



**TONBRIDGE & MALLING  
BOROUGH COUNCIL**

**Matt Boughton**

**Councillor for East Peckham,  
West Peckham, Mereworth  
and Watlingtonbury**

Leader of The Council

11 September 2026

The Rt Hon Matthew Pennycook MP  
Minister of State for Housing and Planning  
Ministry for Housing, Communities and Local Government  
2 Marsham Street  
London  
SW1P 4DF

Dear Matthew,

**Tonbridge and Malling BC – Intervention pursuant to Section 27 of the  
Planning and Compulsory Purchase Act 2004 in respect of the emerging  
Tonbridge and Malling Local Plan**

I write following your letter dated 4 September 2026, informing Tonbridge and Malling Borough Council ('the Council') that you have determined to exercise the powers available to the Secretary of State under Section 27(2) and (3) of the Planning and Compulsory Purchase Act 2004 ('the 2004 Act') to intervene in the Council's local plan preparations and issue directions. This is said to be in response to the Council's decision of 3 September 2026 to determine that the emerging local plan should not at this stage progress to publication and consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 ('the 2012 Regulations') which apply to the emerging plan under the transitional 'legacy plan' provisions.

In your letter of 4 September ('the Intervention letter') you state that the "*directions will remain in force until withdrawn*"; and warn that if the Council should "*fail to comply with the directions*" you "*will consider taking further action*". Nevertheless, you provide the "*opportunity to set out by 18 September any exceptional circumstances which in your view suggest that intervention is not appropriate in this case*".

This letter sets out those exceptional circumstances and confirms that in the circumstances that obtain in this case it is clear that it is not appropriate for the intervention to be made at this point.

## Submission

1. I would remind you in the first instance of the test under s20 of the 2004 Act<sup>1</sup> which confirms that a local planning authority *“must not submit”* a draft plan *“to the Secretary of State for independent examination” unless—*  
*(a) they have complied with any relevant requirements contained in regulations under this Part, and*  
*(b) they think the document is ready for independent examination.”* (emphasis added)
2. The directions set out in the Intervention letter seek to override that statutory test in that you direct that the Council proceeds both to the Regulation 19 consultation (Direction 1) and submit the emerging Plan consulted on under the above direction by no later than 31 December 2026.
3. In the Intervention letter you refer to what you call the Council’s *“failure to support the Regulation 19 Local Plan consultation”* as the principal reason for the Intervention.
4. This is however to mischaracterise and overlook the specific and careful consideration that has been given by the Council to the clear issues which remain in respect of the need, ultimately, to demonstrate that the Local Plan is justified and effective (as set out in the National Planning Policy Framework (NPPF)) and essentially that it can be delivered in order to comply with s20 of the 2004 Act.
5. The evidence to date that has been provided by South East Water (‘SEW’) in respect of future water supply, even following the work that the Council has engaged with through the DEFRA Water Delivery Taskforce, critically does not meet the above test.
6. This in fact should not be an issue.
7. In such circumstances the Intervention is demanding that the draft Local Plan be submitted for examination even though it will fail the soundness test based upon the current evidence.
8. The justification for the Intervention is seemingly not that the emerging plan in its current state can be found sound but the view is instead taken that *“[n]ot progressing the Plan at this stage makes it very unlikely that the Council will be able to meet the December 2026 deadline”* for legacy plans and the

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<sup>1</sup> Which again applies in its previous form to ‘legacy’ plans

potential for the Council's plan-making *"to restart under the new system, resulting in further delay to getting an up-to-date local plan in place"*.

9. Implicit in this is a presumption that if the emerging plan is submitted for examination, when the issues of future water supply clearly affect the deliverability of the proposed development to meet the Government's identified housing need for Tonbridge and Malling, an independent examiner will still somehow find the plan sound in any event. Alternatively, it appears that no consideration has been given to the fact that if this current draft local plan is submitted in accordance with your directions the examiner will have to acknowledge that the plan is clearly not deliverable.
10. To that end, it is not clear how the Intervention can achieve the desired outcome referred to in the Intervention letter, namely to have local plans adopted *"as quickly as possible in order to achieve our ambition of universal plan coverage and to ensure that plans contribute positively to increasing rates of housebuilding and infrastructure delivery."*
11. As such it is clear that the effect of the Intervention will not achieve the desired outcome, namely for a sound effective deliverable local plan to be in place.
12. Lest it be suggested otherwise, the Council does not accept that it has failed or *"is failing or omitting to do anything it is necessary for them to do in connection with the preparation, revision or adoption of its Local Plan"* and more specifically has failed or is failing *"to support the Regulation 19 Local Plan consultation"* as a result of its decision of 3 September.
13. On the contrary, in light of the above and the fact that the Local Plan is not deliverable based on the current evidence, the Council has not abandoned the progress of the draft plan but clearly determined that it should not be progressed to Regulation 19. This is known from the resolution of the Council at its meeting on 3 September 2026, where Council agreed not to progress *"at this time but will continue to work with South East Water, and other relevant infrastructure providers, to seek the evidence that is necessary to enable the Local Plan to move forward"* [emphasis added].
14. The Intervention letter simply fails to acknowledge this and indeed the reality of pressing on with a plan that is not supported by the evidence.
15. In summary, the Council considers that the Intervention is not justified and will lead to the excessive waste of cost of an examination which will conclude the plan is unsound. However, the Council is also extremely disappointed with the

Secretary of State's decision and determination to intervene in its plan process given the acknowledgement of the *"considerable effort that has gone into the preparation of this emerging Plan"* specifically noted in the Intervention letter as well as *"the collaborative work undertaken by the Council and other relevant parties to identify solutions to the issues surrounding water supply"*.

16. It is also apparent that the Intervention was precipitous as it came less than 24 hours after the emerging Local Plan was considered by full Council on 3 September 2026, where there was cross-party consensus from four different political parties on the Council that it should not proceed with the Local Plan at this stage.
17. Further the Intervention letter fails to recognise the specific circumstances in which the decision to delay was made and that the Council wishes to continue with its plan preparation in order to overcome the fundamental issues identified.
18. It is plain that the fault does not lie with Tonbridge and Malling Borough Council given the issues South East Water (SEW) raised during the Regulation 18 consultation. The failure generally of water companies and undertakers is something this Government has openly recognised.
19. Whilst there has been some progress made through the subsequent work as a result of engagement with the Water Delivery Taskforce, this has not yet shown that the concerns it raised in December 2025 have been sufficiently mitigated.
20. Specifically, SEW's 'Position Statement' which provides interim proposals (hence references to it as the Interim Position statement) confirms that the annualised average housing growth forecast in the SEW Water Resources Management Plan 2025/26 is 317 homes per year, over the plan period. This is set out at Table 2 in the SEW Position Statement.
21. As you will be aware the Government have set an Objectively Assessed Housing Need, applying the current standard method for Tonbridge & Malling, of 1,117 homes per year. As such SEW's capacity of being able to provide water for only 317 homes per year leaves a significant shortfall of 800 homes per year, across the plan period. As such and as noted the Council cannot in light of this conclude that there will be sufficient water supply to deliver these homes let alone any other development needs.

22. Equally whilst SEW's (Interim) Position Statement sets out a series of potential supply side and demand side interventions which could be implemented to help bridge this shortfall, the validity of these interventions has not been determined. They have not even progressed through the requisite Ofwat Growth Reopener process.
23. This means that the funding and deliverability of these interventions is in question and cannot simply be assumed will or can occur.
24. As set out above, it is self-evidently unreasonable for the Council let alone the Secretary of State to assume (but which is not clear from the Intervention letter) that the requisite future water infrastructure to support the significant additional housing numbers required in our Local Plan can be forthcoming.

## Conclusions

In light of the above it is clear that it would be costly and counterproductive to progress a plan for which the majority of houses within it cannot actually be delivered and which therefore will not meet the soundness test.

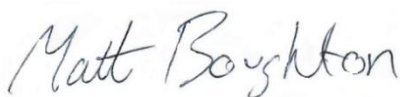
Such action would in fact actively frustrate the Government's ambitions for housing delivery; potentially result in even more sustained water shortages throughout the borough (as well as other authorities also served by SEW); but also fail to provide a sound plan that can be legally adopted.

I would add that the Council does not believe the Government wishes to actively worsen the supply of water in the South East, but this would be the case should this plan based on the current position progress as directed in the Intervention letters.

In light of all the above, it is clear therefore that Intervention is not appropriate at this time and exceptional circumstances do arise.

As such we ask that the Intervention be withdrawn and the Council be allowed to progress with further preparation with its Local Plan as set out in its determination of 3 September to ensure that this plan can indeed be found to be deliverable and sound.

Best wishes



Matt Boughton  
Leader, Tonbridge & Malling Borough Council  
Councillor for East Peckham, West Peckham, Mereworth and Wateringbury