

**Guidance on the Duty to Co-Operate**

This guidance note is presented in two parts: firstly, extracts from the relevant paragraphs of the National Planning Policy Framework (NPPF); and secondly, it provides background and interpretation of the Duty from the Planning Advisory Service (PAS) website.

**Part 1: Extracts from the NPPF**

The main extracts are provided below, with the relevant paragraph number shown. The NPPF can be viewed in full on the Communities and Local Government website at:

[www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf](http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf)

**Strategic Priorities**

**156.** Local planning authorities should set out the strategic priorities for the area in the Local Plan. This should include strategic policies to deliver:

- 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 adaptation, conservation and enhancement of the natural and historic environment, including landscape.

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**Planning strategically across local boundaries**

**178.** Public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in paragraph 156. The Government expects

joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.

**179.** 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. Joint working should enable local planning authorities to work together 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 this Framework. As part of this process, they should consider producing joint planning policies on strategic matters and informal strategies such as joint infrastructure and investment plans.

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**180.** Local planning authorities should take account of different geographic areas, including travel-to-work areas. In two tier areas, county and district authorities should cooperate with each other on relevant issues. Local planning authorities should work collaboratively on strategic planning priorities to enable delivery of sustainable development in consultation with Local Enterprise Partnerships and Local Nature Partnerships. Local planning authorities should also work collaboratively with private sector bodies, utility and infrastructure providers.

**181.** Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position. Cooperation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development.

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## Examining Local Plans

**182.** The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is “sound” – namely that it is:

- **Positively prepared** – the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;

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## Part 2: Planning Advisory Service Guidance

### A Simple Guide to Strategic Planning and the Duty to Co-Operate

<http://www.pas.gov.uk/pas/core/page.do?pagelid=2133454>

[accessed 17th September 2012]

### Why is strategic planning important?

Many social, environmental and economic issues can only be effectively addressed at a larger than local scale. This is because people and businesses do not confine their activities to one council area. For example:

- employees may live in one area and work in another, sometimes travelling large distances on a daily basis suppliers may service many local shops from a small number of distribution centres linked to major transport hubs
- a retail development may attract customers from across a wide catchment area people may travel hundreds of miles to visit tourist attractions, leisure facilities or sporting venues on a regular basis

manufacturing companies may source materials and supply goods from across the UK and beyond.

Similarly, from an environmental perspective:

- residents in some areas may consume water and power that has travelled hundreds of miles surface water run-off in one location may present a flooding hazard to communities further 'downstream'
- water and air pollution may have a damaging impact on environmental assets some distance away

Local plans need to recognise these relationships and include policies to manage their impacts.

### **What is meant by the term 'strategic planning'?**

Even local plan-making will have a 'strategic' element to it. However the term 'strategic planning' more commonly refers to describe policies that address larger than local issues that cannot be dealt with by one local planning authority working alone. For example:

- the provision for new housing across a major conurbation or wider housing market area
- the provision of major retail, leisure, industrial and other economic development across a travel to work area the provision of infrastructure for transport, waste treatment, energy generation, telecommunications, water supply and water quality requirements for minerals extraction the provision of health, security, and major community infrastructure facilities
- measures needed to address the causes and consequences of climate change, including managing flood risk and coastal change protection and enhancement of the natural and historic environment, including townscape.

The priority given to these issues will depend on local circumstances; strategic approaches may not always be needed. The sustainability appraisal scoping report should help to identify what is important for your locality.

## **What happens if strategic planning issues are not properly addressed?**

Paragraph 179 of the NPPF requires councils to work together to address strategic priorities across boundaries and development requirements which cannot be wholly met within their own areas. Failure to do this will:

- lead to less sustainable plans
- reduce the ability to deliver infrastructure and inward investment
- undermine confidence in the ability of councils generally to make difficult political decisions and deliver on newly won freedoms

## **How was strategic planning done in the past?**

Between 1974 and 2004, the strategic planning function was held by upper tier local authorities - county councils or unitary authorities. County Councils produced 'structure plans', which provided the strategic context within which local plans were developed by district councils. From the early 1990s onwards councils also collaborated to produce 'regional planning guidance' to inform the development of structure plans and unitary development plans. From 2004 strategic planning moved to a fully regional model with the establishment of Regional Spatial Strategies and in 2009, Regional Strategies (which also incorporated the economic strategies of regional development agencies).

From 2008, the decisions on 'infrastructure of national importance' fell within the remit of a new 'Infrastructure Planning Commission' (IPC). The Government is publishing a series of national policy statements which are intended to establish the national case for infrastructure development and set the policy framework for infrastructure planning commission decisions

## **How will strategic planning be done in the future?**

Section 109 of the Localism Act gives Government the powers to revoke the eight Regional Strategies outside London following completion of an 'environmental assessment' for each. Within England but outside of London, most statutory plan making will be done by unitary, district or

borough councils. Authorities will be expected to address strategic issues through the 'duty to co-operate' set out in the Localism Act and described in the NPPF.

### **What does the duty to co-operate mean for Councils?**

Section 110 of the Localism Act sets out a new 'duty to co-operate'. This applies to all local planning authorities, national park authorities and county councils in England – and to a number of other public bodies.

The new duty:

- relates to sustainable development or use of land that would have a significant impact on at least two local planning areas or on a planning matter that falls within the remit of a county council;
- requires that councils set out planning policies to address such issues;
- requires that councils and public bodies 'engage constructively, actively and on an ongoing basis' to develop strategic policies requires councils to consider joint approaches to plan making.

Co-operation on strategic issues is not new. Councils have a history of working together and with other bodies to address planning issues of common concern. For example:

- joint commissioning of evidence to inform individual core strategies on key issues (for example on population and household projections)
- 'aligned' plans across several local planning areas that include complementary policies on key issues (for example locations for strategic growth)
- a single plan across several local planning areas, overseen by each authority separately or by a joint committee

### **How will the duty to co-operate be tested?**

The 'duty to co-operate' is a legal requirement of the plan preparation process. It is the first thing that the Planning Inspectorate (PINS) will look at. PINs will need to see sufficient evidence to demonstrate that the

'duty to co-operate' has been undertaken appropriately for the plan being examined. There is no fixed format for how this evidence should be presented, nor what it should comprise, but it should be:

- Succinct
- flow from the issues that have been addressed jointly
- highlight the practical policy outcomes that have resulted.

A 'tick box' approach or a collection of correspondence will not be sufficient.

Councils will also need to show how they have considered joint plan-making arrangements, what decisions were reached and why. Finally, councils need to report how the duty is being taken forward on an ongoing basis through the Annual Monitoring Report. Just because a local plan passes the legal test of the duty, it does not mean it will be found 'sound' in dealing with strategic matters. The policy outcomes of co-operation will need to be tested against the evidence at examination in the normal way.

### **What happens if a council or identified public body will not co-operate or cannot agree?**

Co-operation works two ways. Situations may arise where an invitation to co-operate is not accepted, or agreement on shared policy outcomes cannot be reached.

Where co-operation is not forthcoming, PINs are likely to consider the extent to which the request to co-operate is 'reasonable' based on the evidence. If the deliverability of the plan is dependant on a reasonable request for co-operation by the plan-making body that is not forthcoming, the plan may still be found unsound unless some form of working arrangement can be brokered.

If PINs consider that the legal requirement to co-operate has been met through joint working but there is disagreement about the policy outcome (for example the proposed level of housing provision), then this will need to be resolved through the examination process based on the evidence.

All of these scenarios will cause delay and uncertainty and should be avoided if possible. Councils and other public bodies covered by the duty should make every effort to ensure that strategic issues are properly addressed at the formative stages of the plan preparation process, and that any major disagreements are resolved well before the examination.