

Case Name: *Sevenoaks District Court v Secretary of State for Housing Communities And Local Government* [2020] EWHC 3054 (Admin) (13 November 2020)

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Commentary:

The High Court dismissed a challenge by Sevenoaks District Council of a Planning Inspector's decision that it had failed to comply with the duty to cooperate when preparing the Sevenoaks District Local Plan ("**SDLP**"). The duty to cooperate is set out in section 33A of the Planning and Compulsory Purchase Act 2004 ("**s33A**") and is supplemented by guidance in the National Planning Policy Framework and the Planning Practice Guidance.

The claim was made on four grounds, as follows: firstly, that the Inspector erred in law in failing to apply a margin of appreciation when considering the test under s33A; secondly, that the Inspector failed to correctly interpret and apply the duty to cooperate and conflated that duty with the requirement that a plan be sound; thirdly, that the Inspector failed to have regard to material considerations; and, finally, that the Inspector's reasons were inadequate. All four grounds were dismissed.

Dove J prefaced his conclusions by analysing the substance of the legal issues which arise in relation to the duty to cooperate; the nature of the decision which the Inspector reached; and the specific basis for her conclusions. He emphasised that the duty under s33A requires cooperation in relation to the preparation of a development plan document "so far as relating to a strategic matter" and this arises in relation to each and every strategic matter individually. There was, therefore, no error involved in the present case by the Inspector focusing upon one of those strategic matters (namely, unmet housing need) in reaching her conclusions. He noted that the duty to cooperate is not simply a duty to have a dialogue or discussion but requires the statutory qualities set out in s33A to be demonstrated by the activities comprising the cooperation. He emphasised (citing previous judicial authority) that the court should afford the decision of an Inspector making a judgment regarding compliance with the duty a substantial margin of discretion.

As regards the Inspector's conclusions in relation to compliance with the duty to cooperate, these were drawn from evidence in relation to the claimant's actions further to becoming aware of the detailed extent of its unmet housing need. Once the extent of the unmet need emerged after completion of the Regulation 18 consultation on the SDLP, she found that the claimant should have contacted its neighbouring authorities and engaged constructively in an attempt to resolve the issues arising from the unmet need. Instead, there was no communication or engagement between the emergence of this issue and the start of the Regulation 19 consultation when this would have been reasonably expected. Any engagement took place after the Regulation 19 consultation and just prior to submission of the plan for examination, by which time it was too late to influence plan preparation. The

possibility that constructive engagement may have led to the same outcome was irrelevant insofar as compliance with the duty was concerned.

Turning to the grounds of challenge, in respect of Ground 2 (addressed first), Dove J concluded that the conclusions reached reflected a proper interpretation and application of the duty to cooperate, reflecting the statutory requirements and the evidence which was before the Inspector. In particular, they were based on factual findings regarding the lack of constructive and active engagement at a time when it was required in advance of the Regulation 19 version of the SDLP being settled. She was, correctly, not assessing the finding of a particular solution in respect of the strategic issue of unmet housing need, but rather the quality of the manner in which it had been addressed. In respect of Ground 1, Dove J concluded that there was no justification for the suggestion that the Inspector failed to afford a margin of appreciation for the claimant; the Inspector was ultimately required to reach conclusions in relation to the statutory test which she did.

In respect of Ground 3, Dove J found that the Inspector had regard to all of the evidence that had been placed before her, clearly addressing the detailed material in relation to duty of cooperation meetings and the preparation of joint evidence. In respect of Ground 4, he found that there was no defect in the Inspector's reasoning which was full, detailed and justified.

Case summary prepared by Victoria McKeegan