate on. We have also respectfully requested the opportunity to participate in the forthcoming hearing sessions to assist the Inspector further on such matters.

Response to Issues and Questions for Matter 1 – Procedural and legal requirements including the Duty to Co-operate

Issue 1 - Duty to Co-operate

Question 1.11. Overall, has the Council maximised the effectiveness of the Local Plan by engaging constructively, actively and on an ongoing basis with the prescribed bodies on relevant strategic matters during the preparation of the Local Plan and what form has this taken?

- 2.1 Paragraph 1.30 of the 'Dartford and Ebbsfleet, Housing Needs Assessment' (DBC, October 2019) confirmed the borough has strong functional and housing market relationships with neighbouring authorities to the east and west at Gravesham Borough Council (GBC) and the London Borough of Bexley (LBB) in particular. The latest update to this assessment (Dartford Borough Council, August 2021) confirms, at section 3, that this relationship continues and has grown further over the period 2017-2019.
- 2.2 As we outline below, the potential for unmet housing needs from such authorities was a known and potential prospect during the early iterations of the Dartford Local Plan review. In addition, since at least 2018 DBC would have been aware of the potential for other neighbouring authorities, such as Sevenoaks District Council (SDC), likely to seek assistance with unmet needs.
- 2.3 In the context of the Councils legal duty to cooperate on such matters and NPPF Paragraph 35 requirements to ensure plans are positively prepared, we therefore find it surprising the Council did not seek to test reasonable alternative growth options that embraced the possibility of such unmet needs, principally through the Local Plan Sustainability Appraisal process, to at least understand whether assistance could have been given. As we outline in our comments pertaining to the Sustainability Appraisal process at Issue 2, there is no evidence we can find to suggest this was the case.
- 2.4 The Council equally chose not to commission a Green Belt assessment as part of the early stages of local plan production process. This appears to have been informed by a predetermined assumption that exceptional circumstances did not exist to justify assessing the contribution of Green Belt site options. As outlined in our Regulation 19 representations (Policy S4), there are several grounds to suggest there is a need for an upward adjustment to the boroughs housing requirement, other than just for unmet needs of adjoining LPAs, that would have justified an exceptional need to at least assess such options. We return to this in our response to Issue 2.
- 2.5 Paragraph 4.109 of the Sustainability Appraisal (LUC, July 2021) accompanying the submitted Local Plan instead asserts the Council have tested (without the benefit of a Green Belt assessment) an alternative option including Green Belt lands and concluded this to perform worse than others. This alternative option comprises 1D, as referenced at Appendix C, to '*Reject a brownfield land focus, in favour of new growth locations*

elsewhere in the Borough, including more dispersed development that may include locations within the Green Belt.'

- 2.6 This is not in our view a 'reasonable alternative', it is an extreme and unreasonable alternative that predictably results in more negative effects when compared with others tested. We would not advocate rejecting a brownfield land focus, as this would be contrary to national guidance. Rather we advocate a balanced approach, with reasonable Green Belt site options tested to assess what contribution and benefit could be derived from such sources during the early iterations of the plans production, when housing need and supply considerations were still in a state of flux.
- 2.7 Contrary to paragraph: 010 Reference ID: 2a-010-20201216 (NPPG, 2020)], that guides LPAs to ensure their housing requirement is, *'.....assessed prior to, and separate from, considering how much of the overall need can be accommodated (and then translated into a housing requirement figure for the strategic policies in the plan).'*, the Council appear to have proceeded with a predetermined assumption that exceptional circumstances do not exist to justify assessing Green Belt site options.
- 2.8 Paragraph 2.50 of the Pre-Submission Local Plan (Feb 2021) instead confirmed that the borough housing requirement:
- 'Is directly based on the actual developable supply of housing land (for over 10 years ahead, with additional supply in later years), accounting for the confirmed Dartford capacity to achieve sustainable new homes in the Borough (see Table 1 below);'*
- 2.9 Again, at paragraph 2.51, the Council confirmed:
- 'This capacity led strategy has already enabled a substantial uplift in housing delivery at planned locations.'*
- 2.10 The aforementioned paragraphs have been updated to make this predetermined capacity led strategy less overt in the latest Pre-Submission Local Plan (Sept 2021), now paragraphs 2.57 and 2.58, but essentially confirm the same approach.
- 2.11 Contrary to the aforementioned national guidance, the housing requirement the local plan strategy is based upon appears to have been very much led by the availability and capacity of existing suitable, deliverable, and developable brownfield sites, rather than housing need. Devising a housing requirement and distribution strategy based solely on the availability and capacity of suitable non-Green Belt sites, does not consider actual needs, nor where the borough needs such development and infrastructure to occur in the future. As detailed in our Regulation 19 representations (Policy S4), we contend DBC are not only providing insufficient housing to meet their own needs, particularly for affordable housing, they have also not made any meaningful attempt to agree a joint strategy to address known unmet needs with their neighbours.
- 2.12 Gravesham Borough Council have rightly in our view raised objection to this, whereas LBB and SDC seem content to address such matters through subsequent reviews of Local Plans.

- 2.13 The Inspectors recently examining both the SDC and Tonbridge and Malling Local Plans grappled with similar issues, and concluded this approach was not sufficient, and that the authorities in question had not done enough to discharge their statutory Duty to Cooperate under Section 33A of the 2004 Act. As the Inspectors examining the TMBC Local Plan state at paragraph 33 of their report:

‘However, such an approach is not in the spirit of the Act or of national policy. The identified need for housing exists now, and the likely existence of unmet need has been known about for some time and is therefore a strategic matter that should have been considered through the DtC in the current round of local plans, not delayed to some future date. Deferring the issue to subsequent plans does not amount to constructive, active engagement, especially when the plan making processes were, in reality, closely aligned.’

- 2.14 DBC acknowledge at paragraph 4.24 of their ‘Duty to Cooperate Compliance Statement’ (DBC, Dec 2021) that Gravesham Borough Council (GBC) had formally requested assistance with unmet housing needs as far back as 2015. This request has been maintained, and we note Gravesham Borough Council objected to both Regulation 19 Consultations (February and September 2021), on the grounds the plan was not legally compliant in this regard¹. Among other grounds, GBC assert the Council has not properly considered and assessed reasonable alternative options to address unmet needs from neighbouring authorities. As we outline above, we have reached a similar conclusion.
- 2.15 Turning next to London Borough of Bexley. The London Borough of Bexley (LBB) submitted their Local Plan for examination in November 2021. The Statement of Common Ground between DBC and the LBB (LBB, November 2021) confirms at paragraph 26 that LBB are seeking to meet the 10-year housing target set out in the London Plan (2021) of 685 homes per annum and propose to roll this target forward to the plan end date of 2038.
- 2.16 Under the points of agreement below paragraph 29 of the same document, both parties agree that, *‘the new London Plan is not able to demonstrate that London’s housing needs can be met within the Greater London area.’* In his letter to the Mayor of London dated 29 January 2021, the SoS stated that following publication of the Local Plan, *‘I fully expect you to start working to dramatically increase the capital’s housing delivery and to start considering how your next London Plan can bridge the significant gap between the housing it seeks to deliver and the actual acute housing need London faces. I would again ask you to work closely with those authorities that surround London to develop a strategy to help alleviate the housing pressure that is faced both inside and immediately outside the capital.’*
- 2.17 The revised standard method for calculating housing need was published by the government in December 2020. Under the transitional arrangements of NPPG Paragraph: 036 Reference ID: 2a-036-20201216, the London Plan (2021) was permitted to proceed to adoption in 2021 using the existing standard method figure, which excluded the 35% cities and urban centres uplift. As outlined in paragraph 33 of NPPF,

¹ Table 1 (Page 5) - Duty to Cooperate Update & Addendum [DBC, September 2021]); and Table 2 of ‘Duty to Cooperate Compliance Statement’ (DBC, Dec 2021)).

a review of such plans, *'should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.(our emphasis).*

- 2.18 As is evident from the SoS letter to the London Mayor 29 January 2021, an earlier review is needed given the significant unmet needs existing at present, and likely to increase through the 35% cities and urban centres uplift. For LBB for example, this would increase the annual requirement for LBB from 685pa to 2,422 homes per annum. This is almost double the annual SHLAA capacity figure confirmed by Bexley in the London SHLAA (GLA, 2017), with many other London boroughs also seeing significant rises. Considering this evidence, it is clear that Bexley Council will almost certainly need assistance to address such needs.
- 2.19 Finally, it is apparent that the adjoining authority of Sevenoaks District Council also had unmet needs during the preparation stages of the Dartford Local Plan. There were known and well documented unmet needs arising from the recently examined Sevenoaks Local Plan, dating back to 2018. As outlined at paragraph 4.31 of the *'Duty to Cooperate Compliance Statement'* (DBC, Dec 2021), SDC had also made a formal request for DBC to assist in meeting identified unmet needs in April 2019.
- 2.20 The Inspector's Report into the examination of the submitted SDC Local Plan was published on the 2nd of March 2020 (PINS/G2245/429/7). It was common ground at the examination that SDC are unable to meet their OAN for housing, leaving an unmet need for around 1,900 homes. The Inspector concluded that SDC had not demonstrated there had been active, constructive, or on-going engagement with adjoining authorities in respect of this unmet housing need. Nor had an effective strategy been put in place between the authorities to address such needs as a consequence. The Inspector accordingly concluded the DtC in Section 33A of the 2004 Act had not been complied with and recommended that the SDC Local Plan was not adopted [Paragraph 54 of Inspectors Report to Sevenoaks District Council, 2nd March 2020 (PINS/G2245/429/7)].
- 2.21 Given SDC requests for assistance originated well before the Regulation 19 Consultation stages of the DBC Local Plan, it is unclear why DBC did not commission further assessments through the Sustainability Appraisal process, including a green belt assessment, to deduce what contribution could be offered over and above a brownfield capacity only approach. Instead, one month after SDC's request, DBC and SDC were content to sign a Statement of Common Ground (SoCG) confirming there was no clear relationships between the two areas and no action was necessary. Whilst the SDC Local Plan has now been withdrawn, DBC acknowledge in their latest SoCG with SDC that *'there could be a case to be made for DBC to assist with some unmet needs from SDC in the future subject to a number of factors;'*.
- 2.22 The statutory Duty to Cooperate under Section 33A of the 2004 Act requires Dartford Borough Council to demonstrate they have engaged constructively, actively and on an on-going basis with adjoining authorities on strategic matters such as unmet housing

need, throughout the preparation of Local Plans and prior to formal submission. The DBC approach contending no assistance could be given to GBC, in the absence of evidence to substantiate this claim, does not in our view facilitate constructive and active engagement on such matters. It has predictably led to division, and as yet, no strategy in place to address such needs between adjoining authorities.

- 2.23 DBC suggest they are providing a 40 dwelling per annum surplus over the minimum local housing need (LHN) figure required under the standard method. However, as we set out in our Regulation 19 representations to Policy S4, the actual level of housing need is higher than this in any event. In accordance with NPPG² we strongly contend the Council ought to have made an upward adjustment to their housing requirement. This is without considering unmet needs of adjoining LPAs, which comprise further grounds for adjustment in our view. We can find little or no evidence to suggest the Council intentionally added 40 dwellings per annum to their LHN figure with the express purpose of assisting adjoining LPAs. As we outline above and in our representations at Regulation 19 stage to Policy S4, the housing requirement has overtly been based on suitable non-green belt sources of supply, rather than local housing needs. We cannot conclude therefore that the Council has facilitated constructive and active engagement on such matters in pursuit of a positively prepared plan³. For all the above reasons, we contend the Council has not discharged their statutory duty under Section 33A of the Act

Issue 2: Whether the Council has complied with relevant procedural, legal, and other requirements.

Sustainability Appraisal (SA)

- 2.24 As outlined in paragraphs 2.3-2.11 above, contrary to NPPG Paragraph: 018 Reference ID: 11-018-2014030, the Council have not in our view tested 'reasonable' alternatives to their urban supply-based housing requirement, one that makes a concerted effort to assess options for meeting their own needs in full, within the plan period, and in accordance with paragraph 35 of NPPF. Nor have they assessed reasonable alternatives that seek to assess the potential to assist neighbouring authorities.
- 2.25 Paragraph 140 of the NPPF states, *'Strategic policies should establish the need for any changes to Green Belt boundaries, having regard to their intended permanence in the long term, so they can endure beyond the plan period.'* As we assert in our Regulation 19 representations to Policy S4, there is strong evidence to suggest the Council's approach to Green Belt policy is neither sound or likely to *'endure beyond the plan period'*. The Council has identified housing needs, particularly for affordable housing, beyond that currently being provided for, and there is evidence of mounting unmet needs in adjoining authorities. These provide justification in our view to assess reasonable alternative options to meet these needs, including through a review of the green belt, through the SA process. This needs to be addressed and should not be deferred to an early review of the Local Plan, as envisaged in the latest LDS (DBC, July 2021).

² Paragraph: 010 Reference ID: 2a-010-20201216 (NPPG, 2020)]

³ Paragraph 35, NPPF (MHCLG, 2021)

- 2.26 Accordingly, for the reasons outlined, we do not consider the Council have *‘complied with relevant procedural, legal and other requirements.’*

Other Matters

- 2.27 NPPF paragraph 22 confirms that:

‘Strategic policies should look ahead over a minimum 15-year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure.’

- 2.28 The anticipated adoption date for the Local Plan has been delayed by up to a year from that envisaged in the LDS published earlier this year. The July 2021 update to this indicates adoption now in Q2 of 2023, suggesting the plan period and land supply assumptions to 2037 needs adjusting to 2038 to be consistent. Whilst Table 1 helpfully outlines the breakdown in supply to 2031/32, it is less clear why the breakdown and assumptions for the remainder of the plan period are not stated. Equally unclear, is why the Council have made the plans base year 2017 for purposes of calculating their housing requirement and corresponding supply.
- 2.29 The government’s standard method for calculating housing need uses the current year as the baseline starting point from which to calculate growth for the next 10 years. Given that the standard method seeks to address under, or over delivery from previous years through the affordability adjustment, it is unclear why the Council have sought to rebase this to 2017. The logical point at which to calculate this from to accord with PPG would be the year from which the affordability ratio is taken when establishing the affordability adjustment. This ensures the final Local Plan requirements are appropriately based to inform the strategic policies of the plan, which as NPPF (paragraph 22) suggests, *‘should look ahead over a minimum 15 year period from adoption’*. We suggest this is revisited to ensure the plan accords with the national guidance in NPPF and PPG. We also suggest Table 1 be amended to make clear the breakdown of supply relied upon for the full plan period to 2038, not just to 2031/32.
- 2.30 As outlined above, we recommend the calculated baseline and plan period be adjusted, with a local housing need figure then calculated *‘separate from considering how much of the overall need can be accommodated’*⁴. Reasonable alternative options should be tested through the SA process to meet such needs in full within a plan period to 2038, in accordance with paragraph 11 and 35 of NPPF. Given existing urban sources of supply seem unlikely meet the needs calculated by DBC at present, it seems reasonable to assume one such reasonable alternative will comprise a review of the contribution and benefits of releasing Green Belt lands to meet residual needs. Additional reasonable alternatives should also be tested to deduce the contribution DBC could make to adjoining authorities with evident unmet needs. Appropriate strategies should then be put in place by DBC in liaison with its neighbours to ensure such needs are addressed through the statutory Duty to Cooperate.

-End-

⁴ NPPG paragraph: 010 Reference ID: 2a-010-20201216 (NPPG, 2020)]