
NEW LOCAL PLAN ISSUES AND OPTIONS DOCUMENT: DUTY TO CO-OPERATE TOPIC PAPER 2017

1 PURPOSE OF REPORT

- 1.1 The Council is undertaking a review of its local Development Plan policies. Whilst the Council has historically engaged with its neighbours, infrastructure providers and other public bodies in the preparation of its plans, since 2011 the Duty to Co-operate is a firm legal requirement. This report explains the origins of the Duty to Co-operate, its impact on plan-making and the purpose of the topic paper.

2 SALIENT INFORMATION

- 2.1 The Duty to Co-operate was introduced by section 110 of the Localism Act 2011, and sets out the legal test for the co-operation between local planning authorities and other public bodies. The purpose of this legal test is to maximise the effectiveness of policies for strategic matters in the preparation of Local Plans. What constitutes a 'strategic matter' is further defined within the National Planning Policy Framework (NPPF).
- 2.2 The Town and Country Planning Regulations 2012 identify the prescribed bodies that local planning authorities are required to engage with actively and on an ongoing basis. The intention of this requirement is to ensure that any identified strategic and cross-boundary issues have been addressed within Local Plans.
- 2.3 Paragraph 181 of the NPPF¹ provides guidance on the Duty to Co-operate, and requires local planning authorities to demonstrate how they have worked effectively and collaboratively with a range of organisations throughout the plan-making process. The Planning Practice Guidance (PPG) provides further detail on meeting the challenges of the Duty to Co-operate legal test². It is also clear that the Duty to Co-operate must be an iterative process right up to the point of submission of a Local Plan for independent examination, and it cannot be remedied after a draft Plan has been submitted.
- 2.4 Consequently the Duty to Co-operate has become an important legal test that is considered by Planning Inspectors in the independent examination of Local Plans. In the Council's experience this is the first test that Planning Inspectors will consider, and make a decision on, prior to the further consideration of the tests of soundness (which are set out in the NPPF). If a Council cannot

¹ <https://www.gov.uk/guidance/national-planning-policy-framework/plan-making>

² <https://www.gov.uk/guidance/duty-to-cooperate>

demonstrate to a Planning Inspector that it has satisfied the requirements of the Duty, then it is likely that the Inspector may recommend withdrawal of the draft Plan.

2.5 A Topic Paper on the Duty to Co-operate has been prepared to clearly set out the activities and engagement that the Council has undertaken over a number of years, which meet the requirements of this legal test. This includes the following:-

- Regular, active engagement with the other South Essex local planning authorities at the officer, head of service and Member level in particular;
- Responding to public consultations on those draft Local Plans which could have an impact on the district, including London;
- Commissioning and preparing joint evidence base documents to enable a wider spatial perspective on a range of strategic, cross-boundary matters such as housing and job needs;
- Engagement with other local planning authorities beyond South Essex, such as Chelmsford City Council and the London Borough of Havering; and
- Signing of a South Essex Memorandum of Understanding and a Statement of Common Ground.

2.6 The Duty to Co-operate Topic Paper has been prepared to form part of the evidence base to support the development of the new Local Plan. It is intended that this document will be updated throughout the plan-making process.

3 RISK IMPLICATIONS

3.1 The Duty to Co-operate is an important legal test which needs to be demonstrated throughout the plan-making process. The Topic Paper will assist interested parties in understanding how the Council has complied with the Duty to date, and how this will inform plan-making going forward. As such, it is important that the Council can clearly demonstrate at the independent examination stage how it has complied with the Duty.

4 RESOURCE IMPLICATIONS

4.1 The Council is required to discharge its responsibilities under the Duty to Co-operate throughout the plan-making process. Any outputs from the Duty, such as the preparation of joint evidence base documents or plans, Memorandums of Understanding or Statements of Common Ground, will need to be met from investments in the existing budget provision.

5 LEGAL IMPLICATIONS

- 5.1 Under section 110 of the Localism Act 2011 the Council is required to comply with the requirements of the Duty to Co-operate throughout the plan-making process; as set out elsewhere in the report.

6 RECOMMENDATION

- 6.1 It is proposed that the Sub-Committee **RESOLVES**

That the Duty to Co-operate Topic Paper 2017, as attached at Appendix A, be noted as evidence and published on the Council's website.



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Background Papers:-

None.

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Rochford District Council
Duty to Co-operate Topic
Paper 2017
Planning Policy Sub-Committee
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1 Introduction

- 1.1 Rochford District Council (RDC) has good and well established history of working together with neighbouring local authorities, Essex County Council (ECC) and other prescribed bodies on plan-making. This topic paper explains how RDC has fulfilled its requirements, to date, in relation to effective joint working as set out by the Duty to Co-operate under the Localism Act 2011.
- 1.2 Paragraph 181 of the National Planning Policy Framework (NPPF) makes it clear that Local Planning Authorities (LPAs) will be expected to demonstrate how the Council has worked effectively and collaboratively throughout the plan making process with a range of organisations to ensure that any identified strategic and cross boundary issues have been addressed within their Local Plans.
- 1.3 The Duty to Co-operate is an important legal test that is considered by Planning Inspectors during public examination of plans. The NPPF also advises that cooperation should be through a continual process of engagement from initial and early considerations through to implementation, resulting in a final position where sustainable plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development.
- 1.4 This topic paper describes how issues that have required a greater degree of joint working have been considered and addressed; further detail is set out in **Appendix 1**. It should be read in conjunction with the new Local Plan: Issues and Options Consultation Document, the Infrastructure Delivery topic paper and other documents forming the evidence base for the new Local Plan.

2 Requirements of the Duty to Co-operate

- 2.1 The Localism Act came into effect in November 2011 and sets out the requirements that local authorities must fulfil in relation to the Duty to Co-operate. Section 110 of the Localism Act 2011 inserts the Duty to Co-operate in relation to sustainable development as a new section 33A of the Planning and Compulsory Purchase Act 2004. Under this Act, the Town and Country Planning Regulations 2012 identify the prescribed bodies (listed below) that local authorities are required to engage with actively and on an ongoing basis to maximise the effectiveness of local and marine plan preparation relating to strategic cross boundary matters.
 - Adjoining Authorities
 - Environment Agency
 - Historic and Monuments Commission for England (known as Historic England)
 - Natural England
 - Mayor of London
 - Civil Aviation Authority
 - Homes and Communities Agency
 - Office of the Rail Regulator

- Transport for London
 - Highways Agency
 - NHS Clinical Commissioning Group
 - NHS England
 - The Marine Management Organisation
- 2.2 The NPPF sets out the framework detailing the duty of Local Authorities and other public bodies to co-operate on cross boundary planning issues. It elaborates on how strategic planning matters should be addressed in local plans (paragraphs 178-181). The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities. LPAs are expected to work “collaboratively with other bodies to ensure that strategic priorities across local authority boundaries are properly coordinated and clearly reflected in local plans” (paragraph 179). ‘Strategic priorities’ to which LPAs should have particular regard are set out in paragraph 156 of the NPPF.
- 2.3 The ‘strategic priorities’ for an area when LPAs prepare Local Plans are defined as:
- The homes and jobs needed in the area;
 - The provision of retail, leisure and other commercial development;
 - The provision of infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
 - The provision of health, security, community and cultural infrastructure and other local facilities; and
 - Climate change mitigation and adaption, conservation and enhancement of the natural and historic environment, including landscape.
- 2.4 Paragraph 180 of the NPPF requires LPAs to take account of different geographic areas, including travel-to-work areas. In two tier areas, such as Rochford District, the LPA is expected to co-operate with ECC on relevant issues.
- 2.5 Specific guidance on how the Duty should be applied is included in the Planning Practice Guidance (PPG). This makes it clear that the Duty requires a proactive, ongoing and focussed approach to strategic matters. Constructive cooperation must be an integral part of plan preparation and result in clear policy outcomes which can be demonstrated through the examination process. The PPG makes it clear that the Duty to Co-operate requires cooperation in two tier LPA areas and states “Close cooperation between District LPAs and County Councils in two tier LPA areas will be critical to ensure that both tiers are effective when planning for strategic matters such as minerals, waste, transport and education.”¹

¹ Paragraph: 014, Reference ID: 9-014-20140306

- 2.6 Joint working should enable LPAs to work together on strategic planning priorities, to meet development requirements which cannot wholly be met within their own areas – for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of the NPPF. As part of this process, LPAs should consider producing joint planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.
- 2.7 The Government expects LPAs to work effectively and collaboratively on strategic planning priorities to enable delivery of sustainable development in consultation with Local Enterprise Partnerships (LEPs) and Local Nature Partnerships (LNPs). LPAs should also work collaboratively with private sector bodies, utility and infrastructure providers.

3 New Local Plan Progress

- 3.1 To date the Council has adopted a full suite of policies which form the local development plan for the district. The Council is at the early stages of reviewing its local development plan to take account of changes at the national and local level, including new evidence. Key dates for the preparation of the Council’s new Local Plan are set out in Table 1. This timetable is taken from the Local Development Scheme dated October 2017.

Table 1 – Key dates for Rochford District new Local Plan

Stage	Target Date
Evidence base preparation	January 2015 onwards
Call for Sites	June 2015 – March 2016
Early community engagement	Autumn/Winter 2016
Issues and Options Document public consultation ²	Winter 2017
Preferred Options Document public consultation	Winter 2018/Spring 2019
Proposed Pre-Submission Document public consultation	Winter 2019/Spring 2020
Submission to Secretary of State for independent examination	Summer 2020
Examination hearings	Winter 2020
Inspector’s Report expected	Spring/Summer 2021
Adoption by Full Council	Spring/Summer 2021

² The Council is no longer required by legislation to prepare three formal documents for public consultation and engagement, however this is still considered to be the most appropriate approach for the preparation of the new Local Plan

