

EAST HERTS COUNCIL

DISTRICT PLANNING EXECUTIVE PANEL - 28 NOVEMBER 2012
EXECUTIVE – 4 DECEMBER 2012

REPORT BY EXECUTIVE MEMBER FOR STRATEGIC PLANNING
AND TRANSPORT

THE 'DUTY TO CO-OPERATE' AND EAST HERTS DISTRICT PLAN

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This report explains that the Duty to Co-Operate is a requirement contained within the Localism Act 2011;
- It explains the significance of this in terms of cross-boundary strategic priorities, particularly in relation to housing;
- The report advises that it is considered crucial for East Herts Council Members to adhere to the agreed strategy selection process in order to seek to avoid a situation where the Planning Inspectorate intervenes on the basis of failure to comply with the Duty to Co-Operate;
- Finally, it proposes that the Executive Member for Strategic Planning and Transport be authorised to represent East Herts Council in meetings with the relevant Member(s) from neighbouring local planning authorities, Hertfordshire and Essex County Councils, and other relevant bodies.

RECOMMENDATIONS FOR DISTRICT PLANNING EXECUTIVE
PANEL AND EXECUTIVE: That:

(A)	an approach to the Duty to Co-Operate based on a clearly defined plan-making process, objective assessment, positive preparation, and serious consideration of cross-boundary strategic matters, be supported as the basis for continued work on the District Plan;
(B)	the Executive Member for Strategic Planning and Transport be authorised to attend meetings with Members from local planning authorities, Hertfordshire and Essex County Councils, and other relevant bodies as necessary, to

	demonstrate compliance with the Duty and further progress the District Plan;
<u>RECOMMENDATIONS FOR COUNCIL:</u> That:	
(A)	an approach to the Duty to Co-Operate based on a clearly defined plan-making process, objective assessment, positive preparation, and serious consideration of cross-boundary strategic matters, be agreed as the basis for continued work on the District Plan;
(B)	the Executive Member for Strategic Planning and Transport be authorised to attend meetings with Members from local planning authorities, Hertfordshire and Essex County Councils and other relevant bodies as necessary, to demonstrate compliance with the Duty and further progress the District Plan.

1.0 Background

1.1 Section 110 of the Localism Act includes a new 'Duty to Co-Operate'. This requirement is reflected throughout the National Planning Policy Framework (NPPF). In effect, the Duty is a requirement for Local Planning Authorities to engage in effective strategic planning, and is therefore a replacement for the previous system of regional planning.

1.2 **Essential Reference Paper 'B': Guidance on the Duty to Co-Operate** sets out the relevant paragraphs from the NPPF and explains the background, rationale and main requirements of the Duty. Failure to demonstrate compliance with the Duty can lead to plans being found unsound at examination in public.

1.3 The North London Waste Plan provides a recent example of failure to comply with the Duty:

"A 15-year waste strategy drawn up by seven London councils has become the first English plan to fall foul of the Localism Act's duty to co-operate. Inspector Andrew Mead has ruled that the North London Waste Plan (NLWP) does not comply with the duty and is therefore not sound because 'there has not been constructive, active and ongoing engagement during the NLWP's preparation between the north London councils and the planning authorities to which significant quantities of waste are exported'. Earlier this year, regional waste planning bodies the South Waste

Planning Advisory Group (SEWPAG) and the East of England Waste Technical Advisory Body, which receives waste from north London, objected to the plan. Mead said that contact between the north London councils and these authorities had been 'scant'."
Waste strategy fails on duty to co-operate test: Planning Magazine, 7th September 2012, page 5.

1. 4 As this case demonstrates, it is important that plan-makers should consider the requirements of the duty throughout the plan-making process. For this reason, the nature and extent of co-operation required can only be understood in relation to specific plans, taking account of their scope, likely impact, and key stakeholders.

2.0 Report

- 2.1 The Planning Advisory Service (PAS) guidance states that the Duty to Co-Operate "is the first thing that the Planning Inspectorate (PINS) will look at...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...The policy outcomes of co-operation will need to be tested against the evidence at examination in the normal way."
- 2.2 East Herts Council's stepped approach to strategy selection, including the gradual testing and refinement of initial assumptions, means that East Herts Council is considered to be in a much stronger position than those local planning authorities which do not have such a transparent and rigorous approach to testing of evidence. The Council has a very clear and comprehensive audit trail to justify the decisions which lie behind the choice of strategy which will be presented at the end of the process.
- 2.3 Added to this, a process of continuous engagement with key stakeholders has been central to the strategy selection process, not as a 'tick-box' exercise, but in a genuine attempt to understand the wider issues behind the difficult policy choices which East Herts Council and others will have to make.
- 2.4 The final strategy will rest on a basis set out in a clear narrative within the Supporting Document. This document draws heavily on a further quantity of evidence, including meetings and exchanges with all the key stakeholders as defined by the NPPF. It also demonstrates how the process has responded to public consultation and addressed risk and uncertainty.

Cross-Boundary Strategic Priorities

- 2.5 One of the thorniest issues facing East Herts Council is the issue of cross-boundary strategic priorities. A particularly complex matter in this regard is that of **unmet housing need** from neighbouring authorities (NPPF paragraphs 179 and 182).
- 2.6 The ‘objectively assessed needs’ (Paragraph 182) of each local authority area must be established through population projections, which East Herts Council and several of the neighbouring authorities have done, or by relying on the projections of the East of England Forecasting Model (EEFM) which was run for all Districts in the East of England region in spring 2012.
- 2.7 NPPF Paragraph 179 states that *“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”*
- 2.8 Harlow, Stevenage, and Broxbourne, all have relatively tightly drawn administrative boundaries. Although Welwyn Hatfield Borough’s boundaries are not drawn as tightly, it has recently suggested that due to constraints within its district it is unable to meet all of its needs within the District, and will therefore seek to accommodate some of its housing needs within the adjoining districts of St Albans and East Herts.
- 2.9 Cross-boundary priorities can only emerge through the plan-making processes of the various local planning authorities, to show how they have taken the needs of adjoining authorities into consideration, and to objectively assess the strategic role and function of their neighbouring areas as well as their own needs. This is likely to include consideration of the whole range of social, economic, and environmental issues in the NPPF, within the context of the presumption in favour of sustainable development.
- 2.10 At the ‘formative stage’ of plan-making, each authority must be sufficiently confident that it is able to demonstrate that it has taken account of all the relevant cross-boundary matters in reaching its preferred strategy and in drawing up the policies which follow on from the strategy.

- 2.11 It is possible that, following due planning processes, there will still be disagreement between Local Planning Authorities at Examination in Public. This is acknowledged by the PAS guidance: *“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.”*
- 2.12 If agreement cannot be reached prior to examination, the only way to reach a conclusion is for the evidence presented by both authorities to be tested at examination in public. The Planning Inspector will then decide whether the request to co-operate is based on ‘reasonable’ evidence. If such a situation were to arise, the rigorous process and extensive evidence assembled by East Herts Council should enable it to successfully defend the proposed plan.
- 2.13 However, there remains a risk that, if the Council does not adhere to the agreed strategy selection process, but proceeds on grounds other than the planning requirements set out in the NPPF, that the evidence for the proposed strategy will be found to be insufficient at Examination, and the plan may be found unsound. This could result in proposals from adjoining districts in effect being forced onto East Herts Council by the Planning Inspectorate. The risk of this happening can be reduced if the Council continues to engage positively in the plan-making process.

Statutory Consultees and Other Stakeholders

- 2.14 National planning regulations specify a number of important stakeholders in the formative stages of plan-making. These include ‘statutory consultees’ such as Natural England, the Environment Agency, English Heritage, and the Highways Agency. They also include key public and private sector providers of infrastructure and services. East Herts Council has taken particular care to ensure that these bodies have been engaged in the formative stages of plan-making, and this is clearly evident through the Supporting Document to Part 1 of the District Plan.
- 2.15 In this regard, Hertfordshire and Essex County Councils are important stakeholders in East Herts Council’s plan-making process, as they are significant providers of key services likely to be impacted by the plan, particularly in relation to education and highways, but also other services. Whilst there has already been

considerable engagement, there remain a number of areas where further engagement with both County Councils is necessary before East Herts Council can be in a position to demonstrate that it has a sound plan. These issues are addressed in more detail in Agenda Item 11: District Plan Part 1 – Strategy Supporting Document: Update Report.

Member Engagement with the Duty to Co-Operate

- 2.16 As explained above, it is important that the Council as a whole adheres to the agreed strategy selection process, in order to demonstrate at Examination that the strategy is based on planning considerations set out in the NPPF, and that co-operation is forthcoming where it is required by such considerations.
- 2.17 However, it is also important that the Council has direct Member engagement with neighbouring authorities and also with Hertfordshire and Essex County Councils, where there is likely to be an expectation that co-operation will go beyond the officer level, in order to demonstrate a proper level of commitment to strategic planning.
- 2.18 It is important that Member-level contact projects consistent and co-ordinated messages with a clear strategic focus in representing the Council as a whole, and demonstrates a good understanding of both NPPF requirements and the strategy selection process for the District Plan.
- 2.19 Therefore it is proposed that the Executive Member for Strategic Planning and Transport be authorised to represent East Herts Council in meetings with the identified stakeholder authorities and other relevant bodies. For the sake of transparency it is also proposed that the notes of such meetings be reported back to the District Planning Executive Panel and made public on the Council's website.

3.0 Implications/Consultations

- 3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

Contact Member: Cllr Mike Carver - Executive Member for Strategic Planning and Transport
mike.carver@eastherts.gov.uk

Contact Officer: Kevin Steptoe - Head of Planning and Building Control
01992 531407
kevin.steptoe@eastherts.gov.uk

Report Author: Martin Paine - Senior Planning Policy Officer
martin.paine@eastherts.gov.uk