

SUBJECT:	The Duty to Co-operate and Planning for Strategic Cross Boundary Matters
REPORT OF:	Officer Management Team - Director of Services Prepared by - Head of Sustainable Development

1. Purpose of Report

1.1 The purpose of this report is to:

- explain what the 'duty to co-operate' is;
- set out the likely implications of the duty to co-operate for local plan preparation in South Bucks District and for the way in which South Bucks DC will be required to work with other local planning authorities within and beyond Buckinghamshire;
- recommend that the Sustainable Development Policy Advisory Group notes this report and in future receives regular updates on the duty to co-operate together with suggestions for action where appropriate.

2. Links to Council Policy Objectives

2.1 Effective outcomes as a result of the duty to co-operate are linked to each set of priority action areas set out in the South Bucks Sustainable Community Strategy:

- A sustainable environment
- A thriving economy
- Safe communities
- Health and well-being for all
- Cohesive and strong communities.

3. Background

- 3.1 In the past, the strategic planning framework for South Bucks District was set out in the Buckinghamshire Structure Plan prepared by Buckinghamshire County Council, based on high level Regional Planning Guidance for the South East. More recently, strategic planning policies were set out in regional spatial strategies. In the case of South Bucks this was the South East Plan which included region-wide and sub-regional policies. The South East Plan was revoked in March 2013 and strategic planning is now the responsibility of local planning authorities who themselves must lead discussion, negotiation and action to ensure effective planning for strategic matters in their local plans¹. This responsibility - known as the duty to co-operate - is a legal requirement.
- 3.2 The duty to co-operate was created in the Localism Act 2011, and amends the Planning and Compulsory Purchase Act 2004. It places a legal duty on local planning authorities, county councils and specified public bodies to engage constructively, actively and on an ongoing basis to maximise the effectiveness of local plan preparation relating to strategic cross-boundary matters. The duty to co-operate came into effect in November 2011. A local planning authority must demonstrate how it has complied with the duty at the independent examination of its local plan. If a local authority cannot demonstrate that it has complied with the duty, the local plan will not be able to proceed further through the Examination and the Inspector will recommend that the plan is not adopted. The duty to co-operate is separate from, but related to, the local plan tests of soundness.
- 3.3 The duty to co-operate applies to all local planning authorities who are in the process of preparing and reviewing a local plan. Even if a local planning authority has an adopted local plan (such as South Bucks District), it is still required to co-operate with another local planning authority that is bringing forward a plan.
- 3.4 The National Planning Policy Framework identifies the strategic matters that a local planning authority is expected to include in its local plan and for which co-operation with other authorities is

¹ The National Planning Policy Framework (March 2012) uses the term 'local plan' instead of Core Strategy.

likely to be required. These include policies to deliver the homes and jobs needed in an area; retail, leisure and other commercial development; provision of infrastructure such as transport, water, flood risk, health and community facilities; climate change mitigation and adaptation; and conservation and enhancement of the natural and historic environment (paragraph 156).

- 3.5 At its meeting on 22 January 2014, the Sustainable Development PAG considered a Shared Framework for the Buckinghamshire Councils on Duty to Co-operate and Alignment of Local Plan Timetables and Shared Evidence Base. The shared framework agreement has now been finalised and is in the process of being signed by all four Buckinghamshire districts and by Buckinghamshire County Council.

4. Discussion

- 4.1 The duty to co-operate came into effect in November 2011. The system should therefore no longer be thought of as in transition. Over the last 6-months or so a consistent approach has begun emerging at Examinations. Inspectors are taking a stricter line on the duty to co-operate, with the bar being set very high and objectors (particularly developers) becoming much more proficient at challenging plans on co-operation grounds. As a result, a number of local plans - including the Vale of Aylesbury Plan - have recently failed the legal duty. There is no mechanism to retrospectively correct a failure to comply: a plan either meets the requirement or it does not. Where an Inspector finds that the duty has not been complied with, the most likely outcome is for the plan to be withdrawn and the local authority to need to hold further discussions, carry out additional work, re-publish the plan for consultation and re-submit for Examination.
- 4.2 There is now two years' experience of the duty to co-operate with important messages for local authorities in terms of both preparation of their own local plans and in working with other local authorities who are preparing or reviewing plans. The following boxes briefly summarise some recent examples.

Hart District Local Plan

Hart District Council was not able to persuade other relevant authorities with adopted Core Strategies to undertake a joint Strategic Housing Market Assessment (SHMA) update. It proceeded with a SHMA for Hart only, but this did not robustly identify the full, objectively assessed need for housing within the District or the wider Housing Market Area.

The Council's local plan was therefore not based on objectively assessed housing need and there was no agreement between the relevant local authorities as to the level of overall need, how it could be accommodated and how any unmet need from one authority could be met elsewhere.

The Council only initiated discussion with other local authorities on meeting housing needs very late in the process, after it had already determined the level of housing it was intending to plan for, leaving little scope for effective discussion and co-operation.

The Inspector concluded that the Council had not engaged constructively and on an ongoing basis and had therefore not complied with the duty to co-operate.

Plan withdrawn September 2013

Brighton & Hove City Plan

Although the Council engaged positively with neighbouring authorities and met the legal requirements of the duty to co-operate, the Inspector concluded that co-operation had not led to a positive outcome because no neighbouring Councils had offered to meet all or part of the objectively assessed housing needs that cannot be met in Brighton & Hove.

Given the significant shortfall in meeting housing needs within Brighton & Hove, the Council was advised to undertake a more rigorous analysis of the urban fringe sites it was seeking to protect from development. If the Plan is to be found sound, the Inspector wishes to be satisfied that the Council has left no stone unturned in seeking to meet as much of its need as possible within its own area.

Further work required from December 2013

Mid Sussex District Plan

The Inspector concluded that the Council had taken an ad hoc approach on the duty to co-operate rather than establishing a robust framework. There was little evidence of co-operation at an early stage, that the Council had approached engagement with nearby authorities in a helpful and positive way or that appropriate conclusions have been drawn and acted upon. The Council was also criticised for being too selective over which of its 'neighbours' it chose to co-operate with. There was no in-depth analysis of the issues facing local planning authorities in the area. Consequently, strategic housing priorities across boundaries were not properly addressed or co-ordinated and the Council was unable to demonstrate to the Inspector's satisfaction that adequate consideration had been given to meeting the development needs of nearby local planning authorities. The Council therefore did not comply with the duty to co-operate.

Council advised to withdraw Plan December 2013

Vale of Aylesbury Plan

No SHMA or other assessment of housing needs was produced jointly with other authorities and other authorities had not been formally approached to undertake joint work on housing needs and provision.

There are significant issues in terms of potential unmet housing need from other authorities within and beyond Buckinghamshire. The Council was aware of the issues from the start of the Plan preparation process and it is the Council's duty to have sought to address them through constructive, active and ongoing engagement. The Inspector concluded that the Council did not do so and that this undermined the effectiveness of Plan preparation in dealing with key strategic issues including the overall provision of housing and jobs. The Council therefore did not comply with the duty to co-operate.

Plan withdrawn February 2014

4.3 The key messages from these (and other examples) are as follows:

- Councillors have an important role to play in discussions, negotiations and actions to ensure effective planning for strategic matters.
- The duty to co-operate is not selective - if there is a strategic issue it must be addressed.
- The duty to co-operate goes beyond consultations and discussions: strategic co-operation must lead to evidenced and effective policy outcomes on cross-boundary matters.
- There is no definitive list of actions that constitute effective co-operation; the actions will depend on local needs which will differ.
- The activities that fall within the duty to co-operate relate to all stages of the plan preparation process, including plan scoping, evidence gathering and policy development.
- Local planning authorities are not required to reach agreement - there is no duty to agree. However, co-operation with partners who will play a role in delivering a local plan (by meeting part of another District's objectively assessed housing need for example) is central to the policy test of soundness.
- Even if an Inspector is satisfied that the duty is met, a local authority may still run into problems if the co-operation has not led to a positive outcome.
- Local authorities must give details of what action they have taken under the duty to co-operate in their Monitoring Reports, as well as the outcomes of the co-operation. There also needs to be a very clear and detailed audit trail of any strategic decisions.

4.4 The Shared Framework for the Buckinghamshire Councils will assist South Bucks District in complying with the duty to co-operate. However, the Council will also have to co-operate with other public bodies including (but almost certainly not limited to) the Environment Agency, English Heritage and Natural England, with neighbouring local planning authorities outside of Buckinghamshire, and possibly also other local authorities beyond our immediate neighbours. Exactly which bodies and authorities South Bucks District will need to co-operate with will depend on the strategic matters being planned for and the most appropriate functional geography to gather evidence and develop planning policies. For example, housing market and travel to work areas, river catchments and

landscape areas may be a more appropriate basis on which to plan than an individual district. For a new local plan to replace the adopted Core Strategy, in practice this is likely to mean different geographies for different issues, with a local planning authority working with different groups for different strategic matters.

- 4.5 South Bucks District's duty to co-operate activities will relate to its own plan-making activities and to those of other local planning authorities. The latter will include work on a new local plan for Aylesbury Vale. Following the findings of the Inspector undertaking the Examination of the Vale of Aylesbury Plan, Aylesbury Vale District has decided to withdraw the Plan and to start work on a new local plan. The Aylesbury Vale Cabinet Member for Strategic Planning's report to her Council on 5 February 2014 acknowledges that the new local plan will need to plan for higher levels of growth for Aylesbury Vale, as well as contributing towards the needs of other authorities, taking into account 'beyond the District' considerations.
- 4.6 The duty to co-operate does not apply to the Mayor of London in preparing the London Plan². The GLA Act does, however, impose duties on the Mayor to *consult* local planning authorities such as South Bucks District in connection with the London Plan. The situation on duty to co-operate regarding the Mayor and the preparation of local plans by authorities adjoining London (and the London boroughs) is different from that for the London Plan: the Mayor is bound by the duty as are the adjoining authorities (and London boroughs). South Bucks District Council will therefore be consulted by the Mayor on the London Plan, but there is a two-way duty to co-operate between South Bucks District Council and the Mayor on any local plans that the Council prepares.
- 4.7 To assist with strategic spatial planning co-operation, the Mayor has established an officer working group covering the wider South East. The group has no powers but is intended to provide a forum for discussion, act as a technical sounding board on the London Plan and disseminate information on particular technical issues. South Bucks District Council will represent the Buckinghamshire authorities at the meetings.
- 4.8 In order to comply with the Council's legal duty to engage on strategic cross-boundary matters on a constructive, active and on an ongoing basis, it is proposed that future agendas for Sustainable Development PAG meetings should include a standing item on the duty to co-operate. The reports to Sustainable Development PAG will include comprehensive updates on duty to co-operate activity and, where appropriate, suggestions for action. In addition, and because the Council is already receiving increasing numbers of requests as a result of the duty to co-operate, with many requiring responses to relatively short deadlines, it is recommended that the Head of Sustainable Development be given delegated powers to respond in consultation with the Portfolio Holder for Sustainable Development.

5. Resources, Risk and Other Implications

- 5.1 The Shared Framework for the Buckinghamshire Councils reduces the risk of South Bucks District Council failing to meet its statutory duty.
- 5.2 There are potential resource implications for Planning Policy arising from the duty to co-operate. Although the duty to co-operate is not limited to neighbouring local authorities, with six neighbouring authorities plus Buckinghamshire County Council and the Mayor of London, the statutory duty to engage on strategic cross-boundary issues constructively, actively and on an ongoing basis is likely to be more demanding in terms of officers' and Councillors' time. Although South Bucks District will have control over the timing of duty to co-operate activities in relation to its own plan-making, co-operation in relation to the plans of others will be reactive, difficult to timetable with any precision and could make conflicting demands on the resources of the Planning Policy team.
- 5.3 Joint working with other authorities on the evidence base would be likely to reduce some costs. This was the case with the recent Buckinghamshire-wide GTANA.

² This is because the Mayor's London Plan is part of the Development Plan, but is not a Development Plan Document.

6. Summary**6.1** It is recommended that:

- i. Members of the Sustainable Development PAG advise the Portfolio Holder to recommend that Cabinet give delegated powers to the Head of Sustainable Development to respond, in consultation with the Portfolio Holder for Sustainable Development, to requests from other local planning authorities for input to their local plans/evidence base, and to provide comments to the Mayor of London on the London Plan.
- ii. Members of the Sustainable Development PAG note the contents of this report and in future receive regular updates on the duty to co-operate together with suggestions for action where appropriate.

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Background Papers:	None