

**Broads Local Plan**  
**Duty to Cooperate**  
Report by Planning Policy Officer

**Summary:** This report outlines to members some of the details of the requirements of the Duty to Co-operate and seeks endorsement for the suggested approach.

**Recommendation:** That members endorse the suggested approach.

## **1 Introduction**

- 1.1 The duty to cooperate 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 in England and public bodies to engage constructively, actively and on an ongoing basis to maximise the effectiveness of Local and Marine Plan preparation in the context of strategic cross boundary matters.
- 1.2 The duty to cooperate is not a duty to agree, however, 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.
- 1.3 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.
- 1.4 The Localism Act states that relevant bodies must '*...engage constructively, actively and on an ongoing basis...*'
- 1.5 This report sets out what steps the BA is undertaking in relation to Duty to Cooperate.

## 2 Duty to Cooperate in the (Planning) Headlines...

### Oxford housing chief criticises neighbours over duty to cooperate

27 August 2014 by Susie Sell, Be the First to Comment

The executive director for regeneration and housing at Oxford City Council has criticised neighbouring authorities for failing to take account of the city's unmet housing need in their respective local plans, according to local press reports.

### Luton Council launches legal challenge against neighbour over 'failure to cooperate'

24 July 2014 by John Geoghegan, 1 comment

A Home Counties council has launched a legal challenge against a neighbouring authority's decision to approve a 5,000-home urban extension, arguing that it failed to meet the Duty to Cooperate and unlawfully re-drew green belt boundaries.

### High Court to test application of duty

1 August 2014 by John Geoghegan, Be the First to Comment

A legal challenge by a Home Counties council to a neighbouring authority's approval of a green belt urban extension promises to be a test of whether the duty to cooperate can apply to individual applications as well as to development plans, say experts.

### Council should withdraw plan over failure to meet duty, says inspector

6 May 2014 by John Geoghegan, Be the First to Comment

A Surrey council should withdraw its key development plan because it does not meet the legal duty to cooperate, a planning inspector has recommended.

### Core strategy to be withdrawn after duty to cooperate failure

30 June 2014 by Jamie Carpenter, Be the First to Comment

Members of a Surrey authority's planning committee have voted to withdraw their council's key core strategy planning document from examination after an inspector warned earlier this year that the plan did not meet the legal duty to cooperate.

## 3 The BA and Duty to Co-operate to date.

- 3.1 It is useful to note, that in her report on the examination of the Sites Specifics Local Plan (adopted July 2014), the Inspector said of Duty to Cooperate undertaken by the Broads Authority:

*'From the submitted evidence I consider that the BA has worked closely throughout the period of plan preparation with the relevant prescribed bodies and persons, other statutory and regulatory organisations, and other authorities. Therefore, taking all factors into consideration, I am satisfied that this amounts to constructive, active engagement on an ongoing basis. Consequently, the duty to co-operate has been fulfilled.'*

## 4 What the BA is doing.

### 4.1 Duty to Co-operate Workshops set up with County and neighbouring Councils

- 4.1.1 These are officer level workshops. At the September 2014 Planning Committee the Local Development Scheme was discussed. This shows three rounds of Duty to Cooperate workshops throughout the production of the Broads Local Plan.

## **4.2 Regular attendance to Norfolk Strategic Planning Officers Group**

4.2.1 Set up before the Localism Act 2011 introduced the Duty to Cooperate, this Officer Group has become an important element in meeting the requirements of the Duty. The group meets monthly and discusses strategic elements relevant to the majority of the Local Planning Authorities in Norfolk.

## **4.3 Regular attendance at Norfolk Duty to Co-operate Member Group**

4.3.1 The chairman of the Planning Committee has attended all of the Member Group meetings set up to act as a Member level Duty to Cooperate body. Also present at this group are the Planning Policy Portfolio Holders of the Councils in Norfolk.

4.3.2 This is not a decision making body, but discusses strategic issues relevant to the majority of Norfolk and makes representations for the Members to take back to their respective Authorities.

4.3.3 The Terms of Reference are attached at Appendix A.

## **4.4 Suffolk Strategic Planning Officers Group**

4.4.1 This Group is similar in operation to the Norfolk equivalent.

## **4.5 Involvement in Neighbouring Council's Strategic Housing Market Assessments.**

4.5.1 One of the key issues that the Duty to Cooperate is particularly critical to, is that of housing provision. With the removal of the regional tier of planning and the Regional Plan which traditionally assessed housing need across the region and apportioned it to specific Local Planning Authorities, it is vital that Local Planning Authorities undertake a joint approach and work together closely.

4.5.2 An example is the Central Norfolk Strategic Housing Market Assessment. This will be reported to the November Planning Committee, but a short summary is included in this report by way of illustrating the Duty to Cooperate 'in action'.

4.5.3 Initially, Greater Norwich had planned to undertake this assessment for their area which effectively results in the objectively assessed housing need for an area. One of the first pieces of work is to calculate a housing market area. This is a geographical area which is relatively self-contained in terms of reflecting people's choice of location for a new home i.e. a large percentage of people settling in the area will have sought a house only in that area.

4.5.4 This particular SHMA found that the Housing Market Area that covers Greater Norwich also includes part of North Norfolk and Breckland. As such, those local authorities took part in the Central Norfolk SHMA. This is an example of five local planning authorities (six including the Broads Authority) working together to cooperate in identifying housing need.

#### **4.6 Involvement in Gypsy and Traveller Assessments.**

4.6.1 South Norfolk recently completed a Gypsy and Traveller Accommodation Assessment and involved the Broads Authority as the assessment was for the entire South Norfolk district.

#### **4.7 Commissioning of Joint work**

4.7.1 This is undertaken not only to meet the Duty to Cooperate obligations, but commissioning joint studies shares costs and save money. Potential areas where authorities in Norfolk could commission joint work are included in Appendix B.

4.7.2 An example of commissioning joint work is on the subject of the recreational impacts of development on designated sites. This piece of work is currently being scoped by the Norfolk Strategic Planning Officers Group, which comprises representatives of all nine LPAs across Norfolk, who will each contribute to the cost.

### **5 The Important and Unique Role of Planning Committee**

5.1 The Broads Authority's Planning Committee is comprised of Members from all the constituent District and County Councils. This is of clear benefit when looking at Duty to Cooperate matters and offers a unique opportunity in discharging our Duty to Cooperate duties.

5.2 As Members are aware, the Local Plan will be presented to Planning Committee regularly throughout its production for members to influence its production.

5.3 A number of Planning Committee Members who are appointed by constituent Authorities offer a unique Member level link to their appointing authorities which is not only extremely useful, but essential in producing a sound Local Plan that has met the requirements of the Duty to Cooperate.

5.4 Such Members are encouraged therefore to regularly liaise with their Local Plan portfolio holder and Planning Policy Manager and discuss relevant information relating to the production of the Local Plan. Alternatively, Members may have an opportunity of feeding back to their Council's Cabinet perhaps 4 or 5 times a year.

5.5 Members would act effectively as conduits of information, carrying updates and information back and forth. It would be beneficial to the Broads Local Plan future submission if this were documented in some form, perhaps by emails that are able to be submitted and in the public domain towards the end of the Local Plan production period. It is essential that this dialogue is two way.

- 5.6 During the production of the Local Plan, it is intended that Planning Committee will be kept up to date of progress. This is likely to be via an update report every quarter. It is recommended that Broads Authority's Planning Committee Members use this as the basis of Duty to Cooperate discussions with relevant Members and officers at their Councils.
- 5.7 Of course our neighbouring Councils will be consulted, but as this report has sought to explain, Duty to Cooperate is more than consultation and Member engagement is essential.

## **6 Financial Implications**

- 6.1 The main implication is that of officer time in cooperating with neighbouring Local Planning Authorities.
- 6.2 With regards to commissioning of joint work, there is likely to be cost savings as a result of economies of scale. The Authority's contribution will always be proportionate to the work being commissioned.

## **7 Conclusion**

- 7.1 The Duty to Cooperate is an important component of the planning making process and there are examples of where failure to cooperate has resulted in Plans being delayed or rejected at Examination. It is not only an important statutory requirement, however, but a valuable opportunity to work jointly with our neighbours and share information and aspirations. The Broads Authority has a good track record in cooperation, as proven during the Examination of the Site Specifics Local Plan and it is intended to continue this approach.

Background papers: Terms of Reference of *Norfolk Duty to Co-operate Member Group*  
Draft schedule of areas for cooperation

Author: Natalie Beal  
Date of report: 24 September 2014

Appendices: APPENDIX A – Norfolk Duty to Cooperate – Member Forum Draft  
Terms of Reference  
APPENDIX B – Schedule of issues relating to the 'Duty to Co-operate'  
between Norfolk authorities and other relevant bodies (January 2014)

**Norfolk Duty to Cooperate – Member Forum**  
**Draft Terms of Reference**

**Introduction**

The Localism Act 2011 inserts section 33A into the Planning and Compulsory Purchase Act (2004) the requirement for authorities and certain public bodies to discuss key issues under a 'Duty to Cooperate' when preparing Development Plan Documents (principally Local Plans), and other Local Development Documents .

The Act states, *inter alia*, that Local Planning Authorities must:

*'...engage constructively, actively and on an ongoing basis in any process by means of which development plan documents (or supplementary planning documents) are prepared or supported, so far as relating to 'strategic' matters. For the purposes of the Duty to Cooperate, strategic planning matters are development or infrastructure that significantly affects more than one planning authority area, or those that comprise, or significantly affect, county planning matters.'*

The Duty to Cooperate is a legal test. Local Planning Authorities will need to provide evidence to demonstrate that they have complied with the duty as part of the examination of Local Development Documents.

However, the outcomes arising from the Duty to Cooperate would also be considered as part of the wider soundness test that Local Development Documents are judged against. This is a test of whether the document is 'effective'.

It is possible that a document can successfully pass the Duty to Cooperate legal test, but fail the 'effectiveness' test. This is because cooperation may still be required to deliver a key element(s) of a plan and there have been some high-profile examples of this scenario elsewhere in the country.

The Duty to Cooperate cannot be complied with retrospectively, and failure to do so would mean that a plan would not be able to progress until such time as sufficient engagement had been carried out. This presents a significant risk to local authorities and will affect the timescale for preparing and adopting local plans.

Therefore, bringing elected Members together on a regular basis as part of a single forum will create efficiencies for authorities and avoid duplication of discussion on key issues. Such an approach will mean that time and resources will be saved by negating the need for each authority to have separate discussions on the same topics with its neighbours and others.

**Purpose**

The purpose of the forum is for members to discuss the strategic issues that are planning related and affect all or the majority of local planning authorities and others affected by the Duty to Cooperate under the Localism Acts 'Duty to Cooperate'.

The forum will discuss the implications of these issues for plan-making, or other activities that contribute towards plan-making under the duty (such as evidence base etc) and work to achieve a common understanding or approach to that issue.

### **Objectives**

1. To discuss strategic planning issues that affect local planning authorities
2. to understand the viewpoints of other authorities
3. to consider comment upon and potentially commission relevant supporting evidence base to support local plans (as appropriate)
4. to consider the need for joint or coordinated working on particular topics or evidence
5. to co-ordinate if at all possible timelines for the production of plans

### **Operation of the Forum**

Discussions at the forum will not be binding on any authority. The sovereignty of each LPA and their Local Plan(s) is not affected by this group.

The discussions that take place within this forum will be formally recorded and used by individual authorities at Examinations in Public (EiP) to demonstrate that meaningful engagement at political level has been held under the duty.

### **Membership**

- Member with responsibility for planning from each District Council, the Broads Authority and the County Council, other Members as appropriate.
- The forum will need to engage with elected Members from authorities in other counties.
- Representatives from local authorities beyond Norfolk will receive a standing invite to the meetings.
- Other Duty to Cooperate bodies listed in the Act will be invited to attend as appropriate.
- Other planning issues that only affect two individual authorities should be considered separately between those authorities.

### **Reporting back**

It is anticipated that individual authorities will be kept up to date with reports / minutes from the Forum reported back to suitable committees or cabinets. Where specific endorsement or agreement to a particular action is required individual authorities will be responsible for facilitating this.

The Terms of Reference of this forum will be reviewed annually to ensure that they meet the needs of participating authorities and reflect the requirements of the Act.

# **Schedule of issues relating to the ‘Duty to Co-operate’ between Norfolk authorities and other relevant bodies (January 2014)**

## **Contents**

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## 1) Purpose of the schedule

The purpose of this schedule is to:

- identify the planning issues that cross administrative boundaries (i.e. affecting more than one local planning authority in Norfolk and wider adjoining authorities if appropriate);
- set out the processes for addressing such issues;
- set out the processes for recording outcomes, monitoring and reporting.

Consequently, the Schedule is an ongoing document that will be updated and revised as matters progress, providing a “live” framework to ensure effective co-operation amongst the Local Planning Authorities (LPAs) for the Local Plan making and implementation / delivery process.

## 2) Duty to co-operate

Under Section 110 of the Localism Act and the National Planning Policy Framework (paragraphs 178 to 181) local planning authorities are given a “duty to co-operate” on planning issues that cross administrative boundaries. This requires them to engage constructively, actively and on an ongoing basis, with the expectation that on areas of common interest joint working is undertaken diligently for the mutual benefit of the authorities. As well as working with other LPAs this also includes other public bodies. The LPAs will be expected to demonstrate that such co-operative working has taken place for the examinations on the Local Plans that they produce.

The Norfolk LPAs work together on planning and other issues through a variety of processes. This will continue to be the case. This schedule deals specifically with the strategic planning issues that affect more than one authority. In order to do this a **Working Group** has been set up, comprising members and officers from all the LPAs in Norfolk and representatives of other relevant public bodies. To guide the operation of this group, **Terms of Reference** and a **Memorandum of Understanding** have been adopted.

The Norfolk local planning authorities are:

- Breckland District Council
- Broadland District Council
- Broads Authority
- Great Yarmouth Borough Council
- Borough Council of Kings Lynn and West Norfolk
- Norwich City Council
- North Norfolk District Council
- South Norfolk District Council
- and
- Norfolk County Council (Minerals and Waste LPA)

## 3) Co-operation with neighbouring authorities

As well as co-operation within Norfolk, the duty may also necessitate working with authorities outside Norfolk. Any such issues will also be included on the schedule.

Adjacent local planning authorities are:

- Cambridgeshire County Council
- East Cambridgeshire District Council
- Fenland District Council
  
- Lincolnshire County Council
- South Holland District Council
  
- Suffolk County Council
- Forest Heath District Council
- Mid Suffolk District Council
- St Edmundsbury District Council
- Waveney District Council

#### **4) Co-operation with prescribed bodies**

Other public bodies that may be relevant are:

- Environment Agency
- English Heritage
- Natural England
- Mayor of London
- Civil Aviation Authority
- Homes and Communities Agency
- Clinical commissioning groups
- NHS Commissioning Board
- Office of Rail Regulation
- Highway Authority and Highways Agency
- Marine Management Organisation

Regard will also be had to: the Local Enterprise Partnership (LEP), New Anglia; Local Nature Partnership (LNP), Wild Anglia and other LEPs and LNPs if relevant.

## 5) The Schedule

ISSUES	ACTION (Opportunity to discuss Joint Assessments/Agreements)	OUTCOME	RESULT / MONITORING
<b>1 Policy preparation &amp; implementation</b>			
Co-ordination of strategic growth and infrastructure provision	Preparation of a strategic outline reflecting existing Core Strategies and infrastructure requirements	Framework to guide LPAs and infrastructure providers, evidence for funding bids.	
Co-ordination of Local Plans	Identify issues of potential collaboration	<ul style="list-style-type: none"> <li>• Possible co-ordination of type of documents and timing</li> <li>• Possible joint documents:</li> </ul> <p>Early review of South Norfolk Local Plan (at least) will be necessary. Members should be thinking about any joint Local Plan documents now (joint evidence base info taken as a given)</p>	
<b>2 Evidence base preparation and monitoring</b>			
Housing requirements	<ul style="list-style-type: none"> <li>• Investigate consistent approach to SHMA (including Gipsy &amp; Traveller assessments) and ‘objectively assessed housing need’</li> <li>• Investigate consistent approach to housing calculations</li> </ul>	<ul style="list-style-type: none"> <li>• Possible brief for production of Strategic Housing Market Assessments (SHMAs)</li> <li>• Possible combined working e.g. Gipsy and Traveller Accommodation Assessments (GTAAs)</li> </ul>	Key demonstration of the Duty to Co-operate for Examinations

	This is something that the GNGB authorities are working on, but wider consistency would be helpful across Norfolk (particularly for trying to boost the status of strategic sites in delivering housing)		
Housing distribution and delivery	<ul style="list-style-type: none"> <li>Investigate consistent approach to Strategic Housing Land Availability Assessments (SHLAAs)</li> <li>Investigate consistent approach to 5 year supply</li> </ul>	<ul style="list-style-type: none"> <li>Possible brief for production of SHLAA</li> <li>Possible brief for 5 year supply methodology</li> <li>Possible combined working SN Inspector has asked for an update on employment evidence base. Again, an early (Norfolk-wide?) review, taking the SEP into account, would doubtless be a positive and proactive sign. Retail update also sought by the Inspector</li> </ul>	Robust methodology and figures to ensure the plan led approach over ad hoc appeals
Employment studies	<ul style="list-style-type: none"> <li>Investigate consistent approach to studies</li> </ul>	<ul style="list-style-type: none"> <li>Possible brief for studies SN Inspector has asked for an update on employment evidence base. Again, an early (Norfolk-wide?) review, taking the SEP into account, would doubtless be a positive and proactive sign. Retail update also sought by the Inspector</li> </ul>	Show consistency with and co-ordinated approach to LEP planning
Infrastructure studies	<ul style="list-style-type: none"> <li>Investigate consistent approach to studies</li> </ul>	<ul style="list-style-type: none"> <li>Possible brief for studies</li> <li>Possible combined working High schooling is a key issue for the South Norfolk</li> </ul>	Appropriate requests for new infrastructure to support growth, consistent across the

		examination. As above, we will clearly need to commit to an early review of schooling arrangements in the Wymondham/Hethersett /Cringleford area, working with Children's Services. Implications are county-wide	county / area
Annual monitoring reports	Investigate consistent approach	<ul style="list-style-type: none"> <li>• Possible brief for new AMRs including cross boundary issues</li> <li>• Possible combined working</li> </ul>	
Transportation impacts	Investigate consistent approach	<ul style="list-style-type: none"> <li>• Ensure all authorities treat in consistent way and potentially benefit from a combined approach e.g. A47 issues</li> </ul>	Promote cases for new investment in a more robust way
Green infrastructure and potential recreational pressures on designated nature conservation sites	Investigate consistent approaches which acknowledge the wider impacts and benefits of growth in population. Potential for a Norfolk-wide study (think this is ongoing?) and perhaps a group of some kind?	<ul style="list-style-type: none"> <li>• Co-ordinated approach to the right type of provision</li> <li>• Co-ordinated approach to mitigation of effects of growth to meet Habitats Regulations Assessment 'likely significant effects'</li> </ul>	Balancing of growth and nature conservation issues
Water issues - resources, quality, drought management, flood risk management and land management (holistic approach)	Cumulative impacts needs to be fully assessed and mitigation agreed. Consider joint assessments or agreement to use the same consultancy for Local Plan reviews.	<ul style="list-style-type: none"> <li>• Co-ordinated approach to the right type of provision</li> <li>• Co-ordinated approach to mitigation of effects of growth to meet Habitats Regulations Assessment 'likely significant effects'</li> </ul>	Balancing growth and water demands
Flood Risk Assessments	Potential to review Strategic Flood Risk Assessments (SFRAs) to reflect the latest guidance and climate change predictions. Consider joint	<ul style="list-style-type: none"> <li>• Possible brief for studies</li> <li>• Possible combined working</li> </ul>	Balancing growth with relevant flood risks

	assessments or agreement to use the same consultancy for this.		
<b>3 Scheme specific</b>			
As and when particular items arise and have cross boundary implications. E.g. approach to the A47 improvements research			