

Strategic Planning and Infrastructure Committee

12 January 2021

Local Plan Review – Duty to Co-operate

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service	Rob Jarman
Lead Officer and Report Author	Philip Coyne Helen Garnett
Classification	Public
Wards affected	All

Executive Summary

This report builds on the report that was brought before this committee in June 2019. It summarises the operational processes currently in place in respect to duty to co-operate (DtC), the work that has been undertaken to date, and a future work programme in order that Maidstone can demonstrate constructive, active and ongoing engagement on strategic matters, ahead of submission. It then outlines what steps are proposed to ensure that, in reviewing the Local Plan, Maidstone Borough Council complies with the relevant national requirements and demonstrates a robust and logical approach to engagement with adjacent local authorities and other key stakeholders.

Purpose of Report

To build on the report brought before committee in June 2019 by summarising the steps the Council has carried out to ensure that duty to co-operate to date has been undertaken to ensure the legal compliance of the plan. It then sets out the preferred approach for future duty to co-operate activity to seek agreement on this approach.

This report makes the following recommendations to this Committee:

1. That members agree the framework for future duty to co-operate, the sign-off procedure for future meeting minutes and the arrangements for statements of common ground.

Timetable

Meeting	Date
Committee Strategic Planning and infrastructure Committee	12 January 2021

Local Plan Review – Duty to Co-operate

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve each of the corporate priorities.</p>	Rob Jarman
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendations support the achievements of the four cross cutting objectives by ensuring that the Local Plan Review is successful at examination.</p>	Rob Jarman
Risk Management	<p>The recommendations seek to reduce the risk associated with the production requirements for the Local Plan Review.</p>	Rob Jarman
Financial	<p>Funding has been set aside for the Local Plan Review in the Medium Term Financial Strategy. This includes funding for the specific work described in this report.</p>	Section 151 Officer & Finance Team
Staffing	<p>We will deliver the recommendations with our current staffing.</p>	Rob Jarman
Legal	<p>Accepting the recommendations will fulfil the Council's duties under Planning and Compulsory Purchase Act 2004 and the Town and Country</p>	Cheryl Parks Mid Kent Legal Services

	<p>Planning (Local Planning) (England) Regulations (2012).</p> <p>Acting on the recommendations is within the Council's powers as set out in the Planning and Compulsory Purchase Act 2004.</p> <p>Officers from Mid Kent Legal Services have been involved in discussions that have underpinned the formulation of the framework for DtC proposed in this report.</p>	(Planning)
Privacy and Data Protection	<p>Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.</p>	Policy and Information Team
Equalities	<p>The recommendations do not propose a change in service therefore will not require an equalities impact assessment</p>	[Policy & Information Manager]
Public Health	<p>No implications identified</p>	[Public Health Officer]
Crime and Disorder	<p>The recommendation will not have a negative impact on Crime and Disorder.</p>	Rob Jarman
Procurement	<p>N/A</p>	[Rob Jarman & Section 151 Officer]

2. INTRODUCTION AND BACKGROUND

- 2.1 The requirement to co-operate with other organisations is set out within national policy and legislative frameworks. Paragraphs 22 to 27 of the National Planning Policy Framework (NPPF) requires that in formulating plans, Local Planning Authorities co-operate with each other and other prescribed bodies on strategic and cross-boundary matters. Section 33a of the Planning and Compulsory Purchase Act 2004 requires that local planning authorities must co-operate with a number of prescribed bodies as set out in regulation 4 of the Town and Country Planning (Local Planning) (England) Regulations (2012).
- 2.2 Whilst the duty to co-operate has been an obligation since the introduction of the NPPF in 2012, the 2018 NPPF updated the requirement, raising the bar to require effective and on-going joint working between strategic policy making authorities and relevant bodies. This higher bar has been carried forward to the 2019 NPPF.
- 2.3 These requirements have been tested nationally at Local Plan examinations, and a number of authorities have been demonstrated to fall short of the requirements set out in the NPPF. Notably, Sevenoaks in Kent where a recent High Court judgment determined that the Planning Inspector was right in concluding that the Council had not met its duty to

co-operate in plan making. This was largely owing to the lateness in approaching neighbouring authorities on key cross boundary issues, in that case unmet housing need. This follows similar examination outcomes at Wealden and St. Albans which concluded that duty to co-operate requirements had not been met. Most recently, Inspectors have written to Tonbridge and Malling Borough Council stating “in light of our serious concerns regarding the DtC, as set out above, we consider it a very strong likelihood that there will be no other option other than to invite you to withdraw the plan from examination, or, failing that, for us to issue a final report recommending that the plan is not adopted because of a failure to meet the DtC in accordance with our duties under Sections 20 (5) (c) and (7) of the Act.”

- 2.4 Because these tightened DtC requirements arose after the examination of Maidstone’s current Local Plan, it is important to consider how these impact on our procedures so as to ensure that Maidstone has robust arrangements in place well in advance of the future examination of the Local Plan Review. This will ensure that the Council is able to demonstrate constructive, active and ongoing engagement on strategic matters, ahead of submission. Whilst officers have already responded to this through constructive and active engagement, in light of these recent examinations, it is imperative that the Council also gives consideration to the processes that will shape Maidstone’s duty to co-operate activities going forward to submission and beyond. Additionally, it is appropriate to review procedures in light of the publication of the emerging preferred spatial strategy, as future Duty to Cooperate should respond to this accordingly.

Duty to Co-operate

- 2.5 Duty to co-operate is the process by which a plan making authority engages with relevant bodies on strategic matters. It is an ongoing and iterative process through which the Local Planning Authorities and other prescribed bodies seek agreement with each other on strategic issues. As successive Inspectors have determined, the process constitutes more than mere consultation on the plan, as authorities and bodies must undertake meaningful and collaborative engagement and seek to address any issues in a joint way to find strategic solutions.
- 2.6 The Town and Country Planning (Local Planning (England)) regulations 2017 (As amended) sets out a list of ‘prescribed bodies’ with which a strategic planning authority has a duty to co-operate. These are:
- the Environment Agency;
 - Historic England
 - Natural England;
 - the Mayor of London;
 - the Civil Aviation Authority;
 - the Homes and Communities Agency;
 - primary care trusts
 - the Office of Rail Regulation;
 - Transport for London;
 - integrated Transport Authorities;
 - highway authorities;

- the Marine Management Organisation;
 - local enterprise partnerships.
- 2.7 Whilst the duty is not 'a duty to agree' nor a duty to reach a particular policy outcome (but rather to co-operate), Strategic Planning Authorities should make every effort to reach agreement through constructive, active and ongoing engagement.
- 2.8 To demonstrate effective co-operation a Local Planning Authority must ensure that:
- It has done what it reasonably could to maximise effectiveness of the plan;
 - That it has genuinely tried to resolve issues through collaboration;
 - That it has been meaningful and taken place before decisions had been made;
 - Robust evidence, to support the claim that duty to co-operate has been active and ongoing, must be provided.

Strategic Issues covered by Duty to Co-operate

- 2.9 Section 33a of the Planning and Compulsory Purchase Act 2004 identifies strategic matters as:
- (a) sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or; use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and*
- (b) sustainable development or use of land in a two-tier area if the development or use—*
- (i) is a county matter, or*
- (ii) has or would have a significant impact on a county matter.*
- 2.10 Paragraph 20 of the NPPF defines what constitutes a strategic policy. These are:
- a) housing (including affordable housing), employment, retail, leisure and other commercial development;
 - b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat);
 - c) community facilities (such as health, education and cultural infrastructure); and
 - d) conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.
- 2.11 In applying these broad themes set out in paragraph 20 of the NPPF, the Council has defined the following list of issues and outlined how they relate to Maidstone Borough:

Strategic Issue for Maidstone borough	Geographical area relevant for the 'Duty to Co-operate'	Possible Statement of Common Ground signatories
Meeting the borough's local housing need and helping to meet needs across the relevant Housing Market Area/s	Housing Market Area/s; neighboring authority areas	Tonbridge & Malling BC; Medway; Swale BC; Ashford BC; Tunbridge Wells BC.
Ensuring there is a sufficient supply of affordable housing		
Ensuring sufficient land and floorspace is provided to support economic growth in the borough and to contribute to the needs of the wider economic market area	Functional Economic Market Area	Tonbridge & Malling BC; Medway. South East Local Enterprise Partnership
Ensuring that Maidstone has a vital and vibrant town centre which maintains its role in the sub-region and that a network of local centres continue to serve local retail and service needs.	Retail Catchment Area	[extent of RCA to be confirmed through future evidence]
Ensuring that the borough's environmental assets such as the Area of Outstanding Natural Beauty, Landscapes of Local Value, the countryside and Green Belt are suitably protected	Green Belt	Tonbridge & Malling BC.
	Kent Downs AONB; setting of High Weald AONB	Tonbridge & Malling BC; Medway; Swale BC; Ashford BC; Tunbridge Wells BC.
	Landscapes of Local Value	Tonbridge & Malling BC; Ashford BC; Tunbridge Wells BC.
Ensuring that the borough's biodiversity and wildlife habitats are suitably protected and enhanced	North Downs Woodlands Special Area of Conservation and, potentially, European designated sites in other boroughs	[extent of impacts to be identified through the Habitat Regulations Assessment]. Kent Nature Partnership
	SSSIs, Local Wildlife Sites, ancient woodland which straddle the borough's boundaries.	Natural England Tonbridge & Malling BC; Ashford BC; Medway; Swale BC; Tunbridge Wells BC.
Ensuring that the borough's historic assets are conserved and managed	Maidstone borough	Historic England
Contributing to an overall improvement in air quality, in particular in the Maidstone Air Quality Management Area.	Maidstone AQMA; AQMA in the Malling area of Tonbridge & Malling.	Kent County Council (as highway authority); Tonbridge & Malling BC.
Managing the risk of flooding from all sources.	Catchments of the River Medway, Stour, Beult & Teise.	Environment Agency; Tonbridge & Malling BC; Medway; Ashford BC; Tunbridge Wells BC

Managing nutrient neutrality for the new development in the Sour Catchment in relation to Stodmarsh Designated Sites	Catchment of the River Stour	Environment Agency, Natural England, Ashford BC
Taking a proactive approach to mitigating and adapting to climate change	Maidstone borough. [Significant overlap with air quality and transport matters]	[see air quality and transport matters]
Ensuring sufficient transport infrastructure is provided to serve the new development that is planned.	Strategic highway network, local highway network, and public rights of way within the borough and, potentially, key junctions falling in neighbouring authority areas. Rail infrastructure within the borough.	Kent County Council; Highways England; Network Rail; Tonbridge & Malling BC; Ashford BC; Medway; Swale BC; Tunbridge Wells BC.
Ensuring sufficient utilities infrastructure is provided to serve the new development that is planned.	Maidstone borough (subject to the selected spatial strategy)	Utility providers
Ensuring that sufficient provision is made for health and education to serve the new development that is planned.	Maidstone borough (subject to the selected spatial strategy)	Kent County Council; West Kent Clinical Commissioning Group; Maidstone & Tunbridge Wells NHS Trust.
Ensuring a sufficiency of parks and open spaces	Maidstone borough	-
Ensuring that sufficient provision is made for community infrastructure	Maidstone borough	-

The Statement of Common Ground

2.12 The National Planning Policy Framework (NPPF) requires that plan-making authorities should produce and maintain, one or more statement(s) of common ground. A statement of common ground is a document which details key information, highlighting agreement and disagreement on cross boundary strategic issues with neighbouring authorities and other relevant bodies. It documents where effective co-operation is and is not happening, highlighting the cross-boundary matters being addressed through Duty to Co-operate, and the steps that are being taken by signatories to overcome any disagreements.

2.13 Statements of Common Ground can consist of one document signed by multiple signatories or, where necessary, multiple statements can be used to address issues surrounding specific topics or bodies.

Duty to Co-operate activities to date

2.14 Maidstone Borough Council has undertaken proportionate, active engagement with neighbouring authorities, infrastructure providers and prescribed bodies since the inception of the Local Plan Review in 2018. Additional discussions have been held at sub-regional level through the Kent Planning Policy Forum.

- 2.15 A list of the discussions that have taken place to date is provided in Appendix A. It should be noted that until recently these meetings have been conducted prior to the publication of the Regulation 18 Preferred Approaches consultation document which outlines the spatial approach detailing specific sites and areas for growth. As we are now in a position to hold discussions at a more detailed level it is right that Duty to co-operate activity adapts to this and progresses to a more intensive phase.
- 2.16 Statements of Common Ground have been drafted to aide as a formal record of those strategic matters for use from now on. These will record where there is agreement and disagreement. These will be updated to respond to formal responses to the Regulation 18 Preferred Approaches consultation as well as outcomes from subsequent meetings with relevant organisations.
- 2.17 Active engagement with prescribed bodies has also taken place where strategic matters related to an organisation's operational interest. For example, discussions with infrastructure providers have informed the strategic direction of the plan and shaped the decision-making process.
- 2.18 Since November, officers have been involved in more active engagement with prescribed bodies along with select additional stakeholders on pertinent issues surrounding the plan, such as nutrient neutrality in the river Stour, highways, utilities and other infrastructure. Additionally, pre-consultation engagement has been actively pursued all relevant organisations. In this respect, group presentations outlining the key policy changes and allocations have taken place, and individual organisation meetings are ongoing. These individual meetings allowed prescribed bodies to raise questions and bring forward any points of clarification in advance of their formal consultation response to the plan.

A proportionate approach to DtC

- 2.19 Now that the Council has progressed its plan to Preferred Approaches stage with a preferred spatial strategy, along with preferred area contributions and site allocations identified, as well as preferred strategic policies provided , it is likely that more defined issues will arise and discussions will progress to a more detailed and in-depth stage. It is therefore considered that the Council formalises the duty to co-operate process at this point in time, both in terms of internal procedures and formalising arrangements with other authorities.
- 2.20 Because of the range of organisations and the diverse nature of the issues that may arise from duty to co-operate, it is expected that engagement levels will vary by organisation. The degree of engagement between Maidstone Borough Council and neighbouring boroughs would, for example, be high. This would especially be the case where strategic matters fall within close spatial proximity or raised more significant cross border issues. Additionally, Kent County Council as highways authority is likely to require in depth and significant engagement on a range of highway related matters.

- 2.21 Engagement will also take place at the appropriate level within each body. This will mean that certain strategic matters are addressed by operational officers, while others are also addressed by senior officers and Members.
- 2.22 Other prescribed bodies may also be concerned with significant but specific matters of a strategic importance, such as the role that Southern Water, the Environment Agency and Natural England have in ensuring and delivering nutrient neutrality in the river Stour. It is expected that in depth and ongoing discussions will continue with these bodies along with affected neighbouring authorities in order to find solutions to this strategic matter, and that these discussions may take place at a more senior level.
- 2.23 Other prescribed bodies, whilst engaged actively in the plan process, will have a lesser degree of engagement on account of their remit and regulatory duties. For example, for some infrastructure providers the ability to meet the needs of development are less complex and/or they are bound by a duty to meet infrastructure demand arising from new development.
- 2.24 The programme of duty to co-operate activity will reflect these differences in complexity through the adoption a tailored approach based on the degree of engagement that is required and the nature of the strategic issues to be discussed. This approach is set out in the sections that follow.

Future DtC procedures

Neighbouring authorities

- 2.25 Planned DtC activity with neighbouring authorities will follow a tiered approach in order that strategic matters can be considered in further detail and issues considered escalated where required. The approach is as follows:

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- Level 1: Officer level to discuss strategic matters in more detail and consider issues.
 - Level 2: More complex issues and matters of agreement might be discussed at senior officer level. This may involve directors and/or chief executive.
 - Level 3: Any unresolved issues and key matters of agreement will be escalated to meetings involving appropriate elected Members.

- 2.26 Once key matters of agreement or disagreement are identified, these will be set out in updated statements of common ground – these statements of common ground will effectively dictate the agenda’s for these meetings.

Other prescribed bodies

- 2.27 Meetings are currently taking place at officer level and for the majority of organisations it is expected that they will continue to be undertaken at this level to their conclusion. Where there may be a particularly complex set of issues to deal with in relation to prescribed bodies, there may be a need for meetings to be escalated to senior officer level.

- 2.28 Where particular issues arise that need agreement or where disagreement remains, then Maidstone will enter into a statement of common ground with that organisation.

Recording and reporting future meetings

- 2.29 To provide robust evidence to demonstrate that duty to co-operate has been undertaken effectively there is a need to ensure that a proper record is kept of all engagement.
- 2.30 Meeting agendas will be set by the contents of the draft statements of common ground which have been informed by past discussions. The Head of Planning and Development has a broad range of delegated powers to sign off on the process and outcomes of duty to co-operate meetings and it is proposed that the current arrangements are retained for officer level meetings.
- 2.31 The potential formal meetings involving Council Members are a new arrangement for Maidstone, and accordingly consideration needs to be given to the way that meeting minutes are agreed upon and recorded. Meetings at Level 3 (member level) will be undertaken with an officer in attendance to minute these meeting, and these will be agreed by the officer and Member in attendance. This report recommends that Members agree the procedures for Level 3 meeting minute sign-off, which should be undertaken by the Member/s that were in attendance at the meeting and in conjunction with the Head of Planning and Development.
- 2.32 A summary update on the duty to co-operate will be reported to SPI committee meetings as part of the Local Plan Review Update agenda item, with minutes being disclosed on Part 2 (yellow) papers and taken in private because of the possible disclosure of exempt information.

Statements of Common Ground

- 2.33 As discussed earlier in this report, draft statements of common ground have been prepared in respect of neighbouring authorities. These will be updated as discussions progress, with the aim of bringing the latest agreed statement of common ground before the SPI committee with the Regulation 19 version of the Local Plan Review before sign-off by the Head of Planning and Development.
- 2.34 Duty to cooperate will continue throughout the Local Plan review process, and it should be noted that in some instances matters to be agreed on may not be resolved until closer to the submission and examination of the plan. Therefore provision needs to be made to accommodate any last-minute changes. For this reason, it is considered that, where matters remain to be resolved following this SPI committee, or where late matters arise, the Head of Planning and Development may sign off any changes under delegated powers and in consultation with the elected member whom had been in attendance at level 3 meetings with that council or body. Any significant changes to the statements of common ground will be reported to the SPI committee as part of the Local Plan Review Update.

3. AVAILABLE OPTIONS

- 3.1 The Strategic Planning and Infrastructure Committee are asked to agree the framework for future duty to co-operate, the sign-off procedure for future meeting minutes and the arrangements for statements of common ground, as set out in this report.
- 3.2 Alternatively, Members may choose not to accept the proposed arrangements. This will mean officers will continue with the duty to co-operate process in order to meet national requirements and will do so using the powers set out in Maidstone Borough Council's constitution.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 That members agree the framework for future duty to co-operate, the sign-off procedure for future meeting minutes and the arrangements for statements of common ground, as set out in this report.

5. RISK

- 5.1 The risk associated with these proposals, including the risks should the Council not act as recommended, have been considered in line with the Council's Risk management Framework.
- 5.2 The Planning Inspector appointed to examine the Local Plan review will consider whether a council has complied with the duty to co-operate as set out in the NPPF and relevant legislation. Should the Inspector consider that the Council has not met this duty then the examination will not proceed to hearings. This will delay the review of the Local Plan.
- 5.3 If agreement is secured on all recommendations, then we are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. REPORT APPENDICES

- 6.1 The following documents are to be published with this report and form part of the report:
 - Appendix 1: Duty to Co-operate activities to date (Neighbouring Authorities).
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