
Proposed Adoption of East Kent Memorandum of Understanding on the Local Plan “duty to cooperate”

To: **Cabinet – 3rd March 2016**

Main Portfolio Area: **Community Services**

By: **Cllr Lin Fairbrass, Portfolio Holder for Community Services**

Classification: **Unrestricted**

Summary: To agree and sign a Memorandum of Understanding on the duty to co-operate between East Kent Regeneration Board members (Ashford, Canterbury, Dover, Shepway And Thanet Councils working with Kent County Council), as set out in Appendix 1.

For Decision

1.0 Introduction and Background

- 1.1 The duty to co-operate was introduced in the Localism Act 2011. It places a legal duty on local planning authorities to “engage constructively, actively and on an on-going basis to maximise the effectiveness of local plan preparation relating to strategic cross-boundary matters.”
- 1.2 Section 33A(6) of the Planning and Compulsory Purchase Act 2004, also requires local planning authorities and other public bodies to consider entering into agreements on joint approaches. LPAs are also required to consider whether to prepare local planning policies jointly under powers provided by section 28 of the 2004 Act.
- 1.3 The National Planning Policy Framework (NPPF) says that “Local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly coordinated and clearly reflected in individual Local Plans.”
- 1.4 The Planning Practice Guidance (PPG) states that the duty to cooperate is not a duty to agree. But local planning authorities should make every effort to secure the necessary cooperation on strategic cross boundary matters before they submit their Local Plans for Examination.
- 1.5 If another authority will not cooperate on a strategic matter, this should not prevent the authority bringing forward a Local Plan from submitting it for independent Examination. However, the authority will need to submit comprehensive and robust evidence of the efforts it has made to cooperate and any outcomes achieved and this will be thoroughly tested at the Examination.
- 1.6 The MoU was agreed by the East Kent Regeneration Board on 16th April 2014. Ashford Borough Council and Shepway District Council agreed the MoU at Cabinet meetings in April 2014 and June 2014 respectively. Canterbury City Council and Dover District Council are due to consider the MoU in February 2016 (*information available at time of drafting*).

2.0 Proposed Memorandum of Understanding

- 2.1 The MOU (attached at Annex 1) sets out a framework for collaboration and understanding on emerging Local Plans.
- 2.2 The MOU does not override the statutory duties and powers of the identified parties. It is not legally binding nor is it intended to cover every detailed aspect of their relationships; rather it is a statement of principles to guide working arrangements between the parties and provide a set of workable ground rules for early discussion and co-operation in addressing strategic and cross-boundary issues.

Fulfilling the Duty to Co-operate

- 2.3 Local planning authorities must demonstrate how they have complied with the Duty at the independent Examination of their Local Plans. If a local planning authority cannot demonstrate that it has complied with the duty then the Local Plan will not be able to proceed further in Examination.
- 2.4 The Duty is wide-ranging and applies to the complete range of plan-making activities but the main focus has been on housing requirements and how that is dealt with by local authorities. The Duty also applies to other public organisations in addition to neighbouring local authorities, such as Natural England, the Environment Agency and the Homes and Communities Agency.
- 2.5 With no strategic planning framework across Kent or the South-East, the duty to co-operate presents new challenges for local authorities in preparing their Local Plans. There is benefit in developing a joined-up approach with the other East Kent districts, and in particular, Canterbury and Dover, as well as working with other key partners in the Local Plan process. The MoU is only the first step to meeting the requirements of the Duty – each Council will still need to ensure that they have the appropriate mechanisms in place that trigger early discussions on any cross boundary issues in order to ensure that there is effective and deliverable outcomes. However, it does demonstrate to an Examination Inspector the Council's commitment to a cooperative way of working on strategic matters.
- 2.6 The MoU also refers to the East Kent Councils working with Kent County Council, another key partner in the development process, and it is also important to work closely with the Greater London Authority in relation to its review of the London Plan. Cooperation is also necessary in relation to the provision of infrastructure, through the infrastructure planning process.
- 2.7 How the Duty works in practice is still emerging from experience at Local Plan Examinations and has been until up to very recently, been varied. For many authorities trying to meet the Duty has been difficult. Failures have tended to be related to the most controversial issue – housing requirements – and specifically the failure to work with others assessing objectively assessed housing needs and showing how these needs will be met across administrative boundaries. However, there is also a need to ensure that cooperative working is properly recorded, with clear outcomes, even if agreement on some issues cannot be reached.
- 2.8 The Authority Monitoring Report (AMR) includes information on the duty to co-operate.

3.0 Options

- 3.1 (i) Option 1: The District Council adopts the MOU on the duty to co-operate; or
or
(ii) Option 2: The District Council does not adopt the MOU on the duty to co-operate.

3.2 Option 1 is the recommended approach as this would help to create a co-ordinated approach to local plans across East Kent and helps all the East Kent authorities to demonstrate to Inspectors that the Councils have cooperated on a range of relevant matters in the preparation of local plans. It is in the interests of all the East Kent Councils, including Thanet, to be able to demonstrate that they have met the “duty to cooperate” and worked positively with neighbouring Councils. To adopt Option 2 would undermine this approach, and give the impression that the Council is unwilling to work in partnership with neighbouring Districts, when we have been working closely with them over many years.

4.0 Corporate Implications

4.1 Financial and VAT

4.1.1 No financial issues arising directly from this report.

4.2 Legal

4.2.1 See main body of this report in relation to the legal implications of the “duty to cooperate”.

4.3 Corporate

4.3.1 The Local Plan will represent the Council’s overarching plan for shaping future development of the District over the period up to 2031.

4.3.2 The “duty to cooperate” is an integral part of the Local Plan process and the proposed MoU is one way of demonstrating a corporate commitment to cooperation with neighbouring Councils and other partners on strategic planning matters.

4.4 Equity and Equalities

4.4.1 No equalities issues arising directly from this report.

5.0 Recommendation(s)

5.1 That Cabinet resolves to adopt the East Kent Memorandum of Understanding on the Duty to Cooperate.

6.0 Decision Making Process

6.1 This is not a key decision as it relates to the way in which strategic planning work is undertaken, rather than the policy outcomes of that work.

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| Contact Officer: | Adrian Verrall, Strategic Planning Manager |
| Reporting to: | Abigail Raymond, Head of Built Environment |

Annex List

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| Annex 1 | East Kent MoU on “Duty to Cooperate” |
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Background Papers

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| National Planning Policy Framework (Communities and Local Government, March 2012) - this can be found on the GOV.UK web-site at: | https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf |
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| <p>The Town and Country Planning (Local Planning)(England) Regulations 2012 – this can be found on the legislation.gov.uk website at:</p> | <p>http://www.legislation.gov.uk/uksi/2012/767/pdfs/uksi_20120767_en.pdf</p> |
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Corporate Consultation Undertaken

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| Finance | Nikki Walker, Interim Head of Financial Services |
| Legal | Suki Montague, Assistant Planning & Information Solicitor |
| Communications | Hannah Thorpe, Interim Head of Communications |